Arbitration CAS 2021/A/8375 FC Okzhetpes v. Alexandr Sheplyakov, award of 16 March 2023

Panel: Ms Leanne O'Leary (New Zealand), Sole Arbitrator

Football
Contractual dispute – termination of the employment contract
New evidence at CAS level
Request for relief
Amendment of a request for relief
Unilateral salary reduction due to COVID-19
Decisions of another jurisdictional body

1. **In accordance with Article R57(3) of the Code, *"The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply"*. Article R57(3) of the Code provides for a wide margin of discretion and that discretion to exclude evidence under Article R57(3) should be construed in accordance with the fundamental principle of the de novo power of review of CAS panels. Therefore, the standard of review should not be undermined by an overly restrictive interpretation of Article R57(3) and that discretion to exclude evidence should be exercised with caution, e.g. in situations where a party may have engaged in abusive procedural behaviour or where there exists any other facts or circumstances in which CAS panels might consider it either unfair or inappropriate to admit new evidence.**

2. **The CAS Code does not prescribe a form for a party's request for relief. It only requires in Article R48 that the Statement of Appeal contain, amongst other things, the appellant's request for relief. Nevertheless, requests for relief should be specified with enough precision in order for respondents to reply accurately to all parts of the claim. They must be worded in such a way that the appellate authority may, where appropriate, incorporate them to the operative part of its own decision without modification. If the request for relief is not sufficiently specified, it may be difficult for an adjudicatory body to assess whether the claim adjudicated in the appealed decision and the claim raised before it are the same, in which case the respective requests would be barred by the principle of *res judicata*.**

3. **CAS' power of review is limited by the object of the dispute that was considered in the previous instance. A party may not amend its request for relief unless the parties agree, or a CAS panel agrees otherwise on the basis of exceptional circumstances. In some occasions, amendment to a request for relief after an appeal brief has been filed is allowed.**

4. The FIFA Guidelines on COVID-19 provide that a unilateral decision to vary an employment agreement will only be recognised if made in accordance with national law, or permissible under a collective agreement. In case of conflicting submissions on national law, evidence in the form an expert legal opinion is required.

5. CAS panels are not bound by the decisions of another jurisdictional body.

I. PARTIES

1. FC Okzhetpes (the "Club" or the "Appellant") is a professional football club based in Kokshetau City, Republic of Kazakhstan. It is organised as a state utility company with the right of management of the Club under the Department of Physical Culture and Sports of the Akmola region in the Republic of Kazakhstan. It is affiliated to the Football Federation of Kazakhstan, which, in turn, is affiliated with the Fédération Internationale de Football Association ("FIFA"). The Club participates in the Kazakhstan Championship that is organised by the Professional Football League of Kazakhstan (the "PFLK").

2. Mr Alexandr Sheplyakov (the "Player" or the "Respondent") is a professional football player of Russian nationality.

3. Collectively, the Club and the Player shall be referred to as the "Parties".

II. INTRODUCTION

4. This is an appeal against a decision rendered by the FIFA Dispute Resolution Chamber (the "DRC") on 28 July 2021 (the "Appealed Decision") in an employment-related dispute.

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 adduced at the hearing on 7 April 2022. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, she refers in her Award only to the submissions and evidence she considers necessary to explain her reasoning.

6. On 16 February 2020, the Club and the Player signed an employment contract titled Employment Contract No. 38 (the "Contract"). The official English language translation provided, amongst other things, as follows:

*"2. **RIGHTS AND OBLIGATIONS OF THE PARTIES***

2.1 The Employee has the right:

…

2.1.4 to payment of the salary in a timely manner and in full;

2.1.5 to payment of stoppage in accordance with the Code and the present employment contract;

2.1.6 to rest, including paid annual leave;

…

2.5 The Employer is obliged:

…

2.5.2 to comply with the requirements of the labor legislation of the Republic of Kazakhstan, agreements, the present employment contract, acts issued by it;

…

2.5.2 to pay the Employee the salary and other payments provided for by normative legal acts of the Republic of Kazakhstan, the present employment contract and acts issued by the Employer in a timely manner and in full;

…

2.5.10 to suspend the work if its continuation constitutes a threat to the life and health of the Employee;

…

3. PAYMENT FOR LABOR

*3.1 The Employer establishes a monthly salary to the Employee in the amount of **3 806 000 (three million eight hundred six thousand) tenge**.*

..

3.6 The Employer independently, at the Employee's consent, deducts and transfers the sum in the amount of 0.3% of the Employee's salary to the account of the union committee of FC <<Okzhetpes>> during the validity term of this Employment Contract.

3.7 Payment of work stoppage time occurred at the fault of the Employer is established in the amount of 50 percent of the average salary of the Employee and is paid within the time period stipulated by the legislation of the Republic of Kazakhstan.

3.8 Payment of work stoppage time occurred through no fault of the Employer and the Employee is established in the amount not less than the minimum salary and is paid within the time period provided for in the legislation of the Republic of Kazakhstan.

…

10. VALIDITY TERM OF THE CONTRACT

10.1 The present employment contract shall take effect on the date the Parties have signed it and it is in effect until 13 November 2020.

…

10.3 The Parties agreed to consider 16 February 2020 to be the Employee's labor functions commencement date (the employment commencement date)".

7. On 24 February 2020, the Parties entered into Supplementary Agreement to the Employment Contract No 38 of 16 February 2020 (the "Supplementary Agreement"). An official English version of the Supplementary Agreement provided as follows:

> *"Insert into Article 10 <<Validity term of the Contract>> clause 10.4 stating the following: <<the present employment contract* ***shall be valid till 9 November 2020****, in case the football team has the right to participate in a* ***play-off match*** *for promotion to the Championship of the Republic of Kazakhstan of the 2021 season, the employment contract* ***shall be extended till 21 November 2020****>>.*
>
> *The conditions of the employment contract No. 38 of 16 February 2020 not affected by the present agreement shall remain unchanged".*

8. On 13 March 2020, the Commission for the consideration of proposals on making additions to the Collective Agreement of the State utility company on the right of economic management "Okzhetpes" Football Club held a meeting to consider amendments to a collective agreement dated 28 March 2016 that applied to the Club's workforce. The members of the Commission unanimously voted and adopted the following decision:

> *"1. From March 13, 2020 to make amendments to the collective agreement dated March 28, 2016 of the SCE on the REM "Okzhetpes" Football club on the issues of remuneration for the following items:*
>
> *1.1 In the case of declaring working hours as downtime for reasons beyond the control of the employer and the employee, establish a wage at the rate of 50% of the employee's salary for all professional football players, coaching staff, specialists of the main football team, the Second League team, the "Okzhetpes" football center, women's soccer team, futsal team.*
>
> *1.2 In the case of declaring working time as downtime for reasons beyond the control of the employer and the employee, establish wages at the rate of 80% of the employee's wages for all employees of the administrative and economic personnel".*

9. On 15 March 2020, the President of the Republic of Kazakhstan declared a state of emergency in the country due to the COVID-19 pandemic.

10. On 16 March 2020, the PFLK announced the suspension of all competitions.

11. On 16 March 2020, the Club suspended all football activities, including the activities of its first team in which the Player was employed. The initial period of suspension or downtime continued until 15 April 2020 (the "First Downtime Period"). Notification of the suspension of football activities was issued in the form of Order No 41-od of 16 March 2020 ("Order No 41").

12. On 18 March 2020, the PFLK recommended that football clubs were to cease training.

13. On 19 March 2020, the Club issued an amendment to Order No 41 which stated that:

> *"1. Paragraph 1 of the order No 41-od of 16 March 2020 <<to suspend the activities of all the structural subdivision of the State Communal Enterprise operating on the basis of the Right of Economic Management <<Football club <<Okzhetpes>> from 16 March 2020 till 15 April 2020: the main football team, the football team of the Second League, the football center, women's football team, futsal team. During the period of work stoppage, due to the cause beyond the reasonable control of the Employer the salary shall be established in the amount of 50% of the monthly salary of the Employee>>.*
>
> *…".*

14. On 13 April 2020, the Chief State Sanitary Doctor of the Akmola Region issued a direction which extended the First Downtime Period until the end of May 2020.

15. During the First Downtime Period, the Club implemented salary reductions as outlined in the Order No 41 for the period of the downtime, including a reduction to the Player's salary payment by 50%.

16. In June 2020, the Club resumed its football-related activities and the Player was paid his salary in full for the month of June 2020.

17. On 3 July 2020, the PFLK suspended competition for a second time on the basis of Government restrictions announced to reduce the spread of COVID-19.

18. Between 4 July 2020 and 8 August 2020 (the "Second Downtime Period"), and because of the worsening epidemiological situation in the country, the Club suspended its football activities. During the Second Downtime Period, the Player's salary was reduced by 50%.

19. On 8 August 2020, the Club resumed football activities.

20. On 9 November 2020, the Contract was terminated due to effluxion of time, without the Club making an annual leave payment to the Player.

21. On 25 December 2020, the Player, through his legal representative, wrote to the Club and demanded payment of outstanding monthly salary for March, April, October and November

2020 in the amount of Kazakhstan Tenge ("KZT") 12,559,800 net and an annual leave payment of KZT 3,552,266.67 net. The Club did not respond to the demand.

B. Proceedings before the FIFA DRC

22. On 19 January 2021, the Player filed a claim before the DRC seeking his unpaid wages and an annual leave payment. He requested the following relief:

- Monthly salaries for March, April, October and November 2020 in the amount of KZT 14,462,800 net;
- Compensation for unused leave in the amount of KZT 3,552,266.67 net; and
- Interest in the amount of 11.88% *p.a.* from the salary due dates to the actual date of payment.
- An order that the Club pay the expenses connected to the proceedings, including the costs of the proceedings.

23. Before the DRC, the Player submitted that the Club had failed to make the salary payments claimed. He submitted that the salary deductions in March and April 2020 were *"unlawful"* because the Club imposed them unilaterally without the Player's agreement. The Player further submitted that the Club failed to pay any remuneration in March and April 2020. The Player also claimed that he was entitled to 28 days' paid annual leave which he did not use, and that his contract had been extended until 21 November 2020.

24. In its defence, the Club partially rejected the Player's claim. First, it submitted that the contract extension had not been executed because the Club had not qualified for the play-off match. Secondly, it submitted that the salary amounts claimed were not net payments due to the Player but included tax amounts which the Club was obliged to pay to the tax authorities. It asserted that the Player's net salary was KZT 3,425,400, taking into account a 10% tax deduction. Thirdly, the Club asserted that the salary reduction was lawful because it was implemented in accordance with Kazakhstan law, arose because of the special circumstances created by the COVID-19 pandemic and fell within the scope of "work stoppage" as defined in clause 3.8 of the Contract. Fourthly, the Club acknowledged that it had made several payments to the Player but that the Player was still owed KZT 4,363,674. It asserted that it had paid for a plane ticket for the Player in the amount of KZT 155,923 and that the amount was to be deducted from its debt. It submitted that the total compensation owed for unused leave was KZT 1,848,585.

25. On 28 July 2021, the DRC rendered the Appealed Decision, whose grounds were notified to the Parties by email on 2 September 2021. The DRC partially accepted the Player's claim as follows:

> *"2. The Respondent, FC Okzhetpes, has to pay to the Claimant, the following amount:*

- *Kazakhstan Tenge (KZT) 3,806,000 as outstanding remuneration plus 5% interest p.a. as from 1 April 2020 until the date of effective payment.*

- *KZT 3,806,000 as outstanding remuneration plus 5% interest p.a. as from 1 May 2020 until the date of effective payment.*

- *KZT 3,806,000 as outstanding remuneration plus 5% interest p.a. as from 1 November 2020 until the date of effective payment.*

- *KZT 1,141,800 as outstanding remuneration plus 5% interest p.a. as from 10 November 2020 until the date of effective payment.*

- *KZT 3,396,343 plus 5% interest p.a. as from 19 December 2020 until the date of effective payment.*

3. *Any further claims of the Claimant are rejected.*

4. *The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.*

5. *The Respondent shall provide evidence of payment of the due amount in accordance with this decision to* ***psdfifa@fifa.org****, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).*

6. *In the event that the amount due, plus interest as established above is not paid by the Respondent* ***within 45 days,*** *as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:*

    1. *The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid. (cf. art. 24bis of the Regulations on the Status and Transfer of Players).*

    2. *In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee".*

26. The grounds of the Appealed Decision can be summarised as follows. First, the DRC took note that the matter had been presented to FIFA on *"19 December 2020"* and submitted for decision on 28 July 2021, and that taking into account the wording of Article 21 of the January 2021 edition of the Rules Governing the Procedure of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules"), the June 2020 edition of the Procedural Rules was applicable to the matter at hand. It also considered that, in principle, it was competent to deal with the present dispute based on Article 24(1), in conjunction with Article 22 lit. a) and b), of the October 2020 edition of the FIFA RSTP because the matter concerned an employment-related dispute with an international dimension between a player and a club.

27. Secondly, the DRC confirmed that, in accordance with Articles 26(1) and (2) of the FIFA RSTP (October 2020 edition), the regulations applicable to the substance of the dispute were the October 2020 edition of the FIFA RSTP because the claim was lodged on *"19 December 2020"*.

28. Thirdly, regarding the contract extension, the DRC found that the Club did not qualify for the promotion play-off. Therefore, the Player's contract expired on 9 November 2020 and was not extended until 21 November 2020. Fourthly, regarding the salary deduction, the DRC considered that the Club had failed to try and negotiate with the player in the first place and directly imposed a reduction of 50%. It concluded that the Club had not *"acted in accordance with the regulations regarding a unilateral variation of contract"*. It stated that the COVID-19 Guidelines and the FIFA COVID-19 FAQ did not establish COVID-19 as a *force majeure* situation, nor did the COVID-19 Guidelines exempt the Club from paying the Player's wages. Accordingly, the DRC concluded that the Club's arguments did not exempt it from its obligations under the Player's contract.

29. Fifthly, on the basis that the Club failed to submit any documentation regarding the tax deductions, the DRC decided *"to take into account the monthly salary of KZT 3,806,000 without deductions, in accordance with the wording of the contract"*, and concluded that the Club failed to remit the Claimant's remuneration in the total amount of KZT 12,559,800, which corresponded to the Player's March 2020, April 2020, October 2020 and November 2020 salary pro-rated for nine days. Sixthly, the DRC accepted that the Player was owed the amount claimed as compensation for unused leave, and directed its payment subject to a deduction for the amount of the Player's flight ticket.

30. Finally, in accordance with the general legal principle of *pacta sunt servanda*, the DRC held that the Club was liable to pay the Player the total amount of KZT 15,956,143. It decided that in accordance with its constant practice, the Club was to pay interest of 5% on the amount of KZT 15,956,143 as from the respective salary due dates. The DRC also directed that should the Club fail to pay the amount due within 45 days from communication by the Player of his bank details, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods came into effect. The DRC rejected any further claim lodged by the Player.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

31. On 23 September 2021, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code") against the Respondent in relation to the Appealed Decision. In accordance with Article R51 of the Code, the Statement of Appeal was considered as the Appellant's Appeal Brief.

32. On 18 October 2021, further to Article R41.3 of the Code, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.

33. On 18 January 2022, and within a previously agreed extension of time, the Respondent filed his Answer in accordance with Article R55 of the Code.

34. On 19 January 2022, the CAS Court Office acknowledged receipt of the Respondent's Answer and notified the Parties that unless the Parties agreed or the Sole Arbitrator ordered otherwise on the basis of exceptional circumstances, Article R56 of the Code applied, and *"the Parties shall not be authorized to supplement or amend their requests or their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely, after submission of the Appeal Brief and of the Answer"*. The letter also invited the Parties to inform the CAS Court Office, before 26 January 2022 of their preference for a hearing to be held, or for the Sole Arbitrator to decide the matter based solely on the Parties' written submissions.

35. Also on 19 January 2022, the CAS Court Office issued, pursuant to Article R54 of the Code and on behalf of the Deputy Division President, the Notice of Formation of a Panel in the proceedings, constituted as follows: Dr Leanne O'Leary, Senior Lecturer in Law and Solicitor in Liverpool, United Kingdom acting as Sole Arbitrator.

36. On 26 January 2022, the Appellant informed the CAS Court Office of its preference for a hearing to be held. It also requested the opportunity to submit further written submissions in response to the Respondent's Answer.

37. On 31 January 2022, the Respondent informed the CAS Court Office that he objected to the Appellant's request to submit further written submissions.

38. On 7 February 2022, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to grant a second round of written submissions which were to be limited to addressing the following:

    "i. The provision of payment orders to the Player and the tax authorities;

    ii For the Parties to agree the English translation of clause 3.4 of the Contract, in particular, and the English translation of the court document and collective agreement; and

    iii. For the Appellant to explain how the collective agreement applied to the Player's employment when the Player states that he is not a union member and the collective agreement is not expressly incorporated into the Player's Contract, as well as provide an explanation regarding the deduction for the 'the account of the union committee' of the Club, referred to in clause 3.6 of the Contract".

39. Within the time limit granted by the CAS Court Office, the Appellant filed its Reply on 14 February 2022 and the Respondent filed his Rejoinder on 21 February 2022.

40. On 28 February 2022, and in light of the second round of written submissions, the CAS Court Office invited the Parties to confirm whether a hearing was still required.

41. On 2 March 2022, the Appellant informed the CAS Court Office that a hearing was necessary and of its preference for the hearing to be by way of videoconference. The Respondent

informed of his preference for the Sole Arbitrator to issue an Award based solely on the Parties' written submissions.

42. On 4 March 2022, the CAS Court Office advised the Parties that the Sole Arbitrator had considered the Parties' positions with respect to a hearing, and pursuant to Article R57 of the Code, a hearing would be held by way of videoconference on 7 April 2022. The Parties were invited to confirm their attendance on that date, by 10 March 2022.

43. On 17 March 2022, and as the Parties had remained silent on the proposed hearing date, the CAS Court Office confirmed that a hearing would be held by way of videoconference on 7 April 2022 and invited the Parties to confirm the names of any witnesses, representatives and interpreters who would be in attendance.

44. On 24 March 2022, the Parties confirmed the attendance of their representatives and interpreters at the hearing. The Respondent informed the CAS Court Office that he was unlikely to attend in-person.

45. On 1 April 2022, the CAS Court Office forwarded the Order of Procedure to the Parties which was returned in duly signed copy by the Respondent and the Appellant on 5 April 2022.

46. On 4 April 2022, the Respondent informed the CAS Court Office that owing to the unavailability of his interpreter, the Respondent's representative would not be attending the hearing.

47. On 7 April 2022, a hearing took place by video-conference. Besides the Sole Arbitrator and Mr Fabien Cagneux, CAS Managing Counsel, the following persons attended the hearing:

- For the Appellant:
    - Mr Anton Golubev, TMS Manager and In-House Legal Counsel
    - Mr Grigoriy Chesha, Interpreter
- For the Respondent:
    - No attendance

48. As the Respondent had previously notified of his non-attendance and following a short break to confirm the Respondent's non-attendance, the hearing commenced in the absence of the Respondent and his representative. At the outset of the hearing, the Appellant confirmed that it had no objections to the Sole Arbitrator hearing the matter and confirmed that the Sole Arbitrator had jurisdiction over the present dispute. In its oral submissions, the Appellant reiterated the arguments already put forward in its respective written submissions. No witnesses were called.

49. Before the hearing was concluded, the Appellant expressly stated that it did not have any objection with the procedure adopted by the Sole Arbitrator and that its rights to be heard and to be treated equally had been duly respected.

50. On 7 April 2022, the Appellant submitted additional information in support of its position.

51. On 8 April 2022, the CAS Court Office invited the Respondent to comment on the admissibility and content of the Appellant's additional information.

52. On 13 April 2022, the Respondent informed the CAS Court Office that he objected to the admissibility of the Appellant's additional information.

53. On 14 April 2022, the CAS Court Office informed the Parties of the Sole Arbitrator's decision not to admit the Appellant's additional information. The reasons for her decision are provided in paragraphs 72 to 81 of this Award.

V. SUBMISSIONS OF THE PARTIES

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

- The Appellant and the Respondent entered the Contract for the period between 16 February 2020 and 9 November 2020.

- Relying on clauses 3.1, 3.4 and 3.5 of the Contract, the Respondent's salary was KZT 3,806,000 *gross*.

- Between 16 March 2020 and 31 May 2020, and 4 July 2020 and 8 August 2020, periods of downtime in the Appellant's employment arose because of a state of emergency declared by the President of the Republic of Kazakhstan in relation to the COVID-19 pandemic, the PFLK's decision on 16 March 2020 to suspend all football competitions, and Article 23.2.13 of the Kazakhstan Labor Code which provides that an employer, *"is obliged to suspend work if its continuation poses a threat to the life and health of the employee and other people"*. The Downtime Periods arose for reasons beyond the control of the Appellant or the Respondent, and neither party was able to fulfil their contractual duties during these periods.

- Downtime is a temporary suspension of work for economic, technical, organizational, or other reasons, and in accordance with Article 112 of the Kazakhstan Labor Code, the procedure for registering downtime and the terms of payment, *"for stoppage for reasons beyond the control of the employer and employee are determined by labor, collective agreements and are established in an amount not lower than the minimum salary"*.

- In accordance with clause 3.8 of the Contract, and a Collective Agreement dated 16 March 2016 (the "Collective Agreement") that applies in the Appellant's workplace, the Appellant reduced the Respondent's monthly salary by 50% during the First and Second Downtime Periods. It paid the Respondent's salary in full for the month of June 2020

when government restrictions were eased. It also paid the Respondent's salary in full for the month of August 2020, even though the Second Downtime Period did not finish until 8 August 2020.

- When deciding to reduce the Respondent's salary the Appellant was guided by the legislation of the Republic of Kazakhstan, clause 3.8 of the Contract, the Collective Agreement, the Kazakhstan Labor Code, and the Appellant's economic situation. The Respondent did not dispute or challenge the Club's decision until 2021.

- The Appellant still owes the Respondent salary of KZT 2,671,812, and compensation for unused annual leave of KZT 1,692,662.

- It disputes the FIFA DRC decision because it obliges the Appellant to pay a debt that is calculated without consideration of deductions for the First and Second Downtime Periods and the income tax that the Appellant is obliged to pay to the tax authorities in accordance with clause 3.4 of the Contract.

- In its Statement of Appeal/Appeal Brief, the Appellant submitted the following requests for relief:

  "WE ARE KINDLY ASKING YOU:

  1. *Accept this appeal for consideration*

  2. *Due to the arrest of the currency account of FC Okzhetpes and the inability to pay the appeal fee, it is allowed to pay the appeal fee until October 10, 2021.*

  3. *Consider this dispute of the sole arbitrator of the Court of Arbitration for Sport.*

  4. *Review the decision of the FIFA PRS taking into account the periods of downtime of FC Okzhetpes in 2020, as well as taking into account the Player's income tax paid by the Club to the tax authorities".*

55. In its Reply, the Appellant repeated arguments already raised and provided further details of salary payments and tax calculations. Below is a summary of the Appellant's arguments not already raised in the Statement of Appeal/Appeal Brief:

- In 2020, it paid the Respondent the following amounts:

No.	Date	No. of Pay Order	Amount
1	05.05.2020	336	4 213 424 KZT
2	10.06.2020	453	3 425 000 KZT
3	07.08.2020	618	3 425 618 KZT

4	25.08.2020	668	1 918 000 KZT
5	25.08.2020	676	1 507 000 KZT
6	10.09.2020	721	3 425 000 KZT
7	16.10.2020	840	3 426 200 KZT
Total			**21 340 242 KZT**

- It disputed the DRC calculation of the amount owed to the Respondent because the DRC directed the Appellant to pay more than the balance owed. According to clause 3.1 of the Contract, the Respondent's monthly salary was KZT 3 806 000. If the Appellant had not considered the downtime periods and the 10% income tax, then the Respondent should have received the following amounts:

Month	**Work Days**	**Amount**
February	12 workdays (16.02 – 29.02)	1 826 880 KZT
March	Full month	3 806 000 KZT
April	Full month	3 806 000 KZT
May	Full month	3 806 000 KZT
Juny (sic)	Full month	3 806 000 KZT
July	Full month	3 806 000 KZT
August	Full month	3 806 000 KZT
September	Full month	3 806 000 KZT
October	Full month	3 806 000 KZT
November	7 workdays (01.11 – 09.11)	1 065 680 KZT
Total:		**33 340 560 KZT**

**The Respondent had a five-day working week*

- The difference between the amount directed to be paid by the DRC of KZT 12,559,800 and the balance actually owed if downtime and income tax are not taken into consideration, is KZT 559,482.

- Relying on clause 5.2 of the Contract, the Player would be entitled to 28 days paid leave if he performed his duties for a full calendar year or 366 days in 2020. However, the Contract was for a duration of 267 days and pro-rated the Player was entitled to 21 days of unused leave in the amount of KZT 2,664,200.00. The FIFA DRC directed the Club to pay KZT 3,396,342 plus 5% interest p.a. The difference in calculation is 732,142.00 KZT.

- Regarding the issue of income tax, Article 317.3 of the Code of the Republic of Kazakhstan <<On taxes and other obligatory payments to the budget>> (the "Kazakhstan Tax Code") provides that:

  "For the income of non-resident individual, the calculation, withholding and transfer of individual income tax, as well as the submission of tax reports, are carried out in accordance with the procedure and deadlines established by Chapter 74 of this Code, at the rates provided for in Articles 320 and 646 of this Code".

- Article 320.1 of the Kazakhstan Tax Code provides that, *"The taxpayer's income, with the exception of the income specified in paragraph 2 of this Article, is taxed at the rate of 10 percent".*

- The Respondent's Answer incorrectly translates clause 3.4 of the Contract. Clause 3.4 of the Contract states that the payments due to the Player are indicated in the Contract *without* deduction for tax. The Respondent replaced the preposition "without" with the preposition "with" which distorts the meaning of the clause. The Appellant submits that the English translation of the Contract attached as an exhibit to the Respondent's Answer is correct.

- The Appellant submits that it deducted the following amounts of income tax from the Respondent's monthly salary:

No.	**Month**	**Amount**
1	February	182 688 KZT
2	March	285 450 KZT
3	April	190 300 KZT
4	May	190 300 KZT
5	Juny (sic)	380 600 KZT
6	July	190 300 KZT
7	August	380 600 KZT
8	September	380 600 KZT

9	October	380 600 KZT
10	November	106 569 KZT
11	Unused leave	205 399 KZT
Total:		**2 873 406 KZT**

- It did not make any deductions from the Player's salary for payments to the union committee and it was unaware of whether the Player was a member of a trade union.

- Finally, the Appellant requested the Sole Arbitrator to:

  "1. Recognize as incorrect the amount of the Club's debt to the Player by the decision of the DRC FIFA and calculations of the Respondent and DRC FIFA.

  2. Recognize the debt owed to the player, taking into account the periods of downtime and the paid amounts of income tax, in the amount of 4 364 473,00 KZT (2 671 812 KZT of salary + 1 692 662 KZT of compensation of unused leave). The Club also ready to pay penalty for late payment of this amount.

  3. Oblige the Respondent to pay expenses of the Club for paying Respondent's part of the Advance Cost to the CAS in the amount of 8,000 CHF.

  4. Oblige the Respondent to pay expenses of the Club for paying Appellant's part of the Advance Cost to the CAS in the amount of 8,000 CHF.

  5. Oblige the Respondent to pay all CAS payments presented in this case, if any will be, in the future".

56. The Respondent's submissions may be summarized as follows:

- Relying on Article R58 of the Code, the Respondent submits that the applicable law to the substance of the matter is: the statutes and regulations of FIFA; Swiss law as the FIFA DRC decision was rendered in Switzerland; and the specificity of sport.

- The Appellant's request for relief asks the Sole Arbitrator to, *"Review the decision of the FIFA PRS"*. The FIFA PRS did not issue the decision, but rather the decision was issued by the FIFA DRC. The request for relief also does not specify in what part or in what manner it requests to alter or cancel the Decision. A consideration of the Appellant's appeal cannot entail the cancellation or alteration of the Decision since the Appellant has not raised such a request.

- Assuming that the Appellant's request for relief is formulated properly, the Respondent submits that the text of the Appellant's appeal shows that the Appellant only disputes that part of the Appealed Decision that relates to the salary collection for the period when

the Appellant was suspended from work between 16 March 2020 to 31 March 2020, and from 1 April 2020 to 15 April 2020. The Appellant disputes the calculation of the salary for these periods at 100% of his monthly salary.

- The Appellant does not disagree with the parts of the Appealed Decision that relate to the collection of salary for the periods: 1 March 2020 to 15 March 2020; 16 April 2020 to 30 April 2020; 1 October 2020 to 30 October 2020; 1 November 2020 to 9 November 2020; and the unused annual leave payment.

- The Respondent's salary for the period from 16 March 2020 to 31 March 2020 was KZT 1,964,387.10 (calculated by KZT 3,806,000/31 days in March x 16 days = KZT 1,964,387.10) and 50% of that amount is KZT 982,193.55. The Respondent's salary for the period from 1 April 2020 to 15 April 2020 was KZT 1,903,000 (calculated by KZT 3,806,000/30 days in April x 15 days = KZT 1,903,000) and 50% of that amount is KZT 951,500.00. The subject for consideration in this case is only the issue of whether the Respondent is entitled to salary for the periods 16 March 2020 to 31 March 2020 and from 1 April 2020 to 15 April 2020 in the full amount.

- The Respondent's monthly salary fixed in accordance with clause 3.1 of the Contract was KZT 3,806,000 *net* because the text of the Employment Contract provides that all payments due to the Respondent are specified after income tax is deducted i.e., net, and the Appellant independently calculates and pays taxes from the Respondent's remuneration. The Respondent asserts that Clauses 3.4 and 3.5 of the Contract state the following (emphasis added):

  "3.4 All the payments due to the Employee and presented in the text of the present employment contract are indicated ***with consideration of tax deduction*** *and other obligatory payments stipulated by the laws of the Republic of Kazakhstan.*

  3.5 ***The Employer independently calculates, deducts, and transfers*** *taxes and other obligatory payments from the income of the Employee provided for by the legislation of the Republic of Kazakhstan and received during the validity term of this Employment Contract".*

- The Appellant failed to submit any documentation about the tax deductions, salary payments or payment of compensation for unused leave to the DRC and in these proceedings.

- The outstanding salary owed to the Respondent is:

Month	**Amount of the debt**
March 2020	3 806 000 KZT net
April 2020	3 806 000 KZT net
October 2020	3 806 000 KZT net

November 2020	1 141 800 KZT net (calculated as 3 806 000 KZT net/30 days in November x 9 days worked
Total:	**12 559 800 KZT net**

- The Respondent submits that the Appellant issued Order No 41 which suspended work for the period 16 March 2020 to 15 April 2020 with salary, but that after the specified period expired and the football team returned to work, the Appellant issued an amended order and retroactively reduced the Respondent's salary by 50% for that same period.

- The salary deduction was unlawful and the Respondent is entitled to his full salary for March and April 2020 because: the Appellant implemented the salary reduction unilaterally without trying to reach an agreement with the Respondent; the Appellant did not provide reasons for the amount of the reduction, which in the Respondent's view was arbitrary, unreasoned and had no connection with any objective factor; the Respondent's income was significantly reduced and the Appellant did not pay his salary for several months; the Appellant acted in bad faith because initially it maintained the full salary but after the resumption of work reduced the salary for the period that had already passed; the suspension of the football competition did not prevent the Respondent from training which he was able to continue and thereby perform his contractual duties.

- In the alternative, if it is concluded that the salary reduction was lawful, then the amounts owed to the Respondent are: KZT 2,823,806.45 for March 2020; and KZT 2,845,000 for April 2020: a total of KZT 10,262,106.45. The Appellant did not provide any evidence of salary payment to the DRC or in these proceedings.

- Regarding the compensation for unpaid annual leave, the Respondent submits that clause 5.2 of the Contract provides him with an entitlement to 28 calendar days annual labor leave and he is entitled to 28 calendar days in the amount of KZT 3,552,266.67 net. Pursuant to Article 96.2 of the Kazakhstan Labor Code, on termination of his employment contract, the Respondent is entitled to be compensated for unused annual labor leave. Considering the deduction for the plane ticket, the amount of unused annual leave to which the Respondent is entitled, is 3,396,343.67 KZT. The Appellant did not submit any evidence to the FIFA DRC or in these proceedings that shows payment of compensation for the unused leave.

- The Appellant does not dispute that interest at the rate of 5% per annum is owed on the outstanding salary and unpaid annual leave entitlement.

- The Appellant relies on documents that were not presented to the FIFA DRC, namely: a Collective Agreement; a Labor Inspection Report; and a Kokshetau City Court Decision. These documents are excluded from the present proceedings.

- In any event, these documents cannot constitute grounds for amending the Appealed Decision. The Office of Labor Inspection of Akmola Region, and the Kokshetau City Court of Akmola Region are not part of the football arbitration system. Their decisions are of no legal value to the CAS and are not relevant. The Respondent did not file complaints with either entity or participate in the proceedings, and the complaints were brought by people who are not a party to the current proceedings. The Collective Agreement is not concluded between football clubs and football players of the Republic of Kazakhstan. The Respondent did not sign it, was unaware of its existence until these proceedings and is not a member of a trade union. The meeting at which changes to the Collective Agreement regarding salary deductions was considered, did not include any football player representatives. The amendment was adopted unilaterally by the Appellant, has no legal force, and does not apply to the Respondent.

- The Collective Agreement also has no legal force under Kazakhstan law. Articles 156.1 and 158.3 of the Kazakhstan Labor Code require that the parties to a Collective Agreement are not all employees, but the employees who are represented by their authorized representative, and that a Collective Agreement extends only to those employees on whose behalf a collective agreement has been concluded or who have joined it independently. Articles 20.1 and 20.2 of the Kazakhstan Labor Code, provide that a trade union may only represent those employees who are members of the trade union. A trade union may only represent an employee who is not a member of the union if the employee has authorized the union to represent it. The Respondent is not a member of any trade union in the Republic of Kazakhstan, did not participate in the election of elected representatives of the Appellant's employees and did not authorize any union to represent his interests. The Appellant provided no evidence that the Collective Agreement was signed on behalf of the employees by a professional union or elected representative. The Collective Agreement also contains conditions that violate the rights of the Appellant's employees. Contrary to Article 23.2.6 of the Kazakhstan Labor Code, the Appellant did not inform the Respondent of the Collective Agreement, nor did it inform the Respondent of compliance with Article 156.4 of the Kazakhstan Labor Code.

- Furthermore, relying on Article 10.2 of the Kazakhstan Labor Code, the terms of a collective agreement which worsen the Respondent's position, as the amendment to impose a salary deduction does, are invalid and not applicable. Article 10.3 of the Kazakhstan Labor Code also prohibits unilateral changes to the terms of the Collective Agreement and the Contract. The unilateral changes made to the Respondent's working conditions are invalid.

- The Respondent has collected KZT 15,956,143.00 from the Appellant because of the Appealed Decision, and it disputes only KZT 1,933,693.55 which is the equivalent of 12.11% of the total amount awarded. Accordingly, if its appeal is successful, the Appellant should bear the costs of these proceedings.

- The Respondent requests the Sole Arbitrator:

"1) To dismiss the Appellant's appeal against the Decision of the FIFA DRC of 28 July 2021, rendered in the dispute between the Appellant and the Respondent, in full.

2) To uphold the Decision of the FIFA DRC of 28 July 2021, rendered in the dispute between the Appellant and the Respondent.

3) To condemn the State communal enterprise operating on the basis of the right of economic management <<Football club<<Okzhetpes>>, under the department of physical culture and sport of the Akmola region (FC <<Okzhetpes>>) 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 arbitration as per Article R64.4 of the Code of the Sports-related Arbitration (edition 2021).

4) To condemn the State communal enterprise operating on the basis of the right of economic management <<Football club <<Okzhetpes>>, under the department of physical culture and sport f Akmola Region (FC <<Okzhetpes>>) to pay wholly any expenses, connected to the arbitration proceedings, and to pay Mr Alexandr Sheplyakov wholly all his expenses connected to this proceeding, including the costs of legal services and the costs of the services of the interpreters".

57. The Respondent's new arguments raised in its Rejoinder are summarised as follows:

- The English translation of the Contract which was provided by the Respondent was undertaken by a qualified translator and confirms the translation's reliability.

- Regarding the Collective Agreement, the Respondent submits that the Appellant has not disclosed some attachments to the Collective Agreement. Articles 3.1 and 3.2 of the Collective Agreement oblige the employer to notify the Respondent of the reduction in his salary one month before the reduction, which the Appellant did not do. Moreover, the Collective Agreement provided additional rights and compensation only to the Club's management. These provisions show that the Collective Agreement was either not concluded in principle and was made by the Appellant "retroactively" or it was concluded not by a representative of employees, but by a person who was under the control of the Appellant, and it was concluded only for the Appellant's benefit.

- The Appellant has not provided any evidence to verify the validity of amendments made to the Collective Agreement.

- The Appellant reduced the Respondent's salary by 50% and reduced the salaries of managerial staff by 80% which, contrary to clause 1.3 of the Contract, discriminates against the Respondent based on his official position.

- The Respondent was not a party to the Kokshetau City Court Decision, and there is no evidence that the Decision has entered into force.

- The Appellant accepts in paragraph 33 of its Reply that the Respondent was not a member of a trade union, including of the union that allegedly concluded the Collective

Agreement. The Respondent did not join a trade union in the Republic of Kazakhstan and did not request the Appellant to withhold labor union contributions from his salary.

- The Appellant's reliance on clauses 3.7 and 3.8 of the Contract to implement the salary reduction is *"inconsistent"*. Downtime is defined in Article 1.1.10 of the Kazakhstan Labor Code as, *"a temporary suspension of work due to economic, technological, organizational, other industrial or natural disaster reasons"*. The grounds for suspension of work do not include epidemiological reasons. There was no downtime to which clauses 3.7 and 3.8 of the Employment Contract applied. Also, the Respondent's work was not suspended, only football matches. Downtime requires formalization through a procedure laid out in an employment contract or collective agreement (*see* Article 112.1 of the Kazakhstan Labor Code), and the Appellant did not formalize it. The Contract does not provide a procedure.

- The Appellant misled the DRC over the amount of debt owed to the Respondent and now submits that KZT 14,664,518 is owed, of which KZT 12,000,318 is monthly salary and KZT 2,664,200 is unpaid leave compensation. The responsibility to prove payment of the debt lies with the Appellant, and all uncertainties and inaccuracies in the evidence provided by the Appellant should be construed against it.

- The payment orders submitted by the Appellant were not directed to the payment of the disputed debt. The payment orders show the amount of money paid to a group of employees and not the Respondent specifically. The payment orders show that debts for other periods were paid but not the debts that are the subject of these proceedings. There is also no evidence of payments for February and July 2020. The Respondent was paid incentives other than monthly salary e.g., bonuses, and the Appellant is trying to offset bonus payments against outstanding monthly salary.

- The Appellant incorrectly calculates the Respondent's salary for the period 1 to 9 November 2020 on the basis that the Respondent worked 7 days and had a five-day work week. However, such an approach is inconsistent with the calculation of salary for other months.

- All payments made to the Respondent differed in amount. If it is accepted that the monthly salary amount was KZT 3,806,000 – 10% tax = KZT 3,425,400, the Appellant never once transferred that amount to the Respondent. The Appellant organized the payment of labour in a deliberately incomprehensible manner to create debt collection difficulties for the Respondent and other employees, and these acts, according to CAS jurisprudence, cannot be held against the player.

- The payment orders do not prove that the Respondent's salary specified in the Contract was gross; it is "impossible" to determine from the payment orders which taxes and for whom exactly were the payments made from the payment orders.

- The Appellant does not deny that the Respondent is owed compensation for unpaid annual leave but challenges the calculation of the amount owed. It calculates the leave due based on the Contract duration and not the duration of 28 calendar days as provided

in clause 5.2. The Respondent relies on the FIFA DRC Decision of 3 October in the case No. 18-01010 Player Konstiantyn Dudchenko, Ukraine v FC Akzhayik, Kazakhstan, and submits that the correct calculation is 28 calendar days.

- The Respondent submits that the Appellant has amended its request for relief contrary to Article R56 of the Code. The Respondent relies on CAS 2019/A/6578, paras 125 to 128, and submits that the Appealed Decision may be reviewed only in that part in which the Appellant requested to review it in the Statement of Appeal/Appeal Brief, namely the request is limited to a review of the Appealed Decision only in respect of collecting salary in full for the period of suspension of football matches, and not in respect of any other part.

- The Respondent requested that the Sole Arbitrator *"refuse to satisfy the Appellant's appeal in full"*.

VI. JURISDICTION

58. The jurisdiction of the CAS in these proceedings arises from Article R47 of the Code and Articles 57 and 58 of the FIFA Statutes.

59. 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 CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".

60. Articles 57(1) of the FIFA Statutes states:

"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents".

61. Article 58 of the FIFA Statutes provides:

"1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.

2. Recourse may only be made to CAS after all other internal channels have been exhausted.

…".

62. Neither party disputed jurisdiction and the Parties' signatures on the Order of Procedure confirmed that they accept the jurisdiction of the CAS.

63. The Sole Arbitrator is satisfied that the parties exhausted all internal channels in FIFA before these proceedings commenced. Accordingly, the Sole Arbitrator determines that the CAS has jurisdiction to hear the present case.

VII. ADMISSIBILITY

64. Article R49 of the Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document".*

65. Pursuant to Article 58(1) of the FIFA Statutes *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".*

66. The Sole Arbitrator notes that the DRC rendered the Appealed Decision on 28 July 2021 and that the grounds of the Appealed Decision were notified to the Parties on 2 September 2021. Considering that the Appellant filed its Statement of Appeal on 23 September 2021, i.e. within the deadline of 21 days prescribed in the FIFA Statutes, the Sole Arbitrator is satisfied that the present appeal was filed in time and is admissible.

VIII. APPLICABLE LAW

67. Article R58 of the Code provides as follows:

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

68. The Appellant has not specified a choice of law in its pleadings. In his Answer, the Respondent relies on the application of the FIFA RSTP.

69. The Player's DRC claim form is dated 19 January 2021, and his Answer submits that his DRC claim was filed on 19 January 2021. The Sole Arbitrator notes that the FIFA RSTP January 2021 edition came into force on 1 January 2021 (*see* Article 29, FIFA RSTP January 2021 edition). Article 26.1 further provides that, *"Any case brought to FIFA before these regulations come into force shall be assessed according to the previous regulations".* Since the Player's claim was presented to the DRC on 19 January 2021 after the FIFA RSTP January 2021 edition entered into force, and none of the exceptions outlined in Article 26.2 of those regulations apply, the Sole Arbitrator concludes that by virtue of Articles 26.1 and 29, the FIFA RSTP January 2021 edition applies.

70. Accordingly, in consideration of the above and in the absence of a choice of law by the Parties for the rules to be applied subsidiarily, pursuant to Article R58 of the Code, the Sole Arbitrator holds that the present dispute shall be decided principally according to the FIFA RSTP January 2021 edition, with Swiss law applying subsidiarily.

IX. PRELIMINARY ISSUES

71. The Respondent raises four procedural matters. Specifically, these are:

    a. An objection to the admission of documents not submitted to the DRC;

    b. An objection to the Appellant's documents submitted after the remote hearing;

    c. An objection to the scope of the Appellant's request for relief in the Statement of Appeal/Appeal Brief; and

    d. An objection to the Appellant's amendment to the request for relief in the Reply.

    Objections a and b are considered together. So too are objections c and d.

A. Respondent's Objection to Admission of Appellant's Documents Not Submitted to the DRC and Objection to the Documents Submitted After the Remote Hearing

72. The Respondent objected to certain of the Appellant's documents, namely: the Collective Agreement (attachment No 1 to the Statement of Appeal/Appeal Brief), the Labor Inspection Report dated June 2021 (Attachment No 3 to the Statement of Appeal/Appeal Brief), and the Kokshetau City Court Decision dated 6 August 2021 (Attachment No 4 to the Statement of Appeal/Appeal Brief). He submitted that the Appellant did not provide these documents to the DRC and therefore cannot rely on them in these proceedings. In oral submissions, the Appellant contended that the documents were connected to the case and were not available for the DRC proceedings.

73. During the remote hearing on 7 April 2022, the Appellant referred to the Respondent's pay slips and submitted these following the hearing. The Respondent objected to the admissibility of the pay slips. Relying on Article R56 of the Code, the Respondent submitted that the Appellant had the opportunity to provide the pay slips with the Statement of Appeal/Appeal Brief and in the second round of submissions, which it did not do. He submitted that it would be procedurally unfair to admit the pay slips at this late stage. The Respondent also submitted that the pay slips were unreliable because Part 2 of Article 113 of the Kazakhstan Labor Code requires an employer to provide pay slips monthly and with each salary payment, which the Appellant did not do. The Respondent further asserted that the pay slips were drawn up unilaterally after the dispute arose, were unsigned, infringed the Kazakhstan Labor Code, and should not be taken into consideration.

74. The relevant procedural rules that apply to these objections are Articles R56, R57(1) and R57(3) of the Code.

75. The Sole Arbitrator notes that under Article R57(1) of the Code, and the consistent jurisprudence of the CAS, she has the full power to review the facts and the law of the case. The Sole Arbitrator, therefore, deals with the present case *de novo*, evaluating all facts and legal issues involved in the dispute. This *de novo*-mandate only applies to the matter in dispute that has been brought before the Sole Arbitrator. The matter in dispute is defined by the requests of the Parties and the facts of the case.

76. Article R57(3) of the Code provides as follows:

"The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply".

77. The Sole Arbitrator notes that in accordance with well-established and long standing CAS jurisprudence, Article R57(3) of the Code provides for a wide margin of discretion and that the discretion to exclude evidence under Article R57(3) should be construed in accordance with the fundamental principle of the *de novo* power of review, as specified in paragraph 75 above. Furthermore, the standard of review should not be undermined by an overly restrictive interpretation of Article R57(3). The discretion to exclude evidence, therefore, should be exercised with caution, e.g. in situations where a party may have engaged in abusive procedural behaviour or where there exists any other facts or circumstances in which the Sole Arbitrator might consider it either unfair or inappropriate to admit new evidence (see CAS 2017/A/5256, paras 56 - 57; CAS 2017/A/5103 , paras 44 - 45; CAS 2017/A/5090, paras 55 - 56).

78. The Sole Arbitrator observes that the Kokshetau City Court Decision is dated after the DRC decision. The Labor Inspection Report is dated after the filing of the Appellant's defence in the DRC proceedings. She notes that the Appellant in its defence did not refer to the Collective Agreement, which is dated 2016 and amended in 2020, and that the Appealed Decision also does not refer to it. The Sole Arbitrator does not consider that the filing of the new evidence represents abusive procedural behaviour. Also, she considers that there are no facts or circumstances that exist which would render it unfair or inappropriate to admit the new evidence. The Sole Arbitrator notes that the Respondent has had the full opportunity to comment on the Appellant's documents. Accordingly, bearing in mind the *de novo* power of review and the wide discretion afforded under Article R57(3) of the Code, the Sole Arbitrator considers that attachments 1, 3 and 4 of the Statement of Appeal/Appeal Brief are admissible. The Respondent's challenge to their admissibility is dismissed.

79. Article R56 of the Code provides:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer".

80. The Sole Arbitrator is mindful that the CAS Court Office informed the Parties on 19 January 2022 that unless the Parties agreed or the Sole Arbitrator orders otherwise on the basis of exceptional circumstances, Article R56 of the Code applied.

81. The Sole Arbitrator considers that pay slips for salary payments made between February 2020 and November 2020 should reasonably have been available to submit with the Statement of Appeal/Appeal Brief, and during the second round of submissions which was granted at the Appellant's request. The timely production of documentary evidence is required under the Code to enable an opposing party to prepare its case fully. The Sole Arbitrator observes that there is no evidence of *exceptional circumstances* which would justify the late submission of the documents. In the absence of any exceptional circumstances, the Appellant's interests in putting its case are outweighed by the Respondent's procedural rights. Accordingly, the Sole Arbitrator finds that the pay slips submitted after the hearing are inadmissible, and excluded from consideration in these proceedings. The Appellant's objection is upheld. The Sole Arbitrator's decision regarding this objection was notified to the Parties on 14 April 2022.

B. Objection to the scope of the Appellant's request for relief in the Statement of Appeal/Appeal Brief and Objection to the Appellant's amendment to its request for relief in the Reply

82. In paragraphs 15 to 18 of his Answer, the Respondent objected to the scope of the Appellant's request for relief in its Statement of Appeal/Appeal Brief. He submitted that the Appellant had not formulated its request correctly because: a) the Appellant requested a review of the decision of the FIFA PRS and the Appealed Decision was rendered by the FIFA DRC; and b) the request for relief did not make a demand for cancellation or alteration of the Appealed Decision.

83. During the second round of submissions, the Appellant submitted an amended request for relief in its Reply to which the Respondent objected in his Rejoinder. Relying on Articles R48 and R56 of the Code, and CAS 2019/A/6578, the Respondent submitted that the Appellant had no right to amend its request to include requests for a reduction in salary amounts, compensation for unpaid leave and arbitration costs, all of which had not previously been specified in the Statement of Appeal/Appeal Brief. At the hearing, the Appellant explained that its Reply provided more details.

84. The relevant procedural rules that apply to these objections are Article R48, Article R56 and Article R57.

85. The Code does not prescribe a form for a party's request for relief. It only requires in Article R48 that the Statement of Appeal contain, amongst other things, *the Appellant's request for relief*. Nevertheless, CAS jurisprudence establishes that *"requests for relief should be specified with enough precision in order for the Respondents to reply accurately to all parts of the claim. They must be worded in such a way that the appellate authority may, where appropriate, incorporate them to the operative part of its own decision without modification"* (CAS 2017/A/5339, para 83). If the request for relief is not sufficiently specified, it may be difficult for an adjudicatory body to assess whether the claim adjudicated in the appealed decision and the claim raised before it are the same, in which case

the respective requests would be barred by the principle of *res judicata* (CAS 2017/A/5339, para 82).

86. Article R57 provides:

"R57 Scope of Panel's Review – Hearing

The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".

…".

87. The power in Article R57 is not boundless. As a general rule, the CAS considers that its power of review is limited by the object of the dispute that was considered in the previous instance:

"[P]ursuant to art. R57 of the CAS Code, a CAS panel has full power to review the facts and the law and to issue a decision de novo. However, when a CAS Panel is acting following an appeal against a decision of a federation, association or sports-related body, the power of such a Panel to rule is also determined by the relevant statutory legal basis and, therefore, is limited with regard to the appeal against and the review of the appealed decision, both from an objective and a subjective point of view. Therefore, if a motion was neither object of the proceedings before the previous authorities, nor in any way dealt with in the appealed decision, the panel does not have the power to decide on it and the motion must be rejected" (CAS 2007/A/3523, para 22; CAS 2014/A/3521, para 75; CAS 2017/A/5195, para 79).

88. The Sole Arbitrator acknowledges that the request for relief refers erroneously to the FIFA PRS [DRC]. However, from the copy of the Appealed Decision submitted with the Statement of Appeal/Appeal Brief, it is evident which decision and by which entity the Appellant wishes to appeal. The Appellant also refers in other parts of the Statement of Appeal/Appeal Brief, notably paragraphs 26 and 27 to the *"decision of the DRC FIFA"*. The Sole Arbitrator considers that the reference in error to the FIFA PRS does not invalidate or otherwise render inadmissible the Statement of Appeal/Appeal Brief. Nor for that matter does the general request for the Sole Arbitrator to *"review the decision taking into account the periods of downtime of FC Okzhetpes in 2020, as well as taking into account the Player's income tax paid by the Club to the tax authorities"*. The request for relief refers to the subject of the proceedings before the DRC and is sufficiently detailed to enable the Respondent to reply in his Answer. The Sole Arbitrator does not consider that the formulation of the Appellant's request for relief in the Statement of Appeal/Appeal Brief in any way prejudices the Respondent. Accordingly, the Respondent's objection to the prayer for relief in the Statement of Appeal/Appeal Brief is dismissed.

89. Article R56, outlined in paragraph 79 above, regulates amendments to a request for relief following the submission of an Appeal Brief. A party may not amend its *request for relief* unless the parties agree, or the Sole Arbitrator agrees otherwise on the basis of *exceptional circumstances.* There is CAS jurisprudence which permits amendment to a request for relief after an Appeal Brief has been filed (e.g. CAS 2017/A/5042). Equally there is authority, such as the case to which the Respondent referred, in which the Sole Arbitrator did not permit an amendment to a request for relief, acknowledging that:

"[W]ithout prejudice to the provision of article R57 of the CAS Code, which confers the CAS the full power to review the facts and the law of the case, the Sole Arbitrator is nonetheless bound to the limits of the parties' motions, since the arbitral nature of the proceedings obliges the Sole Arbitrator to decide all claims submitted by the Parties and, at the same time, prevents him from granting more than the Parties are asking by submitting their requests for relief to the CAS, according to the principle of ne ultra petita" (CAS 2019/A/6578, para 127).

90. The issue falls to be determined on the circumstances of each case and, in particular, in the absence of the parties' agreement, whether there are *exceptional circumstances* to permit an amendment. In this case, the Sole Arbitrator considers that there are none. The amendment provides a quantum of the outstanding salary and unpaid annual leave that the Appellant considers is owed, and a new request for arbitration costs, all of which could have been specified in the Statement of Appeal/Appeal Brief. The quantum provided in the amendment is based on salary payment information that was very likely available, considering the time that has past, when the Appellant filed its Statement of Appeal/Appeal Brief. Furthermore, the decision to grant a second round of written submissions was limited to the submission of certain information and did not permit a revision to the request for relief. Accordingly, in the absence of exceptional circumstances, the Sole Arbitrator upholds the Respondent's objection and excludes the amendment to the Appellant's request for relief set out in its Reply.

X. MERITS

91. This dispute relates to unpaid wages for the months of March, April, October and November 2020, and unpaid annual leave.

92. The Appellant acknowledges that an amount for unpaid wages and unpaid annual leave is owed to the Respondent. It also acknowledges that it will pay interest. The Appellant disputes, however, the amount that the DRC directed to be paid in Article 2 of the Operative Part of the Appealed Decision on the basis that: the salary amount specified in the Contract is a gross amount, not a net amount, and tax deductions are required to be taken from it; clauses 3.6 and 3.7 the contract and other legislation permitted it to pay the Respondent 50% of his salary during downtime periods when the football competition was suspended due to COVID-19; and the calculation of unpaid annual leave is based on a contract duration of a full year when the Player's contract was for a duration of *266 days*. The Respondent disagrees with the Appellant's contentions.

93. In deciding this dispute, the Sole Arbitrator bears in mind that the appeal is conducted by way of a *de novo* review and:

"[I]n CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (see also article 8 of the Swiss Civil Code, ATF 123 III 60, ATF 130 III 417). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish

some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence" (e.g. CAS 2009/A/1810 & 1811, para 18; and CAS 2020/A/6796, para 98).

94. Article 8 of the Swiss Civil Code provides that:

"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact".

95. The burden of proof, therefore, rests on the Club to establish the salary and unpaid annual leave amounts due to the Player.

96. On the basis of the Parties' written and oral submissions, the Sole Arbitrator considers that there are three issues for determination, namely:

a) whether the Player's monthly salary payment outlined in clause 3.1 of the Contract is expressed as a gross or net amount;

b) whether the Club was entitled to reduce the Player's salary to 50% during the downtime periods; and

c) what is the amount of salary and unpaid annual leave owed to the Player.

A. Is the Player's Contractual Monthly Salary Payment Expressed as Gross or Net?

97. This issue turns on the English translation of clause 3.4 of the Contract. The Appellant submits that the English translation of clause 3.4 includes the word "without" and that the salary amount expressed in clause 3.1 was a gross amount from which the Club was permitted under clause 3.5 to deduct tax in the amount of 10% specified in the Kazakhstan Tax Code. The Club submitted during the hearing that most players have their salaries recorded in a gross amount in their contracts. The Respondent submits in his Answer that the salary amount specified in the contract is a net amount and relies on an interpretation of clause 3.4 that uses the word "with" so that the clause reads as follows:

"3.4 All the payments due to the Employee and presented in the text of the present Employment Contract are indicated ***with*** *consideration of tax deduction and other obligatory payments stipulated by the laws of the Republic of Kazakhstan"* (emphasis added).

98. The Parties were invited during the second round of submissions to agree the English translation of the Contract. The Appellant submitted in its Reply that the English version of the contract attached to the Respondent's Answer was correct. The Respondent confirmed in his Rejoinder that the qualification of the translator hired by the Respondent confirms the reliability of the translation of documents that he has provided.

99. Accordingly, since the Parties state that the English contract version submitted as exhibit 1 of the Answer is correct or reliable, the Sole Arbitrator uses that contract version to decide this dispute. The relevant clauses state the following:

> *"**3. PAYMENT FOR LABOR***
>
> *3.1 The Employer establishes a monthly salary to the Employee in the amount of **3 806 000 (three million eight hundred six thousand) tenge**.*
>
> *3.2 The salary is paid by bank transaction in the monetary form, in native currency of the Republic of Kazakhstan, at least once a month no later than the 10th day of the following month.*
>
> *3.3 When paying the salary, the Employer is obliged to notify the Employee in the written or electronic form about the constituent parts of the salary which are due to him for the relevant period as well as about the amount and grounds of the conducted deductions, and about the total amount of the money payable.*
>
> *3.4 All the payments due to the Employee and presented in the text of the present employment contract are indicated <u>without</u> consideration of tax deduction and other obligatory payments stipulated by the laws of the Republic of Kazakhstan.* (emphasis added)
>
> *3.5 The Employer independently calculates, deducts, and transfers taxes and other obligatory payments from the income of the Employee provided for by the legislation of the Republic of Kazakhstan and received during the validity term of this Employment Contract".*

100. Clause 3.1 does not specify whether the monthly salary amount of KZT 3,806,000 is a gross or net amount. Clause 3.4 states that all payments set out in the Contract, including the monthly salary amount, are indicated "without" deductions for tax. In other words, the monthly salary amount is indicated *in the absence of* tax deductions. Accordingly, the Sole Arbitrator determines that the monthly salary amount of KZT 3,806,000 outlined in clause 3.1 is a gross amount and the Club is entitled to deduct tax and other obligatory payments from that amount. The Sole Arbitrator recalls the Club's submission that foreign citizens pay income tax at a rate of 10% in Kazakhstan, which was not challenged by the Player. Assuming a 10% deduction for tax was the only obligatory payment to take from the Player's salary, the Sole Arbitrator notes that the Player's net monthly salary would have been KZT 3,425,400. The Sole Arbitrator observes, however, that the Appellant's table of salary payments does not contain this figure as a payment to the Player made at any time throughout his employment and no explanation was provided, particularly for those months that fell outside the First and Second Downtime Periods.

B. Was the Club Entitled to Reduce the Player's Salary During the Downtime Periods?

101. The Appellant submits that during the First and Second Downtime Periods that arose because of the COVID-19 pandemic, it reduced the Respondent's salary by 50%. In doing so, it considered the Kazakhstan Labor Code, FIFA Regulations, the Contract, and the Collective Agreement and came to the conclusion that the downtime periods should be paid in the amount of 50% of the salary for all employees, regardless of whether they were a member of the trade union or not. As there was a Collective Agreement in place and the provisions of the Collective Agreement improve the conditions of employees in comparison with employment contracts, in order to comply with the principle of equality, the provisions of the Collective Agreement were applied to all Club employees without exception. The Appellant also submits that the legality

of the Club's actions are confirmed by the Kazakhstan City Court decision and the Labor Inspection Report.

102. The Appellant further submits that it considered the COVID-19 Guidelines and the FIFA COVID-19 FAQs and came to the conclusion that the law of the Republic of Kazakhstan applied since the guidelines and FAQs are *"not regulatory legal documents"*. It considers that it did not violate the FIFA Guidelines since the agreement with employees regarding payments since downtime was outlined in clauses 3.7 and 3.8 of the Contract, and the Respondent agreed to those clauses. The Appellant's financial situation was compromised; there were debts and no additional income because of the pandemic and a government ban on large events.

103. The Respondent asserts that the salary reductions were unlawful. He contends that: the Appellant unilaterally reduced his salary without consultation; the Collective Agreement is not concluded between football clubs and football players in the Republic of Kazakhstan, has no legal force, that he is not a member of a trade union in Kazakhstan and that he never authorised a trade union to act on his behalf; and the Appellant was not contractually entitled to reduce his salary.

104. The Sole Arbitrator observes that in response to the COVID-19 pandemic and government restrictions introduced worldwide to limit the spread of the virus, FIFA issued a number of circular letters, a set of guidelines titled Football Regulatory Issues: COVID-19 (April 2020) (the "FIFA Guidelines") and, on 11 June 2020, a document titled "Frequently Asked Questions (FAQs) COVID-19" (the "FIFA COVID-19 FAQs") to guide national football associations, clubs and players through practical issues arising from the pandemic, particularly in relation to player contracts.

105. The Sole Arbitrator notes that the FIFA Guidelines provide in relation to "agreements that cannot be performed as originally intended", the following general non-binding guidelines at pages 6 and 7:

"In order to guarantee some form of salary payment to players and coaches, avoid litigation, protect contractual stability, and ensure clubs do not go bankrupt, while considering the financial impact of COVID-19 on clubs, it is proposed that:

(i) Clubs and employees (players and coaches) be strongly encouraged to work together to find appropriate collective agreements on a club or league basis regarding employment conditions for any period where the competition is suspended due to the COVID-19 outbreak.

Such agreements should address, without limitation: remuneration (where applicable salary deferrals and/or limitation, protection mechanisms, etc.) and other benefits, government aid programmes, conditions during contract extensions, etc.

Where the relevant social partners exist, agreement should be reached within CBA structures or another collective agreement mechanism.

(ii) Unilateral decisions to vary agreements will only be recognised where they are made in accordance with national law or are permissible within CBA structures or another collective agreement mechanism.

(iii) Where:

a. clubs and employees cannot reach an agreement, and

b. national law does not address the situation or collective agreements with a players' union are not an option or not applicable,

Unilateral decisions to vary terms and conditions of contracts will only be recognised by FIFA's Dispute Resolution Chamber (DRC) or Players' Status Committee (PSC) where they were made in good faith, are reasonable and proportionate.

When assessing whether a decision is reasonable, the DRC or the PSC may consider, without limitation:

a. whether the club had attempted to reach a mutual agreement with its employee(s);

b. the economic situation of the club;

c. the proportionality of any contract amendment;

d. the net income of the employee after contract amendment;

e. whether the decision applied to the entire squad or only specific employees.

(iv) Alternatively, all agreements between clubs and employees should be "suspended" during any suspension of competitions (i.e. suspension of football activities), provided proper insurance coverage is maintained, and adequate alternative income support arrangements can be found for employees during the period in question".

106. The FIFA COVID-19 FAQs reiterate on page 8 that *"as a matter of principle, existing employment agreements shall be governed by the national law referred to in the agreement and/or an existing CBA, and the contractual autonomy of the parties".*

107. Also, at page 10, the following question and answer is provided:

Q: *"If a dispute arises before a FIFA judicial body as a result of a unilateral variation to an employment agreement, what evidence is required to prove that such variation was in accordance with national law, [a collective bargaining agreement], or another collective agreement mechanism?"*

A: *"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof.*

As an example, a party should provide <u>independent</u> legal advice from a qualified legal practitioner in the relevant legal jurisdiction which confirms that the unilateral variation was a valid exercise of the national law referred to in the agreement, CBA, or other collective agreement mechanism".

108. Applying the FIFA Guidelines, the Sole Arbitrator finds that the Appellant did not consult directly or agree the salary reduction with the Respondent and that the decision to reduce the Player's salary during periods of downtime caused by the COVID-19 pandemic, was a unilateral decision made by the Appellant. The FIFA Guidelines provide that a unilateral decision to vary an employment agreement will only be recognised if made in accordance with national law, or permissible under a collective agreement. In the present case, the national law that governs the agreement is Kazakhstan law, specifically the Kazakhstan Labor Code.

109. Clause 3.1 entitles the Player to payment for periods of work stoppage in accordance with the Kazakhstan Labor Code. Clause 3.8 provides that, *"Payment of work stoppage time occurred through no fault of the Employer and the Employee is established in the amount not less than the minimum salary and is paid within the time period provided for in the legislation of the Republic of Kazakhstan"*. The Sole Arbitrator considers that the work stoppage that occurred during the First and Second Downtime Periods occurred through no fault of the Employer and Employee and that clause 3.8 applies. The Sole Arbitrator notes, however, that there is no evidence that confirms the amount of the minimum salary or the time period in which such payments were to be paid according to Kazakhstan law.

110. The Club states that it established the amount of payment for work stoppage *"in the amount of 50% of the monthly salary of the Employee"* (*see* Order No 41-od) in accordance with clause 3.8 and the Collective Agreement. It is evident that a trade union exists in the Appellant's workplace, although the Appellant acknowledges that it did not know whether the Player was a trade union member and that it did not make deductions from the Player's wages to a union committee under clause 3.6 of the Contract. The Club states that, *"in order to comply with the principle of equality, the provisions of the collective agreement were applied to all employees of the Club, new and old, foreigners and citizens of Kazakhstan, without exception"*. The Respondent confirmed that he was never a member of a Kazakhstan trade union and that he never authorised a trade union to act on his behalf. The Respondent challenges the procedure for agreeing the downtime payment with the trade union and the legality under Kazakhstan law of the application of the salary deduction to him as a non-union member.

111. On the basis of the conflicting submissions on Kazakhstan law and the absence of any independent legal evidence which confirms that the amount of salary deduction for downtime and the process by which it was implemented, was lawful, the Sole Arbitrator is unable to determine whether the salary reduction was lawfully implemented under Kazakhstan law. The Appellant has submitted English translations of a Kokshetau City Court Decision and a Labor Inspection Report in support of its position that it lawfully implemented the salary reduction. The Labor Inspection Report identifies violations of Kazakhstan Labor Code which do not appear to relate to the Player's employment but to other of the Appellant's employees, e.g. the non-payment of salary in full in 2020 and the non-payment of compensation for unused annual leave, amongst others. The Sole Arbitrator observes that while the Labor Inspection Report describes the downtime period and implementation of a 50% salary reduction for all employees, it does not confirm the legality of the 50% salary reduction. The Kokshetau City Court Decision concerns a civil claim brought by four of the Appellant's employees against the Appellant in respect of unpaid salary, unpaid compensation for unused annual leave and penalties for late payment. The Decision is in favour of the Respondent. The Sole Arbitrator notes that the

Decision relates to similar claims as those raised in these proceedings. However, it did not involve the Respondent as a Party and permits an appeal. There is no evidence that an appeal was made.

112. The Sole Arbitrator recalls that CAS is a forum that is not bound by the decisions of another jurisdictional body (CAS 2014/A/3561 & 3614, para 103). It is not obliged to follow the Kokshetau City Court Decision. The Sole Arbitrator accepts that there is evidence of a substantive right under Kazakhstan law to reduce the salaries of employees during periods of downtime but there is no evidence that the correct procedure was followed to enforce the right, and no independent legal advice from a legal practitioner that confirms the application of Kazakhstan law in these circumstances. On balance, and based on the available evidence, the Sole Arbitrator is not persuaded that the salary reduction was imposed lawfully under Kazakhstan law. To prove the fact of Kazakhstan law, evidence in the form of an expert legal opinion is required. Accordingly, the Sole Arbitrator determines that the salary reduction was implemented unilaterally and without the agreement of the Player. As the Club is contractually obliged under clause 2.1 to pay the Player's salary in a timely manner and in full, the Sole Arbitrator concludes that Player was entitled to his full monthly salary payment during the First and Second Downtime Periods and throughout his employment.

C. What is the amount of salary and unpaid annual leave that is owed to the Player?

a) Salary Amounts

113. The Sole Arbitrator accepts that the Appellant made payments to the Respondent on 5 April 2020, 10 June 2020, 7 August 2020, 25 August 2020, 10 September 2020 and 16 October 2020 for the total amount of KZT 21,340,242. However, there is no indication over which salary periods these payments concern, or whether the payments relate to the monthly salary only or include amounts for bonuses. The Sole Arbitrator observes that the Appellant made tax payments to the Treasury Committee of the Ministry of Finance of the Republic of Kazakhstan, during the relevant period and that a certificate issued by the tax authorities confirms that the Appellant has no outstanding tax liabilities 18 June 2021. The documentary evidence, however, shows one payment made for the taxation payments for all employees and does not specifically identify the amount paid on behalf of the Respondent and for which salary period.

114. The Appellant contends that even if the periods of downtime and the 10% income tax were not taken into account, the DRC directed it to pay KZT 559,482 more than is owed. According to the Appellant, if the periods of downtime and the 10% income tax are not taken into account, the monthly salary amount owed to the Player for the period between 16 February 2020 and 9 November 2020, is KZT 33,340,560. The amount paid to the Player during the same period was KZT 21,340,242. The amount still owed is KZT 12,000,318 (KZT 33,340,560.00 – 21,340,242.00), which is less than the DRC directed amount of 12,559.800.00.

115. The Respondent does not deny that payments totalling KZT 21,340,242 were received, but states that these payments included bonus payments in addition to the monthly salary payment, and he disputes the Appellant's overall calculation of the total amount owed. No evidence of bonus payments or an entitlement to bonus payments has been submitted in these proceedings.

116. The Respondent has not submitted a cross appeal so the Sole Arbitrator is limited to a review of the amounts directed to be paid by the DRC. In respect of the disputed salary payments for March 2020, April 2020, October 2020 and November 2020, and based on the evidence available, the Sole Arbitrator is unable to calculate the specific net amount owed. Nonetheless, as discussed in paragraphs 97 to 100 above, the Sole Arbitrator finds that the gross monthly salary amount of KZT 3,806,000 is owed to the Player for each of March 2020, April 2020 and October 2020. Under clause 3.5 of the Contract, the Club is entitled to deduct tax payments from the gross monthly salary amount.

117. The Parties dispute the calculation of the November 2020 salary payment. The Player's Contract terminated on 9 November 2020 due to effluxion of time. The Appellant submits that the Respondent had a five-day working week and is owed KZT 1,065,680 for 7 work days. The Respondent states that he is owed KZT 1,141,800 which he calculates as 3,806,000 net/30 days x 9 days worked.

118. The Sole Arbitrator observes that the Contract does not expressly state the Player's hours or work days and notes that a football player can work variable hours. She also notes that the period 1 to 9 November (inclusive) has six regular work days from Monday to Friday and that the Appellant has not explained how it arrived at the figure of seven work days. Accordingly, the Sole Arbitrator finds that the Appellant has not discharged the burden of proving that the Respondent is owed seven days' salary for the month of November 2020. The Sole Arbitrator considers that the Player is entitled to the salary amount directed by the DRC of KZT 1,141,800 for November 2020. Nevertheless, the Sole Arbitrator emphasises that the payment of KZT 1,141,800 is a gross salary payment and she finds that the Appellant may deduct tax from that amount under clause 2.5 of the Contract.

b) Unpaid Annual Leave

119. Before the DRC, the Appellant claimed unpaid annual leave of 28 days calculated as KZT 3,552,266. The DRC awarded the amount claimed, less a deduction of KZT 155,923 for a flight ticket that the Appellant paid on the Respondent's behalf. It directed the Appellant to pay KZT 3,396,343.

120. The Appellant accepts that unpaid annual leave is owed to the Respondent but it disputes the calculation of the amount owed. It submits that under clause 5.2 of the Contract the Player was only entitled to 28 days' annual leave if he was employed for a full year, which in 2020 was 366 days. The Respondent, however, was employed for 267 days and is entitled to 21 days only, which equates to KZT 2,664,200. The Respondent submits that under clause 5.2 he was entitled to the full 28 day annual leave entitlement.

121. Clause 5.2 outlines the Player's entitlement to basic annual leave or paid holiday leave and provides that:

"The Employer provides the Employee with the basic annual leave of 28 calendar days (which is an obligation with regard to the minimum requirements of a standard employment contract with a football player in the field of professional football in the EU and on the other territory of the UEFA). By agreement of the Parties this

paid annual leave may be divided into parts. In this case, one of the parts of the paid annual labor leave must constitute at least two calendar weeks of the duration of the leave stipulated in this clause".

122. The issue is whether the Player's entitlement to paid holiday leave of 28 calendar days is pro-rated to take into account the shorter duration of the Respondent's employment of less than a year, or whether the Player's entitlement is *28 calendar days*. The Contract does not expressly state that the Player's entitlement to paid holiday leave is calculated pro-rata when the contract duration is less than 12 months. While the Sole Arbitrator appreciates the Appellant's position and acknowledges that a worker of less that 12 months' service may receive a pro rata leave entitlement, applying the principle of *pacta sunt servanda*, the Sole Arbitrator considers that clause 5.2 is drafted so as to entitle the Appellant to 28 calendar days' paid holiday leave. Taking into consideration that the amount awarded by the DRC for unpaid annual leave was a gross amount, the Sole Arbitrator considers that the Respondent is entitled to KZT 3,552,266 gross from which the Appellant may deduct taxation under clause 3.5 of the Contract and also deduct the cost of an air ticket of 155,923.

123. In conclusion, for the reasons set out above, the Appellant's appeal is partially upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Okzhetpes on 23 September 2021 against the decision rendered by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* on 28 July 2021 is partially upheld.

2. The decision rendered by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* on 28 July 2021 is confirmed, saved for point n. 2, which is amended as follows:

   2. The Respondent, FC Okzhetpes, has to pay to Mr Alexandr Sheplyakov, the following amounts:

   - *Kazakhstan Tenge (KZT) 3,806,000 gross as outstanding remuneration plus 5% interest p.a. as from 1 April 2020 until the date of effective payment.*

   - *KZT 3,806,000 gross as outstanding remuneration plus 5% interest p.a. as from 1 May 2020 until the date of effective payment.*

- *KZT 3,806,000 gross as outstanding remuneration plus 5% interest p.a. as from 1 November 2020 until the date of effective payment.*

- *KZT 1,141,800 gross as outstanding remuneration plus 5% interest p.a. as from 10 November 2020 until the date of effective payment.*

- *KZT 3,552,266 gross less the cost of an air ticket of KZT 155,923, plus 5% interest p.a. as from 19 December 2020 until the date of effective payment.*

The Appellant is entitled to make deductions for taxation and other obligatory payments from the gross amounts above.

3. (…).

4. (…).

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