**Arbitration CAS 2022/A/8574 Marcos Lavín Rodríguez v. FC Voluntari, award of 15 March 2023**

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

*Football*
*Termination of the employment contract without just cause by the player*
*Just cause*
*Article 14 and 14bis of the FIFA RSTP*
*Compensation for breach of contract payable to a club*

1. **Under Swiss law, just cause exists whenever the terminating party cannot be expected in good faith to continue the employment relationship (Article 337 par. 2 of the Swiss Code of Obligations). Only material breaches of a contract can possibly be considered just cause for the termination of an employment contract. It is up to the party who terminated the contract to discharge the burden of proof to establish that the contract was in fact terminated with just cause based on the circumstances of the case.**

2. **According to Article 14 of the FIFA Regulation on the Status and Transfer of Players (RSTP), a contract may be terminated by either party without consequences of any kind where there is just cause. In order to rely on Article 14bis of the FIFA RSTP granting just cause for the unilateral termination of a contract with a club, the club must have failed to pay to the player *"at least two monthly salaries on their due dates"* and the player must have put the club in default granting it 15 days to remedy its default. The fact that a player is not considered to have just cause for the termination of a contract pursuant to Article 14bis of the FIFA RSTP, is of no importance to the assessment of whether a player anyway can be considered to have just cause to terminate a contractual relationship with a club based on the circumstances of the particular situation.**

3. **Following the principle of "positive interest", the injured party is entitled to a whole reparation of the damage suffered. This compensation must be aimed at reinstating the injured party to the position it would have been in had the contract been performed until its expiry. Even if a club whose player terminated his contract without just cause, could be considered as having "saved" the residual amount, the club would at the same time suffer from not having said player employed and would still be entitled to a compensation.**

## I. THE PARTIES

1. Marcos Lavín Rodríguez (the "Player") is a professional football player of Spanish nationality.

2. FC Voluntari is a Romanian professional football club affiliated with the Federaţia Română de Fotbal (the "FRF"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

## II. FACTUAL BACKGROUND

3. The facts set out below are a summary of the main relevant facts as established by the Sole Arbitrator on the basis of the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal (the "FIFA DRC") on 9 December 2021 (the "Appealed Decision") and based on the Parties' written and oral submissions and evidence. Additional facts and allegations found in the Parties' submissions 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, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

4. On 3 September 2020, the Player and the Club entered into an employment contract (the "Contract") valid until 30 June 2022 regarding the Player's employment with the Club as a professional football player.

5. The Contract, stated *inter alia*, as follows:

*"II. SUBJECT OF THE CONTRACT*

*The soccer player carries out the following activities:*

- *Football activities, in conditions and quality required by the club by participating in official and friendly training and games, as well as by the whole program, as established by the club.*

*[…]*

*III. CONSIDERATION SPORTS ACTIVITIES*

*1. The club undertakes to pay the player for the period 03.09.2020 - 30.09.2020 the net amount of 13.000 Euros which will be paid as follows:*

*- 6.500 Euro net until 10.09.2020;*

*- 6.500 Euro until the 20th of the following month for the previous month.*

*1.1. The club undertakes to pay the player for the period 01.10.2020 - 30.06.2021 the net amount of 6.500 Euro / month on the 20th of the following month for the previous month.*

*2. The club undertakes to pay the player for the period 01.07.2021- 30.06.2022 the net amount of 7.000 Euro / month on the 20th of the following month for the previous month.*

*3. The club undertakes to provide the player with an apartment and a car.*

*4. The club undertakes to pay the player bonuses in proportion to the minutes played valid for all three years, as follows:*

*4.1. If in the 2020/2021 competition season the club's first team will qualify for the Play-Offs or is in the top 6 teams at the end of the Competition, the club undertakes to pay the player the net amount of 7.000 Euros within 30 days from the date qualification in the Play-Off or, as the case may be, at the end of the Competition within 30 days from the date of validation of the ranking.*

*4.2. If the team wins the Romanian Cup 2021 edition, the club undertakes to pay the player the net amount of 7.000 Euros within 30 days from the date of winning the Cup.*

*4.3. If the team ranks 7th at the end of the 2020/2021 Championship, the club undertakes to pay the player the net amount of 5.000 Euros within 30 days from the date of validation of the ranking.*

*4.4. If the team wins the 2020/2021 Championship, the club undertakes to pay the player the net amount of 20,000 Euros within 30 days from the date of winning the Cup.*

*4.5. If the team qualifies in the Europa League groups, the club undertakes to pay the player the net amount of 10.000 Euros within 30 days from the date of qualification.*

*4.6.The club undertakes to pay the player the net amount of 200 Euro / official match played League 1 (match played is considered at least 45 minutes / official match League l) on the 20th of the following month for the previous month.*

*4.7. The club undertakes to pay the player the net amount of 250 Euro / official match played Liga 1 and the team wins, on the 20th of the following month for the previous month.*

*5. The player can transfer free of charge to another club, if that club pays to the FC Voluntari club the net amount of 500.000 Euros.*

*6. The payment of the amounts will be made in Lei, respectively of 4.7 Lei / Euro.*

*7.The club undertakes to pay the player two round-trip plane ticket Romania - Spain.*

*[…]*

*XIV. APPLICABLE REGULATIONS*

*13.1 The football regulations applicable to this contract are the statutes, regulations and decisions of FIFA; UEFA, FRF or LPF, as the case may be.*

*13.2 CLUB and PLAYER must comply with the statutes, regulations and decisions of FIFA; UEFA, FRF / AJF / LPF in this order, which are an integral part of this contract and which the parties, by their signature, accept as mandatory.*

*[…]*

*XV. OTHER CLAUSES*

*[…]*

*b) Non-observance of the contractual clauses by either party results in the obligation of the defaulting party to pay damages equivalent to the value of the contract. […]*

*[…]".*

6. According to the Player, on 19 July 2021, the Club demoted him to the second team of the Club. According to the Club, it is correct that the Player was temporarily told to train with the second team of the Club as a disciplinary measure following the Player´s unacceptable conduct, however, the Player was called back to the first team after a very short period.

7. By letter of 30 July 2021 (the "Default Letter"), Asociación de Futbolistas Españoles (the "AFE") on behalf of the Player put the Club in default for the amount of EUR 15,262.43, stating, *inter alia*, as follows:

*"Mr.Marcos Lavin Rodriguez has informed us explaining that during the last months your Club is not respecting the contractual obligations towards the player under its sole discretion and decision; which is absolutely against the value of contractual stability advocate by FIFA's Rules of the Statute and Transfer of Players and the labour rights of our affiliate.*

*Due to the debts maintained by your Club, the financial situation of Mr. Marcos Lavín Rodriguez is totally grievous and nowadays (July 30, 2021) the current outstanding salary not paid by FC VOLUNTARI on a timely manner amounts 15.262,43 € net, equivalent to:*

*• The monthly instalments of his regular salary of May 2021 (6.500 € net) and June 2021 (6.500 € net) = 13.000 € net.*

*• Bonus related to played matches (under clause 4.6 of the referred contract) = 1.400 € net(7 matches x 200 € net).*

*• Two round plane tickets (under clause 7 of the referred contract) = 862, 43 € net.*

*Besides, as you are aware for sure, from a legal perspective the ongoing employment agreements must be respected and the player can not be punished for not being in the Club's future plan.*

*The decision, taken at your sole discretion since July 19, 2021, of relegating him to the B-team and excluding him from the first squad, as you surprisingly communicated to our affiliate; has no legal cause which could justify this degrading treatment. The player is, without any doubt, a regular member of the first squad, while the B-*

*team is not a professional squad with a full-time professional program where the player could fully develop his capabilities.*

*When entering into a negotiation scenario the players rights must be respected in any case, there is not possible discussion about it. UEFA, FIFA and mainly FIFPro (the World Players Union) are constantly monitoring situations like this and condemn the treatments like the one that your Club has been giving to Mr. Marcos Lavín Rodríguez from the referred date.*

*Taking into account the exposed scenario, we hereby require FC VOLUNTARI to urgentfy fulfill the debt with our affiliate (15.262, 43 € net) and their obligations, letting his comeback to the regular development of trainings with the first team of your Club. Please note that should your Club not comply with the above-mentioned request within the deadline of 15 days, the player reserves his right to terminate the contract due to a justified cause in accordance with the FIFA RSTP and its article 14 and 14bis. […]".*

8. On 6 August 2021, the Club paid EUR 6,638 to the Player.

9. By letter of 21 August 2021 (the *"Termination Letter"*), the AFE, on behalf of the Player, terminated the Contract, stating, *inter alia*, as follows:

*"The player gave you a 15 days deadline and informed you and the Federation that in case of non-compliance the total outstanding debt at that date (15.262,43 € net), he reserved his right to terminate the contract due to a justified cause in accordance with the FIFA RSTP -*

*article 14 and 14bis-, Nowadays, August 21, 2021, once the given deadline has been already consumed, the player has not received the payment of that total amount and, besides, one additional monthly instalment of his regular salary is already overdue (July 2021 monthly instalment,) 6.500 € net), which means that your Club keeps violating his fundamental labour rights under the contract as well as his personality rights. We want to highlight that, counting date to date, as a gesture of good faith, the player conceded you more than 15 days for you to have enough room to salve this dreadful problem, but despite his efforts, you did not fulfill your obligations in a legally and timely manner.*

*That is why, given the repeated, persistent and erratic behavior of your Club, who after having been requested has not remedied the referred outstanding debt, the player has no choice but to send this document through which he terminates his contract with FC VOLUNTARI with just cause, according to article 14 and 14bis of FIFA RSTP. Accordingly we will initiate the appropriate legal actions before FIFA bodies in order to recognize and defend his rights with all the consequences that it could imply for your Club, from the economic and disciplinary side.*

*Therefore, based on the foregoing and hereby, we inform you that as of today's effective Date, August 21, 2021, Mr. Marcos Lavín Rodríguez terminates, with just cause and based on Article 14 and 14bis of the Regulation on FIFA Statute and Transfer of Players, the employment contract signed with FC VOLUNTARI, which we communicate to you for the appropriate purposes.[…]".*

10. By letter of 1 September 2021, the legal representative of the Club replied, *inter alia*, as follows:

*"This is in reference to the captioned matter wherein we wish to inform you that the undersigned is representing the professional football club FC Voluntari. The club has been in receipt of two notices of default dated 30 July 2021 and 21 August 2021, the contents of which are false and outrightly denied.*

*Firstly, we wish to indicate that as on 30 July 2021 when the first notice was sent the Club was only short of EUR 5500 (five thousand five hundred euros) in salary which is less than two monthly salaries. Thereafter, on 5 August 2021 the Club paid the Player an amount of EUR 6638 (six thousand three hundred thirty euros) thereby fulfilling its obligations.*

*Secondly, on 21 August 2021 i.e. the date of termination only the salary for the month of July 2021 was due and which had only become due one day prior i.e. on 20 August 2021. Hence, the Player must have misinformed you or failed to inform you of the relevant facts correctly.*

*Thus, we understand that the termination by the Player is against the FIFA Regulations and therefore without just cause. Nevertheless, as a sign of good faith the Club gives the Player a deadline of forty-eight (48) hours to report back to the Club and resume training. Once the Player resumes training with the Club, the bonus amount due shall be paid. Failing to adhere to this request shall force the Club to seek legal remedies against the Player before the competent legal bodies".*

## III. PROCEEDINGS BEFORE THE DISPUTE RESOLUTION CHAMBER OF THE FIFA FOOTBALL TRIBUNAL

11. On 3 September 2021, the Player lodged a claim in front of FIFA against the Club for breach of contract without just cause, requesting that the latter be ordered to pay as follows:

*"- EUR 20.504.37 net as outstanding remuneration, plus 5% interest p.a. as from 21 August 2021 detailed as follows;*

*- EUR 18,241.94 net for the monthly salaries of June 2021 (6,500 EUR net) and July 2021 (7,000 EUR net), as well as the 21 days worked in August 2021 (4,741.94 EUR net)*

*- Bonus related to matches played (under clause 4.6 of the contract) = 1.400 EUR net (7 matches x 200 EUR net), in relation to the following matches:*

*20/11/20 vs Dinamo*

*13/12/20 vs Hermannstadt*

*19/01/21 vs UTA Arad*

*22/01/21 vs FCSB*

*26/01/21 vs Univ. Craiova*

*30/01/21 vs Sepsi OSK*

*03/02/21 vs Astra Giurgiu*

*- Two round-trip air tickets Romania-Spain (clause 7 of the contract) = 862, 43 EUR net (copy of invoices enclosed)*

*- EUR 76,532.62 net plus 5% interest p.a. as from 21 August 2021 as compensation for breach of contract without just cause, corresponding to the residual value of the contract".*

12. In support of his claim, the Player stressed, *inter alia*, that the fact that the Club paid the amount due on 30 July 2021 on 5 August 2021 does not imply that the Club had fulfilled its obligations, and therefore article 14bis of the FIFA Regulations on the Status and Transfers of Players (the "FIFA RSTP") is applicable.

13. In its reply to the claim, the Club lodged a counterclaim requesting payment of compensation for termination of contract without just cause in the amount of EUR 60,290.24 net, plus 5% interest as from 21 August 2021. In this respect, the Club calculated the residual value of the Contract at EUR 72,484 net, but noted that it owed to the Player the amount of EUR 7,677.50 net together with EUR 4,516.13 for 20 days of August 2021.

14. The Club submitted, *inter alia*, that, for September 2020, the Player was entitled to two instalments of EUR 6,500 in order to pay EUR 6,500 net to his agent.

15. Furthermore, and in relation to the Default Letter, the Club argued that the said notice was incorrect insofar at that time two monthly salaries were not outstanding and only less than one monthly salary remained payable to the Player. Moreover, after receipt of the Default Letter, on 5 August 2021, the Club paid the amount of EUR 6,638 net to the Player.

16. According to the Club, as of the date of termination of the Contract, the salary for the month of July 2021 had become due only a day earlier as per the Contract, and the Club noted that the FIFA DRC had defined that less than two outstanding monthly salaries are not enough to meet the criteria of Article 14bis of the FIFA RSTP, on which grounds the Player did not have just cause to terminate the Contract.

17. Finally, and as to the alleged demotion of the Player to the second team of the Club, the Club argued that the Player had not attached any substantive evidence to prove such conduct.

18. In his replica and reply to the counterclaim, the Player insisted that he terminated the Contract with just cause and insisted on the payment of EUR 76,532.26 net as compensation.

19. The Player submitted that, throughout the entire duration of the employment relationship, the Club´s payment behaviour was erratic and devoid of any logic or order.

20. The Player further underlined that despite taking into account the payment made by the Club on 5 August 2021 to satisfy the monthly payment for May 2021, at the date of termination of the Contract, two monthly payments of salary were already due on the basis of the Contract.

21. In its final remarks, the Club stressed that the Player never complained about the alleged payment default and noted that all payments referred to by the Club are supported by the respective bank excerpts.

22. Moreover, it cannot be said that the Club did not respond to the Default Letter since it complied with all its financial obligations right after receiving it, clearing all its debts as of 30 July 2021.

23. Finally, the Club insisted that it never exerted any sort of pressure or adopted any measures against the Player with the aim to terminate or change the terms of the Contract.

24. The FIFA DRC, having confirmed its competence and the application of the August 2021 edition of the FIFA RSTP, then referred to the Procedural Rules Governing the Football Tribunal (the "FIFA Procedural Rules") and recalled the basic principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact carries the respective burden of proof.

25. With regard to the substance of the matter, the FIFA DRC took note of the fact that the Parties were disputing whether the Player´s termination of the Contract on 21 August 2021 was with or without just cause. As such, the FIFA DRC considered that the legal issue at stake was to establish whether the Player had just cause to terminate the Contract, and it thus had to determine the quantum of the Club´s debt to the Player on the said date.

26. In doing so, it was first noted that the Club accepted a debt of EUR 7,677.50, i.e. slightly more than one month´s salary, and furthermore, that the Player in his replica did not deny this specific amount as the debt of the Club towards him at the date of his termination of the Contract.

27. As a result, the FIFA DRC found no other option than to conclude that the Club´s debt towards the Player (roughly one month) was not sufficient to justify early termination of the Contract, whether in accordance with Article 14 or 14bis of the FIA RSTP.

28. In light of the above, the FIFA DRC referred to Article 17 (1) of the FIFA RSTP, according to which a party in breach must pay compensation, and noted that no compensation clause was included in the Contract, which meant that the amount of compensation payable by the Player had to be assessed in application of the other parameters set out in Article 17 (1) of the FIFA RSTP.

29. The FIFA DRC then proceeded with the calculation of the monies payable under the terms of the Contract until its termination and concluded that the amount of EUR 72,259 (i.e. rest of August 2021: EUR 2,259 + September 2021 –June 2022: EUR 70,000) should serve as the basis for the determination of the amount of compensation for breach of contract, and further noted that the Player had remained unemployed since his termination of the Contract.

30. However, the FIFA DRC then recalled that the event that led to the early termination of the Contract and observed *"that the Club committed several irregularities during the execution of the performances, such as the non-payment of the agreed bonus, as well as demoting the Player to the second team"*,

which caused the FIFA DRC to reduce the payable compensation to the final amount of EUR 15,000.

31. Regardless of the compensation payable to the Club, the FIFA DRC recalled that the Player is entitled to payment of his outstanding remuneration until the date of termination of the Contract, observing that the Player would be entitled to the outstanding remuneration of EUR 7,677.50 net due until 21 August 2021, as well as to his salary for 21 days of August, i.e. EUR 4,741 (7000 x 21/31) net.

32. In addition, the FIFA DRC found that the Player was entitled to the claimed match bonus as contractually agreed and uncontested by the Club for the amount of EUR 1,400, as well as the reimbursement of the contractually agreed flight tickets (as per receipt) in the amount of EUR 862.

33. Finally, and with reference to Article 24bis (1) and (2) of the FIFA RSTP, the FIFA DRC decided that in the event that the Player should fail to pay the amounts due to the Club within 45 days of the notification of the decision, a restriction on playing official matches for the maximum duration of six months would become immediately effective on the Player in accordance with Article 24bis (2) (4) and (7) of the FIFA RSTP.

34. Equally, the FIFA DRC decided that in the event that the Club should fail to pay the amounts due to the Player within 45 days of the notification of the decision, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods, will become effective on the Club in accordance with Article 24bis (2) (4) and (7) of the FIFA RSTP.

35. On 9 December 2021, and based on the abovementioned considerations, the FIFA DRC rendered the Appealed Decision and decided as follows:

*"1. The claim of [the Player] is partially accepted.*

*2. [The Club] has to pay to [the Player] the following amounts:*

*EUR 15,216.55 net as outstanding salaries, plus interest as follows*

*- 5% interest p.a. over the amount of EUR 5,954.55 (rest of the salary of July 2021) as from 21 August 2021 until the date of effective payment;*

*- 5% interest p.a. over the amount of EUR 7,000 (salary of August 2021) as from 21 September 2021 until the date of effective payment;*

*- 5% interest p.a. over the amount of EUR 1,400 (outstanding bonus)) as from 21 August 2021 until the date of effective payment;*

*- 5% interest p.a. over the amount of EUR 862 (flight tickets) as from 21 August 2021 until the date of effective payment;*

*3. The counterclaim of [the Club] is partially accepted.*

*4. [The Player] has to pay to [the Club], the amount of EUR 15,000 net for breach of contract without just cause, plus 5% interest p.a. as from 29 September 2021 until the date of effective payment.*

*5. Any further claims of the parties are rejected.*

*6. Full payment (including all applicable interest) shall be mad to the bank accounts indicated in the enclosed Bank Account Registration Forms.*

*7. Pursuant to art. 24bis of the Regulations on the Status and Transfer of Players (August 2021 edition), if full payment (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:*

*1. [The Club] shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration the ban shall be of three entire and consecutive registration periods,*

*2. [The Player] shall be restricted on playing in official matches up until the due amounts ae paid. The overall maximum duration of the restriction shall be up to six months on playing in official matches.*

*3. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*

*9.*[sic] *The consequences shall only be enforced at the request of the parties in accordance with art. 24bis par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*

*10. This decision is rendered without costs".*

36. On 15 December 2021, the grounds of the Appealed Decision were notified to the Parties.

## IV. PROCEEDINGS BEFORE THE CAS

37. On 4 January 2022, the Appellant filed his Statement of Appeal against the Respondent in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"). With his Statement of Appeal, the Appellant requested to submit this matter to a Sole Arbitrator and the Respondent agreed to such request.

38. On 2 February 2022, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code.

39. On 28 March 2022, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, attorney-at-law in Copenhagen, Denmark, as Sole Arbitrator.

40. On 27 April 2022, the Club filed its Answer in accordance with Article R55 of the CAS Code.

41. On 4 May 2022, the Parties were informed that the Sole Arbitrator had decided to hold a hearing in this matter.

42. On 13 May 2022, the CAS Court Office, on behalf of the Sole Arbitrator, issued the Order of Procedure, which was duly signed by the Parties.

43. On 25 May 2022, the Appellant was invited to comment on the Respondent's evidentiary request in its Answer regarding *"the contract signed with the Spanish Club Extremadura on 3 February 2022"*.

44. On 27 May 2022, the Appellant informed the CAS Court Office, *inter alia*, that the referred contract *"was never signed back by Extremadura"* and that *"the Player has never been registered with Extremadura US, has not played a single game and has not received a single euro from this club"*.

45. Later on the same date, and with reference to the above, the Respondent wrote to the CAS Court Office, stating, *inter alia*, as follows: *"We note that the Appellant's letter is in violation of Article R56 of the CAS Code as the Sole Arbitrator did not provide him with a chance to file a second round of submission. All allegations against the Answer of the Respondent can be addressed during the hearing. Accordingly, we request the Sole Arbitrator to remove all such comments from the file, the same being inadmissible"*.

46. On 30 May 2022, the Parties were informed that the Respondent's evidentiary request was rejected by the Sole Arbitrator as the Sole Arbitrator did not find it relevant to the dispute, simply because it apparently never entered into force.

47. On 17 June 2022, a hearing was held at the CAS Court Office in Lausanne, Switzerland. In addition to the Sole Arbitrator, Ms Lia Yokomizo, Counsel to the CAS, and the following persons attended the hearing:

    <u>For the Player:</u>

    Mr Marcos Lavín Rodríguez, the Appellant himself

    Mr Ugnacio Triguero Gea, legal counsel

    Mr John Anderson Souza Fonseca, witness

    Mr Santiago Liste Cortizo, interpreter

    <u>For the Club:</u>

    Mr Josep Vandellos Alamilla, legal counsel

    Mr Saksham Samarth, legal counsel

Ms. Valentina Petre, counsel to the Club

Mr Walid Al Bitar, witness.

48. At the outset of the hearing, the Parties confirmed that they had no objections to the appointment of the Sole Arbitrator. The Parties and their witnesses were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator. After the Parties' final submissions, the Sole Arbitrator closed the hearing and reserved his final award. The Sole Arbitrator took into account in his subsequent deliberations all the evidence and arguments presented by the Parties although they may not have been expressly summarised in the present Award.

49. Upon the closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

## V. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

50. The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator has, however, carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to such submissions or evidence in the following summary.

### A. The Player

51. In his Appeal Brief of 2 February 2022, the Player requested the CAS:

*"a) To partially overturn [the Appealed Decision].*

*b) To order the Club to pay the Player the amount of EUR 20,365.43 as outstanding remuneration plus 5% interest as from the due dates.*

*c) To rule that the Player did not terminate the contract without just cause.*

*d) To rule that the Player terminated the contract with just cause.*

*e) To order the Club to pay to the Player the amount of EUR 76,532.26 as compensation for breach of contract plus 5% interest as from 21 August 2021.*

*In the alternative should the CAS come to the conclusion that the Player did not have a just cause to terminate the contract:*

*f) To order the Club to pay the Player the amount of EUR 20,365.43 as outstanding remuneration plus 5% interest from the due dates.*

*g) To rule that the Player does not have to pay any compensation for breach of contract to the Club.*

*In the further alternative to point g) above:*

*h) To reduce the compensation the Player has to pay as compensation for breach of contract to the Club.*

*In all scenarios:*

*i) To condemn the Club to pay the entire CAS administration costs and the arbitration fees and to reimburse the Player of any and all expenses he incurred in connection with this procedure.*

*j) To condemn the Club to pay the Player a contribution towards his legal costs".*

52. In support of his requests for relief, the Player submitted, *inter alia*, as follows:

- One of the main issues that need to be clarified in this case is the issue as to which payments by the Club constituted salary payments and which payments constituted bonus payments.

- Several payments were incorrectly set off as salary payments by the FIFA DRC, despite such payments actually being bonus payments and reimbursement of the costs of a flight ticket in order for the Player to come to Romania to sign the Contract.

- The smaller amounts paid to the Player during the employment relationship with the Club were all payments of bonuses and out-of-contract payments and were not payments of salary pursuant to the Contract, which the FIFA DRC failed to take into consideration in the Appealed Decision.

- During the entire employment relationship between the Parties, the salary payments would always be made by bank transfer, while the bonus payments would mostly be paid in cash and only rarely by bank transfer.

- All payments were always made to the players in Ron, and the Player never received any payments in Euros, including the alleged payment of EUR 3,000 in cash on 18 May 2021, which the Player never received.

- However, the Player confirms to have received a payment of RON 3,000 as a bonus payment.

- It was common practice for the Club to pay the players of the team certain out-of-contract bonuses based on favourable results and depending on each player's participation in the relevant matches.

- The Club's attempt to relabel such payments as salary payments is erroneous and should not be accepted.

- Moreover, pursuant to the Contract, the Player was entitled to receive certain bonuses depending on the results and his participation in matches of the Club's team.

- At the date of termination of the Contract, and as recognised by the Club, the amount overdue relating to clause 4.6 of the Contract amounted to EUR 1,400 (7 matches x EUR 200 net).

- When the Club was put in default on 30 July 2021, the total outstanding amount was EUR 15,262.43 net, i.e. two monthly salaries of EUR 6,500, the above-mentioned outstanding match bonuses and the amount of EUR 862.43 for flight tickets, which were to be reimbursed to the Player.

- As such, at the time of the Default Letter, more than two months´ salary payments were outstanding.

- Furthermore, at the time of termination of the Contract on 21 August 2021, the monthly salary for July 2021 in the amount of EUR 7,000 had also fallen due and was not paid by the Club.

- Based on that, the FIFA DRC should have awarded the Player the amount of EUR 15,262 + EUR 7,000 + EUR 4,741 (20 days of August salary) – EUR 6,638 (as paid by the Club on 6 August 2021), or in total EUR 20,365.43 as outstanding remuneration.

- The Player had just cause to terminate the Contract in accordance with Article 14bis of the FIFA RSTP, even if the calculation by the FIFA DRC was correct and only EUR 7,677.50 was still outstanding on the date of termination.

- Pursuant to the said article, the Club is obliged to *"fully comply"* with its outstanding obligations once it has received a 15-day notice.

- The wording *"fully comply"* prevents the Club from paying just a part of the outstanding amount in order to avoid the consequences which are the Player's just cause to terminate the Contract.

- Based on that, and since the Club did not *"fully comply"* with its payment obligations as set out in the Default Letter, the Player had just cause to terminate the Contract.

- In any case, the Player also had just cause to terminate the Contract under Article 14 of the FIFA RSTP as the Player could not be expected in good faith to continue the employment relationship, as per Article 337 par. 2 of the Swiss Code of Obligations, under the given circumstances.

- In this regard, it must be stressed that the Club continuously paid the Player his salaries substantially late, which alone should be considered as just cause to terminate the Contract.

- Moreover, the Club did in fact exclude the Player from its first team, as also mentioned in the Default Letter, which is also to be considered as just cause for the termination of the Contract since the exclusion was based on the Player not accepting a reduction in his contractual salary or an early termination of the Contract, as suggested by the Club.

- Also, it must be noted that the Club never replied to the Default Letter, which is an obligation for a club, and only underscores the fact that the Club was not interested in continuing or saving the employment relationship with the Player.

- As such, the subsequent request from the Club to the Player to return to the Club was clearly made in bad faith.

- In application of the fact that the Player had just cause to terminate the Contract, Article 17 of the FIFA RSTP provides that compensation is due to the Player and that, in principle, the amount of compensation due is equal to the residual value of the Contract, noting that the Player did not sign a new contract with another club following his termination of the Contract.

- As the Contract was terminated on 21 August 2021 and would not have expired until 30 June 2022, the residual value of the Contract corresponds to EUR 76,532.26, to which interest of 5% p.a. should be added as from 21 August 2021 until the date of effective payment.

- Furthermore, the Club must pay the Player his outstanding remuneration in the amount of EUR 20,504.37 plus interest of 5% p.a. as from the due dates.

- In the unlikely event that the Sole Arbitrator should find that the Player did not have just cause to terminate the Contract, no compensation should be due to the Club as the residual amount of the Contract was in fact saved by the Club as a result of the termination of the Contract. Money saved cannot constitute damages.

- In any case, any amount of compensation payable to the Club should be reduced to zero on the basis of Article 44 of the Swiss Code of Obligation, taking into consideration the degree of fault of the Club by not paying the Player his salaries on time.

**B. The Club**

53. In its Answer of 27 April 2022, the Club requested the CAS to:

*"a) Dismiss the appeal in full.*

*b) Uphold [the Appealed Decision] in full in this regard:*

*i. For the calculation mistake in the operative part of the appealed decision, [the Club] request the Sole Arbitrator to rectify the same under Article R57 of the CAS Code or remit the matter back to FIFA to rectify the calculation mistake.*

*c) Alternatively, should the Sole Arbitrator conclude that the Player terminated the Contract with just cause, then to reduce the amount of compensation based on his failure to come back to resume duties with the Club and his failure to mitigate his damages.*

*d) In all events, to condemn [the Player] to the payment of all costs related to the present arbitration proceedings:*

*e) In all events, to fix a sum, at the discretion of the Panel to be paid by [the Player] to [the Club], in order to pay all legal fees and costs of any nature incurred by [the Club] as a consequence of these proceedings".*

54. In support of its requests for relief, the Club submitted, *inter alia*, as follows:

- By 30 July 2021, when the Default Letter was forwarded to the Club making reference to Article 14bis of the FIFA RSTP, two monthly salaries were not outstanding.

- Thus, the requirement for sending a notice of default under the said article was not met.

- According to Article 14bis of the FIFA RSTP, a club must unlawfully fail to pay at least two monthly salaries on their due dates for a player to be deemed to have just cause to terminate his contract unilaterally.

- It is correct that the first payment towards flight tickets corresponding to EUR 335.11 made on 25 August 2020 was inadvertently added to the calculation of salary due to an administrative oversight. However, notwithstanding such payment and including the bonus and flight tickets due under the Contract, the total amount due to the Player on 30 July 2021 was less than two monthly salaries.

- Partial and random payments were made by the Club as a result of the COVID-19 pandemic and due to the financial difficulties of the Club. The players of the Club were informed that such payments were a part of the salary payments pursuant to the players' contracts.

- No out-of-contract bonuses were ever agreed or paid to the Player, and the Player was never informed that he would be regularly paid out of contract.

- The Player never discharged his burden of proof to substantiate this allegation.

- The Club would from time to time pay with small delays, but was almost complying regularly with its financial obligations towards the Player, and the Player never complained for 11 months from September 2020 to July 2021.

- The Player does not dispute having received the payment of EUR 65,934.04 NET as of 30 July 2021, and the Player signed receipts for the payments made in Euros on 22 February 2021 and 18 May 2021.

- Moreover, on 5 August 2021, and after the receipt of the Default Letter, the Club made a payment of EUR 6,638 NET to the Player and, thus, no salary payments were due to the Player as of that date.

- On 20 August 2021, the salary for the month of July had become due, and on 21 August 2021, the Player terminated the Contract, i.e. at a time when only one monthly salary was due, which the Club clarified in its letter to the Player dated 1 September 2021.

- In any case, the Player never submitted his bank details and thus never discharged his burden of proof in relation to not having received his contractual payments from the Club.

- Moreover, and according to Swiss law and CAS jurisprudence, it is for the Club to allocate debts and indicate which payment corresponds to what debt.

- The Club did exercise such discretion by informing the Player at all times that the small payments made were partial payments towards salary, and not even once was the Player ever informed that these were *"out of contract payments"*.

- In any case, and pursuant to Swiss law, the eleven payments that the Player disputed should be allocated to his salary first followed by in contract bonus and flight tickets.

- It is not the denied that the Player was temporarily assigned to the Club's second team.

- However, he was only sent to the second team for a temporary period and due to his abusive and negative reaction towards the coach and the entire team following a match on 19 July 2021, during which he was on the bench.

- Such abusive behaviour was an express violation of the Player's contractual duties, which, *inter alia*, obligate the Player to behave in a civilised manner at all times.

- In any case, the Player never signed a contract for a specific team, but only for the Club, and the coach of the Club's team is entitled to let the Player train with and play matches for the second team of the Club.

- During his time with the second team, the first team of the Club only played two official matches, and the Player was called back to the first team on 3 August 2021 and took part in the next match of the first team of 13 August 2021 when the Contract was still in force.

- As such, the alleged breach of contract by the Club by demoting the Player to the second team was already remedied when the Player terminated the Contract on 21 August 2021.

- In any case, the Player terminated the Contract without just cause, both under Article 14 and Article 14bis of the FIFA RSTP.

- As the Contract was terminated by the Player without just cause, the Club does not dispute the assessment in the Appealed Decision with regard to the amount of compensation payable by the Player to the Club.

- The Appealed Decision erred in the calculation of the outstanding salaries for 21 days of August 2021 and on the costs related to the flight ticket, which is why the amount payable by the Club to the Player as such should be reduced.

- In case the Sole Arbitrator should find that the Contract was terminated with just cause, the amount of compensation payable to the Player should be less that requested by the Player.

- First of all, the Player was offered 48 hours to return to the Club and resume his activities, which the Player never did.

- Moreover, the Player failed to mitigate his damages since he did not actively seek other employment.

## VI. JURISDICTION

55. Article R47 of the CAS Code states, *inter alia*, 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".*

56. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 57 par. 1 of the FIFA Statutes, which reads as follows:

*"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".*

57. Neither of the Parties objected to the jurisdiction of the CAS, which was furthermore confirmed by the Parties signing the Order of Procedure.

58. It follows that the CAS has jurisdiction to decide on the Appeal.

## VII. ADMISSIBILITY

59. Article R49 of the CAS 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".*

60. As mentioned above, it follows from Article 57 of the FIFA Statutes that:

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

61. The grounds of the Appealed Decision were notified to the Appellant on 15 December 2021, and the Appellant's Statement of Appeal was lodged on 4 January 2022, i.e. within the statutory time limit of 21 days set forth in Article R49 of the CAS Code and in Article 57 of the FIFA Statutes, which is not disputed.

62. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

63. It follows that the Appellant´s Appeal is admissible.

64. Under Article R57 of the CAS Code, the Sole Arbitrator has full power to review the facts and the law and may issue a de novo decision superseding, entirely or partially, the Appealed Decision.

## VIII. APPLICABLE LAW

65. Article R58 of the CAS Code states 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".*

66. The Sole Arbitrator further notes that Article 56 par. 2 of the FIFA Statutes reads as follows:

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

67. Based on the foregoing, and in accordance with the submissions of the Parties, the Sole Arbitrator is satisfied to accept the application of the various regulations of FIFA, in particular the FIFA RSTP, and, subsidiarily, the application of Swiss law.

## IX. MERITS

68. Initially, the Sole Arbitrator notes that it is undisputed that on 2 September 2020, the Parties signed the Contract valid as from the date of signing until 30 June 2022 and that, according to

the Contract, the Player was entitled to receive the following amounts as remuneration for the work performed under the Contract:

*"1. The club undertakes to pay the player for the period 03.09.2020 - 30.09.2020 the net amount of 13.000 Euros which will be paid as follows:*

*- 6.500 Euro net until 10.09.2020;*

*- 6.500 Euro until the 20th of the following month for the previous month.*

*1.1. The club undertakes to pay the player for the period 01.10.2020 - 30.06.2021 the net amount of 6.500 Euro / month on the 20th of the following month for the previous month.*

*2. The club undertakes to pay the player for the period 01.07.2021- 30.06.2022 the net amount of 7.000 Euro / month on the 20th of the following month for the previous month.*

*3. The club undertakes to provide the player with an apartment and a car.*

*4. The club undertakes to pay the player bonuses in proportion to the minutes played valid for all three years, as follows:*

*4.1. If in the 2020/2021 competition season the club's first team will qualify for the Play-Offs or is in the top 6 teams at the end of the Competition, the club undertakes to pay the player the net amount of 7.000 Euros within 30 days from the date qualification in the Play-Off or, as the case may be, at the end of the Competition within 30 days from the date of validation of the ranking.*

*4.2. If the team wins the Romanian Cup 2021 edition, the club undertakes to pay the player the net amount of 7.000 Euros within 30 days from the date of winning the Cup.*

*4.3. If the team ranks 7th at the end of the 2020/2021 Championship, the club undertakes to pay the player the net amount of 5.000 Euros within 30 days from the date of validation of the ranking.*

*4.4. If the team wins the 2020/2021 Championship, the club undertakes to pay the player the net amount of 20,000 Euros within 30 days from the date of winning the Cup.*

*4.5. If the team qualifies in the Europa League groups, the club undertakes to pay the player the net amount of 10.000 Euros within 30 days from the date of qualification.*

*4.6.The club undertakes to pay the player the net amount of 200 Euro / official match played League 1 (match played is considered at least 45 minutes / official match League l) on the 20th of the following month for the previous month.*

*4.7. The club undertakes to pay the player the net amount of 250 Euro / official match played Liga 1 and the team wins, on the 20th of the following month for the previous month.*

*5. The player can transfer free of charge to another club, if that club pays to the FC Voluntari club the net amount of 500.000 Euros.*

*6. The payment of the amounts will be made in Lei, respectively of 4.7 Lei / Euro.*

*7.The club undertakes to pay the player two round-trip plane ticket Romania - Spain".*

69. It is further undisputed that in July 2021, the Player was temporarily demoted to/told to train with the second team of the club, however, the Player was called back to the first team after a few matches.

70. Additionally, it is undisputed that by the Default Letter on 30 July 2021, the Club was put in default for the amount of EUR 15,262.43, allegedly equivalent to two monthly instalments of EUR 6,500 each, contractual bonuses related to 7 matches of EUR 200 each and outstanding reimbursement of flight tickets in the amount of EUR 862.43.

71. Finally, it is undisputed that on 6 August 2021, the Club paid EUR 6,638 to the Player, and by letter of 21 August, the Player terminated the Contract referring to the Default Letter and to Articles 14 and 14bis of the FIFA RSTP.

72. As such, the Parties agree that the Player terminated the Contact unilaterally on 21 August 2021, until which date he had fulfilled his contractual obligations towards the Club.

73. However, the Parties disagree over to what extent the Contract was terminated with or without just cause, and, accordingly, the Parties also disagree over the financial consequences of the said termination.

74. Based on the above, and since the Appealed Decision was only appealed by the Player, the Sole Arbitrator finds that his task in these proceedings is, *inter alia*, to decide whether the FIFA DRC was correct in finding that on 21 August 2021, the Player cannot be considered to have had just cause to terminate the Contract.

Thus, the main issues to be resolved by the Sole Arbitrator are:

A) Did the Player have just cause to terminate the Contract on 21 August 2021, and, in any case,

B) What are the financial consequences of the Player's termination of the Contract, if any?

## A) Did the Player have just cause to terminate the Contract on 21 August 2021?

75. Article 13 of the FIFA RSTP defends the principle of contractual stability, stating as follows:

*"A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement".*

76. However, Article 14 and Article 14bis of the FIFA RSTP read, *inter alia*, as follows:

*"Article 14*

*1. A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.*

*2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause.*

*Article 14bis*

*1. In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.*

*2. […]".*

77. Under Swiss law, such just cause exists whenever the terminating party cannot be expected in good faith to continue the employment relationship (Article 337 par. 2 of the Swiss Code of Obligations), and in accordance with CAS jurisprudence, only material breaches of a contract can possibly be considered just cause for the termination of an employment contract (CAS 2013/A/3091).

78. Based on the facts of the case and the Parties' submissions, including the fact that it is not disputed that the Contract was actually terminated by the Player on 21 August 2021, the Sole Arbitrator finds that it is up to the Player to discharge the burden of proof to establish that the Contract was in fact terminated with just cause based on the circumstances of the case.

79. In doing so, the Sole Arbitrator adheres to the principle established by CAS jurisprudence that *"in 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 (.). 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 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46; and CAS 2009/A/1975, paras. 71ff)".*

80. The Sole Arbitrator finds, however, that the Player has failed to adequately discharge this burden of proof.

81. To reach this decision, the Sole Arbitrator has conducted an in-depth analysis of the facts of the case and the information and evidence gathered during the proceedings.

Article 14bis of the FIFA RSTP

82. The Sole Arbitrator initially notes that the Player, in the Termination Letter, made reference to Article 14bis of the FIFA RSTP stating that the Club had failed to fulfil its payment obligations as set out in the Default Letter, i.e. the payment of the alleged outstanding amount of EUR 15,262.43 to be paid within 15 days and that the Player therefore had just cause to terminate the Contract, adding that the Player´s contractual salary for July 2021, which fell due on 20 August 2021 according to the Contract, had also not been paid on time.

83. The Club, on its side, disputed that the Contract was terminated with just cause since the Club, with its payment of 5 August 2021 of EUR 6,638, had fulfilled all payment obligations by the date of the Default Letter, which, according to the Club, amounted to EUR 5,500, and further argued that the Player´s contractual salary for July 2021 only fell due on the day before the termination.

84. Based on the circumstances of the case and since the content of the Contract is not in dispute, the Sole Arbitrator finds that it is up to the Club to discharge the burden of proof to establish that it had in fact fulfilled its payment obligations pursuant to the Contract at the time of the Player's termination of the contractual relationship, i.e. on 21 August 2021.

85. With regard to the amounts due pursuant to the Contract, the Sole Arbitrator notes that it seems undisputed that on the date of the Default Letter, i.e. on 30 July 2021, the amount of EUR 73,762.43 had fallen due for payment to the Player in accordance with the Contract as follows:

    a) EUR 71,500 as monthly salaries for the month of September 2020 to June 2021 (11 x EUR 6,500) as two salaries were to be paid for September 2020;

    b) EUR 1,400 as contractual match bonuses (7 x EUR 200); and

    c) EUR 862.43 as outstanding reimbursement of flight tickets (as the Sole Arbitrator refers to the said amount as set out in the Appealed Decision).

86. However, the Player submits that out of this contractual amount, he had received only EUR 58,500.

87. The Club, on its side, submits that it had in fact made payments to the Player in accordance with the Contract in the amount of EUR 65,934.04; some payments made in Lei, and some payments made in Euros, mostly made by bank transfer, but some made by cash. These payments were supported by documentary evidence during these proceedings, including copies of bank transfer statements and signed receipts for cash payments.

88. The Player does not dispute having received payments from the Club in addition to the above-mentioned contractual payments that he confirms to have received. However, such payments were in fact made as additional *out-of-contract bonuses*, which does not affect the Club´s payment obligations pursuant to the Contract and cannot be set off against such outstanding contractual amounts.

89. Furthermore, the Player submits that there is a mistake with regard to two of these out-of-contract bonus payments, which the Club submits consisted of EUR 800 and EUR 3,000, respectively, but were in fact only paid to the Player in Lei.

90. With regard to the alleged out-of-contract bonuses, the Sole Arbitrator does not find himself sufficiently convinced that the payments in question are in fact to be considered as out-of-contract bonuses made by the Club in addition to the payments which fell due pursuant to the Contract.

91. In this connection, the Sole Arbitrator notes that Mr Walid Al Bitar, the sporting director of the Club, explained during the hearing, *inter alia*, that the Club was not in a financial situation to be able to award its players any payments besides what it was contractually obligated to do. Due to the financial difficulties of the Club, the Club was even struggling to fulfil its contractual payment obligations on time, which is why its players, including the Player, would receive their contractual payments in smaller instalments and with smaller delays from time to time depending on the current financial situation of the Club at the time in question. According to the witness, the players were informed about this.

92. Furthermore, in order to be able to pay such alleged out-of-contract bonuses to its players, the Club would have needed a formal authorisation from the authorities, which was never applied for and, thus, never obtained.

93. The Sole Arbitrator further notes that even if the Player and his former team mate, Mr John Anderson Souza Fonseca, both explained during the hearing that the players were from time to time, and before upcoming matches, promised to receive a bonus payment in case of a good result and depending on each player´s participation in the game, Mr Anderson also explained that such an amount would subsequently be cut from the salary payments to the players from the Club, which apparently none of the other players complained about to the Club.

94. Based on the above, the Sole Arbitrator does not find that the Player has discharged his burden of proof to establish that the payments in questions made by the Club were in fact payments of out-of-contract bonuses and not payments relating to his contractual salary.

95. With regard to the two payments of EUR 800 and EUR 3,000 allegedly made by the Club, which, according to the Player, were actually made in Lei and not in Euros, the Sole Arbitrator initially notes that both Mr Al Bitar and Mr Anderson explained that payments made by the Club were sometimes made in Euros and sometimes made in Lei.

96. The Sole Arbitrator further notes that Mr Al Bitar stated that the Club did in fact take out two loans in Euros in order to use these amounts to pay the players and that documentary evidence in form of signed receipts has been filed during these proceedings, according to which the Player apparently signed for the receipt of EUR 800 and EUR 3,000 on 22 February 2021 and 18 May 2021, respectively.

97. Based on that, the Sole Arbitrator finds no grounds for not considering the two payments to have been made in Euros as submitted by the Club.

98. As such, and taking the above-mentioned amounts into consideration, the Sole Arbitrator finds that on the date of the Default Letter, the amount of EUR 73,762.43 had fallen due to the Player in accordance with the Contract, while the Club discharged its burden of proof to establish that it had paid the amount of EUR 65,934.04, which means that the outstanding amount due to the Player on 30 July 2021 pursuant to the Contract was EUR 7,828.39.

99. In order to rely on Article 14bis of the FIFA RSTP granting just cause for the unilateral termination of a contract with a club, the club must have failed to pay to the player *"at least two monthly salaries on their due dates"*.

100. Based on the above, and as *"two monthly salaries"* of the Player on the date of the Default Letter amount to EUR 13,000 pursuant to the Contract, the Sole Arbitrator has to conclude that on the said date, the Club had not failed to pay at least two salaries to the Player, and the Player was consequently not to rely on the said article justifying just cause for the termination of the Contract.

101. Furthermore, and for the sake of good order, the Sole Arbitrator notes that the Club's subsequent failure to pay the Player´s salary for July 2021 on the due date, i.e. on 20 August 2021, does not alter this, also noting that the Club did in fact pay the amount of EUR 6,638 to the Player on 6 August 2021, and thus before the Player terminated the Contract.

Article 14 of the FIFA RSTP

102. As already mentioned above, according to Article 14 of the FIFA RSTP, a contract may be terminated by either party without consequences of any kind where there is just cause, and under Swiss law, such just cause exists whenever the terminating party cannot be expected in good faith to continue the employment relationship (Article 337 par. 2 of the Swiss Code of Obligations), and in accordance with CAS jurisprudence, only material breaches of a contract can possibly be considered just cause for the termination of an employment contract (CAS 2013/A/3091).

103. Moreover, the fact that a player is not considered to have just cause for the termination of a contract pursuant to Article 14bis of the FIFA RSTP, is of no importance to the assessment of whether a player anyway can be considered to have just cause to terminate a contractual relationship with a club based on the circumstances of the particular situation.

104. In this regard, the Player submits that he could not be expected in good faith to continue the employment relationship with the Club as a) the Club continuously paid the Player his salaries substantially late, which alone should be considered as just cause to terminate the Contract; b) the Club continuously tried to pressure the Player to reduce his contractual salary; and c) the Club excluded the Player from its first team based on the Player not accepting a reduction of his contractual salary or an early termination of the Contract, as suggested by the Club.

105. With regard to the Club´s alleged failure to pay the Player his salaries in a timely manner, the Sole Arbitrator finds it undisputed that the Player´s salaries were, to a large extent, paid by the

Club after their respective due dates, and often in smaller instalments, which, according to the Club, was the result of the poor financial situation of the Club.

106. However, the Sole Arbitrator also notes that the Club apparently was in fact trying to fulfil its payment obligations towards the Player and his teammates, that not all delays were substantial, neither in time nor in amount, and that the Player apparently was informed about the nature and reason behind such smaller and delayed payments and never complained in writing about the late payments until the Default Letter was forwarded to the Club.

107. Based on that and on the specific circumstances of the present dispute, the Sole Arbitrator finds that the Player had in fact no just cause to terminate the contractual relationship based on the Club´s late payment of his salaries.

108. Furthermore, the Sole Arbitrator finds it insufficiently documented that the Club was in fact trying to pressure the Player to accept a reduction of this contractual salaries in a manner that would cause the Player not to be expected to continue the contractual relationship.

109. Finally, and with regard to the alleged exclusion of the Player from the Club´s first team based on the Player not accepting a reduction of his contractual salary or an early termination of the Contract as allegedly suggested by the Club, the Sole Arbitrator initially notes that he considers it undisputed that the Player was in fact told to train with the second team of the Club in June 2021.

110. However, and based on the explanations given during the hearing, the Sole Arbitrator finds that this temporary demotion of the Player is to be seen as a disciplinary measure by the Club following an incident between the Player and the coach in connection with a match where the Player was not included in the starting lineup.

111. The Sole Arbitrator further notes that it is not in dispute that the Player was not told to train alone and was actually a part of the training of the second team, combined with the fact that the Contract does not include any specific right for the Player to train with and play for the first team of the Club.

112. The fact that the Club apparently did not open a formal disciplinary procedure against the Player before telling him to train with the second team, does not automatically make such a decision of the coach unjustified.

113. In any case, the Sole Arbitrator notes that the Player was only absent from the first team for two official matches and was called back at the beginning of August 2021, for which reason the alleged breach caused by the Club´s demotion of the Player had already been remedied when the Player terminated the Contract on 21 August 2021.

114. Based on that and on the specific circumstances of the present dispute, the Sole Arbitrator finds that the Player had in fact no just cause to terminate the contractual relationship based on the Club´s decision to let him train temporarily with the second team of the Club.

115. Based on the above considerations, the Sole Arbitrator finds that the Player terminated the Contract on 21 August 2021 without just cause.

**B) What are the financial consequences of the Player's termination of the Contract?**

116. The Sole Arbitrator notes that since the Parties' contractual relationship was terminated without just cause by the Player, the Sole Arbitrator has to address (i) the Player's claim for payment of the outstanding remuneration etc. and (ii) the Club's claim for compensation for breach of contract.

117. With regard to the Player's claim for payment of the outstanding remuneration, and in view of the fact that it is undisputed that the Player fulfilled his obligations under the Contract until the termination date and in accordance with the general principle of *pacta sunt servanda*, the Sole Arbitrator finds that the Club should have fulfilled its contractual obligations to the Player until the date of termination of their contractual relationship on 21 August 2021.

118. As set out in para 101 above, the Sole Arbitrator finds that on the date of the Default Letter, the outstanding amount due to the Player pursuant to the Contract amounted to EUR 7,828.39.

119. Pursuant to the Contract, the Player´s monthly salary would amount to EUR 7,000 starting from 1 July 2021, which is why the Player is also entitled to be paid EUR 7,000 for July 2021 and EUR 4,516.13 for 20 days of August 2021.

120. The Sole Arbitrator finally recalls that it is undisputed that the Club made a payment of EUR 6,638 on 6 August 2021.

121. Based on that, the Sole Arbitrator finds that the Player is in fact entitled to receive EUR 12,706,52, which is a smaller amount than decided by the FIFA DRC.

122. However, the Sole Arbitrator notes that since the Club did not appeal the Appealed Decision and since the Player´s request for relief with regard to the outstanding remuneration does not leave any room for a reduction of this amount, the Sole Arbitrator has no other choice but to confirm the amount decided by the FIFA DRC in the Appealed Decision.

123. With regard to the Club's claim for compensation for breach of contract, and since the Player is held liable for the early termination of the Parties' contractual relationship due to his breach of contract, the Sole Arbitrator finds that the Club is entitled, subject to Article 17 (1) of FIFA RSTP, to receive financial compensation for breach of contract.

124. Article 17 (1) of the FIFA RSTP states as follows:

*The following provisions apply if a contract is terminated without just cause:*

*1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any*

*other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.*

*Bearing in mind the aforementioned principles, compensation due to a player shall be calculated as follows:*

*i. in case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated;*

*ii. in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract.*

*iii. Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in the points i. and ii. above. The terms of such an agreement shall prevail".*

125. With reference to the said provision, the Sole Arbitrator finds that it appears undisputed that no agreement has been concluded between the Parties on the amount of compensation payable in the event of breach of contract, and it also appears undisputed that the Player, after the termination of the contractual relationship with the Club, has not entered into any other employment contract with a professional football club.

126. Based on the above, the Sole Arbitrator initially notes, in consistency with the well-established CAS jurisprudence, that the injured party is entitled to a whole reparation of the damage suffered according to the principle of *"positive interest"*, under which compensation for breach must be aimed at reinstating the injured party to the position it would have been in had the contract been performed until its expiry (CAS 2012/A/2698; CAS 2008/A/1447).

127. In view of the above, the Sole Arbitrator is satisfied to note that the Club, as general rule, has the right to have its compensation determined under the provisions of Article 17 (1) of the FIFA RSTP in the light of the principle of *"positive interest"* as specified above and with due consideration to the duty to mitigate damages according to Swiss law, which is consistent with CAS jurisprudence (CAS 2005/A/909-910-911; CAS 2005/A/801; CAS 2004/A/587).

128. Even if the Parties are not entirely in agreement with regard to the exact amount payable to the Player under the Contract from the date of termination until 30 June 2022, the Sole Arbitrator notes that it is not disputed that such an amount exceeds EUR 70,000.00. However, the Sole Arbitrator notes that in the Appealed Decision, the FIFA DRC recalled that the Club *"committed several irregularities during the execution of the performances"*, which, according to the FIFA DRC,

justified a significant reduction of the payable compensation to the Club to a final amount of EUR 15,000.

129. While the Club, which did not appeal the Appealed Decision either, confirms in its Answer that it does not dispute this assessment, the Player on his side submits that no compensation should be due to the Club as the residual amount of the Contract was in fact saved by the Club as a result of the termination of the Contract and since money saved cannot constitute damages.

130. Furthermore, the Player submits that any amount of compensation payable to the Club should be reduced to zero on the basis of Article 44 of the Swiss Code of Obligations, considering the degree of fault on the Club by not paying the Player his salaries on time.

131. Initially, the Sole Arbitrator notes that it does not agree with the Player that no compensation should be due to the Club by reason of the alleged "saving" achieved by the Club from not having to pay the Player his salaries for the remaining term of the Contract.

132. First of all, and even if the Club could be considered having *"saved"* the residual amount, the Club was at the same time suffering from not having the Player employed.

133. Moreover, and if the Sole Arbitrator was to follow the logic of the Player's argument, professional football clubs would never be entitled to receive any compensation from players terminating their contractual relationships with the said club, which is clearly not the intention behind Article 17 of the FIFA RSTP.

134. Based on that, and even if the Club did in fact commit several irregularities during the Parties' contractual relationship, the Sole Arbitrator finds no basis for reducing the amount of compensation payable by the Player to the Club any further than the already substantial reduction decided by the FIFA DRC, which the Club did not appeal.

135. As such, and based on the circumstances of this particular case, the Sole Arbitrator confirms the decision by the FIFA DRC in the Appealed Decision regarding the amount of compensation granted to the Club for the Player's termination of the Contract without just cause.

136. Finally, and for the sake of good order, the Sole Arbitrator notes that since the Club did not appeal the Appealed Decision and in view of the fact that counterclaims are not admissible pursuant to Article R55 of the CAS Code, the Sole Arbitrator is not in a position to deal with the Club´s submission regarding the price for the reimbursable flight tickets and the alleged calculation error.

## ON THESE GROUNDS

**The Court of Arbitration for Sport rules:**

1. The appeal filed on 4 January 2022 by Marcos Lavín Rodríguez against the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 9 December 2021 is dismissed.

2. The decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 9 December 2021 is confirmed

3. (…).

4. (…).

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