**Arbitration CAS 2022/A/8891 Boluspor KD v. Haris Hajdarevic & FK Zeljeznicar Sarajevo, award of 20 September 2023**

Panel: Mr Mark Hovell (United Kingdom), President; Mr Efraim Barak (Israel); Mr Manfred Nan (The Netherlands)

*Football*
*Contractual dispute – termination of the employment contract*
*15-days deadline under article 14bis of the FIFA RSTP*
*Interactions between article 14 and 14bis of the FIFA RSTP*

1. **The 15-days deadline requirement of the default notice under article 14bis of the FIFA Regulations on the Status and Transfer of Players (RSTP) starts counting the next day after the notification, and not on an hourly basis.**

2. **While the 2018 amendment of the FIFA RSTP with the addition of article 14bis, helped provide the parties with some certainty, in that termination could be invoked where two monthly salaries remained outstanding, it did not erase the possibility for party to unilaterally terminate the employment contract on the basis of article 14 of the FIFA RSTP. Ultimately, one important difference between the two venues for terminating an agreement lays in the fact that Article 14bis of the FIFA RSTP provides a player with an automatic right to terminate his or her playing contract, whereas, any player invoking Article 14 of the FIFA RSTP has to prove to the panel that he or she had just cause to terminate.**

## I. PARTIES

1. Boluspor Kulübü Derneği (the "Appellant" or "BKD") is a football club with its registered office in Bolu, Turkey. BKD is currently competing in the First League of the Turkish Football Federation (the "TFF"), which is the second division in Turkey. BKD is a member of the TFF, which in turn is affiliated to the Fédération Internationale de Football Association ("FIFA").

2. Mr Haris Hajdarevic (the "First Respondent" or the "Player") is a professional football player born on 7 October 1988 in Sarajevo, Bosnia and Herzegovina. He currently plays for FK Zeljeznicar Sarajevo in Bosnia and Herzegovina.

3. FK Zeljeznicar Sarajevo (the "Second Respondent" or "FKZS") is a football club with its registered office in Sarajevo, Bosnia and Herzegovina. FKZS is currently competing in the Premier League BH, which is the highest division in Bosnia and Herzegovina. It is a member

of the Football Association of Bosnia and Herzegovina (the "FABH"), which in turn is affiliated to FIFA.

4. The Appellant, the First Respondent and the Second Respondent together they are referred to as the "Parties" and each individually as a "Party".

## II. FACTUAL BACKGROUND

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

### A. The BKD employment contract

6. On 14 January 2021, the Player entered into an employment contract with BKD until 31 May 2023 (the "BKD Employment Contract"). Pursuant to the BKD Employment Contract, BKD had to pay to the Player the following amounts:

- EUR 30,000 in five monthly instalments for the 2020/21 season;
- EUR 10,000, within 60 days of his registration with the TFF, if BKD was promoted to the higher division by the end of the 2020/21 season and was competing in the Super League (i.e. the highest Turkish division) in the 2021/22 season;
- EUR 80,000 in 10 monthly instalments for the 2021/22 season;
- EUR 20,000, within 60 days of his registration with the TFF, if BKD was promoted to the higher division by the end of the 2021/22 season and was competing in the Super League in the 2022/23 season;
- EUR 100,000 in ten monthly instalments for the 2022/23 season, and a bonus of EUR 20,000 if BKD was promoted to a higher league at the end of the 2022/23 season.

7. Further, the BKD Employment Contract set out that the Player was entitled to other benefits as follows:

- a house – BKD was to pay the rent, while the Player was to pay all other expenses;
- a car;
- two economy class return tickets from/to Istanbul/Sarajevo; and

- a sell on clause - i.e. 10% of the net definitive transfer compensation received by BKD, payable to the Player, if he was to be transferred to another club.

8. On 19 January 2021, the Player received the sum of EUR 6,000 from BKD as his first payment under the BKD Employment Contract, in cash.

**B. Breakdown in the relationship between BKD and the Player**

9. On 7 February 2021, the Player played in a match for BKD in the TFF First League, and was given a red card and sent off in the 85th minute.

10. On 24 February 2021, after the disciplinary procedure before the TFF as a result of the Player's red card, BKD imposed a fine on the Player in the amount of EUR 5,705.88.

11. From March 2021 onwards, the relationship between BKD and the Player deteriorated. The Player was rarely selected to play in matches as he was either benched or was not in the playing squad.

12. On 9 March 2021, BKD made another payment in cash to the Player, this time in the sum of EUR 2,000.

13. On 16 June 2021, the Vice President of BKD sent the Player's agent (Mr Hadis Zubanovic) a number of WhatsApp messages stating *inter alia* that BKD's coaches did not want the Player on the team anymore, as the Player was not of a sufficient standard to play for the club or in the league. Further, the Player would be allowed to stay with BKD if he wished to, but he would not be allowed to train with the team:

*"They [the assistant coaches] Said Haris can not play in this league and Boluspor".*

*"If board want to stay he can stay but he can not train with team".*

*"Teammates do not want to pass in training because the pass they make does not return to the player again. At least 3-4 players told us this during the season, he [assistant coach] said".*

*"He has not potantiol"* [sic].

*"This is reality, Haris is not a player".*

*Burak Asan is an incompetent player. But Burak asan is a More Best player than haris"* [sic].

**C. The default notice and BKD Employment Contract termination**

14. On 28 July 2021, the Player sent a default notice to BKD requesting payment of EUR 22,000 as outstanding salaries for February 2021 (a partially unpaid salary) and for March 2021 to May 2021 (the "Default Notice"). The Player granted BKD 15 days to comply with its obligations,

pursuant to Article 14bis of the FIFA Regulations on the Status and Transfer of Players (the "RSTP").

15. On 12 August 2021, at 16:25, the Player's lawyer wrote to BKD notifying it that he was terminating the BKD Employment Contract, due to BKD's unilateral breach of the BKD Employment Contract without just cause (the "Termination Letter"). The Termination Letter stated, *inter alia*, as follows:

*"Since it obviously that there is no further basis given to continue the agreement in good faith and loyalty, we have no other choice than to act as warned with previous a letter, dated 28/7/2021. Due to unfulfilled financial obligations with a delay of four (4) months you have breached the agreement unilaterally and without just cause. Therefore, you leave us no other choice than to take legal steps against your club. In accordance to the FIFA Regulations for Status and Transfers of Players, Art. 14, We herewith properly terminate the current Agreement – signed on 14 January 2021 for the period from 14 January 2021 until 31.5.2023. – with immediate effect, due to the unilaterally breaching of the contract without just cause by your club, in order to be able to continue the career of the player Mr Haris Hajdarević. Moreover, his duty herewith stops and he will not return to your club anymore".*

16. Later that day, and after the BKD received the Termination Letter, the Player was invited to a meeting at BKD's facilities. BKD's president and sporting director attended the meeting, and they offered the Player the money that was overdue in cash, which the Player rejected. After the Player rejected the money, the meeting ended.

17. Still on the same day, BKD made a bank transfer to the Player of EUR 22,351.25 constituting the outstanding amount of EUR 22,000 plus interest of 5% for late payment. This bank transfer was made at 18:54 that day.

18. On 13 August 2021, at 17:38, BKD wrote to the Player stating its *"astonishment and disappointment"* at receiving the Termination Letter. BKD stated that the overdue amount had been paid to the Player, along with interest, within the 15 day deadline – which BKD calculated to be 12 August 2021. BKD claimed that the termination of the BKD Employment Contract by the Player was a termination without just cause.

19. On 16 August 2021, the Player's lawyer wrote to BKD stating, *inter alia*, as follows:

*"We received your letter on Friday, August 13, 2021. at 17.18 hours, in which you inform us about your activities and comments after the player Haris Hajdarević terminated his contract with your club. We would like to point out that your allegations are incorrect. Even 17 days have passed since your letter was received, without any earlier communication from your Club, if we take into account the moment when we sent you a default notice, reminding about outstanding payments to the player.*

*We believe that your letter only wants to remove the responsibility from the club chairman for the treatment of the player. As a reminder, on the 12th August the player has received severe serious insults and threats from the President of your club, where his further stay in the club was jeopardized. We remind you that the President previously informed the player orally that he would not be part of the team for the new competition season, ie that*

*he would not be on the list of registered players and that he can leave the club. The player was forbidden to attend trainings and several times he had to train on his own without the presence of doctors and other coaching staff.*

*We feel that the player did not deserve such treatment first as a human being and then as an athlete, whom you have not paid for more than 6 months".*

### D. Subsequent events

20. On 25 August 2021, the Player and FKZS entered into an employment contract until 31 May 2022 for a total amount of EUR 11,759.72 for that period (the "FKZS Employment Contract").

### E. Proceedings before the FIFA Dispute Resolution Chamber

21. On 13 August 2021, the Player filed a claim against BKD before the FIFA Dispute Resolution Chamber ("DRC").

22. On 16 February 2022, after the Parties had made submissions to the FIFA DRC, it issued a decision as follows (the "Appealed Decision"):

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

    *2. [BKD], has to pay to the [Player] the following amounts:*

    - *EUR 2,750.79 as outstanding remuneration plus 5% interest p.a. as from 12 August 2021 until the date of effective payment;*
    - *TRY 3,830 as outstanding remuneration plus 5% interest p.a. as from 12 August 2021 until the date of effective payment; and*
    - *EUR 177,067 as compensation for breach of contract without just cause plus 5% interest p.a. as from 13 August 2021 until the date of effective payment.*

    *3. Any further claims of the [Player] are rejected. […]".*

23. On 2 May 2022, the grounds of the Appealed Decision were provided to the Parties.

## III. Proceedings before the Court of Arbitration For Sport

24. On 20 May 2022, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2021 edition) (the "CAS Code"), BKD filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS"). In its Statement of Appeal, BKD nominated Mr Efraim Barak, Attorney-at-law in Tel Aviv, Israel, as arbitrator.

25. On 25 May 2022, FIFA informed the CAS Court Office that it renounced its right to request its intervention in the arbitration, further to Article R41.3 of the CAS Code.

26. On 31 May 2022, in accordance with Article R51 of the CAS Code, BKD filed its Appeal Brief with the CAS Court Office.

27. On the same date, the Player and FKZS both wrote to the CAS Court Office confirming their joint nomination of Mr Manfred P. Nan, Attorney-at-law in Amsterdam, The Netherlands, as arbitrator.

28. Also on the same date, the CAS Court Office wrote to the Parties inviting the Player and FKZS to file their respective Answers within 20 days.

29. On 1 June 2022, the Player wrote to the CAS Court Office requesting that the time limit to file his Answer be suspended and fixed only once the advance of costs had been paid by BKD.

30. On 2 June 2022, the CAS Court Office wrote to the Parties stating that *"the time limit set out in the CAS' letter dated 31 May 2022 is <u>set aside</u> and a new time limit shall be fixed upon* [BKD's] *payment of its share of the advance of costs".*

31. On 17 and 20 June 2022, the Player and FKZS respectively wrote to the CAS Court Office stating that he/it would not be paying his/its share of the advance of costs.

32. On 27 June 2022, the CAS Court Office wrote to the Parties stating that it had not received FKZS' Answer by 20 June 2022. The CAS Court Office invited FKZS to confirm whether its Answer was filed within this deadline, and if so, to provide proof in this regard.

33. On 30 June 2022, FKZS wrote to the CAS Court Office confirming that it had not yet filed its Answer, and stated as follows:

    *"[FKZS] is aware that [the Player] has filed request that its time limit be fixed after the payment by [BKD] of its share of the advance of costs, but above-mentioned letter did not specify that time limit is set aside only for [the Player]. This is understandable considering process relation of [FKZS] towards [the Player], namely [BKD] claims of joint liability regarding termination of the contract by [the Player].*

    *If Counsel deems that above stated is not correctly interpreted by [FKZS], we kindly ask for that time limit is fixed upon the [BKD's] payment of advance of costs. [FKZS] has participated in the procedures so far in every instance and intends to continue".*

34. On 1 July 2022, the CAS Court Office wrote to the Parties inviting BKD and the Player to confirm whether they agree that FKZS is granted a new deadline to file its Answer.

35. On 5 July 2022, the CAS Court Office wrote to the Parties inviting the Player to file his Answer within 20 days, in light of the payment by BKD of its share of the advance of costs and further to Article R55 of the CAS Code.

36. On the same date, i.e. 5 July 2022, BKD informed the CAS Court Office that it did not agree FKZS should be granted a new deadline to file its Answer.

37. On 6 July 2022, the Player wrote to the CAS Court Office confirming that he agreed FKZS should be granted such a deadline to file its Answer.

38. On 7 July 2022, the CAS Court Office wrote to the Parties stating that, in light of the disagreement between the Parties, it will be for the Panel to decide the issue. Furthermore, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to this case was constituted as follows:

President: Mr Mark A. Hovell, Solicitor in Manchester, United Kingdom

Arbitrators: Mr Efraim Barak, Attorney-at-Law in Tel Aviv, Israel

Mr Manfred P. Nan, Attorney-at-Law in Amsterdam, The Netherlands

39. On 12 July 2022, the CAS Court Office wrote to the Parties stating that the Panel had decided to grant FKZS's request that a new deadline be set for it to file its Answer and that the reasons for such decision would be provided in the final Award. As such, FKZS was invited to file its Answer within 20 days.

40. On 9 August 2022, the CAS Court Office acknowledged the receipt of the Answers of the Player and FKZS on 3 August 2022 and 9 August 2022, respectively. Within the same notification, the CAS Court Office requested the Parties to state whether they preferred a hearing to be held or for the Panel to issue an award based solely on the Parties' written submissions.

41. On 22 August 2022, the Parties were informed inter alia that the Panel had decided that a hearing would be held, further to Article R57 of the CAS Code.

42. On 12 September 2022, BKD requested to be permitted to submit additional evidence in response to the evidence submitted by the Player, which included a chain of WhatsApp messages between BKD's Sporting Director and the Player's agent. The Respondents objected to this request.

43. On 5 October 2022, the CAS Court Office confirmed that the Panel had granted the request of BKD and indicated that the complete WhatsApp chain should be filed.

44. On 7 October 2022, the CAS Court Office acknowledged the reception of the chain of messages from BKD and granted the Respondents a deadline of until 12 October 2022 to provide any comments they may have in this regard.

45. On 13 October 2022, the CAS Court Office acknowledged the receipt of the Player's letter regarding BKD's letter dated 7 October 2022 and the chain of messages accompanying the letter. The CAS Court Office noted that this correspondence had been received only when the time limit set for the 12 October 2022 had already elapsed.

46. On 26 October 2022, the CAS Court Office informed the Parties that the Panel had decided to admit the Player's comments on the new evidence provided by BKD and that the reasoning behind this decision would be set out in the final Award.

47. On 28 October 2022, BKD returned a signed copy of the Order of Procedure to the CAS Court Office.

48. On 31 October 2022, FKZS returned a signed copy of the Order of Procedure to the CAS Court Office.

49. On 1 November 2022, the Player returned a signed copy of the Order of Procedure to the CAS Court Office.

50. On 3 November 2022, after the Parties had been consulted with respect to the date of the hearing, the hearing was held by video-conference further to Articles R44.2 and R57 of the CAS Code. The Panel was assisted by Ms Kendra Magraw, CAS Counsel.

51. The Panel was joined at the hearing by the following persons:

*i.* For BKD:

- Mr İsmet Bumin Kapulluoğlu, Legal Representative;
- Mr Ismail Duru, Sporting Director at BKD and Witness; and
- Mr Feyyaz Sezen, Interpreter.

*ii.* For the Player:

- Mr Loizos Hadjidemetriou, Legal Representative;
- Mr Charalambos Vrakas, Counsel;
- Mr Haris Hajdarevic, the Player;
- Mr Hadis Zubanovic, the Player's agent and Witness;
- Ms. Adina Salkanovi, Interpreter; and
- Ms. Emina Nazraic, Interpreter

*iii.* For FKZS:

- Mr Feda Dupovac, Legal Representative.

52. At the hearing, as a preliminarily matter, the Parties present confirmed that they had no objection as to the constitution of the Panel.

53. The Parties made submissions in support of their respective cases and answered some questions posed by the Panel. The Player and the witnesses (Messrs Duru and Zubanovic) were examined as well. The witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. The Parties and the Panel had full opportunity to examine and cross-examine the witnesses.

54. At the conclusion of the hearing, the Parties present confirmed that they had no objections in respect of their right to be heard and to be treated equally in these arbitration proceedings.

## IV. THE PARTIES' SUBMISSIONS

55. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

### A. BKD

56. In its Appeal Brief, BKD submitted the following prayers for relief:

*"Under the presence of the present conditions,* [BKD]*, by reserving its right on the surplus, including but not limited to request the payment of training compensation arising from the registration of the Player with* [FKZS]*, hereby respectfully requests from the Honourable Panel to accept the present appeal brief, and;*

*a) to grant a permanent relief reversing the appealed decision and reject the* [Player's] *claim in full,*

*b) declare that the termination of the employment contract by the Player is without just cause,*

*c) to condemn the Player to pay the compensation for breach of contract to* [BKD] *in the amount of 246.800.-Euro, or any lesser amount in accordance with the consideration of the Honourable Panel, alongside with its interest in the rate of 5% p.a. to be applied from the date of termination until the date of effective payment,*

*d) to hold* [FKZS] *jointly and severally liable for the payment of the compensation for breach of contract,*

*e) if above mentioned requests are not accepted, without detriment to the requests of order as listed above and in subsidiary order, to reduce the amount of compensation for breach of contract that has been decided in favour of the Player under the decision appealed against,*

*f) to establish that the costs of the present arbitration procedure shall be borne by the Respondents,*

*g) to condemn the Respondents to pay* [BKD] *the legal fees and other expenses in connection with the present proceedings".*

57. In summary, BKD submitted the following arguments in support of its Appeal:

### *i. Application of Article 14bis of the FIFA RSTP*

58. BKD submitted that the Player was entitled to EUR 30,000 in salary payments. However, prior to the notice of default on 28 July 2021, BKD had made total payments to the Player of EUR 8,000. Therefore, EUR 22,000 remained outstanding.

59. BKD noted that it was put in default by the Player on 28 July 2021, and it was given 15 days – pursuant to Article 14bis of the FIFA RSTP – to remedy this default. BKD argued that this amount was, in fact, paid within the 15 days as the amount of EUR 22,000 plus interest was paid on 12 August 2021. Notwithstanding this, the Player nevertheless terminated the Employment Contract, citing *"unfulfilled financial obligations with a delay of four (4) months"*.

60. Although the FIFA RSTP was silent on the issue of counting deadlines, BKD noted that Article 16, para. 6 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (June 2020 edition) ("FIFA Procedural Rules") states:

*"The day on which a time limit is set shall not be counted when calculating the time limit"*.

61. Further, Article 77 of the Swiss Code of Obligations ("SCO") states (emphasis added by BKD):

*"1 Where an obligation must be discharged or some other transaction accomplished within a certain time limit subsequent to conclusion of the contract, the time limit is defined as follows:*

*1. where the time limit is expressed as a number of days, performance falls due on the last thereof, <u>not including the date on which the contract was concluded</u>, and where the number stipulated is eight or fifteen days, this means not one or two weeks but a full eight or fifteen days;*

…

*2. <u>Time limits are calculated in the same manner when stipulated as running from a date other than the date on which the contract was concluded</u>"*.

62. BKD noted that the FIFA DRC (which refers to itself also as the "Chamber") determined this issue as follows in the Appealed Decision:

*"48. In this context, the Chamber acknowledged that their task was to determine, based on the evidence presented by the parties, whether the claimed amounts had in fact remained unpaid by the Respondent and, if so, whether the formal pre-requisites of art. 14bis of the Regulations had in fact been fulfilled.*

*49. The Chamber then referred to the wording of art. 14bis par. 1 of the Regulations, in accordance with which, if a club unlawfully fails 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 obligations.*

*50. The Chamber acknowledged that the Claimant claims not having received his remuneration in full for the total amount of EUR 25,096 corresponding to part of his salary of February 2021; full salaries of March 2021, April 2021 and May 2021 and 12 days of August 2021.*

*51. Furthermore, the Chamber noted that the Claimant has provided written evidence of having put the Respondent in default on 28 July 2021 (at 13:44), i.e. at least 15 days before unilaterally terminating the contract on 12 August 2021 (at 16:25).*

*52. The Chamber further noted that in the case at hand the Respondent bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties.*

*53. In this respect, the DRC took note that based on the evidence at disposal on 12 August 2021 (at. 18:54) the Respondent made a bank transfer to the Claimant for an amount of EUR 22,345.21.*

*54. In this context, the Chamber observed that on 13 August 2021 (at. 17:38) the Respondent informed the Claimant via email about the relevant bank transfer.*

*55. Nonetheless, the DRC concluded that the above-mentioned evidence provided by the Respondent does not prove beyond doubt the payment of the total amount claimed as outstanding by the Claimant (i.e. EUR 25,096) at the moment of the termination of the contract, i.e. 12 August 2021 (at 16:25).*

*56. Thus, the Chamber decided that the Claimant had a just cause to unilaterally terminate the contract, based on art. 14bis of the Regulations".*

63. BKD disagreed with the FIFA DRC's reasoning for two reasons:

a. Firstly, in light of Article 77 of the SCO (quoted above), the time limit for payment did not expire until 12 August 2021, *"at any time before midnight without any relevance of the exact time of the delivery of notification and termination notice"*.

b. Secondly, BKD noted that the Default Notice requested the payment of EUR 22,000. The total outstanding amount the Player claimed before FIFA was EUR 25,096, which included the aforementioned EUR 22,000 and also a further EUR 3,096 corresponding to the 12 days that had passed from the termination of the BKD Employment Contract. However, BKD noted that the August 2021 salary was not due until 31 August 2021, so BKD had no reason to pay this amount to the Player at that time.

64. Accordingly, BKD argued that the Player failed to comply with the formal pre-requisites of Article 14bis of the FIFA RSTP, as BKD paid him the requested amount within the given deadline. As such, the termination of the BKD Employment Contract was without just cause. BKD argued that the concluding otherwise, as the FIFA DRC did in the Appealed Decision, *"is the demolition of the very rule of FIFA embodying the right of players for the termination of employment contracts for outstanding salaries"*.

65. Further, BKD claimed that the amount the Player requested for flight tickets corresponded to the price of tickets bought for his departure from Turkey on 13 August 2021, after the

termination of the BKD Employment Contract. Therefore, BKD claimed that it was not obliged to reimburse these amounts.

***ii. Consequences of the termination of the BKD Employment Contract***

66. For the reasons set out above, BKD considered that the Player terminated the BKD Employment Contract without just cause. As such, he should be ordered to pay compensation to BKD pursuant to Article 17 of the FIFA RSTP.

67. BKD noted that it and the Player had not agreed to a damages clause in the BKD Employment Contract in the event of termination. The residual value of the BKD Employment Contract at the time of termination was EUR 176,800 (i.e. EUR 4,800 for August 2021, EUR 72,000 for the remaining months of the 2021/22 season, and EUR 100,000 for the 2022/23 season).

68. Further, as the Player terminated the BKD Employment Contract only two days before BKD's first official league match of the 2021/22 season, BKD claimed that it *"had to swiftly transfer another player playing in the same position"*. BKD signed Mr Jakob Novak from Nogometni Club Celji on 25 August 2021 and entered into an employment contract with that player for the total amount of EUR 250,000 for the 2021/22 and 2022/23 seasons. BKD submitted that the excess costs it therefore incurred as a result of the Player's termination of the BKD Employment Contract was EUR 70,000 (i.e. EUR 250,000 minus EUR 180,000 saved on the Player's salaries).

69. Consequently, BKD requested the Panel to order the Player to pay compensation to BKD in the amount of EUR 246,800 (i.e. EUR 176,800 as the residual value of the Employment Contract, plus EUR 70,000 as replacement costs).

70. BKD claimed that the Player signing for FKZS *"almost immediately following the termination indicates that the Player was predetermined to terminate the contract"* regardless of BKD's actions. Nevertheless, as FKZS is the Player's 'new club', BKD requested that FKZS be held joint and severally liable for the compensation payable by the Player.

71. In the alternative, and in the event the Panel was to conclude that the Player did have just cause to terminate the BKD Employment Contract, BKD requested that the Panel reduce the amount of compensation owed to the Player. BKD also noted that at the time of the Appealed Decision, the Player had only concluded a contract with FKZS up to 31 May 2022, and the Player was likely to sign a further contract during the course of these appeal proceedings at the CAS. BKD requested that the Panel take into account any new contracts signed by the Player after 31 May 2022.

**B. The Player**

72. In his Answer, the Player submitted the following prayers for relief:

*"a) Reject the appeal of the Club.*

*b) Confirm the decision of the FIFA DRC;*

*c) In the alternative, to rule that no compensation shall be paid by the Club.*

*d) Order the Club to pay the full arbitration costs.*

*e) Order the Club to pay the Player an amount towards his legal costs and expenses incurred in connection with the present proceedings".*

73. In summary, the Player made the following arguments in support of his Answer to BKD's Appeal:

***i. The basis for termination***

74. The Player submitted that he had just cause to terminate the BKD Employment Contract on the basis of both Article 14 and Article 14bis of the FIFA RSTP.

*a. Time limit under Article 14bis of the FIFA RSTP*

75. The Player claimed that FIFA correctly calculated the applicable time limits in the Appealed Decision, which he claimed started running as of the date and time of the Default Notice, and expired at the same time 15 days later. The Player claimed that in the purpose of Article 14bis of the FIFA RSTP was to combat the malpractice of non-payment of salaries, *"not to impose additional administrative hurdles such as what* [BKD] *is trying to put forward"*. In any event, should the Panel disagree with the Player, he submitted that he nonetheless had just cause to terminate the BKD Employment Contract.

*b. Just cause under Article 14 of the FIFA RSTP*

76. The Player did not solely rely on Article 14bis of the FIFA RSTP in the Termination Notice, as the letter also clearly referred to Article 14 of the FIFA RSTP. The Player noted that the FIFA Commentary confirms that:

*"Article 14bis refers to unpaid and outstanding salaries. However, this certainly does not imply that delayed payment of other forms of (frequent, non-conditional) remuneration cannot constitute a just cause for a player to terminate their contract prematurely. A player invoking other outstanding remuneration as just cause to terminate their contract may still have a strong case. The pertinent circumstances will have to be assessed against the general definition of what constitutes a just cause in accordance with the terms of article 14, along with the relevant general criteria set out in jurisprudence and described above. Particular attention should be paid factors such as whether the outstanding amount is significant (i.e. that it is neither negligible nor totally subordinated), the extent of the delay, the general attitude of the parties in the specific case, and other relevant factors".*

77. The Player also stated that FIFA and CAS jurisprudence was clear that even if a player did not have just cause under Article 14bis of the FIFA RSTP, he could still have just cause under Article 14 of the FIFA RSTP. In this regard, *"CAS panels usually refer to a conduct of such a nature that the Player could no longer be reasonably expected in good faith to continue the employment relationship with the Club"*. The Player cited *CAS 2020/A/7744* in this regard.

78. The Player noted that in addition to unpaid salaries amounting to over 4 months, BKD had:

- imposed a disproportionate and unjustified fine on him;
- repeatedly expressed that he was not wanted any longer;
- repeatedly expressed that he would not be able to play for BKD any longer; and
- repeatedly expressed that he would be deregistered next season.

## C. FKZS

79. In its Answer, FKZS submitted the following prayers for relief:

> *"1. The appeal filed by [BKD] against the decision of the FIFA DRC dated 16th February 2022 is dismissed and rejected.*
>
> *2. The decision rendered by the FIFA DRC dated 16th February 2022 is confirmed.*
>
> *3. The costs of the present arbitration proceedings shall be borne by [BKD] in their entirety*
>
> *4. BKD] shall pay to the Respondent amount as contribution towards the legal fees and other expenses incurred in connection with these arbitration proceedings".*

80. In summary, FKZS made following arguments in support of its Answer to BKD's Appeal:

### *a. Joint liability on the compensation payable to BKD*

81. FKZS submitted that considering the facts of the case, the Player had terminated the BKD Employment Contract in accordance with the FIFA RSTP. Consequently, FKZS would not be jointly liable for the payment of any compensation to BKD pursuant Article 17.2 of the FIFA RSTP. Furthermore, the fact that FKZS is not liable to pay compensation, means that no sporting sanctions can be imposed pursuant Article 17.4 of the FIFA RSTP.

### *b. Just cause for the termination of the BKD Employment Contract*

82. FKZS noted the fact that BKD neglected its financial obligations towards the Player, which constitutes a just cause for the termination of the BKD Employment Contract. FKZS relied on a number of CAS decisions to argue that the Player was entitled to terminate the BKD Employment Contract due to the seriousness and repetition of the contractual breaches by BKD. Furthermore, FKZS noted that the Player had followed the prescribed procedure of termination of the BKD Employment Contract with just cause.

### *c. Lack of inducement by FKZS for the contract termination*

83. In the case the termination of the BKD Employment Contract by the Player was considered without just cause by the Panel, FKZS put forward a number of arguments to avoid the joint liability to pay compensation to BKD, pursuant Article 17.2 of the FIFA RSTP.

84. FKZS noted that the termination of the contract between BKD and the Player was contrary to the financial interests of FKZS. This is based on the fact that the transfer of the Player from FKZS to BKD was free of charge, and that the only financial gain of FKZS would come if the Player was transferred from BKD to a third club, as FKZS would be entitled to a 30% of that transfer fee.

85. The Player had no financial interest either in joining FKZS. The wages he agreed to receive from FKZS were significantly lower than the ones he was to receive from BKD. The only purpose of FKZS was to help the Player to continue with his career.

86. Finally, FKZS did not have any sporting interest either in the Player, considering that he had only played five games in the past 6 months.

## V. JURISDICTION OF THE CAS

87. Article R47 of the CAS 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.*

*An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".*

88. The Panel notes that the Appealed Decision was a final decision rendered by the FIFA DRC. According to Article 57(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".*

89. As such, the Panel concludes that the CAS has jurisdiction to hear this appeal. Furthermore, the jurisdiction of the CAS was confirmed by the Order of Procedure duly signed by the Parties.

90. It follows that the CAS has jurisdiction to hear this dispute.

## VI. ADMISSIBILITY

91. The Appealed Decision was notified to the Parties on 16 February 2022 and the grounds of the Appealed Decision were notified on 2 May 2022.

92. BKD lodged its Statement of Appeal and Appeal Brief with the CAS on 20 May 2022 and 31 May 2022 respectively, in accordance with Article 57(2) of the FIFA Statutes and Articles R47, R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee.

93. It therefore follows that this appeal is admissible.

## VII. APPLICABLE LAW

94. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

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

95. The Panel observes that Article 56(2) of the FIFA Statutes (2021 edition) stipulates the following:

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

96. The Panel notes that BKD referred only to Swiss law as being applicable in its written submissions and that the Respondents did not refer to any law as being applicable, yet the Parties all made numerous references to the FIFA RSTP and to Swiss law in their written submissions.

97. As such, the Panel is satisfied to primarily apply the various regulations of FIFA and, subsidiarily, Swiss law should the need arise to fill a possible gap or *lacuna* in the various regulations of FIFA.

## VIII. PRELIMINARY ISSUES

98. Prior to the hearing, the Panel was required to consider two issues: (i) whether FKZS had missed the deadline to file its Answer and if so, whether it should be granted a new deadline to file its Answer; and (ii) whether the Player's response to the additional evidence filed by BKD, that was received by the CAS Court Office a day after the deadline set had expired, should be admitted to the file.

99. The Panel took an un-formalistic approach to these issues. The Panel would rather see in writing and in advance what would otherwise be said at the hearing. This inter alia gave the other Parties notice of their positions prior to the hearing.

100. With regards to the first issue, i.e. FKZS's Answer, the Panel notes that the Player had asked for the deadline for his Answer to be suspended until BKD paid its share of the advance of costs, as permitted further to Article R55 of the CAS Code. FKZS had said it would not pay the advance of costs, as did the Player, but FKZS did not specifically ask that its deadline for the filing of the Answer be suspended. The CAS Court Office letter that acknowledged receipt of and granted the Player's Article R55 request, which was addressed to all the Parties, did not specify that only the Player's Answer deadline was suspended. The Panel can accept that FKZS may have interpreted that letter to mean its deadline was too, despite the context of CAS' letter. Accordingly, while it was undisputed that the FKZS did not file the Answer within the deadline, in light of the circumstances of the case, the Panel decided to grant a new deadline to the FKZS to file an Answer further to inter alia Articles R44.3 and R56 of the CAS Code.

101. The Panel then turns to the second issue, i.e. the admissibility of the Player's response to the additional evidence filed by BKD which was received by the CAS Court Office a day after the deadline set had expired. The deadline was not a "hard" deadline, as is seen in other parts of the CAS Code. While the Player's response was submitted one day late, it was of assistance to the Panel (and to BKD), as his position on the full chain of WhatsApp messages was known in advance of the hearing, and was not prejudicial to any of the Parties.

## IX. MERITS OF THE APPEAL

### A. The Main Issues

102. The Panel observes that the main issues to be resolved are:

a) Did the Player terminate the BKD Employment Contract with just cause?

b) If the answer to a) is in the affirmative, what are the financial consequences of the termination?

103. These issues will be considered in turn.

#### *a. Did the Player terminate the BKD Employment Contract with just cause?*

104. The Panel notes the way the FIFA DRC had determined this question in the Appealed Decision. The FIFA DRC confined itself to whether or not the conditions of Article 14bis of the FIFA RSTP had been complied with, and in particular whether the Player had provided BKD with 15 days to remedy its breach of the BKD Employment Contract (due to the overdue payables), or whether he had terminated the BKD Employment Contract too soon and BKD had managed to remedy the breach within 15 days.

105. In order to fit within Article 14bis of the FIFA RSTP, the Panel notes that the FIFA DRC resorted to looking at the hours in a day (i.e. the time during a day), as opposed to whole days.

106. The Panel cannot see an option to go down this path under either FIFA's own regulations and rules, or under Swiss law. Rather, as BKD submitted at paras. 60 and 61 above, Swiss law refers to this matter as does FIFA's Procedural Rules – by analogy – which state that days will start counting the next day after the notification. As such, in the matter at hand, the Article 14bis Default Notice was issued on 28 July 2021. The 15 days therefore run from 29 July 2021 (as such the last day would be 12 August 2021).

107. It is undisputed that the Player sent the Termination Letter on 12 August 2021. BKD then "came to life" and firstly looked to give the Player the sum he had referred to in the Default Notice, with interest in cash (claiming that it had always paid him in this manner before); then, when he refused the cash, transferring the money to his bank account that day.

108. The Panel can see from the evidence submitted in this proceeding that this transfer was made from BKD to the Player. However, the evidence does not establish whether the transfer was received on the same day or subsequently, and that point was not raised by the Parties.

109. The Panel therefore has doubts as to whether the strict wording of Article 14bis of the FIFA RSTP was complied with. However, that issue can be left open by the Panel, as the position of the Player is that the termination was also in accordance with Article 14 of the FIFA RSTP.

110. The Panel will therefore consider that submission.

111. BKD claimed that the sole reason given by the Player for the termination of the BKD Employment Contract was the overdue salaries and that the Player had never complained about BKD's behaviour until he filed the claim before FIFA. Consequently, BKD argued that there is no room for the application of Article 14 of the FIFA RSTP other than on the basis of the overdue amounts. Additionally, the Player did not prove that he had been forced to train on his own or that he had received threats and insults in the meeting of 12 August 2021 with the management of BKD. Finally, BKD claimed that Article 14bis of the FIFA RSTP was the only article invoked in all the letters forwarded to BKD by the Player's lawyer.

112. The Panel notes that, pursuant to Article R57 of the CAS Code, appeals before CAS are on a *de novo* basis. Accordingly, the Panel may be restrained in dealing with matters that were not raised at first instance, by the party that argues them for the first time at the CAS proceedings. However, here the main issue is whether the Player had just cause to terminate the BKD Employment Contract when he did, and the Panel can consider all submissions and evidence before it to make that determination.

113. The Panel observes that in fact, Article 14 of the FIFA RSTP was <u>solely</u> invoked in the Termination Letter. Whilst there were references to the overdue sums the Player had claimed from BKD, there was not a reference to Article 14bis of the FIFA RSTP in the Termination Letter. The relevant part of the Termination Letter reads as follows:

*"Due to unfulfilled financial obligations with a delay of four (4) months you have breached the agreement unilaterally and without just cause. Therefore, you leave us no other choice than to take legal steps against your club. In accordance to the FIFA Regulations for Status and Transfers of Players, Art. 14., We herewith properly terminate the current Agreement – signed on 14 January 2021 for the period from 14 January 2021 until 31.5.2023. – with immediate effect, due to the unilaterally breaching of the contract without just cause by your club…"*

114. The Panel notes that there was no reference in the Termination Letter as regards the Player training alone, apparently not being wanted at BKD, the threat not to register him, etc. Whilst there was some evidence of all this in the file, it was a little thin (primarily the WhatsApp chain between the Agent and the club) and it was not referred to by the Player as a reason for the termination with just cause.

115. That noted, the Panel is satisfied from the evidence that substantial sums of arrears of salary had built up almost from the start of the employment relationship, and that there was no sign of these being brought up to date, and as such the Player terminated the BKD Employment Contract.

116. BKD only reacted when it received the Termination Letter and it proposed to do in two hours, what it had not done in 4 months. However, the BKD Employment Contract had already been terminated by the Player earlier that same day that BKD reacted and tried to rectify the situation via cash payment.

117. The question for the Panel is whether a club that has not paid its player for 4 months, despite the player demanding the payment of such arrears, provides that player with just cause to end the employment relationship.

118. The Panel notes that there has been a long and consistent line of jurisprudence at the CAS that if a significant amount of salaries were unpaid after a demand from a player, then the player could terminate for just cause. The number of months overdue and the length of the demand were often debated. In 2018, FIFA added Article 14bis to the FIFA RSTP, after consultation and negotiations with the likes of the European Club Association and the Fédération Internationale de Associations de Footballeurs Professionnels. This provided the parties with some certainty, in that termination could be invoked where two monthly salaries remained outstanding. However, as seen above, this was ultimately not the route chosen by the Player.

119. The 2018 FIFA RSTP did not exclude any party from utilising Article 14 of the FIFA RSTP, but any panel examining the facts would want to consider the number of months overdue/outstanding and consider the default notice given. Ultimately, one important difference between the two venues for terminating an agreement lays in the fact that Article 14bis of the FIFA RSTP provides a player with an automatic right to terminate his or her playing contract, whereas, any player invoking Article 14 of the FIFA RSTP has to prove to the panel that he or she had just cause to terminate.

120. Therefore, the right to invoke Article 14 of the FIFA RSTP over Article 14bis in cases where the due amounts were paid within the "warning period" of 15 days needs some other supporting

elements that will convince a panel that indeed the overall conduct of the club constitute a breach in spite of paying the full amount of the salaries plus interest within the 15 days.

121. In the case at hand, the Panel has no hesitation in concluding that the Player was due 4 months' salary almost from the very beginning of the employment relationship and the start of the employment period. Furthermore, the Panel concludes that the evidence shows that the BKD lost interest in the Player immediately at the start of the employment relationship. In addition, the default notice provided BKD with 15 days' notice to pay the outstanding amounts or to see the BKD Employment Contract terminated. All these elements are sufficient, in the Panel's opinion, for just cause to arise. Based on the evidence in the file, the Panel has the impression that BKD would not have paid no matter what period of notice it was given, since it was only once the termination had taken affect that BKD reacted. BKD showed little interest in the Player, had left him with a significant amount of arrears and only "came to life" in an attempt to avoid paying any compensation for breach of the contract once it had been terminated. It is therefore that in the specific circumstances of this case, the Panel is fully satisfied that invocating Article 14 of the FIFA RSTP as the ground for the termination with just cause is acceptable and justified.

122. In conclusion, the Panel determines that the Player's termination was with just cause, in accordance with Article 14 of the FIFA RSTP.

123. At this stage, the Panel can also dismiss any claims against FKZS brought by BKD. There was no breach of contract by the Player that FKZS could have had any joint liability for nor was there any breach to have induced.

***b. What are the financial consequences of the termination?***

124. Although the Panel has arrived at the same conclusion as the FIFA DRC did in the Appealed Decision by a different route, the outcome was the same – the Player had just cause to terminate the BKD Employment Contract.

125. The Panel notes that FIFA then assessed the arrears of salaries due as at termination and the compensation going forward. The FIFA DRC gave credit to BKD for the monies BKD paid to the Player on 12 August 2021 and took account of the monies the Player earned in his short time at FKZS. However, the FIFA DRC then recredited the EUR 11,759.78 that the Player had earned from FKZS, as it was able to award up to that amount (or 3 months' salary on the BKD Employment Contract, whichever was the lower) when awarding additional compensation under Article 14bis of the FIFA RSTP, due to the overdue payables.

126. As the Panel has determined that the termination was with just cause, it too considers Article 17 of the RSTP. This article applies *"[i]n all cases"*, so regardless of whether just cause arose from Article 14 or Article 14bis of the FIFA RSTP. In the case at hand, there were overdue sums owed to the Player and he did manage to mitigate his losses to a small degree. The Panel notes that these factors were correctly taken into account by the FIFA DRC and agrees with its conclusion that the compensation element awarded should now be EUR 177,067.

127. There was no evidence that the Player had managed any further mitigation after his spell with FKZS finished. The Panel notes that in BKD's submissions, it did not apportion the salary for August 2021 between arrears and future compensation as the FIFA DRC had, so BKD had in its submissions greater arrears and a lower calculation of the residual value of the BKD Employment Contract. However, the overall total was the same.

128. The Panel notes that the FIFA DRC had awarded interest on the sum granted to the Player at the rate of 5% per annum from the various due dates until the date of effective payment. This was not specifically challenged by BKD. The Panel agrees with the FIFA DRC's determination of the interest payments and confirms these in this award.

129. As such, the Panel upholds the financial calculations in the Appealed Decision.

**B. Conclusion**

130. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel determines that the appeal is dismissed.

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

## ON THESE GROUNDS

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

1. The appeal filed by Boluspor KD against the decision rendered by the FIFA Dispute Resolution Chamber on 16 February 2022 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 16 February 2022 is upheld.

3. (…).

4. (…).

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