



Arbitration CAS 2022/A/9265 FC Shakhtyor v. Dario Kolobaric, award of 30 May 2023

Panel: Ms Yasna Stavreva (Bulgaria), Sole Arbitrator

Football

Termination of an employment contract with just cause by a player

Outstanding salaries

Compensation

Clerical mistake and adjustment of interest

1. Pursuant to Article 14bis of the FIFA Regulations on the Status and Transfer of Players, a player is deemed to have a just cause for termination when his club failed to pay him at least two consecutive monthly salaries, provided that he previously sent a default notice, with a 15-day deadline to remedy its debt. He is entitled to claim reimbursement of the sums owed to him in this respect without any other form of prior negotiation.
2. The compensation for damages shall be calculated considering the remuneration due to the player in accordance with the employment contract and its residual duration, subject to any financial gains made after the early termination. An additional indemnity equivalent to three months' salary may also be awarded, if the circumstances of the case so require.
3. An obvious clerical mistake in a specific item of the appealed decision may be automatically corrected before the CAS, in particular where it was acknowledged by the player and does not affect the total amount awarded to him before the lower instance. The calculation of interest should be adjusted accordingly.

I. PARTIES

1. FC Shakhtyor (the “Appellant” or the “Club”) is a Belarusian professional football club with its seat in Soligorsk, Belarus. It is affiliated to the Belarusian Football Federation (the “BFF”), which in turn is an affiliated member of the *Fédération Internationale de Football Association* (the “FIFA”).
2. Mr. Dario Kolobaric (the “Respondent” or the “Player”), born on 6 February 2000, is a professional Slovenian football player who was in an employment relationship with FC Shakhtyor until 2 May 2022.
3. The Appellant and the Respondent are jointly referred to as the “Parties”.

II. INTRODUCTION

4. The appeal is brought by the Appellant against the decision of the FIFA Dispute Resolution Chamber (the “FIFA DRC”) dated 6 September 2022 with regard to the payment of outstanding salaries and compensation for breach of contract (the “Appealed Decision”).

III. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions and evidence filed with these submissions. Additional facts and allegations found in the Parties’ written 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, she refers in her Award only to the submissions and evidence she considers necessary to explain her reasoning.
6. On 26 July 2021, the Club and the Player concluded an employment contract valid as from the date of signature until 20 July 2022 (the “Contract”), whereby the Club undertook to pay to the Player a net monthly salary of Belarusian roubles (“BYN”) 8,000, corresponding to approx. EUR 2,300.
7. On 27 July 2021, by means of a Supplementary Agreement to the employment contract, the Parties agreed to extend the duration of the Contract until 31 December 2024 and stipulated that, in addition to the monthly salary of BYN 8,000, the Player would be entitled to the following net remunerations:

- “(1) EUR 22,000 by 30 August 2021;*
- (2) EUR 50,000 by 30 September 2021;*
- (3) EUR 22,000 by 30 October 2021;*
- (4) EUR 22,500 by 30 December 2021;*
- (5) EUR 25,400 by 30 January 2022;*
- (6) EUR 50,000 by 28 February 2022;*
- (7) EUR 25,400 by 30 March 2022;*
- (8) EUR 25,400 by 30 May 2022;*
- (9) EUR 25,400 by 30 July 2022;*
- (10) EUR 25,400 by 30 September 2022;*
- (11) EUR 25,400 by 30 November 2022;*
- (12) EUR 25,400 by 30 January 2023;*
- (13) EUR 25,400 by 30 March 2023;*
- (14) EUR 25,400 by 30 May 2023;*
- (15) EUR 25,400 by 30 July 2023;*
- (16) EUR 25,400 by 30 September 2023;*
- (17) EUR 25,400 by 30 November 2023;*
- (18) EUR 35,400 by 30 January 2024;*
- (19) EUR 35,400 by 30 March 2024;*

(20) EUR 35,400 by 30 May 2024;
(21) EUR 35,400 by 30 July 2024;
(22) EUR 35,400 by 30 September 2024;
(23) EUR 35,400 by 30 November 2024”.

8. Furthermore, pursuant to clause 8.1.4 of the Contract as amended by Article 2 of the Supplementary Agreement the Parties agreed that at the end of the sporting season 2021 the Respondent would be entitled to USD 1,000 net for each goal/assist realized in official matches for the main team, payable by or on 31 December 2021.
9. In addition to the above, clause 8.1.12 of the Supplementary Agreement established that the Club would reimburse the Player the cost of accommodation in Belarusian roubles and amounting to the equivalent of USD 200 net per month, upon the submission of the relevant documents.
10. On 15 April 2022, the Player sent to the Club a default letter requesting the following amounts: (i) EUR 161,387.73 corresponding to the remuneration payable under 8.1.2 of the Contract as amended by Article 2 of the Supplementary Agreement, (ii) USD 1,000 as outstanding bonus for the season 2021 and (iii) USD 1,000 as housing allowances. In addition, the Player granted the Club 15 days to remedy the breach of contract.
11. On 19 April 2022, the Club replied to the Player recognizing outstanding amounts for EUR 160,654.02 and explaining its delay with lack of financial means. In its answer, the Club made a proposal for rescheduling the debt and postponing the payment’s deadline, as follows:

“Debt repayment proposal:
 - 20 000 EUR should be paid till 25/04/2022;
 - 50 000 EUR should be paid till 10/05/2022;
 - 20 000 EUR should be paid till 15/05/2022;
 - 50 000 EUR should be paid till 10/06/2022;
 - 20 654,02 EUR should be paid till 15/06/2022”.
12. On 29 April 2022, the Club paid the Player the amounts of BYN 42,018.65 and EUR 15,062.61 as partial payments of the outstanding debts.
13. On 2 May 2022, the Player sent to the Club another letter whereby he confirmed the receipt of the last payment occurred on 29 April 2022, reiterated his request for payment of the outstanding amounts and notified the Club about the immediate termination of the Contract for overdue payables.
14. The letter stipulated – in its relevant parts – the following:

“I recognize having received from FC Shakhtyor Soligorsk on 29 April 2022 the amounts of BYN 42,018.65 and EUR 15,062.61. Nevertheless, notwithstanding these payments FC Shakhtyor Soligorsk has failed to cover the entire amount of the outstanding debt to me within the deadline established in the above-mentioned letter of 15 April 2022.

In view of the serious and continuous breach of the financial obligations stipulated under the employment contract committed by FC Shakhtyor Soligorsk and taking into account the fact that through your fault our employment relationship is disrupted to a point that a continuation is not possible any longer, I am herewith terminating the employment contract binding us with immediate effect”.

15. On 16 June 2022, the Player signed an employment contract with the Slovenian club FC Koper, valid until 31 December 2024, including a net monthly salary of EUR 2,000.

IV. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

16. On 3 June 2022, the Player lodged a claim against the Club before the FIFA DRC which included, *inter alia*, the following requests for relief:

- “1. *To establish that the [Club] breached the employment contract (the Contract and the Supplementary Agreement) signed with the [Player];*
2. *To condemn the [Club] to the following payments in favour of the [Player]:*
 - a) *EUR 22,445.16 net plus 5% p.a. as from 31 August 2021 until the date of effective payment;*
 - b) *EUR 50,166.75 net plus 5% p.a. as from 1 October 2021 until the date of effective payment;*
 - c) *EUR 1,663.51 net plus 5% p.a. as from 31 October 2021 until the date of effective payment;*
 - d) *EUR 10,433.80 net plus 5% p.a. as from 31 December 2021 until the date of effective payment;*
 - e) *EUR 18,623.11 net plus 5% p.a. as from 31 January 2022 until the date of effective payment;*
 - f) *EUR 42,021.56 net plus 5% p.a. as from 1 March 2022 until the date of effective payment;*
 - g) *EUR 3,271.24 net plus 5% p.a. as from 30 April 2022 until the date of effective payment;*
 - h) *USD 1,000 net (bonus) plus 5% p.a. as from 1 January 2022 until the date of effective payment;*
 - i) *USD 1,200 net (housing allowance) corresponding to housing allowances for six months;*
3. *To condemn the [Club] to the payment in favour of the Claimant [Player] of the compensation for the termination of the contract without just cause in the amount of EUR 540,000, plus 5% interest p.a. as from 3 May 2022 until the date of effective payment;*
4. *To sanction the [Club] for the breach of contract in accordance with Art.17 par.4 RSTP for the next two registration periods”.*

17. The Club, despite being notified of the Player’s claim, did not provide its position on the matter.

18. On 6 September 2022, the FIFA DRC rendered the Appealed Decision, in which the claim of the Player was accepted.
19. The operative part of the Appealed Decision states as follows:

“1. The claim of the Claimant, Dario Kolobaric, is accepted.

2. The Respondent, FC Shakhtyor Soligorsk, has to pay to the Claimant, the following amount:

- *EUR 22,445.16 as outstanding remuneration plus 5% p.a. as from 31 August 2021 until the date of effective payment;*
- *EUR 50,166.75 as outstanding remuneration plus 5% p.a. as from 1 October 2021 until the date of effective payment;*
- *EUR 1,663.51 as outstanding remuneration plus 5% p.a. as from 31 October 2021 until the date of effective payment;*
- *EUR 10,433.80 as outstanding remuneration plus 5% p.a. as from 31 December 2021 until the date of effective payment;*
- *EUR 18,623.11 as outstanding remuneration plus 5% p.a. as from 31 January 2022 until the date of effective payment;*
- *EUR 42,021.56 as outstanding remuneration plus 5% p.a. as from 1 March 2022 until the date of effective payment;*
- *EUR 42,021.56 as outstanding remuneration plus 5% p.a. as from 30 April 2022 until the date of effective payment;*
- *USD 1,000 as outstanding bonus plus 5% p.a. as from 1 January 2022 until the date of effective payment;*
- *USD 1,200 as outstanding housing allowance;*
- *EUR 485,900 as compensation for breach of contract without just cause plus 5% p.a. as from 2 May 2022 until the date of effective payment;*

3. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.

*4. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players 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 Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of three entire and consecutive registration periods.

2. 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.

*5. The consequences **shall only be enforced at the request of the Claimant** in accordance with art.24 par.7 and 8 and art.25 of the Regulations on the Status and Transfer of Players.*

6. *This decision is rendered without costs*”.

20. The grounds of the Appealed Decision can be summarized as follows:

- First of all, the FIFA DRC concluded that it was competent to deal with the case at hand and that the March 2022 edition of the FIFA Regulations on the Status and Transfer of Players (the “RSTP”) shall be applicable to the matter at hand as to the substance.
- It then noted that all facts established by the Player remained uncontested as the Club had not replied to the claim. Thus, the FIFA DRC noted that the decision would be passed based on the documents on file, i.e. those provided by the Player.
- The FIFA DRC acknowledged that the Player unilaterally terminated the Contract on 2 May 2022 after having put the Club in default regarding the payment of outstanding salaries, bonus and housing allowances.
- The FIFA DRC concluded that the Player had terminated the Contract with just cause in accordance with Article 14bis of the RSTP on 2 May 2022. It considered that the Club had undoubtedly failed to pay more than two monthly salaries at the time the Player terminated the Contract. Furthermore, the FIFA DRC observed that the Player had duly put the Club in default of payment of the outstanding remuneration and granted a time limit of 15 days to settle its debts, but to no avail.
- The FIFA DRC then addressed the claim of the Player for payment of the outstanding remuneration, corresponding to all amounts not received but due up until the date of termination of the Contract. As the claim for EUR 148,625,137 plus USD 2,200 (outstanding amounts as salaries, bonus and housing allowances) had remained uncontested, the FIFA DRC decided to grant such amounts to the Player plus 5% interest *p.a.* (excluding housing allowances) as from the day following the due date until the date of effective payment.
- Furthermore and in addition to the outstanding remuneration, the FIFA DRC decided that, taking into consideration Article 17 (1) of the RSTP, the Player is entitled to compensation for breach of contract.
- As regards the calculation of the amount of said compensation, the FIFA DRC first noted that the Contract did not contain any clause, by means of which the Parties had beforehand agreed upon a compensation payable in the event of breach of contract. It then took into account both the remuneration due as stated in the Contract and the time remaining under the Contract along with the professional situation of the Player after its premature termination. The FIFA DRC noted that the Contract would have lasted until 31 December 2024, so for another 32 months, had it not been terminated prematurely. Thus, it concluded that the residual value of the Contract was EUR 540,000.

- The FIFA DRC then pointed out that the Player had been able to mitigate the damages by concluded a new employment contract with the Slovenian club FC Koper from 16 June 2022 until 31 December 2024. According to the constant practice of the FIFA DRC and the general obligation to mitigate damages, the FIFA DRC concluded that the total remuneration of EUR 61,000 which the Player earned and should earn with the club during the period mentioned, shall be deducted from the amount of compensation owed by the Club.
- Therefore, the amount of the mitigated compensation for breach of contract would amount to EUR 479,000 (EUR 540,000 – EUR 61,000).
- The FIFA DRC then addressed the entitlement to three additional monthly salaries in case of an early termination of the contract due to overdue payables according to Article 17 (1) para. ii) of the RSTP and concluded to award the Player additional compensation of EUR 6,900, i.e. three times his basic monthly salaries.
- Finally, the FIFA DRC decided that the Club shall pay the Player an amount of EUR 485,900 (i.e. EUR 540,000 minus EUR 61,000 plus EUR 6,900), as well as 5% interest *p.a.* as of 2 May 2022 until the date of effective payment (as requested by the Player and in accordance with the constant practice of the FIFA DRC).

21. On 31 October 2022, the grounds of the Appealed Decision were notified to the Parties.

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 16 November 2022, the Appellant lodged a Statement of Appeal with the Court of Arbitration for Sports (“CAS”) against the Respondent with respect to the Appealed Decision, pursuant to Articles R47 and R48 of the CAS Code of Sports-related Arbitration, edition 2022 (the “CAS Code”). In the Statement of Appeal, the Appellant requested an extension of the time limit until 12 December 2022 to submit its Appeal Brief. It also requested a sole arbitrator to be appointed.
23. On 12 December 2022, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.
24. On the same date, the CAS Court Office acknowledged receipt of the Appellant’s Appeal Brief and set a 20-day time limit for the Respondent to file his Answer.
25. On 12 and 15 December 2022, the Respondent requested the time limit to file his Answer to be set aside and fixed after the payment of the Appellant’s share of the advance of costs pursuant to Article R55 para. 3 of the CAS Code.
26. On 28 December 2022, the CAS Court Office informed the Parties that the Appellant has paid the total of the advance of costs in this procedure and set a 20-day deadline for the Respondent to file his Answer in accordance with Article R55 of the CAS Code.

27. On 10 January 2023, the Respondent requested a 10-day extension of the time limit to file his Answer, which was granted.
28. On 26 January 2023, the Respondent filed his Answer in accordance with Article R51 of the CAS Code.
29. On the same date, the CAS Court Office invited the Parties to inform it whether they request a case management conference and a hearing to be held or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions. In addition, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code, on behalf of the President of the CAS Appeals Arbitration Division, the Panel had been constituted as follows:

Sole Arbitrator: Ms Yasna Stavreva, Attorney-at-law in Sofia, Bulgaria.
30. On 31 January 2023, the Respondent informed the CAS Court Office that he preferred an award to be issued based solely on the Parties' written submissions and therefore did not deem necessary a case management conference and a hearing in this matter to be held.
31. On 7 February 2023, the CAS Court Office acknowledged the lack of response from the Appellant to its letter of 26 January 2023 and informed the Parties that the Sole Arbitrator deemed herself sufficiently well-informed to decide the present dispute based solely on the Parties' written submissions. In addition, the CAS Court Office invited the Parties to sign and return a copy of the Order of Procedure by 14 February 2023. Furthermore, the CAS Court Office informed the Parties that the evidentiary proceedings in the present procedure were closed in accordance with Article R59 para. 5 of the CAS Code.
32. By letters dated 8 and 13 February 2023, respectively, the Respondent and the Appellant returned to the CAS Court Office a duly signed copy of the Order of Procedure.

VI. SUBMISSIONS OF THE PARTIES

A. The Appellant's Position

33. In its Statement of Appeal and Appeal Brief, the Appellant submitted the following requests for relief:

"The Appellant hereby respectfully requests that the Sole Arbitrator:

- 1. Set aside and annul the entire decision passed on 6 September 2022 by the DRC and refer the case back to the FIFA.*
- 2. Order the Respondent to bear all the costs incurred with the present procedure.*
- 3. Order the Respondent to pay the Appellant a contribution towards his legal and other costs, in the amount to be determined at the discretion of the Sole Arbitrator.*

alternatively

1. *Order the Appellant to pay the Respondent:*

a) *EUR 144 991,02 as outstanding remuneration;*

b) *Compensation for the breach of the contract without just cause in the amount, to be calculated with the deduction of the Player's income in FC Koper.*

2. *Order the Respondent to bear all the costs incurred with the present procedure.*

3. *Order the Respondent to pay the Appellant a contribution towards his legal and other costs in the amount to be determined at the discretion of the Sole Arbitrator".*

34. In support of its Appeal, the Appellant's position, in essence, may be summarized as follows:

➤ **Applicable law**

The Appellant submits that due to Article R58 of the CAS Code and Article 56 par. 2 of the FIFA Statutes, the FIFA RSTP shall primarily apply to the present matter and, subsidiarily, the labour legislation of the Republic of Belarus.

➤ **Merits**

- a) The Appellant holds that it did not challenge the existence of overdue payables towards the Respondent and the unilaterally interruption of the employment relationship with the Player. Therefore, the Appellant considers that the Respondent breached the conditions provided in clause 11.1 of the Contract by not negotiating with the Club an amicable solution before terminating the Contract and bringing the dispute to the relevant FIFA body.
- b) According to the Appellant, it provided the Respondent with an offer of debt reconstruction as soon as the Respondent claimed for payment but he denied to negotiate which is in contradiction with clause 11.1 of the Contract and even with Article 14bis (1) of the RSTP which gives the Parties a possibility for optional resolution of financial claims stating: "*Alternative provisions in contracts existing at the time of this provision coming into force maybe considered*".
- c) Furthermore, the Appellant submits that the FIFA DRC did not take into account all circumstances related to the termination of the Contract and miscalculated the amount of the outstanding remuneration due to the Respondent.
- d) In this regard, the Appellant submits that, after the confirmation of the amount of the outstanding salaries in its letter dated 19 April 2022 and the partial payment of EUR 15,063 made by it on 29 April 2022, the remaining remuneration due to the Respondent is EUR 144,991.01.

- e) The Appellant further objects to the reimbursement of the housing allowances in the amount of USD 200 per month alleging that no relevant documents for accommodation were provided by the Respondent.
- f) Finally, the Appellant contests the amount of the compensation for breach of the Contract and the way it was determined in the Appealed Decision. The Appellant deems that the amount of the mitigated damages by the Respondent was not properly defined because FIFA DRC did not estimate what exactly the Player earned under the new contract he has signed with FC Koper. Thus, the method of calculation of the compensation was wrong and violates the provision of Article 17 of the RSTP.

B. The Respondent's Position

35. In his Answer to the Appeal Brief, the Respondent submitted the following requests for relief:

“... the Respondent respectfully requests the Sole Arbitrator:

“1. To reject the Appeal, however, under consideration of point 2 below;

2. To confirm the Challenged Decision, save for the clerical mistake committed by FIFA in point IV-2 bullet-point 7 of the Challenged Decision, which shall read as follows:

“EUR 3,271.24 as outstanding remuneration plus 5% interest p.a. as from 30 April 2022 until the date of effective payment”;

3. To condemn the Appellant to the payment in favour of the Respondent of all legal expenses incurred;

4. To establish that the costs of the arbitration procedure shall be borne by the Appellant”.

36. In support of his defense, the Respondent, in essence, submitted the following:

➤ **Applicable law**

The Respondent submits that in consideration with Article R58 of the CAS Code, Article 56 par. 2 of the FIFA Statutes and clause 11.4 of the Contract, the FIFA RSTP shall apply to the merits of the case and, subsidiarily, Swiss law.

➤ **Merits**

- a) The Respondent considers that direct negotiations have never been an obligatory precondition for the termination of the Contract and the filing a claim before the relevant FIFA body.
- b) The Respondent holds that, contrary to the Appellant's allegations, he never refused direct negotiations with the Club. Before the default letter was sent, he had approached the Appellant several times to request payment of the outstanding

remunerations but the Appellant did not react. Thus, the Appellant itself refused to enter into negotiations with the Respondent.

- c) During the validity of the Contract, the Respondent was always at the disposal of the Appellant, attending the trainings and taking part in all sports activities. The Club was able to approach him or made efforts to approach him for amicable solution of the dispute effectively at any time.
- d) The default letter itself, sent to the Appellant on 15 April 2022, constitutes an act of good faith inviting the Club to respect the financial obligations under the Contract and the Supplement Agreement.
- e) The Appellant did not provide any evidence of corroboration that it made efforts for amicable solution of the dispute except the production of a debt repayment proposal which cannot be qualified as an amicable settlement proposal. This proposal was sent to the Respondent only when the Club was put in default of the outstanding remunerations due.
- f) In addition, the Respondent considers undisputed that the Appellant failed to perform its financial obligations as from August 2021 without any valid reason, as it was also confirmed by the same Club by acknowledgement of the overdue payables under the Contract. As a result, there is no doubt that the Appellant is responsible for breach of contract and that the Player had just cause to terminate the Contract on 2 May 2022. Therefore, there is no ground for CAS to set aside the Appealed Decision or to refer the case back to the first instance.
- g) Further, the Respondent comments on the financial consequences of the termination of the Contract with just cause and considers that the calculation made in the Appealed Decision shall be entirely confirmed.
- h) The Respondent admits the mistake in part IV.2 bullet point 7 of the Appealed Decision where instead of EUR 3,271.24 as outstanding payment due on 1 March 2022 as requested in the FIFA claim point IV-2 lit. g), the FIFA DRC put the amount of EUR 42,021.56. According to the Player, it is an obvious clerical mistake and by not participating in the first instance legal proceedings the Appellant failed to apply to FIFA for a correction.
- i) With regard to the housing allowances, the Respondent argues that he had duly provided the Appellant with the necessary payment documentation and that it was the latter, assisting the Respondent in finding accommodation.
- j) With regard to the compensation, the Respondent deems that it was correctly determined by FIFA DRC under the provisions of Article 17 of the RSTP. He holds that there were no other supplementary agreements or additional documentation signed with the Player's new club, except the professional football contract, produced

as evidence in the file and the salary stipulated in it was properly accounted and deducted from the basis of the calculation.

- k) Lastly, the Respondent comments on the Appellant's alternative request in point 1 lit. b) of the Requests for Relief of the Appeal Brief which requires the awarded amount of the compensation to be reconsidered by the Sole Arbitrator, stating: *"the Appellant is ordered to pay the Respondent (...) b) compensation for breach of the contract without just cause in the amount, to be calculated with the deduction of the Player's income in FC Koper"*. The Respondent refers to the jurisprudence of the Swiss Federal Tribunal and the CAS jurisprudence (CAS 2017/A/5339) and considers that the Appellant failed to specify the wording of the request with enough precision. Therefore, it should be completely disregarded as ambiguous.

VII. JURISDICTION AND ADMISSIBILITY

37. The jurisdiction of CAS, which is not disputed by the Parties, derives from Article 57(1) of the FIFA Statutes (2022 edition), providing that *"[a]ppeals 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"* and Article 47 para. 1 of the CAS Code providing that *"[a]n appeal against the decision of a federation, association or sports-related bodies maybe 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"*.
38. The jurisdiction of CAS was also confirmed by the Order of Procedure duly signed by both Parties.
39. It follows that CAS has jurisdiction to decide on the present dispute.
40. Additionally, the grounds of the Appealed Decision were notified to the Parties on 31 October 2022. The Statement of Appeal was filed on 16 November 2022 and therefore within the deadline set forth in Article 57(1) of the FIFA Statutes. The Statement of Appeal also complied with the requirements of Article R48 of the CAS Code. Consequently, the appeal is admissible.

VIII. APPLICABLE LAW

41. Article 187 para.1 of the Swiss Private International Law Act ("PILA") provides:
- "The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such choice, according to the rules of the law which in the case has the closest connection"*.
42. Article R58 of the CAS Code provides as follows:

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

43. Article 57(2) of the FIFA Statutes (2019 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”.

44. Clause 11.4 of the Contract states:

“In all other matters not provided for in this agreement, the parties are governed by the FIFA Regulations on the status and transfer of players”.

45. The Appellant submits that the present dispute shall be governed first and foremost by the FIFA Regulations, in particular FIFA RSTP. The labour law of the Republic of Belarus shall apply subsidiarily.
46. The Respondent also confirms the applicability of the FIFA Regulations, in particular the FIFA RSTP. According to him Swiss law shall apply on a subsidiary basis.
47. Procedural matters are governed by the regulation in force at the time of the procedural act in question. Since the Respondent’s claim was filed with FIFA on 3 June 2022 and submitted for decision on 6 September 2022, the June 2022 edition of the Procedural Rules Governing the Football Tribunal (the “Procedural Rules”) apply.
48. As regards the FIFA RSTP, the March 2022 edition applies to the substance in accordance with Article 26 of the FIFA RSTP.
49. In view of the above, the Sole Arbitrator finds that primarily the various rules and regulations of FIFA are applicable, in particular the FIFA RSTP (March 2022 edition), and, additionally, Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.
50. The labour law of the Republic of Belarus shall not apply on subsidiarily basis because none of the Parties refer to a specific and explicit choice-of-law clause in the Contract or allege the applicability of concrete national legal acts.

IX. MERITS

51. With regard to the merits of the present dispute and based on the Parties’ written submissions, the main issues to be resolved by the Sole Arbitrator are:

a. Did the Respondent have just cause to terminate the Contract unilaterally and prematurely on the basis of Article 14bis of the RSTP and was he obliged to enter into amicable negotiations with the Appellant before terminating the employment relationship and filing a claim to FIFA?

b. If the employment contract was terminated with just cause, what are the consequences thereof?

A. Did the Respondent have just cause to terminate the Contract unilaterally and prematurely on the basis of Article 14bis of the RSTP and was he obliged to enter into amicable negotiations with the Appellant before terminating the employment relationship and filing a claim to FIFA?

52. In the Appealed Decision, the FIFA DRC concluded that the Respondent had just cause to terminate the Contract on 2 May 2022, “because of the [Club’s] significant breach on the basis of [Article 14bis of the RSTP]”.

53. Article 14bis of the RSTP can be considered as *lex specialis* of the general principal that employment contracts may be terminated with just cause. It introduces a specific provision of contractual termination in case of outstanding salaries. Specifically, such provision reads as follows:

“1. In 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 maybe considered.

2. For any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered. Delayed payment of an amount which is equal to at least two months shall also be deemed a just cause for the player to terminate his contract, subject to him complying with the notice termination as per paragraph 1 above...”.

54. CAS jurisprudence consistently ruled that the non-payment of two monthly salaries does in principle constitute just cause for termination of the relevant contract based on the fact that the payment obligation is one of the main obligations that the employers have towards their employees.

55. In this sense, if a club “fails to meet its obligations, the employee can, as a rule, no longer be expected to continue be bound by the contract in future...” (CAS 2018/A/6605, para 67; CAS 2016/A/4693, para 101; CAS 2013/A/3398).

56. Furthermore, for a party to be allowed to validly terminate an employment contract it must have warned the other party in order to give the latter chance to remedy and comply with its obligations. (CAS 2018/A/6605; CAS 2015/A/4327; CAS 2013/A/3398).

57. Against this background, the Sole Arbitrator deems necessary to determine whether the requirements set out in Article 14bis of the RSTP were fulfilled, i.e. (i) more than two monthly

salaries were outstanding at the time of termination and (ii) the Appellant was duly put in default and it was granted, at least, a 15-day time limit to comply with its financial obligations.

58. The Sole Arbitrator finds undisputed between the Parties that (i) the Contract was unilaterally terminated by the Respondent on 2 May 2022; (ii) the Appellant, by means of correspondence, acknowledged on 19 April 2022 the existence of overdue payables towards the Respondent in the amount of EUR 160,654.02; (iii) at the time of terminating the Contract, the Appellant was aware of outstanding debts amounting to more than two monthly salaries of the Respondent; (iv) on 15 April 2022 the Respondent sent a letter to the Appellant putting the latter in default of EUR 161,387.73 plus USD 2,000 as outstanding amounts and granting a deadline of 15 days to comply with its financial obligations.
59. What is firstly disputed in the present case, as maintained by the Appellant, is whether the Respondent had an obligation to enter into amicable negotiations with the Club before he terminated the Contract.
60. According to the Appellant, the Respondent refused amicable negotiations in regard to the Club's proposal for restructuring of the debt and turned directly to FIFA DRC, without negotiating amicable solution, which was obligatory for the Parties under clause 11.1 of the Contract. He did not comply with Article 14bis (1) of the RSTP which in its last part gives the Parties a possibility for optional resolution of financial claims, stating: *"Alternative provisions in contracts existing at the time of this provision coming into force maybe considered"*. Therefore, the Respondent's failure to negotiate breached the precondition for termination and filing a claim before FIFA within the Contract.
61. Assessing the alleged "failure of the Respondent to negotiate", the Sole Arbitrator deems that the Appellant misinterpreted the provisions in clause 11.1 of the Contract and Article 14bis (1) of the RSTP.
62. Clause 11.1 of the Contract reads as follows:

"In case any dispute arises between the parties under this contract, or in connection with their football activity, it shall be settled by direct negotiations. If the dispute between the parties is not settled, it shall be settled at the corresponding body of FIFA, as the dispute would have the international dimension. The decision of the FIFA bodies can be appealed before the Court of Arbitration for sport – CAS in Lausanne (Switzerland)";
63. After examining the content of the aforementioned clause, the Sole Arbitrator considers that it is clearly a jurisdiction clause, referring to the bodies competent to resolve disputes that may arise under the Contract or in connection with the Parties' football activity.
64. As to the wording of Article 14bis (1) of the RSTP in its last part, the Sole Arbitrator notes that it concerns the so-called alternative clauses in contracts which provide alternative method to deal with issues relating to the non-payment of salary that were present in contracts signed between clubs and players before Article 14bis of the RSTP entered into force, i.e. before 2018. Since the Contract was concluded on 26 July 2021, this clause is not applicable to the matter at hand.

65. In view of the foregoing, the Sole Arbitrator finds the arguments of the Appellant in respect to the “Respondent’s failure to negotiate” to be baseless and therefore rejected.
66. As a consequence, the Sole Arbitrator concludes that, as the FIFA DRC found in the Appealed Decision, the Respondent had just cause to terminate the Contract on 2 May 2022 in accordance with Article 14bis of the RSTP.

B. If the employment contract was terminated with just cause, what are the consequences thereof?

67. The Sole Arbitrator turns then to the question whether the consequences of the Appellant’s breach of Contract were correctly assessed by the FIFA DRC.
68. The Sole Arbitrator notes that, first of all, the party in breach – thus the Appellant – has to pay all the outstanding remuneration, i.e. all the outstanding remuneration that were due at the time of the termination of the Contract.
69. The Sole Arbitrator further notes that the Respondent had claimed a total of EUR 148,625.137 (i.e. the unpaid salaries) plus USD 2,200 (i.e. goal bonus and housing allowances) as outstanding remuneration before FIFA DRC.
70. Furthermore, the Sole Arbitrator observes that the Appellant contests that the amount of outstanding salaries on 2 May 2022 was EUR 144,991.02. It also contests the reimbursement of the housing allowances of USD 200 per month stating that no relevant documents for accommodation were provided by the Respondent at the time the Contract was terminated.
71. The Sole Arbitrator is not persuaded by the allegations of the Appellant with respect to the amount of the outstanding salaries because it did not prove on what basis its calculations were done and how it reached the figure EUR 144,991.02. Also, she does not agree with the Appellant’s allegations with respect to the housing allowances firstly because it was decided between the Parties under clause 8.1.12 of the Supplementary Agreement that the Respondent was entitled to the reimbursement of the costs of accommodation in the amount of USD 200 and secondly because evidences for payment of housing allowances were produced to the file in this regard and were not refuted by the Appellant.
72. The Sole Arbitrator further takes note, that the Respondent in his claim before the FIFA DRC (point IV-2 lit. g) of the Requests for relief) requested to be paid the amount of EUR 3,271.24, corresponding to the payment due on 30.03 2022. In the operative part of the Appealed Decision (part IV.2 bullet point 7) the FIFA DRC awarded the amount EUR 42,021.56 as outstanding payment instead of the requested EUR 3,271.24. The Appellant did not challenge the Appealed Decision in this regard and did not ask the Chamber to correct the relevant part. However, the Respondent admitted that it was a clerical mistake. In light of these circumstances, the Sole Arbitrator is of the opinion that the awarded amount of EUR 42,021.56 in the Appealed Decision constitutes an obvious clerical mistake as it cannot exceed the requested amount. The Sole Arbitrator considers that the clerical mistake needs to be

corrected and the outstanding amount, corresponding to the payment due on 30 March 2022 to be confirmed in the amount of EUR 3,271.24.

73. In addition, the Sole Arbitrator finds, that the clerical mistake does not affect the calculation of the total amount due as outstanding salaries which was correctly stated in the Appealed Decision.
74. As a consequence, the Sole Arbitrator concurs with the FIFA DRC that salary payments in the total amount of EUR 148,625.137, bonus for a goal scored on 31 October 2021 in the amount of USD 1,000 and housing allowances for six months in the total amount of USD 1,000 are to be awarded to the Respondent as outstanding remuneration.
75. Furthermore, the Sole Arbitrator notes that in case a contract is terminated without just cause, according to Article 17 of the RSTP, the party in breach shall pay compensation for damages suffered by the injured party.
76. According to Article 17 (1) of the RSTP, said compensation *“unless otherwise provided for in the contract – 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 a 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 the protected period”*.
77. Also, according to Article 17 (1) para. ii) of the RSTP, *“in case a 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, the 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 maybe increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the preliminary terminated contract”*.
78. The Sole Arbitrator notes that, as set out by the FIFA DRC in the Appealed Decision, there is no compensation clause included in the Contract that should be taken into account.
79. In a next step, the Sole Arbitrator observes that the Contract valid until 31 December 2024, thus for another thirty-two months at the time it was prematurely terminated. Taking into account the financial terms of the Contract from the date of its unilateral termination until its end date, the Sole Arbitrator concludes that the remaining residual value of the Contract amounts to EUR 540,000. Hence, the Sole Arbitrator agrees with the FIFA DRC that said amount shall serve as the basis for the final determination of the amount of compensation for breach of contract.
80. The Sole Arbitrator further takes note that the Respondent has signed a new employment contract with the Slovenian club FC Koper from 16 June 2022 until 31 December 2024,

including a monthly salary of EUR 2,000 net. Thus, he was able to mitigate his damages in the amount of EUR 61,000.

81. The Appellant contests the amount of the mitigated damages and submits that it was not properly defined. According to the Appellant, the FIFA DRC did not estimate what exactly the Player earned under the new and thus, made a wrong calculation, in contradiction of Article 17 of the RSTP.
82. After reviewing the Appealed Decision and the arguments raised by the Appellant, the Sole Arbitrator sees no reason to deviate from the conclusions of the FIFA DRC as the Appellant did not adduce any corroborating and convincing evidence in support of its allegations.
83. Considering the above, the Sole Arbitrator confirms that the mitigated compensation amounts to EUR 479,000 (EUR 540,000 – EUR 61,000).
84. The Sole Arbitrator then evaluates whether any additional compensation in the sense of Article 17 (1) para. ii) of the RSTP is due. Said additional compensation is paid if the contract termination took place because of overdue payables by a club and would correspond to three monthly salaries. In this regard, the Sole Arbitrator agrees with the FIFA DRC that the Respondent shall be awarded the amount of additional compensation of EUR 6,900, i.e. three times his basic monthly salary.
85. In light of the above, the Sole Arbitrator concurs with the FIFA DRC that the compensation for breach of contract in the matter at hand shall be EUR 485,900 (i.e. EUR 540,000 minus EUR 61,000, plus EUR 6,900) and deems this to be reasonable and proportionate considering the specific circumstances and the obvious clerical mistake which does not affect the final calculation of the total amount due (outstanding remuneration plus compensation for the breach of contract).
86. Additionally, the Sole Arbitrator notes that interest accrues from the day following the due date according to Article 339 para.1 of the Swiss Code of Obligations (“SCO”) and CAS jurisprudence (CAS 2019/A/6508 para. 99 with references). However, the Appellant did not challenge the Appealed Decision in this regard. In light of the principle of *ne ultra petita*, the Sole Arbitrator concurs with the FIFA DRC that 5% interest *p.a.* shall apply both on outstanding remuneration (excluding housing allowances) as well as on the compensation for breach of contract as from the day following the due dates until the date of effective payment.
87. Ultimately, the Sole Arbitrator notes that the Appellant did not challenge the conclusions of the FIFA DRC regarding the compliance of the Club with the monetary decisions. Consequently, she sees no reason to deviate from the FIFA DRC’s assessment in this regard.
88. Thus, the present Appeal is partially upheld and the Appealed Decision is partially confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 16 November 2022 by FC Shakhtyor against the decision rendered on 6 September 2022 by the FIFA Dispute Resolution Chamber is partially upheld.
2. The decision issued on 6 September 2022 by the FIFA Dispute Resolution Chamber is partially confirmed, save for part IV.2 bullet point 7, which shall read as follows:

“EUR 3,271.24 as outstanding remuneration plus 5% interest p.a. as from 30 April 2022 until the date of effective payment”.

3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.