Arbitrations CAS 2022/A/9328 Çaykur Rizespor A.Ş. v. Loic Remy & CAS 2022/A/9329 Loic Remy v. Çaykur Rizespor A.Ş, award of 31 August 2023

Panel: Mr Fabio Iudica (Italy), President; Mr Wouter Lambrecht (Belgium); Mr Bernard Hanotiau (Belgium)

Football
Contractual dispute – termination of the employment contract
Burden and standard of proof
Notion of just cause
Mutual intent to terminate the employment contract
Poor performance
Additional compensation

1. **Following article 13.5 of the Procedural Rules governing the FIFA Football Tribunal as well as article 8 of the Swiss Civil Code, each party bears the burden of proving the facts and allegations on which he relies. Regarding the standard of proof, while FIFA regulations do not set one, for article 17 of the Regulations on the Status and Transfer of Players (RSTP) related cases, CAS panels have applied the standard of "comfortable satisfaction", which, on the standard of proof spectrum, sits in between the standard of "beyond a reasonable doubt" and the standard of "balance of probabilities".**

2. **The notion of just cause is not defined under the FIFA RSTP, but it has been recognized under Swiss law (in particular article 337 para. 2 of the Swiss Code of Obligations) that "just cause" exists whenever the terminating party can in good faith not be expected to continue the employment relationship. The definition of 'just cause', as well as the question whether 'just cause' in fact existed, shall be established in accordance with the merits of each particular case. As it is an exceptional measure, the immediate termination of a contract for 'just cause' must be accepted only under a narrow set of circumstances. Only a particularly severe breach of the labour contract will result in the immediate dismissal of the employee, or conversely, in the immediate abandonment of the employment position by the latter.**

3 **The mere exchange of draft termination agreements between the parties' lawyers, does not significate that there was a mutual expression of intent between a club and a player to mutually terminate an employment contract.**

4. **The alleged poor performance of a player does not justify a valid termination of the employment contract by a club. Additionally, should the poor performance be due to injuries suffered by said player, that would worsen the club's liability.**

5. **The matter concerning the consequences of an employment termination without just**

cause is specifically governed by Article 17 of the FIFA RSTP which establishes the cases where an additional compensation is due to the player, i.e., only in cases when the player signed a new employment contract (and therefore in case of mitigated compensation) and when the early termination of the previous employment contract occurred due to overdue payables. Should the termination be based on other elements than overdue payables and even if in the end the club was also indebted toward the player of two consecutive salaries, additional compensation cannot be awarded.

I. INTRODUCTION

1. These consolidated appeals are brought respectively by Çaykur Rizespor A.Ş. and Mr Loic Remy, against the decision rendered by the Dispute Resolution Chamber (the "DRC" or the "Chamber") of the Fédération Internationale de Football Association ("FIFA") on 27 October 2022 regarding an employment-related dispute arisen between the parties.

II. THE PARTIES

2. Çaykur Rizespor A.Ş. (the "Club") is a football club with its registered office in Rize, Turkey. The Club is a member of the Turkish Football Federation (the "TFF"), which in turn is affiliated to the Fédération Internationale de Football Association.

3. Mr Loic Remy (the "Player") is a professional football player, born in Lion, France on 2 January 1987 and is a French citizen.

4. The Club and the Player are jointly referred to as the "Parties".

III. FACTUAL BACKGROUND AND THE FIFA PROCEEDINGS

A. Background Facts

5. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, the file of the proceedings before the FIFA DRC and the relevant documentation produced. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in the Award only to the submissions and evidence it considers necessary to explain its reasoning.

6. On 28 August 2020, the Club signed an employment contract with the Player to be valid for two sporting seasons, as from the date of signing until 31 May 2022 (the "Employment Contract"). According to the extension clause contained in Article 3.26 of the Employment

Contract, the wording of which was later amended by the Parties on 19 September 2020, the Employment Contract could be extended for a further sporting season until 31 May 2023, subject to the agreement of both Parties, by no later than 30 April 2022, which did not occur.

7. With regard to the sporting season 2021/2022, according to Article 3.1. of the Employment Contract, the Player was entitled to receive a total amount of EUR 1,650,000.00 net as follows:

   - EUR 150,000.00 as fix payment to be paid by no later than 15 September 2021;

   - EUR 1,500,000.00 as salary, payable in 10 monthly instalments between 31 August 2021 and 31 May 2022 at the end of each month.

8. The Player was also entitled to several performance and success bonuses pursuant to Article 3.2 of the Employment Contract.

9. Article 3.23. of the Employment Contract provided the following with regard to the fixed payment: *"The fix payment is made to the Player with the assumption that the player will serve to the Club for the whole season. If the Player, leaves (via permanent/loan transfer or termination) the Club with any reason before the end of the season, then the fix payment will be subject to a pro-rata calculation. If the result of the calculation exceeds the payment made to the Player, then the Player shall return the exceeding amount to the Club within 10 days following the Club's notification. Hereby the Player gives his consent that If the Player has unpaid receivables, then the exceeding amount shall be deducted therefrom".*

10. Towards the end of 2021 and the beginning of 2022, the Parties started discussions on the possible early and mutual termination of the Employment Contract. (Incidentally, the Panel notes that the Club submits that the Player would have allegedly indicated his desire to leave the Club since the end of the season 2020/2021, although no concrete steps or follow up took place and no further discussions were held until the end of January 2021. The circumstance is however not confirmed by the Player).

11. On 31 January 2022, the Parties exchanged e-mails regarding the possibility of a mutual termination. In such context, the Club's lawyer forwarded to the Player's lawyer a document named *"Mutual Termination of Employment Contract and Settlement Agreement"* dated 31 January 2022 (the "Termination Agreement"), specifying that the draft included a clause providing that the Club *"would be responsible for the debt even the board changes or relegates"*, as the Player had allegedly requested. To this e-mail, the Player's lawyer replied as follows: *"This is convenient Mrs Anil"*. Pursuant to the Termination Agreement, , which remained unsigned, the Club proposed to the Player the following financial conditions for the early termination:

   - *"2.2. In consideration of the promises between the Parties in this Agreement, the Parties have now mutually agreed to terminate the employment relationship prior to the expiry of the original term of the Employment Contract and to settle the overdue payables and consequences of early termination on the following terms:*

- ***3. Duties of the Parties***

- *3.1 Club agrees to pay to the Player a net sum of 900.000.-€ (nine hundred thousand Euros) with the following payment plan to the Player's usual bank account;*

  - *200.000.-€ (two hundred thousand Euros) to be paid on 01.02.2022*
  - *200.000.-€ (two hundred thousand Euros) to be paid on 31.05.2022*
  - *200.000.-€ (two hundred thousand Euros) to be paid on 31.08.2022*
  - *300.000.-€ (three hundred thousand Euros) to be paid on 31.12.2022".*

12. According to the Club, the evening of the same day, the Player showed up in the office of the Club's vice-president saying that he didn't want to sign the mutual termination anymore.

13. On 3 February 2022, the Club sent a letter to the Player making reference to their previous meeting, inviting the Player to mutually terminate whilst mentioning the Club's concerns regarding the risk of being relegated from the Super League to the First League and the financial and administrative consequences that would result therefrom (the "Warning Letter"). With regard to the Player's position within the Club, the Warning Letter urged the Player to sign the Termination Agreement, pointing out the following:

"As from the beginning of the last season, you have been suffering from continues[sic!] injuries. Last season you had a surgery in Germany, then suffered from other injuries, got Covid 19, this season your injuries continued and you are also injured now. Since you reject to get vaccinated and obviously could not protect yourself (social distancing and hygiene) got Covid 19 again while you were in France, time period for isolation was longer than a vaccinated person and you could not return to Turkey you missed more trainings and two more games. These facts caused a serious decrease in your performance while we compared it with your previous seasons in other clubs. You played 19 games (1.012 minutes) out of 44 games (app. 4050 minutes) played at the 2020/2021 season and 9 games (352 minutes) out of 24 games (app. 2160 minutes) at the 2021/2022 season. Between the dates of 01.10.2021 and 30.01.2022, you missed 36 team trainings out of 87 trainings. While our Club fulfil its obligations, you failed fulfilling yours.

We had several meetings regarding your position at the team and we explained you, our position. At our last meeting we held on 31st of January, we agreed on mutually terminating the employment contract. We exchanged drafts of the Mutual Termination Agreement with your lawyer Mr. Umur Varat and agreed on a final version. However, at last minute you did not sign the Mutual Termination Agreement.

Due to TFF's in force league regulations, in order to transfer a new foreign player we are being forced to terminate existing employment contract with one of our foreign players. Since the Club is in danger of relegating, we have to transfer new players whose performance are at their utmost level.

As Caykur Rizespur, we did everything at our best to treat your injuries; even paid for your operation in Germany just to get back to you in the team. However, we came to a point that this effort would not be enough.

For the last time, we invite you to complete the termination procedures and sign the Mutual Termination Agreement which we have already agreed on 31st of January. We are ready to pay your overdue payables and your receivables until the end of the employment contract as well as we have agreed on the Mutual Termination Agreement. As Çaikur Rizespor, we hereby guarantee that all the installments [sic!] *will be paid in their due time.*

We will be waiting for you until 04rd of January [rectius, February] *at 12:30 Turkish Local Time to avoid any possibility of unilateral termination of the employment contract".*

14. According to the Club, the Player finally refused to sign the Termination Agreement as he wanted to take advantage of the situation asking an amount of EUR 1,75 million. Such allegation is based on a WhatsApp exchange, at an unspecified date, between the Player's alleged agent and a Board Member of the Club.

15. On 4 February 2022, the Club sent a termination notice to the Player, claiming to have just cause based on the following arguments:

"As Caykur Rizespor A.S, we tried to mutually terminate the Professional Player's Contract and end our employment relationship amicably. In this sense, we have offered you to pay all your receivables which will be due until the end of the Contract i.e. 31.05.2022. You have accepted these terms at our meeting on 31st of January and then refrain from signing the Mutual Termination Agreement.

On 4th of February 2022, we have understood why you have changed your mind. We have been informed by your agent Ms. Bilfer Budak that you will only accept mutual termination in return for 1.750.00-EUR to be paid which is almost double of the residual value of the Contract.

After receiving your last condition, we see that it is impossible to end the employment relationship mutually and amicably. Therefore, despite all our good effort, we hereby forced to terminate Professional Player's Contract, with just cause which we have explained various time verbally and for the last time at our 03.02.2022 dated letter".

16. On 8 February 2022, the Player signed a new employment contract with the Turkish club Adana Demirspor, valid as from the date of signing until 31 May 2022, under which he was entitled to receive a monthly salary of EUR 50,000.00 (the "New Employment Contract").

B. The FIFA Proceedings

17. On 10 March 2022, the Player lodged a claim in front of FIFA against the Club for breach of contract, requesting outstanding remuneration in the amount of EUR 300,000.00 for the salaries of December 2021 and January 2022, plus interest, as well as compensation for breach in the amount of EUR 600,000.00, plus interest. For the purpose of calculating the compensation for breach, the Player started from the residual value of the Employment Contract, then deducted

EUR 200,000.00 as alternative remuneration deriving from the New Employment Contract in view of his duty of mitigation, and finally considered additional compensation in the amount of EUR 200,000.00 pursuant to Article 17 FIFA RSTP, based on the existence of overdue payables.

18. The Player argued that, as from 26 December 2021, he had not been selected to play in the first team without any explanation or justification from the Club and moreover, he had not received his salaries for December 2021 and January 2022 in the amount of EUR 300,000.00 without any *prima facie* contractual basis. With regard to the early termination of the Employment Contract, the Player maintained that the Club had no just cause and that such termination was based on the reasons provided by the Club in the Warning Letter: the Player's injuries, the Player's poor performance and the lack of interest in the Player's services, the Club opting to terminate his contract in order to sign new foreign players.

19. In its reply before FIFA, the Club rejected the Player's claim and complained about his behaviour, mainly in relation to some health issues together with the Player's alleged careless and unprofessional attitude. In this respect, the Club argued that, despite the authorities' recommendations during the pandemic, and despite having not been vaccinated against Covid-19, he did not renounce travelling to France to join his family during the team leave and tested positive for Covid-19 twice, in November 2020 and early January 2022. For this reason, he missed numerous training sessions with the team and matches, also due to the fact that, being not vaccinated, he had to observe a longer isolation period. In addition, the Club also made reference to some orthopaedic problems related to the Player's right leg and knee, with diagnostic tests performed under the Club's indication. Moreover, the Player also suffered from an inguinal hernia and needed surgery which was performed in Germany as per the Player's request, with a renowned surgeon, at the expenses of the Club, although the latter was not obliged to cover expenses for surgery outside Turkey.

20. According to the Club, near the end of the 2020/2021 sporting season, the Player also complained about the Club and the team and reported having problems adapting to life in Turkey and wanted to reunite with his family in France and for this reason he was willing to mutually terminate the Employment Contract with the Club without any compensation. After a while, things seemed to be settled down. However, at the beginning of the 2021/2022 sporting season, the Player persistently complained about his health condition and missed several trainings (also because of his second Covid-19 infection) and seemed not close to the team. The Club contended that, in the period between 26 September 2021 and 31 January 2022, the Player only took part in 48 training sessions out of 100. The Club was aware of the fact that the Player had no intention to improve his condition and commitment within the team and the Club in its turn needed to transfer new international players in order to avoid relegation. So, the Parties started discussions on a possible mutual termination of the Employment Contract. However, according to the Club, after initially agreeing (verbally) on the proposal of a mutual termination agreement, the Player finally decided not to sign it as the Club was informed by the Player's agent (Ms Bilfer Budak) that the Player would only terminate the Employment Contract against payment of EUR 1,750,000.00. In such a context, the Club maintained it was forced to terminate

the Employment Contract on 4 February 2022 with just cause, and requested to be granted an amount of EUR 1,192,464.56, plus interest, broken down as follows:

- EUR 600,000.00 as compensation for breach of contract by the Player;
- EUR 50,000.00 corresponding to the last 10 days of January 2022 since the Player was absent since 21 January 2000 and did not render any service;
- EUR 542,464.56 corresponding to the unamortized amount of the fix payment according to Article 3.23 of the Employment Contract.

21. The Player filed his Rejoinder to the Club's Reply rejecting the arguments put forward by the latter and stated that his non participation in trainings or matches was the consequence of the Club's choice not to select him as from 26 December 2021 and that his absence in January 2022 was justified by his injury; that the Club had acknowledged having an outstanding debt towards him in the amount of EUR 300,000.00; that Article 3.23 of the Employment Contract would only apply in case the Player leaves the Club which is not the present case and that the Club terminated the Employment Contract without a just cause and was therefore obliged to pay compensation for breach as well as the outstanding remuneration.

22. On 27 October 2022, the FIFA DRC rendered the Appealed Decision by which the Player's claim was partially accepted as follows:

"1. The claim of the Claimant / Counter-Respondent, Loic Remy, is partially accepted.

2. The Respondent / Counter-Claimant, Caykur Rizespor, has to pay to the Claimant / Counter - Respondent, the following amount(s):

- *EUR 300,000 as outstanding remuneration plus 5% interest p.a., as follows:*
  - *On the amount of EUR 150,000, as from 1 January 2022 until the date of effective payment;*
  - *On the amount of EUR 150,000, as from 1 February 2022 until the date of effective payment.*
- *EUR 400,000 as compensation for breach of contract, plus 5% interest p.a. as from 10 March 2022 until the date of effective payment.*

3. Any further claims of the Claimant / Counter-Respondent are rejected.

4. The claim of the Respondent / Counter-Claimant is rejected.

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

6. 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 [sic!] *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.

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

8. This decision is rendered without costs".

IV. SUMMARY OF THE APPEALED DECISION

23. The grounds of the Appealed Decision were served to the Parties on 18 November 2022. They can be summarized as follows.

24. Firstly, the DRC considered that, in principle, it was competent to decide the present case, which involves an employment-related dispute with an international dimension between a French player and a Turkish club, based on the provision of Article 23(1), in combination with Article 22 lit. b) of the FIFA RSTP, July 2022 edition.

25. Moreover, considering that the Player lodged his claim on 10 March 2022, the Chamber established that the March 2022 edition of the FIFA RSTP was applicable to the matter at hand as to the substance.

26. Then, the Chamber recalled the basic principle of the burden of proof, as stipulated in art. 13(4) of the Procedural Rules Governing the Football Tribunal.

27. With regard to the merits, the DRC noted that the dispute between the Parties relates to a claim for outstanding remuneration and compensation for breach of contract filed by the Player against the Club which, in turn, lodged a counter claim against the Player requesting to be awarded compensation for breach of contract by the Player.

28. The DRC considered that the following events were not disputed between the Parties:

- The Club failed to pay the Player's salaries for December 2021 and January 2022;

- The Player was injured during January 2022 and therefore he could not provide his services to the Club;

- Despite some discussions between the Parties concerning the mutual termination of the Employment Contract, no agreement was concluded between them in such respect;

- in the Warning Letter, the Club informed the Player *inter alia* of the following: the Club was at risk of relegation; the Player's performance was not sufficient following his injuries and his failure to participate in trainings as a consequence of isolation due to Covid-19 infection without being vaccinated, the Player had refused to sign a mutual agreement; the Club needed to terminate one of their ongoing contracts with foreign players in order to sign a new foreign player; the Club urged the Player to sign the Termination Agreement.

29. The Chamber noted that the Employment Contract was finally terminated by the Club on the grounds of the impossibility to reach a mutual termination agreement with the Player.

30. As to the reasons relied upon by the Club with respect to just cause for termination, the DRC considered the following:

- According to the jurisprudence of the FIFA Football Tribunal, a player's poor performance cannot be used as a justification for a player's dismissal, all the more so if the player's poor performance is motivated by an injury, which adds seriousness to the club's violation;

- The Player's absence from training or matches due to a medical leave (Covid-19 infection) cannot be used against the Player in the sense sought by the Club; in addition, apart from the Player's absences in November 2020 and January 2022 motivated by health issues, there is no evidence of any other absence or default notice sent by the Club to the Player in order to urge him to show up at the Club or participate in trainings or matches, nor any disciplinary proceedings seem to have been initiated by the Club against the Player; in addition, the Chamber trusted the Player's allegations that his failure to participate in official matches was a consequence of the Club's coach not selecting him to play;

- The Club failed to prove that the Parties had reached an agreement on the termination of the Employment Contract; in this respect, the content of the WhatsApp messages allegedly exchanged with the Player's Agent, submitted by the Club were deemed to be non-conclusive;

- The Club ultimately opted to terminate the Employment Contract since it was not satisfied with the Player's performance, in order to sign with another foreign player since the Player refused to sign the Termination Agreement, which is not acceptable.

31. As a consequence of the above, the DRC concluded that the Club had no just cause to terminate the Employment Contract on 4 February 2022, considering that unilateral termination of a contract is an *ultima ratio* measure and that the arguments provided by the Club in the Warning Letter *"jointly constituted the reason leading to termination of the contract, none of which can be considered as a valid reason to support the termination of an employment contract"*.

32. Therefore, all the Club's counterclaims were rejected.

33. As to the consequences of the Club's breach, the DRC, first decided that the Club is liable to pay to the Player his outstanding remuneration at the time of termination, in the amount of EUR 300,000.00, plus 5% interest as from the relevant deadline.

34. With regard to compensation for breach, in the absence of any compensation clause in the Employment Contract, the DRC made reference to the parameters set out in Article 17 of the FIFA RSTP and decided that the residual value of the Employment Contract until 31 May 2022 (i.e., EUR 600,000.00) served as the basis for calculating the amount of compensation. In continuation, the Chamber deducted the amount of the alternative salaries earned by the Player under the New Employment Contract until 31 May 2022 (i.e., EUR 200,000.00) in accordance with the Player's duty of mitigation.

35. Subsequently, with regard to the Player's request for additional compensation, the Chamber recalled that according to Article 17(1) lit. ii of the FIFA RSTP, a player is entitled to an extra amount corresponding to three monthly salaries, should the termination of the employment contract be due to overdue payables. As a consequence, the Player's request was rejected based on the fact that the Employment Contract was terminated by the Club and not by the Player.

36. Consequently, the DRC decided to grant to the Player an amount of EUR 400,000.00 as mitigated compensation, plus 5% interest as from 10 March 2022 until the date of effective payment.

37. Finally, and in accordance with Article 24(1)(2) FIFA RSTP, the DRC considered the consequences of the Club's possible failure to pay the relevant amount within the deadline of 45 day from notification of the Appealed Decision. In such event, it was decided that a registration ban for a maximum of three entire and consecutive registration periods shall apply on the Club and the matter shall be submitted to the FIFA Disciplinary Committee, if the payment is still not made at the end of the registration ban, at the request of the Player.

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

38. On 8 December 2022, the Club filed a statement of appeal with the Court of Arbitration for Sport (hereinafter: the "CAS") in accordance with Article R48 of the Code of Sports-related Arbitration (2022 edition) (hereinafter: the "CAS Code") against the Player with respect to the Appealed Decision. The Club nominated Mr Wouter Lambrecht, Attorney-at-Law in Barcelona,

Spain, as an arbitrator in the present procedure and chose English as the language of the arbitration.

39. On the same day, also the Player filed a statement of appeal with the CAS pursuant to Article R48 of the CAS Code and this with respect to the Appealed Decision. The Player requested that the case be submitted to a panel of three arbitrators and nominated Mr Bernhard Hanotiau, Attorney-at-Law in Brussels, Belgium, as an arbitrator. Finally, the Player chose English as the language of the arbitration.

40. As per the Parties agreement, both proceedings were consolidated.

41. On 16 December 2022, the Player filed his Appeal Brief in accordance with Article R51 of the CAS Code.

42. On 19 December 2022, the Club filed its Appeal Brief in accordance with Article R51 of the CAS Code.

43. On 9 January 2023, the Club filed its Answer in the case CAS 2022/A/9329.

44. On 16 January 2023, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.

45. On 20 January 2020, the Player filed his Answer in the case CAS 2022/A/9328.

46. On 20 January 2023, the CAS Court Office informed the Parties that the Panel appointed to decide the present case in the two consolidated procedures had been constituted as follows:

President: Mr Fabio Iudica, Attorney-at-Law in Milan, Italy

Arbitrators: Mr Wouter Lambrecht, Attorney-at-Law in Barcelona, Spain

Mr Bernard Hanotiau, Attorney-at-Law in Brussels, Belgium

47. On 1 February 2023, the CAS Court Office informed the Parties that the Panel did not consider a case management conference to be necessary in the present case and that, on the other hand, after consultations with the Parties, it had decided to hold a hearing in the present arbitration proceedings.

48. On 8 February 2023, the CAS Court Office, after exchanging dates with the Parties, informed the Parties that a hearing was scheduled in the present case on 14 March 2023 to be held by videoconference.

49. On 21 February 2023, the CAS Court Office forwarded the Order of Procedure to the Parties which was returned to the CAS Court Office in duly signed copy on 21 February by the Player on the same day, and on 24 February 2023 by the Club.

50. On 14 March 2023, a hearing took place in the present case, by videoconference. In addition to the Panel and Mr Giovanni Maria Fares, Counsel to the CAS, the following persons attended the hearing remotely:

For the Club:

- Mr Anil Gürsoy Artan, Legal Counsel;
- Mr Selim Selimoğlu, Witness, previous President of the Club

For the Player:

- Mr Loic Remy, the Player himself;
- Mr Umur Varat and Ms Aygin Kuruloğlu, Legal Counsels
- Mr Laurent Denis, Sport Counsel

51. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the Panel, nor to the jurisdiction of the CAS.

52. The Panel heard evidence from Mr Selim Selimoğlu and the Player, Mr Loic Remy.

53. Mr Selim Selimoğlu confirmed having no role at the Club at the moment of the hearing. He affirmed that due to several injuries and health issues, the Club could not benefit from the Player, that his performance was bad, and the Club was in a difficult situation as it was dissatisfied with the Player, so they tried to find an amicable solution with the Player in order to terminate the Employment Contract. On the other hand, the Club was ready to keep the Player if he decided not to sign a termination agreement; however, he requested an excessive amount (EUR 1,750,000.00), when the Employment Contract was almost at its end showing his desire to take advantage from the Club. The witness also testified that the Player was initially available to sign the Termination Agreement but then changed his mind, probably because he wanted a higher amount. In this respect, Mr Selim Selimoğlu made reference to *"the entire season"*. After termination of the Employment Contract, the Club engaged another player in replacement since they didn't have another player playing in the same role.

54. Mr Loic Remy confirmed having suffered from a serious injury in 2020 when he underwent surgery in Germany; as well as some smaller injuries and that the only reason why he missed some trainings was only due to his physical condition and recovery (rehabilitation and physiotherapy); he also underlined he had never been sanctioned by the Club or subject to any disciplinary proceedings. He declared that he never expressed to the Club his intention to leave the Club nor the country; that the Parties had discussions about his performance and the Club's expectation, although he also had expectations towards the Club; that the organization within the Club needed to be improved but that he wanted to play with the Club until the end of the

Employment Contract. With regard to the negotiations with the Club for the early termination in January 2022, the Player's account was a bit confused, he indicated that he was open to find an agreement that would work for all parties but that he was not willing to drop three salaries as initially requested by the Club. He made reference to a first proposal made by the Club amounting to EUR 750,000.00 which he considered too low to be accepted. Upon the request by the Panel referring to the Termination Agreement containing the payment of EUR 900,000.00, which covered the December 2021 and January 2022 salaries as well as the residual value of the Employment Contract the Player clarified that he would have signed this Termination Agreement only in case he already had received a proposal from a new club, since he didn't want to risk the end of his career as a "free player". With reference to the Warning Letter, he declared that it was too late to sign the Termination Agreement, because of the upcoming end of the transfer season in Turkey. Finally, the Player denied having ever requested the amount of EUR 1,750,00.00 as consideration for the early termination of the Employment Contract.

55. With regard to the oral pleadings, the Parties essentially reiterated their arguments as already proposed in their written submissions. With regard to the Player's request for additional compensation, the relevant legal argument proposed by the Player's counsel was that both Article 17 of the FIFA RSTP and Article 337c SCO cumulatively apply.

56. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their rights to be heard and to be treated equally were respected.

VI. SUBMISSIONS OF THE PARTIES

57. The following outline is a summary of the main positions of the Parties in the consolidated procedures CAS 2022/A/9328 and CAS 2022/A/9329 which the Panel considers relevant to decide the present dispute and does not comprise each and every contention put forward by the Parties. However, the Parties' written and oral submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Club's submissions and requests for relief in its Appeal Brief in CAS 2022/A/9328

58. In its Appeal Brief, the Club submitted the following request for relief:

1. *"To hold a hearing,*

2. *To declare the Appeal admissible and founded,*

3. *To set aside the FIFA DRC decision,*

4. *to declare that the Club terminated the Employment Contract with the Player with just cause.*

5. *to declare that the Player shall pay to Çaykur Rizespor A.Ş. a total amount of 600.000,00.-EUR as compensation which is equal to his remaining salaries of 2021/2022 season receivables as it is defined under Art. 17 of the FIFA RSTP,*

6. *to declare that the Player shall pay to Çaykur Rizespor A.Ş. an amount of 50.000,00.-EUR as a part of his unserved January 2022 salary plus 5% interest per annum accrued from the date of termination until the date of effective payment,*

7. *to declare that the Player shall return an amount of 542.464,56.-EUR as the unamortized amount of the fix payment as it is stated under Article 3.23 of the Employment Contract plus %5 interest per annum accrued from the 10th day after the Respondent received our reply letter of 07.04.2022 during the FIFA proceedings until the date of effective payment,*

8. *to condemn the Respondent to pay the costs of the proceedings as well as the court office fee.*

9. *to condemn the Respondent to pay the legal costs which is fixed ex aequo et bono at CHF 10.000.*

Subsidiarily, if the Panel decides that both Parties have fault in termination of the employment relationship,

1. *To hold a hearing,*

2. *To declare the Appeal admissible and founded,*

3. *To set aside the FIFA DRC decision,*

4. *to declare that the Player shall pay to Caykur Rizespor an amount of 50.000,00.-EUR as a part of his unserved January 2022 salary plus 5% interest per annum accrued from the date of termination until the date of effective payment*

5. *to declare that the Player shall return an amount of 542.464,56.-EUR as the unamortized amount of the fix payment as it is stated under Article 3.23 of the Employment Contract plus %5 interest per annum accrued from the 10th day after the Respondent received our reply letter of 07.04.2022 during the FIFA proceedings until the date of effective payment,*

6. *to condemn the Respondent to pay the costs of the proceedings as well as the court office fee.*

7. *to condemn the Respondent to pay the legal costs which is fixed ex aequo et bono at CHF 10.000.*

Thirdly, if the DRC decides that Club has terminated the Employment Contract without just cause

1. *To hold a hearing,*

2. *To declare the Appeal admissible and founded,*

3. *To set aside the FIFA DRC decision,*

4. *to declare that the Player shall pay to Caykur Rizespor an amount of 50.000,00.- EUR as a part of his unserved January 2022 salary plus 5% interest per annum accrued from the date of termination until the date of effective payment*

5. *to declare that the Player shall return an amount of 542.464,56.-EUR as the unamortized amount of the fix payment as it is stated under Article 3.23 of the Employment Contract plus %5 interest per annum accrued from the 10th day after the Respondent received our reply letter of 07.04.2022 during the FIFA proceedings until the date of effective payment,*

6. *to take into consideration of the Player's receivables defined under the new contract of the Player with Adana Demirspor A.S. as 212.927,50.-EUR while calculating the compensation.*

7. *to decide both parties to share the costs of the proceedings as well as the court office fee.*

8. *to condemn the Respondent to pay the legal costs which is fixed ex aequo et bono at CHF 10.000".*

59. The Club's Appeal in the procedure CAS 2022/A/9328 is based on the arguments and legal submissions which are summarized as follows.

- The Player arrived two days late at the training camp in Antalya which took place between 4 November 2020 and 14 November 2020, after a trip to France to visit his family from which he tested positive to Covid-19 and therefore could not attend any training session;

- In November and December 2020, the Player complained suffering from health issues at his right leg; subsequently he was diagnosed with inguinal hernia, refused to be operated in Turkey and received reimbursement from the Club for the surgery performed in Germany by a renowned surgeon indicated by the Club;

- During the sporting season 2020/2021, he took part in 19 matches out of 45 played by the Club;

- Between the end of September 2021 and the end of January 2022, the Player participated in only 48 trainings out of 100, as he was often injured;

- Towards the end of the sporting season 2020/2021, during a meeting with the sporting director of the Club, he expressed his dissatisfaction and desire to mutually terminate the Employment Contract without any compensation;

- After a short period of apparent stability, the Player repeated his complaints and intention to terminate the Employment Contract; he had missed many trainings, did not participate in matches with enthusiasm, he was not close to his teammates and did not show his utmost performance;

- At the end of December 2021, during the team leave, the Player travelled to France to stay with his family notwithstanding the recommendations of the health authorities due

to the ongoing pandemic and he got sick again from Covid-19; and since he was not vaccinated, he had to respect a longer period of isolation, and therefore resumed his duty at the Club 10 days later than expected;

- During the first half of the sporting season 2021/2022, he only took part in 9 matches played by the Club, out of 24.

- In the last days of January 2022, both Parties were aware that the Player had no intention or showed no effort to improve his condition and performance; on the other hand, the Club needed to sign other players in order to avoid relegation; therefore, the Parties entered into negotiations for the mutual termination of the Employment Contract.

- This time, the Player requested that the Club paid all the remaining salaries until the end of the Employment Contract. The Club accepted such request and the Parties and their lawyers exchanged correspondence regarding the terms of the Termination Agreement. However, the Player suddenly changed his mind at the last minute and refused to sign the document.

- In such context, the Club finally became aware from the Player's agent (WhatsApp message), that the reason for the Player's refusal was that he had increased his request to EUR 1,750,000.00 as a condition to accept the early termination of the Employment Contract, meaning that he wanted to take advantage of the situation.

- Therefore, having verbally agreed to the termination and the conditions therefore and after having received no reply from the Player to the Warning Letter within the deadline of 4 February 2022, the Club terminated the Employment Contract with just cause.

- From the legal standpoint, the Club submits that the Player acted in bad faith, as he tried to take advantage from the Club's difficult position, requesting twice the residual value of the Employment Contract offered by the Club.

- The Player's multiple examples of conduct and attitude toward the Club described above *"were a part of an engineered breach but not the cause for termination by their selves"*: the cause for termination by the Club was the Player's bad faith, although the DRC completely ignored it.

  "It is obvious that both Parties lost their confidence in each other and we believe that it is quite reasonable not to expect from a club to maintain the employment relationship with its player while the player was trying to benefit from the situation of the club".

- As a consequence, the Club had just cause for termination and the Player is liable to pay compensation for breach in the amount of EUR 600,000.00 corresponding to the residual value of the Employment Contract and must return EUR 542,464.56 as the unamortized amount of the fix payment in accordance with Article 3.23 of the Employment Contract.

- The DRC also wrongly interpreted the Club's approach regarding the Player's second episode of Covid-19 disease: in fact, *"The second Covid-19 incident was not a simple "medical leave", this was a result of an unprofessional act and intentional breach of contract"* since at that time there was enough information about the virus and about the precautions to follow in order to avoid the infection in accordance with recommendations of the health authorities. As a consequence, the Player should also return to the Club part of his salary for January 2022 in the amount of EUR 50,000.00 corresponding to 10 days of his absence from work in the relevant period.

- In any event, even in case of confirmation of the Appealed Decision, the calculation of the amount of compensation to be granted to the Player must be amended by deducting EUR 212,927,50 corresponding to the remuneration earned by the Player under the New Employment Contract, which includes EUR 8,927.50 as "per-match salary" and EUR 4,000.00 corresponding to accommodation allowance.

B. The Player's submissions and requests for relief in his Answer in CAS 2022/A/9328

60. In his Answer, the Player submitted the following requests for relief:

*"**TO DECLARE** the Appeal by RIZESPOR admissible but NO founded.*

***TO DECLARE** the termination of the Contract by RIZESPOR (on 4 February 2022) without just cause.*

***TO CONDEM** RIZESPOR to pay outstanding remuneration as following:*

€ 150,000 Net as monthly wage of December 2021 to add by an interest at 5% per annum from 1st January 2022 until the date of effective payment;

€ 150,000 Net as monthly wage of January 2022 to add by an interest at 5% per annum from 1st February 2022 until the date of effective payment.

***TO CONDEMN** RIZESPOR to pay a compensation for breach of Contract amounting to € 600,000 Net to be added by an interest at 5% per annum from 4 February 2022, until the date of effective payment.*

TO ORDER RIZESPOR to be born all the costs of the arbitration to be determined and served to the Parties by the CAS Court Office (i.e. the Court Office Fee and the expenses for the arbitration proceedings);

TO ORDER RIZESPOR to pay to Mr. L.A.T.H. REMY a total amount of CHF 10.000 as contribution towards the expense incurred in connection with these arbitration proceedings".

61. The position of the Player as a Respondent in the procedure CAS 2022/A/9328 is set forth in his Answer and can be summarized as follows.

62. As to the facts, the Player relied on the following in order to sustain the Club's responsibility for the breach of contractº.

- Although during the course of the Employment Contract he has suffered some injuries, he was able to play 352 minutes with the First Team in the sporting season 2021/2022; however, the Club has not selected him as from 26 December 2021 with no justification;

- The Club also failed to pay him two consecutive monthly salaries for December 2021 and January 2022 for a total amount of EUR 300,000.00, with no apparent reason or justification; This is confirmed by the Club's proposal in the Termination Agreement whereby the Club offered to pay 600,000.00 as the residual value of the Employment Contract and EUR 300,000.00 as outstanding remuneration.

- Notwithstanding the "duress" exercised by the Club, the Player has always refused (even verbally) to agree to the Termination Agreement;

- The Player chose to respect the Employment Contract until its natural expiry considering that at the time of the Club's proposal, all the transfer windows were closed, and he had no guarantee to find another club just few days before the end of the transfer window in Turkey (8 February 2022).

- It was a fundamental right of the Player to agree or not to the Termination Agreement proposed by the Club. Moreover, the Club failed to prove any misconduct or bad faith by the Player during the "negotiations" for the mutual termination of the Employment Contract.

- The authentic reasons for terminating the Employment Contract by the Club on 4 February 2022 are expressed in the Club's Warning Letter (economic situation in case of relegation, Player's injury and poor performance, Player's deregistration in order to sing another foreign player) and cannot justify the Club's early termination on the basis of just cause.

- In addition, the Player did not commit any violation during the Employment Contract as it results from the absence of any disciplinary proceedings against him.

- Therefore, the Appealed Decision is correct in establishing that the Club terminated the Employment Contract without just cause.

- With regard to the compensation for breach to be paid by the Club, since the Employment Contract does not contain any compensation clause, the DRC correctly applied the criteria set forth under Article 17 of the FIFA RSTP.

- In this respect, the Player, by referring to his Appeal in CAS 2022/A/9329, maintained that compensation for breach granted by the DRC should also include an additional

compensation in the amount of EUR 200,000.00; therefore, the final amount of (mitigated) compensation for breach should be EUR 600,000.00 (EUR 600,000.00 – EUR 200,000.00 + EUR 200,000.00).

C. The Player's submission and requests for relief in his Appeal Brief in CAS 2022/A/9329

63. In his Appeal Brief, the Player submitted the following requests for relief:

"Mr L.A.T.H REMY requests the partial reformation of the decision of the Dispute Resolution Chamber reference number FPSD-5408 as following:

TO CONDEMN RIZESPOR to pay to Mr. L.A.T.H. REMY an additional compensation amounting to € 200,000 Net added by an interest at 5% per annum from 4 February 2022 until the day of effective payment.

TO ORDER RIZESPOR to be born all the costs of the arbitration to be determined and served to the Parties by the CAS Court Office (i.e. the Court Office Fee and the expenses for the arbitration proceedings);

TO ORDER RIZESPOR to pay to Mr. L.A.T.H. REMY a total amount of CHF 10.000 as a contribution towards the expense incurred in connection with these arbitration proceedings".

64. The following is a summary of the Player's arguments in his Appeal in the procedure CAS 2022/A/9329.

- The Player requested the CAS to partially amend the Appealed Decision, by granting him a further amount of EUR 200,000.00 net as additional compensation, based on Article 337c (3) of the Swiss Code of Obligations (the "SCO"), plus 5% interest p.a.

- The Player relied on Swiss jurisprudence to sustain that, despite the wording of Article 337c SCO (*"The Court **may** order"*), additional compensation in case of an employer's dismissal without just cause shall always be due (being a semi-mandatory provision, see CAS 2017/A/5402), except for in case of exceptional circumstances where it appears to be unjustified. Such additional compensation is similar to a penalty clause, serves a double purpose, both compensative and punitive, and has to be determined by the judge on equitable basis.

- In addition, in accordance with CAS jurisprudence (CAS 2008/A/1519-1520; CAS 2015/A/4042), panels may increase or decrease the amount of compensation *"by establishing on a case-by-case basis the prejudice suffered by a party in case of an unjustified breach or termination of contract with due consideration of all elements of the case including all the non-exclusive criteria mentioned in art. 17 para. 1 of the FIFA Regulations and by having as a guidance art. 337c para. 3 and art. 337d para 1 of the Swiss Code of Obligations, under which a judging authority is allowed to grant a certain <special indemnity> to the employee as well as the specificity of sport, which serves to verify the solution for compensation reached otherwise".*

- Article 337c SCO is applicable to the present case not only in accordance with Article 56.2 of the FIFA Statutes but also pursuant to Article 3 of the Employment Contract, stating that *"… The Swiss law and FIFA Regulations shall be applicable to the dispute"*.

- In addition, Article 438(3) of the Turkish Code of Obligations which is applicable in the light of the *"due consideration to the law of the country concerned"* under the provision of Article 17(1) of the FIFA RSTP, contains an analogous norm to Article 337c SCO: *"the court may order the employer to pay the employee an amount of additional compensation determined at the court's discretion taking due account of all the circumstances; however, compensation may not exceed the equivalent of six months' salary for the employee"*.

- In such context, the *"lex specialis"* contained under Article 17(1) of the FIFA RSTP referred to by the DRC in order to exclude the additional compensation based on the fact that the Employment Contract was terminated by the Club and not by the Player, *"cannot be an element (possibility) to derogate to the application of Article 337c para3. SCO"*.

- *"Moreover, in the case at hand, (i.e. when an outstanding remuneration equivalent to two consecutive wages is undoubtedly due to the player), it is very critics that a club takes an advantage by a termination without just cause to avoid the application of the lex specialis established within article 17 par. 1 lit. ii of FIFA RSTP and tried to pay no other additional compensation (without to take account of application of article 337c para 3. SCO)"*.

- In the present case, there is no exceptional circumstance for the Club to avoid the application of additional compensation to the Player according to Article 337c SCO considering that the Club is solely responsible for the termination of the Employment Contract and also bearing in mind that the "reasons" for such termination cannot provide any just cause to the Club.

- Moreover, the Player has committed no fault and has always performed his contractual obligations towards the Club.

- For the purpose of calculating the amount of additional compensation, the following elements should be considered:

    - The seriousness of the Club's fault;

    - The timeline of the termination, close to the end of the transfer period in Turkey and after the closure of the transfer period in most of the Football Associations in Europe;

    - The age on the Player (35) making it difficult for him to find a new club;

    - The absence of any fault by the Player;

- The termination took place during the protected period.

- Based on the foregoing, the Player would be in principle entitled to receive an additional compensation amounting to 6 monthly salaries (i.e., EUR 900,000.00). However, as a demonstration of his good faith, the Player accepts an amount of EUR 200,000.00 which is consistent with the proposal by the Club in the Termination Agreement to pay the total amount of the residual value of the Employment Contract (i.e., EUR 600,000.00).

D. The Club's submissions and requests for relief in its Answer in CAS 2022/A/9329

65. In its Answer, the Club submitted the following requests for relief:

1. *"to reject all the claims of the Appellant,*

2. *to condemn the Appellant to pay the costs of the proceedings as well as the court office fee.*

3. *to condemn the Respondent to pay the legal costs which is fixed ex aequo et bono at CHF 10.000".*

66. The position and legal submissions of the Club as set forth in its Answer and can be summarized as follows.

- First, with regard to the Player's not being selected to play in the First Team, the Club rejected the accusations, stating that this was the result of the Player's health condition, beside the fact that it is the sole discretion of the Club's head coach to select the players to be fielded:

  "The medical reports, MRI reports and the number of Player's attendance to the team trainings are self-explanatory. It is a common understanding in football that one cannot expect a player to be fielded when he is injured, got operated, COVID + or not attended team trainings. Moreover, the Head Coach has the sole authority and power to decide over the list of game Squad".

- Moreover, the Club never used "duress" in order to push the Player to agree on the Termination Agreement. Witness statements submitted by the Club prove that it was the Player who was willing to leave the Club, tried to push the Club to termination with endless "injuries" and then changed his mind, increasing his monetary request in order to save money for his retirement. Therefore, the allegations regarding the Player's verbal refusal of the Termination Agreement are contradicted by the Player's behaviour.

- The Player's allegations that the termination of the Employment Contract was based on the facts listed in the Warning Letter are to be rejected. The Club terminated the Employment Contract based on the lack of trust between the Parties which is confirmed by the Player's ultimate request to receive payment of EUR 1,750,000.00:

"The exact cause as it is stated at the notification letter of 04th of February, the Club could not see any point to continue the employment relationship after receiving the 1.750.000.-EUR counteroffer. It is obvious that both Parties lost their confidence in each other and we believe that one cannot reasonably expect from a club to maintain the employment relationship with its player while the player was trying to benefit from the situation of the club".

- The Player is not entitled to receive any additional compensation since Article 17(1) lit. ii) of the FIFA RSTP only applies in case of termination due to overdue payables when the contract is terminated by the player. In the present case, however, the Employment Contract was terminated by the Club. This is also confirmed in all CAS decisions referred to in the Player's Appeal Brief, where disputes arose from termination made by players mostly because of unpaid receivables.

- Therefore, the Appealed Decision on the point rejecting the request for additional compensation is correct and in line with the FIFA RSTP, as well as FIFA and CAS jurisprudence.

VII. JURISDICTION

67. 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".

68. In their respective Appeals to the Appealed Decision, the Parties rely on Article 56 and 57 of the FIFA Statutes as conferring jurisdiction to the CAS.

69. Pursuant to Article 56(1) of the FIFA Statutes (2022 Edition), FIFA recognises the jurisdiction of the CAS to *"resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and match agents".*

70. Article 57(1) of the FIFA Statutes reads as follows: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".*

71. The jurisdiction of the CAS was further confirmed by the signature of the Order of Procedure and at the hearing by both Parties.

72. Accordingly, the CAS has jurisdiction to hear the present case.

VIII. ADMISSIBILITY

73. Article R49 of the CAS Code provides the following:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".

74. 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 notification of the decision in question".*

75. The Panel notes that the Appealed Decision was rendered on 27 October 2022 and that the grounds of the Appealed Decision were notified to the Parties on 18 November 2022.

76. Considering that the Parties filed their respective Statement of Appeal on 8 December 2022, i.e., within the deadline of 21 days set in the FIFA Statutes, the Panel is satisfied that the present Appeals were filed timely.

77. Furthermore, the Appeals complied with all other requirements of Article R48 of the CAS Code and are therefore admissible.

IX. APPLICABLE LAW

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

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

79. According to Article R56(2) of the FIFA Statutes *"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".*

80. According to article 9 of the Employment Contract *"[…] The Swiss law and FIFA Regulations shall be applicable to the dispute".*

81. In application of the above, the Parties have also relied on the application of the relevant FIFA Regulations, namely the FIFA RSTP, and Swiss law.

82. In consideration of the above and in accordance with the wording of Article R58 of the CAS Code and article 9 of the Employment Contract, the Panel holds that the present dispute shall

be decided principally according to the FIFA RSTP, March 2022 edition, with Swiss law applying subsidiarily.

X. LEGAL ANALYSIS

A. Introduction

83. In the present consolidated procedures, both Parties request the revision of the Appealed Decision, based on conflicting assumptions regarding the reasons for the early termination of the Employment Contract.

84. The Panel hereby recalls the main requests for relief submitted by the Parties in the two procedures.

85. In CAS 2022/A/9328, principally, the Club requests the Panel to overturn the Appealed Decision by establishing that the Employment Contract was terminated with just cause and that the Club is entitled to receive compensation for breach from the Player. Subsidiarily, the Panel is requested to establish that both Parties were responsible for the early termination of the Employment Contract, without any compensation being due, and thirdly, in case the Panel confirms that the Employment Contract was terminated by the Club without just cause, the Club requests that the compensation for breach granted by the DRC be reduced by deducting an additional amount of EUR 12,927,50, in accordance with the duty of mitigation, corresponding to part of the salary and other benefits received by the Player under the New Employment Contract. In all cases, the Club also requests that the Player be ordered to repay EUR 50,000.00 corresponding to 10 days of undue remuneration for January 2022, as a consequence of his absence from work due to his negligent behavior, as well as EUR 542,464.56 as the unamortized amount of the fixed payment, in accordance with Article 3.23 of the Employment Contract.

86. On the opposite side, the Player argues that the DRC correctly established that the Club had no just cause for termination and requests the CAS to confirm the Appealed Decision on this point (apart from requesting a higher amount as compensation for breach, based on his appeal in CAS 2022/A/9329).

87. In CAS 2022/A/9329, the Player requests the CAS to partially amend the Appealed Decision, by granting him an additional compensation in the amount of EUR 200,000.00 net, based on the provision of Article 337c (3) SCO.

88. The Club objects that the Player is entitled to receive additional compensation in accordance with Article 17(1) lit. ii of the FIFA RSTP, this relevant provision only being applicable in a case of termination by a player on the basis of overdue payables, which is not the present case.

89. In view of the foregoing, the main issue to be resolved by the Panel is whether the Club did or did not have a just cause to terminate the Employment Contract on the 4th of February 2022, and depending on said answer what the ensuing consequences of such a termination would be pursuant to Article 17 of the FIFA RSTP. In this respect, the Panel will also need to assess whether the responsibility for the early termination is attributable to both Parties. Besides, and in any case, the Panel will also have to address the issue whether the Player is obliged to repay to the Club the requested amounts (i.e., EUR 542,464.56 as the unamortized amount of the fixed payment and EUR 50,000.00 as undue part of salary for January 2022).

B. The main issue: Was the Club entitled to terminate the Employment Contract on 4 February 2022 based on just cause?

90. Addressing this issue, the Panel recalls that the following circumstances are not disputed between the Parties:

a. the Employment Contract was terminated by the Club with immediate effect on 4 February 2022;

b. at the time of termination, two monthly salaries of the Player were outstanding, for a total amount of EUR 300,000.00;

c. before the date of termination, the Parties had started discussions on the possibility of a mutual termination of the Employment Contract; however, such discussions did not lead to the signing of the Termination Agreement dated 31 January 2022 which contained the proposal made by Club to pay to the Player EUR 300,000.00 as outstanding salaries in addition to EUR 600,000.00 as the residual value of the Employment Contract;

d. the Player suffered multiple health issues/injuries during the Employment Contract.

91. The Club ascribes the reason for termination to the Player's bad faith in the course of the negotiations aiming at finding an agreement to end their engagement and alleged that after having verbally agreed to the terms and conditions of the Termination Agreement, the Player suddenly refused to sign the document and requested almost double the amount proposed by the Club. According to the Club, such an event, considered in the context of the Player's multiple absences, injuries and poor performance, clearly showed that the Player wanted to take advantage from the situation and that the confidence between the Parties was completely lost. Therefore, the Club could no longer reasonably be expected to pursue the employment relationship. Moreover, the Club contends that at the end of the sporting season 2020/2021, the Player had already expressed his dissatisfaction and intention to leave the Club, with no financial request.

92. The Player firmly rejects the Club's allegations, and argues that he was subject to pressure by the Club in order to terminate the Employment Contract; that the reasons for the Club to terminate the Employment Contract must be drawn from the Warning Letter and that those

reasons do not constitute a just cause; and that he had always refused to sign the Termination Agreement because it would not be easy for him to find a new club at that time, as a "free agent".

93. Keeping in mind the above background, the Panel first wishes to recall the principles of the burden of proof and the standard of proof.

94. Namely, for what concerns the burden of proof, each Party bears the burden of proving the facts and allegations on which he relies. This follows from article 13.5 of the Procedural Rules governing the FIFA Football Tribunal ("the FPR") which reads that *"A party that asserts a fact has the burden of proving it"* as well as from article 8 of the Swiss Civil Code ("SCC") which provides that *"unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*.

95. For what concerns the standard of proof, the Panel observes that none of the FIFA regulations set the standard of proof for disputes related to the breach and termination of employment contracts. According to well-established CAS jurisprudence, when the regulations of the sports organization from which the Appealed Decision emanates, remain silent on the applicable standard, it is up to the CAS to determine it. In the present case and keeping in mind that in many other Article 17 RSTP related cases, CAS panels have applied the standard of "comfortable satisfaction", which, on the standard of proof spectrum, sits in between the standard of *"beyond a reasonable doubt"* and the standard of *"balance of probabilities"* (see CAS 2020/A/7180 para. 84 with further references), the Panel considers that the applicable standard of proof in this case, also keeping in mind the allegations of the Club, is that of *"comfortable satisfaction"*.

96. In line with the above, it is up to the Club to demonstrate to the level of comfortable satisfaction that it had a just cause to terminate the Employment Contract with the Player.

97. For what concerns the notion "just cause" the Panel also considers it useful to recall that this notion is not defined in the FIFA Regulation on the Status and Transfer of Players (FIFA RSTP") but that it has often been analyzed by CAS panels and in doing so has been construed in line with Swiss law and in particular with Article 337 para. 2 of the SCO. According to the well-established jurisprudence of CAS:

"Under Swiss law, such a 'just cause' exists whenever the terminating party can in good faith not be expected to continue the employment relationship (Article 337 para. 2 CO). The definition of 'just cause', as well as the question whether 'just cause' in fact existed, shall be established in accordance with the merits of each particular case (ATF III 153 consid. 1 a). As it is an exceptional measure, the immediate termination of a contract for 'just cause' must be accepted only under a narrow set of circumstances (ibidem). Only a particularly severe breach of the labour contract will result in the immediate dismissal of the employee, or conversely, in the immediate abandonment of the employment position by the latter. In the presence of less serious infringement, an immediate termination is possibly only if the party at fault persisted in its breach after being warned (ATF 129 III 380 consid. 2.2, p. 382). The judging body determines at its discretion whether there is 'just cause' (Article 337

para. 3 CO). As a result, only a violation of a certain severity justifies the early termination of a contract; and a breach is sufficiently severe only if it excludes the reasonable expectation of a continuation of the employment relationship" (see CAS 2020/A/7180 at para 93 with further references to CAS 2015/A/4046 & 4047, at para. 98, referring to Article 337 para. 2 SCO; CAS 2014/A/3463 & 3464, CAS 2008/A/1447 and CAS 2006/A/1180 at para. 25).

98. Pursuant to this jurisprudence, the Panel must determine whether the Club has discharged its burden of proof in establishing that the reasons it invoked for terminating the Employment Contract with the Player were so severe that the Club could not reasonably have been expected to continue its employment relationship with the Player.

99. In light of these introductory remarks and considering the factual elements and legal submissions presented by the Parties, the Panel is not comfortable satisfied that the Club reached a mutual agreement with the Player to terminate the Employment Contract nor that it had a just cause to terminate the Employment Contract.

100. First, whilst the Panel observes that the Parties did indeed appear to have negotiated a possible mutual termination agreement, there is no conclusive evidence on file that the Player had expressed his verbal consent to accept the conditions of the Termination Agreement, as contended by the Club. In fact, the email exchange between the Parties' lawyers is not sufficient nor conclusive in this respect, also because other than the drafts and email exchange, there is no document or reference on file, neither in said email exchange, that specifically states that the Player actually agreed to terminate, agreed to the draft, or the conditions contained therein.

101. In similar fashion, the wording contained in the email of the Player's lawyer on 31 January 2022, *"This is convenient"* sent in reply to an email of the Club's lawyer, whereby she shared the draft of the Termination Agreement and explained why a specific clause had been added, does not, to the comfortable satisfaction of the Panel, demonstrate that the Player had in fact agreed to the draft Termination Agreement nor to actually mutually terminating the Employment Contract. In fact, the Panel believes that such a comment made reference to the relevant specific clause referred to by the Club's lawyer in his e-mail and moreover, it represents an evaluation by the Player's lawyer and does not correspond to an expression of the Player's consent to the Termination Agreement in general.

102. The Panel is not comfortable satisfied that by means of the mere exchange of draft termination agreements between the lawyers, there was a mutual expression of intent between the Club and the Player as required by article 1 of the SCO to mutually terminate the Employment Contract. In this regard, while the lawyers were working on a draft of the Termination Agreement, the Panel observes that the Player could have had other reasons than those connected to the monetary offer by the Club not to sign or finally refuse to sign the Termination Agreement, including his concerns about remaining unemployed and finishing his career, besides the fact that he had no obligation to agree on the termination.

103. In this respect, at the hearing, the Player asserted that he finally refused to sign the Termination Agreement because at that time, he had still not found a new employment agreement with another club and that he wanted to avoid the risk of being a "free player" close to the end of the transfer window in Turkey.

104. Secondly, with regard to the Club' allegation that the Player had acted in bad faith, namely the Player's request to be granted EUR 1,750,000.00, the Panel notes that the Player denied this circumstance at the hearing. The only evidence submitted by the Club in support of such allegation, is the screen shot of a WhatsApp conversation between the Player's agent and Mr Selim Selimoğlu, a Board Member of the Club. However, from the relevant WhatsApp conversation, and in the absence of any indication of the date of such conversation, nor on the screenshot nor in the legal submission of the Club, the Panel is not able to place the relevant request in the exact time and context within the negotiation period. Therefore, there is no evidence that such a request was made after the Club's proposal under the Termination Agreement, not to mention that there is no evidence either that the Player had verbally accepted the Club's proposal in the Termination Agreement, as already underlined above. Rather, from the previous WhatsApp Exchange between the Board member of the Club and the Agent of the Player in which the agent indicates, *"I called him he did not answer I said its urgent I will explain him what you wrote me once again. I hope I can give you a positive answer, I cannot call you if is negative out of embarrassment"* (emphasize added) the Panel understands that the Player's answer regarding a possible termination was in suspense. Hence, the Panel is not comfortably satisfied that the Player, as alleged by the Club, acted in bad faith during the negotiations. What is more, albeit parties need to negotiate in good faith, the Panel understands that during negotiations and prior to any term-sheet being agreed upon, parties in a negotiation can still change their opinion and positions, which is what appears to have happened in this case.

105. As the Panel is not comfortably satisfied that the Parties reached an agreement to mutually terminate the Employment Contract nor that the Player acted in bad faith during the negotiations, it goes without saying that neither can the Panel uphold or consider these reasons as a justification for the Club to terminate the Employment Contract.

106. Thus, the Panel reaches the conclusion that the Club had no just cause to terminate the Employment Contract on 4 February 2022.

107. In addition, the Panel also excludes that, at that time, the circumstances of the case offered the Club any alternative "good reason" for termination.

108. The evidence on file show that, more realistically, the Club was dissatisfied with the Player, due to his string of injuries, unavailability and poor sporting performance, and needed to sign another foreign player in his place, in the attempt to avoid relegation. Such consideration is corroborated by the content of the Warning Letter where the Club merely refers to the Player's injuries and poor sporting performance and his non-participation in training sessions due to medical condition. In this regard, the Panel agrees with the DRC that not only the Player's poor performance could not justify a valid termination of the Employment Contract, but the fact

that the alleged poor performance was due to injuries suffered by the Player, worsen the Club's liability.

109. In this context, the Panel believes that the pressure exercised by the Club on the Player to sign the Termination Agreement, also bearing in mind that at that time the Club was also in default of payment of two of the Player's monthly salaries, took the form of an abusive conduct.

110. For the sake of completeness, the Panel also rejects the Club's allegations regarding the Player's unjustified absences and violations during the employment relationship since they are completely unsupported and therefore, the Club has failed to meet the burden of proof with respect to the Player's alleged breach. In this respect, it is observed that there is no evidence that the Club had imposed sanctions on the Player, or instigated disciplinary proceedings against him or even warned him in writing. Incidentally, the Panel notes that in the Club's Warning Letter, there is no mention of these alleged violations and offences by the Player. Therefore, the Club failed to demonstrate that the Player was no longer respecting the terms and conditions of the Employment Contract without justification.

111. Moreover, on the contrary, the evidence on file proves the Club's default in paying the Player's monthly salaries for December 2021 and January 2022, which was also acknowledged by the Club, apart from providing no justification thereof.

112. Regarding the Club's arguments that the Player had previously expressed his intention to leave and tried to reach an agreement on the early termination of the Employment Contract, the Panel notes that the witness statement submitted by the Club under Exhibit 10 in its Appeal Brief in CAS 2022/A/9328 was contradicted by the Player at the hearing and is not confirmed by any other documentary evidence. On the contrary, it is observed that in the Club's Warning Letter there is no reference to the Player's alleged wish to leave the Club. Besides, the Panel believes that the Club's allegation in this respect is not relevant for the purpose of justifying the decision of the Club to unilaterally terminate the Employment Contract on 4 February 2022.

113. Consequently, the Panel confirms that the Club had no just cause to terminate the Employment Contract on 4 February 2022 and establishes that the termination was only attributable to the Club, failing any evidence of the Player's violations. Hence, damages are indeed payable by the Club to the Player as per article 17 of the FIFA RSTP and therefore its requests for relief to be awarded damages must be rejected.

C. Consequences of the Club's termination of the Employment Contract without just cause – What amount of compensation for breach of contract is the Player entitled to receive from the Club?

a. The Club's request for reduction

114. At this point, the Panel turns its attention to the Parties' respective request to amend the Appealed Decision with respect to the amount of compensation granted to the Player. It is

reminded that in the Appealed Decision, the Player was awarded the amount of EUR 400,000 as compensation for the breach of contract.

115. Based on the Club's allegation, the amount of compensation should be further reduced by the sums that the Player received under the New Employment Contract in connection with match salary (EUR 8,927.50) and accommodation allowance (EUR 4,000.00).

116. As to the "per-match salary", the Panel notes that under Article 3.2 of the New Employment Contract, the Player was entitled to receive EUR 100,000.00/14 matches = EUR 7,142.00 as "per-match salary" according to the conditions set forth under the Special Provision n. 3 of the said contract (100% if the Player is in the starting line-up; 75% if he joins the match at a later stage; 50% if the Player is in the list but finally does not join the match).

117. The Panel notes that the amount calculated by the Club based on the Player's attendance according to the Club's Exhibit n. 18, was not disputed by the Player. Therefore, although the calculation followed by the Club in order to obtain the amount of EUR 8,927.50 is not perfectly clear to the Panel in the light of the prospect submitted by the Club under Exhibit 18, the Panel finally decided to accept the Club's request on this point and to deduct the relevant amount from the compensation for breach granted in the Appealed Decision.

118. With regard to EUR 4,000.00 as accommodation allowance, the Panel notes that under the Special Provision n. 1 of the New Employment Contract, *"Club shall totally 4.000 Euro to the Player for accommodation, car, flight ticket and other expenses for each season"*.

119. In this regard, the Club's request of deduction is rejected since the relevant amount corresponds to the coverage of costs incurred by the Player in connection with the New Employment Contract and not to remuneration or bonuses and shall therefore not be deducted in accordance with the duty of mitigation.

b. The Player's request for an additional compensation

120. The Player submits that he is entitled to receive an additional amount in accordance with Article 337c (3) SCO even if Article 17 (1) lit. ii of the FIFA RSTP would not apply to the present case.

121. The Panel incidentally observes that in the FIFA proceedings the Player merely supported the request of an additional compensation under the provision of Art. 17(1) lit. ii of the FIFA RSTP while in the present arbitration he also relies on Art. 337c (3) SCO. In this respect, the majority of the Panel believes that the reference to Art. 337c (3) SCO concerns a new legal argument submitted by the Player in order to support a previous claim and not a new claim which was not submitted before FIFA in the previous instance. Therefore, in principle, according to the opinion of the majority of the Panel, the Player was not prevented from submitting such claim before the CAS. In any case, the Panel does not need to enter into more details of the present issue, since the Player's request is unfounded and shall be rejected in the merits.

122. In fact, the Panel recalls that the matter concerning the consequences of an employment termination without just cause is specifically governed by Article 17 of the FIFA RSTP which establishes the cases where an additional compensation is due to the player, i.e., only in cases when the player signed a new employment contract (and therefore in case of mitigated compensation) and when the early termination of the previous employment contract occurred due to overdue payables. Therefore, the Panel agrees with the DRC on excluding the additional compensation in the present case. In fact, although it also resulted that the Club was in default of payment of two of the Player's consecutive monthly salaries, the termination of the Employment Contract is based on different reasons.

123. In order to support his request, the Player referred to CAS jurisprudence allegedly confirming the applicability of an additional payment beyond the limits set by the provision of Article 17(1) lit. ii).

124. In the case CAS 2007/A/1419, the player and the club had signed an agreement on the possible termination of their employment contract according to which the player was entitled to receive an amount of EUR 50,000.00 in case of termination by the Club. Before the CAS, the player did not claim the amount set forth under the termination agreement and left it to the Sole Arbitrator to decide the amount of the indemnity at his discretion in accordance with Article 337c (3) of the SCO. The Sole Arbitrator decided to grant the player an extra amount of one month salary, in addition to the compensation for breach of contract calculated on the basis of Article 17 of the FIFA RSTP. The Panel believes that in that case, the player's request for an indemnification had a contractual basis in the termination agreement of the parties, and therefore, the Sole Arbitrator's decision to grant an additional amount based on Article 337c (3) (as an alternative to the contractual clause in the termination agreement) was justified based on the agreement between the parties.

125. The relevant part of the award in CAS 2007/A/1419 reads as follows:

"The Panel notes primarily that the Appellant is not claiming anymore the amount set forth in the termination agreement, but is asking the Panel to award an indemnity within the meaning of art. 337c of the Swiss CO.

The Appellant has thereby indicated that it left it to the discretion of the Panel to set the level of the indemnification. 36. Swiss CO Article 337c provides that in the case of an undue termination of an employment contract the judge may award an indemnity of maximum six months' salary".

126. Therefore, based on the foregoing, the Panel believes that the principle applied by the Sole Arbitrator in CAS 2007/A/1419 is not applicable to the present case.

127. Moreover, the Player referred to CAS 2017/A/5402. However, the Panel observes that the relevant case concerned a dispute between a club and a coach at a time when the FIFA RSTP did not contain any provision regarding the status of coaches and the termination of an employment contract between clubs and coaches and therefore, the Sole Arbitrator applied Article 337c (3) of the SCO in order to fill the gap in the FIFA Regulations.

128. In addition, the Panel notes that at the time when the abovementioned CAS awards were issued, Article 17 of the FIFA RSTP did not contain any specific provision with respect to additional compensation.

129. In this respect, it is hereby recalled that, pursuant to Article R58 of the CAS Code, in the present case, the Panel shall decide the dispute according to the applicable regulations, i.e., the FIFA RSTP and subsidiarily, to Swiss law, in case of need due to the regulatory gap. Furthermore, the referral to Swiss law in Article 56(2) of the FIFA Statutes *"does not comprise a comprehensive remission to Swiss law but rather a subsidiary/additional application of Swiss law, in order to fill lacunae in the rules and regulations of FIFA. Whenever the latter contain a ruling, Swiss law, which has been declared to apply "additionally", must give way even if the otherwise applicable provision of Swiss law were mandatory"* (see MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials).

130. As a consequence, the Panel is satisfied that the Player is not entitled to receive any additional compensation as a consequence of the termination of the Employment Contract without just cause.

c. The Club's request for repayment

131. In its Appeal Brief, the Club requested the Panel to order the Player to return the amount of EUR 542.646,56 as the alleged unamortized amount of the fixed payment payable to the Player under Article 3.1 of the Employment Contract, based on Article 3.23 of the said contract.

132. The relevant part of the provision reads as follows: *"The fix payment is made to the Player with the assumption that the Player will serve to the Club for the whole season. If the Player leaves (via permanent/loan transfer or termination) the Club with any reason before the end of the season, the then fix payment will be subject to a pro-rata calculation. If the result of the calculation exceeds the payment made to the Player, then the Player shall return the exceeding amount to the Club within 10 days following the Club's notification"*.

133. The Club's request is unfounded since the obligation to repay imposed on the Player is clearly limited to cases where the termination occurs at the initiative or with the consent of the Player and not in case where the Club terminates the Employment Contract without just cause, as in the present case. The opposite would be contrary to the principle of good faith and *pacta sunt servanda* and in any event, in such case the pro-rata amount that had not yet fallen due would have to have been considered as forming part of the residual value when establishing the compensation due as per article 17 of the FIFA RSTP.

134. As to the second request for repayment, the Club claims that the Player has to return part of the salary for January 2022, in the amount of EUR 50,000.00 corresponding to 10 days of the Player's absence from work.

135. First, it is observed that, according to the facts and documents on file, the salary for the month of January 2022 is still outstanding; therefore, the request of repayment is misplaced and should be instead a request for deduction from the amount payable to the Player.

136. In any event, the request is unfounded and shall be rejected since the Club failed to provide any evidence demonstrating that the Player's absence was unjustified.

137. As a consequence, the Club is ordered to pay the entire amount of the Player's salary for January 2022, plus interest, as established in the Appealed Decision.

XI. CONCLUSION

138. In view of all the foregoing, the Panel finally decided to partially amend the Appealed Decision with respect to the Club's request to deduct the amount of EUR 8,927,50 from the compensation for breach granted to the Player. Therefore, the amount of compensation for breach owed by the Club to the Player amounts to EUR 391,073.00.

139. The Appealed Decision is confirmed in the remaining part.

140. Any further claims or requests for relief from the Parties are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 8 December 2022 by Çaykur Rizespor A.Ş against the Decision issued on 27 October 2022 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially upheld.

2. The Appeal filed on 8 December 2022 by Loic Remy against the Decision issued on 27 October 2022 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is rejected.

3. The Decision issued on 27 October 2022 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially amended as follows:

"2. The Respondent/Counter-Claimant, Caykur Rizespor, has to pay to the Claimant/Counter-Respondent the following amount(s):

- *EUR 300,000 as outstanding remuneration plus 5% interest p.a. as follows:*
- *On the amount of EUR 150,000 as from 1 January 2022 until the date of effective payment;*
- *On the amount of EUR 150,000 as from 1 February 2022 until the date of effective payment;*
- *EUR 391,073.00 as compensation for breach of contract, plus 5% interest p.a. as from 10 March 2022 until the date of effective payment".*

4. All the remaining parts of the Decision issued on 27 October 2022 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association between the Parties are confirmed.

5. (…).

6. (…).

7. (…).

8. All other motions or requests for relief are dismissed.