TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

Arbitration CAS 2023/A/9444 U Craiova 1948 SA v. Marko Gajic, award of 27 October 2023

Panel: Prof. Petros Mavroidis (Greece), Sole Arbitrator

Football
Termination of an employment contract
Burden of proof
Just cause

1. **The burden of proof behooves on the party claiming certain facts (*actori incumbit probatio*).**

2. **Pursuant to the legal maxim *"pacta sunt servanda"*, contracts must be performed in good faith. Article 14 para. 1 of the FIFA Regulations on the Status and Transfer of Players (RSTP) still provides for the possibility of unilaterally terminating a contract, assuming the party terminating the contract has just cause to this effect. While the FIFA rules do not precisely define the concept of "just cause", reference to this body of law is compulsory when it is relevant to resolve disputes. The concept of "just cause", as defined in Article 14 of the RSTP, is similar to the concept of "good cause" included in Article 337.2 of the Swiss Code of Obligation (CO) considering that recourse to Swiss law on subsidiary basis is warranted. When it comes to understanding the scope and ambit of "just cause", the two bodies of law are mutually reinforcing. They are complements, and not substitutes. Two requirements must always be met for just cause to exist: (i) A substantive requirement, consisting usually in a pattern of behaviour that renders the continuation of the employment relationship in good faith unreasonable for the party giving notice. This does not mean that one isolated incident, if it is of such gravity that leads to the same outcome, cannot in and of itself suffice to serve as just cause. Lack of respect of auxiliary terms and conditions, conversely, could not be relied on as a "good cause" or "just cause" for lawfully terminating a contract; (ii) A procedural requirement, that is, the obligation of the party with just cause terminating the contract, to furnish its contractual partner a written notice.**

I. THE PARTIES

1. U Craiova 1948 SA (the "Appellant" or the "Club") is a professional football club participating in the top football competition in Romania, the Liga I (also known as "SuperLiga"). It is headquartered in Craiova, Romania, and is an affiliated member of the Romanian Football Federation (the "RFF") which in turn is a member association of the *Fédération Internationale de Football Association* (the "FIFA").

2. Mr Marko Gajic (the "Respondent" or the "Player"), is a professional football player, who had been previously employed by the Club before returning to play his trade in his native Serbia.

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

II. KEY FACTS

A. Relevant Background

4. The present arbitration originated in a contractual dispute between the Club and the Player. The Player had submitted a dispute before the FIFA Football Tribunal, following the Club's decision to terminate the contract with him, and its refusal to withdraw the termination. The FIFA Dispute Resolution Chamber ("DRC"), one of the three Chambers of the Football Tribunal as per Article 54 of the FIFA Statutes, issued a decision on this score on 24 November 2022 (REF FPSD-6130; the "Appealed Decision"), largely accepting the claim of the Player. It is against this decision of the DRC that the Club has lodged an appeal, the subject matter that is, of the present award.

5. Some of the key facts are disputed between the Parties, and the Sole Arbitrator has decided to briefly relay here both the overlap, as well as the disagreement between them, focusing on the salient factual features that provide the background of the present dispute, as each of the disputing Parties draws different legal consequences from them.

6. On 22 July 2021, the Player signed an employment contract with the Club. The Contract was supposed to be valid from 23 July 2023 until 30 June 2023. According to the contractual terms agreed, the Player was entitled to a signing fee of EUR 10,000 net, and a monthly salary of EUR 7, 000 net, to be paid by the 15th day of each month thereafter.

7. The Player had completed registration procedures with the Club already by 26 July 2021, and he made his debut with the team a few days later, on 7 August 2021.

8. On 3 November 2021, the felt a sharp pain and discussions between him and the Club officials led to the common agreement to rest for a week.

9. On 10 December 2021, the Player suffered a new injury.

10. On 11 December 2021, the player travelled to Serbia for medical treatment of his injury.

11. While in Serbia, the Player informed the Club that he would not be fit to appear at the next game scheduled for 16 December 2021. He did not conform with a request by the Club's officials to return and play, and returned only at the end of his therapy on 16 December 2021.

12. On 17 December 2021, the Player participated in a training session where he was informed by the Club that he was not counted upon for the next game scheduled for 20 December 2021

13. On the same date, the Club invited the Player to a disciplinary hearing scheduled for

20 December 2021.

14. On 20 and 21 December 2021, disciplinary proceedings were held in which the Player participated and presented his views. No decision was taken on 21 December 2021, and instead, as per his account, the Player received a letter by the Club officials advising him to return to the Club after the winter break, that is, on January 3, 2022.

15. On 29 December 2021, the Club terminated the employment contract with the Player, and the reason for it, was the Player's absence from training between 13-16 December 2021. In this regard, there is no dispute between the Parties that the Club has not paid the signing fee, a part of the salary for December 2021.

16. On 4 January 2022, he put the Club in default, asking that its officials withdraw the termination letter.

17. His plea remained unanswered. In the absence of alternatives, the Player signed with Radnicki 1923. His contract would run until 31 May 2022, and his monthly remuneration was fixed at EUR 323.00 net, the equivalent of RSD 38,000 (Serbian dinars), the local currency. Subsequently, he introduced his complaint against the Club before the FIFA Football Tribunal that led to the proceedings before CAS.

B. Proceedings before the DRC

18. On 23 May 2022, the Player tabled his complaint against the Club before the DRC. He requested the payment of the unpaid remuneration, plus interest rate from the moment the interest was due.

19. On 24 November 2022, the DRC issued the findings of the Appealed Decision. The findings of interest to the present dispute are reproduced in what immediately follows:

    1) The claim of the Claimant MARKO GAJIC, is partially accepted.

    2) The Respondent U Craiova 1948 SA, has to pay to the Claimant, the following amount(s):

    - *EUR 10,949 as outstanding remuneration plus 5% interest p.a. as from 15 January 2022 until the date of effective payment;*

    - *EUR 40,385 as compensation for breach of contract plus 5% interest p.a. as from 23 May 2022 until the date of effective payment.*

    3) Any further claims of the Claimant are rejected.

20. On 26 January 2023, the grounds of the decision were communicated to the Parties.

III. PROCEEDINGS BEFORE THE CAS

21. On 10 February 2023, the Appellant filed its Statement of Appeal against the Respondent with respect with the Appealed Decision in accordance with Articles R47 *et seq.* of the CAS Code of Sports-related Arbitration (2023 edition) (the "Code"). In its Statement of Appeal, the Appellant requested, *inter alia*, to refer the dispute to a sole arbitrator and a stay of the Appealed Decision.

22. On 24 February 2023, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.

23. On 24 March 2023, the Deputy President of the CAS Appeals Arbitration Division dismissed the Appellant's request for a stay.

24. On 27 April 2023, the Respondent filed his Answer in accordance with Article R55 of the Code.

25. On 28 April 2023, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, confirmed the constitution of the Panel as follows:

    Sole Arbitrator: Petros C. Mavroidis, Professor at Columbia Law School, New York City, New York

26. On 25 May 2023, the CAS Court Office issued an Order of Procedure and invited the Parties to return a signed copy of it.

27. On 13 June 2023, the Respondent returned a signed copy of the Order of Procedure.

28. On 9 August 2023, a remote hearing was held. That day, in addition to the Sole Arbitrator and Dr. Björn Hessert, Counsel to the CAS, the following persons attended the hearing:

    For the Appellant:

    - Mr. Dan Idita, in-house counsel;

    - Mr. Gigel Preoteasa, interprester;

    For the Respondent:

    - Mr Filip Blagojevic, counsel.

29. At the outset of the hearing both Parties confirmed that they had no objection with regard to the composition of the Panel, and the manner in which the process had been handled until then. At the conclusion of the hearing, both Parties confirmed once again that their right to be heard had been fully respected throughout the proceedings.

30. On 9 August 2023, with the agreement of the Parties, the Respondent sent a copy of the Player's contract with Radnicki 1923, signed on 24 January 2023 which forwarded it to the

Club by the CAS Court Office on the same day.

IV. PARTIES' POSITIONS AND PRAYERS FOR RELIEF

31. The following section summarises the Parties' claims and arguments in support of their respective requests for relief. While the Sole Arbitrator has examined the full record submitted by the Parties, he will refer, in what follows, only to the arguments, which, in his view, are relevant in deciding the issues in the appeal.

A. The Appellant

32. The Club requests from the Sole Arbitrator to quash the appealed DRC decision, since, in its view, it is erroneous in several respects:

- The Player was absent from training without justification. No one at the Club with the power to authorize a leave had granted the Player permission to leave the Club's headquarters and look for treatment in Serbia. The DRC simply overlooked these facts, which are quintessential for the resolution of the present dispute.

- The Club, in compliance with the applicable Romanian Labour Code, as well as the relevant RFF statutes, first initiated disciplinary proceedings, and then and only then terminated the contract with just cause as the Player had been absent without authorization.

- The Club also provided the Player with the statutorily applicable 30-days deadline to rebut the termination letter, which the Player effectively never seized.

- But even if the Sole Arbitrator were to refute the above, he should definitely drastically reduce the amount due. The Player under-reported his remuneration from Radnicki 1923, and the Sole Arbitrator should inquire into this, and re-calculate the amount of compensation based on the true value of the contract that the Player had signed with his new club in the Serbian League.

33. In its Statement of Appeal, the Club has submitted the following requests for relief:

"<u>Preliminary request</u>

1. We kindly request that you declare this Appeal admissible.

<u>On the substance</u>, we kindly request that you

2. Dismiss in its entirety the Decision passed on 24 November 2022 in case file with ref. no. FPSD-6130, whose grounds were communicated on 26 January 2023, and

3. amend such decision so as dismiss in its entirety the claim of the Player Marko GAJIC with respect to all his requests for relief, which is all the amounts of money the Player requested;

4. order the Respondent to bear the costs of these arbitration proceedings;

5. order the Respondent to cover the Appellant's legal fees and other expenses incurred in connection with these arbitration proceedings".

B. The Respondent

34. The Player's response amounts, for all practical purposes, to a plea not to disturb the decision of the DRC. In his view, there is absolutely nothing wrong with the rationale and the outcome of that decision, and the Club has not managed to persuasively argue against it in the present proceedings either.

35. More specifically, in support of his position, the Player has argued that:

- Throughout his contractual relationship with the Club he had been paid less than what he had been contractually promised, often with substantial delay, and sometimes not at all;

- His injury was genuine, as were his discussions with the Club's officials. He left Romania, only after talking to the Club's officials, and communicated with them consistently while undergoing treatment in Serbia;

- The disciplinary proceedings against him were "sham", and he still rebutted effectively all the points raised. In fact, even if he had left without permission to undergo treatment in his home country, he was absent only for four days as per the Club's admission, and this leave does not satisfy the requirements for just cause under the FIFA Regulations on the Status and Transfer of Players ("RSTP");

- On 4 January 2023, he requested from the Club to withdraw the letter of termination, which the Club simply ignored, and then and only then he signed with a new club, namely Radnicki 1923. Nevertheless, because by that time the January transfer window was almost over, he could not find good offers, and in fact the offer from Radnicki 1923 was the only one he had managed to attract. He understands fully well that the contractual compensation was quite low even by Serbian football standards, but this was the only one that he managed to receive;

- Proof that his injury was genuine is also adduced by the fact that he had to await a few weeks on the sidelines, before making his debut for the new club, Radnicki 1923.

36. In light of the above, Player has tabled the following requests of relief before the Sole Arbitrator:

"1. The appeal filed by U Craiova 1948 SA against the decision issued on 24 November 2022 by the Football Tribunal – the Dispute Resolution Chamber of the Fédération Internationale des Football Associations is dismissed;

2. U Craiova 1948 SA shall pay to Mr. Marko Gajic an amount of CHF 5,000, as reimbursement of his legal fees and expenses.

3. U Craiova 1948 SA shall bear all costs of the present arbitration".

V. JURISDICTION OF THE CAS

37. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the Code and Article 57 para. 1 of the FIFA Statutes

38. Article R47 para. 1 of the Code stipulates:

"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".

39. Article 57 para. 1 of the FIFA Statutes further states:

"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".

40. The present appeal is directed against a final decision of a FIFA legal body, i.e. the DRC. Accordingly, the CAS has jurisdiction to rule on the appeal filed by the Club. In their written submissions, and through their pleadings at the oral hearing held on 9 August 2023, the Parties confirmed their consent to see the CAS adjudicate their dispute.

41. Consequently, CAS has jurisdiction to hear and adjudicate this dispute.

VI. ADMISSIBILITY OF THE APPEALS

42. Article R49 of the Code determines, in its relevant parts, as follows:

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

43. In accordance with Article 57 para. 1 of the FIFA Statutes,

"appeals against final decisions passed by FIFA's legal bodies […] shall be lodged with CAS within 21 days of notification of the decision in question".

44. There is no dispute that the Statements of Appeal was filed within the deadline of twenty-one days as per the above-mentioned provisions. The appeals comply with all other requirements of Article R48 of the Code. The appeals are therefore, admissible – a point never contested by the Respondent.

VII. APPLICABLE LAW

45. There is a prima facie disagreement between the Parties regarding the applicable law. The Club under the heading "Applicable Law" in its pleadings, mentions:

- Article 58 of the Code, which includes the applicable FIFA regulations (which make explicit reference to the relevance of Swiss law), and the principle of contractual autonomy;

- *In casu*, the Club mentions that the Parties have agreed to the applicability of the RFF Regulations on the Status and Transfer of Players, as well as the Romanian Labour Code, and more specifically, of its Articles 61 and 62;

- In the subsequent pages, the Club has built its case with extensive arguments to the FIFA Statutes, CAS case law, Swiss law, as well as the Romanian statutes mentioned above.

46. The Player, in turn, objects to the relevance and applicability of Romanian statutes:

- In his view, Article R58 reflects a hierarchy between the applicable regulations, and the law chosen by the parties, or in the absence of choice, to the law of the federation that issued the challenged decision;

- The DRC is the body that issued the challenged decision, and it is headquartered in Switzerland, and hence, it is the applicable regulations primarily, and Swiss law accessorily, that should apply;

- No other body law is applicable.

47. The Sole Arbitrator first noted Article 56.2 of the FIFA Statutes, which states that:

"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".

48. Furthermore, the present appeal is directed against a decision by the DRC. The DRC issued its decision focusing on the applicable regulations, and did not at all refer to the Romanian statutes that the Club believes applicable in the present dispute. There is no evidence in the Appealed Decision that the Club objected to the choice of applicable law during the proceedings before the DRC. The Club did not claim during the CAS proceedings that the choice of law by the DRC was erroneous, either.

49. Accordingly, the Sole Arbitrator proceeded to review the present appeal in light of the applicable regulations of FIFA and particularly the RSTP, and have recourse to Swiss law only when warranted.

VIII. POWER OF REVIEW OF THE SOLE ARBITRATOR

50. The Sole Arbitrator wished to underscore that, according to Article R57 para. 1 of the Code, it retains full power to review the facts and the law of the case, and can even decide the dispute *de novo*. The Sole Arbitrator may issue a new decision which replaces the decision challenged, may annul the decision, or refer the case back to the previous instance.

IX. MERITS

51. In the Sole Arbitrator's view, the present dispute largely hinges on two issues:

- Did the Club have just cause to terminate the contract on 29 December 2021?
    - If yes, then the Appealed Decision should be set aside, but
    - If no, then the Sole Arbitrator would have to move and assess the second issue, namely:
- What is the true value of the contract that the Player signed with Radnicki 1923?

52. The second question is relevant because, otherwise, unless that is if the value of the second contract were subtracted from the amount of money that the Club would owe him, the Player would be unjustly enriched, as he would be receiving salaries from two clubs for the same time-period, namely January-May 2023.

53. The burden of proof behooves on the party claiming certain facts (*actori incumbit probatio*). Longstanding CAS jurisprudence has underscored this point:

"According to the general rules and principles of law, facts pleaded have to be proven by those who plead them, i.e. the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proven by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code: 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.

It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites include the concept of 'burden of proof' are (i) the 'burden of persuasion' and (ii) the 'burden of production of the proof'. In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party" (CAS 2016/A/4580, para. 91, with further references to CAS 2015/A/309; CAS 2007/A/1380, CAS 2005/A/968 and CAS 2004/A/730).

54. In application thereof, it is for the Club to demonstrate that the Appealed Decision is erroneous, and for the Player to rebut the evidence provided.

A. Did the Club Have Just Cause to Terminate the Contract?

55. The Sole Arbitrator would like to first recall that, pursuant to the legal maxim *"pacta sunt servanda"*, contracts must be performed in good faith (ATF 135 III 1, c. 2.4). Article 14 para. 1 of the RSTP still provides for the possibility of unilaterally terminating a contract, assuming the party terminating the contract has just cause to this effect:

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

56. The Commentary on the RSTP offers some clarifications regarding the ambit and scope of "just cause":

"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. Behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist over a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally" (RSTP Commentary, N2 to Article 14).

57. CAS jurisprudence has specified that, while the FIFA rules do not precisely define the concept of "just cause", reference to this body of law is compulsory, when it is relevant to resolve disputes (CAS 2006/A/1062; CAS 2008/A/1447).

58. At this stage, the Sole Arbitrator wished to underscore that Article 337.2 of the Swiss Code of Obligations ("CO") as well, contains a similar concept:

"In particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice".

59. The concept of "just cause", as defined in Article 14 of the RSTP, is similar to the concept of "good cause" included in Article 337.2 of the CO. Recall that recourse to Swiss law on subsidiary basis is warranted, as mentioned above. When it comes to understanding the scope and ambit of "just cause", the two bodies of law are mutually reinforcing. They are complements, and not substitutes.

60. When considering the existence of a "just cause" or "good cause", respectively, the CAS has often followed the jurisprudence of the Swiss Federal Tribunal, according to which "good cause" exists (and, consequently, an employment contract may be lawfully terminated) when the fundamental terms and conditions (either general/objective or specific/personal), which formed the basis of the contractual arrangement, are no longer respected (ATF 101 Ia 545). Lack of respect of auxiliary terms and conditions, conversely, could not be relied on as a "good cause" or "just cause" for lawfully terminating a contract.

61. In this vein, the Swiss Federal Tribunal has repeatedly held that, in presence of good cause, the party terminating the employment relationship cannot be reasonably required to continue performing its obligations (ATF 101 Ia 545; Judgment 4C.240/2000 of 2 February 2001; Judgment 4C.67/2003 of 5 May 2003; WYLER R., Droit du travail, Berne 2002, p. 364; TERCIER P., Les contrats spéciaux, Zurich 2003, N 3402, p. 496). In this jurisprudence, the contractual infringement by the counterparty allowing for such release from obligations must be serious (Judgment 4C.240/2000 of 2 February 2001).

62. The case law of the Swiss Federal Tribunal offers various illustrations of "just cause" (or lack of it). A unilateral or unexpected change in the status of an employee, which is not related either to company requirements or to the organization of the work or to a failure of the employee to observe his/her obligations has been considered a just cause for termination (Unpublished judgments of 7 October 1992 in SJ 1993 I 370, of 25 November 1985 in SJ 1986 I 300 and of 16 June 1981 in case C.40/81). Similarly, in certain circumstances, a refusal to pay all or part of the salary has also been considered just cause for termination (STAEHLIN A., Kommentar zum Schweizerischen Zivilgesetzbuch, Obliagtionenrecht, V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, N 27 ad Art. 337 CO; BRUNNER/BÜHLER/WAEBER/BRUCHEZ, Commentaire du contrat de travail, Lausanne 2010, N 7 ad Art. 337 CO).

63. CAS jurisprudence echoes the case law of the Swiss Federal Tribunal, in that only material breaches of a contract can be considered as "just cause" (CAS 2006/A/1062; CAS 2006/A/1180; CAS 2007/A/1210; CAS 2006/A/1100).

64. The above concerns the substantive law of "just cause". But this is only one of the two legs, on which "just cause" rests, for there is an additional requirement that must be met as well, of procedural nature that is. Consequently, complying with the substantive requirement, is a necessary but not a sufficient condition for complying with the requirement to show "just cause" in order to unilaterally terminate a contractual relationship.

65. From a procedural perspective, for a party to be allowed validly to terminate an employment contract, it is required that it has provided the other party with adequate notice, in order for the latter to have the opportunity to comply with its own obligations.

66. A CAS Panel, by way of a typical illustration, has held that:

> *"[s]econdly, a prerequisite for terminating because of late payment is that the Appellant should have given a warning. This follows from the principle of good faith; for the breach of duty is – objectively – from the outset not so grave that it would have been unreasonable to expect the Appellant to continue the employment. However, if that is the case the Appellant must – before he terminates the Contract – let the Respondent know firstly that he is complaining that the Respondent's conduct is not in accordance with the Contract and secondly that he is not prepared to accept such breaches of contract in future. With regard to employment contract relationships in the world of football, according to the principle of contractual stability, the unilateral termination of a contract must be considered as an absolute last resort, where, given the particularities of the situation at stake, it could not be expected that one of the parties could reasonably continue to be bound by the contractual relationship"* (CAS 2006/A/1180).

67. The duty to issue a reminder or a warning, respectively, is not absolute, and there are circumstances where no reminder and no warning were deemed necessary, i.e. in a case when it is clear that the other side does not intend to comply with its contractual obligations.

68. Put succinctly, arbitral tribunals retain a substantial margin of judgment discretion in determining whether a change in circumstances could be a "just cause", given the spectrum of possible constellations described above. It is clear, nevertheless, that two requirements must always be met for just cause to exist:

- A substantive requirement, consisting usually in a pattern of behaviour that renders the continuation of the employment relationship in good faith unreasonable for the party giving notice. This does not mean that one isolated incident, if it is of such gravity that leads to the same outcome, cannot in and of itself suffice to serve as just cause;

- A procedural requirement, that is, the obligation of the party with just cause terminating the contract, to furnish its contractual partner a written notice to this effect.

69. The Sole Arbitrator deems it appropriate to underscore at this stage, that it is usually a pattern of behaviour that renders the continuation of the employment relation impossible or unreasonable. In similar cases, the legal consequence that an arbitral tribunal can draw from its analysis would be informed by the behaviour of the parties throughout the life of their contractual relationship. One cannot exclude of course, that an isolated incident as well might suffice. But it would have to be of such gravity that it would in and of itself suffice to make the continuation of the employment relationship impossible or unworkable.

70. In this vein, the occasional delayed payment of a monthly salary, or the one-off absence from (or delayed arrival at) a training session would hardly qualify as isolated instances of such gravity that in and of themselves could justifiably lead a party to terminate its relationship with the other contracting party. By virtue of the principle of proportionality, similar contractual deviations are punished with warnings, fines etc.

71. It is against this legal benchmark that the Sole Arbitrator will proceed to evaluate the question whether the Club had just cause to terminate the contract with the Player.

72. The starting point of the Sole Arbitrator's analysis under the above explained legal benchmark is the stated rationale for terminating the contract. The reason that the Club offered in its decision to terminate the contract with the Player is the latter's unjustified absence from the training sessions between 13-16 December 2021. The Club also accuses the Player for bad faith regarding his reported remuneration from Radnicki 1923. This accusation, however, concerns a period that post-dates the termination of the contract, and is, thus, not germane to the discussion regarding the existence, or not, of just cause for terminating the employment contract.

73. The Club's claim cannot be upheld for the following reasons:

- The Club does not point to a pattern of behaviour, which would justify for terminating

the employment contract:

- Indeed, the Club does not refer to any similar incident(s) before the period between 13-16 December 2021;

- There is no evidence submitted demonstrating that the Player had otherwise engaged in anti-contractual behaviour;

- The absence between 13-16 December 2021 is not in and of itself of such gravity that it justifies termination of the contract, which is, as is commonplace in CAS jurisprudence and Swiss law, *ultima ratio*, the last resort indeed when the contractual relationship cannot be saved anymore:

  - For starters, the Player provided sufficient evidence that he had not departed without informing the Club first, and without the consent of the Club officials;

  - But even if the Player had left without seeking authorization, he was absent for a brief spell only. The Club, without previously putting the Player in default, organized two consecutive disciplinary proceedings that led to the termination letter. As this was an isolated incident (and not a patterned behaviour was already shown), the Club should, at the very least, have explained why in its view it was of such gravity that it deserved the most severe punishment. It did not. As already stated, similar occurrences are hardly of the gravity associated with severe breakdown of the contractual relationship, and, consequently, cannot be considered just cause for terminating the contract;

  - The Player showed cooperative attitude, as he participated in the disciplinary proceedings, and explained his point of view, namely, that his non-participation in training sessions was due to the injury that he had suffered. He also highlighted his ensuing discussions on this score with Club's officials and the subsequent departure to Belgrade, Serbia, only after he had secured the authorization to do so by the Club's officials. His attitude does not suggest that he intended to disrespect his contractual obligations at all. And the Club's response is not that similar discussions had not taken place, but simply that the person granting authorization had no legal power to do so. The Club, nonetheless, did not explain why this was common knowledge to the Player, especially since dozens of communications had already taken place between the Player and this specific Club official, as per the evidence that the Player submitted;

  - Finally, the Player had no incentive to terminate his relationship with the Club. Indeed, there is no allegation that he had engaged in transfer speculation, and the value of the contract that he subsequently signed with Radnicki 1923 is a fraction only of the remuneration he had been receiving while in the paybook of U Craiova 1948 SA.

74. Consequently, the Sole Arbitrator concludes that the Club could not demonstrate that it had

just cause to terminate the employment contract on 29 December 2021.

B. What are the consequences of the termination of the employment contract without just cause?

75. The Club has also claimed that the Player has under-reported the value of his contract with Radnicki 1923. This claim is sequential to the claim examined above. Had the Sole Arbitrator accepted that the Club had terminated the contract with just cause, there would have been no need to assess the well-founded of the claim regarding the under-reporting of the value of the Radnicki 1923 contract. As the Sole Arbitrator has refuted the claim that the Club had just cause to terminate the contract, it behooves on him to entertain the claim regarding the proper value of the Radnicki 1923 contract as well.

76. The Sole Arbitrator deemed it appropriate to state at the outset that the Club has presented no evidence at all that the Radnicki 1923 contract, as reported by the Player, is a "sham" contract. Indeed, beyond an unfounded allegation at an aggregate level, the Club submitted no tangible evidence (in the form for example, of the "genuine" contract, assuming one existed) regarding the value of the Radnicki 1923 contract.

77. In fact, the Club did not present any evidence to this effect before the DRC either. The award by the DRC makes no mention at all to evidence submitted by the Club to the effect that the Radnicki 1923 contract was not authentic. Nor is there any evidence that the Club had placed a request with the Serbian Football Federation (where all contracts between clubs participating in the competitions that it organizes and their players must be deposited) to procure a copy of the Radnicki 1923 contract.

78. The Club did request the Sole Arbitrator to do so, but the Player's legal counsel had anyway offered during the hearing to present a copy of the litigious contract, which he did, as already noted. The Sole Arbitrator provided the Cub with an opportunity to comment on the authenticity of the presented contract. No comment was ever submitted to this effect.

79. The contract submitted by the Player's legal counsel clearly states that the monthly salary of the Player had been fixed at RSD 38,000 (Serbian dinars) net, which is the equivalent of EUR 323.00.

80. This is the only evidence presented to the Sole Arbitrator regarding the value of the Radnicki 1923 contract, and its authenticity has not been put into question by the Club. Consequently, the Sole Arbitrator has decided to set aside the claim by the Club that the value of the Radnicki 1923 contract had been under-reported by the Player.

IX. CONCLUSION

81. In conclusion, pursuant to the analysis in the preceding pages, the Sole Arbitrator has come to the conclusion that he should:

(1) dismiss the appeal;

(2) order the Club to pay the Player the sums already adjudicated by the DRC in its decision of 24 November 2022; and

(3) reject all other requests for relief.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 24 February 2023 by U Craiova 1948 SA against the decision issued on 24 November 2022 by the FIFA Dispute Resolution Chamber is dismissed.

2. The decision of 24 November 20222 by the FIFA Dispute Resolution Chamber is confirmed.

3. (…).

4. (…).

5. All other and further requests for relief are dismissed.