



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

Arbitration CAS 2023/A/9827 Hapoel Tel Aviv FC v. Vasilije Bakic, award of 26 November 2024

Panel: Ms Carmen Núñez-Lagos (Spain), Sole Arbitrator

Football

Breach of the offer to conclude an employment contract by the offeror club

Legal nature of an offer to conclude an employment contract and consequences of the failure to comply with it

Methodology of calculation of the compensation

Reduction of the compensation based on Article 44 CO

Period of payment of salaries

1. The offer of a club to engage a player containing all essential requirements, i.e. the fact that it is in writing, the date, the identity of the player, the duration of the contract and the remuneration as well as the validity period of the offer, is a unilateral promise of an employment contract. If such offer was signed and accepted by the player within the period laid down by the club, in the event of the club's failure to comply with the unilateral promise of contract, the club's failure maybe regarded as a wrongful dismissal, which entitles the player to compensation.
2. Even though a club's failure to comply with the unilateral promise of contract is not the breach of an employment contract without just cause but is to be considered as a wrongful termination of a promise, the damages caused can be calculated under different methodologies, including the one foreseen under article 17 of the FIFA Regulations on the Status and Transfer of Players when a contract is terminated without just cause.
3. Article 44 of the Swiss Code of Obligations (SCO) allows the reduction of compensation if there are circumstances attributable to the injured party that helped to give rise to or increase the damage. However, if the failure to comply with the unilateral promise of contract is only due to the club's fault and not to the player's behaviour, there are no grounds to reduce the compensation based on Article 44 SCO.
4. In the context of an employment relationship in football, it is expected that the employer pays not only for competition months, but also preseason and vacation period (*i.e.*, a period of twelve months).

I. PARTIES

1. Hapoel Tel Aviv FC, (hereinafter the “Appellant” or the “Club”) is an Israeli football club affiliated to the Israel Football Association (“IFA”), which in turn is a member of the Fédération Internationale de Football Association (“FIFA”).
2. Mr Vasilije Bakic (hereinafter the “Respondent” or the “Player”) is a professional football player of Serbian nationality.
3. The Appellant and the Respondent are jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties’ submissions and evidence. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Sole Arbitrator refers only to the submissions and evidence it considers necessary to explain its reasoning.

a. Background of the dispute

5. On 23 January 2023, the Club sent to the Player’s previous club FK Kolubara Lazarevac (“Kolubara”) a letter of interest to engage the Player for the 22/23 and 23/24 seasons, against the payment of a transfer fee of EUR 100,000. The offer was subject to the execution of a valid employment contract between the Club and the Player.
6. On the same date, the Club sent the Player an “Official Offer” (the “Offer”) according to which the Club offered to engage the Player for the 22/23 and the 23/24 football season and until 10 January 2025, for a monthly net salary of:
 - i. EUR 7,000 for the 2022/2023 football season (January-May 2023);
 - ii. EUR 11,500 for the 23/24 season; and
 - iii. EUR 12,500 for the 24/25 football season.
7. In addition, the Club agreed to pay a signing fee of EUR 7,500 “*on date of signature contract*”.
8. The Player was also offered a bonus of one-month net salary, in case the Club: (i) won the championship of the Israeli League; (ii) qualified to European competitions; or (iii) won the State Cup of Israel. Finally, the Offer stated that the Club “*will provide the Player apartment, car and medical insurance, flight tickets for the player and his family, all according to its [sic] own discretion (round trip)*”.
9. The Offer was subject to three conditions stated in Clauses 8 and 10:

“8. This is subjected [sic] to the execution of a valid employment agreement between Hapoel and the Player for the seasons 22/23 and 23/24, and for a valid transfer agreement between Hapoel and Tobol Kostanay FC”.

“10. This agreement is subjected [sic] to Player successfully passes medical examinations and Physiological tests in Israel”.

10. The Offer was to expire on 25 January 2023.
11. The Player signed the Offer and stated that he *“officially accept[s] and confirm[s] the above”*.
12. On 24 January 2023, the Club and Kolubara entered into an *“Agreement for the Permanent Transfer of Professional Football Player”* (the *“Transfer Agreement”*) according to which Kolubara permanently transferred the entirety of the Player’s economic and federative rights to the Club, for EUR 100,000. The Transfer Agreement explicitly stated in its Clause 5 that:
 - 5.1 Notwithstanding anything to the contrary in this Agreement, the permanent transfer of the Player as contemplated by this Agreement shall be subject to and conditional upon the Accepting Club having signed a contract of employment with the Player.*
 - 5.2 In the event no employment contract between the Player and the Accepting Club was not conclude [sic] and not come into force, this Transfer Agreement will be void and with no effect and the Transferring Club will have no compensation’s entitlement and it will have no claims and/ or demands”.*
13. On 26 January 2023, the Player arrived to Israel and was subject to a medical examination in Medix Medical Centre. The cardiac examination report certified that the Player was *“fit to engage in activities under some restrictions”* and was *“[r]eferred to a cardiac consultation, including echo-stress test, Holter and Cardiac in order to evaluate and rule out a cardiac structural or electrical abnormality”*. On the same day, according to the Player, an *“echo-stress test, Holter and Cardiac MRI”* was conducted on the Player at the Sourasky Medical Center.
14. On 27 January 2023, the Club sent to the Player a draft of a *“Player Agreement Form”* (the *“Agreement Form”*) for the Player’s review and approval. In accordance with its Preamble, *“the Team and the Player are signing or will sign concurrently on the Association’s Players Agreement Form (hereinafter: the “Agreement Form”) that is submitted for the Authority’s approval”*.
15. On the same day, the Player replied through his counsel that the Agreement Form included the following fundamental differences with the Offer which were not acceptable to the Player:
 1. The Club’s option to terminate the employment contract with immediate effect prior to 31 May 2023, with just cause in case of *“any change to the corporate and/ or ownership structure of the owner of the Club Poehy Tel Aviv Holdings LTD”* (clauses 1.6-1.7 of the Agreement Form)
 2. The Player’s obligation to pay by himself any amount of training compensation, financial claims or demands by any third party that may be imposed on the Club

related to his transfer to the Club and any such obligations shall be deducted unilaterally from his salaries (clause 2.4 and 2.6 of the Agreement Form)

3. Any alleged not accurate medical representation to be considered as a fundamental breach that shall entitle the Club to unilaterally terminate the employment contract with “just cause” (clause 9.1 of the Form).
16. The Club responded that *“most of the remarks are not accepted and in particular when it comes to fundamental clauses”*.
17. A meeting took place on 29 January 2023 between the Parties, to no avail.
18. On 31 January 2023, the Club informed the Player that *“the Club decided not to conclude an agreement and no valid (or any) employment agreement was signed”*. The Club argued that the Player had refused to perform the additional tests required to complete the medical examinations:

“The MRI’s test were not clear and unequivocal, and they were according to the report the Club asked you to perform another tests – Echo and Holter monitor. Due to your sole circumstances you refused to do such medical tests and alongside, to the best of the Club’s knowledge, your former club demanded from you to return back, and therefore the Club was prevented to complete its medical examinations and was not able to ensure you are healthy and in proper medical activity sate (sic), before signing valid employment agreement”.
19. On 9 February 2023, the Player responded through his counsel that the Offer contained each and every essential details to conclude a final and binding contract but *“unfortunately, upon the Player’s arrival in Israel, Hapoel demanded to change essential parts in the Contract”*. The Player informed the Club that *“due to Hapoel’s refusal to accept the Player’s services despite that a valid Contract was signed by the Parties, Hapoel is hereby liable for the early and unilateral termination of the Contract without just cause during the protected period”* and claimed the payment of EUR 223,270 at 5% annual interest from 1 February 2023 until the date of effective payment.
20. On 13 February 2023, the Club rejected the Player’s arguments regarding the existence of a valid and binding contract between the Parties and refused to pay the amounts claimed by the Player.
21. The Respondent returned to its former club Kolubara and played for the remaining of the 22/23 season, earning a monthly salary of RSD 200,000 (the “Kolubara Contract”).
22. Later on, on 16 June 2023, the Player signed a *“Professional Playing Agreement”* with the Serbian club, FK Radnički Niš, from 26 June 2023 to 31 December 2025, for a monthly net salary of EUR 350, a special monthly wage of EUR 1,310 per month, based on the Player’s experience, and “special fees” during the performance of the agreement, for a total of EUR 70,000, to be paid in 8 instalments (the “Radnički Contract”).

b. Proceedings before the FIFA's Dispute Resolution Chamber (Ref. n. FPSD-9718)

23. On 23 March 2023, the Player lodged a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC" or the "Chamber") based on the Club's unilateral termination of the employment agreement without just cause and claimed the payment of compensation. In essence, the Player requested:

"1. FIFA DRC shall accept the claim of the Claimant.
*2. FIFA DRC shall order the Respondent to pay to the Claimant **EUR 221,631 net** as Compensation, plus 5% interest p.a. as from 1 February 2023 until the date of effective payment.*
3. FIFA DRC shall impose sportive sanctions on the Respondent".

24. In its answer, the Club requested:

"1. To declare that the Respondent and the Claimant did not enter in to a binding and valid employment contract.
2. Accordingly, to dismiss the Claimant's Claim in its entirety.
*3. **Alternatively**, and even if the DRC finds that the Respondent had a final, binding and valid employment contract - to declare that Player breached the contract by refusing to complete the medical tests in order to receive a permit to participate in football activities organized by IFA, allowing the Club to terminate the agreement with just cause;*
Or to decide that the contract was null and void since the Player did not pass the mandatory medical examination and could not be registered in IFA.
*4. **Alternatively to the alternative**, decide that the Player is not entitled to any compensation further than the compensation for the 2022/23 season and that he is also not entitled to any interests.*
*5. **In any event**: to Order the Claimant to reimburse the Respondent all and any amount of legal fees and any other costs and expenses incurred by the Respondent in these proceedings".*

25. On 22 June 2023, the FIFA DRC rendered its Decision (the "Appealed Decision") and decided that:

"1. The claim of the Claimant, Vasilije Bakic, is partially accepted.
2. The Respondent, Hapoel Tel Aviv Football Club, must pay to the Claimant the following amount(s):
*- **EUR 211,796.70 as compensation for breach of contract without just cause plus 5% interest p.a. as from 1 February 2023 until the date of effective payment.***
3. Any further claims of the Claimant are rejected.

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

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

1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to 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.

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

7. The decision is rendered without costs”.

26. The grounds of the Appealed Decision were notified to the Parties on 7 July 2023. With regards to the merits, the FIFA DRC determined that:

- The Offer indeed represents a valid and binding employment contract, since it contains the *essentialia negotii* specific to this type of contracts: (i) duration of the agreement; (ii) subordination of the employee to the employer; (iii) personal performance; (iv) wages; and (v) the signature of both Parties.

- The validity of an employment agreement shall not be subject to a successful medical examination, as stated in Article 18(4) of FIFA Regulations on the Status and Transfer of Players (“FIFA RSTP”). Consequently, the FIFA DRC rejected the arguments of the Respondent related to the non-signature of the final contract.

- The FIFA DRC ruled that the Club had terminated the Contract without just cause, by its correspondence of 1 February 2023.

27. With regards to compensation, the FIFA DRC decided that the Club was liable for a total of EUR 242,838.70, from the date of its unilateral termination until its end date

28. In addition, as the Player found employment with Kolubara, with an approximate total salary of RSD 3,640,000 for the overlapping period, the Player mitigated damages in the total amount of EUR 31,042. Therefore, the Club must pay the amount of EUR 211,796.70 to the Player (*i.e.*, EUR 242,838.70 minus EUR 31,042), as a reasonable and justified amount of compensation for breach of contract in the present matter.

29. An interest on said compensation at the rate of 5% p.a. as of 1 February 2023 until the date of effective payment.

30. The FIFA DRC concluded that the Player was entitled to receive an amount of EUR 211,796.70 as compensation for breach of contract without just cause plus the annual interest of 5% from 1 February 2023 until the date of the effective payment.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

31. On 19 June 2023, in accordance with Article R48 of the Code of Sports-related Arbitration (the “Code”) (2023 edition), the Appellant filed its Statement of Appeal before the Court of Arbitration for Sport (“CAS”) against the Respondent with respect to the Appealed Decision.
32. On 25 July 2023, the CAS Court Office acknowledged receipt of the Statement of Appeal and, *inter alia*, also invited the Respondent to inform whether he agrees to the appointment of a sole arbitrator.
33. Still on 25 July 2023, pursuant to Article R41.3 of the Code, the CAS Court Office invited FIFA to inform whether it intended to participate as a party in the present arbitration, within ten (10) days.
34. On 27 July 2023, the Respondent informed that he did not object to submit the case a sole arbitrator, and to English as the language of the procedure.
35. On 2 August 2023, the CAS Court confirmed that the sole arbitrator would be appointed by the Division President, or her Deputy, pursuant to Article R54 of the Code, as indicated in the letter dated 25 July 2023.
36. On 3 August 2023, FIFA informed CAS that it would not intervene in the proceedings.
37. On 16 August 2023, the Appellant filed its Appeal Brief within the previously extend deadline.
38. On 5 October 2023, the Respondent filed his Answer within the previously extended deadline.
39. On 9 October 2023, the CAS Court Office invited the Parties to inform by 16 October 2023 whether they preferred for a hearing to be held or for the Sole Arbitrator to issue an award solely based on the Parties’ written submissions.
40. On the same date, the CAS Court Office also informed the Parties that pursuant to Article R54 of the Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, that the Panel appointed in the present dispute had been constituted as follows:
- Sole Arbitrator: Ms Carmen Núñez-Lagos, Attorney-at-law in Paris, France.
41. On 16 October 2023, the Respondent informed that it was unnecessary to hold a hearing.
42. On 26 October 2023, the Appellant requested to hold a hearing in the present matter.
43. On 8 January 2024, the CAS Court Office informed that the Sole Arbitrator considered herself sufficiently well-informed to render an Award based on the Parties’ submissions, without the

need to hold a hearing. In addition, the CAS Court Office sent the Order of Procedure to the Parties and invited them to send it signed by 15 January 2024.

44. On 9 January 2024, the Appellant requested a second round of written submissions.
45. On 12 January 2024, the CAS Court Office invited the Respondent to file his comments on the Appellant's request on a second round of written submissions no later than 17 January 2024.
46. On 16 January 2024, the Respondent opposed to the second round of submissions requested by the Appellant.
47. On 17 January 2024, the CAS Court Office informed that the Sole Arbitrator had decided to grant the Appellant's request on a second round of written submissions. Accordingly, the Appellant was invited to file its Reply, of maximum 3 pages, which it did on 7 February 2024, within the deadline granted.
48. On 20 March 2024, the Respondent filed his Rejoinder, within the relevant deadline granted.
49. On 12 April 2024, the CAS Court Office informed that the Sole Arbitrator confirmed her previous decision to render an Award based on the Parties' submissions, without the need to conduct a hearing. In addition, the CAS Court Office sent an updated Order of Procedure to the Parties and invited them to send it signed by 17 April 2024.
50. On 14 April 2024, both the Appellant and the Respondent returned a signed copy of the Order of Procedure.

IV. THE PARTIES' SUBMISSIONS

a. The Appellant's submissions and requests for relief

51. The Appellant argues that the Appealed Decision should be overturned in full as a binding employment contract was not concluded nor signed by the Parties and the Offer was subject to mandatory conditions that were not fulfilled. Consequently, the Appellant did not terminate an employment contract without just cause, and the Respondent was not entitled to receive compensation. As an alternative, the Appellant claims the amount due should be reduced.
52. The Appellant sustains that a final and binding employment contract was not concluded nor signed, considering that:
 - The Offer is not a valid and binding employment contract, at most, it is a precontract. Even if it contains the *essentialia negotii*, the Offer was subject to: (i) the Player's medical examination; and (ii) the signing of an Employment contract.
 - The Transfer Agreement was also subject to the signing of a valid employment agreement. Therefore, the Parties expressly agreed that the Offer does not represent a final employment contract, in accordance with Article 7.1 Swiss Code of Obligations ("SCO").

- The Parties never reached an agreement on the final draft of the employment contract, and consequently the first pre-condition was not fulfilled. The signature of an Agreement Form is a necessary step to complete the registration of a player, and such document must be approved by the IFA Budgetary Control Authority. The Offer is therefore not a valid employment contract in Israel since it does not fulfil the requirements of the Agreement Form.
 - The Player refused to complete his medical examinations in violation of the condition stated in the Offer, Israeli law and FIFA Regulations, according to which, medical are mandatory. Since the Player only completed part of the mandatory tests required by the corresponding cardiologist, the employment contract could not be entered into.
 - Article 18(4) FIFA RSTP is not applicable in this case since the Offer was not an employment contract, but a precontract. In accordance with the Commentary on the FIFA RSTP, as well as FIFA and CAS jurisprudence, a medical examination is a legitimate condition to conclude a final employment contract between the Parties.
 - The Club acted in good faith and wanted to close the transfer of the Player. The Club invested thousands of dollars in expenses, in order to sign a binding employment contract with the Player. Nevertheless, the Player acted in bad faith and refused to complete the medical examinations, as it was agreed in the Offer.
53. For all the above reasons, the FIFA FDRC wrongly concluded that the Contract was terminated without just cause. The Club was not bound to the Offer without the prior fulfilment of the valid conditions agreed between the Parties. As a result, it was entitled not to proceed with the transaction.
54. In the alternative, the Appellant asserts that the Player breached the employment contract, based on the Player's refusal to complete further medical tests. As a consequence, the Appellant concludes that it was entitled to terminate the employment contract with just cause:
- In accordance with FIFA RSTP, a player cannot refuse the employer's demand to undergo medical tests. Such behaviour from a player entitles the employer to terminate the employment contract, under Article 11(1) RSTP.
 - The tests were necessary for the Player's registration before IFA, and his participation in training and football games.
55. As a second alternative, the Appellant argues that the compensation granted by the FIFA DRC must be amended, in accordance with two different grounds.
56. First, the Appellant considers that the compensation shall be reduced in accordance with the general principle of damage mitigation and Article 17(1)(ii) FIFA RSTP:
- FIFA DRC only deduced the amounts that the Player would have earned from Kolubara from February 2023 to 30 June 2024. However, days prior to the issuance of the Appealed Decision, the Player joined the Serbian club FK Radnički Niš, for a remuneration in the

overlapping period of EUR 77.885 (i.e. until 10 January 2025). As a consequence, CAS shall deduce these new amounts from the compensation granted by the FIFA DRC. The Club estimates such compensation in the amount of EUR 130.099.

- CAS case law allows arbitrators to deduct any new playing contracts entered into after the FIFA DRC from the compensation awarded. Due to the *de novo* power of review provided for by Article R57 of the Code, the Sole Arbitrator shall reduce the compensation awarded by the FIFA DRC.
57. Second, the Appellant sustains that the Respondent's conduct during the execution of the medical examination justifies the reduction of the compensation:
- The Appellant explains that CAS panels tend to mitigate the amounts of compensation based on Article 44 SCO, upon the specific. The Respondent's refusal to cooperate with the medical examinations justifies an adjustment of the compensation.
 - The Player was accompanied by experienced lawyers during the negotiations of the Offer. Still, the Player accepted that the employment contract was subject to two conditions. If these two conditions had not been agreed by the Parties, no damages would have occurred. Consequently, the Respondent contributed to his own damage.
58. The Appellant also requests to overturn the Appealed Decision regarding the payment of interests. The Appellant explains that FIFA DRC ordered to pay interests from 1 February 2023 until the effective payment date, even though most of the sums awarded as compensation would have been paid in 2024 and 2025. The Appellant sustains that interest shall be paid from the date each payment was due in accordance with the Offer, instead of from 1 February 2023.
59. Finally, the Appellant opposes to the additional compensation requested by the Respondent in his Answer. The Appellant explains that the Respondent did not appeal the Appealed Decision, and consequently he is not entitled to claim an additional compensation at this stage of the proceedings. The Appellant recalls that CAS is prevented from granting compensation beyond what was decided in the Appealed Decision.
60. In its Statement of Appeal, the Appellant submits the following requests for relief:

"8.1. As a primary requests:

a. To annul and set aside the Decision passed on 22 June 2023 by the DCR.

b. To declare that under the circumstances, that the parties did not enter into a binding and valid employment contract.

c. Accordingly, to decide that the Respondent is not entitled to any compensation from the Appellant

8.2. Alternatively: *If the CAS finds that the Appellant and the Respondent had a final, binding and valid employment contract – then CAS is requested to declare that:*

a. the Respondent breached the contract, by refusing to complete the medical tests in order to receive a permit to participate in football activities organized by the Israeli Football Association. His failure and refusal to complete the medical tests, allowed the Club to terminate the agreement with just cause; Or:

b. To decide that the contract was frustrated and could not be implemented and could not be executed since the Respondent did not pass the mandatory medical examinations and could not be registered with Club (due to his intentional omission) under the Israeli Football Association.

c. Accordingly, to decide that the Respondent is not entitled to any compensation from the Appellant.

8.3. Alternatively to the alternative: *In case the CAS shall decide that the parties concluded a valid and binding employment contract that was terminated by the Respondent without just cause, the CAS is required to:*

a. Reduce the compensation awarded to the Player in the Appealed Decision, by mitigating the value of his employment agreement/s for the 2023/24 season and for the 2024/25 season until 1 February 2025.

b. Decide that interests shall be added to the amount awarded to the Player, only from the date each payment was due in accordance with the agreement and not from 1 February 2023.

8.4. In any case:

The CAS is required to order the Respondent to pay the Appellant a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Panel or of the Sole Arbitrator”.

61. In the Appeal Brief, the Appellant amended its requests for relief, in the following terms:

“As a primary requests:

114.1. To annul and set aside the Decision passed on 22 June 2023 by the DCR.

114.2. To declare that under the circumstances, that the parties did not enter into a binding and valid employment contract.

114.3. Accordingly, to decide that the Respondent is not entitled to any compensation from the Appellant

Alternatively: *If the Sole Arbitrator finds that the Appellant and the Respondent had a final, binding and valid employment contract – he is requested to declare that:*

*114.4. the Respondent breached the contract, by refusing to complete the medical tests in order to receive a permit to register with the Appellant and participate in football activities organized by the Israeli Football Association. His failure and refusal to complete the medical tests, allowed the Club to terminate the agreement with just cause; **Or:***

114.5. *To decide that the contract was frustrated and could not be implemented and could not be executed since the Respondent did not pass the mandatory medical examinations and could not be registered with Club (due to his intentional omission) under the Israeli Football Association.*

114.6. *Accordingly, to decide that the Respondent is not entitled to any compensation from the Appellant.*

Alternatively to the alternative: *In case the CAS shall decide that the parties concluded a valid and binding employment contract that was terminated by the Respondent without just cause, the Sole Arbitrator is required to:*

114.7. *Reduce the compensation awarded to the Player in the Appealed Decision, by mitigating the value of his employment agreement/s for the 2023/24 season and for the 2024/25 season until 1 February 2025.*

114.8. *To further reduce the compensation awarded to the Player based on the merits of the case and Article 44 SCO.*

114.9. *Decide that interests shall be added to the amount awarded to the Player, only from the date each payment was due in accordance with the agreement and not from 1 February 2023.*

8.4. In any case:

The Sole Arbitrator is required to order the Respondent to pay the Appellant a contribution towards its legal and other costs;”

b. The Respondent’s submission and request for relief

62. The Respondent refutes the Appellant’s allegations regarding the grounds for reduction of the compensation awarded by the FIFA DRC.
63. The Respondent insists that the Offer is a valid and binding employment contract between the Parties, as decided by the FIFA DRC. In addition, the Respondent denies that this contract was subject to the conclusion of any further agreement, and sustains that the medical examination does not affect its validity:
 - The Offer is an employment contract since it contains the *essentialia negotii* and the Parties’ signatures. In accordance with CAS and FIFA jurisprudence, the *essentialia negotii* of a valid employment contract shall include: (i) name of the parties; (ii) an object; (iii) duration of the employment relationship; (iv) a salary; and (v) signatures. The Offer fulfils such requirements.
 - The Offer is not a precontract. According to case law, a precontract exists when the parties have not yet agreed on the essential elements of the contract. In consequence, the Appellant is expected to provide factual evidence that demonstrates the Parties intention to conduct

further negotiations after the Player's medical examination and before the final contract was concluded. However, the Appellant failed to do so.

- The employment contract was valid and binding. The Parties relied on the signature of the Offer as a valid contract. During the negotiations between the Parties, the Club never mentioned the IFA standard contract, nor other "budgetary control" documents. The Club required to sign the Agreement Form after the signature of the Offer, with significant amendments to the fundamental contractual terms previously agreed in the Offer.
 - Clause 8 of the Offer is ambiguous and invalid. The phrase "[t]his is subjected to the execution of a valid employment agreement" is unclear since it is unknown what the word "this" refers to. In addition, this clause pertains to the execution of a valid transfer agreement between the Club and Tobol Kostanay FC, a football club from Kazakhstan that was not involved in this transaction. Therefore, the Offer shall be interpreted against the Club in application of *in dubio contra proferentem* principle.
 - The medical examination did not affect the validity of the contract. In accordance with Article 18(4) FIFA RSTP, a contract's validity may not be subject to a successful medical examination. According to the Commentary on the FIFA RSTP, clubs must undertake all appropriate steps before concluding a contract. This is not contradicted by Israeli law nor UEFA Medical Regulations. Therefore, clause 10 of the Offer is illegal.
 - Nevertheless, the Player successfully passed all medical examinations, including the additional heart tests mentioned by the Appellant, on 26 January 2023. The evidence of the record supports such circumstance, with no complaints from the Appellant related to this matter. Conversely, the Club sent the Agreement Form on 27 January 2023, the day after all tests were completed.
 - As a result, the Appellant terminated the employment contract without just cause, and the Player is entitled to receive compensation.
64. The Respondent also considers that the Sole Arbitrator must uphold his rights to be compensated for the residual value of the employment contract, deducting the Radnicki contract and a further additional compensation to the Player equal to six months' salaries, as the Club is a repeating offender in 9 prior cases before FIFA.
65. In his Answer, the Respondent requested the Sole Arbitrator to decide:

"1. Dismiss the appeal filed by the Appellant against the decision FPSD-9718 passed on 22 June 2023 by the FIFA Dispute Resolution Chamber insofar it is admissible.

2. Confirm the decision FPSD-9718 passed on 22 June 2023 by the FIFA Dispute Resolution Chamber.

3. In the alternative, order the Appellant to pay the Respondent the amount of EUR 170,020.

4. Order the Appellant to bear all the costs incurred in connection with the present procedure.

5. Order the Appellant to pay to the Respondent a contribution towards its legal fees and other costs, in the amount to be determined at the discretion of the Sole Arbitrator”.

V. JURISDICTION OF THE CAS

66. 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 the 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 him prior to the appeal, in accordance with the statutes or regulations of that body”.

67. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 57 para. 1 of the FIFA Statutes, which provides that *“Appeals against final decisions passed by FIFA’s legal bodies and against decision passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question”.*
68. In addition, the Respondent did not object to the jurisdiction of the CAS, and the Parties furthermore confirmed the CAS jurisdiction when signing the Order of Procedure.
69. Considering the above, the Sole Arbitrator finds that CAS has jurisdiction to decide on the present appeal.

VI. ADMISSIBILITY

70. The grounds of the Appealed Decision were notified to the Appellant on 7 July 2023 and the Statement of Appeal was filed on 19 July 2023, *i.e.* within the statutory time limit of 21 days set out in Article 57 para. 1 of the FIFA Statutes.
71. The Statement of Appeal complied with all the requirements of Articles R48 and R51 of the CAS Code.
72. It follows that the appeal is admissible, which is not disputed by the Respondent.

VII. APPLICABLE LAW

73. Article R58 of the CAS Code provides as follows:

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

74. Pursuant to Article 56 para. 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”.

75. The Sole Arbitrator notes that both the Appellant and the Respondent applied in these proceedings, for the purpose of Article R58 of the Code, the rules and regulations of FIFA.
76. Based on the above, the Sole Arbitrator is satisfied to apply the various rules and regulations of FIFA, and when necessary Swiss law to fill a possible gap in the various regulations of FIFA.

VIII. MERITS OF THE APPEAL

77. In light of the Parties’ submissions, the Sole Arbitrator shall examine whether the conditions of the Offer were complied with, and if not, whether the Player is entitled to compensation for the damages suffered and in which amount.
78. The Sole Arbitrator will address the following issues:
 - (i) Whether the conditions of the Offer were complied with
 - (ii) Whether a wrongful dismissal took place
 - (iii) The compensation under article 17 of the FIFA RSTP
 - (iv) The calculation of the compensation
 - (v) The interests

i. Whether the Conditions of the Offer were complied with

79. The Sole Arbitrator observes that the Club sent an employment offer to the Player on 23 January 2023.
80. According to the Offer, the Club “offers to engage the Player for the 2022/23 and for 2023/24 seasons and until 10 of January 2025” for a monthly net salary of: (i) EUR 7,000 for the 22/23 football season (January-May 2023); (ii) EUR 11,500 for the 23/24 season; and (iii) EUR 12,500 for the 24/25 football season (from July 2024). In addition, the Club proposed to pay a signing fee of EUR 7,500 “on date of signature contract”, as well as performance bonuses. The Offer was accepted by the Player before the expiring date foreseen as 25 January 2023.
81. The Offer was expressly made subject to three conditions:

Clause 8 provides that:

*“This is subjected to **the execution of a valid employment agreement between Hapoel and the Player for the seasons 22/23 and 23/24, and for a valid transfer agreement between Hapoel and Tobol Kostanay FC**”.*

Clause 10 provides that:

*“this agreement is subjected to Player **successfully passes medical examinations and Physiological tests in Israel**”.*

82. As a result, the Sole Arbitrator will analyse whether the three conditions included in aforementioned Clauses 8 and 10 of the Offer, a) Transfer Agreement, b) Medical examination and c) Employment agreement, were complied with:

a) *Transfer Agreement*

83. The Parties required the execution of a transfer agreement between the Club and the Player's former club Kolubara. The Sole Arbitrator observes that the Club and Kolubara entered into the Transfer Agreement on 24 January 2023 in order to permanently transfer of the Player's economic and federative rights to the Club, for a transfer fee of EUR 100,000. Consequently, the first of the conditions set out in the Offer was fully met.
84. The Sole Arbitrator considers that the reference to a transfer from “Tobol Kostanay FC” in Clause 8 of the Offer was a clerical error. The subsequent conclusion of the Transfer Agreement between the Club, the Player and Kolubara on 24 January 2023 proves that the Parties intended to refer to Kolubara instead of Tobol Kostanay.

b) *Medical Examination*

85. The Offer also required the Player to complete and pass the medical examination and the physiological tests in Israel.
86. The Sole Arbitrator notes that the Parties dispute whether the Player completed and passed the medical examinations upon its arrival to Israel. Whilst the Appellant sustains that the Player refused to complete the echo-stress test, Holter and Cardiac MRI that he was referred to, the Respondent insists that he completed and passed them over the course of 26 January 2023.
87. The Sole Arbitrator observes that the Player was subject to a medical examination in Medix medical centre, at 8:14 on 26 January 2023. The results of the medical examination were submitted on the same day, at 8:43. According to these results, the Player was “*referred to cardiac consultation, including echo-stress test, Holter and Cardiac MRI in order to evaluate and rule out a cardiac structural or electrical abnormality*” (Exhibit A8, Appeal Brief).
88. On the same day, at 16:39, an employee of the Club contacted the Player's agent to communicate that he would “*come to pick you at 18:15 [t]o MRI*”. One minute later, the Player's agent responded to the Club's representative with a check mark.
89. From that moment onwards, the communications between the Parties refer to the negotiations of the draft Agreement Form, or the Player attendance to a Club's league game on 28 January 2023.

90. There is no reference to the Player's refusal to complete the medical examinations nor any pending medical issues. The Sole Arbitrator notes that according to the Offer, the Parties were to enter into the Agreement Form once the medical examinations were completed. It was reasonable to expect that this matter would have been raised in the communications between the Parties whilst starting to negotiate the terms of the Agreement Form. On the contrary, the Club only complained about the lack of medical examinations on 1 February 2023, when the Player was back to Serbia and the Club had already decided not to continue with the transfer of the Player.
91. As a result, the Sole Arbitrator concludes that from the Parties' behaviour that the Club had accepted the Player's medical condition. Under this scenario, the second of the conditions set out in the Offer was also met.

c) *Employment Agreement*

92. Once these conditions were met, the Parties expected to enter into the Agreement Form according to the terms promised in the Offer. The Sole Arbitrator notes in addition that during the negotiations of the Offer, the Club's CEO said that they would "*write all this in the final contract*", referring to some observations of the Offer made by the Player's agent. Consequently, the Sole Arbitrator finds that the Parties' intention was to conclude an employment contract as the final step set out in the Offer. The Sole Arbitrator also notes that the signing of an Agreement Form is compulsory under IFA and that the Agreement Form must be approved by the Budget Control Authority of IFA, *conditio sine qua non*, the Player may not be registered in IFA and compete.
93. It is undisputed by the Parties that the subsequent employment contract, by the means of the Agreement Form, was not concluded.

ii. *Whether a wrongful dismissal took place*

94. The Parties and the FIFA DRC discussed whether the Offer was a valid employment contract or a precontract.
95. In the Appealed Decision, the FIFA DRC concluded that the Offer represents a valid and binding employment contract between the Parties. The FIFA DRC ruled that the Offer was a valid employment contract "*by recalling the well-established jurisprudence which dictates that, in order for an employment contract to be considered valid and binding, apart from the signature, it should contain the essentialia negotii of an employment contract*". Thus, the Chamber concluded that the Club terminated the contract without just cause and declared that the Club must compensate the Player.
96. The Appellant opposes to the FIFA DRC conclusion and considers that the Offer "*includes nothing but the outlines of a financial offer and pre-conditions to the engagement of the Player*". For the Appellant, if the Parties had intended the Offer to be an employment contract, they would not have explicitly stipulated that the Offer was subject to the signature of a further contract. Therefore, the Appellant concludes that the Offer's conditions were not fulfilled, and

subsequently an employment contract was not concluded between the Parties. Since a contract cannot be terminated before it was even concluded, the Appellant concludes that the Player's claim concerning the termination of a contract without just cause must have been rejected.

97. The Respondent insists that the Offer contains all essential requirements of an employment agreement and reflects the common intent of the Parties. For the Respondent, the Offer represents a valid and binding employment contract between the Parties. Consequently, the Respondent concludes that the Appellant unilaterally terminated the employment contract without just cause and the Respondent is entitled to receive compensation for breach of contract.
98. Notwithstanding the foregoing, the Sole Arbitrator concludes that the question is not whether the Offer was a valid employment contract or a precontract. The Sole Arbitrator considers that the Offer is a unilateral promise of an employment contract, subject to a time limit and to three conditions precedent. Therefore, in the event of the Club's failure to comply with the unilateral promise of contract, the Club's failure may be regarded as a wrongful dismissal. Likewise, should the Player fail to comply with his commitments he may be subject to pay damages to the Club.
99. The Offer contains all essential requirements of an offer, including the fact that it is in writing, contains the date, the identity of the Player, the duration of the contract and the remuneration as well as the validity period of the offer. In addition, the Offer was signed and accepted by the Player within the period laid down by the Club and could not therefore be withdrawn by the Club.
100. The Sole Arbitrator clarifies that article 18 (4) of the FIFA RSTP ("*[t]he validity of a contract may not be made subject to a successful medical examination ...*") does not apply, as suggested by the FIFA Chamber to an employment offer, which is not an employment contract.
101. Since one of the conditions precedents was not met (i.e. the signature of an employment contract by means of a Player's Agreement Form, as required by IFA, and its Budget Control Authority), the Sole Arbitrator will address whether the failure to fulfil the aforementioned condition is due to one of the Parties conduct and what are the legal consequences of such conduct.
102. The Sole Arbitrator notes that the Parties engaged in negotiations to enter into a Player's Agreement Form, through legal counsel. During the negotiations, the Club requested to modify the Offer in the following items:
 - First salary to be paid in August, instead of July as originally foreseen in the Offer.
 - Payment of bonuses limited to only one per season, instead of by specific achievements.
 - The duration of the contract: the Club's option to terminate the contract with just cause on 31 May 2023, in case of "*any change to the corporate and/or ownership structure of Poaley Tel Aviv Holding LTD, a company incorporated under the laws of the state of Israel (the "Corporation") (the corporation that controls the Club) by providing written notice to the Player*" (Clause 1.6 of the draft Agreement Form).

103. With regards in particular to the duration of the contract, the Player alleges that this clause was the main reason for not signing the Agreement Form. The clause was never previously discussed by the Parties, and when the Player opposed to its inclusion in the draft of the Agreement Form, on 27 January 2023 the Club considered it a “*fundamental clause*” and refused to erase it.
104. The Sole Arbitrator notes that on 31 May 2023, a new group of investors took control of the Club. Consequently, the inclusion of this last provision would eventually have represented the reduction of 75% of the duration of the contract to the detriment of the Player.
105. The Sole Arbitrator finds that Clause 1.6 of draft of the Agreement modified the terms of the Offer and prevented the Parties from concluding the Agreement Form.
106. The Club did breach the promise to contract made in the Offer since it was unwilling to conclude the subsequent employment contract in line with the terms that were already set out in the Offer. The breach of the Offer ultimately occurred when the Club, by its letter of 1 February 2023, informed the Player that it “*decided not to conclude an agreement and no valid (or any) employment agreement was signed*”.
107. In light of the foregoing, the Sole Arbitrator concludes that the Club failed to comply with the third and last condition of the Offer, *i.e.*, the signature of the Agreement Form.
108. The Club’s breach of the Offer is to be regarded as a wrongful dismissal, which entitles the Player to compensation.

iii. The compensation under article 17 of the FIFA RSTP

109. Both Parties have relied on article 17 of the FIFA RSTP to calculate the compensation due. The Sole Arbitrator will apply the compensation provided for under article 17 of the FIFA RSTP even though, as previously explained, the Club’s failure to comply with the unilateral promise of contract is not the breach of an employment contract without just cause but is to be considered as a wrongful termination of a promise. In this regard, the damages caused can be calculated under different methodologies, including the one foreseen under article 17 of the FIFA RSTP when a contract is terminated without just cause. As the Parties have chosen to rely on the aforementioned article 17 for the compensation calculation, the Sole Arbitrator will follow that methodology.
110. In the Appealed Decision, the FIFA DRC ordered the Club to pay the amount of EUR 211,796.90 to the Player plus 5% interest *per annum* as from 1 February 2023 until the date of effective payment. Such compensation was calculated in accordance with Article 17(1)(ii) FIFA RSTP which states as follows:

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

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

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

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

[...]

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

111. The Appealed Decision granted the Player the residual value of the contract at the time of termination (EUR 242,838.70) minus the value of the contract the Kolubara Contract for the overlapping period (EUR 31,042).
112. At the time of the rendering of the Appealed Decision, the FIFA Chamber was not made aware that a new contract had been entered into with the Serbian club FK Radnički Niš on 18 June 2023. The Appellant sustains that the Sole Arbitrator should take into account for the calculation of the compensation the value of the Radnicki Contract (CAS 2021/A/7714).
113. The Respondent admits that he signed an employment agreement with FK Radnički Niš and that the value of the new contract for the overlapping period should be taken into account to calculate the payable compensation. Notwithstanding, the Respondent considers that the value of the new contract shall be calculated only taking into account its salary components, and not the payment of rent.
114. The Sole Arbitrator notes that it is undisputed that the value of the Radnicki Contract for the overlapping period should be taken into account to calculate the compensation. The Player concluded the Radnički Contract on 16 June 2023, i.e. six days before the FIFA DRC rendered the Appealed Decision, reason why the FIFA DRC could not take it into consideration.
115. Accordingly, the Sole Arbitrator has the power to take into account this new fact and the new evidence when assessing the compensation (see CAS 2021/A/7714).
116. In addition, the Appellant requests to further reduce the compensation awarded based on Article 44 SCO. The Appellant considers that the Respondent's refusal to cooperate and continue with the medical examinations is a circumstance that contributed to Player's own damage.
117. Article 44 SCO provides as follows:

“1. Where the person suffering damage consented to the harmful act or circumstances attributable to him helped give rise to or compound the damage or otherwise exacerbated the position of the party liable for it, the court may reduce the compensation due or even dispense with it entirely.

2. The court may also reduce the compensation award in cases in which the damage was caused neither wilfully nor by gross negligence and where payment of such compensation would leave the liable party in financial hardship”.

118. The aforementioned provision allows the reduction of compensation if there are circumstances attributable to the injured party that helped to give rise to or increase the damage. As previously decided, the failure to sign the Agreement Form is only due to the Club’s fault and not to the Player’s behaviour during the medical examinations. The Player cooperated and eventually completed the medical examinations to the satisfaction of the Club.
119. The Sole Arbitrator does not find grounds to reduce the compensation on the basis of Article 44 SCO, as requested by the Appellant.
120. Finally, the Respondent considers that the Sole Arbitrator shall grant additional compensation to the Player equivalent to six months’ salaries. The grounds for such petition are the criterion of “specificity of sport” and the existence of aggravating factors. According to the Respondent, CAS jurisprudence has described as aggravating factor of terminating an employment contract without just cause when the club is a repeating offender. The Respondent informs that the Club has previously been sanctioned by FIFA nine times after failing to respect contractual obligations with other players and clubs. For the Respondent, such circumstance was publicly acknowledged by the Club’s councils through a press release issued on its website.
121. The Sole Arbitrator considers that the Respondent is not entitled to an additional compensation equal to six months’ salaries worth up until the amount awarded in the Appealed Decision, as requested by the Respondent. The Respondent failed to prove that the Club is a repeating offender for the purposes of this case. Therefore, the Player shall not be entitled to claim for an additional compensation based on aggravating factors.
122. In sum, the Sole Arbitrator finds grounds to modify the compensation granted by the FIFA RSTP due to the Radnicki Contract entered into by the Player after the issuance of the Appealed Decision.

iv. The compensation calculation

123. The Parties disagree with the residual value of the Offer, the value of the Kolubara Contract for the relevant period as decided by the FIFA RDC, and the value of the Radnick Contract.
124. The Sole Arbitrator finds that the Appealed Decision performed its calculation of compensation as follows:

- **EUR 242,838.70** (residual value of the Offer) minus **EUR 31,042** (value of the Kolubara Contract for the overlapping period (remaining of the 22/23 and 23/24 seasons) = **EUR 211,796.70**

a) The residual value of the Offer

125. The Parties dispute the calculation of the residual value of the Offer in the Appealed Decision. The Appellant considers that the correct amount should be EUR 217,160 while the Respondent considers a residual value of EUR 252,666.
126. The Sole Arbitrator notes that the differences between the Parties derive from the calculation of a different number of monthly salaries per season:

Appellant	Appellant	Respondent	Respondent
Signing fee	EUR 7,500		EUR 7,500
4 months salary 2022/2023 season	EUR 28,000		EUR 28,000
10 months salary 2022/2023 season	EUR 115,000	12 months	EUR 138,000
5 months and 10 days 2024/2025	EUR 66,600	6 months and 10 days	EUR 79,166.67
TOTAL	EUR 217,160		EUR 252,666

127. The Sole Arbitrator calculates the residual value of the Offer in **EUR 252,666.67**, from 1 February 2023 until 10 January 2025, with the following breakdown:

(i) **EUR 7,500**: signing fee

(ii) **EUR 28,000**: four months of salary for the 22/23 season

(iii) **EUR 138,000**: 12 months of salary for the 23/24 season. The Sole Arbitrator finds that Clause 3 of the Offer states that the Club “*shall pay 11,500 EURO net salary per month to the player at the 2023/24 season*” without specifying the payable months of the season. In the context of an employment relationship in football, it is expected that the employer pays not only for competition months, but also preseason and vacation period (*i.e.*, a period of twelve months). The Sole Arbitrator did not find any grounds to conclude that the Player was entitled to receive just ten months of salary for the 23/24 season under the terms of the Offer.

(iv) **EUR 79,166.67**: 6 months and 10 days of salary for the 24/25 season (*i.e.*, from 1 July 2024 until 10 January 2025) for an amount of EUR 79,166.67. Clause 3 of the Offer stipulate that the Club was supposed to pay “*12,500 EURO net per month until January 10, 2025 – during the 2024/25 season (from the month of July 2025)*”. Since the Parties included the phrase “*from the month of July 2025*”, the Sole Arbitrator finds it as an express reference of the starting month of payment for the 24/25 season. The Sole

Arbitrator also considers that the reference to the year 2025 was a clerical error and it was supposed to be 2024, considering that it was not possible to start paying a specific amount of salary “*from the month of July 2025*” when the salaries for this season were supposed to be paid “*until January 10, 2025*”.

b) The Kolubara Contract

128. The Parties dispute the calculation of the value of the Kolubara Contract for the relevant period, as follows:

	Appellant	Respondent
4.8 months of salary	RSD 960,000	5 months of salary (RSD 1,000,000)
4.8 months of rent	RSD 115,200	Not included
Exchange rate	1 RSD per 0.00853423 EUR	1 RSD per 0.008516 EUR
TOTAL	RSD 1,075,200 = EUR 9,176	RSD 1,000,000 = EUR 8,516

129. The Sole Arbitrator calculates the value of the Kolubara Contract in RSD 1 075 200 (EUR 9,159.70) for the period between 1 February 2023 and 25 June 2023, with the following breakdown:

(i) **RSD 960,000:** 4.8 months of salary for the 22/23 season, calculated from 1 February 2023 (start of the overlapping period) until 25 June 2023 (date of termination of the employment contract). The Sole Arbitrator dismisses the Respondent’s consideration of 5 months of salary when the Player could not legally be paid by Kolubara from 26 June 2023 onwards. The new employment contract was “*concluded for the period from June 26, 2023*” and consequently Kolubara was released from the obligation to pay salary from that moment onwards.

(ii) **RSD 115,200:** 4.8 months of rent. The Sole Arbitrator considers that the rent should also be included as part of the compensation as it was part of the Player’s remuneration under that Contract.

The applicable exchange rate to the value of the Kolubara Contract is 1 RSD per 0.008519 EUR as of 1 February 2023 (date of the Club’s breach (*i.e.*, 1 February 2023)).

c) The Radnicki Contract

130. The Parties dispute the calculation of the value of the Radnicki Contract for the relevant period, as follows:

	Appellant	Respondent	Respondent
18.5 months of minimum net salary (350 EUR per month)	EUR 6,475	18 months	EUR 6,300
18.5 months as “special monthly wage for the Player’s experience”	EUR 24,235	18 months	EUR 23,580
special fees based on a monthly amount (EUR 2,400) multiplied by 18.5	EUR 44,400		EUR 44,250
included in the calculation the monthly payment for rent	EUR 2,775	Not included	
TOTAL	EUR 77,885		EUR 74,130

131. The Sole Arbitrator calculates the value of the Radnicki Contract in **EUR 77,553.38** for the period between 26 June 2023 and 10 January 2025, with the following breakdown:

- (i) **EUR 6,475**: eighteen months and fifteen days of net salary;
- (ii) **EUR 2,775**: eighteen months and fifteen days of rent.
- (iii) **EUR 24,235**: 18 months and 15 days of minimum net salary and special monthly wage (from 26 June 2023 (conclusion of the Radnicki contract) until 10 January (end of the overlapping period). The Sole Arbitrator notes that the Respondent did not consider in his assessment the periods between: (i) 26 and 30 June 2023 (5 days); and (ii) 1 and 10 January 2025 (10 days). The Player was due to receive payment from Radnicki in these two periods, and therefore must be considered in the valuation.
- (iv) **EUR 44,068.38**: special fees to be calculated until 10 January 2025:
 - EUR 10,000 due on 30 June 2023;
 - EUR 10,000 due on 31 December 2023;
 - EUR 8,000 due on 30 June 2024;
 - EUR 10,000 due on 31 October 2024 and
 - EUR 6,068.37, due from 1 November 2024 till 25 February 2025. Both Parties have excluded the period between 11 January and 25 February 2025, as this period is outside of the overlapping period. Therefore, the Sole Arbitrator will consider only an amount of EUR 6,068.37, out of the EUR 10,000 due on 25 February 2025.

132. Based on the above, the Sole Arbitrator decides that the Appellant must pay the amount of **EUR 165,953.59** to the Player as compensation for the wrongful dismissal.
133. The calculation was as follows: the residual value of the Offer at the time of the offer's breach (**EUR 252,666.67**) minus the value of the new contracts for the overlapping period (**EUR 9,159.70** and **EUR 77,553.38**).

v. Interests

134. Finally, the Sole Arbitrator does not find any grounds to amend the FIFA DRC decision with regard to interests. The FIFA DRC condemned the Appellant to pay the Respondent interest as of 1 February 2023, as a compensation for all the amounts the player would have been paid in accordance with the Offer.
135. The Appellant considers that no interest can be due since the date to pay the outstanding amounts is yet to come. The Sole Arbitrator recalls that the obligation to pay compensation exists since the breach occurred. Consequently, the Sole Arbitrator considers that the Offer's dates of payment of the monthly salaries are irrelevant for the determination of the date on which the compensation becomes payable.
136. The Sole Arbitrator decides that the starting date for calculating the interest period corresponds to the date on which the compensation becomes due. Considering the Player is entitled to be compensated since the date of the Offer's breach (*i.e.*, from 1 February 2023), the Club is liable to pay interest thereafter.
137. In view of the above, the Appealed Decision is partially confirmed, and the Player is entitled to receive an amount of **EUR 165,953.59** as compensation for the breach of the Offer, plus the annual interest of 5% as from 1 February 2023 until the date of the effective payment.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Hapoel Tel Aviv FC against the Decision of the FIFA Dispute Resolution Chamber, passed on 22 June 2023 (Decision FPSD-9718), is partially accepted.
2. The Decision of the FIFA Dispute Resolution Chamber passed on 22 June 2023 (Decision FPSD-9718) is confirmed saved for paragraph 2 of the operative part, which shall provide as follows:

*“The Respondent, Hapoel Tel Aviv Football Club, must pay to the Claimant the following amount(s): **EUR 165,953.59** as compensation for wrongful termination plus 5% interest p.a. as from 1 February 2023 until the date of effective payment”.*

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