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

CAS 2024/A/10736 Beijing Guoan Football Club v. Marko Dabro

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark

in the arbitration between

Beijing Guoan Football Club, Beijing, China

Represented by Mr Dong Shuangquan and Ms Zhang Cuiping, Attorneys-at-Law, Great Wall Law Firm, Beijing, China, and Mr Saverio P. Spera and Mr Jaques Blondin, Attorneys-at-Law, SP.IN Law, Zurich, Switzerland

Appellant

and

Marko Dabro, Split, Croatia

Represented by Mr Hrove Raic and Mr Tomislav Kasalo, Attorneys-at-Law, Law Firm Kasalo & Raic Ltd., Split, Croatia

Respondent

I. PARTIES

1. Beijing Guoan Football Club ("Beijing FC" or the "Club" or the "Appellant") is a professional football club based in Beijing, China. The Club is affiliated with the Chinese Football Association (the "CFA"), which in turn is affiliated with the *Fédération Internationale de Football Association* ("FIFA").

2. Mr Marko Dabro (the "Player" or the "Respondent") is a professional football player of Croatian nationality.

3. The Player and the Club are hereinafter collectively referred to as the "Parties", where applicable.

II. FACTUAL BACKGROUND

A. Background facts

4. Below is a summary of the main relevant facts as established on the basis of the Parties' written and oral submissions and the evidence examined in the course of these proceedings. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the award only refers to the submissions and evidence the Sole Arbitrator considers necessary to explain his reasoning.

5. On 1 April 2022, the Player and the Club entered into an EMPLOYMENT CONTRACT FOR PROFESSIONAL FOOTBALL PLAYER (the "Employment Contract") stating, *inter alia*, as follows:

"[…]

ARTICLE 1: Term of the Contract

1. This Contract shall enter into force on 1 April 2022 and shall continue until 31 December 2025.

[…]

ARTICLE 3: Salary and Bonuses

1. The Parties agree to calculate the salary on an annual basis. During the term of the Contract, Party A shall pay Party B the annual salaries as follows:

1) The First calendar year

EUR 1,272,727 (in words: one million two hundred and seventy-two thousand seven hundred and twenty-seven euros) from 1 April 2022 until 31 December 2022 before tax, which shall amount to EUR 700,000 (in words: seven hundred thousand euros) after tax for reference;

2) The second calendar year

EUR 1,527,272 (in words: one million five hundred and twenty-seven thousand two hundred and seventy-two euros) from 1 January 2023 until 31 December 2023 before tax, which shall amount to EUR 840,000 (in words: eight hundred and forty thousand euros) after tax for reference;

3) The third calendar year

EUR 1,527,272 (in words: one million five hundred and twenty-seven thousand two hundred and seventy-two euros) from 1 January 2024 until 31 December 2024 before tax, which shall amount to EUR 840,000 (in words: eight hundred and forty thousand euros) after tax for reference;

4) The fourth calendar year

EUR 1,527,272 (in words: one million five hundred and twenty-seven thousand two hundred and seventy-two euros) from 1 January 2025 until 31 December 2025 before tax, which shall amount to EUR 840,000 (in words: eight hundred and forty thousand euros) after tax for reference;

2. For the first calendar year, Party A shall pay Party B the salary of April in the amount of EUR 140,000 (in words: one hundred and forty thousand euros) after tax on 20 May 2022. Remaining salaries of 2022 in the amount of EUR 560,000 after tax shall be paid to Party B in eight equal monthly installments. Party A shall pay the salary for the last month on the 20th day of every month. In the event the above-mentioned payment due date falls on a statutory holiday, the payment due date shall be extended to the first working day following the holiday.

3. For the second calendar year, the third calendar year and the fourth calendar year, the annual salaries shall be paid to Party B in equal monthly installments. Party A shall pay the salary for the last month on the 20th day of every month. In the event the above-mentioned payment due date falls on a statutory holiday, the payment due date shall be extended to the first working day following the holiday.

[…]

ARTICLE 4: Allowances, holidays and other working conditions

[…]

3. During the term of this Contract, Party B is entitled to a monthly residential allowance in the amount of RMB 13,000 gross and Party A shall provide Party B with pick-up services for training in Beijing.

[…]

ARTICLE 9: Termination of the Contract

1. This Contract may be terminated by mutual agreement between the Parties.

2. Either Party shall be entitled to terminate this Contract with just cause, pursuant to the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP")

[…]

6. Party B is entitled to terminate this Contract by notifying Party A in writing if any of the following events occurs:

6.1 Party A fails to pay salary to Party B for more than two (2) months and fails to remedy such default within 15 (fifteen) days upon receipt of Party B's written notification.

[…]".

6. On 3 February 2023, the Parties and the Latvian club RIGA FC ("Riga FC") agreed on the temporary transfer of the Player from the Appellant to Riga FC (the "Loan Agreement") for the period between 5 February 2023 and 31 December 2023 (the "Loan Period").

7. The Loan Agreement stated, *inter alia*, as follows:

"[…]

1. The Parties agreed that RIGA FC will conclude an employment contract with the Football Player on a temporary basis starting from the 05 of February 2023 till the 31 December 2023 (inclusive) with the right to register the Football Player with the appropriate league (association) and football authority with the monthly salary in an amount of 20 000 Euro net per month Riga FC shall also be solely responsible for the payment to the Player of any salary, bonus, and other benefits as agreed between the Player and FC Riga, plus any associated taxation and mandatory social contributions due thereon.

2. Beijing Guoan FC and the Football Player shall suspend the current contract of employment concluded between Beijing Guoan FC and the Football Player, the suspension will be arranged on the loan period. Accordingly the Football Player is obliged to arrive in the depositions of Beijing Guoan FC on the 1th of January 2024.

3. Parties have agreed that there will be no compensation payable in connection to this transfer.

[…]".

8. On 10 February 2023, the Player and Riga FC signed a Labour Contract valid from 10 February 2023 until 30 November 2023 (the "Riga Contract"), stating, *inter alia*, as follows:

"[…] 2. Financial conditions:

2.1 The Club shall pay fixed Salary to the the [sic] Football-player as follows:

Net 20,000 (twenty thousand) EUR per month after deduction of all taxes

2.2 The Club shall pay an additional bonuses [sic]:

[…]".

9. On 11 February 2023, the Player and the Club signed a Supplementary Agreement (the "Supplementary Agreement") stating, *inter alia*, as follows:

"[…]

As you know, we accept the offer from Riga FC to loan from February to December 2023.

Besides Riga FC pay you 20000 Euro net monthly, our club will pay the difference of your 2023 season salary, which is in total 565,000 Euro net.

[…]".

10. By letter of 13 September 2023, the Player put the Club in default, granting a 10-day time limit to remedy the default, stating, *inter alia*, as follows:

"[…]
2. Pursuant to the documentation I received from the Player, I can confirm the following:
[…]
c) that the Club has failed to pay overdue payables to the Player in total amount of net EUR 376,430.00, broken down as follows:
- January 2023 salary of net EUR 70,000.00, which matured on 20/2/2023, and
- February 2023 salary of net EUR 56,430.00, which matured on 20/3/2023, and
- March 2023 salary of net EUR 50,000.00, which matured on 20/4/2023, and
- April 2023 salary of net EUR 50,000.00, which matured on 20/5/2023, and
- May 2023 salary of net EUR 50,000.00, which matured on 20/6/2023, and
- June 2023 salary of net EUR 50,000.00, which matured on 20/7/2023, and
- July 2023 salary of net EUR 50,000.00, which matured on 20/8/2023.

4. In this context, and while reserving all rights of the Player arising from the Employment contract, the Player kindly asks the Club to remedy its default towards him and to pay him the above specified overdue payables in net total of EUR 376,430.00 (three hundred and seventy-six thousand and four hundred thirty euros), along with the pertinent default interest and all relevant taxes, state contributions and charges on top of all above specified net amounts, all within the next 10 days.

5. Should the Club fail to meet the aforementioned request within the given deadline, then the Player shall be forced to file a claim before the FIFA Football Tribunal against the Club whereas the Mayer shall request the payment of overdue payables in question, as well as the imposition of sporting sanctions against the Club".

11. By email dated 19 September 2023, the Club replied as follows:

"*Thanks for your mail.*

Actually our club is working on a settlement agreement with the player from the agent Mr. Li which the attached is our draft version.

Looking forward to your response".

12. On the same date, the Player reiterated its position stating, *inter alia*, as follows:

"[…]

2/ Without prejudice and while reserving all rights of the Player, arising out of pertinent Employment contract, please note that Mr. Li is not authorised to represent the Player in this dispute which means that even if there was any communication between the Club and Mr. Li regarding this dispute, it has no legal effect whatsoever and shall be disregarded as such.

3/ Notwithstanding the aforementioned and contrary to the claims from Club's email dated 19 September 2023, the Player duly informs the Club that he is not interested in signing the mutual termination agreement of his contractual relationship with the Club.

4/ Consequently, the Player kindly asks the Club once again to execute in full payments of overdue payables specified in the Player's default letter dated 13 September 2023, within the prescribed deadline and, if need be, to exchange correspondence in this matter exclusively with legal representatives of the Player herein".

13. On 11 October 2023, the Club executed a payment in favour of the Player in the amount of EUR 45,000.

14. By letter of 14 December 2023, the Player sent a further default notice (the "Default Letter") to the Club, granting a 15-day time limit to remedy the default, stating, *inter alia*, as follows:

"[…]

2. Pursuant to the documentation I received from the Player, I can confirm the following:

[…]

c. that the Club has failed to pay outstanding remuneration to the Player in net total of EUR 481,430.00 (four hundred and eighty-one thousand and four hundred thirty euros), broken down as follows:
- balance of January 2023 salary of net EUR 25,000.00, which matured on 20/2/2023, and
- February 2023 salary of net EUR 56,430.00, which matured on 20/3/2023, and
- March 2023 salary of net EUR 50,000.00, which matured on 20/4/2023, and
- April 2023 salary of net EUR 50,000.00, which matured on 20/5/2023, and
- May 2023 salary of net EUR 50,000.00, which matured on 20/6/2023, and
- June 2023 salary of net EUR 50,000.00, which matured on 20/7/2023, and
- July 2023 salary of net EUR 50,000.00, which matured on 20/8/2023, and
- August 2023 salary of net EUR 50,000.00, which matured on 20/9/2023,and
- September 2023 salary of net EUR 50,000.00, which matured on 20/10/2023, and
- October 2023 salary of net EUR 50,000.00, which matured on 20/11/2023.

3. On this note, the Player shall state that the aforementioned behavior of the Club clearly constitutes a heavy breach of the Employment contract without just cause in the sense of applicable FIFA Regulations on the Status and Transfer of Players (hereinafter: FIFA RSTP).

4. In this context, and while reserving all rights of the Player arising from the Employment contract, the Player kindly asks the Club to remedy its default towards him and to pay him the

above specified outstanding remuneration in net total of EUR 481,430.00 (four hundred and eighty-one thousand and four hundred thirty euros), along with the pertinent default interest and all relevant taxes, state contributions and surcharges on top of all above specified net amounts, all within the next 15 days.

5. Should the Club fail to meet the aforementioned request within the given deadline, then the Player reserves the right to unilaterally terminate the Employment contract with just cause, and to file a claim before FIFA Football Tribunal against the Club whereas the Player shall request pertinent outstanding remuneration and compensation in accordance with the article 17. of FIFA RSTP, as well as the imposition of sporting sanctions against the Club, all due to the aforementioned severe breaches of the Employment contract committed by the Club".

15. On 20 December 2023, the Club made another payment to the Player in the amount of EUR 158,000.

16. On 2 January 2024, the Player notified the Club that he was unilaterally terminating the Employment Contract (the "Termination Letter"), stating, *inter alia*, as follows:

"1/ I am addressing You again as a legal counsel to my client Mr Marko Dabro, […] (hereinafter: the Player), following the default letter sent by the Player to Beijing Guoan FC Co. Ltd. (hereinafter: the Club) on 14 December 2023.

2/ By the means of the aforementioned correspondence, the Player, through his legal counsel and according to the terms of the Employment Contract for Professional Football Player valid from 1/4/2022 until 31/12/2025 (hereinafter: the Employment contract), i.e. requested from the Club to pay him outstanding remuneration in net total of EUR 481,430.00 (four hundred and eighty-one thousand and four hundred thirty euros), broken down as follows:
- balance of January 2023 salary of net EUR 25,000.00, which matured on 20/2/2023, and
- February 2023 salary of net EUR 56,430.00, which matured on 20/3/2023, and
- March 2023 salary of net EUR 50,000.00, which matured on 20/4/2023, and
- April 2023 salary of net EUR 50,000.00, which matured on 20/5/2023, and
- May 2023 salary of net EUR 50,000.00, which matured on 20/6/2023, and
- June 2023 salary of net EUR 50,000.00, which matured on 20/7/2023, and
- July 2023 salary of net EUR 50,000.00, which matured on 20/8/2023, and
- August 2023 salary of net EUR 50,000.00, which matured on 20/9/2023, and
- September 2023 salary of net EUR 50,000.00, which matured on 20/10/2023, and
- October 2023 salary of net EUR 50,000.00, which matured on 20/11/2023;
along with the pertinent default interest and all relevant taxes, state contributions and surcharges on top of all above specified net amounts, all within 15 days from the date of issuance of the correspondence in question and as specified in the subject correspondence.

3/ However, instead of fully complying with the aforementioned request of the Player specified in the default letter dated 14 December 2023, the Club on 20 December 2023 only executed the payment of an amount of EUR 158,000.00 meaning that the Club failed to fully comply with the above mentioned Player's request, i.e. it failed to pay to the Player outstanding remuneration in net total of EUR 323,430.00, broken down as follows:
- balance of April 2023 salary of net EUR 23,430.00, which matured on 20/5/2023, and
- May 2023 salary of net EUR 50,000.00, which matured on 20/6/2023, and
June 2023 salary of net EUR 50,000.00, which matured on 20/7/2023, and

July 2023 salary of net EUR 50,000.00, which matured on 20/8/2023, and
- August 2023 salary of net EUR 50,000.00, which matured on 20/9/2023, and
- September 2023 salary of net EUR 50,000.00, which matured on 20/10/2023, and
October 2023 salary of net EUR 50,000.00, which matured on 20/11/2023;
along with the pertinent default interest and all relevant taxes, state contributions and surcharges on top of all above specified net amounts.

4/ In addition to the aforementioned, the Club has also failed to pay to the Player November 2023 salary of net EUR 50,000.00, which matured in the meantime (on 20 December 2023) which outstanding sum together with above specified outstanding remuneration in point 3/ herein calculate to total net amount of EUR 373,430.00 (three hundred and seventy-three thousand four hundred and thirty euros) which amount evidently remains due by the Club to the Player.

5/ In view of the foregoing, the Player, through his legal counsel, sends to the Club this letter as a notice of termination of the Employment contract, and informs the Club that he is forced to file a claim to FIFA deciding bodies against the Club and request:
- *Payment the pertinent outstanding remunerations along with the default interest and all relevant taxes, state contributions and surcharges on top of all above specified net amounts, and*
- *Payment of compensation in accordance with article 17. of FIFA Regulations on the Status and Transfer of Players (hereinafter: FIFA RSTP), and*
- *Imposition of sporting sanctions against the Club, all in the light of FIFA RSTP".*

17. By email of 3 January 2024, the Club replied that it paid outstanding salaries until October 2023 and attached a payment receipt in the amount of EUR 272,000. According to the documents on file, this payment was executed on 3 January 2024.

18. On 5 February 2024, the Player signed a new employment contract with the Croatian club NK Varaždin ("Varaždin") (the "New Contract") valid from the said date until 31 May 2026, granting the Player a monthly net salary of EUR 5,500.

B. Proceedings before the FIFA Dispute Resolution Chamber

19. On 11 January 2024, the Player lodged a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC"), submitting that he had terminated the Employment Contract with just cause on 2 January 2024 and requesting the following relief:

"i. to ascertain that the Claimant terminated the Employment contract signed with the Respondent with just cause; and

ii. a) to condemn the Respondent to pay in favor of the Claimant outstanding remuneration of net EUR 175,946.00 (one hundred and seventy-five thousand, nine hundred and forty-six euros) plus RMB 13,838.00, which matured as follows:
- EUR 1,430.00, on 20/10/2023, and
- EUR 50,000.00, on 20/11/2023, and
- EUR 50,000.00, on 20/12/2023, and
- EUR 70,000.00, on 02/01/2024, and
- EUR 4,516.00, on 02/01/2024, and

- RMB 13,838.00, on 02/01/2024; and

b) to condemn the Respondent to pay all relevant taxes, state contributions and surcharges, on top of the above-mentioned net amounts, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent; and

c) to condemn the Respondent to provide the Claimant with the corresponding tax certificates concerning the payment of all the above specified net amounts alongside all the net amounts already paid to the Claimant during the term of the Employment Contract, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent; and

iii. a) to condemn the Respondent to pay in favor of the Claimant compensation of net EUR 1,675,484.00 (one million, six hundred and seventy-five thousand, four hundred and eighty-four euros) and RMB 312,000.00 which matured on 2/1/2024, while at the same time taking into account provisions of Article 17. of FIFA RSTP, within 45 days as from the date of notification of the decision in the present matter to the Respondent; and

b) to condemn the Respondent to pay all relevant taxes, state contributions and surcharges, on top of the above-mentioned net compensation, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent; and

c) to condemn the Respondent to provide the Claimant with the corresponding tax certificates concerning the payment of all the above specified net compensation, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent; and

or alternatively to the points III.a), III. b) and III. c) herein,

d) to condemn the Respondent to pay in favor of the Claimant compensation in total of EUR 3,054,544.00 (three million, fifty-five thousand, five hundred and fortg four euros) and RMB 312,000.00 which matured on 2/1/2024, while at the same time taking into account provisions of Article 17. of FIFA RSTP, within 45 days as from the date of notification of the decision in the present matter to the Respondent; and

iv. into in any event, to condemn the Respondent to pay in favor of the Claimant default interest of 5% per year on the aforementioned amounts starting from the respective date of maturity specified in points II. and Ill. above until the effective date of the payment, within 45 days as from the date of notification of the decision in the matter of the reference to the Respondent; and

v. to impose sporting sanctions against the Respondent, all in the light of FIFA RSTP".

20. In support of his claim, the Player submitted, *inter alia*, that the Club had failed to comply with its financial obligations despite several reminders and default notices, thus leaving the Player no alternative but to terminate the Employment Contract.

21. In its reply to the FIFA DRC, the Club lodged a counterclaim against the Player and his new club, Varaždin, requesting the following relief:

- *"To oblige the Player to pay to the [Club] the compensation for the early unilateral termination of the contract without just cause in the amount of EUR 1,082,000 net as residual value of the employment contract, plus interest at a rate of 5% per annum;*

- *To oblige the player's new club to be jointly and severally liable with the Player for making compensation payments to the [Club];*

- *In any case, should the Club be ordered to assume any financial obligation towards the Player, it should be confirmed whether the Player has already signed contracts with other clubs, such remuneration under a new employment contract shall be considered in the calculation of the amount of compensation".*

22. The Club submitted, *inter alia*, that it was in fact the Player who breached the Employment Contract by his premature termination without just cause since the Employment Contract was suspended during the entire period of the Loan Agreement and the Supplementary Agreement was commenced on flexible terms and did not specify any due dates for the payments to the Player by the Club.

23. In this context, the Club held that the due dates indicated under the Employment Contract would not be applicable to the Supplementary Agreement as it pertained to different agreements between the Parties.

24. In addition, the Club stressed that it executed all payments in a timely manner in line with the terms of the Supplementary Agreement. In this respect, the Club alleged having executed payments in the total amount of EUR 475,000 before the Player's termination of the Employment Contract on 2 January 2024, including the latest payment of EUR 272,000 on 30 December 2023, which was transferred to the Player on 2 January 2024.

25. Accordingly, the Club held having executed all its payments in a timely manner in line with the terms of the Supplementary Agreement and the Club's policies.

26. Finally, the Club stated that the Player failed to return to the Club as supposed.

27. In his response to the Club's counterclaim, the Player initially argued that he was never supposed to return to the Club in December 2023 as alleged by the Club.

28. Moreover, the Player alleged having only received the Club's payment of EUR 272,000 on 3 January 2024, meaning after his termination of the Employment Contract, and further stressed that the Club failed to provide evidence of allegedly having executed the said payment on 30 December 2023.

29. In addition, the Player emphasised that in any case at the time of the termination of the Employment Contract, the outstanding amount (EUR 171,430 + accommodation expenses in the amount of CNY 13,000) corresponded to more than two monthly salaries under either the Employment Contract or the Supplementary Agreement, thus entitling the Player to terminate the Employment Contract and uphold his original requests for relief.

30. In its defensive statement, Varaždin argued having had no role in the Player's decision to terminate the Employment Contract as its first contact with the Player only occurred on 30

January 2024. As such, Varaždin requested to be released from any form for liability, regardless of any findings concerning the Player's just cause.

31. The FIFA DRC initially analysed whether it was competent to deal with the case and found that the March 2023 edition of the Procedural Rules Governing the Football Tribunal (the "Procedural Rules") was applicable.

32. The FIFA DRC further observed that, in accordance with Article 23 (1), as read with Article 22 (1)(b), of the FIFA Regulations of the Status and Transfer of Players (the "FIFA RSTP") (February 2024 edition), it was competent to deal with the matter at stake, which concerns an employment-related dispute of an international dimension.

33. Having established its competence to deal with the matter, the FIFA DRC concluded that since the claim was filed on 11 January 2024, the May 2023 edition of the FIFA RSTP was applicable to the matter at hand as to substance.

34. Moreover, and with reference to the Procedural Rules, the FIFA DRC recalled the basic principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact carries the respective burden of proof.

35. Moving to the substance of the dispute, the FIFA DRC took note of the fact that the Parties were in dispute regarding the existence of outstanding remuneration in favour of the Player under the Supplementary Agreement and the Employment Contract. In particular, it was observed that, in the Club's view, the latter would have been entitled to pay the Player's salary at any time after the Loan Period expired, and the Player would have no just cause to prematurely terminate the Employment Contract on 2 January 2024.

36. In this respect, the FIFA DRC further took note of the Club's allegations according to which the said flexibility in terms of payment would derive from the absence of any indication about the due date for the Player's remuneration in the Supplementary Agreement. The FIFA DRC then observed that, on the contrary, the Player believed that he had just cause to terminate the Employment Contract based on the consistent number of salaries which were outstanding at the time, in line with Article 14bis of the FIFA RSTP.

37. With this in mind, the FIFA DRC then acknowledged that its task was to determine which amounts were effectively outstanding in favour of the Player at the time of termination, if any, and, in the affirmative, whether the Player would have just cause to terminate the Employment Contract based on Article 14bis of the FIFA RSTP.

38. The FIFA DRC then recalled the facts of the case and noted that the due dates stipulated in the Employment Contract was not aligned with the Supplementary Contract, which was silent as to the payment conditions.

39. The FIFA DRC then focused its attention on the Club's argument that it was entitled to pay the Player's remuneration related to the year 2023 after the Loan Period had expired.

40. In this regard, the FIFA DRC noted that the consistency and frequency of the payments executed in favour of the Player during the Loan Period suggested that the remuneration related to the year 2023 was in fact due before the Loan Period expired.

41. Moreover, it was stresses that the Club never objected to the Player's default notices.

42. In addition to the above, the FIFA DRC deemed the connection between the Employment Contract and the Supplementary Agreement to be evident, with the latter apparently serving the sole function of recalibrating the Player's remuneration based on the temporary agreement stipulated with Riga FC.

43. In the FIFA DRC's view, this was the reason why the Parties did not even worry to clarify the criteria adopted for the calculation of the fixed amount of EUR 565,000 in relation to the Loan Period.

44. Likewise, in the FIFA DRC's view, it appeared only rational that, in the absence of any contrary indication, the Parties would implicitly undertake the same terms agreed in the Employment Contract, including the due date for the Player's salaries.

45. Had the Club wanted to arrange a different payment schedule, it should have manifested its will accordingly by inserting a different provision in the Supplementary Agreement. Conversely, the FIFA DRC emphasised that the Club's conduct in conjunction with the lack of further indications under the Supplementary Agreement would have at least generated certain expectations in the Player that his salaries should have been paid, in principle, in a regular manner.

46. As such, the FIFA DRC emphasised that in the case at hand, it was for the Club to prove that it indeed complied with the financial terms of the contract concluded between the Parties, but the FIFA DRC concluded that it could not entertain the Club's thesis according to which the latter would have been entitled to pay the Player's remuneration related to the year 2023 after the end of the relevant Loan Period.

47. Notwithstanding the above, the FIFA DRC remarked that it had yet to establish the degree of delay by the Club in the payment of the Player's relevant remuneration, if any, and whether the said delay would entitle the latter to prematurely terminate the Employment Contract on 2 January 2024.

48. The FIFA DRC then emphasised that in order to rely on Article 14bis of the FIFA RSTP granting just cause for the unilateral termination of a contract with a club, the club must have failed to pay to the player "at least two monthly salaries" on their due dates while having been granted a 15 days' time limit to remedy its default.

49. In this regard, the FIFA DRC held that the Player had provided sufficient evidence for having put the Club in default and for granting the Club a time limit of at least 15 days to remedy its default.

50. In addition, the FIFA DRC noted that the Player, while being on loan with Riga FC, claimed not having received remuneration corresponding to part of the salary due for September 2023 as well as the salaries for October and November 2023 in full from the Club. Furthermore, the Player stated that the Club held additional debts towards the Player in the amount of EUR 272,000 at the time of termination.

51. In this context, the FIFA DRC held that the Club maintained its obligation to pay the Player salaries during the Loan Period, with deduction of the salary received by Riga FC, *i.e.* the Club was obligated to pay the Player a total of EUR 565,000 as the contractual balance between the Riga Contract and the Employment Contract.

52. The FIFA DRC verified its reasoning by calculating the pro-rata value of the Player's remuneration during the Loan Period, highlighting that the amount of EUR 565,000 would indeed correspond to approximately EUR 49,500 per month until 30 November 2023 plus EUR 70,000 as salary for the month of December.

53. Moreover, the FIFA DRC observed that the Player held the view that a total of EUR 373,430 had remained outstanding at the time of the termination or, upon accounting for the Club's payment dated 3 January 2024, an amount of EUR 171,430 [sic] (the Sole Arbitrator finds this amount to be a typo, as the correct amount is EUR 101,430) (i.e. EUR 373,430 – 272,000).

54. In this regard, the FIFA DRC stressed that the contractual due date of the salary for December 2023 would be on 20 January 2024 only and, as such, not outstanding at the time of termination.

55. However, the FIFA DRC then recalled that, based on the aforementioned pro-rata calculation, the outstanding amount would in any case correspond to more than two monthly salaries under the Supplementary Agreement as a total of EUR 101,430 would still remain outstanding even if the relevant payment from the Club of EUR 272,000 had been executed before the time of termination of the Employment Contract.

56. Therefore, the FIFA DRC emphasised that any further speculation regarding the actual due date would be moot. Thus, the FIFA DRC concluded that the Player indeed had just cause to unilaterally terminate the Employment Contract, based on Article 14bis of the FIFA RSTP.

57. As a consequence, the FIFA DRC decided to reject the Club's counterclaim on the basis of lacking legal ground.

58. Consequently, and in accordance with the general legal principle of *pacta sunt servanda*, the FIFA DRC decided that the Club was liable to pay to the Player the outstanding amounts of EUR 171,430 net and CNY 13,000.

59. In addition, considering the Player's request as well as the constant practice of the FIFA DRC in this regard, the FIFA DRC decided that the Club must pay to the Player interest at 5% p.a. on the outstanding amounts as from the respective due dates until the date of effective payment.

60. Having established that the Club was to be held liable for the early termination of the Contract, the FIFA DRC focused its attention on the consequences of such termination and referred to Article 17 (1) of the FIFA RSTP, according to which a party in breach must pay compensation, and noted that no compensation clause was included in the Employment Contract, which meant that the amount of compensation payable by the Club had to be assessed in application of the other parameters set out in Article 17 (1) of the FIFA RSTP.

61. The FIFA DRC then proceeded with the calculation of the monies payable to the Player under the terms of the Employment Contract until its end date and concluded that the Player would have received in total EUR 1,680,000 as remuneration had the Employment Contract been performed until its expiry date, which amount should serve as the basis for the determination of the compensation for breach of contract.

62. Furthermore, the FIFA DRC verified as to whether the Player had signed an employment contract with another club during the relevant period of time, which would have enabled him to reduce his loss of income. According to the constant practice of the FIFA DRC, such remuneration under a new employment contract must be taken into account in the calculation of the amount of compensation for breach of contract in connection with the Player's general obligation to mitigate his damages.

63. In this respect, the FIFA DRC noted that the Player, in February 2023, signed an employment contract with the Croatian club, Varaždin, under which the Player was entitled to a monthly salary of approximately EUR 5,500. Therefore, the FIFA DRC concluded that the Player mitigated his damages in the total amount of EUR 126,500 (23 x EUR 5,500).

64. Subsequently, the FIFA DRC referred to Article 17 (1) (ii) of the FIFA RSTP, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables.

65. In this respect, the FIFA DRC decided to award the amount of additional compensation of EUR 210,000, i.e. three times the monthly remuneration of the Player under the Employment Contract. However, according to Article 17 (1) (ii) of the FIFA RSTP, the overall compensation to a player may never exceed the rest value of the prematurely terminated contract and as such limit the additional compensation to EUR 126,500.

66. Consequently, on account of all the above-mentioned considerations and the specificities of the case at hand as well as the Player's general obligation to mitigate his damages, the FIFA DRC decided to accept the Player's claim and found that the Club must pay the amount of EUR 1,680,000 as compensation for breach of contract in the case at hand.

67. Furthermore, the FIFA DRC decided to award the Player CNY 312,000 (i.e. CNY 13,000 x 24 months) as accommodation expenses based on the relevant Employment Contract.

68. In addition, considering the Player's request coupled with the constant practice of the FIFA DRC in this regard, the FIFA DRC decided that the Club must pay to the Player interest at 5% *p.a.* on the compensation as of 2 January 2024 until the date of effective payment.

69. Finally, the FIFA DRC rejected the Player's request regarding the production of the relevant tax certificates, but highlighted that the sums that are expressed in Euros and which are due by the Club to the Player must be paid net of any tax in accordance with the Employment Contract.

70. Finally, and with reference to Article 24bis (1) and (2) of the FIFA RSTP, the FIFA DRC decided that in the event that the Club should fail to pay the amount due to the Player within 45 days of the notification of the decision, a ban from registering any new players, either

nationally or internationally, for the maximum duration of three entire and consecutive registration periods, should become immediately effective on the Club in accordance with Article 24bis (2) (4) and (7) of the FIFA RSTP. However, such a possible ban will be lifted immediately and prior to its completed payments of the due amounts in accordance with Article 24 (8) of the FIFA RSTP.

71. On 4 April 2024, the FIFA DRC rendered the Appealed Decision and decided that:

"1. The claim of [Marko Dabro] is accepted.

2. [Beijing Guoan FC], must pay to [Marko Dabro]the following amount(s):

- *EUR 171,430 net as outstanding remuneration plus interest p.a. as follows:*
  - *5% interest p.a. over the amount of EUR 1,430 as from 21 October 2023 until the date of effective payment;*
  - *5% interest p.a. over the amount of EUR 50,000 as from 21 November 2023 until the date of effective payment;*
  - *5% interest p.a. over the amount of EUR 50,000 as from 21 December 2023 until the date of effective payment;*
  - *5% interest p.a. over the amount of EUR 70,000 as from 2 January 2024 until the date of effective payment;*

- *CNY 13,000 as outstanding amount plus 5% interest p.a. as from 2 January 2024 until the date of effective payment.*

- *EUR 1,680,000 net as compensation for breach of contract without just cause plus 5% interest p.a. as from 2 January 2024 until the date of effective payment.*

- *CNY 312,000 as compensation for breach of contract without just cause (accommodation expenses) plus 5% interest p.a. as from 2 January 2024 until the date of effective payment.*

3. The counterclaim of [Beijing Guoan FC] is 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/Counterclaimant 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/Counter-Respondent 1 in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.

7. This decision is rendered without costs".

72. On 10 June 2024, the grounds of the Appealed Decision were notified to the Parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

73. On 28 June 2024, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code") against the Appealed Decision.

74. On 8 July 2024, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

75. By letter of 30 July 2024 (the "Correction Letter"), the Appellant wrote as follows to the CAS Court Office:

"*We refer to the abovementioned matter and the Appeal Brief we submitted on 8 July 2024 via currier and email.*

We have noticed a numerical error in Section VI. Par. 67 of the Appeal Brief. The amount "EUR 1,82,000" should be corrected to "EUR 1,082,000". Therefore, Section VI. Par. 67 should read as follows:

"The Appellant requests to order the Player to pay the Appellant EUR 1,082,000 net as residual value of the Employment Contract, plus interest at a rate of 5% per annum".

We apologize for any inconvenience this may have caused and kindly request the correction to be made in the official documents".

76. On 23 September 2024, and within the granted extension of time, the Respondent submitted his Answer in accordance with Article R55 of the CAS Code.

77. On 2 October 2024, the CAS Court Office informed the Parties that, pursuant to Articles R33, R52, R53 and R54 of the CAS Code, the Arbitral Tribunal appointed to hear the appeal was constituted as follows:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark

78. By letter of 4 October 2024, the Parties were informed that the Sole Arbitrator had decided to hold a hearing, and by letter of 9 October 2024, they were informed that the hearing would take place in Lausanne on 5 December 2024.

79. The Parties both signed and returned the Order of Procedure, confirming, *inter alia*, the jurisdiction of the CAS to hear this dispute.

80. On 5 December 2024, a hearing was held at the CAS Court Office in Lausanne, Switzerland.

81. In addition to the Sole Arbitrator and Ms Amelia Moore, Counsel to the CAS, the following persons attended the hearing:

For the Appellant:

Mr Jaques Blondin – Counsel

Mr Saverio P. Spera – Counsel

Mr Dong Shuangquan – Counsel

For the Respondent:

Mr Marko Dabro – Respondent – (via Webex)

Mr Hrove Raic – Counsel

Mr Tomislav Kasalo – Counsel

82. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Sole Arbitrator.

83. The Sole Arbitrator heard the evidence of the Respondent, Mr Marko Dabro. The Parties and the Sole Arbitrator had the opportunity to examine and cross-examine Mr Dabro.

84. The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.

85. After the Parties' final submissions, the Sole Arbitrator closed the hearing. The Sole Arbitrator took into account in his subsequent deliberations all the evidence and arguments presented by the Parties although they may not have been expressly summarised in the present Award.

86. Upon the closure of the hearing, the Parties stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

IV. SUBMISSIONS OF THE PARTIES

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

A. The Appellant

88. In its Appeal Brief and with reference to its subsequent letter of 30 July 2024, the Appellant requests for relief were as follows:

(i) "The Appellant requests [the Appealed Decision] to be deemed null and void;

(ii) The Appellant requests [the Appealed Decision]to be set aside;

(iii) The Appellant requests to stay the execution of [the Appealed Decision] by suspending the payment of the remuneration amounting of EUR 1,851,430 net and CNY 325,000, and the ban from registering new players, either nationally or internationally, as well as the transfer ban;

(iv) The Appellant requests to order the Player to pay the Appellant EUR 1,082,000 net as residual value of the Employment Contract, plus interest at a rate of 5% per annum".

89. The Appellant's submissions, in essence, may be summarised as follows:

- It is undisputed that the Player was on loan with FC Riga during the Loan Period and that an employment relationship was formed between FC Riga and the Player when entering into the Riga Contract.
- During the Loan Period, the Player was not an employee of the Club and the Club did not benefit in any way from the Player's services.
- As such, during the Loan Period, the Player was only registered with FC Riga.
- During the entire Loan Period, and in accordance with the Loan Agreement, the employment relationship between the Parties was suspended.
- Furthermore, and also pursuant to the Loan Agreement, during the Loan Period FC Riga should be "*be solely responsible for the payment to the Player of any salary, bonus, and other benefits as agreed between the Player and FC Riga, plus any associated taxation and mandatory social contributions due thereon".*
- As the Employment Contract was suspended during the entire Loan Period, the Player was not entitled to receive any salary from the Club during this period, and FC Riga was the sole responsible for payment of salary to the Player.
- It is clear from the wording and context of Article 14bis of the FIFA RSTP that it only covers outstanding salary, while the provision is not applicable to other outstanding amounts.
- The Supplementary Agreement signed between the Parties is not an employment contract, and the amount in favour of the Player must not be considered as salaries in the context of Article 14bis of the FIFA RSTP. Instead, the amount it is a subsidy given by the Appellant to the Respondent out of good will and in good faith.
- The Player waited more than seven months to request any alleged outstanding payments from the Club, which indicates that no amounts were due during the Loan Period.

- Waiting more than seven months to request payment of any outstanding amount clearly exceeds any acceptable reflection period, which is why the Player waived his alleged just cause for terminating the Employment Contract.

- Thus, and even if any outstanding amount was not paid on time, the Player was not entitled to unilaterally terminate the Employment Contract in accordance with Article 14bis FIFA RSTP.

- Article 18 par. 1 of the Swiss Code of Obligations ("SCO") states that when assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement.

- Most importantly, as the Supplementary Agreement emphasises the wording "*2023 season*" and "*the amount in total*", it should be understood to mean that the Club enjoys flexibility in terms of the timing of payment.

- The Player's unilateral claim for a monthly instalment therefore lacks contractual basis and should not be supported.

- The full payment of the loan subsidy should only be made in a lump sum after the Loan Period expired. Furthermore, following the Club's practices, if there was no specific payment date, the full payment of the loan subsidy would also be paid after the Loan Period expired. Despite this, the Club had made several early partial payments.

- Moreover, the Player was supposed to return to the Club to participate in training and matches after the expiration of the Loan Agreement by the end of November 2023. However, the Player did not return, indicating his intension to refuse to fulfil his contractual obligations towards the Club, under which circumstances the Club had the right of anticipatory defence and was entitled to withhold the remaining outstanding amount.

- In order to unilaterally terminate an employment contract based on the provision of Article 14bis of the FIFA RSTP, a player is required to send a formal default notice to the club granting the latter at least 15 days to comply with its financial obligations towards the player. However, in the present case, the criteria under Article 14bis of the FIFA RSTP were not met by the Player.

- Given that payment was due on 22 January 2024 and that the Player's contractual relationship with the Appellant was suspended during the Loan Period, the Player was not entitled to send a default notice of termination to the Club until 22 March 2024.

- Thus, the Player did not have just cause to terminate the Employment Contract.

- According to Article 17 (1) (ii) of the FIFA RSTP, in case a player signs a new employment 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 has to be deducted from the residual value of the contract that was terminated early.

- However, in accordance with Article 44 par. 1 of the SCO, 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.

- When calculating the amount due as compensation for damage, the remuneration under a new employment contract must be taken into account, in line with the general obligation to mitigate damages. The duty to mitigate is guided by the general principle of fairness, which requires a player to act in good faith and seek other employment diligently and seriously, with the aim of limiting damages and avoiding unjust enrichment.

- Furthermore, insofar as the duty to mitigate damages is concerned, Article 337c par. 2 of the SCO provides the following: "*The employee must permit a set-off against this amount for what be saved because of the termination if the employment relationship, or what he earned from other work, or what he had intentionally failed to earn".*

- In this case, although the Player signed an employment contract with Varaždin, his monthly salary with this club is only EUR 5,500, compared to his previous monthly salary of EUR 70,000 with the Appellant. This significant disparity raises serious concerns about the Player's intentions and the integrity of his actions.

- The Employment Contract provides that "*During the term of this Contract, [the Player] is entitled to a monthly residential allowance in the amount of RMB 13,000 gross…*".

- While the Player was loaned to FC Riga, it was the obligation of FC Riga to arrange accommodation for the Player. Consequently, the Player was not entitled to this allowance during the period, and there was no outstanding payment of house allowance.

- After the Employment Contract was terminated, the Player will no longer provide services to the Club and will not reside in Beijing. Therefore, the residential allowance will no longer be applicable and should not be paid. As a result, the house allowance or monthly accommodation expenses should not be considered as a part of the residual value of the Employment Contract.

- In any case, and based on the principle of *pacta sunt servanda*, the Player was bound by the terms of the Supplementary Agreement. The Club was not in breach of its payment obligations to the Player pursuant to the Supplementary Agreement

and, therefore the termination of the contractual relationship was consequently made without just cause by the Player.

- As such, the Player must bear the consequences for such unjustified breach of contract as they are established in the FIFA RSTP and must compensate the Club for the damages caused and based on the Employment Contract.

B. The Respondent

90. In his Answer, the Respondent requested the CAS to:

(i) "to reject all reliefs sought by the Appellant in its Requests for Relief from the Appeal Brief, and

(ii) to confirm entirely the challenged FIFA FT Decision dated 4 April 2024, and

(iii) to order the Appellant to also pay all the costs of the proceedings before CAS, and

(v) to order the Appellant to also pay a significant contribution towards the legal fees and other expenses incurred by the Respondent in connection with these proceedings before CAS of at least CHF 15,000.00".

91. The Respondent's submissions, in essence, may be summarised as follows:

- Pursuant to the FIFA RSTP, the Club and the Player were free to define in writing their contractual obligations during the Loan Period.

- In this regard, the Club undertook to pay to the Player the total balance of salary for the season 2023 as the Supplementary Agreement states: "*Besides Riga FC pay you 20000 Euro net monthly, our club will pay the difference of your 2023 season salary, which is in total 565,000 Euro net".*

- As such, the Club clearly undertook to pay the Player, as a professional, the balance of salary mentioned during the Loan Period, and such an obligation of the Club was not suspended.

- The provision in the Loan Agreement pursuant to which "*Riga FC shall also be solely responsible for the payment to the Player of any salary, bonus, and other benefits as agreed between the Player and FC Riga, plus any associated taxation and mandatory social contributions due thereon*" referred exclusively to the contractual relationship between Riga FC and the Player and the payment obligation on Riga FC as set out in the Loan Agreement.

- In other words, the said provision in the Loan Agreement did not have any effect on the obligations on the Club agreed between the Parties in the Supplementary Agreement.

- In fact, the Club expressly stated in the Supplementary Agreement that it would pay the difference of the Player's salary besides the amount the Player would receive from Riga FC.

- The provision of the Loan Agreement which refers to the suspension of the Employment Contract during the Loan Period is completely irrelevant in the context of the Club's financial obligations towards the Player given that the Parties along with the Loan Agreement also concluded the Supplementary Agreement, under which they clearly agreed, *inter alia*, that the Club should pay to the Player the balance of salary for the 2023 season as mentioned therein.

- Moreover, the Club's submission that the agreed amount in the Supplementary Agreement was to be considered as a subsidy instead of a salary must be rejected.

- Actually, the Supplementary Agreement, which was drafted by the Club, clearly states that the Club "*will pay the difference of your 2023 season salary*", thus underlining that also the Club considered it to be a part of the Player's salary.

- Moreover, in the light of the principles of *"contra proferentem"* and *"in dubio contra stipulatorem",* any potential ambiguity in the Supplementary Agreement must be interpreted against the Club, which drafted the said agreement, and in favour of the Player.

- In any event, it is irrelevant how the said sum was titled as it is clear that it is an unconditional payment due to the Player and, as such, always falls within the scope of the Article 14bis of the FIFA RSTP.

- In this regard, the Appealed Decision was right in stating that based, *inter alia*, on the connection between the Employments Contract and the Supplementary Agreement and in the absence of any contrary indication, the Parties would implicitly undertake the same payment terms as agreed in the Employment Contract, including the due date for the Player's salary.

- If the Club wanted to arrange for a different payments schedule, it should have manifested its will accordingly by inserting a different provision in the Supplementary Agreement.

- Moreover, the Club never disputed its contractual outstanding payments towards the Player in its replies to Player when being put in default by the latter.

- On the contrary, the Club actually admitted its due payment obligations by executing its payments to the Player on 11 October 2023 and 21 December 2023 in the total amount of EUR 158,000.

- As such, and although the Supplementary Agreement *per se* does not specify the due date(s) of payment of the Player's salary during the Loan Period, it can be easily concluded that the Club undertook to continue paying his monthly salary during the Loan Period as it is clearly stated that it "...*will pay the difference of*

your 2023 season salary..", which can then only be related to the maturity dates already set out in the Employment Contract as otherwise if the Parties had wanted to arrange for a different payment schedule, they would surely have manifested their will accordingly by inserting a different provision in the Supplementary Agreement.

- Moreover, the Player duly put the Club in default in accordance with the FIFA RSTP before terminating the Employment Contract.

- The Player was only obliged to return to the Club on 1 January 2024.

- Already based on that, the Club's argument that it was entitled to withhold its payment to the Player due to his alleged late return must be dismissed.

- With regard to the outstanding payments, on 14 December 2023, *i.e.* at the moment when the Player forwarded the Default Letter to the Club, the total amount of net EUR 481,430.00 was outstanding to the Player (corresponding to the period as from January 2023 until October 2023).

- Since the Club, following the Player's Default Letter, only executed payment of the amount of EUR 158,000.00 on 20 December 2023, it is evident that the Club did not comply in full with its financial obligations towards the Player within the given deadline, as it failed to pay in full the outstanding remuneration requested in the said Default Letter.

- The Club's payment of EUR 272,000 on 3 January 2024 was only executed after having received the Termination Letter from the Player.

- But even if it would be wrongly deemed that the Player received the payment of EUR 272,000.00 before he sent the Termination Letter, thus terminating the employment relationship, the Club's executed payment of EUR 158,000.00 on 20 December 2023 and of EUR 272,000.00, *i.e.* a total amount of EUR 430,000.00), clearly showcases that the Club did not comply in full with its payment obligations to the Player as it failed to pay in full the outstanding remuneration requested in the said Default Letter (instead of payment of net EUR 481,430.00, the Club only paid EUR 430,000.00), along with the outstanding remuneration for November 2023 which matured in the meantime, on 20 December 2023.

- Finally, in its email dated 3 January 2024, the Club stipulated that it paid its debts towards the Player for the period until October 2023, which means that it confirmed that it did not remedy its defaults towards the Player specified in the Default Letter and did not fully comply with its obligations from the Employment Contract.

- Pursuant to Article 14bis of the FIFA RSTP: "*In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has*

put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s)".

- As such, and having been previously been invited in writing by the Player to do so, the Club did not fully comply with its financial obligations arising from the employment relationship, which is why the Player had just cause to unilaterally terminate the Employment Contract in accordance with the said article.

- Moreover, and for the sake of good order, it must be added that the Player had just cause to terminate the Employment Contract also based on Article 14 of the FIFA RSTP.

- When the Player sent its final Default Letter, the Club was in default of the Player's salary for almost an entire year and such behaviour of the Club is completely unacceptable as it jeopardised the Player's financial stability, and thus while taking the overall circumstances of this case into account, even if one were to wrongly conclude that the prerequisites from Article 14bis of the FIFA RSTP were not met in this matter (which is obviously not the case), the Player surely had just cause to terminate the Employment Contract with the Club also based on Article 14 of the FIFA RSTP.

- With regard to the consequences of the Club's breach of contract and the monthly allowances due to the Player, it is stated in the Employment Contract that: "*During the term of this Contract, [the Player) is entitled to a monthly residential allowance in the amount of RMB 13,000 gross…"*

- This means that the Parties obviously agreed on a fixed amount of monthly rental costs, which is just another remuneration due to the Player and in accordance with the well-established CAS jurisprudence, as a fixed rental remuneration is always included in the compensation when a football club breaches the employment contract of a player, meaning that the Club's allegations in this regard lack any basis whatsoever and shall be disregarded.

- With regard to the compensation, the Appealed Decision rightfully awarded the Player compensation in accordance with the applicable rules.

- Moreover, the submission by the Club that the Player deliberately signed with his new club a contract at a lower salary in order to manipulate the calculation of the mitigated compensation must be rejected since the salary included in the new contract is in fact the Player's correct salary pursuant to his new employment relationship.

- Thus, and in addition to the outstanding remuneration awarded to him in the Appealed Decision, the Player is clearly also entitled to a compensation for breach of contract as rightfully calculated and awarded by FIFA.

V. JURISDICTION AND ADMISSIBILITY

92. The present arbitration is governed by Chapter 12 of the Swiss Private International Law Act ("PILA"), which provides in Article 186 (1) that the Sole Arbitrator is entitled to rule on his jurisdiction ("*Kompetenz-Kompetenz*").

93. Article R47 of the CAS Code reads, *inter alia*, as follows:

> "*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".*

94. Article 57 (1) of the FIFA Statutes reads:

> "*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".*

95. Furthermore, it follows from Clause 11 (2) of the Employment Contract that "*If the dispute between the Parties cannot be resolved by negotiation within the above-mentioned time limit, the Parties expressly waive the right to bring the dispute before the domestic courts of any country and agree to submit the dispute to the competent dispute resolution body of FIFA. Any party dissatisfied with a decision made by the competent dispute resolution body of FIFA is entitled to appeal to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland".*

96. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, and the Parties confirmed the CAS jurisdiction when signing the Order of Procedure.

97. With regard to admissibility, Article R49 of the CAS Code provides, *inter alia*, 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. […]"*,

and as already set out above, it follows from Article 57 (1) of the FIFA Statutes that appeals filed against final decisions passed by FIFA's legal bodies must be lodged with the CAS within 21 days of receipt of the decision in question.

98. The grounds of the Appealed Decision were notified to the Appellant on 10 June 2024, and the Appellant's Statement of Appeal was lodged on 28 June 2024, *i.e.* within the statutory time limit of 21 days set forth in Article R49 of the CAS Code and in Article 57 of the FIFA Statutes, which is not disputed.

99. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

100. It follows that the appeal of the Appealed Decision is admissible and that the CAS has jurisdiction to decide on it.

VI. APPLICABLE LAW

101. 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".*

102. Article 56 par. 2 of the FIFA Statutes determines the following:

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

103. Furthermore, it follows from Clause 11 (3) of the Employment Contract that "*This Contract shall be governed by the FIFA Regulations".*

104. Based on the above, and with reference to the filed submissions, the Sole Arbitrator is satisfied that the various regulations of FIFA are primarily applicable and that Swiss law is subsidiarily applicable should the need arise to fill a possible gap in the various regulations of FIFA.

VII. PROCEDURAL ISSUES

105. The Sole Arbitrator notes that several procedural issues were raised by the Respondent in the course of these proceedings.

106. The Respondent submitted, *inter alia*, that it was only at the hearing that the Claimant for the first time raised the issues of i) "reflection time" and ii) the principle of good faith, thereby breaching Article R56 of the CAS Code.

107. The Sole Arbitrator notes in this regard that he does not find it necessary to decide on whether these arguments should be formally disregarded with reference to the said provision for the very reason that he does not find them decisive for the dispute.

108. Moreover, and for the sake of good order, the Sole Arbitrator notes that the Club's Correction Letter is not in conflict with Article R56 of the CAS Code as its content only intends to correct a clear and obvious typo in the Appeal Brief.

VIII. Merits

109. Initially, the Sole Arbitrator notes that the factual circumstances pertaining to this matter are for the most parts undisputed, including the following elements which the Sole Arbitrator finds specifically relevant:

- Pursuant to the Employment Contract, valid from 1 April 2022 until 31 December 2025, the Player was, during the 2023, 2024 and 2025 seasons, entitled to receive from the Club a monthly salary of EUR 70,000 net, payable on the 20th day of the following month.

- Moreover, and also pursuant to the Employment Contract, the Player was entitled to "*a monthly residential allowance in the amount of RMB 13,000 gross*".

- Pursuant to the Loan Agreement of 3 February 2023, the Player was loaned to Riga FC during the Loan Period from 5 February 2023 until 31 December 2023, and pursuant to the Riga Contract of 10 February 2023, according to which the Player was employed by the said club from 10 February 2023 until 30 November 2023, the Player was entitled to receive a monthly salary of EUR 20,000 net from FC Riga during this period.

- On 11 February 2023, and as a consequence of the Player's loan to FC Riga, the Parties signed the Supplementary Agreement, which states as follows:

  "*As you know, we accept the offer from Riga FC to loan from February to December 2023.*

  Besides Riga FC pay you 20000 Euro net monthly, our club will pay the difference of your 2023 season salary, which is in total 565,000 Euro net".

- By letter of 13 September 2023, the Player put the Club in default, stating that the Club had failed to pay the Player the total amount of EUR 376,430, which, according to the Player, included his January 2023 salary (in full) and his February 2023 salary (in part) pursuant to the Employment Contract and the salaries for March, April, May, June and July 2023 pursuant to the Supplementary Agreement.

- On 11 October 2023, the Club executed a payment in favour of the Player in the amount of EUR 45,000.

- On 14 December 2023, the Player forwarded the Default Letter to the Club granting the latter a 15-day limit to pay the alleged outstanding amount of EUR 481,430, broken down as follows:

  "*- balance of January 2023 salary of net EUR 25,000.00, which matured on 20/2/2023, and*
  - February 2023 salary of net EUR 56,430.00, which matured on 20/3/2023, and
  - March 2023 salary of net EUR 50,000.00, which matured on 20/4/2023, and
  - April 2023 salary of net EUR 50,000.00, which matured on 20/5/2023, and
  - May 2023 salary of net EUR 50,000.00, which matured on 20/6/2023, and
  - June 2023 salary of net EUR 50,000.00, which matured on 20/7/2023, and
  - July 2023 salary of net EUR 50,000.00, which matured on 20/8/2023, and
  - August 2023 salary of net EUR 50,000.00, which matured on 20/9/2023,and
  - September 2023 salary of net EUR 50,000.00, which matured on 20/10/2023, and
  - October 2023 salary of net EUR 50,000.00, which matured on 20/11/2023".

- On 20 December 2023, the Club executed another payment in favour of the Player in the amount of EUR 158,000.

- By Termination Letter of 2 January 2024 to the Club, the Player terminated the Parties' employment relationship, stating that the Club was still in default regarding the due amount of EUR 323,430, broken down as follows

  "*- balance of April 2023 salary of net EUR 23,430.00, which matured on 20/5/2023, and*
  - May 2023 salary of net EUR 50,000.00, which matured on 20/6/2023, and
  - June 2023 salary of net EUR 50,000.00, which matured on 20/7/2023, and
  - July 2023 salary of net EUR 50,000.00, which matured on 20/8/2023, and
  - August 2023 salary of net EUR 50,000.00, which matured on 20/9/2023, and
  - September 2023 salary of net EUR 50,000.00, which matured on 20/10/2023, and
  - October 2023 salary of net EUR 50,000.00, which matured on 20/11/2023;"

  and further stating that the Club was now also in default regarding the November 2023 salary pursuant to the Supplementary Agreement in the amount of EUR 50,000 net.

- On 3 January 2023, the Club executed another payment in favour of the Player in the amount of EUR 272,000, stating that it had now paid the outstanding salary until October 2023. According to the Club, this payment was made already on 2 January 2024.

- Finally, on 5 February 2024, the Player signed his New Contract with Varaždin.

110. While the Parties agree that pursuant to the Supplementary Agreement, the Player was entitled to receive the amount of EUR 565,000 net from the Club covering the Loan Period, the Parties disagree on whether the Player had just cause to terminate their employment relationship on 2 January 2024 as a consequence of the Club's failure to pay the said amount divided into monthly payments during the Loan Period (as submitted by the Player) and on whether the said amount in any case is to be considered an employment-related salary to the Player or as subsidy to the Player from the Club.

111. Thus, the main issues to be resolved by the Sole Arbitrator are:

A) Did the Player have just cause to terminate the Employment Contract on 2 January 2024, and, in any case,

B) What are the financial consequences of the Player's termination of the Employment Contract, if any?

A) Did the Player have just cause to terminate the Employment Contract on 2 January 2024?

112. To reach a decision on the issue whether the Player had just cause to terminate the Contract on 2 January 2024, the Sole Arbitrator has conducted an in-depth analysis of the facts of the case and the information and evidence gathered during the proceedings, including the information and evidence gathered during the proceedings before FIFA.

113. Initially, the Sole Arbitrator notes that the Player submits that, on 2 January 2024, the Club was in default of its payments of EUR 481,430 to the Player pursuant to the Supplementary Agreement and that the Club had been duly notified about the consequences of not fulfilling its payments obligations, and the Player therefore had just

cause to terminate the employment relationship in accordance with Articles 14 and 14bis of the FIFA RSTP.

114. The Club, on the other hand, submits that the Player did not have just cause for the termination since, *inter alia*, the said amount had not yet fallen due, and the amount payable to the Player pursuant to the Supplementary Agreement is not a salary in connection with the Parties' employment relationship, which relationship, in any case, was suspended during the Loan Period and since the Default Letter did not fulfil the formal and legal requirements for putting the Club in default.

115. With regard to the contractual and employment-related relationship between the Parties during the Lon Period, the Sole Arbitrator initially notes that Article 10 of the FIFA RSTP states, *inter alia*, as follows:

"Loan of professionals
1. A professional may be loaned for a predetermined period by their club ("former club") to another club ("new club") on the basis of a written agreement. The following rules apply to the loan of professionals:

a) The clubs shall conclude a written agreement defining the terms of the loan ("loan agreement"), in particular, its duration and financial conditions. The professional may also be a party to the loan agreement.

b) The professional and the new club shall sign a contract covering the duration of the loan. This contract shall acknowledge that the professional is on loan.

c) During the agreed duration of the loan, the contractual obligations between the professional and the former club shall be suspended unless otherwise agreed in writing.
[…]".

116. Furthermore, in the Loan Agreement, the Parties and FC Riga agreed, *inter alia*, that: "*Beijing Guoan FC and the Football Player shall suspend the current contract of employment concluded between Beijing Guoan FC and the Football Player, the suspension will be arranged on the loan period. Accordingly the Football Player is obliged to arrive in the depositions of Beijing Guoan FC on the 1th of January 2024.*

117. As such, the Sole Arbitrator appreciates that, as a starting point, the Employment Agreement was suspended during the Loan Period and the Player was not to be considered an employee of the Club during this period.

118. However, and in direct connection with the loan arrangement, the Parties also entered into the Supplementary Agreement, according to which the Club obliged itself to pay in favour of the Player "*the difference of [his] 2023 season salary, which is in total 565,000 Euro net".*

119. The Sole Arbitrator notes in this regard that it is undisputed that the amount of EUR 565,000 is in all essence equal to the difference between the Player's salary

pursuant to the Employment Agreement and his salary pursuant to the Riga Contract (10 x EUR 49,500 (February – November) + 1 x 70,000 (December)).

120. As such, and even if the Employment Agreement basically was suspended during the Loan Period, the Sole Arbitrator finds that the Parties were continuously under contract with each other during this period.

121. The Sole Arbitrator notes in this regard that Article 13 of the FIFA RSTP defends the principle of contractual stability, stating as follows:

"*A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement".*

122. However, Articles 14 and 14bis of the FIFA RSTP read, *inter alia*, as follows:

"*Article 14 Terminating a contract with just cause*

1. 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.

2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause.

Article 14bis Terminating a contract with just cause for outstanding salaries

1. In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). […]

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

[…]".

123. Under Swiss law, good cause exists whenever the terminating party cannot be expected in good faith to continue the employment relationship (Article 337 par. 2 of the SCO), and in accordance with CAS jurisprudence, only material breaches of a contract can possibly be considered just cause for the termination of an employment contract (CAS 2013/A/3091).

124. Based on the facts of the case and the Parties' submissions, the Sole Arbitrator finds that it is up to the Club to discharge the burden of proof to establish that it had in fact

fulfilled its payment obligations towards the Player at the time of the Player's termination thereof. Furthermore, and depending on whether/to what extent the Club has discharged this burden of proof, the Sole Arbitrator finds that it is eventually up to the Player to discharge the burden of proof to establish that he did in fact have just cause to terminate the employment relationship.

125. In doing so, the Sole Arbitrator adheres to the principle established by CAS jurisprudence that "*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (..). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence" (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46; and CAS 2009/A/1975, paras. 71ff)*".

126. However, the Sole Arbitrator finds that the Club has failed to adequately discharge its burden of proof to establish that it had in fact fulfilled its payment obligations towards the Player at the time of the Player's termination.

127. In this regard, the Sole Arbitrator initially notes that the Club does not dispute that pursuant to the Supplementary Agreement, the amount of EUR 565,000 net is to be paid to the Player concerning the Loan Period, however, submitting that this amount only fell due by the end of December 2023 when the Loan Period, pursuant to the Loan Agreement, expired.

128. As it is not disputed that the Supplementary Agreement does not include any provision regarding the due date(s) of such payment(s), the Sole Arbitrator finds that the relevant due date(s) must be found through interpretation of the said agreement.

129. Under Swiss law, and as confirmed by the CAS (e.g. CAS 2017/A/5172), the principles on contract interpretation are to be found in Article 18 par. 1 of the SCO, which is based on the assumption that the parties have concluded a contract and, in principle, do not dispute its effectiveness but rather the content of the agreement reached. In that case, Article 18 par. 1 of the SCO provides that the content of the agreement must be construed according to the true intentions of the parties. Thus, the parties' subjective will has priority over any contrary declaration in the text of the contract. In case a common subjective will of the parties cannot be ascertained, the contents of the contract must be determined by application of the principle of mutual trust, *i.e.* by seeking, in accordance with the rules of good faith, the meaning the parties could and should have given to their respective declarations.

130. In this regard, the Sole Arbitrator initially notes that the Supplementary Agreement explicitly refers to "*the difference of your 2023 season salary"*, thus referring to the salary set out in the Employment Agreement, and that pursuant to Clause 3(1) and (3) and of the said Agreement *"The Parties agree to calculate the salary on an annual basis"* and "*For the second calendar year, the third calendar year and the fourth*

calendar year, the annual salaries shall be paid to [the Player] in equal monthly installments".

131. With these provisions in mind, the Sole Arbitrator finds that it would have been diligent of the Club to specifically insert a clause regarding an alternative due date if this was in fact the Club's understanding of the Parties agreement, also noting that the Supplementary Agreement was drafted by the Club.

132. Moreover, the Sole Arbitrator notes that the Club never objected to the monthly due dates referred to in the default letters forwarded by the Player during the Loan Period, and what is more, the Club did in fact pay a substantial part of the said amount to the Player during in the Loan Period.

133. Finally, the Sole Arbitrator appreciates that the Player, during the hearing, explained that he discussed the issue of payment terms with the Club and was reassured that he was to be paid every month.

134. Based, *inter alia*, on these circumstances, and even if the Club submits that it was never its intention, the Sole Arbitrator finds that in application of the principle of mutual trust, *i.e.* by seeking, in accordance with the rules of good faith, the meaning the parties could and should have given to their respective declarations, the Supplementary Agreement must be construed to have as a consequence that the "*difference of your 2023 season salary"* was to be paid on a monthly basis under the application of the same terms of payments as agreed on in the Employment Agreement.

135. Based on that, and since it is not disputed that on 14 December 2023, when the Player forwarded the Default Letter, the Club had only paid the EUR 45,000 to the Player for the 2023 season, the Sole Arbitrator finds that the Club on that date was in default in the amount of EUR 481,430 as broken down in the Default Letter.

136. It is not disputed that the Club executed a payment in favour of the Player in the amount of EUR 158,000 on 20 December 2023, but the Parties are in dispute regarding when the Club's additional payment of EUR 272,000 was actually made.

137. Based on the evidence on file, specifically the confirmation of payment of the said amount which document was only forwarded to the Player on 3 January 2024, the Sole Arbitrator does not find that the Club has discharged its burden of proof to establish that it had in fact fulfilled its payment obligations towards the Player at the time of the Player's termination on 2 January 2024.

138. On the contrary, the Sole Arbitrator finds that the Club had failed to pay the amount of EUR 323,430 out of the original amount set out in the Default Letter at the time when it received the Termination Letter.

139. Based on that, the Sole Arbitrator has to decide whether the Player had just cause to terminate the Employment Contract by taking into consideration the submissions by the Club that the Default Letter did not fulfil the requirements set out in Article 14bis of the FIFA RSTP.

140. In this regard, the Sole Arbitrator initially notes that he finds that both the amount of EUR 481,430 which was outstanding on the date of the Default Letter and the amount of EUR 323,430, which was not duly paid by the Club on the date of termination, corresponds to "*at least two monthly salaries"*, as required in Article 14bis of the FIFA RSTP.

141. In this regard, the Sole Arbitrator cannot uphold the Club's submission that the amount is not to be considered a "salary", not least since the Supplementary Agreement clearly defines it as "*the difference of your 2023 season salary"* and since the intention was to fill the gap between the salaries payable pursuant to the Employment Agreement and the Riga Contract.

142. Moreover, and based on the Sole Arbitrator's finding regarding the payment terms applicable to the Supplementary Agreement, the Sole Arbitrator also dismisses the Club's submission that the Default Letter was forwarded prematurely.

143. Furthermore, and for the sake of good order, the Sole Arbitrator finds that the fact the Player only forwarded his first default letter to the Club on 13 September 2023 does not have as a consequence that the Player had waived his right to subsequently terminate the employment relationship due to the Club's breach of its payment obligations in a timely manner, and the Sole Arbitrator similarly finds that the Player did not act in bad faith towards the Club.

144. In addition, the Sole Arbitrator does not accept the argument submitted by the Club that it was entitled to withhold the remaining outstanding amount due to the Player's late return to the Club for the mere reason that, pursuant to the Loan Agreement, the Player was only to return to the Club by the beginning of January 2024 when the Loan Period as set out in the Loan Agreement had expired.

145. Finally, and since the Sole Arbitrator finds that the Supplementary Agreement is nothing more than, and is also labelled itself as, a supplement to the Employment Agreement, thus regulating the Parties employment relationship in a supplementary manner, the Sole Arbitrator finds no reason why the Player should not have just cause to terminate the Employment Agreement based on the content of the Default Letter and the circumstances of the case.

146. As such, the Sole Arbitrator finds that the prerequisites of the application of Article 14bis of the FIFA RSTP are met in order to consider that the Player had just cause to terminate the Employment Contract as it is found that the Club was in breach of its contractual obligations to the Player, that the Club had been duly warned about the possible consequences in accordance with Article 14bis of the FIFA RSTP and that the Player therefore had just cause to terminate the Contract on 2 January 2024.

B) What are the financial consequences of the Player's termination of the Employment Contract, if any?

147. The Sole Arbitrator notes that since the Parties' contractual relationship was terminated with just cause by the Player, the Sole Arbitrator must address (i) the Player's

claim for payment of the outstanding remuneration etc. and (ii) the Player's claim for compensation for breach of contract.

148. With regard to the Player's claim for payment of the outstanding remuneration, and in view of the fact that it is undisputed that the Player fulfilled his obligations under the Parties' contractual relationship until the termination date and in accordance with the general principle of *pacta sunt servanda*, the Sole Arbitrator finds that the Club should have fulfilled its contractual obligations to the Player until the date of termination of their contractual relationship on 2 January 2024.

149. The Sole Arbitrator notes in this regard that the Club does not appear to dispute the calculation of the outstanding remuneration as set out in the Appealed Decision and that, based on his own analysis, he sees no reason to deviate from the Appealed Decision in this regard.

150. With regard to the Player's claim for compensation for breach of contract, and since the Club is held liable for the early termination of the Parties' contractual relationship due to its breach of contract, the Sole Arbitrator finds that the Player is entitled, subject to Article 17 (1) of the FIFA RSTP, to receive financial compensation for breach of contract.

151. Article 17 (1) of the FIFA RSTP states, *inter alia*, as follows:

"***Consequences of terminating a contract without just cause***

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:

i. In case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.

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 a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract.

iii. Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in the points i. and ii. above. The terms of such an agreement shall prevail.
[…]".

152. With reference to the said provision, the Sole Arbitrator finds it undisputed i) that no agreement was concluded between the Parties on the amount of compensation payable in the event of breach of contract, ii) that the Player for the remaining period of the Employment Contract would have been entitled to receive a salary of EUR 1,680,000 from the Club and iii) that the Player, on 5 February 2024, and thus after the termination of the contractual relationship with the Club, signed the New Contract with Varaždin valid from the said date until 31 May 2026, granting the Player a monthly net salary of EUR 5,500.

153. Initially, the Sole Arbitrator notes, in consistency with the well-established CAS jurisprudence, that the injured party is entitled to a whole reparation of the damage suffered according to the principle of "*positive interest*", under which compensation for breach must be aimed at reinstating the injured party to the position it would have been in had the contract been performed until its expiry (CAS 2012/A/2698; CAS 2008/A/1447).

154. Moreover, the Sole Arbitrator observes that Article 337c par. 1 and 2 of the SCO provides the following: "*(1) Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration. (2) Such damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work*".

155. In view of the above, the Sole Arbitrator is satisfied to note that the Player has the right to have his compensation determined under the provisions of Article 17 (1) of the FIFA RSTP in the light of the principle of "*positive interest*" as specified above and with due consideration to the duty to mitigate damages according to Swiss law, which is consistent with CAS jurisprudence (CAS 2005/A/909-910-911; CAS 2005/A/801; CAS 2004/A/587).

156. The Sole Arbitrator notes that the FIFA DRC reduced the undisputed remaining amount due to the Player pursuant to the Employment Contract for the remaining contractual period in the amount of EUR 1,680,000 by deduction of the Player's salary under the New Contract during the same period, *i.e.* EUR 126,500.

157. In this regard, the Club submits that it appears that the Player violated his duty to mitigate damages since the monthly salary pursuant to the New Contract was considerably lower than his monthly salary pursuant to the Employment Contract.

158. However, the Sole Arbitrator is not persuaded by this argument. According to CAS jurisprudence, the duty to mitigate damages must be regarded in accordance with the general principle of fairness, which implies that, after a breach by a club, a player must act in good faith and seek for other employment, showing diligence and seriousness, with the overall aim of limiting the damages deriving from the breach and avoiding that a possible breach committed by the club could turn into an unjust enrichment for him. Furthermore, the duty to mitigate should not be considered satisfied when, for example, a player deliberately fails to search for a new club or unreasonably refuses to sign a satisfying employment contract, or when, having different options, the player deliberately accepts to sign a contract with worse financial conditions, in the absence of any valid reason to do so. However, the circumstance that a player received a higher remuneration under his former contract than he will receive under his new contract is not in itself sufficient to mean automatically that the compensation payable from his former club has to be reduced in the event that the new contract does not pay the player just as well as the original contract did (CAS 2018/A/6029, para 120-121).

159. Based on the above, and on the circumstances of this case, the Sole Arbitrator finds that the Club has failed to fulfil its burden of proof with regard to the Player's alleged violation of the duty to mitigate his damages.

160. The same goes for the Club's submission that Article 44 (1) of the SCO should be applicable since the Club has not in any manner proven or even substantially indicated in which regard the Player allegedly consented to the harmful act or helped give rise to or compound the damage or otherwise exacerbated the position of the Club in this regard.

161. With regard to the "*monthly residential allowance in the amount of RBM 13,000 gross*" as agreed upon in the Employment Agreement, the Sole Arbitrator notes that the Club, on the one hand, submits that since the Player will no longer reside in Beijing following the termination of the employment relationship, he will no longer be entitled to receive the monthly residential allowance, which therefore should not be considered as a part of the remaining value of the Employment Contract.

162. The Player, on the other hand, submits that the fixed residential allowance is to be considered as a part of the agreed salary, and this must be considered as a part of the remaining value of the Employment Contract.

163. The Sole Arbitrator notes in this regard that the Parties agreed on a fixed amount, which was to be paid monthly to the Player during the entire contract period, without making such payments conditional upon any actually residential cost incurring on the Player.

164. As such, and without any other indications regarding the ratio behind the Parties agreement in this regard, the Sole Arbitrator finds that the "*monthly residential allowance*" should simply be considered as a part of the agreed remuneration payable to the Player

pursuant to Employment Contract and that the agreed monthly amount must also be included in the calculation of the remaining value of the Employment Contract.

165. Further, the Sole Arbitrator sees no reason to deviate from the Appealed Decision concerning the additional compensation awarded to the Player pursuant to Article 17 (1) (ii) of the FIFA RSTP, *i.e.* EUR 126,500, subject to the early termination of the contractual relationship due to overdue payables.

166. Based on the circumstances of this particular case, the Sole Arbitrator agrees with the FIFA DRC in the calculation of the amount of compensation granted to the Player in the Appealed Decision for the Club's breach of contract.

167. Finally, the Sole Arbitrator sees no reason to deviate from the Appealed Decision concerning the interest rate and, therefore, confirms that the Player is entitled to receive interest at the rate of 5% *p.a.* of the said amounts as set out in the Appealed Decision.

IX. COSTS

(…)

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Beijing Guoan Football Club on 28 June 2024 against the decision of the FIFA Dispute Resolution Chamber issued on 4 April 2024 is dismissed.

2. The decision of the FIFA Dispute Resolution Chamber issued on 4 April 2024 is confirmed.

3. (…).

4. (…).

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

Seat of Arbitration: Lausanne, Switzerland
Date: 25 March 2025

THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger
Sole Arbitrator