CAS 2023/A/9686 FC Krasnodar v. Erik Botheim and FC Salernitana 1919 S.R.L.

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Ulrich Haas, Professor of Law in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany

Arbitrators: Mr Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland

Mr Manfred Peter Nan, Attorney-at-Law in Amsterdam, The Netherlands

in the arbitration between

FC Krasnodar, Russia

Represented by Mr Mikhail Prokopets, Mr Sergey Lysenko, Ms Daria Lukienko, Attorneys-at-Law in Moscow, Russia

- Appellant -

and

Erik Botheim, Norway

Represented by Mr Matthew Bennett, Ms Jennifer Norris, Mr Robert Danvers, Attorneys-at-Law in United Kingdom

- First Respondent -

and

FC Salernitana 1919 S.R.L., Italy

Represented by Mr Salvatore Civale, Mr Eduardo Chiacchio, Mr Francesco Fimmanò, Mr Salvatore Sica, Ms Elena Raccagni, Mr Roberto Terenzio, Attorneys-at-Law in Naples, Italy

- Second Respondent -

I. PARTIES

1. Football Club Krasnodar (the "Appellant") is a Russian professional football club based in the city of Krasnodar and affiliated to the Russian Football Union ("FUR"), which in turn is a member of the Union des Associations Européenes de Football Associations ("UEFA") and the Fédération Internationale de Football Association ("FIFA").

2. Erik Botheim (the "Player" or the "First Respondent") born on 10 January 2000 is a Norwegian professional football player.

3. FC Salernitana 1919 S.R.L. ("Salernitana" or the "Second Respondent") is an Italian professional football club, with registered address in Salerno, Italy. The Second Respondent is affiliated to the Italian Football Federation ("FIGC"), which in turn is a member of UEFA and FIFA.

4. The Appellant, the Player, and Salernitana are jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

A. Introduction

5. The dispute in these appeal proceedings revolves around a decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal (the "FIFA DRC"). Such decision of 1 February 2023 (the "Appealed Decision") concerns an employment related dispute between the Appellant and the Player as well as Salernitana being the club that the Player joined after leaving the Appellant. The FIFA DRC found that the Appellant and the Player had mutually departed from their employment relationship and therefore granted no compensation for breach of contract to either of them. The FIFA DRC, however, upheld the Player's request for payment in an amount of EUR 500,000, which it considered due at the point in time of such mutual departure.

6. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, the CAS file, the content of the first hearing that took place on 19 December 2023, at the CAS headquarters in Lausanne, Switzerland and the Second hearing held by videoconference on 9 April 2025. References to additional facts and allegations found in the Parties' written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it shall refer in this Award only to those submissions and evidence it deems necessary to explain its reasoning.

B. Execution of the employment contract between the Appellant and the Player

7. On 21 December 2021, the Appellant, the Player, and FK Bodo Glimt agreed on the permanent transfer of the Player to the Appellant for a transfer fee of EUR six million, of which the Appellant has already paid the first instalment in an amount of EUR three million.

8. On 22 December 2021, the Appellant and the Player concluded an employment contract valid as from 1 January 2022 until 30 June 2025 (hereinafter the "Contract").

9. Pursuant to Clause 4 of the Contract, the Player was entitled to the following monthly salary:

> *"4.1 The monthly salary, excluding incentives payments, bonuses and awards, in amount of 73,530 (seventy three thousand five hundred thirty) Euro (62,500 Euro net) is to be paid to the Footballer and is paid in rubles at the exchange rate determined by the Central Bank of the RF at the latest date of the payable month. (...)*
>
> *4.3 The salary is paid twice per month:*
> *- advance payment in amount of up to 50% of the salary no later 25th day of the payable month;*
> *- final payment no later than 10th day of the month following after payable month."*

10. In accordance with Clauses 9.1 and 9.2 of the Contract, the Appellant undertook to pay to the Player the following bonuses:

> *"9.1 After signing of the present employment contract, the club shall pay to the footballer a sign-on bonus in amount of 1,176,471 (one million one hundred seventy six thousand four hundred seventy one) Euro (1 000 000 Euro net)* [hereinafter the "Sign-On Bonus"]. *The payment shall be made in Russian rubles at the exchange rate established by the Central Bank of the RF on the date of payment according to the following schedule:*
>
> - *588,236 (five hundred eighty-eight thousand two hundred thirty six) euro (500 000 euro net) no later than 10 March 2022;*
> - *235,295 (two hundred thirty-five thousand two hundred ninety five) euro (200 000 euro net no later than 10 October 2022;*
> - *352,940 (three hundred fifty two thousand nine hundred forty) euro (300 000 euro net) no later than 10 February 2023.*
>
> *9.2 Starting from 2022/2023 sport season if based on the results of Club's official matches within Russian Premier – League, Russian Football cup and UEFA Club European Tournaments (UEFA Champions League, UEFA Europa League, UEFA Europa Conference League) in the corresponding sports season the Footballer takes part in 67% (sixty seven percent) or more of these matches (only those matches – shall be taken into account when the Footballer is on the pitch at least 45 (forty-five) minutes of playing time), then beginning from the July 01 of the year in which such season ended, the Footballer's monthly salary shall be increased by 9,805 (nine thousand eight hundred and five) Euro (8,334 Euro net)."*

11. Clause 9.5.2 of the Contract provides as follows:

> *"If the Footballer terminates the present contract with the Club on his own initiative (at his own will) without just cause by service of notice in writing on the Club which is sent via his appointed legal representatives, then the Footballer shall pay to the Club a compensation in amount equivalent to 30.000.000,00€ (thirty million Euro) (the 'Termination Payment'). The payment indicated in the present item shall be made by the Footballer (or by a third party / club authorized by Footballer) to the Club not later that on the termination date.*
>
> *The Club accepts the Termination Payment in full and final settlement of any and all claims and/or complaints it may have, whether or not presently known to it or to the law, in any jurisdiction, against the Footballer in respect of the termination of his employment with the Club."*

12. Furthermore, Clause 11 reads as follows:

> *"11.1 In case there will arise a dispute between the parties it should be settled by means of negotiations. If the Parties fail in achieving an agreement on the dispute, it should be referred to the FIFA Dispute Resolution Chamber, and any appeal of the DRC's decision shall be lodged with the CAS before a three-judge panel, and the proceedings shall be conducted in English. Both the FIFA DRC and the CAS shall primarily apply the FIFA regulations and Swiss law and then secondarily, Russian legislation. …*
>
> *11.3 The conditions and terms of the present contract can be amended only by written agreement of the Parties."*

C. Events following the execution of the Contract

13. On 24 February 2022, Russia invaded Ukraine.

14. On 27 February 2022, the Norwegian Ministry of Foreign Affairs advised against all travel to Russia issuing the following statement on its website:

> *"The situation in Russia is unstable and may deteriorate rapidly. The closure of airspace over large parts of Europe will make it more difficult to travel to and from Russia. The situation has already affected travellers. There is social unrest in Russia and many people have been arrested. Demonstrations and other forms of protest in support of and against the situation in Ukraine may escalate and lead to higher security risks for Norwegian travellers. Access to cash and goods may be limited in the time ahead."*

15. On 28 February 2022, Mr Jim Solbakken sent a WhatsApp message to the Appellant's deputy general director for international affairs, Mr Pytor Tolstikov (hereinafter the "Deputy Director"), asking:

> *"Know you spoke with Erik yesterday, what can we do with the sign on?"*

16. On the same day, FIFA issued an official media-release in which it communicated as follows:

> *"Following the initial decisions adopted by the FIFA Council and the UEFA Executive Committee, which envisaged the adoption of additional measures, FIFA and UEFA have today decided together that all Russian teams, whether national representative teams or club teams, shall be suspended from participation in both FIFA and UEFA competitions until further notice."*

17. On 2 March 2022, the Appellant's Deputy Director and the Appellant's commercial director, Mr Aram Fundukyan (hereinafter the "Commercial Director") met with the Player and other foreign players of the Appellant, namely Remy Cabella (France), Grzegorz Krychowiak (Poland), Jhon Cordoba (Colombia), Wanderson Maciel Sousa Campos (Brazil), Junior Alonso (Paraguay), Cristian Ramirez (Ecuador), Kaio Pantaleão (Brazil) and Viktor Claesson (Sweden) (hereinafter the "Meeting"). The content of the discussions at the Meeting is disputed between the Parties. The respective positions of the Parties are described below.

18. Between 2 and 3 March 2022, WhatsApp communications between various foreign players and the Appellant were exchanged, which related to the travel arrangements of

the foreign players in order to leave Russia.

19. On 3 March 2022, the Player departed from Russia to Norway.

20. On the same day, following the departure, the Player received a document from the Appellant for signature (hereinafter the "Proposed Additional Agreement"). The Player has not signed said document. The latter read in its pertinent parts as follows:

> *"1. In the context of the current geopolitical and economic situation, the Parties have agreed on the following:*
>
> *1.1. The Footballer by his will and consent takes unpaid leave (days-off) for the period starting as of 02 March 2022 up to the date to be mutually established by the Parties additionally in writing (hereinafter - Unpaid leave).*
>
> *1.2. The Footballer agrees and acknowledges that during the period of the Unpaid leave the Club is not liable before the Footballer for the payment of salary and other payments stipulated by the Employment contract. The Footballer confirms that he will not claim any payments for the period of Unpaid leave from the Club.*
>
> *1.3. The Club acknowledges and confirms that for the period of Unpaid leave the Footballer is entitled to train separately of the Club's teams as well as by Footballer's wish to participate in the training process and take part in friendly matches of any football club/team.*
>
> *...*
>
> *1.4. The Footballer acknowledges that the Club has the right to take him back early from Unpaid leave, and therefore agrees to arrive at the Club's location within three calendar days from the receipt of the notification by phone and/or email.*
>
> *1.5. After the end of the period of Unpaid leave, the Employment contract is subject to full execution by the parties.*
>
> *2. The present Agreement adjusts the terms of the employment contract concluded by the Parties. In case of conflict the terms of this Agreement shall prevail. ...*"

21. On 7 March 2022, FIFA issued Annex 7 to the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP") concerning '*Temporary rules addressing the exceptional situation deriving from the war in Ukraine'*.

22. On 8 March 2022, the Player sent a notice to the Appellant stating as follows:

> *"We understand that on or around 1 March 2022, following Russia's invasion of Ukraine and the subsequent war between Russia and Ukraine, FCK notified the Player, and all other foreign players at FCK, at a meeting that they were permitted to leave Russia to return to their home countries given the serious concerns raised by the players regarding the unfolding situation. FCK further confirmed that if any foreign player did choose to return home, including the Player, FCK would continue to pay the relevant player all of their remuneration pursuant to their employment contract. In reliance upon this agreement, the Player left Russia and returned to his home country of Norway.*
>
> *Despite this aforementioned agreement, the Player subsequently received FCK's proposed Additional Agreement to the Employment Contract (the 'Proposed Additional Agreement'), which, inter alia, proposed that: (i) the Player should agree to take unpaid leave for the period from 2 March 2022 up to an undetermined future date which was to be mutually agreed; and (ii) FCK was not liable to the Player for the payment of salary and other payments stipulated in the Employment Contract during such period.*

We are informed that the Player has already communicated his rejection of the Proposed Additional Agreement via his representatives. However, for the avoidance of any doubt, the Proposed Additional Agreement is rejected by the Player in its entirety and therefore, as at this date, the Employment Contract remains in force and effect save that the Player has been authorised by FCK to remain in Norway.

As such, and as you are aware, pursuant to Article 4 of the Employment Contract, the Player is entitled to receive a net monthly salary of €62,500 (Sixty Two Thousand Five Hundred Euros) payable in two instalments, one in advance no later than the 25th day of the payable month and one in arrears payable no later than the 10th day of the month following the payable month.

It is noted that FCK is required to make payment of the remainder of the Player's monthly salary for February 2022 by no later than 10 March 2022 (the 'Second February Salary Payment'). In addition, Article 9.1 of the Employment Contract provides that FCK shall pay the Player the first instalment of the 'sign-on bonus'1 in the net amount of €500,000 (Five Hundred Thousand Euros) by no later than 10 March 2022 (the 'First Sign-On Instalment').

In light of the above, FCK is required to pay to the Player: (i) the Second February Salary Payment; and (ii) the First Sign-On Instalment, by no later than 10 March 2022 in accordance with the terms of the Employment Contract.

In the event the aforementioned sums are not paid in full by the stipulated deadline, we reserve the Player's right to take the necessary steps to terminate the Employment Contract with just cause and/or commence proceedings against FCK for its breach of contract in accordance with Article 12bis and Article 14bis of the FIFA Regulations on the Status and Transfer of Players (the 'RSTP').

In the meantime, we also note the decision of the Bureau of the FIFA Council of 7 March 2022, to temporarily amend the RSTP as set out in Annex 7 entitled "Temporary rules addressing the exceptional situation deriving from the war in Ukraine".

Please note that the Player reserves all of his rights in respect of the same."

23. On 31 March 2022, the Player sent a second notice of default to the Appellant requesting payment of all outstanding amounts up until date thereof.

24. On 5 April 2022, the Appellant sent an email to the Player stating as follows:

"1. Firstly, we would like to draw your attention to the fact that it was the player's personal decision to leave Russia and FC Krasnodar's site. The player informed the club about that in the beginning of March 2022. The club did not object to the player's decision of leaving Russia;

2. Secondly, in regard to performance of financial obligations, we would like to state that the payments to the player on behalf of the club were suspended due to the fact that the player left the club's site and the country and thus he stopped performing his employment duties, which he has to perform according to the employment agreement, which was concluded between him and FC Krasnodar;

3. Thirdly, we would like to say that we respect the players decision, however, in light of the current situation we also tend to protect interests of the club, therefore we kindly ask you to act in good faith principle. We emphasize the fact that we are ready to consider options with a loan or a definitive transfer to another club and we are open for negotiations;

4. Lastly, we would like to remind you that the player has a right to suspend his employment agreement with the club and be transferred to another team in accordance with the following: Annex 7 FIFA RSTP (edition March 2022)."

25. On 6 April 2022, the Player replied to the Appellant – *inter alia* – stating as follows:

> *"The Player is very much aware of FIFA's 'Temporary rules addressing the exceptional situation deriving from the war in Ukraine' (Annex 7 of FIFA's Regulations on the Status and Transfer of Players) but notes that it is entirely a matter for him as to whether he wishes to rely on such provisions and suspend the Employment Contract to join another club (should such an option be available to him) and at present, it should be clear that he does not wish to do so and that he wishes to maintain the Employment Contract."*

26. On 7 April 2022, the Appellant replied and reiterated its position as per its email dated 5 April 2022.

27. On 20 and 26 April 2022, the Player sent further letters to the Appellant requesting payment of the outstanding amounts.

28. On 6 May 2022, the Appellant via email communicated – *inter alia* – the following to the Player:

> *"The player did not exploit the right to suspend his contract, which was given to the player according to the norms expressed in Annex 7 FIFA RSTP (edition March 2022), thus he was not transferred to any other club and remained under the obligations of the employment agreement with FC 'Krasnodar'. Unfortunately, the player is defaulting on complying with his duties according to the contract;*
>
> *Furthermore, we heard several times from the player's representatives that he would not play anymore for the club no matter what the circumstances, thus actually withdrawing from the obligations undertaken in the employment agreement signed with FC Krasnodar."*

29. On 17 May 2022, the Player sent a termination notice (hereinafter the "Termination Notice") to the Appellant stating as follows:

> *"Termination of employment contract dated 22 December 2021 between Erik Botheim and FC Krasnodar (the 'Employment Contract')*
>
> *I write further to the letters which have been sent to you by my legal representatives, Centrefield LLP, on 8 March, 31 March, 6 April, 20 April and 26 April 2022.*
>
> *As set out in those letters, FC Krasnodar has breached the Employment Contract by failing to make any payment to me whatsoever in respect of the sums due thereunder from 10 March 2022 to date.*
>
> *To confirm, the sums outstanding are:*
>
> - *€25,540 in respect of the second instalment of my salary for February 2022, which was due on 10 March 2022 in accordance with Article 4 of the Employment Contract;*
> - *€62,500 in respect of my salary for March 2022 which was due to be paid in two instalments on 25 March 2022 and 10 April 2022 in accordance with Article 4 of the Employment Contract;*
> - *€62,500 in respect of my salary for April 2022, which was due to be paid in two instalments on 25 April 2022 and 10 May 2022 in accordance with Article 4 of the Employment Contract; and*
> - *€500,000 in respect of the first instalment of the signing on bonus, which was due to be paid on 10 March 2022 in accordance with Article 9.1 of the Employment Contract;*
>
> *together (the 'Outstanding Sums').*
>
> *As a result of FC Krasnodar's flagrant and continuing breach of its fundamental obligations*

under the Employment Contract, the relationship of trust and confidence between myself and FC Krasnodar has broken down irretrievably and I can no longer be expected to comply with the Employment Contract.

In addition to FC Krasnodar's fundamental breach of the Employment Contract, I also continue to have grave concerns about Russia's illegal invasion of Ukraine and the on-going war. Not only do I have a strong moral objection to the illegal actions of the Russian state and the thousands of innocent civilians that have been killed by Russian forces, including many women and children, I also have serious concerns about my status and safety as a non-Russian national in Russia in the current political climate.

My concerns are supported by the Norwegian Ministry of Foreign Affairs, which released a public statement on 27 February 2022 advising Norwegian citizens against travelling to Russia and noting that:

> *'There is social unrest in Russia and many people have been arrested. Demonstrations and other forms of protest in support of and against the situation in Ukraine may escalate and lead to higher security risks for Norwegian travellers. Access to cash and goods may be limited in the time ahead'.*

The warning in this regard remains in place and has since been followed by the introduction of draconian laws by the Russian Duma, according to which individuals are at risk of being imprisoned for up to fifteen years if they are considered to have 'misspoken' about the Russian military.

As Alexandr Tolstikov (Technical Director), Aram Fundukyan (Commercial Director) from FC Krasnodar acknowledged during our meeting on 2 March 2022, for all of these reasons, it became untenable for me and the other foreign national players in attendance at that meeting to remain in Russia and therefore we left Russia, with FC Krasnodar's consent, on 3 March 2022.

Furthermore, following FIFA's announcement on 28 February 2022, FC Krasnodar, as a club affiliated to the Russian Football Union, is prohibited from participating in UEFA competitions until further notice. This represents a fundamental limitation on the opportunities available to me in terms of my career development compared to the basis on which I agreed to join FC Krasnodar. It also materially reduces the opportunities available to me to earn 'points' which can be converted into cash bonuses in accordance with Article 9 of the Employment Contract.

In the circumstances, this letter constitutes notice of the termination of the Employment

Contract, for just cause, with immediate effect, in accordance with Article 14bis of the FIFA Regulations on the Status and Transfer of Players (the 'FIFA Regulations').

To confirm, for the avoidance of any doubt, as per the requirements of Article 14bis:

- *FC Krasnodar has unlawfully failed to pay me at least two months' salaries on their due dates;*
- *by way of my representatives' letter of 26 April 2022 (a copy of which is enclosed for reference) I have put FC Krasnodar in default in writing and granted a deadline of at least 15 days for it to fully comply with its financial obligations; and*
- *FC Krasnodar has entirely failed to comply with its financial obligations within the stipulated deadline or at all to date.*

The Employment Contract is therefore terminated with immediate effect and I have copied this letter to the Russian Football Union in order that it can release my International Transfer Certificate to any new club I join in due course.

In the meantime, I intend to commence a claim before FIFA to recover the Outstanding Sums, as well as compensation for FC Krasnodar's repudiatory breach of the Employment Contract, in accordance with Article 17 of the FIFA Regulations.

Yours sincerely

Erik Botheim

cc. Russian Football Union info@rfs.ru"

30. On 26 May 2022, the Player received a payment in the amount of RUB 2,285,049 (EUR 39,059.91) from the Appellant.

D. Second Respondent and Player entering into an employment relationship

31. On 4 July 2022, the Player and the Second Respondent concluded an employment contract valid from 4 July 2022 to 30 June 2026.

32. On 7 July 2022, Salernitana uploaded the transfer documents on FIFA TMS specifying that "*Salernitana 1919 S.r.l. entered a transfer instruction to engage Erik BOTHEIM permanently. The player's former club is FC Krasnodar*" requesting for FUR's approval to the issuance of the International Transfer Certificate ("ITC").

33. On 8 July 2022, FUR delivered the ITC issued in favor of FIGC, in which it is specified that "*we hereby certify that, in accordance with the provisions of the FIFA Regulations on the Status and Transfer of Players, the Player: Erik Botheim, born on 10.01.2000, formerly a member of: FC Krasnodar, having duly fulfilled his/her obligations towards both his/her former club and our association, is therefore free to pursue sports activities and register with another association affiliated to FIFA*".

III. PROCEEDINGS BEFORE THE FIFA DRC

34. On 24 June 2022, the Player filed a claim against the club before the FIFA DRC. In the claim the Player submitted the following prayers for relief:

> *"The claim is admissible;*
> *The Player has terminated the Playing Contract lawfully and with just cause on the basis of Article 14bis … and/or Article 14 … of the FIFA Regulations;*
> *The … [Appellant] must make payment of the Arrears to the Player in full;*
> *The Respondent must make payment of the Compensation to the Player in full …*
> *Interest is payable on all sums awarded to the Player at a rate of 5% per annum …"*

35. On 5 July 2022, the Appellant lodged a claim against the Player before FIFA DRC asking for compensation in the amount of EUR 30 million plus 5 percent interests based on the Player's termination of the Contract.

36. On 22 July 2022, the Player and the Appellant were informed by FIFA that the proceedings shall be consolidated.

37. On 26 July 2022, the case file was provided to Salernitana and its position to the proceedings was requested.

38. On 1 February 2023, the FIFA DRC rendered its decision, the operative part of which reads in its relevant part as follows:

> ***"Decision of the Dispute Resolution Chamber***
>
> *1. The claim of Claimant 1 / Respondent 2, Erik Boeheim [sic], is partially accepted.*
>
> *2. The claim of Claimant 2 / Respondent 1, FC Krasnodar, is rejected.*
>
> *3. Claimant 2 / Respondent 1, FC Krasnodar, has to pay to Claimant 1 / Respondent 2, Erik Botham [sic], the following amount:*
>
> *- EUR 500,000 as outstanding amount plus 5% interest p.a. as from 11 March 2022 until the date of effective payment*
>
> *4. Any further claims of Claimant 1 / Respondent 2 are rejected.*
>
> *5. (...)*
>
> *6. (...)*
>
> *7. (...)*
>
> *8. This decision is rendered without costs."*

39. On 8 May 2023, the FIFA DRC notified the grounds of the Appealed Decision to the Parties. According to the grounds of the Appealed Decision, the FIFA DRC concluded "*that, since none of the parties was sincerely interested in continuing the employment relationship, no compensation for breach of contract to any of the parties should be awarded except for any outstanding amounts due to the player prior to 5 April 2022*", i.e., due to the "*mutual departure of the parties from the contract*" both requests for compensation had to be rejected. Moreover, since the Player left the Appellant on 3 March 2022, he shall not be entitled to the salary of March 2022 but only to the Sign-On Bonus in the amount of EUR 500,000.

IV. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

40. On 29 May 2023, the Appellant filed its appeal against the Appealed Decision with the Court of Arbitration for Sport (the "CAS") against the Player and Salernitana (hereinafter jointly referred to as the "Respondents") in accordance with Article R48 of the Code of Sports-related Arbitration (2023 edition) (the "CAS Code"). In its Statement of Appeal, the Appellant requested the appointment of a Sole Arbitrator to decide on this matter.

41. On 31 May 2023, the CAS Court Office sent a copy of the Statement of Appeal to the attention of Respondents and invited them to comment, i*nter alia* on the Appellant's request that the case be submitted to a Sole Arbitrator.

42. On the same day, the CAS Court Office invited FIFA to file an application with CAS if it intends to participate as a party in this proceeding within the applicable deadline. In addition, FIFA was asked to provide a clean copy of the Appealed Decision at its earliest convenience.

43. On 2 June 2023, the Second Respondent informed the CAS Court Office that it prefers a three-member panel to decide upon the case at hands.

44. On 5 June 2023, the First Respondent informed the CAS Court Office about its position that the appointment of a Sole Arbitrator would not be appropriate in the present case.

45. On 8 June 2023, the CAS Court Office informed the Parties that the dispute shall be referred to a Panel of three CAS members and invited the Appellant to nominate a CAS arbitrator within the applicable deadline.

46. On 9 June 2023, the CAS Court Office acknowledged receipt of the Appellant's nomination of Mr Emin Özkurt, Attorney-at-Law in Istanbul, Turkey, and invited the Respondents to jointly nominate a CAS arbitrator within the applicable deadline.

47. On 12 June 2023, FIFA informed the CAS Court Office that it renounces its right to request its intervention in the present proceedings.

48. On 19 June 2023, the First Respondent informed the CAS Court Office about the Respondents' nomination of Mr Manfred Peter Nan, Attorney-at-Law in Amsterdam, The Netherlands, as arbitrator.

49. On 11 July 2023, the CAS Court Office acknowledged receipt of the Appeal Brief in accordance with the previously extended deadline, sent a copy of the Appeal Brief to the attention of the Respondents and invited them to submit an Answer within the applicable time limit.

50. On 22 August 2023, the CAS Court Office acknowledged receipt of the Respondents' Answer filed on 21 August 2023 within the previously extended deadline and invited the Parties to indicate by 29 August 2022 whether they preferred a hearing to be held in this matter or for the Panel to issue an award based solely on the Parties' written submissions.

51. In addition, the CAS Court Office informed the Parties that the Panel appointed to decide on the present matter was constituted as follows:

President	Mr Ulrich Haas, Professor of Law in Zurich, Switzerland, and Attorney-at-law in Hamburg, Germany
Arbitrators	Mr Emin Özkurt, Attorney-at-Law in Istanbul, Turkey
	Mr Manfred Peter Nan, Attorney-at-Law in Amsterdam, The Netherlands

52. On 31 August 2023, the CAS Court Office noted, *inter alia,* that all Parties stated their preference to hold a hearing in the present matter.

53. On 12 September 2023, the CAS Court Office informed the Parties that the Panel has decided to hold a hearing in person in this matter and proposed to the the Parties' some dates. Further, the CAS Court Office noted that the Player, in his Answer (page 23 in fine), requests the Panel "*to make inquiries of FIFA as to whether any cases were received*

by it from the Appellant's registered players in relation to unpaid salary from 2 March 2022 onwards", and invited the Appellant and the Second Respondent to submit their comments in this respect, if any, by 18 September 2023.

54. On 18 September 2023, the Appellant submitted that it deemed the aforementioned request unnecessary for this case and too time-consuming, and therefore it shall be denied for the sake of good order and swift conduct of the present proceedings.

55. On 3 October 2023, the CAS Court Office informed the Parties that, further to the latter's availability, the hearing will be held on 19 December 2023 at the CAS Court Office in Lausanne.

56. On 15 November 2023, the CAS Court Office, after having received the Parties' lists of participants to the hearing, observed that some of the witnesses indicated by the Appellant in the Appeal Brief and for which witness statement were filed were not contained in the list of participants (namely, Mr Pantaleão and Mr Tolstikov). The letter invited the Parties to inform the CAS Court Office by 20 November 2023 whether the witness statement filed should remain on file in case the witnesses did not appear at the hearing. Finally, the letter invited the Parties to liaise among each other in order to agree on a draft tentative hearing schedule by 1 December 2023.

57. On 17 and 20 November 2023, the Parties filed their comments with respect to the witness statements. Therein, the Respondents requested that the Appellant's witnesses be present at the hearing for cross-examination.

58. On 23 November 2023, the CAS Court Office advised the Parties that in case the witnesses Mr Pantaleão and Mr Tolstikov do not attend the hearing, their witness statements will not be considered as witness testimony, but as mere party submissions. Furthermore, the letter invited the Parties to return a signed copy of the Order of Procedure ("OoP") attached to this letter, which was duly signed by all Parties without any reservation.

59. On 1 December the First Respondent provided a draft hearing schedule as agreed upon by the Parties.

60. On 15 December 2023, the CAS Court Office sent a revised version tentative hearing schedule to the Parties.

61. On 19 December 2023 a hearing was held in person at the CAS Court Office in Lausanne. The following persons attended the hearing besides the members of the Panel and Mr Giovanni Maria Fares, Counsel to the CAS:

<u>For the Appellant</u>:

- Mr Yury Zaytsev, Counsel
- Ms Daria Lukienko, Counsel
- Mr Sergey Lysenko, Counsel
- Mr Vladimir Khashig, Appellant's General Director (via videoconference)

- Mr Aram Fundukyan, Appellant's Commercial Director
- Mr Vitaly Pasunko, Appellant's in-house legal counsel
- Mr Yury Obozny, Interpreter

For the First Respondent:

- Mr Erik Botheim
- Mr Matthew Bennett, Counsel
- Mr Robert Danvers, Counsel
- Mr Jim Solbakken, Witness (agent);

For the Second Respondent:

- Mr Salvatore Civale, Counsel
- Mr Salvatore Sica, Counsel
- Mr Roberto Terenzio, Counsel
- Mr Tommaso Sica, Counsel
- Mr Massimiliano Dibrogni, Witness (Secretary of Salernitana).

62. At the outset of the hearing that Parties expressly acknowledged that they had no objection to CAS jurisdiction and the constitution of the Panel. The Panel heard the testimony of Mr Vladimir Kashig and Mr Aram Fundukyan (both called by the Appellant), of the Player and Mr Jim Solbakken (called by the First Respondent) and of Mr Massimiliano Dibrogni (called by the Second Respondent). During the hearing the Second Respondent – with the consent of the other Parties – waived the testimony of its further witnesses, i.e. Mr Salvatore Avallone and Mr Christian Romanazzi. All witnesses heard by the Panel were advised of their obligation to tell the truth.

63. Before the hearing was concluded, all Parties expressly stated that they had no objection to the procedure adopted by the Panel and that they were given full opportunity to present their cases, submit their arguments and to answer the questions posed by the members of the Panel.

64. On 2 February 2024, Salernitana informed the CAS Court Office that the Player, Salernitana and the Swedish club FF Malmö have entered into a transfer agreement for the permanent transfer of the Player ("Transfer Agreement"). Attached to the letter was – *inter alia* – a copy of the Transfer Agreement. The latter provides a transfer fee in the amount of EUR 300,000 (which is inclusive of the solidarity contribution in the amount of EUR 15,000). Thus, the net amount received by Salernitana for the permanent transfer of the Player equals EUR 285,000. Salernitana requested that only its accompanying letter containing the key figures be forwarded to the Appellant and that the Transfer Agreement itself remain confidential.

65. On 5 February 2024, the CAS Court Office acknowledged receipt of Salernitana's letter and invited the other Parties to file their comments in this regard by 9 February 2024.

66. On 9 February 2024, the Appellant requested that the documents submitted by Salernitana "*be completely disregarded by the Panel*". The Appellant explains that upon "*the Second*

Respondent's request, [the Appellant] *was not provided with the documents attached to the Second Respondent's letter dated 2 February 2024* …[which] *clearly violates the Appellant's rights as a party to the proceedings as it deprives FC Krasnodar from an opportunity to comment on the attachments … and confirm their veracity*." The letter continues to state that Salernitana's submissions are "*completely irrelevant to the case at hand* [and that] *… the Second Respondent itself has not provided any comments as to why exactly the Exhibits attached to this letter might be relevant to the case at hand*." Finally, the letter states that "*the hearing in the present case was held in December 2023* … [and that] *the submission phase of the present case had been closed* …". The First Respondent did not file any comments.

67. On 15 February 2024, Salernitana wrote to the CAS Court Office that in view of the Appellant's objection it authorizes CAS to disclose a redacted version of the Transfer Agreement to the Appellant.

68. On 21 February 2024, the CAS Court Office on behalf of the Panel informed the Parties that "*the Panel will consider the document filed by Salernitana and the information regarding the transfer of the Player, without any prejudice to the assessment of their material relevance for the present dispute only if both Respondents fully disclose all aspects of the deal with Malmö, namely … any agreements, including side agreements and addenda, concluded between Salernitana, or any other entity thereto affiliated, and Malmö, or any other entity thereto affiliated; .. any agreements, including any side agreements and addenda, forming the employment relationship between the Player and Malmö, or any other entity thereto affiliated; … proof of any payments made by Malmö, or any other entity thereto affiliated, in relation with the transfer of the Player. … The Panel will not accept any confidentiality reservation or redaction of any documents. In this respect the Parties are reminded that the present procedure and all aspects of it are fully confidential* …".

69. On 23 February 2023, the Second Respondent informed the CAS Court Office that it does not object to the disclosure of the details/documents of the Malmö transfer, but that it requests an extension of the deadline to submit the documents in order to obtain the consent from FF Malmö, given the confidentiality provisions included in certain documents.

70. On 26 February 2024, the CAS Court Office informed the Second Respondent that its request for an extension of the deadline has been granted until 28 February 2024.

71. On 23 February 2024, Salernitana submitted an unredacted copy of the Transfer Agreement to the CAS Court Office and a printout from the FIFA Transfer Matching System ("TMS") related to the transfer of the Player from Salernitana to FF Malmö. The letter further noted that despite the first instalment having fallen due under the Transfer Agreement, Salernitana has not received any payments as of this date from FF Malmö.

72. On 27 February 2024, the Player submitted to the CAS Court Office an employment contract between FF Malmö and the Player dated 31 January 2024 ("Malmö Contract") and an amendment to the Malmö Contract dated 31 January 2024 ("Amendment").

73. On 28 February 2024, the CAS Court Office invited the Appellant to comment on the Transfer Agreement, the Malmö Contract and on the Amendment by 6 March 2024.

74. On 6 March 2024, the Appellant filed its comments.

75. On 4 July 2024, Salernitana challenged the arbitrator Mr Emin Özkurt pursuant to Article R34 of the CAS Code.

76. On 5 July 2024, the CAS Court Office acknowledged receipt of Salernitana's challenge and invited the other Parties and the arbitrators to submit their comments.

77. On 5 July 2024, Mr Emin Özkurt submitted his comments on the challenge.

78. On 12 July 2024, the Appellant and the First Respondent filed their comments.

79. On 15 July 2024, the CAS Court Office acknowledged receipt of the various comments and inquired with Salernitana whether it wished to maintain its challenge.

80. On 17 July 2024, Salernitana requested that its challenge be forwarded to the Challenge Commission of the ICAS for a decision.

81. On 19 July 2024, the CAS Court Office informed the Parties that an Order on Challenge will be rendered by the Challenge Commission of the ICAS.

82. On 3 December 2024, the Challenge Commission of the ICAS issued its decision. The operative part of the decision reads in its pertinent parts as follows:

> *"1. The Petition for Challenge of Mr Emin Özkurt filed on 4 July 2024 by the FC Salernitana S.R.L. 1919 is upheld.*
>
> *2. Mr Emin Özkurt is removed from the Panel of Arbitrators appointed in the matter CAS 2023/A/9686 FC Krasnodar v. Erik Botheim and FC Salernitana 1919 S.R.L.*
>
> *3. In accordance with Article R36 of the Code of Sports-related Arbitration, FC Krasnodar is granted a deadline of five (5) days of receipt of the present Order to nominate another arbitrator from the CAS List of Arbitrators."*

83. The CAS Court Office forwarded the decision of the Challenge Commission of the ICAS to the Parties on the same day.

84. On 5 December 2024, the Appellant requested the CAS to extend the time limit for nominating an arbitrator by 5 days.

85. On the same day, the CAS Court Office granted the Appellant's request.

86. On 6 December 2024, the Appellant requested the CAS Court Office to provide with the recording of the hearing.

87. On 9 December 2024, the CAS Court Office provided the Appellant with a link to download the recording of the hearing.

88. On 10 December 2024, the Appellant nominated Mr Michele A.R. Bernasconi as arbitrator in replacement of Mr Emin Özkurt.

89. On 20 December 2024, the CAS Court Office informed the Parties that the Panel appointed to decide on the present matter was newly constituted as follows:

President	Mr. Ulrich Haas, Professor of Law in Zurich, Switzerland, and Attorney-at-Law in Hamburg, Germany
Arbitrators	Mr Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland
	Mr Manfred Peter Nan, Attorney-at-Law in Amsterdam, The Netherlands

The letter also referred the Parties to Article R36 of the CAS Code and invited them to provide by 8 January 2025 their positions with respect to the continuation of the procedure.

90. On 25 December 2024, the Appellant provided – *inter alia* – the following comments:

> *"As a preliminary remark, please be advised that the Appellant in general considers that the proceedings in the present case were conducted in a comprehensive and unbiased manner, as well as in full compliance with the applicable rules and regulations. Moreover, both audio and video recordings of the conducted hearing are in possession of the honorable Panel and the Parties.*
>
> *However, in case that following the examination of the audio and video recordings the new arbitrator has any follow-up questions and clarifications to be addressed to the Parties, the Appellant suggests to conduct a Q&A session with the Panel instead of a full hearing."*

91. On 7 January 2025, Salernitana submitted the following comments:

> *" ... the Second Respondent respectfully requests to grant the party with terms to file a further round of submissions, not only in view of the new constitution of the Panel but also to comment on the impact of the 'Diarra judgement' in the FIFA and CAS proceedings.*
>
> *Moreover, in the Second Respondent's view, following the additional round of submissions, Parties should express their preference whether to have another hearing or not."*

92. 8 January 2025, the First Respondent provided – *inter alia* – the following comments:

> *"1. Mr Bernasconi to review the existing case file, including the Parties respective pleadings and the recording of the hearing, and the New Panel to consider the case with a view to rendering a decision.*
>
> *2. Should it be necessary, in the event of questions/matters arising as a result of Mr Bernasconi's review of the case file and subsequent discussions between the New Panel, written questions should be submitted to the relevant Parties requiring written responses.*
>
> *3. In the event the New Panel decides that the Appellant's Appeal is dismissed and that the FIFA Dispute Resolution Chamber decision is upheld, then the procedure can be concluded*

as there will be no reason to consider the matter further (as there will be no need to consider quantification of damages and/or the joint/several liability of any of the Parties).

4. Only in the event of liability being attributed to the Respondents will it be necessary for the Parties to consider the potential impact/applicability of the Diarra Decision and the updated FIFA Regulations regarding the quantification of damages and joint/several liability of new clubs. In such an instance, the Parties should then be invited to make further submissions on the above matters only."

93. On 10 January 2025, the CAS Court Office invited the Parties to submit any observations on the potential impact of the decision of the European Court of Justice ("ECJ") dated 4.10.2024 in the matter Rs. C-650/2022 ("Diarra Decision") on the present procedure. Furthermore, the Parties were invited to address whether, as a result of the Diarra Decision, or independently of it, any Swiss law provisions may apply to the dispute at hand. Finally, the letter provided the Parties with the opportunity to comment on the applicability of the "revised version of the RSTP" (the "FIFA Interim Regulation"), i.e. the interim regulatory framework that was adopted by the Bureau of the FIFA Council on 22 December 2024.

94. On 24 January 2025, the Parties submitted their comments and observations.

95. On the same day, the CAS Court Office invited the Parties to inform it by 30 January 2025 whether they wish a hearing to be held limited to the issues discussed in the last submissions.

96. On 31 January 2025, the CAS Court Office informed the Parties that the Panel has decided to hold a brief video hearing in this matter, limited to the issues raised in the most recent submissions. The Parties were invited to state whether they would be available on 28 February 2025 at 9:30.

97. On 4 February 2025, the Parties confirmed their availability on 28 February 2025. The First Respondent requested, however, that the start of the hearing be moved to 10:00.

98. On 6 February 2025, the CAS Court Office confirmed that the hearing will be held on 28 February 2025 at 10:00 CET by videoconference. The Parties were invited to provide the names of the persons who will be attending the hearing on their behalf by 13 February 2025.

99. On 12 February 2025, the Appellant provided the names of the persons that will be attending the hearing on its behalf.

100. On 13 February 2025, the First Respondent requested a postponement of the hearing.

101. On 14 February 2025, the CAS Court Office informed the Parties that the Panel does not oppose a postponement of the hearing and offered 9 April 2025 as an alternative date. The letter invited the Parties to provide their position by 18 February 2025.

102. On 17 February 2025, the Second Respondent confirmed that it would be available for a hearing on 9 April 2025.

103. On 18 February 2025, the First Appellant and the First Respondent informed the CAS Court Office that they would be available for a hearing on 9 April 2025.

104. On the same day, the CAS Court Office confirmed that a hearing will be held by videoconference on 9 April 2025 in this matter.

105. On 7 April 2025, the Appellant submitted a copy of the CAS award 2024/A/10279-10281 to the attention of the Panel.

106. On 9 April 2025, a hearing by videoconference was held at 10:00 CET. Besides the arbitrators and the CAS Counsel for these proceedings, Giovanni Maria Fares, the following persons attended the hearing:

For the Appellant:

- Mr Mikhail Prokopets, counsel
- Mr Sergey Lysenko, counsel
- Ms Daria Lukienko, counsel

For the First Respondent:

- Mr Matthew Bennet, counsel
- Ms Jennifer Norris, counsel
- Mr Robert Danvers, counsel
- Mr Antonio Rigozzi, counsel
- Ms Josepha Nehring, counsel

For the Second Respondent:

- Mr Salvatore Civale, counsel
- Mr Roberto Terenzio, counsel
- Mr Tommaso Sica, counsel
- Mr Filippo Pandolfi, counsel
- Mr Eduardo Chiaccio, counsel

107. At the outset of the hearing the Parties confirmed that they had no objection as to the constitution of the Panel. At the end of the hearing the Parties confirmed that their right to be heard had been respected in these proceedings.

V. SUBMISSIONS OF THE PARTIES

108. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant's Position

109. In its Appeal Brief, the Appellant requested as follows:

> 1. *The appeal filed by Football Club Krasnodar is upheld.*
> 2. *The Decision of the FIFA Dispute Resolution Chamber passed on 1 February 2023 in the case Ref. Nr. FPSD-6510 is annulled and set aside.*
> 3. *A new decision is issued, whereby*
>
> *Mr. Erik Botheim has to pay Football Club Krasnodar the amount of EUR 30,000,000 net as compensation for termination of contract without just cause plus 5% interest p.a. as from 18 May 2022 until the date of the effective payment.*
>
> *Football Club Salernitana 1919 S.R.L. is jointly and severally liable for the payment of compensation for termination of contract by Mr. Erik Botheim without just cause.*
>
> *or, alternatively,*
>
> *Mr. Erik Botheim has to pay Football Club Krasnodar the amount of EUR 11,522,466 net as compensation for termination of contract without just cause plus 5% interest p.a. as from 18 May 2022 until the date of the effective payment.*
>
> *Football Club Salernitana 1919 S.R.L. is jointly and severally liable for the payment of compensation for termination of contract by Mr. Erik Botheim without just cause.*
>
> *or alternatively,*
>
> *Mr. Erik Botheim has to pay Football Krasnodar the amount of EUR 6,000,000 net as compensation for termination of contract without just cause plus 5% interest p.a. as from 18 May 2022 until the date of the effective payment.*
>
> *Football Club Salernitana 1919 S.R.L. is jointly and severally liable for the payment of compensation for termination of contract by Mr. Erik Botheim without just cause.*
>
> 4. *Mr. Erik Botheim and Football Club Salernitana 1919 S.R.L. shall bear all costs incurred with the present procedure.*
> 5. *Mr. Erik Botheim and Football Club Salernitana 1919 S.R.L. shall pay Football Club Krasnodar a contribution towards its legal fees and other expenses incurred in connection with the present proceedings, in an amount to be determined at the Panel's discretion.*

110. The Appellant's submissions in support of its appeal against the Appealed Decision may be summarized as follows:

1. The Contract was effectively suspended by mutual consent of the Parties

(a) The suspension of the Contract by mutual consent of the Parties is corroborated by witness statements.

1. The existence and the conditions of the verbal agreement at the Meeting are confirmed by the witness statement of the Commercial Director.

2. The fellow foreign player Kaio confirmed in his witness statement that the Commercial Director explicitly stated that the employment contracts would be deemed suspended in case any of the foreign players decided to leave Russia for some time.

(b) In addition, the behavior of the other foreign players of the Appellant corroborates the suspension of the Contract by mutual consent.

1. The foreign players were granted the options to either terminate the contracts if their contract were about to expire and they were not willing to extend them even if the situation stabilized, or to suspend the contracts if they considered to come back.

2. The majority of the foreign players, including the First Respondent, choose the suspension event though the Commercial Director had warned them that all the payments would be suspended.

3. All foreign players understood the nature of the suspension and never claimed any remuneration from the Appellant, unlike the Player.

(c) Further, the Player's actions confirm the suspension of the Contract.

1. The Player did not terminate the Contract and left Russia on the plane leased by the Appellant for him and the other foreign players, thereby showing that he was party to the verbal agreement.

2. If the Player's position was that the Contract would still be in force, he should have come back to the Appellant fulfilling his obligations.

3. The Player never substantiated his alleged "*safety concerns*".

4. According to CAS jurisprudence, the Player bears the burden of proof to establish that his absence was authorized without loss of pay.

(d) Finally, suspension of the Contract by mutual consent of the Parties is corroborated by the Appellant's good faith conduct deriving from the justified reliance on the suspension of the Contract.

1. The Appellant leased an airplane for the foreign players, including the First Respondent, to secure the players' safety and for the sake of their convenience.

2. The Appellant's proposal to sign the Proposed Additional Agreement is in line with its presumption that the Contract was suspended.

3. The Appellant's conduct regarding the verbal agreement matches with the opportunity provided by FIFA's introduction of Annex 7 to the FIFA RSTP on 7 March 2022.

4. Without the suspension of the Contract under the verbal agreement, the Appellant would have clearly demanded the Player to return to perform his essential obligations under the Contract.

5. No employer would ever continue paying its employees without them performing their contractual obligations in turn.

6. The Appealed Decision wrongfully concluded that due to the lack of

explicitly requesting the Player's return the Appellant had no interest in the Player's services. The Appellant only complied with the verbal agreement and would have been acting in blatant bad faith by summoning the Player to training sessions or games during the suspension period.

7. It was explicitly communicated to the Agent that the Player would receive the remuneration which had become due prior to the suspension of the Contract. Such remuneration had then been paid by the Appellant on 26 May 2022.

(e) The Appellant and the Player clearly reached a tacit verbal agreement that the Contract was suspended according to which the Player was released of its contractual obligations in order to look for a new club or wait until the situation regarding the conflict between Russia and Ukraine would change. In return, the Appellant would not have to pay any amounts to the Player until the final decision on the future of their employment relationship would be reached.

2. The Contract was terminated by the Player without just cause

(a) The Player had no just cause to terminate the Contract as the payments were effectively suspended as of 1 March 2022, and the Player was acting in bad faith since the moment he had left the Club's premises.

(b) The interpretative note to Annex 7 FIFA RSTP clarifies that the suspension of a contract means that the obligation to provide sporting services and the obligation to remunerate such services shall be paused.

(c) Consequently, the Player had no legal basis to terminate the Contract with just cause based on Article 14bis FIFA RSTP.

(d) The Player was not even in the position to claim any payments from the Appellant since he did not fulfil his duties under the Contract.

(e) For the issue of unjustified early termination of a contract, the behavior of both parties needs to be taken into account:

1. The Player did not terminate the Contract when he left for Norway. The Player's Agent explicitly stated that the Player was not considering coming back even before issuing the Termination Notice.

2. The Player did not sign with a different club to secure any income during the period of the Contract's suspension but claimed for payments from the Appellant while the Appellant could have presumed that the Player accepted the suspension of the Contract.

3. The Player acted in bad faith and in violation of the principle of *pacta sunt servanda* when he did not respect the verbal agreement.

4. The absence of the Player from the Appellant's premises and the non-attendance of training sessions and matches constitutes a significant and severe breach of his contractual obligations.

5. The Appellant's offer to sign the Additional Agreement was an attempt to preserve the employment relationship without any harm towards each other.

(f) The Player and the Appellant concluded the Contract as a long-term contract even providing for further prolongation possibilities.

(g) The Player left the Appellant in bad faith only after two months although he was considered an essential part of the team, in particular considering the transfer sum of EUR six million. The Player has never tried to find an amicable solution for both parties.

(h) The Player was "*engineering a breach*" and his motive was to become a 'free agent' in order to get better salary offers, sign-up bonuses, and agent bonuses.

(i) The Player and/or the Agent rejected every opportunity for a loan or a permanent transfer to another club. The Appellant was open to such suggestions, especially after the Agent declared that the Player would not return to Russia in any case.

(j) CAS jurisprudence requires blatant actions by a club for the finding that it had no longer interest in a player's services.

(k) The finding within the Appealed Decision that the Appellant no longer had interest in the Player's services is absurd considering that the Appellant did everything to preserve the employment relationship.

3. Consequences of the Player's termination of the Contract without just cause

(a) The Player is not entitled to receive the first instalment of the Sign-On Bonus of EUR 500,000 from the Appellant since such payment was not only conditional upon the Player's signing of the Contract but also upon its fulfilment. In any case, the nature of the Sign-On Bonus has changed under the exceptional circumstances, which the Appellant bears no responsibility for, and thus had also to be considered suspended under the verbal agreement.

(b) The Appellant is entitled to receive compensation for the Player's termination of the Contract without just cause as per the liquidated damage clause in the Contract, i.e., in the amount of EUR 30 million.

1. According to Article 17 (1) FIFA RSTP, the compensation can be determined within the Contract.

2. The amount determined is justified considering the circumstances of the Player's termination, namely the Appellant's frustrated transfer fee of EUR 6 million as well as the Player's non-performance and leaving of the Appellant only shortly after the long-term Contract has been signed.

3. According to CAS jurisprudence, contractually agreed damages clauses do not need to be reciprocal.

(c) In the alternative, the Player shall compensate the Appellant with an amount of EUR 11,522,466 based on the well-established DRC jurisprudence taking into account (i)

the renumeration due to the Player under the Contract and his new contract, (ii) the Appellant's unamortized expenses, and (iii) the specificity of sport.

(d) Even if the Panel decided that such calculation would be excessive, the Appellant would be at least entitled to receive compensation in an amount of EUR six million, i.e., the transfer fee for the Player's services.

(e) Any amount awarded by the Panel shall be subject to interests at a rate of five percent per annum starting as of the date following the Player's termination without just cause, i.e., as of 18 May 2022, until the date of the effective payment.

(f) The Second Respondent being the Player's new club in the meaning of Article 17 (2) FIFA RSTP shall be held jointly and severally liable regarding the compensation awarded to the Appellant.

4. Further submissions

(a) The Appellant submits that the Diarra Decision of the ECJ has no impact on the current proceedings. The Appellant refers to CAS 2023/A/9670&9671 para 139 in this respect. Furthermore, the Diarra Decision only binds courts of the member states of the European Union. Switzerland is no a member state of the European Union. None of the Parties pleaded at the time that the FIFA RSTP were invalid or were in breach with the law of the European Union. In the case at hand, the FIFA RSTP did not constitute an obstacle to the free movement of the Player, since the latter – after breaching the Contract – immediately found employment with Salernitana and later on with FF Malmö.

(b) The 2025 version of the FIFA RSTP is not applicable to the case at hand, because of the principle of *tempus regit actum*. Such understanding is backed by Article 26 of the FIFA RSTP and by CAS jurisprudence. The Appellant refers insofar to CAS 2020/A/7567, para. 55.

(c) Salernitana must be liable for the breach, since it decided to hire the Player being well aware of the presumption of joint and several liability of a new club under the applicable FIFA rules in force at the time. Not holding Salernitana liable would be also contrary to the principle of procedural fairness and equality.

(d) Swiss law is only applicable insofar as the FIFA RSTP contain a lacuna. This is not the case and, therefore, the Appellant submits that Articles 337b and 337c of the Swiss Code of Obligation ("SCO") are not applicable.

B. The First Respondent's Position

111. In his Answer, the First Respondent requested the Panel to rule as follows:

> *"1. This Answer is admissible and well-founded;*
>
> *2. The Appellant's appeal is dismissed in its entirety and the Appealed Decision is upheld in full;*
>
> *3. The Appellant must pay the costs of these appeal proceedings in full; and*

4. The Appellant must pay in full, or, in the alternative a contribution towards, the legal costs and expenses of the First Respondent, pertaining to these appeal proceedings before the CAS pursuant to Article R64.5 of the CAS Code."

112. The First Respondent's submissions may be summarized as follows:

1. The Contract was not suspended

(a) The Contract was not suspended by a verbal agreement reached between the Appellant and the Player during the Meeting:

1. Even if the Parties had reached such a verbal agreement (*quod non*), this would have been of no legal effect given Clause 11.3 of the Contract, which expressly provides that the rights and obligations thereunder can only be varied "*by written agreement of the parties*".

2. In any event, as the party relying on the alleged verbal agreement to suspend the Contract, the burden of proof falls upon the Appellant to prove its existence.

3. The witness statements of Kaio and the Commercial Director are inherently unobjective and unreliable, given that both individuals were (and remain) employees of the Appellant and therefore each have a vested interest in supporting its position in this matter. Both witness statements lack substance with regard to an explicit agreement between the Player and the Appellant.

4. Prior to the Meeting, the Player instructed his agent (Mr Solbakken) to contact the Appellant to discuss the way forward in light of his increasing concerns. The Appellant confirmed to the agent that it would arrange the Player's safe passage out of Russia so that he could stay in Norway until the invasion was over, which they expected would occur within a matter of days.

5. The Player left the Meeting with the understanding that he would continue to receive remuneration under the Contract throughout his enforced absence from Russia. The alleged offer of Commercial Director to train and play with other clubs made at such meeting was in contrast to FIFA's regulations at this time since Annex 7 of the FIFA RSTP has only been introduced at a later stage.

6. Several of the foreign players pushed the Appellant to provide them with written confirmation of the terms of the Appellant's consent for them to leave Russia prior to their departure, confirming that their salary payments would continue. One of the Appellant's representatives, Mr Ermokhin, advised the players to 'trust us (i.e., the Appellant)' and indicated that each player would receive a document the following day, before they were due to leave.

7. If the Appellant truly intended to subject the foreign players' departure from Russia to a suspension of their respective employment contracts, it would have secured written confirmation of this, in accordance with the requirements of the Contract, before facilitating such departure.

8. The Appellant never mentioned or referred to the alleged verbal agreement in the subsequent correspondence between the parties, but only did so for the first time in its Statement of Claim dated 5 July 2022 before the FIFA DRC.

9. The Player's and Mr Solbakken's conduct are irreconcilable with the alleged existence of a verbal agreement. The Agent never stated that he and the Player were aware of the suspension (contrary to the Appellant's assertion within the Appeal Brief, para. 112).

10. The Appellant orally communicated to Mr Solbakken only after the Player's departure that several financial and practical obstacles had arisen, which meant that the Appellant was no longer able to pay the Player as agreed and it therefore required the Player to suspend the Contract suggesting that the outstanding Sign-On Bonus would not be payable unless and until the Player made an appearance for the Appellant's first team.

11. In any event, the Player cannot be deemed to have tacitly accepted the suspension of the Contract when it is clear from his witness statement that he had not understood from the discussions in the Meeting that the Appellant's permission for him to leave Russia was conditional upon his agreement to suspend the Contract. Furthermore, upon becoming aware of the suggested suspension of the Contract upon his receipt of the Proposed Additional Agreement, the Player expressly and immediately rejected such offer.

12. At least one of the Player's teammates also did successfully bring proceedings before FIFA in respect of unpaid salary during his absence from Russia (contrary to the Appellant's allegation). In any case, the circumstances of these other players provide no insight into the Player's position and the Appellant's reliance on them matters no further.

2. The Contract was terminated with just cause

(a) The Player's termination of the Contract was with just cause:

1. The Appellant unlawfully failed to pay to the Player four instalments of his salary as required under clause 4.1 of the Contract (on 10 and 25 of March 2022 and 10 and 25 April 2022) which amount, collectively, to at least two months' salary as required by Article 14bis of the FIFA RSTP.

2. The Appellant unlawfully failed to pay him the outstanding Sign-On Bonus on 10 March 2022 as required under clause 9.1 of the Contract, which is equivalent to eight months' salary. Even this due payment alone would justify the Contract's termination with just cause based on Article 14bis of the FIFA RSTP. There are no conditions whatsoever which were required to be fulfilled for the outstanding Sign-On Bonus to be payable on its due date.

3. The Player's ITC to facilitate his registration with the Second Respondent was issued without undue delay and in the absence of any objection to its release by the Appellant or the FUR.

4. The Appellant was not alleviated from its payment obligations, neither by virtue of the alleged verbal agreement, nor by virtue of reliance on Annex 7 of the FIFA RSTP. The right to suspend an employment contract provided for in Annex 7 of the FIFA RSTP was specifically implemented by FIFA on an optional basis, exercisable at the election of a player only. This recognizes that the circumstances and impact of the Russian invasion vary from player to player and the suspension of employment obligations would not be suitable in all cases.

5. The Player has not breached any of his obligations under the Contract since he has not disobeyed or refused to comply with any instruction of any member of the Appellant's staff at any time and nor has he missed any training session, match or other event which he was requested or instructed by the Appellant to attend.

6. On the contrary, the Player, along with the other foreign players, requested and received permission to leave Russia on account of their concerns arising out of the Russian invasion into Ukraine. Indeed, the Appellant itself has consistently acknowledged, including in its letters of 5 April 2022 and 6 May 2022 that it "*did not object to the Player's decision to leave Russia*" and apparently maintains this position in its Appeal Brief (para. 19 to 25), and never requested the Player to return.

(b) Even if the Player had breached the Contract by failing to attend training and/or matches in which he was required to participate (*quod non*), the terms of the Contract did not entitle the Appellant to simply withhold all remuneration due to him on this basis. It would, instead have been required to follow the agreed disciplinary process and scheme of fines set out in the Contract.

1. The Player could in any case have not been expected to continue the employment relationship with the Appellant due to its serious breach of trust by avoiding the payment obligations, and by supporting him to leave Russia on the assurance that it would continue to pay him, but eventually did not do so.

2. In addition, the practical and political situation in Russia following the commencement of the Russian invasion made it untenable for the Player to continue living and working there and gave rise to a right for the Player to terminate the Contract in accordance with Article 14 of the FIFA RSTP.

3. The Player felt that he was unable to continue living and working in Russia as a matter of principle but also due to fears for his safety and security as a foreign national in Russia, from Norway, a country which is a member of NATO and with a border with Russia, which has provided military aid and assistance to Ukraine.

4. Norway's anti-war stance makes the Player extremely vulnerable in Russia given the Russian Government's treatment of any individual who is deemed to object to Russia's actions in Ukraine. Shortly before the Player's departure from Russia, the Norwegian Government recommended that its

citizens avoid all travel to Russia. Further, the Russian Duma introduced a law pursuant to which anybody considered to be propagating 'false information' about the Russian military (including the mere suggestion that the Invasion is a 'war') can be arrested and imprisoned for up to fifteen years.

5. The Player also saw his professional career, in particular as a national team player, at risk if he had continued his employment relationship with the Appellant.

6. The Player's termination right is supported by public statements of governments worldwide, FIFPro, and the World Leagues Forum.

7. The FIFA Statutes provide that FIFA commits to respect "*all internationally recognized human rights and shall strive to promote the protection of these rights*". FIFA specified this statutory commitment in its Human Rights Policy of May 2017. It enshrines in particular the fundamental right to a safe and healthy working environment. Additionally, FIFA acknowledged in this policy that player's rights are among FIFA's salient human rights risks "particularly in connection with their employment." Russia is a country currently in breach of international human rights law according to the United Nations. In the present case, the Player did not believe that his employment relationship ensured him a safe and healthy environment any longer due to the unlawful invasion of Ukraine by Russia, i.e., a country internationally condemned for its violation of international law.

8. The Player has acted at all times in good faith in this matter and has been the victim of circumstances outside of his control.

9. Making use of Annex 7 of the FIFA RSTP as introduced on 7 March 2022 (including its updates in June and July 2023) was not fit for the Player for various reasons.

3. Consequences for the Contract

(a) The Appellant is not entitled to any compensation:

1. Even if the Appellant's claim was accepted by the Panel, the amount claimed by the Appellant in accordance with Clause 9.5.2 of the Contract is excessive and disproportionate and must be reduced, given it patently exceeds the amount that is just and equitable as it is grossly in excess of any losses that the Appellant could have suffered as a result of the Player's breach of contract.

2. The "remuneration element" of the alternative compensation claimed by the Appellant would not be relevant given the Contract would be suspended and, on the Appellant's own arguments, it was therefore not required to make any payments to the Player. The Appellant would therefore have saved money equivalent to the Player's salary for the remaining term of the Contract, rather than suffered any loss of residual value of the Contract as a

result of the termination. In any event, the calculation applied by the Appellant is flawed.

3. In terms of the unamortized expenses (namely the transfer fee), the Appellant cannot claim compensation for a failure to provide services under the Contract as a result of the alleged breach of contract as the Player was not required to provide them anyway whilst the Contract was suspended. In any event, the Appellant's calculation is incorrect.

(b) In relation to the specificity of sport the Player would not be considered to have been acting in bad faith whilst the Contract was suspended and neither party was required to comply with their obligations under the Contract.

(c) The Appellant is in any case prevented from raising the claim for alternative compensation within these CAS proceedings based on Article R57 CAS Code.

4. Further Submissions

(a) The Diarra Decision and the FIFA Interim Regulations are not applicable to the case at hand. There is no legal basis to apply the FIFA Interim Regulations retrospectively. Doing differently would violate the First Respondent's interests and the principle of procedural fairness. Furthermore, the First Respondent has acted in good faith relying on the contractual stability regime enshrined in the FIFA RSTP. This cannot be overturned two years after the Appealed Decision coming into force. Furthermore, the FIFA RSTP (edition 2025) make it clear that the FIFA Regulations do not apply retrospectively in appeals proceedings.

(b) Even if the FIFA Interim Regulations were applicable, this would not make any difference in these proceedings. The amendments made to Article 17(1) FIFA RSTP only confirm the First Respondent's position. However, the amendment of Article 17(2) FIFA RSTP would cause significant and unjustified prejudice to the Frist Respondent, contrary to his legitimate expectations. The contractual stability regime had been in force materially on the same terms for more than 20 years. It was the First Respondent's clean and firm understanding that a new employer club would be jointly liable in the event that the Player breached his employment contract without just cause. Without such assurance, the First Respondent may have taken a different approach.

C. The Second Respondent's Position

113. In its Answer, the Second Respondent requested the Panel:

> *"1. to reject in full the Appeal filed by Krasnodar FC and confirm the FIFA DRC Appealed Decision;*
>
> *On a subsidiary basis*
>
> *2. in case the Panel deems the Player to have terminated the Employment Contract without just cause, to reject the Appellant's claim on the jointly financial liability of Salernitana for the reasons above mentioned.*

3. to order the Appellant to bear in full the costs of this arbitration proceedings;

4. to order the Appellant to pay a contribution of the legal fees, costs and expenses borne by the Second Respondent, Salernitana 1919 S.r.l., in relation to these Appeal proceedings, in an amount to be determined at the discretion of the Panel."

114. The Second Respondent's submissions are to a large extent congruent with the First Respondent's submissions which naturally follows from the identical request to confirm the Appealed Decision.

115. Hence, while the Panel has accounted for and carefully considered all the submissions made and evidence adduced by the Second Respondent, it summarizes in the following mainly the Second Respondent's submissions which differ from or add on to the First Respondent's submissions, or explicitly concern only the Second Respondent's position with respect to these proceedings:

1. Joint and several liability

(a) The negotiations between the Player and Salernitana started only at the opening of the 2022 summer transfer window, when Salernitana appointed the intermediary Mr Luca Ariatti to negotiate and conclude the registration of the Player. As a consequence, the termination of the Player's Contract could not have been influenced by Salernitana and, therefore, it is uncontroversial that the latter has not committed any infraction or inducement for the termination of the Contract.

(b) The Appellant, neither before the FIFA DRC nor in the Appeal Brief, mentioned any involvement and/or inducement of another club with respect to the Player's termination of the Contract.

(c) Even if the Player terminated the Contract without just cause, the liability of the new club provided by Article 17 (2) of the FIFA RSTP cannot be presumed but shall be analyzed on a case-by-case basis (CAS 2015/A/3953 & 3954).

(d) Joint and several liability does not apply in cases where it was the employer's decision to dismiss with immediate effect a player who, in turn, had no intention to leave the club in order to sign with another club and where the new club has not committed any fault and/or was not involved in the termination of the employment relationship between the old club and the player.

(e) The Appellant's payment of the partial salary amount of RUB 2,285,049 on 26 May 2023 confirms that the Appellant did not deem the Contract suspended.

(f) The contractual compensation clause invoked by the Appellant is disproportionate and non-reciprocal and therefore without legal effect.

(g) The Appellant's alternative calculation of the compensation is flawed and incorrect and would in any event have to be significantly reduced.

2. Further submissions

(a) The Diarra Decision of the ECJ is "absolutely relevant" to the case at hand. The ECJ evaluated Article 17 (2) and (4) FIFA RSTP and found that the rigid approach contained therein violated the principle of proportionality and did not sufficiently balance the interests of players and clubs with the principle of contractual stability. The ECJ stated that FIFA's approach to presume the new club's liability without considering the individual circumstances of the case was illicit. Thus, the Appellant's request to condemn Salernitana jointly with the Player must be rejected. Salernitana never induced the Player to unilaterally terminate his contract with the Appellant. This was also confirmed by the Payer at the hearing.

(b) In case Salernitana would be held jointly and severally liable, it is likely to go bankrupt due to its current financial situation.

(c) The FIFA Interim Regulations are applicable to the case at hand. This follows from the "Explanatory Notes" according to which the new provisions apply in proceedings pending before the Football Tribunal or before the CAS. This is also in line with the agreement of the Parties. They have referred to the FIFA Regulations as the law applicable to the merits, which includes also the new rules.

(d) There is no room for the application of Swiss law. The FIFA Interim Regulations are crystal clear and must be applied in the case at hand. There is no gap that needs to be filled by falling back on Articles 337 et seq SCO. However, it is noteworthy that the provision of the SCO command the adjudicatory body to take account of all the circumstances when calculating a possible compensation. The same concept was highlighted by the ECJ in the Diarra case and is now incorporated in the new Article 17 (2) of the FIFA Interim Regulations.

VI. JURISDICTION

116. This arbitral proceeding is governed by the Articles 176 et seq. of the Swiss Private International Law Act ("PILA"), since the Parties are domiciled outside Switzerland and because the seat of the arbitration is in Switzerland (Article R27 of the CAS Code). Furthermore, the Parties have not opted out of the applicability of chapter 12 of the PILA.

117. Article R47 (1) of the CAS Code provides as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of 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."*

118. Article 57 (1) of the FIFA Statutes states as follows:

> *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question."*

119. The Appealed Decision of 18 February 2021 constitutes a final decision passed by a legal body of FIFA, i.e., the FIFA DRC. Further, the note related to the appeal procedure within the Appealed Decision explicitly refers to CAS jurisdiction as appeal instance in the present case and in accordance with Article 57(1) of the FIFA Statutes.

120. The Panel also notes that Clause 11.1 of the Contract reads as follows:

> *"In case there will arise a dispute between the parties it should be settled by means of negotiations. If the Parties fail in achieving an agreement on the dispute, it should be referred to the FIFA Dispute Resolution Chamber, and any appeal of the DRC's decision shall be lodged with the CAS before a three-judge panel …"*

121. Finally, the Panel observes that neither of the Parties objected to the jurisdiction of the CAS and that the OoP was duly signed by the Parties without reservation.

122. It follows from the above that CAS has jurisdiction to hear this dispute.

VII. ADMISSIBILITY

123. Article R49 of the CAS Code provides as follows:

> *"In the absence of a time limit in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for the appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the parties."*

124. Article 57 (1) of the FIFA Statutes provides as follows:

> *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question."*

125. Furthermore, the Appealed Decision provides as follows:

> *"According to article 57 par. 1 of the FIFA Statues, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision."*

126. The Panel notes that the grounds of the Appealed Decision were notified to the Appellant on 8 May 2023. As the Appellant filed its Statement of Appeal on 29 May 2023, the appeal was filed within the deadline of 21 days.

127. Consequently, the Panel finds that the appeal was filed in time and is admissible.

VIII. OTHER PROCEDURAL ISSUES

A. Article R57(3) of the CAS Code

128. The Appellant submitted evidence in this CAS proceeding, which it had not filed during the proceeding before the FIFA PSC.

129. According to Article R57 (3) of the CAS Code, *"the Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered."*

130. The First Respondent argues that the Appellant is estopped from claiming compensation on the basis of the alleged loss it suffered as an alternative argument in the present proceeding. According to the First Respondent, it was open to the Appellant to raise this alternative compensation argument in the proceedings before the FIFA DRC and yet it did not do so, despite the evidence now relied upon, being available at the time. As such, the First Respondent states that this is an "entirely new remedy" being sought by the Appellant and hence, there is a strong and compelling reason for the Panel to exercise the power under Article R57 of the CAS Code.

131. The Panel notes that according to Article R57 (1) of the Code and in line with consistent CAS jurisprudence, the Panel has, in principle, full power to review the facts and the law of the case on a *de novo* basis (CAS 2016/A/4387, no. 146). However, as observed in CAS 2014/A/3523 (no. 75), while the *de novo* nature of the CAS appeal procedure allows a panel to take new facts into account, it must remain within the scope of the first instance decision (also see CAS 2017/A/5256 no. 55; CAS 2007/A/1396 & 1402 at no. 46). The Panel notes that the First Respondent appears to claim that by invoking an "alternative compensation argument", the Appellant is seeking an "entirely new remedy". The Panel does not agree with this interpretation. While the Appellant did not raise this "alternative" argument before the FIFA DRC, the underlying claim of the Appellant, is still that of compensation and this argument is merely an additional basis for the compensation claimed. As such, the Panel does not consider this argument to fall outside the scope of its review in the present proceeding.

132. The Panel further notes that Article R57 (3) of the Code provides for an exception to the *de novo*-power. The provision, however, accords the Panel with a wide margin of discretion whether to exclude evidence that was already available at the first instance. The provision is interpreted restrictively in CAS jurisprudence (RIGOZZI/HASLER, in Arroyo (ed.) Arbitration in Switzerland, 2nd ed. 2018, Art. 57 CAS Code no. 11 et seq.) and is designed for cases only in which

> *"(i) the party requesting the exclusion of evidence that was not presented in the first instance (non-arbitral) proceedings will have to establish not only that the new evidence was already available or could reasonably have been discovered at the first instance level, but also (ii) why admitting the evidence would constitute an abuse of process."* (Rigozzi/Hasler, in Arroyo (ed.) Arbitration in Switzerland, 2nd ed. 2018, Art. 57 CAS Code no, 13).

133. In this regard, the Panel also refers to the decision in CAS 2016/A/4859 (no. 64), wherein the panel stated the following:

> *"It is clear from the language of this rule that while a CAS Panel may exclude such evidence, it is not bound to do so. Indeed the practice of the CAS with respect to the application of this rule is restrictive. In other words, exclusion of evidence should be the exception rather than the rule, and should generally be applied in "exceptional circumstances of abusive or inappropriate conduct by the parties submitting new evidence (…)."*

134. Applying the above discussed principles, the Panel finds that the present case is not suitable for the exercise of the power under Article R57 to exclude the "alternative" argument of the Appellant and the evidence presented in support of it. First, the Panel notes that there is no limitation under Article R57 of the CAS Code for admitting "new" legal arguments and submissions (CAS 2017/A/5090, no. 52) and as such, the "alternative" argument of the Appellant is found to be admissible. Secondly, the Panel does not consider this case to fall within the "exceptional circumstances" which would necessitate the exclusion of the evidence put forward by the Appellant in support of the said argument. The Panel notes that the Appellant's conduct cannot be termed as "abusive" or "inappropriate" in this case and as such, dismisses the First Respondent's request.

B. Witness Statements

135. The Appellant submitted a witness statement for Mr Kaio Fernando da Silva Pantaleão, i.e. a football player under contract with the Appellant. In its letter dated 23 November 2023, the CAS Court Office – in view of the comments filed by the Respondents – advised the Parties that in case the witnesses would not attend the hearing, their respective witness statements will not be considered as witness testimony, but as mere party submissions. Consequently, the Panel did not consider the witness statements filed for Mr Pantaleão and Mr Tolstikov as witness testimony, but as mere party submissions.

C. The submissions filed after the hearing

136. As previously mentioned, Salernitana has submitted information to the CAS Court Office relating to the transfer of the Player from Salernitana to the club FF Malmö after the hearing. The Appellant has requested that Salernitana's letter shall not be admitted on file. Subsequently, Salernitana requested that a redacted version of the Transfer Agreement be disclosed to the Appellant. In its letter dated 21 February 2024 the Panel informed the Parties that it *"will consider the document filed by Salernitana and the information regarding the transfer of the Player, without any prejudice to the assessment of their material relevance for the present dispute only if both Respondents fully disclose all aspects of the deal with Malmö, namely … any agreements, including side agreements and addenda, concluded between Salernitana, or any other entity thereto affiliated, and Malmö, or any other entity thereto affiliated; .. any agreements, including any side agreements and addenda, forming the employment relationship between the Player and Malmö, or any other entity thereto affiliated; … proof of any payments made by Malmö, or any other entity thereto affiliated, in relation with the transfer of the Player. … The Panel will not accept any confidentiality reservation or redaction of any documents. In this respect the Parties are reminded that the present procedure and all aspects of it are fully confidential …*". Following the above letter the Player disclosed his new contract with Malmö FF and agreed that the contract be disclosed to the Appellant. The latter had an opportunity to comment on the new documents filed by the First and the Second

Respondent. In its letter dated 6 March 2024, the Appellant submitted that the documents filed had no relevance whatsoever for the dispute at hand.

137. Article R56 (1) of the CAS Code provides that – absent any exceptional circumstances, "*the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer*". The Panel notes that the information provided by Salernitana and the Player could not be provided at an earlier stage and therefore finds that the new documents filed are admitted on file based on exceptional circumstances.

D. Continuation of the Proceedings subsequent to the Challenge

138. Following the substitution of Mr Emin Özkurt by Mr Michele A.R. Bernasconi, the CAS Court Office invited the Parties to comment on Article R36 of the CAS Code, which reads as follows:

> *"In the event of resignation, death, removal, replacement of a Sole Arbitrator by a 3-member Panel during the procedure or successful challenge of an arbitrator, such arbitrator shall be replaced in accordance with the provisions applicable to her/his appointment. If, within the time limit fixed by the CAS Court Office, the Claimant/Appellant does not appoint an arbitrator either to replace the arbitrator it had initially appointed or to constitute a 3-member Panel, the arbitration shall not be initiated, or in the event it has been already initiated, shall be terminated. Unless otherwise agreed by the parties or otherwise decided by the Panel, the proceedings shall continue without repetition of any aspect thereof prior to the replacement."*

139. In their respective letters the Parties stated that they wish to continue the proceedings without the repetition of any aspect thereof prior to the replacement. The Parties also acknowledged this once more at the outset of the second hearing held on 9 April 2025.

IX. APPLICABLE LAW

140. 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 absence of such 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."*

141. Article 56 (2) of the FIFA Statutes sets forth as follows:

> *"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."*

142. Clause 11.1 of the Contract provides as follows:

> *"…Both the FIFA DRC and the CAS shall primarily apply the FIFA regulations and Swiss law and then secondarily, Russian legislation."*

143. Furthermore, Clause 11.7 of the Contract reads as follows:

> *"All issues not settled by the present contract shall be regulated by regulations of FIFA, UEFA, RFU and RF current legislation"*

144. The Panel is satisfied that primarily the various regulations of FIFA apply to the merits of this appeal. In addition, pursuant to Article 56 (2) of the FIFA Statutes, Swiss law shall apply on a subsidiary basis in order to interpret the FIFA regulations. This finding is also confirmed by the Parties' submissions, as the Parties equally submit that the rules and regulations of FIFA shall apply and subsidiarily, Swiss law. For all issues not covered by the FIFA regulations, the Russian legislation applies.

X. MERITS

145. The relevant questions the Panel needs to answer in this appeal can be grouped into the following issues:

- A. Was the Contract suspended?
- B. When was the Contract terminated?
- C. Is the Player entitled to the Sign-On Bonus?
- D. Was the Player's termination of the Contract with or without Just Cause?
- E. What are the Consequences of the Player terminating the Contract without Just Cause?

A. Was the Contract suspended?

1. The events on 2 and 3 March 2023

146. The Parties are in dispute if and what was agreed upon on 2 March 2023 between the Player and the Appellant prior to the Player's departure. The Appellant submits that a consensus was found at the meeting between Mr Fundukyan and the Appellant's players that the contracts of those players that wished to leave the Appellant would be suspended. The First Respondent, on the contrary, submits that there was no such agreement. The First Respondent submits that it was promised to all players at the meeting that payments would be made despite of their absence. Finally, the First Respondent states that even if there was an oral agreement to suspend the Contract (*quod non*), such agreement was not valid, since it did not comply with Clause 11.3 of the Contract, which requires that any amendment of the Contract needs to be in writing.

a) The evidence before the Panel

147. The Appellant has called Mr Khashig (General Director of the Appellant) and Mr Fundukyan (Commercial Director of the Appellant) as witnesses in order to corroborate its submission. The testimony of Mr Khashig in this regard was not particularly helpful,

since he was not present at the meeting. Furthermore, Mr Khashig stated that he did not discuss with the Player in person whether the Contract shall be suspended or not.

148. Mr Fundukyan testified that he had been mandated by the Appellant' board of directors to speak with the (foreign) players, because he spoke English. At the meeting on 2 March 2022 he offered to the players three different options: terminate the employment contract for those players that only had 6 more months left; continue the employment contract in case a player wished to stay with the Appellant or to suspend the employment contact for those players who wished to leave Russia. There were no individual discussions with the players. According to Mr Fundukyan the options were discussed "in a group" with all foreign players being present (but for one who was injured). It was not clear from Mr Fundukyan's testimony in what detail the various options were discussed, more particularly whether it was explicitly stated that players leaving Russia would no longer be paid. Mr Fundukyan stated during his witness testimony that it was "obvious" and "logical" that in case a player departed from the Appellant, he would no longer be paid. Mr Fundukyan also testified that the players present at the meeting "did not decide straight away" what option to take. The decision was rather implicit, i.e. if a player showed up the next day to depart from Russia he had decided to suspend his contract.

149. The Player stated in his testimony that he was present at the meeting on 2 March 2023 and that the meeting was chaotic. No individual conversation took place. The Player also testified that no conditions were expressed by Mr Fundukyan for leaving Russia. The Player states that he was not advised that in case he left Russia he no longer would be paid. The Player submits that "the main focus" of the meeting on 2 March 2022 was how to evacuate the players from Russia. The Player further testified that he received the Proposed Additional Agreement on 3 March 2022 while being on the bus to the airport in order to leave Russia. He submits that he was "shocked" and "surprised" and immediately called his agent (Mr Solbakken) and that he never expressed any consent to this document.

b) The findings of the Panel

150. The burden of proof that the Appellant and the Player executed an amendment of the Contract on 2 or 3 March 2022 rests with the Appellant. The Panel – in light of the above testimonies – is not satisfied that the Player and the Appellant agreed to suspend the Contract. No such agreement was concluded on 2 March 2023, since no individual negotiations took place and consequently, no meeting of the minds can be established. The Panel also finds that the Player by getting on the bus in order to leave Russia did not implicitly agree to a suspension of his Contract. The Panel is of the view that the primary concern of the Appellant when organizing the meeting on 2 March 2023 was how to get those players out of Russia that wished to leave. Such plan was complex and needed to be executed as quickly as possible before the borders would close. There was little time to negotiate and agree on the detailed consequences that a departure of a player would have on his Contract. Rather, the club's primary concern was to act in accordance with its duty of care as an employer by bringing its players to safety immediately and without conditions.

151. However, it is equally evident to the Panel that such a deep cut into the contractual structure as a result of the Player's departure from Russia cannot remain without consequences on the Contract. The obligations of the employer and the employee are reciprocal. One contractual partner only enters into an obligation for the sake of the obligation of the other party. If, therefore, the Player is no longer able to provide his services to the Appellant because he has left Russia, this will, in principle, have consequences on the Appellant's obligations under the Contract. It is rather evident for the Panel that the parties to the Contract on 2 and 3 March 2023 – sensibly – concentrated on the urgent matters first, i.e., to get the Player who wanted to leave Russia because of safety concerns out of the country as quickly as possible. However, it is equally obvious for the Panel that the parties to the Contract, in any event, should have known and understood that this would have consequences for the Contract and that such consequences would need to be negotiated and dealt with in good faith between the parties once the Player was out of the country.

152. Lacking convincing evidence, the Panel does not agree with the Player that the Appellant's consent to rush him to safety must be construed as an acceptance to pay him all monies due under the Contract no matter what, i.e., irrespective of whether the Player fulfills his obligations under the Contract.

2. The Proposed Additional Agreement

153. In the Proposed Additional Agreement, the Appellant proposed to the Player to take "*unpaid leave for the time starting as of 2 March 2022 up to the date to be mutually established*" and thereby – basically – to suspend the Contract. The Player did not express its consent to the Appellant's proposal, either implicitly by staying on the bus and leaving the country nor expressly thereafter. Instead, on 8 March 2023, the Player made it clear in a letter that he does not intend to accept the Proposed Additional Agreement.

3. Annex 7 of the RSTP

154. On 7 March 2022, FIFA issued Annex 7 to the FIFA RSTP (cf. no. 21). The relevant provisions read as follows:

> *"[Article] 1 Scope of application of the temporary rules addressing the exceptional situation deriving from the war in Ukraine*
>
> *This annexe applies to all employment contracts of an international dimension concluded between players or coaches and clubs affiliated to the Ukrainian Association of Football (UAF) or the Football Union of Russia (FUR), as well as to the registration of all players – regardless of their nationality – previously registered with the UAF.*
>
> *[Article] 3 Employment contracts of an international dimension with clubs affiliated to the FUR*
>
> *1.*
>
> *Notwithstanding the provisions of these regulations and unless otherwise agreed between the parties, a contract of an international dimension between a player or a coach and a club affiliated to the FUR can be unilaterally suspended until 30 June 2022 by the player or the coach, provided that a mutual agreement with the club could not be reached before or on 10 March 2022.*

2.

The minimum length of a contract established under article 18 paragraph 2 of these regulations does not apply to any new contract concluded by the professional whose contract has been suspended in accordance with paragraph 1 above.

…

[Article] 4 Consequences of the suspension

A player or coach whose contract has been suspended as per article 2 paragraph 1 or article 3 paragraph 1 above does not commit a breach of contract by signing and registering with a new club. Article 18 paragraph 5 of these regulations does not apply to a professional whose contract has been suspended as per article 2 paragraph 1 or article 3 paragraph 1 above."

155. Annex 7 to the FIFA RSTP entered into force on 7 March 2022 and applies to all employment contracts of an international dimension between players and clubs affiliated – *inter alia* – with the FUR. In the case at hand, the Appellant is affiliated with the FUR. Furthermore, the Contract between the Appellant and the Player was still in force on 7 March 2022 and is of an international dimension. Consequently, Annex 7 to the RSTP is applicable.

156. The Annex 7 to the RSTP – first and foremost – gives precedence to a negotiated solution between the Parties. Article 3 (1) of the Annex 7 to the RSTP provides that the window for finding such solution is – at the minimum – until 10 March 2022. Once this time limit has elapsed, Article 3 (1) of the Annex 7 of the FIFA RSTP provides that a player "*can unilaterally suspend*" the employment relationship with the club. Annex 7 to the RSTP does not exclude that negotiations continue after 10 March 2022. However, as of this point in time a player can stop the negotiations by pulling the unilateral option. It follows from the wording of Article 3(1) of the Annex 7 of the FIFA RSTP that it is solely up to the Player to decide whether to unliterally suspend the employment relationship or not.

157. In the view of the Panel, there is no evidence on file that the Player either implicitly or explicitly declared to unilaterally suspend the Contract. Instead, the Player declared in a letter dated 6 April 2022 that he "*is very much aware of FIFA's 'Temporary rules addressing the exceptional situation arising from the war in Ukraine' and that "he does not wish …* [to rely on such provision] *and that he wishes to maintain the Employment Contract*."

158. Annex 7 to the FIFA RSTP is silent on the fate of the employment relationship pending a decision of a player whether to exercise the "option" to unilaterally suspend the employment relationship. The better arguments speak in favor of suspending the respective obligations under the contract for the time being until the player takes a definitive decision whether to exercise the option or not. Furthermore, Annex 7 to the FIFA RSTP is also silent on the fate of the employment relationship once a player refuses to exercise the option according to Article 3 (1) of Annex 7 to the RSTP. The only sensible interpretation of the rules is that – once it is clear that a player will definitely not exercise the option, the obligations under the contract will resume in full. Thus, when the Player on 6 April 2022 decided not to exercise the option and to maintain the employment relationship the reciprocal obligations – in principle – resumed. However, the Player made it clear in his letter dated 6 April 2022 that he was not willing to fulfill his obligations

arising from the Contract.

159. The Panel finds that the Player's behavior is incompatible with Annex 7 of the RSTP in that he does not wish to stay with the Club and provide his services, but wants to be paid in full at the same time. The Panel also finds that a diligently and in good faith acting player who does not wish to fulfill his obligation under the contract would have pulled the option according to Article 3 (1) of the Annex 7 of the FIFA RSTP under the given circumstances. Article 3(1) of the Annex 7 of the FIFA RSTP in the view of the Panel constitutes a balanced compromise between the interests of players and the interests of the Russian clubs in case a player wishes to leave Russia because of safety concerns arising from the Russian aggression against Ukraine. If the Player would have negotiated in good faith this would have been the compromise on which he would have had to settle with the Club.

160. Be it as it may, also a contradictory or illicit behavior of the Player cannot be turned into an expression of will by the Player to unilaterally suspend the Contract.

B. When was the Contract terminated?

1. Termination on 5 April 2022?

161. In the Appealed Decision the FIFA DRC found that the Contract was mutually terminated by the Player and the Appellant on 5 April 2022. The Appealed Decision reads insofar as follows (no. 17):

> *"... the Chamber is of the opinion that the parties therefore mutually departed from the contract, ultimately as from 5 April 2022 ..."*

162. The Appealed Decision argues that not only the Player had lost interest in the Contract, but also the Appellant, because "*in none of the club's letters that were sent to the player, the club explicitly requested the player's return. What is more, already in its first letter sent to the player on 5 April 2022, the club even emphasised that it was ready to consider options with a loan or a definitive transfer to another club and that it was open for negotiations*".

163. The Panel does not agree with this finding. As previously noted, the Appellant and the Player were – once the Player had departed from Russia – under an obligation to negotiate in good faith the consequences of the Player leaving the Club. This also follows from Annex 7 to the RSTP. That the Appellant submitted various options to the Player, how to solve the matter is by no way a sign that the Appellant had lost interest in the Contract. Mr Solbakken and Mr Khashig in their respective testimony declared that they were in regular contact (Mr Khashig: "*8 to 10 times*"; Mr Solbakken: "*we spoke a lot to find a solution*"). Why would the Club be in constant contact with the Player's agent and submit proposals to the latter, if it had lost interest in the Player? There is not a single piece of evidence on file from which one can deduce that the Appellant lost interest in the Contract and/or the Player. Instead, the Appellant was at all times eager to find a solution in order to monetarize on its rights over the Player by loaning or selling the latter to another club and at the same time account for the legitimate interests of the Player not to return to Russia while the war was ongoing. To call the Player back to the Appellant was not an

option, because the Player had made it clear that he did not wish to return and because the Player had left Russia for legitimate safety concerns. Since the war situation had not improved, but rather deteriorated since 3 March 2022, it was simply non-sensical for the Appellant to call the Player back to Russia to provide his services. Furthermore, this would also have negatively affected the common obligation of the parties to the Contract to negotiate a solution in good faith. To conclude, therefore, the Panel does not agree that the Contract was mutually terminated by the Appellant and the Player or that they both lost interest in the Contract as of 5 April 2022.

2. Termination Notice on 17 May 2022?

164. If the Contract was not terminated mutually on 5 April 2022, it was terminated by the Player on 17 May 2022. The Termination Notice is unequivocal, refers to "*flagrant and continuing breaches*" of the Appellant and states that as a consequence of this letter the "*Employment Contract is therefore terminated with immediate effect*". Consequently, the Panel finds that the Contract was terminated by the Player as of this date.

C. Is the Player entitled to the Sign-On Bonus in the amount of EUR 500,000?

1. The Position of the Parties

165. The Player in his Notice of Termination – *inter alia* – claimed the payment of EUR 500,000 "*in respect of the first instalment of the signing bonus, which was due to be paid on 10 March 2022*". The Player claims the Sign-On Bonus even though he had departed from Russia on 3 March 2023. The Player claims that the Sign-On Bonus was unconditionally and had to be paid to him on 10 March 2022 irrespective of whether he would provide services to the Appellant or not. Furthermore, the Player submits that the circumstances leading to the impossibility of providing the services were neither caused by him nor did they fall within his sphere of risk and that, therefore, the Appellant remains obliged to pay the Sign-On Bonus. The Appellant on the contrary claims that the consequences of Russia's war against Ukraine did not fall within its sphere of risk either, that the Appellant is not at fault for this situation and that, therefore, it is not obliged to pay any kind of remuneration for services that had to be rendered after 3 March 2023. The Sign-On Bonus is – according to the Appellant – part of the remuneration for the Player's services. Thus, if the latter is unable or unwilling to provide the services under the Contract, no payment is due to the Player.

2. The nature of the Sign-On Bonus

166. The Panel finds that the Sign-On Bonus must be qualified as part of the remuneration for the services to be provided by the Player under the Contract. The only difference to a "normal" remuneration is that the parties did not agree a monthly payment method in relation to the Sign-On Bonus, but instead specified several points in time at which a lump sum was due. In contrast to a monthly remuneration, the Sign-On Bonus was therefore not intended to remunerate the performance of services in a specific (past or upcoming) period of time. Rather, the lump sum (Sign-On Bonus) covered the total term of the Contract. With this approach (which differs from a monthly payment method), the contracting parties wished to manage certain risks (e.g., termination or suspension of the

Contract) that may be associated with the fulfilment of the latter. If, for example, the execution of the contract is disrupted after the Sign-On Bonus has become due, this does not affect the claim for the payment of the Sign-On Bonus. The legal situation is obviously different, if the disruption occurs before the Sign-On Bonus becomes due. In this case, the creditor of the respective claim bears the risk and depending on the specific facts and circumstances of each case, the entitlement to payment of the Sign-On Bonus does not arise.

3. The allocation of the risk according to the subsidiarily applicable Swiss law

167. The Panel finds that the correct legal framework to assess the consequences of Annex 7 to the RSTP on the Contract is Swiss law. According thereto, the employment contract is an exchange relationship under the law of obligations. If one party does not perform, the other may withhold its performance (SFT 136 III 313, consid. 2.3.1; 120 II 209, consid. 6a). This follows from the general principles set out in Art. 82 of the Code of Obligations ("CO"), which reads as follows:

> *"A party to a bilateral contract may not demand performance until he has discharged or offered to discharge his own obligation, unless the terms or nature of the contract allow him to do so at a later date."*

168. An exception applies if the employer is in creditor default. The latter is the case, if the creditor fails to accept the duly offered performance or if he unjustifiably refuses to take the preparatory actions incumbent upon him without which the employee is unable to fulfil his or her obligation.

169. The Swiss legislator has created a special rule for employment contracts in case of creditor default (cf. Article 324 CO): If the employee cannot provide the services due to the employer's fault or if the employer defaults on accepting the work for other reasons, the employer remains obliged to pay the remuneration without the employee being obliged to provide subsequent services.

170. The Panel notes that according to Swiss law – in principle – the employer may be in creditor default, even if he is not at fault. However, there is an exception to the rule, i.e. if the employer has "objective reasons" for not accepting the services of the employee (SFT 4A_53/2023, consid. 4.1). An "objective reason" within the above meaning that excludes creditor's default was affirmed by the SFT, for example, when the creditor was unable to take certain preparatory actions due to the chaos of war and wartime economic measures (BGE 63 II 226). Furthermore, a creditor was allowed to reject the employee's performance because it was to be fulfilled at his place of residence and there was an import ban there (BGE 44 II 407 E. 1). An objective reason is also affirmed if the creditor would expose himself to unreasonable legal risks by accepting the performance. In contrast, "personal reasons" of the employer never exclude creditor's default. The latter is true, in particular, if a so-called business risk materializes. Business risks or operational risks must always be borne by the employer (BGE 124 III 346 consid. 2.a).

171. The term "business risk" or "operational risk" is not defined by law. The term ultimately covers all circumstances stemming from the employer's sphere of risk. Whether a particular circumstance is to be qualified as a business risk (within the employer's sphere

of risk) or as an objective reason (outside the employer's sphere of risk) is to be determined on a case-by-case basis. When performing the case-by-case analysis it must be kept in mind that not every circumstance falling outside the employee's sphere of risk automatically is to be qualified as a business risk. Therefore, an objective reason may exist even if the employee's sphere of risk is not affected. The question of whether there is an objective reason ultimately depends on whether the risk in question is inherent to the operations of a specific company, i.e., its specific production and working conditions or not. If the risk in question is of a general nature "affecting everyone", then the latter must be qualified as an objective reason excluding creditor's default of the employer (ZK-OR/SCHRANER, Vol. V/1e: Die Erfüllung der Obligationen, Art. 68-96 OR, 3rd ed. Zurich 2000, Art. 91 no. 113, 125). Thus, if the inability to perform the services is based on a general risk situation that the individual employer has not caused and is not responsible for in the broadest sense, then the employer does not need to make the payments due under the contract to the employee. Other elements that need to be taken into account when qualifying an incident as an objective reason are its temporal length and/or whether it was foreseeable for the employer. The SFT has qualified as an objective reason the business closure in order to combat the COVID-19 pandemic (SFT 4A_53/2023, consid. 6).

4. The application of the above principles to the case at hand

172. When applying the above principles, the Panel finds that, lacking any different agreement between the Parties, the Appellant was not in creditor's default and, therefore, was not under an obligation to pay the Sign-On Bonus that fell due after 3 March 2022, i.e., when the disruption of the Contract occurred. The finding of the Panel is also backed by FIFA's Annex 7 of the RSTP. The latter does not automatically terminate the employment relationships between Russian clubs and their players (cf. supra no. 155 et seq.). In addition, Annex 7 of the FIFA RSTP does not allocate Russia's war against Ukraine into the sphere of risk of either the Russian clubs or the players, but instead tries to find a proportionate solution taking into account the interests of both, the affected clubs and the players. Mutatis mutandis, the Panel is satisfied that the same shall apply in a situation like the one of the present case in which both Parties accepted to suspend within shortly the performance of the contractual obligations, subject to a "solution" to be negotiated by the Parties. Therefore, the Panel is of the view that while the Parties had left open to further negotiation the final "solution" of their contractual issues, the factual, effective understanding of the Parties was that at least at that juncture, their contractual obligations were suspended. Accordingly, the Sign-On Bonus did not become due.

D. Was the Player' termination of the Contract with or without Just Cause?

1. The position of the Parties

173. The Appellant submits that this Panel is bound by the Appealed Decision that dismissed the Player's request at first instance asking the FIFA DRC to determine that the Contract was terminated with just cause. Since the Player did not appeal the Appealed Decision, this Panel is – according to the Appellant – bound by the conclusion of the FIFA DRC that the Contract was not terminated with just cause. The Appellant subsidiarily submits that even if the Panel was not bound to the conclusions of the FIFA DRC, it must find

that the Player terminated the Contract without just cause. The Player objects to the Appellant's submissions and states that this Panel is not barred from finding that the Player terminated the Contract with just cause.

2. The finding of the Panel

174. The Player had filed a request asking the FIFA DRC to decide that the "*Player has terminated the Playing Contract lawfully and with just cause on the basis of Article 14bis … and/or Article 14 … of the FIFA Regulations.*" The FIFA DRC has dismissed such claim in the Appealed Decision ("*Any further claims of* … [the Player] *are rejected*").

175. The panel in CAS 2023/A/9404 has provided guidance as to the scope of the binding nature of decisions of association tribunals. In said decision, the panel applied the principles of res judicata by analogy and justified this by stating as follows (at no. 102):

> *"The Panel notes that association tribunals and arbitral tribunals perform similar functions. Both seek to resolve a dispute between the parties in a court-like procedure. Because of these similar functions it appears obvious to determine the extent of the binding effect of both dispute resolution mechanisms in a similar way. This is all the more true, considering that res judicata not only serves a public interest. Instead, the concept also intends to protect the private interests of the parties involved in the litigation. Without the 'finality' of a dispute resolution mechanism, a dispute would never end. It is, however, the common intention of the parties when submitting to a dispute resolution mechanism, to have their contentious relationship finally and bindingly resolved by the adjudicator. The private interests involved do not differ in proceedings before an association tribunal from other forms of dispute resolution such as arbitration. Consequently, when looking at the similar functions and the similar interests involved, the better arguments speak in favour of determining the scope of the binding effects of the respective decisions in an identical manner, i.e. to determine the extent of the finality of a decision of an association tribunal by applying the concept of res judicata by analogy."*

176. When applying the principles of *res judicata* by analogy the starting point to determine the extent of the binding effects are the requests filed by the party on the one hand and the conclusions of the adjudicatory body (i.e., the operative part of the decision) on the other hand. However, it is equally true that – in order to fully understand the conclusions – the Panel may fall back on the reasons of the decision in order to interpret the conclusions. In this respect, the Panel refers to SFT 144 I 11, consid. 4.2, where the court stated as follows:

> *"Die materielle Rechtskraft eines früheren Entscheids bedeutet grundsätzlich nur eine Bindung an das Dispositiv. Allerdings können zur Feststellung der Tragweite des Dispositivs weitere Umstände, namentlich die Begründung des Entscheids herangezogen werden"*
>
> **Free translation**: The res judicata effect of an earlier decision basically only means that the operative part of the decision is binding. However, further circumstances, namely the reasons for the decision, can be used to determine the scope of the ruling of the operative part.

177. In the case at hand the Appealed Decision found as follows:

> *"In view of the above, the Chamber wished to emphasize that the actions of both parties led the members of the Chamber to conclude that from the player's behaviour, it can be determined that he was not interested in resuming his duties with the club; likewise, the club was also not genuinely interested in the player's services after he left Russia. As such, the*

> *Chamber is of the opinion that the parties therefore mutually departed from the contract, ultimately as from 5 April 2022, as it was from that date that the club informed the player that it had reached a verbal agreement with him regarding the suspension of the contract and all obligations arising thereof, including its payment suspension under the contract."*

178. There are good reasons to assume that the FIFA DRC did not leave the question whether the Player terminated the Contract with just cause deliberately open, but rejected such claim with binding effects. Be it as it may, the Panel can leave this question unanswered, because even if it was not bound to the FIFA DRC's conclusion, it would find that the Player terminated the Contract without just cause.

179. At the hearing the Player stated in his testimony that the reasons for sending the Termination Notice was that he was not getting paid the monies that – according to him – he was entitled to. This was further backed by the testimony of Mr Solbakken who stated that the Contract had been terminated because the Appellant had failed to pay the monthly remunerations up until April and, more particularly, because of the non-payment of the Sign-On Bonus in the amount of EUR 500,000. As explained above, however, the Player was not entitled to the Sign-On Bonus (cf. supra no. 172). The Player equally was not entitled to the monthly remunerations for March and April 2022 (cf. supra no. 155 et seq.).

180. In his written submissions the Player submitted that he also terminated the Contract because he saw his professional career, in particular as a national team player, at risk if he had continued his employment relationship with the Appellant. The Panel does not concur with this argument. The Player could have simply chosen to exercise the option in Annex 7 of the FIFA RSTP and contract – for the time of the suspension – with any other club. It was not necessary for him to terminate the Contract in order to play with another club.

181. The Panel, in addition, finds that the Player breached his obligation to negotiate in good faith with the Appellant how to resolve the contractual impasse after his departure from Russia (cf. supra no. 163, 172). The Appealed Decision found in this respect (at no. 16) that "*... on analysis of the documentation on file it seems that the player failed to show any willingness to find an amicable solution to the matter and could have taken more efforts to find a solution*." This Panel follows this finding. At the hearing Mr Solbakken explained that the Player refused to discuss any options and alternatives how to resolve the matter unless the Player was paid all allegedly outstanding amounts. Mr Solbakken said that "*we were hard on the club for payment*". In the view of the Panel this constitutes a breach of the Player's obligation to negotiate in good faith, considering that he was neither entitled to the monthly remunerations for March and April 2022 nor to the first Sing-On bonus. More particularly, the Panel finds that the Player – acting in good faith – should have exercised the option in Article 3 of Annex 7 of the FIFA RSTP and suspended the Contract, since such provision constitutes a fair and balanced compromise between the interests of the Player and the Appellant. Refusing to suspend the Contract and – without providing any services – demanding full payment from the Appellant and ultimately terminating the Contract was in clear breach of the Player's obligations to negotiate in good faith. By following this approach, the Player attempted to unilaterally impose and enforce his own interests regardless and to the detriment of the interests of his contractual partner. Thus, the Panel finds that – in any event – the Player terminated

the Contact without just cause.

E. What are the Consequences of the Player terminating the Contract without Just Cause?

1. Article 17 (1) FIFA RSTP is not fit for purpose

182. In case a party terminates an employment contract without just cause, Article 17 (1) of the FIFA RSTP entitles the contractual partner (here the Appellant) to a claim for compensation. The article also provides some guidance how to calculate the Appellant's claim for compensation. The question in this particular case is, however, whether the calculation provided for in Article 17 FIFA RSTP is fit for purpose in the case at hand.

183. In case of termination of an employment contract without just cause by a player, Article 17(1) FIFA RSTP calculates the damage incurred by the club – in principle – based on the value of the player's services. The underlying idea behind this calculation is that by terminating the contract unlawfully the player has deprived his contractual partner (i.e., the club) of the player's services and, therefore, must compensate such loss. Such calculation only makes sense in case the breach committed by the player is causal for the club's loss of the player's services. This, however, is not the case here, since the Appellant would have lost the Player's services also in the event that the Player would have behaved lawfully by – e.g. – exercising the option in Article 3 of Annex 7 of the FIFA RSTP. In such case the Contract would have been suspended and the Player would have been free – during the time of the suspension – to enter into a new employment contract with a new club (i.e., Salernitana) without breaching his contractual obligations and thereby triggering the consequences of Article 17 (1) of the FIFA RSTP. The damage incurred by the Appellant is, thus, not the loss of services for the Player, since the application of Annex 7 of the FIFA RSTP has been extended until 30 June 2024 and more recently, i.e. on 31 May 2024, further extended until 30 June 2025 (cf. FIFA Circular Letter no. 1887). Instead, the Appellant's damage caused by the Player consists in the loss of the opportunity to transfer the Player either by loan or permanently to another club. The Panel concludes therefore, that the methodology to calculate the damages enshrined in Article 17 (1) FIFA RSTP was designed for completely different sets of circumstances and that, therefore, the provision is not fit for purpose to calculate the compensation due to the Appellant.

2. The penalty clause in the Contract

184. The Appellant has submitted that the Player is liable based on Clause 9.5.2 of the Contract or – subsidiarily, that the Player should compensate the Appellant's frustrated expenses such as the transfer fee that the Appellant paid to the Player's previous club in order to be able to register the Player.

185. Clause 9.5.2 of the Contract entitles the Appellant to a "claim for compensation" in the amount of EUR 30 million in case the Player "*terminates the present contract with the club on his own initiative … without just cause by service of notice*."

186. Such a clause is generally considered, under Swiss law, a (permissible) liquidated

damages or a penalty clause in accordance with Art. 160 et seqq. of the Swiss Code of Obligations. The purpose of such a clause is to compensate for an expected loss or damage and to simplify the enforcement of the claim for damages in cases where it is difficult to determine the actual loss incurred and/or to put additional pressure on a contractual party to perform the contract properly. While under Swiss law parties are generally free to establish which amount shall be triggered by the application of such a clause (see Art. 163 para. 1 SCO) and whether an amount is due also in the absence of a certain damage (cf. Art. 161 SCO), a tribunal, at its discretion, may reduce an amount due that it considers excessive (Art. 163 para. 3 SCO).

187. The Panel is of the view that the mere fact that Clause 9.5.2 of the Contract applies unilaterally, i.e. only to one contractual party in case of a breach of contract, does not render the clause null and void. This is in line with Swiss law and also CAS jurisprudence. It shall be noted, that the FIFA RSTP do not request any such clause to be reciprocal.

188. However, the majority of the Panel finds that Clause 9.5.2 of the Contract is not applicable in the case at hand. The majority of the Panel is of the view that such clause was not intended to cover cases like the one at hand, in which a difficult situation has been brought about by a war situation affecting the Contract and with rules applicable to such circumstances (such as Annex 7 of the RSTP) the scope and the consequences of which were uncertain. The majority of the Panel is, consequently, not prepared to apply a standard penalty clause that was designed for typical cases in the football industry to the very extraordinary circumstances of the case at hand. In addition, the majority of the Panel is satisfied that when the Parties decided to de facto "suspend" their contractual duties, subject to a final agreed "solution", they departed not only by the rules of the Contract concerning, as seen above, the payment of any Sign-On Bonus, but also to the strict application of the Clause 9.5.2 of the Contract. As a matter of fact, the majority of the Panel is satisfied that the actual joint intention of the Parties within the meaning of Art. 18 SCO regarding the Contract has been to "suspend" its effects, without any payment obligation for the Club, without any training obligation by the Player, and with several other issues to be agreed by the Parties in good faith at a later stage. This factual agreement reached by the Parties and their willingness to leave open to later negotiations the final settlement of any disputes justifies – according to the majority of the Panel – the consequences that not only the Sign-On Bonus is not due, but also that the Clause 9.5.2 of the Contract shall not be applied.

3. The application of Article 337b CO

189. Failing the applicability of Article 17 (1) RSTP and of Clause 9.5.2 of the Contract, the Panel must decide, what legal framework to apply in order to assess the consequences of the Player's termination without just cause. The majority of the Panel is of the view that this *lacuna* is to be filled by Swiss law and not by Russian law (cf. supra no. 140 et seq.), more particularly by applying Article 337b CO. The provision reads as follows:

> *"(1) Where the good cause for terminating the employment relationship with immediate effect consists in breach of contract by one party, he is fully liable in damages with due regard to all claims arising under the employment relationship.*
>
> *(2) In other eventualities the court determines the financial consequences of termination with*

immediate effect at its discretion, taking due account of all the circumstances."

190. Paragraph one of the above provision is designed for those cases, in which a party terminating the contract has good cause, because the contractual counter-party committed a breach of contract. This is not the case here and, therefore Article 337b (1) CO is not applicable in the case at hand. Paragraph 2 of the same provision, on the contrary, applies "*in* [all] *other eventualities*". The provision applies – e.g. – if none of the parties is at fault for the termination of the contract or in case both parties are responsible for the termination of the latter (BSK-OR/PORTMANN/RUDOLPH, 7th ed. 2020, Article 337b no. 5). In such case the court / panel has discretion when deciding on the consequences of the termination of the contract, the only prerequisite being that the court / panel take into account all the relevant circumstances. However, according to the wording of the Article 337 (2) CO, the provision only applies, if the party terminating the contract has – irrespective of the question of fault / breach of contract – a good cause for terminating the contractual relationship (KuKo-OR/SCHWAIBOLD, 2014, Article 337b no. 8; cf. also SFT 116 II 142, 142, consid. 5c). Thus – looking at the wording – Article 337b CO does not apply to the case at hand, since the Player did not have good cause for terminating the Contract (cf. supra no. 174 et seq.). However, the majority of the Panel is of the view that Article 337b (2) CO applies to a situation like the one of the present circumstances, where both Parties have agreed to suspend the "life" of the Contract, thinking that they would be able to reach a consensus on all other issues at a later stage. This, however, did not happen.

191. The majority of the Panel sees itself comforted by a decision of a previous panel, in CAS 2020/A/7262:

> *"Article 17 par. 1 of FIFA RSTP does not encompass cases in which both parties contribute to a situation that ultimately leads to termination of the contractual relationship. It is therefore necessary to refer to Article 337b of SCO. In case termination of the employment relationship occurs due to circumstances that are not attributable exclusively to one party, Article 337b par. 2 of SCO authorizes the judicial body to determine the financial consequences of such termination at its discretion, taking into account all circumstances of the case."*

192. When exercising the discretion granted under Article 337b CO, a court / panel shall take into account all circumstances, such as the length of the contractual relationship, the type of cause leading to the termination of the contract as well as the type of obligation breached and the degree of fault of the parties involved in the execution of the contract (KuKo-OR/SCHWAIBOLD, 2014, Article 337b no. 8).

193. When applying the above criteria, the majority of the Panel concludes that no compensation is due to the Appellant. The length of the Contract was short and the value of the Player's services under the Contract minimal, since the Player could have validly exercised the option according to Annex 7 of the RSTP and thereby suspend his obligation to provide services to the Club. There were no concrete offers by other clubs to transfer the Player either permanently or on loan. Furthermore, the majority of the Panel finds that the Club failed to clarify the contractual situation when it let the Player depart from Russia on 3 March 2022. In addition, the majority of the Panel finds that also the Appellant was under a duty to negotiate with the Player in good faith. Only on 5 April 2022, i.e. nearly

a month past the Player's departure did the Appellant follow up with a written proposal to the Player how to deal with the complicated situation. The Panel also observes that the Player – in essence – did no profit from the early termination of the Contract, since his overall salary (for the relevant period) under the Contract is more or less the same as the contract with Salernitana. Finally, the Panel is of the view that the Player's fault – looking at the circumstance overall – is rather low. He was confronted with a difficult situation involving complex factual and legal issues and with little to no guidance available from FIFA and jurisprudence how to deal with this extraordinary situation.

F. Summary

194. In summary, the majority of the Panel finds that the Appellant's appeal is successful insofar as it is directed against the payment of the bonus in the amount of EUR 500,000. Thus, the respective operative part in the Appealed Decision ("*3. Claimant 2 / Respondent 1, FC Krasnodar, has to pay to Claimant 1 / Respondent 2, Erik Botham [sic], the following amount: EUR 500,000 as outstanding amount plus 5% interest p.a. as from 11 March 2022 until the of effective payment"*) must be set aside. The Appellant's further reaching claims for penalty / damages must be dismissed based on Article 337b (2) CO.

195. Finally, based on the above, the Appellant's claim against Salernitana must be equally dismissed.

196. In view of the above, the Panel does not need to address the impact of the Diarra Decision or of the 2025 version of the FIFA RSTP on the case at hand.

197. Based on the above conclusions, all other requests and prayers of the Parties shall be dismissed.

XI. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Krasnodar on 29 May 2023 against the decision of the Dispute Resolution Chamber of the Football Tribunal dated 1 February 2023 is partially upheld.

2. The operative part of the decision of the Dispute Resolution Chamber of the Football Tribunal in no. 1-4 is amended as follows:

    1. The claim of Erik Botheim is dismissed;
    2. The claim of FC Krasnodar is dismissed;

3. (…).

4. (…).

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

Date: 21 May 2025
Seat of the arbitration: Lausanne (Switzerland)

THE COURT OF ARBITRATION FOR SPORT

Ulrich Haas
President of the Panel

Michele A.R. Bernasconi
Arbitrator

Manfred Peter Nan
Arbitrator