CAS 2022/A/9013 Savvas Poursaitides v. Apoel Nicosia Club & Apoel Podosfairo Dimosia Ltd.

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Jacopo **Tognon**, Professor and Attorney-at-law in Padua, Italy

in the arbitration between

Mr Savvas Poursaitides, Eleftheroupoli, Greece

Represented by Mrs Kassiani Orphanidou, Orphanides, Christofides & Co. LLC, Nicosia, Cyprus

Appellant

and

Apoel Nicosia Club, Nicosia, Cyprus

Represented by Mr Efthymios Agathokleous, General Manager Apoel FC, Lakatamia, Cyprus

First Respondent

&

Apoel Podosfairo Dimosia Ltd., Nicosia, Cyprus

Represented by Mr Efthymios Agathokleous, General Manager Apoel FC, Lakatamia, Cyprus

Second Respondent

I. PARTIES

1. Mr Savvas Poursaitides (the "Appellant" or the "Coach") is a professional football coach.

2. Apoel Nicosia Club (the "First Respondent") is a football club based in Cyprus, affiliated to the Cyprus Football Association ("CFA"), which in turn is affiliated to the *Féderation Internationale de Football Association* ("FIFA").

3. Apoel Podosfairo Dimosia Ltd. (the "Second Respondent") is the managing company of the football department of Apoel Nicosia Club.

4. The First Respondent and the Second Respondent are jointly referred to as the "Respondents" and the Appellant and the Respondents are jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

A. Background Facts

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and evidence adduced during these proceedings. Additional facts and allegations found in the Parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

6. On 6 January 2021, the Appellant and the Respondents signed an employment contract (the "Employment Contract") valid from the date of its signature until 31 May 2022.

7. According to Article 1.3 of the Employment Contract, the Appellant was entitled to a gross remuneration as follows:

   - From January 2021 until May 2021 five monthly instalments starting from 31 January 2021 and ending on 31 May 2021 with a gross salary of EUR 12,965 (equal to EUR 10,000 net) per month;

   - From July 2021 until May 2022 eleven monthly instalments starting from 31 July 2021 and ending on 31 May 2022 with a gross salary of EUR 14,726 (equal to EUR 10,000 net) per month.

8. On 6 January 2021, the Appellant and the Respondents further signed a supplementary agreement (the "Supplementary Agreement") according to which the Parties agreed an additional compensation equal to EUR 97,000 to be paid in favour of the Coach as follows:

   - EUR 20,000 net in five equal instalments of EUR 4,000 each starting from 31 January 2021 and ending on 31 May 2021;

- EUR 77,000 net in eleven monthly instalments of EUR 7,000 each starting from 31 July 2021 and ending on 31 May 2022.

9. Pursuant to Article 2.5 of the Employment Contract, it was agreed that, in case of termination of the employment relationship without just cause by any of the Parties, the other Party would be entitled to a compensation equal to EUR 30,000 to be paid in three consecutive monthly instalments, on the last day of each month, starting from the month following the one in which the termination was made.

10. On 28 August 2021, the Respondents terminated the Employment Contract and the Supplementary Agreement. According to the Appellant, such termination occurred by publishing an announcement in the media, without sending any termination notice to the Coach. The Respondents submit that the Appellant was informed by phone.

11. It is undisputed that the sum of EUR 30,000.00, as compensation for termination of the employment relationship pursuant to Article 2.5 of the Employment Contract was not paid to the Coach. In addition, according to the Coach, the Respondents failed to pay to the Appellant the amount of EUR 17,000, as overdue payables for the month of August 2021.

B. Proceedings before Dispute Resolution Committee of Cyprus Football Association

12. On 11 January 2022, the Coach lodged a claim against the Respondents, before the Dispute Resolution Committee of the Cyprus Football Association (the "NDRC"), requesting:

- a declaration that the termination of the Employment Contract was made illegally and/or unconventionally and/or unjustifiably;
- the payment of EUR 17,000 as accrued salary for the month of August 2021;
- the payment of EUR 153,000 net as compensation for breach of contract;
- the issuance of any other order or treatment that the NDRC may decide;
- the reimbursement of legal fees and costs.

13. In their reply, the Respondents admitted that they owed to the Coach the amount of EUR 30,000, affirming that such sum constitutes liquidated damages.

14. The NDRC, with respect to the claim related to the unpaid salaries, determined that the sum of EUR 17,000 was due to the Coach as overdue payables for the month of August 2021.

15. With respect to the claim related to the compensation for breach of the Employment Contract, the NDRC recalled that the Coach requested the payment of the amount of EUR 153,000, corresponding to the salaries that he would have received until the natural expiry date of his employment relationship, whilst the Respondents affirmed that the only sum due was equal to EUR 30,000 as outlined in Article 2.5 of the Employment Contract.

16. At this regard, the NDRC affirmed that it was clear that the parties decided for a pre-agreed compensation that the injured party would have received in case of termination of the Employment Contract in an amount equal to EUR 30,000.

17. The NDRC further recalled the provision of Cyprus Contract Law (Capital 149, Article 74.1) as well as the relevant jurisprudence of the Supreme Court and determined that the amount established in the Employment Contract shall be considered as predetermined compensation and, as such, it shall be used to calculate the compensation to be granted in favour of the non-defaulting party, which, in any case, can be less than the stipulated amount but not higher than that.

18. In consideration of the above, the NDRC concluded that the Parties pre-determined the compensation owed to the innocent party to be equal to EUR 30,000.

19. Therefore, on 20 June 2022, the NDRC decided as follows ("NDRC Decision"):

"*Therefore, and pursuant to the facts brought before the Committee, a unanimous decision in favour of the Applicant and against the Defendants is issues as follows:*

A. €17.000 as overdue payable for August 2021.

B. €30.000 as pre-determined compensation for terminating the contract.

C. €600 Legal Expenses plus V.A.T.

D. €515 fees for filling the application plus V.A.T.

The aforementioned amounts must be paid within 30 days."

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 8 July 2022, the Appellant filed his Statement of Appeal against Apoel Nicosia Club and Apoel Podosfairo Dimosia before the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code") challenging the NDRC Decision. In his Statement of Appeal, the Appellant requested for a Sole Arbitrator to decide upon the case at stake.

21. On 14 July 2022, the CAS Court Office acknowledged receipt of the Statement of Appeal and recalled that, pursuant to Article R51 of the CAS Code, the Appellant shall file his Appeal Brief within 10 days following the expiry of the time for the appeal. The CAS Court Office further invited the Respondents to confirm whether they agreed with the appointment of a Sole Arbitrator within 5 days from receipt of the relevant letter.

22. On the same date, the CAS Court Office informed the CFA that the appeal was not directed to the latter. However, pursuant to Article R41.3 of the CAS Code, it was notified to the CFA that if the latter intended participate in the proceedings hereof it shall file an application before CAS within the following 10 days.

23. On 20 July 2022, the CAS Court Office sent to the Appellant and the Respondents the clean copy of the NDRC Decision submitted by the CFA.

24. On the same date, the Appellant filed his Appeal Brief and the CAS Court Office invited the Respondents to submit their Answer within the subsequent 20 days.

25. On 26 July 2022, the Respondents requested that the time limit to file their Answer be fixed once the Appellant had paid the advance of costs. Accordingly, pursuant to Article R55 para. 3 of the CAS Code, the time limit set out in the CAS letter dated 20 July 2022 was set aside and the Parties were advised that a new time limit would be fixed upon the Appellant's payment of the advance of costs.

26. On 28 July 2022, the CAS Court Office, by referring to its letter dated 14 July 2022 with which the Respondents were requested to confirm whether they agree to the appointment of a Sole Arbitrator, recalled that in the absence of an answer within the prescribed deadline the President of the CAS Appeals Arbitration Division would decide the issue.

27. On 2 September 2022, the Respondents declared that they did not intend to pay their respective shares of the advance of costs.

28. On 12 September 2022, the CAS Court Office acknowledged receipt of the Appellant's payment of total of the advance costs of this procedure, including the Respondents' shares, and ordered the Respondents to file their Answer within the subsequent 20 days. Furthermore, the Parties were informed that the Panel was constituted as follows:

    Sole Arbitrator: Mr Jacopo Tognon, attorney at law in Padova, Italy

29. On 29 September 2022, the Respondents requested a 10-day extension of the time limit to file their Answer, which was granted by the CAS Director General on the same day.

30. On 12 October 2022, the Respondents filed their joint Answer within the extended deadline. On the same date, the Parties were invited to inform the CAS Court Office by 19 October 2022 whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

31. On 17 and 19 October 2022, respectively, the Respondents and the Appellant informed the CAS Court Office that they did not deem a hearing necessary and that they preferred for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

32. On 31 October 2022, the Appellant was invited to comment on the Respondents' request for production of various documents.

33. On 8 November 2022, the CAS Court Office acknowledged the Appellant's clarification with respect to his employment agreement with Nea Salamina Ammochostou. It was further noted that the Appellant declared to have received the amount of EUR 13,475.58 during the period from January to May 2022.

34. On 24 November 2022, the CAS Court Office notified the Parties that the Sole Arbitrator decided not to hold a hearing in this matter but to decide the case solely on the basis of the Parties' written submissions.

35. On the same day, the CAS Court Office issued, on behalf of the Sole Arbitrator, an order of procedure (the "Order of Procedure"), which was signed by the Appellant on 28 November 2022 and by the Respondents on 24 November 2022.

IV. SUBMISSIONS OF THE PARTIES

36. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every argument advanced by the Parties. The Sole Arbitrator has nonetheless carefully considered all the claims made by the Parties, whether or not there is a specific reference to them in the following summary.

A. The Appellant

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

38. The Appellant first clarifies that he disputes the NDRC Decision only with respect to the part in which it awarded to the Coach the amount of EUR 30,000 as previously agreed compensation for the termination of the Employment Contract unilaterally made by the Respondents, instead of EUR 153,000, corresponding to the residual value of the Employment Contract.

39. The Coach affirms that the First Respondent is a club affiliated to the CFA which assigned the management of its football team to the Second Respondent.

40. The Appellant submits that, on 6 January 2021, he signed the Employment Contract with the Respondents valid from the date of its signature until 31 May 2022 and, thus, for the residual part of football season 2020/2021 and the entire season 2021/2022,as well as the Supplementary Agreement, and recalls the terms of both agreements.

41. The Appellant further points out that, on 28 August 2021, the Respondents unilaterally terminated the Employment Contract and the Supplementary Agreement by publishing an announcement on the media and without sending any termination letter directly to the Coach.

42. The Coach affirms that the Respondents failed to pay the amount of EUR 17,000 as overdue salary for the month of August 2021 as well as the sum of EUR 30,000 within the term established in the Employment Contract.

43. Thus, the Appellant recalls that he filed a claim against the Respondents before the NDRC on 11 January 2022, requesting, *inter alia*, the payment of EUR 17,000 as overdue payables for August 2021 and of EUR 153,000 as compensation for breach of the Employment Contract.

44. However, the NDRC Decision rejected the Coach's request of payment of EUR 153,000 and determined that the amount to be awarded in his favour was equal to EUR 30,000, namely the pre-agree compensation set forth in the Employment Contract.

45. In this respect, the Appellant emphasises that the Respondents failed to meet the conditions established under Article 2.5 of the Employment Contract. Indeed, the Respondents did not pay the relevant pre-agreed amount within the terms specified in such clause. Nonetheless, according to the Appellant, the respect of the deadline provided for in Article 2.5 of the Employment Contract was a precondition for the Coach to accept the pre-agreed compensation.

46. The Appellant states that the NDRC applies the laws and regulations of the CFA with particular regard to those adopted pursuant to the laws and regulations of FIFA, which are applied subsidiarily in case a given sector is not regulated. Thus, pursuant to the regulations of the CFA, clubs shall conclude employment contract with technical staff in accordance with the provisions of the Codified Employment Contract of Technical Staff Members attached to the regulations.

47. The Appellant then recalls Article 9 of the Codified Employment Contract of Technical Staff Members that provides the cases in which a club is entitled to terminate an employment relationship with a technical staff member.

48. The Coach also affirms that the provisions of the Codified Employment Contract of Technical Staff Members prevail over the terms of the Employment Contract.

49. Furthermore, the Appellant submits that the NDRC was obliged to apply the Annex 8 of the FIFA Regulations on the Transfer and Status of Players, January 2021 edition, ("FIFA RSTP"), which, under Article 6, provides that in all cases in which a party terminates an employment agreement without just cause, it must pay compensation.

50. Moreover, the Coach affirms that, unless otherwise provided in the relevant employment contract, the compensation shall be equal to the residual value of the contract which was prematurely terminated.

51. The Appellant points out that, without giving any termination letter, the Respondents were in breach of Article 2.5 of the Employment Contract. In addition, the Respondents did not pay within the prescribed term the amount agreed as pre-determined compensation.

52. Therefore, according to the Coach, Article 2.5 of the Employment Contract is no longer enforceable and, thus, he requests a sum equal to the residual value of the Employment Contract as compensation.

53. Indeed, the Appellant affirms that the respect of the timing established in Article 2.5 of the Employment Contract was a precondition for the acceptance and validity of such clause.

54. The Appellant's Requests for Relief contained in the Appeal Brief are as follows:

> "*1. To overturn the decision of the Cyprus Football Association Dispute Resolution Chamber which awarded the Appellant to amount of € 30.000 as pre-agreed compensation for the unilateral termination of its contract of employment without just cause by the Defendants;*
>
> *2. Decide that the Appellant is entitled the amount of € 153.000 as compensation, the residual value of its contract for the season 2021/2022, which was terminated without just cause by the Defendants and/or by breach of contract.*
>
> *3. Respondents 1 & 2 incurred the legal costs of the proceedings before CAS*".

B. The Respondents

55. The Respondents' submissions, in essence, may be summarised as follows.

56. The Respondents first affirm that the Appellant is trying to persuade the Sole Arbitrator that, even though a fixed compensation for breach of contract had been agreed in advance, that fixed compensation is no longer legally valid and/or enforceable basically for the reasons as follows: (i) the Respondents failed to timely comply to the payment obligation established in Article 2.5 of the Employment Contract and, thus, such compensation is no longer legally valid and the Respondents must pay in favour of the Coach a compensation equal to the residual value of the Employment Contract and the Supplementary Agreement; (ii) the timely payment of the pre-agreed compensation was a condition for the Coach to accept the provision of Article 2.5 of the Employment Contract; (iii) the Respondents were in breach of Article 2.5 of the Employment Contract since they did not notify in writing to the Coach the termination of his employment relationship.

57. The Respondents clarify that the pre-agreed compensation established under Article 2.5 of the Employment Contract covers also the Supplementary Agreement.

58. The Respondents further state that, according to Article 22.3 of the Cyprus Football Association Regulations for the Registration and Transfer of Football Players ("CFA RSTP"), the applicable law in the present dispute is the Cyprus Football Association Regulations and subsidiarily the Cyprus law and the jurisprudence of the Cyprus Supreme Court. The NDRC can also receive guidelines from the jurisprudence of FIFA and CAS, however such jurisprudence is not binding on the NDRC.

59. The Respondents, in any case, emphasise that the Appellant did not challenge the applicability of Cyprus law and he did not argue that the NDRC was wrong in applying such law.

60. Furthermore, the Respondents disagree with the Appellant's position that FIFA RSTP shall apply subsidiarily simply because the CFA has not yet fully complied with the Laws and Regulations of FIFA. Indeed, Annexe 8 of the FIFA RSTP is not binding on the member associations and it does not impose any mandatory regulations on national associations, save for Article 1(4) of Annexe 8 which states that each national association

must "*include in its regulations appropriate means to protect contractual stability between coaches and clubs or associations, paying due respect to mandatory national law and collective bargaining agreements*".

61. At this respect, the Respondents submit that the CFA implemented a standard employment contract to safeguard coaches' rights and protect contractual stability.

62. The Respondents also recall FIFA Circular no. 1743 dated 14/12/2020, issued by FIFA to inform its member associations of certain amendments in its regulations. However, with this Circular, FIFA did not impose any obligation on its members to implement the provisions of Annexe 8 at national level.

63. In any case, the fact that the CFA regulations do not include a specific provision regarding how compensation is to be assessed in case of breach of contract, does not automatically lead to the applicability of Annexe 8 to the FIFA RSTP.

64. The Respondents further affirm that the Appellant failed to prove any legal or contractual relations between the Second Respondent and the First Respondent. The Second Respondent is managing the football teams of club Athletic Football Club of Greeks of Nicosia.

65. The Appellant also failed to prove any contractual or other relations between himself and the First Respondent. Indeed, the name APOEL Nicosia, mentioned in the Employment Contract and the names APOEL Football Club and APOEL FC used in the Supplementary Agreement do not refer to the First Respondent and they are names used by the Second Respondent.

66. Consequently, the Respondents request the Sole Arbitrator to reject the Appellant's claims against the First Respondent for lack of standing to be sued.

67. With respect to the merits of the dispute, the Second Respondent confirms to have signed with the Appellant the Employment Contract and the Supplementary Agreement and it further confirms that said contracts were terminated on 28 August 2021. However, it submits that the Appellant was notified of the termination by phone.

68. The Second Respondent also recognises not to have paid the liquidated damages within the timeframe stipulated in Article 2.5 of the Employment Contract. Nonetheless, it points out that the Parties had never agreed that in the event that such damages would have not been paid within the agreed timeframe, the Appellant would be entitled to a higher compensation. Indeed, the time established in the aforementioned Article 2.5 was not a precondition for the validity and applicability of such clause.

69. In any case, the Respondents affirm that even if the Sole Arbitrator decides to apply the provisions of Annex 8 of the FIFA RSTP, the Appellant would still not be entitled to any higher compensation since Article 6(2) of Annex 8 of the FIFA RSTP expressly states that "*(u)nless otherwise provided for in the contract, compensation for the breach shall be calculated as follows…*".

70. Furthermore, the Respondents state that, in case the Sole Arbitrator decides that he should award a higher compensation to the Appellant, it shall be taken into consideration the fact that the Coach on 27 January 2022 signed an employment contract with another club affiliated to the CFA, namely Nea Salamina FC.

71. The Respondents did not take any prayers for relief *per se* but they "*reject the Appellant's requests for relief*".

V. JURISDICTION

72. 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 the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body*".

73. The jurisdiction of the CAS derives from Article 22.2 of the CFA RSTP, that provides, *inter alia*, as follows:

> "*The decisions of the NDRC can only be appealed before CAS (Court of Arbitration for Sports […]. Appeals can be filed before CAS according to the relevant Statutes of CAS"* [English translation].

74. The NDRC Decision further indicates at the bottom that "*[a]n appeal against the decision, after receipt of the full text of the decision, can be filed within 21 days before the Court of Arbitration for Sport*". The jurisdiction of the CAS was not contested by either Party and it is further confirmed by the Order of Procedure, which was duly signed by the Parties. Therefore, it follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

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

> "*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for 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 […]*".

76. Furthermore, Article 22.2 of the CFA RSTP provides that:

> "*Appeals can be filed before CAS according to the relevant Statutes of CAS*".

77. The NDRC Decision was notified to the Parties on 20 June 2022 and the Appellant filed its Statement of Appeal on 8 July 2022. Therefore, the 21- day deadline to file the appeal

was met. The appeal further complied with the other requirements of Article R48 of the CAS Code.

78. The Sole Arbitrator finds, therefore, the appeal admissible.

VII. APPLICABLE LAW

79. The Appellant states that the NDRC applies the laws and regulations of the CFA with particular regard to those adopted pursuant to the rules and regulations of FIFA, which apply subsidiarily in case a given sector is not regulated. In particular, the Appellant submits that the NDRC was obliged to apply the Annexe 8 of the FIFA RSTP.

80. Article R58 of the CAS Code contains a conflict-of-law rule for determining the applicable law in appeal arbitration proceedings. Such provision states as follows:

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

81. Article 2.1 of the Employment Contract reads as follows:

> "*The present Contract is regulated by the provisions of the Codified Employment Contract of Technical Staff Members, as these have been agreed by the Cyprus Football Association (CFA) and the Cyprus Football Coaches Association (CYFCA) and as these provisions have been adopted in Annex II of the CFA Registration and Transfer of Players Regulations*".

82. Art. 22.3 of the CFA RSTP states the following:

> "*When exercising its judicial jurisdiction, the NDRC shall apply the Laws and the Regulations of the Association, especially those adopted on the basis of the Laws and Regulations of FIFA and will receive guideline from the case law of FIFA and CAS. In case where the Association has not yet fully complied with the Laws and Regulations of FIFA, the Laws and Regulations of FIFA will be applied mutatis mutandis*."

83. It derives from the above that the Sole Arbitrator shall decide the present matter according to the Cyprus Football Associations Regulations and, subsidiarily, Cyprus law.

84. The Sole Arbitrator concurs with the Respondents in affirming that Annexe 8 of the FIFA RSTP shall not apply in these proceedings. Indeed, such Article is not one of the FIFA regulations which is binding on its member associations and which must be mandatorily implemented.

85. In fact, Article 1.4 of Annexe 8 of the FIFA RSTP states that each national association must "*include in its regulations appropriate means to protect contractual stability*

between coaches and clubs or associations, paying due respect to mandatory national law and collective bargaining agreements".

86. At this respect, the Sole Arbitrator notes that the CFA complies with this obligation since it has implemented a standard employment contact to safeguard the coaches' employment rights and protect contractual stability between coaches and clubs.

VIII. MERITS

87. The main issues to be addressed by the Sole Arbitrator in deciding this dispute are the following:

(a) Is the compensation clause in Article 2.5 of the Employment Contract valid?

(b) Does the First Respondent have standing to be sued in the present proceedings?

A. Is the compensation clause in Article 2.5 of the Employment Contract valid?

88. The Sole Arbitrator notes that it remained undisputed between the Parties that the Respondents unilaterally and prematurely terminated the Employment Contract with the Coach on 28 August 2021.

89. The Sole Arbitrator further takes note that Article 2.5 of the Employment Contract provides a clause dealing with the consequences of a unilateral termination by one of the Parties without just cause. In particular, such provision states as follows:

"*Should any one of the Parties unilaterally terminate the present contract without just cause, the other Party shall be entitled to compensation of an amount of € 30,000.*

This compensation constitutes a liquidated damages clause and shall be paid by the Party in breach in 3 consecutive monthly instalments, on the last day of each month, beginning from the month following the one when the termination without just cause was made".

90. Furthermore, the applicable Cyprus Contract Law and, particularly, Capital 149, Article 74(1) reads as follows:

"*When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for*".

91. As a general rule, in line with the basic principle of *pacta sunt servanda*, applicable to every legal system, in case of termination of an employment contract without just cause by one of the parties, such party is required to compensate the other party for the damages incurred as a consequence of such breach.

92. In this respect, the Sole Arbitrator observes that the parties to an employment agreement are free to stipulate a liquidated damages clause that shall apply in case of breach of contract and/or unilateral termination of the contract.

93. However, in order for such clauses to be valid, CAS jurisprudence has set out certain criteria that must be met. For example, the reciprocal obligations set forth shall not be disproportionately in favour of one of the parties and give it an undue control over the other party.

94. Indeed, even if established CAS jurisprudence (CAS 2015/A/3999-4000) determined that a liquidated damages clause does not necessarily have to be reciprocal to be valid (CAS 2019/A/6533), it shall not, in any case, be disproportionate, failing which such clauses shall be considered as incompatible with the general principles of contractual stability and are therefore declared null and void (CAS 2016/A/4605).

95. In this respect, the Sole Arbitrator deems that the validity of these particular clauses shall be assessed on a case-by-case basis, taking into account all the relevant circumstances.

96. In the case at stake, the Sole Arbitrator notes that the penalty established under Article 2.5 of the Employment Contract is actually reciprocal, since it applies to both Parties of the contractual relationship in case of termination without just cause by one of them. Indeed, in case either the Coach or the Respondents decide to terminate in advance the Employment Contract without cause, the breaching Party shall pay a compensation, in both cases in the amount of EUR 30,000, to the other.

97. In view of the above, the Sole Arbitrator does not find that there is any imbalance or disproportion between the rights and duties of both contractual Parties that could lead to the invalidity of the clause, which, therefore, shall be considered valid.

98. Furthermore, the Sole Arbitrator deems that, taking into account the wording of the clause, it is clear that the intent of the Parties was to stipulate in advance the amount of compensation in case of breach of the Employment Contract by any of the Parties. Hence, it is a liquidated damages clause.

99. At this respect, the Sole Arbitrator recalls that: "*[…], the parties to an employment contract may stipulate in the contract the amount of compensation for breach of contract. Where such a clause exists, its wording should leave no room for interpretation, and must clearly reflect the true intention of the parties. Whether such clauses are called "buy out clauses", indemnity or penalty clauses, or otherwise, is irrelevant. Legally, they correspond therefore to liquidated damages provisions*" (CAS 2014/A/3707).

100. In consideration of all the above, of the legal principle of *pacta sunt servanda*, and given that Article 2.5 of the Employment Contract provides for the clear type of measurable and identifiable penalty, this Sole Arbitrator is of the opinion that the provision in question reflects the true and clear will of the contracting Parties.

101. The Appellant, however, whilst recognising that the Parties established in the Employment Contract a pre-determined compensation in case of early termination, states that the

provision set forth in Article 2.5 is unenforceable since the Respondents failed to pay the relevant amount within the agreed deadline.

102. In particular, the Coach argues that the respect of the agreed timeframe was a precondition for the acceptance and applicability of the clause. Since the relevant amount was not paid within the prescribed deadline, he submits that the Sole Arbitrator should revert to Annexe 8 of the FIFA RSTP in order to calculate the compensation to be granted in favour of the Coach, i.e. the residual value of the Employment Contract.

103. The Respondents, while admitting that the payment deadline was not met, deny that this would entitle the Coach to receive a higher amount. In fact, the timeframe provided for in the Employment Contract could not be considered a pre-condition for the validity of the clause. Indeed, the fact that the Respondents did not timely pay the agreed sum only gave the Coach the possibility to commence legal proceedings for demanding its payment.

104. The Respondents further point out that in case the Parties had considered the timely payment as a pre-condition for the validity and enforceability of such clause, they would have expressly mentioned it in writing in the Employment Contract.

105. The Sole Arbitrator concurs with the arguments of the Respondents. Indeed, as outlined above, according to the Sole Arbitrator the provision of Article 2.5 of the Employment Contract is clear and it is a standard liquidated damages clause according to which the Parties pre-agreed the amount of compensation to be awarded in favour of the non-breaching Party.

106. At this respect, the Sole Arbitrator also recalls the decision of the Supreme Court in Cyprus, also cited in the NDRC Decision, which reads as follows:

> "*[…] from the above is concluded that in Cyprus, in contrast with what is applied in England, the distinction between a genuine pre-estimate of damages and a penalty has no substantial difference, as the Court, has, in both cases, the discretionary power to award reasonable compensation which, however, cannot in any case exceed the amount stipulated in the contract, regardless of whether this is a penalty clause or not. The Court simply, after having reached the conclusion that the amount referred to the contract can be considered as predetermined compensation, is better helped to calculate the compensation, which can be less than the stipulated amount but no more than that*" (Civil Appeal No. 10963 dated 8 April 2002).

107. If the Parties had wanted Article 2.5 of the Employment Contract to become null and void in case of a failure to pay the full amount of EUR 30,000 within the prescribed deadline, they could – and should – have mentioned it expressly. In the absence of such express indication, the Sole Arbitrator cannot follow the Appellant's interpretation.

108. For all the above reasons, the Sole Arbitrator finds that Article 2.5 of the Employment Contract is valid and shall be applied to the present dispute and therefore, as correctly affirmed in the NDRC Decision, the amount that shall be granted in favour of the Coach for the termination of the employment relationship without just cause by the Respondents is equal to EUR 30,000.

109. Even if not necessary in consideration of the fact that, as already clarified, Annexe 8 of the FIFA RSTP is not applicable to the present dispute, the Sole Arbitrator wishes to point out that, even applying such Annexe 8, the only amount the Coach would be entitled to would be the pre-agreed sum equal to EUR 30,000 determined under Article 2.5 of the Employment Contract.

110. Indeed, Article 6.2 of Annex 8 of the FIFA RSTP expressly states that "*(u)nless otherwise provided for in the contract, compensation for the breach shall be calculated as follows […]*".

111. Thus, the various parameters set out in such Annexe 8 apply only subsidiarily. Any agreement of the parties in this regard is to be considered first (CAS 2012/A/2910; CAS 2009/A/1880 & 1881; CAS 2008/A/1519&1520). In general, therefore, the will and the intention of the Parties must be respected and shall prevail.

112. The Respondents further submit that, in case of applicability of Article 6.2 Annexe 8 of the FIFA RSTP for the determination of the sum to be awarded in favour of the Coach, the relevant compensation should be mitigated since the Appellant signed on 27 January 2022 an employment agreement with Nea Salamina FC.

113. At this respect, considering that the Parties agreed that the Coach was entitled to receive the sum of EUR 30,000 as pre-agreed compensation in case of termination of the Employment Contract by the Respondents without just cause, the Sole Arbitrator will not deal with this issue further by reviewing the amounts received under the new employment contract with Nea Salamina FC, as the Coach, due to the applicability of Article 2.5 of the Employment Contract, was not required to mitigate his damages.

114. Contrary to what happens in case of calculation of the compensation to be awarded pursuant to Annexe 8, Article 6.2 of the FIFA RSTP, in the event a liquidated damages clause exists, the Coach would not be required to mitigate his damages.

115. In consideration of all the above, this Sole Arbitrator considers that the appeal shall be dismissed and the NDRC Decision is entirely confirmed.

B. Does the First Respondent have standing to be sued in the present proceedings?

116. It shall now be determined whether the First Respondent has standing to be sued in the proceedings hereof.

117. The Sole Arbitrator takes note that, according to the Respondents, the Appellant failed to prove any legal or contractual relations between the Second Respondent and the First Respondent, as well as any contractual or other relations between the First Respondent and the Coach.

118. At this respect, the Respondents affirm that the Second Respondent is managing the football teams of club Athletic Football Club of Greeks of Nicosia and the Second Respondent only signs both the Employment Contract and the Supplementary Agreement.

It follows that any claim made against the First Respondent shall be rejected since it has no standing to be sued in this arbitration procedure.

119. Whilst the Sole Arbitrator has taken note of the allegations made by the Respondents, in light of the outcome of these proceedings – hence, that the appeal is dismissed and the NDRC Decision is confirmed – the Sole Arbitrator deems it unnecessary to further address this issue.

IX. CONCLUSIONS

120. In conclusion, after having fully analysed all the factual elements provided by the Parties and the substantive law and regulations applicable to the merits, this Sole Arbitrator considers that the appeal is not grounded and, therefore, the NDRC Decision is confirmed.

121. All other claims or prayers for relief are rejected.

X. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Savvas Poursaitides on 8 July 2022 against the decision issued by the Cyprus Football Association Dispute Resolution Committee on 20 June 2022 is dismissed.

2. The decision issued by the Cyprus Football Association Dispute Resolution Committee on 20 June 2022 is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 28 March 2023

THE COURT OF ARBITRATION FOR SPORT

Jacopo Tognon
Sole Arbitrator