CAS 2018/A/5740 FC Bunyodkor v. Denilson Martins Nascimento

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark
Arbitrators: Dr Marco Balmelli, Attorney-at-Law in Basel, Switzerland
Mr Edward Canty, Solicitor in Manchester, United Kingdom

in the arbitration between

FC Bunyodkor, Uzbekistan

-Appellant-

v.

Denilson Martins Nascimento, Brazil
Represented by Mr Breno Costa Ramos Tannuri, Attorney-at-Law in São Paulo, Brazil

-Respondent-

*****

I. PARTIES

1. FC Bunyodkor (the "Appellant" or the "Club") is a professional football club based in Uzbekistan, and affiliated with the Uzbekistan Football Association (the "UFA"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

2. Mr Denilson Martins Nascimento (the "Respondent" or the "Player") is a former professional football player of Brazilian nationality.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations as established by the Panel on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (the "FIFA DRC") on 21 September 2017 (the "Appealed Decision"), the written and oral submissions of the Parties and evidence adduced. Additional facts and allegations found in the written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Panel refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 15 October 2009, the Club, the Player and the company Zeromax GmbH ("Zeromax") signed an Employment Contract (the "Private Employment Contract") drafted in Portuguese/English, valid from 1 January 2010 until 31 December 2010. The Private Employment Contract was apparently signed and stamped on behalf of the Club by Mr Ismailov, who appeared to be signing as "*Presidente*".

5. The Private Employment Contract stated, *inter alia*, as follows:

> ***"EMPLOYMENT CONTRACT***
>
> ***PFC BUNYODKOR****, based in Uzbekistan, 100115, Tashkent, Chopon Ota, str. 81, herein represented by its President,* ***Mr. K. TAVAKAL ISMAILOV****, the final signed, hereinafter simply* ***CLUB, ZEROMAX GMBH****, with headquarters located in Lindenstrasse 4, 6340 Baar, Switzerland, herein represented by its director* ***Mr. MIRALDIL S. DJALALOV,*** *hereafter referred to as* ***COMPANY, CONTRACTOR.***
>
> ***DENILSON NASCIMENTO MARTINS****, Brazilian citizen, married, professional athlete with the CV-008468 passport, valid, 29.12.2006 to 28.12.2011, hereafter referred to as* ***EMPLOYEE.***

The PARTIES decided to conclude this contract of employment, to will observe the following conditions, freely agree upon by them.

1. THE OBJECT OF THE CONTRACT

1.1. The EMPLOYEE will provide services as a football player, playing in competitions by the employer that he is participating.

[…]

4. THE AMOUNT OF COMPENSATION

4.1 For the services, the EMPLOYEE will receive the first year of work the importance of U$ 1.300.000,00 (One Million and Three Hundred Thousand Dollars) net, whose values will be paid as follows:

4.2. a) on January 30, 2010 will receive the importance of 300.000,00 (Three Hundred Thousand Dollars);

b) on April 30, 2010 will receive the importance of 300.000,00 (Three Hundred Thousand Dollars);

c) on July 30, 2010 will receive the importance of 300.000,00 (Three Hundred Thousand Dollars)

d) on October 30, 2010 will receive the importance of 400.000,00 (Four Hundred Thousand Dollars)

4.3 In the case of the EMPLOYER exercises the option to renew this Agreement within the period specified in Section 3.2. this instrument, receive for the year 2011 the value of U$ 1.300.000,00 (One Million and Three Hundred Thousand Dollars) net on the following dates:

a) on January 30, 2011 will receive the importance of 300.000,00 (Three Hundred Thousand Dollars);

b) on April 30, 2011 will receive the importance of 300.000,00 (Three Hundred Thousand Dollars);

c) on July 30, 2011 will receive the importance of 300.000,00 (Three Hundred Thirty [sic] *Thousand Dollars);*

d) on October 30,2011 will receive the importance of 400.000,00 (four hundred thousand Dollars);

5. OTHER BENEFITS

5.1.1 The EMPLOYER will shall provide to the EMPLOYEE six (6) airline tickets round trip to Brazil a year contract, in Business Class, the ticket must be requested from the EMPLOYER 10 days in advance, except in an emergency room, leaving a vacancy for the day requested the sole responsibility of the airline that is holding the right to use the passage to be traversed in any event.

5.1.2 The EMPLOYER will provide to the EMPLOYEE for the duration of this Agreement, and as a result of this, a furnished house to serve as his residence.

5.1.3 The EMPLOYEE and his family will be entitled to medical and hospital plan that will be funded by the EMPLOYER.

5.1.4 The EMPLOYER will shall provide the EMPLOYEE a vehicle for use during the term of the Contract of Work.

5.1.5 The EMPLOYER will provide the children of the EMPLOYEE American school during the term of this agreement.

[…]

7. This Agreement is irrevocable and irreversible

For to be the parties agree and contractors, have signed this instrument in 02 (two) copies of equal content and validity of the witnesses below."

6. Zeromax is/was a limited liability company ("LLC") with its registered headquarters in Switzerland. Zeromax was the principal shareholder of the company LLC Neftegazmontazh, which in turn was the principal shareholder of the Club. Moreover, Zeromax was the sponsor of the Club.

7. On 20 January 2010, the Club and the Player signed *The Contract on performance of professional duties by non-amateur Football player of FK Bunyodkor* (the "Standard Contract") drafted in Russian/English, valid from 15 January 2010 until 31 December 2010.

8. The Standard Contract stated, *inter alia*, as follows:

"***1. SUBJECT of the CONTRACT***

***1.1 Club** undertakes to employ the **Football Player** as a professional football player (non-amateur-football player) of soccer team FK "BUNYODKOR" (Tashkent), to pay wages and to provide with the working conditions necessary for performance of such work and stipulated by the legislation of Uzbekistan, and the **Football Player** undertakes to perform work as the football player of **Club**, using thus all professional skill with the purpose of achievement by **Club** high sports results.*

***1.2** The present Contract is a special form of the time limited labour contract and complies with the current legislation of Uzbekistan.*

[…]

3. RIGHTS and DUTIES of the PARTIES

[…]

*3.3 During validity of the Contract the **Club** undertakes:*

*- to follow the condition of payment to the **Football Player** according to the present Contract.*

[…]

4. PAYMENT, TIME of REST and SOCIAL MAINTENANCE

4.1** For performance of the duties stipulated by the present Contract, the wages, according to the list of staff of **Club** are monthly paid to the **Football Player

***4.2** The administration of **Club**, as agreed with trainer's structure, may award the **Football Player** for achievement of successful (victorious) results. The sizes of bonuses are established in each*

*concrete case, proceeding from productivity of the **Football Player** and a financial condition of **Club**. All bonuses are paid after victorious results of competitions.*

***4.3 Football Player** will receive premiums and additional payments level with other members of the team*

[…]

7. FINAL PROVISIONS

***7.1** All disputes and disagreements which may arise during performance of obligations under the present contract, coordinate the parties by negotiations. The parties are obliged to abstain from the decision of disputes among themselves in courts of the general jurisdiction, for this purpose it is necessary to use the appropriate bodies of Professional football league of Uzbekistan, Uzbekistan Football Federation, AFC and FIFA.*

***7.2** Conditions of the present Contract are confidential and are not subject to disclosure without the consent of other party.*

[…]"

9. According to the Player, he did not receive the agreed payments on time, and on 7 August 2010, the Player allegedly forwarded a default notice to the Club requesting the payment of the outstanding amounts pursuant to the Private Employment Contract.

10. By letter of 9 August 2010, the Player notified the Club and Zeromax that he considered the Private Employment Contract as terminated considering the outstanding remuneration and the fact that no response was received from the Club to his default notice of 7 August 2010.

11. Later on the same date, the Club informed the UFA and the national league that four of its players, including the Player, had left the Club in spite of ongoing negotiations between the parties.

12. On 10 August 2010, the Player contacted the Debt Collection Office of Baar in Switzerland in order to verify the financial situation of Zeromax, and on the next day, the Player's then legal representative initiated a debt collection request against Zeromax before the same debt collection office.

13. On 13 August 2010, bankruptcy proceedings against Zeromax were opened in Switzerland.

14. On 17 April 2011, the Player submitted a claim to the Bankruptcy Office of Zug, Switzerland, claiming the amount of CHF 2,369,036.90 from Zeromax "*as first class*" based on the Private Employment Contract.

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

15. On 2 December 2010, the Player lodged a claim before FIFA against the Club for breach of contract, asking to be awarded USD 700,000 as outstanding remuneration and USD 400,000 as compensation for breach of contract.

16. In support of his claim, the Player submitted, *inter alia*, that the Club had failed to pay the contractual remuneration, having only paid the total amount of USD 200,000 in two instalments of USD 100,000 on 30 January 2010 and on 2 August 2010, respectively.

17. According to the Player, in July 2010, the Club proposed the termination of the Contract, which the Player refused.

18. Furthermore, the Player stated that the Club and Zeromax were put in default in writing on 26 July 2010 after several unsuccessful meetings, giving the Club and Zeromax a deadline of 10 days to comply with the payment obligation "*under penalty on one side of termination of employment contract.*" However, without any payments made to the Player of the outstanding instalments, on 9 August 2010, the Player terminated the employment relationship with immediate effect, considering that he had just cause for the termination.

19. In its reply to FIFA, the Club submitted that the Player's claim was time-barred according to both Uzbek and Swiss law, considering, respectively, that the claim lodged before FIFA neither interrupts nor suspends the statute of limitations, combined with the fact that the FIFA DRC is neither an ordinary court nor an arbitration tribunal.

20. The Club further submitted, *inter alia*, that the Club had no payment obligation to the Player, since it was Zeromax that was liable to pay the Player his remuneration, of which fact the latter was well aware. In this regard, it was further noted that on different occasions in August 2010, the Player only contacted Zeromax, thus clearly considering the said company as the debtor, and even contacted the Debt Collection Office of Baar in Switzerland to verify the financial situation of the company and to request outstanding payments by initiating a debt collection request against Zeromax.

21. Moreover, the Club submitted that in order for a foreign player to play for the Club in Uzbekistan, such a player needs to obtain a work permit from the relevant authorities, in which regard the Club must submit an employment contract concluded between the respective player and the Club. However, the Club was never the real employer, and any negotiations regarding the Player were conducted by Zeromax, which also made all material payments to the Player while the Club only made payments in accordance with the Standard Contract. The Club was never in a financial position that would make it possible to make the claimed payments to the Player in accordance with the Private Employment Contract.

22. Furthermore, the Club submitted that the contract was actually null and void because it was signed by an unauthorised person on behalf of the Club and because it foresaw the payments in USD, which is against the applicable laws. Due to currency restrictions, agreements under which the players were to be paid in foreign currency were concluded by Zeromax, which was domiciled outside Uzbekistan.

23. Finally, with regard to the Player's termination of the employment relationship, the Club submitted that it never received any default notice from the Player.

24. In his replica, the Player insisted on his claim and maintained, *inter alia*, that it was the Club, as employer, which failed to pay to him the outstanding amount and that the Club was always the primary debtor.

25. Furthermore, the Player informed FIFA that he remained unemployed until the end of the relevant contractual period.

26. Finally, the Club submitted information regarding the status of the Player's application to the Bankruptcy Office of Zug, which was not yet decided.

27. First of all, the FIFA DRC analysed whether it was competent to deal with the case, noting that since the claim was lodged on 2 December 2010, the 2008 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules") is applicable. Having established its competence to deal with the matter, which concerns an employment-related dispute with an international dimension, the FIFA DRC then referred to the allegation of the Club that the claim was time-barred. However, as the claim was lodged in front of the FIFA DRC on 2 December 2010, and as the event giving rise to the dispute occurred on 9 August 2010, the FIFA DRC rejected such an allegation and confirmed that it was competent to enter into the substance of the matter. The FIFA DRC further concluded that since the claim was filed on 2 December 2010, the 2010 edition of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") was applicable to the matter at hand.

28. The FIFA DRC then entered into the substance of the matter and noted that the Club, for its part, rejected the Player's claim arguing, *inter alia*, that it was not bound by the Private Employment Contract, which is the basis for the Player's claim. In particular, the Club argued that the said contract was null and void because it was signed by an unauthorised person on behalf of the Club and because it was not registered with the UFA.

29. The FIFA DRC found that the argument by the Club that it was not bound by the Private Employment Contract could not be upheld for the mere reason that the Player, in good faith, could reasonably believe that the said contract was signed by a person legally authorised to sign it on behalf of the Club, not least since the Club had not proven that the Player was duly informed that the person signing was not legally authorised based on the specific circumstances of the case. Moreover, it was stressed that the signatures on the relevant contract were accompanied by the Club's stamp.

30. Moreover, the FIFA DRC rejected the Club's argument regarding the issue of non-registration with the UFA, making reference to the established jurisprudence that, as a general rule, the registration of an employment contract with a federation cannot constitute a condition for its validity.

31. Consequently, the FIFA DRC determined that the Private Employment Contract was valid and binding on both parties.

32. Furthermore, and considering the arguments of the Parties, the FIFA DRC proceeded to determine the party responsible to pay the Player's remuneration and recalled that the Club and the Player had signed two different contracts: (i) the Private Employment Contract between the Player, the Club and Zeromax, which established a remuneration for the services of the Player in the amount of USD 1,300,000 in favour of the Player, and (ii) the Standard Contract concluded between the Player and the Club, which established that the Player was entitled to a remuneration "*according to the list of staff Club*".

33. Taking into consideration both contracts, the FIFA DRC found that it could be established that the Player and the Club concluded an employment relationship, and the Player undertook to render his services as a player to the Club. In particular, it was considered that the Parties' employment relationship was governed by both contracts and that these contracts included a reciprocal exchange of obligations between the Club and the Player. In this regard, the FIFA DRC was satisfied that, whereas the term "employer" has not been further defined, the Player was to render his services as a player to the Club, a club affiliated to the UFA only.

34. The FIFA DRC further stressed that the Private Employment Contract clearly establishes the remuneration the Player was entitled to receive for his services as a player and, additionally, recalled that the Standard Contract expressly establishes that the Club undertakes to employ the Player and pay him wages.

35. On this account, it was found that the Club was to be held liable for the payment of the Player's remuneration for his services as a football player, at the same time recalling that the Club had not been able to corroborate its allegations that Zeromax was the party liable to pay the remuneration to the Player with relevant and conclusive documentation.

36. Having established the above, the FIFA DRC recalled that the Player terminated the contractual relationship in writing on 9 August 2010, alleging that the aggregate amount of USD 700,000 was still outstanding in spite of having put the Club in default. Furthermore, it was noted that it remained undisputed that the amount of USD 700,000 on the basis of the Private Employment Contract was still outstanding at that time, corresponding to a part of the first instalment of USD 300,000 as well as the full second and third instalments of USD 300,000 each, which fell due on 30 January 2010, 30 April 2010 and 30 July 2010, respectively.

37. As such, the FIFA DRC found that the Club had seriously neglected its financial contractual obligations towards the Player over a substantial amount of time. Even if the Club allegedly had never received the Default Letter, the FIFA DRC found that the Player could in good faith believe that even if such a default letter had been received, the Club would have persisted in the non-compliance with the financial terms of the Private Employment Contract.

38. Based on that, the Player was found to have terminated the contract with just cause, and in accordance with the principle of *pacta sunt servanda*, the Club was found liable to pay to

the Player the remaining outstanding amount at the moment of termination, i.e. USD 700,000.

39. With regard to the calculation of the amount of compensation for breach of contract in the case at stake, the FIFA DRC first summed up that, in accordance with Article 17 (1) of the FIFA RSTP, the amount of compensation must be calculated, in particular, and unless otherwise provided for in the contract at issue, with due consideration for the law of the country concerned, the specificity of sport and any other objective criteria, including, in particular, the remuneration and other benefits due to the Player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years and depending on whether the contractual breach falls within a protected period.

40. Since the Private Employment Contract did not contain any provision under which the Parties had agreed beforehand on an amount of compensation payable by the parties to the contract in the event of breach of contract, the FIFA DRC proceeded with the calculation of the monies payable to the Player under the terms of the said contract until its natural expiry and concluded that the amount of USD 400,000 (i.e. the residual value until the end of December 2010) should serve as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.

41. The FIFA DRC then noted that the Player had not signed any new employment contract within the period of time between the termination of the contract and its original date of expiry and, thus, had not been able to mitigate his damages.

42. In view of the above, it was decided that the Club must pay the amount of USD 400,000 to the Player as compensation for breach of contract.

43. As such, on 21 September 2017, the FIFA DRC rendered the Appealed Decision and decided, *inter alia*, that:"

> *1. The claim of [the Player] is admissible.*
>
> *2. The claim of the [the Player] is accepted.*
>
> *3. [The Club] has to pay to [the Player] outstanding remuneration in the amount of USD 700,000,* ***within 30 days*** *as from the date of notification of this decision.*
>
> *4. [The Club] has to pay to [the Player] compensation for breach of contract in the amount of USD 400,000,* ***within 30 days*** *as from the date of notification of this decision.*
>
> *5. In the event that the amounts due to [the Player] in accordance with the abovementioned numbers 3. and 4. are not paid by [the Club] within the stated time limits, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limits and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

6. [The Player] is directed to inform [the Club] immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received. "

44. On 25 April 2018, the grounds of the Appealed Decision were communicated to the Parties.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

45. On 16 May 2018, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code") against the Respondent and FIFA with respect to the Appealed Decision. In its Statement of Appeal, the Appellant requested the stay of the Appealed Decision.

46. By letter of 25 May 2018 and with reference to a letter of 18 May 2018 from the CAS Court Office regarding, *inter alia*, the request for stay, the Appellant confirmed that it did not maintain its application for a stay of the execution of the Appealed Decision being a monetary award.

47. On 28 May 2018, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

48. By letter of 5 June 2018 to the CAS Court Office FIFA stated, *inter alia*, as follows:

"[…] *In particular, we have to stress that FIFA, more precisely the Dispute Resolution Chamber, acted in the matter at stake in its role as the competent deciding body of the first instance and was not a party to the dispute. Moreover, we would like to emphasise that the appealed decision of the Dispute Resolution Chamber dated 21 September 2017 is not one of a disciplinary nature.*

Therefore, we deem that FIFA cannot be considered as a Respondent in the present affair, and, in consequence, we request that FIFA shall be excluded from the procedure at stake. If this should not be the case, we reserve our right to claim against the Appellant for the legal costs incurred by FIFA as a consequence of the unnecessary involvement in the present procedure. […]"

49. By letter of 7 June 2018, the Appellant confirmed that it maintained FIFA as the Second Respondent.

50. On 10 August 2018, the Parties were informed that the Panel had been constituted as follows:

President:	Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark
Co-Arbitrators:	Dr Marco Balmelli, Attorney-at-Law in Basel, Switzerland
	Mr Edward Canty, Solicitor in Manchester, United Kingdom

51. By letter of 13 September 2018, and following direct negotiations between the Appellant and FIFA, the Appellant confirmed that it agreed to remove FIFA as a Respondent from the present proceedings.

52. On 14 September 2018, the Respondent filed his Answer in accordance with Article R55 of the CAS Code. The Answer included a request for disclosure of documents.

53. On 27 September 2018, the Respondent informed the CAS Court Office of his preference for a hearing to be held in this matter.

54. By letter of 3 October 2018 from the Appellant, the CAS Court Office was informed that the Parties had "*agreed to seek bilateral dialogue and to try to reach a settlement. For this reason, we ask you to suspend the procedure until further notice. If the settlement discussion are not successful within a reasonable time, we would inform you and ask you to resume the proceedings.*"

55. By letter of 10 January 2022 from the Respondent and following the Parties' numerous confirmations since October 2018 that the negotiations were still pending, the CAS Court Office was informed that "*the Parties were unable to conclude an amicable settlement and therefore, we kindly request the CAS Court Office lift the suspension and resume the proceedings.*"

56. By letter of 12 January 2022 from the CAS Court Office, the Appellant was requested to indicate whether it considered a hearing necessary and to file its position on the Respondent´s request for disclosure of documents as included in the Answer.

57. On 19 January 2022, the Appellant confirmed that a hearing would be necessary, and that it opposed the requested disclosure sought by the Respondent "*with reference to the fact that it is not related to the subject matter of the dispute.*"

58. By letter of 15 February 2022, the Parties were informed that the Panel had decided to hold a hearing in the present dispute. Furthermore, the Parties were informed as follows regarding their respective requests for disclosure of documents:

"(i) Appellant's request

The Panel has noted that the Appellant requests the production by the Respondent of "all its bank account statements for period from January 2010 to August 2010 which will show from which entity the Player received payments under the 2009 Agreement".

Given that the Respondent does not dispute that his remuneration was paid via the company "Zeromax", the Panel considers this request as irrelevant and, therefore, dismisses such request.

(ii) Respondent´s request

The Panel has noted that the Respondent request the disclosure by the Appellant of "copy of all employment contract(s) and settlement agreement(s) (Private and/or Standard) entered between the Club (and Zeromax) and Mr. Arthur Antunes Coimbra ("Zico")."

With respect to this request, the Panel considers that these documents are not related to the dispute at stake and, even if some of such documents bear the signature of Mr Ismailov, the Respondent´s request shall be deemed as a fishing expedition which is not allowed pursuant to the IBA Guidelines on the Taking of Evidence in International Arbitration.

Consequently, the Respondent´s request for disclosure of documents is denied."

59. By letter of 20 September 2022, the Parties were invited to inform the CAS Court Office about their availabilities for a hearing by the end of January 2023/beginning of February 2023. However, on 26 September 2022, the (then) legal representative of the Appellant informed the CAS Court Office "*that I still have not received any feedback from FC Bunyodkor. The Russian lawyers to whom I forwarded your letters have also not responded. Under these circumstances, I assume that I am no longer a recipient of your information.*" Furthermore, the (then) legal representative forwarded the postal addresses of the Appellant to the CAS Court Office.

60. However, eventually, by email of 7 October 2022, the CAS Court Office was informed by the Appellant's (then) legal representative that the Appellant was available for a hearing on 1 February 2023, which date had already been confirmed by the Respondent.

61. By letter of 10 October 2022, the Parties were informed that the hearing was to be held in Lausanne, Switzerland on 1 February 2023, and on 17 October 2022 the Parties were forwarded the Order of Procedure to be signed and returned.

62. On 24 October 2022, the Respondent signed and returned the Order of Procedure, while the Appellant failed to do so.

63. By letters of 6 January 2023, both Parties informed the CAS Court Office about the names of the persons who were to attend the scheduled hearing, and by letter of 11 January 2023, the Parties were invited to liaise with each other and provide the CAS Court Office with a joint hearing schedule by 18 January 2023.

64. On 24 January 2023, the Appellant informed the CAS Court Office that it "*has certain problems to pay its legal counsel their long outstanding fees in time for the previous work done on the matter to make sure they duly prepare for the coming hearings as they have stopped working on the matter […]*", in which regard the Appellant "*respectfully request a short adjournment of the hearing date at least for one month, preferably, for 1,5-2 months, to make sure the Club is put in funds by its shareholder and is duly represented at the hearings having ample possibility to present its case.*"

65. Later on the same date, the Respondent objected to such postponement, submitting, *inter alia*, that the hearing had been scheduled for many months and the case had been pending before the CAS for more than five years. Moreover, the Respondent stated that his counsel had already travelled to Europe in order to attend the hearing and the Respondent himself had already bought the airplane tickets and booked his hotel for the purpose of attending the hearing.

66. By letter of 25 January 2023, the Parties were informed that the hearing date was confirmed "*In light of the Respondent's objection*." Moreover, the Parties' attention was drawn to Article R57 (4) of the CAS Code, according to which, "*If any of the parties, or any of its witnesses, having been duly summoned, fails to appear, the Panel may nevertheless proceed with the hearing and render an award.*"

67. On 30 January 2023, the CAS Court Office forwarded a hearing schedule prepared by the Panel, to which neither of the Parties objected.

68. However, by letter of 31 January 2023, the Appellant once again requested the Panel to postpone the hearing "*for at least 1 month*" as the "*Legal counsel for the Club is unable to participate in these hearings due to objective reasons"*, i.e. as "*it is currently not possible for the Club to pay its Counsel their long outstanding fees for the previous work done on the matter.*" Furthermore, the Appellant submitted that "*the conduct of hearings is further complicated by the unavailability of the Club's witnesses on the set dates*."

69. Later the same day, the Parties were informed, *inter alia*, as follows by the CAS Court Office:

> "*I draw to the Appellant's attention that, on 7 October 2022 and through its counsel, it confirmed its availability to attend the hearing and, on 6 January 2023, provided the CAS Court Office with its list of participants, which also announced the presence of several witnesses.*
>
> *In light of the foregoing and considering the Respondent's objection, please note that the hearing scheduled on 1 February 2023 is* ***confirmed****.*
>
> *Finally, I remind that, pursuant to Article R57 (4) of the Code, "If any of the parties, or any of its witnesses, having been duly summoned, fails to appear, the Panel may nevertheless proceed with the hearing and render an award.*""

70. On 1 February 2023, a hearing was held at the CAS Court Office in Lausanne, Switzerland.

71. However, the Appellant never attended the hearing, neither in person nor via the Webex link, which was provided to the Parties before the hearing. Moreover, the Appellant apparently never called or wrote to the CAS Court Office with regard to its absence from the hearing.

72. Based on the circumstances of the case, including the fact that the Appellant had already accepted the hearing date, was duly summoned to the hearing, had informed the CAS Court Office about the people intending to attend the hearing and did not prove that it was not possible for the witnesses to attend the hearing, coupled with the nature of the request for postponement, which did not constitute a new or urgent problem, the Panel, with reference to Article 57 (4) of the CAS Code, decided to proceed with the hearing in order to be able to render the present award.

73. In addition to the Panel and Mr Fabien Cagneux, Managing Counsel, the following persons attended the hearing:

For the Respondent:

- Mr Denilson Martins Nascimento – Respondent
- Mr Breno Costa Ramos Tannuri – Counsel
- Mr André Oliveira de Meira Ribeiro – Counsel
- Ms Gwenn Le Garrec – Counsel
- Mr Rivaldo Vitor Borba Ferreira – Witness
- Ms Larissa Benevides – Interpreter.

74. At the outset of the hearing, the Respondent confirmed that he had no objections to the constitution of the Panel.

75. The Panel heard the evidence of the Respondent and of Mr Rivaldo Vitor Borba Ferreira, a witness called by the Respondent, who was invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. The Respondent had the opportunity to examine the witness, and the Panel had the opportunity to cross-examine the Respondent and the witness.

76. The Respondent was afforded ample opportunity to present his case, submit his arguments and answer the questions posed by the Panel.

77. After the Respondent's final submissions, the Panel closed the hearing. The Panel took into account in its subsequent deliberations all the evidence and arguments presented by the Parties in their written submissions and as presented by the Respondent during the hearing although they may not have been expressly summarised in the present Award.

78. Upon the closure of the hearing, the Respondent expressly stated that he had no objections in respect of his right to be heard and to the Parties having been treated equally and fairly in these arbitration proceedings.

V. PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

79. The following outline of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference

has been made in what immediately follows. The Parties' written submissions, the Respondent´s verbal submissions at the hearing and the contents of the Appealed Decision were all taken into consideration.

A. The Appellant

80. In its Appeal Brief, the Appellant requested the CAS to

> *1) Set aside the Appealed Decision; alternatively reject the claim;*
> *2) Grant the Club, upon request, further or other relief that may be appropriate.*
> *3) Order the Player to bear all costs of these arbitration proceedings and to compensate the Club for all costs incurred in connection with this arbitration, including but not limited to the arbitration costs, arbitrator fees, and the fees and/or expenses of the Club's legal counsel, witnesses and experts, in an amount to be shown.*

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

- In Uzbekistan, foreign football players have a different labour status than Uzbek players and have to obtain a work permit from the Agency of the Foreign Labour Migration Affairs of Uzbekistan. In order to obtain such a permit, the Club has to submit an employment contract with the player in question to the said agency.

- The Club and the Player only concluded the Standard Contract valid until 31 December 2010. This contract, which was registered with the Professional Football League of Uzbekistan, was negotiated by Mr Boboyev on behalf of the Club. Since 2007, Mr Boboyev was in charge of negotiating players' contracts on behalf of the Club.

- Pursuant to the Standard Contract, disputes between the Parties were to be referred to the Professional Football League of Uzbekistan, the UFA and FIFA.

- Furthermore, the Player concluded the related Private Employment Contract with Zeromax, which contract was allegedly signed on behalf of the Club by Mr Ismailov. This contract, of which the Club had no knowledge, was only signed in two copies, was never registered with the Professional Football League of Uzbekistan, and the Club did not receive any copy thereof when signed by the Player and Zeromax.

- The Private Employment Contract does not state that the Club is the debtor, and it lists Mr Ismailov as "*Presidente*", even though Mr Ismailov was never the president of the Club.

- Usually, Zeromax would request the Club to accept a foreign player, but the Club was never involved in the negotiations, which were conducted by the owner of Zeromax, Mr Djalalov.

- Zeromax never acted on behalf of the Club regarding such contracts, and Mr Boboyev was never informed. The Club would only sign a bilateral contract with a player and register such a contract with the league.

- Due to currency restrictions, agreements under which football players were to be paid in foreign currency were made by Zeromax, which was domiciled outside Uzbekistan and, consequently, not subject to the restrictions under the laws of the Republic of Uzbekistan.

- The Club never made and was never able to make foreign-exchange transactions for the benefit of football players.

- The Club only made payments to the Player pursuant to and in accordance with the Standard Contract, and the Club has fully fulfilled its payment obligations towards the Player pursuant to the Standard Contract.

- Any payments to the Player pursuant to the Private Employment Contract were made, or should have been made, by Zeromax.

- The burden of proof regarding any consequences of the Private Employment Contract relating to the Club rests on the Player, being the one who wants to derive any rights thereof.

- With regard to Mr Ismailov, who allegedly signed the Private Employment Contract on behalf of the Club, it must be stressed that he did not and could not validly represent the Club, which must be decided in accordance with Uzbek law. The stamp of the Club on the Private Employment Contract does not alter that.

- First of all, when signing the Private Employment Contract, Mr Ismailov was no longer the Acting General Director of the Club, who is the person entitled to bind the Club legally.

- Even if Mr Ismailov had previously been acting as the Acting General Director of the Club, this was no longer the case when signing the Private Employment Contract, and he was then an Executive Manager and had no power to bind the Club. The Player knew or should have known this. Moreover, Mr Ismailov was not authorised under a power of attorney to bind the Club, nor was he in any other manner mandated to do so, and neither the Club nor its shareholders ever subsequently approved the signing of the Private Employment Contract.

- In any case, Mr Ismailov did not understand its content as he neither speaks nor reads English and Portuguese, which both the Player and Zeromax knew. The Private Employment Contract was never translated into Uzbek or Russian.

- Furthermore, it must be stressed that it was always financially and legally impossible for the Club to perform its alleged obligations pursuant to the Private Employment Contract, which was known or ought to have been known by the Player.

- As such, legal entities are for instance only allowed to make transfers in foreign currencies for certain purposes, and payments under employment contracts with foreign football players do not fall within such purposes. By entering into the alleged payment obligation in USD, the Club would have violated the national legislation.

- Based on all of the above, the Private Employment Contract must in any case be declared invalid in violation of the applicable national rules.

- According to the Player, he forwarded a default letter to the Club and to Zeromax, but the Club never received such notice.

- Any negotiations were always conducted between the Player and Zeromax, and any letters regarding the Player's employment relationship were forwarded to Zeromax and not to the Club.

- At the beginning of August 2010, the Player played his last game for the Club and then left Uzbekistan without informing the Club about his leaving.

- The Player initiated debt collection proceedings in the first class against Zeromax, thus acknowledging that it was in fact this company that was the sole debtor of the alleged outstanding amount.

- The procedures before FIFA against the Club were only initiated when the Player became concerned about the financial situation of Zeromax, and the claim before FIFA included the amount covered by the initiated debt collection proceedings.

- In any case, any claim against the Club under the Private Employment Contract would be time-barred as FIFA rules obviously do not prevail over substantive law.

- Pursuant to Uzbek law, a claim must be filed with the relevant state or arbitration court within a set period from the date when the party became aware or should have become aware of the infringement of its rights. However, filing a claim with the FIFA DRC neither interrupts nor suspends the statute of limitations.

- Pursuant to Swiss law, claims of employees arising from an employment relationship are time-barred after five years, and since the Player terminated the employment relationship on 9 August 2010, the claim was in any case time-barred when the Club filed its Appeal Brief since the Player failed to suspend the running of the Uzbek statute of limitations.

- As such, FIFA overlooked that even if the Player was considered to have a claim against the Club, such a claim was in any case time-barred.

- Regarding the Appealed Decision, FIFA DRC was not competent to adjudicate the matter.

- In this regard, it must be noted that Zeromax is not a member of the FIFA family and that the Club was not a party to the Private Employment Contract. FIFA could only become competent to adjudicate the dispute if the Club was a party to the said contract, which is not the case.

- Moreover, the Private Employment Contract makes no reference whatsoever to FIFA, and the FIFA DRC is not recognised as a true court of arbitration. The FIFA DRC is not an independent arbitration tribunal. It cannot waive substantive law. It may impose sanctions but, as an organ of a Swiss association, may not decide on money claims.

- Moreover, the FIFA DRC failed to hold an oral hearing, thus depriving the Club of its opportunity to duly present its case and violating its basic procedural rights. Moreover, the FIFA DRC should have called Zeromax as a party.

- In any case, the claim is raised against the principle of good faith since the Player knows that the Club is not the intended debtor pursuant to the Private Employment Contract.

- Finally, and in any case, the amount of damages due, if any, must be reduced when the damaged party failed to do all in its power to keep damages to a minimum or avoid damages altogether. All payments the Player received or could have received must be deducted from any compensation payable by the Club to the Player.

- Moreover, as the Appealed Decision is void or is to be set aside, respectively, it cannot serve as a basis for any sporting or other sanctions by FIFA, the AFC or any other sports-governing body.

B. The Respondent

82. In his Answer, the Respondent requested the CAS:

FIRST – To set aside in full the appeal lodged by [the Club] before the CAS;

SECOND – To confirm in full the Appealed Decision; and

THIRD – To order [the Club] to pay to the Player any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount the amount of CHF 30,000.

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

- With regard to the jurisdiction of the FIFA DRC to adjudicate the Player's claim against the Club, the jurisdiction is set out in Article 22 and Article 24 of the FIFA

RSTP as the present dispute is an employment-related dispute of an international dimension.

- Such jurisdiction has already been confirmed by the CAS in CAS 2015/A/3938, which dealt with very similar aspects. CAS 2015/A/3938 was subsequently confirmed by the Swiss Federal Tribunal.

- In the present dispute, the Parties have not even indicated any specific judicial body to adjudicate their dispute in the Private Employment Contract, which makes the jurisdiction of the FIFA DRC even more clear.

- The submission of the Club regarding the FIFA DRC not being "*an independent arbitration tribunal*" which "*cannot waive substantive law*" and "*may not decide on money claims*" must be rejected since the Club, as an indirect member of FIFA, is bound to comply with the "*Statutes, regulations, directives and decisions of FIFA bodies*" pursuant to Article 14 (1) of the FIFA Statutes.

- As such, it cannot validly be submitted that the FIFA DRC did not have jurisdiction to adjudicate the claim.

- With regard to the merits of the dispute, the decisive issues are the terms and conditions of the Private Employment Contract.

- Rights and obligations between football clubs and football players are generally set out in employment contracts, in which regard the FIFA RSTP sets out the legal framework in order to guarantee a uniform and equal treatment of all those that are bound by such regulations within the world of football.

- In order for an employment contract between a club and a player to be considered valid and binding, it must contain the so-called "*essentialia negotii*", i.e. at least the names of the parties, the object, the duration of the employment relationship, the salary and the signatures of the parties (CAS 2015/A/3953 & 3954). Furthermore, and in accordance with the FIFA RSTP, such a contract must be concluded between a club and a player.

- The FIFA RSTP does not provide any mandatory rules with regard to the language of an employment contract between a club and a player, nor is there any formal requirement for the validity of such a contract, requiring it to be proven that those signing such a contract actually understood the language in which it was drafted. According to the CAS, "*a party signing a document of legal significance, as a general rule, does so on its own responsibility and is liable to bear the possible legal consequences arising from the execution of the document.*" (CAS 2013/A/3375 & CAS 2013/A/3376).

- The Private Employment Contract complies with the formal requirements and is a valid and binding employment contract. Whether the Private Employment Contract was registered with the UFA is irrelevant to its validity.

- The Private Employment Contract is duly signed by the Player and by Mr Ismailov, duly representing the Club, and it also contains all the other *essentialia negotii.* The Private Employment Contract is clear in this regard and leaves no room for doubt or misunderstanding in relation to the remuneration that the Player, as the "EMPLOYEE", was entitled to receive from the Club pursuant to Clause 4 of the said contract.

- In this regard, it is irrelevant whether the Club "knew" about the content of the Private Employment Contract, or whether or not Mr Ismailov understood English, as submitted by the Club, since he unquestionably duly signed it on behalf of the Club.

- Moreover, it must be stressed that the Club never questioned the validity of the said contract or questioned the fact that the Player was with the Club, which would have been a reasonable question if the Club was not aware of the Private Employment Contract. Moreover, the Club was the party benefiting the most from it, i.e. by being able to play a well-experienced Brazilian professional football player.

- If the Club now submits that it is not bound by the Private Employment Contract, even when duly signed on its behalf, the onus is on the Club to substantiate such allegations, which it has failed to do.

- It is not disputed by the Club that it was in fact Mr Ismailov who signed the Private Employment Contract on behalf of the Club, and he also signed the contracts with the other foreign players. And even if Mr Ismailov apparently was no longer the Club's Acting General Director at the time of signing, the Player and the rest of the team were never informed about that. Moreover, Mr Ismailov was still working for the Club as its Executive Director.

- Based on that, the Player and the rest of the team had no reason to question the authority of Mr Ismailov to sign such a contract and could in good faith rely on such signatures being validly binding on the Club.

- Thus, the Club is bound by the signature of Mr Ismailov, which is also supported by Articles 32, 33 and 38 of the Swiss Code of Obligations ("SCO"), *inter alia*, since the Club in any case ratified the Private Employment Contract by having the Player render his services to the Club.

- According to the Club, the Private Employment Contract does not identify the Club as the employer and, thus, as the debtor, but such a view has neither a factual nor legal basis and must therefore be rejected by the Panel.

- Article 319 (1) and Article 322 (1) of the SCO provide that under an individual employment contract, the employee undertakes to work in the service of the employer and the employer undertakes to pay him the agreed or customary salary.

- As such, and as confirmed by the CAS, the employer's payment obligation is his main obligation towards the employee.

- Clause 5 of the Private Employment Contract leaves no room for doubt or misunderstanding that the Club was the employer of the Player.

- And even if the Private Employment Contract eventually assigned to Zeromax such financial obligations, Swiss law ratifies that the Club in any case would hold primary responsibility towards the Player as an employer.

- Furthermore, it must be stressed that the Player was rendering his services as a professional football player to the Club, and not to Zeromax, which is/was a gas company and not a football club.

- Now claiming that it has no outstanding payment obligations towards the Player pursuant to the Private Employment Contract constitutes an act of bad faith by the Club.

- The Club breached the Private Employment Contract by not paying the Player his contractual remuneration, and the Player thus had just cause to terminate the Private Employment Contract. As such, the Club must pay the Player his outstanding remuneration together with compensation for breach of contract, and the Appealed Decision must therefore be confirmed.

- For the sake of good order, it must also be stressed that the claim against the Club is not time-barred.

- The Club, as indirectly affiliated with FIFA, has to comply fully with the Statutes and regulations of FIFA, and Swiss law will only be taken into consideration if there is a gap in the applicable rules and regulations of FIFA.

- Pursuant to Article 25 (5) of the FIFA RSTP, any claim will not be heard subject to the said regulations if more than two years have elapsed since the event giving rise to the dispute. In this regard, neither Swiss nor Uzbek national rules are applicable since the FIFA RSTP prevails, even if the national provisions are mandatory.

- The Player complied in full with the above-mentioned rule when submitting his claim before the FIFA DRC in December 2010, which is why the claim is not time-barred.

VI. JURISDICTION

84. Article R47 of the CAS Code (2017 edition) provides, *inter alia*, as follows:

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

85. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 58 (1) of the applicable FIFA Statutes. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, and the Respondent confirmed the CAS jurisdiction when signing the Order of Procedure.

86. It follows that the CAS, as a minimum, has jurisdiction to decide on the Appeal of the Appealed Decision with regard to the jurisdiction of the FIFA DRC and the admissibility of the Appellant's claim, which the Panel will address in the merits section below.

VII. ADMISSIBILITY

87. Article R49 of the CAS Code (2017 edition) provides, *inter alia*, as follows:

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

88. It follows from Article 58 of the applicable FIFA Statutes that:

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

89. The grounds of the Appealed Decision were notified to the Parties on 25 April 2018, and the Appellant's Statement of Appeal was lodged on 16 May 2018, i.e. within the statutory time limit of 21 days set forth in Article R49 of the CAS Code and in Article 58 of the FIFA Statutes, which is not disputed.

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

91. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

92. Article R58 of the CAS Code (2017 edition) provides as follows:

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

93. Article 57 (2) of the FIFA Statutes reads 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."

94. The Panel notes that the Parties both submit that the applicable regulations in these proceedings, for the purposes of Article R58 of the CAS Code, are the rules and regulations of FIFA and, additionally, that Swiss law applies since the present appeal is directed against a decision issued by the FIFA DRC applying the rules and regulations of the same.

95. However, the Panel further notes that the Parties also submit that the laws of Uzbekistan should also be taken into consideration.

96. Based on the above, and with reference to the submissions filed, the Panel is satisfied to accept the application of the various rules and regulations of FIFA and, subsidiarily, Swiss law. However, the Panel will take into consideration the relevant national rules where applicable and relevant.

97. Moreover, and for the sake of good order, the Panel notes that since the dispute was originally filed before FIFA on 2 December 2010, the 2010 edition of the FIFA RSTP is applicable to the dispute.

IX. MERITS

98. Initially, the Panel notes that the relevant factual circumstances of this case are – in essence – undisputed by the Parties, including the fact that on 15 October 2009, the Player and Mr Ismailov, allegedly on behalf of the Club, and Zeromax signed the Private Employment Contract, valid as from 1 January 2010 until 31 December 2010. Moreover, on 20 January 2010, the Club and the Player signed the Standard Contract, valid as from 15 January 2010 until 31 December 2010.

99. Furthermore, it is undisputed that on 9 August 2010, the Player terminated his employment relationship with the Club, submitting that he had not received the amount of USD 700,000 pursuant to the Private Employment Contract.

100. However, the Parties are in dispute, *inter alia*, over whether the Club is in fact legally bound by the Private Employment Contract and, if even so, whether or not it is the Club that is responsible for paying the Player's contractual remuneration. Moreover, the Club disputes that the Player had just cause for terminating his employment relationship, based on which he is in any case not entitled to receive any compensation for breach of contract, further submitting that any claim against the Club is time-barred.

101. Finally, the Club submits that FIFA did not have jurisdiction to adjudicate the dispute and that the FIFA DRC, by failing to hold an oral hearing and failing to call Zeromax as a party, violated the Club's basic procedural rights.

102. Based on these circumstances, the Panel finds that the main issues to be resolved by the Panel are:

A. Did FIFA have jurisdiction to adjudicate the dispute, and did it violate the basic procedural rights of the Club?

B. Is the Private Employment Contract to be considered a valid and binding employment contract between the Club and Player, and, in the affirmative,

C. Did the Player terminate the Private Employment Contract with or without just cause, and

D. What are the financial consequences, if any, of the Player's termination of the Private Employment Contract?

A) Did FIFA have jurisdiction to adjudicate the dispute, and did it violate the basic procedural rights of the Club?

103. The Club submits that FIFA did not have jurisdiction to adjudicate the dispute based on the Private Employment Contract since, *inter alia*, the Club was never a valid party to the said contract. Moreover, the said contract makes no reference whatsoever to FIFA, and the FIFA DRC is not recognised as a true court of arbitration and is not the CAS.

104. The Panel initially notes that it is undisputed between the Parties that any possible jurisdiction of the FIFA to decide on the claim of the Player must originate from the regulations of FIFA.

105. Article 3 (1) of the Procedural Rules provides, *inter alia*, as follows:

> "*The Players' Status Committee and the DRC shall examine their jurisdiction, in particular in the light of arts 22 to 24 of the Regulations on the Status and Transfer of Players […]"*.

106. Furthermore, Article 22 and Article 24 of the FIFA RSTP state, *inter alia*, as follows:

> *22 "Competence of FIFA*
> *Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:*
> *a) […];*
> *b) employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement;*
> *c) […]"*
>
> *24 Dispute Resolution Chamber*

1. The DRC shall adjudicate on any of the cases described under article 22 a), b), d) and e) with the exception of disputes concerning the issue of an ITC.
[…]"

107. In this regard, and since the Panel considers the Club to be the employer of the Player as set out in para. 144 below, the Panel notes that it considers the present dispute to be an employment-related dispute between a club and a player of an international dimension.

108. As such, the Panel dismisses the submission regarding the alleged lack of jurisdiction of the FIFA DRC to adjudicate the Player's claim against the Club based on the Private Employment Contract.

109. The Panel further notes that the Club submits that its basic procedural rights were violated since the FIFA DRC failed to hold a hearing before issuing the Appealed Decision.

110. Without going into the merits of the allegation, the Panel notes that in any event, the full power of review of the Panel before the CAS under Article R57 (1) of the CAS Code would in principle cure the procedural violations that allegedly occurred in prior proceedings (see, *ex multis*, CAS 2011/A/2594, para. 41, CAS 2018/A/5853, para. 115, CAS 2021/A/8256, paras. 133 *et seq.*).

111. Moreover, the Panel does not agree with the Club that Zeromax should have been called as a party before the FIFA DRC for the mere reason that Zeromax is not a member of the FIFA football family and thus not subject to the jurisdiction of FIFA and since the employment-related dispute pursuant to the Private Employment Contract only deals with the relationship between the Parties.

112. Consequently, the submissions related to the alleged violations of due process and the right to be heard can also be dismissed.

B) <u>Is the Private Employment Contract to be considered a valid and binding employment contract between the Club and Player?</u>

113. With regard to the Private Employment Contract, the Club submits that it does not constitute a valid agreement between the Parties since, *inter alia*, the Club was never informed about the contract and never intended to be a party to it, and, besides, it is submitted that the Private Employment Contract was never validly signed on behalf of the Club.

114. The Player, on his side, submits that the Private Employment Contract is to be considered as a valid and binding employment contract between the Club and the Player and is to be considered together with the Standard Contract.

115. In this regard, the Panel initially notes that it is undisputed that, pursuant to the explicit wording of the Private Employment Contract, the contracting parties set out in the document are the Club, the Player and Zeromax and that the Club and the Player were referred to as

"*CLUB*" and "*EMPLOYEE*", respectively, while Zeromax is referred to as "*COMPANY, CONTRACTOR*". Moreover, the title of the contract is "*EMPLOYMENT CONTRACT*".

116. Furthermore, and with reference to CAS jurisprudence, *inter alia*, CAS 2015/A/3953 & 3954, the Panel notes that the said agreement appears to include all *essentialia negotii*, i.e. i) a date, ii) the name of the parties, iii) the duration of the contract, iv) the amount of remuneration and v) the signatures of the parties.

117. In view of the foregoing, the Panel is comfortable in finding that the Private Employment Contract constitutes a valid and binding employment contract entered into between the Parties unless specific circumstances speak against this finding in a decisive manner.

118. In this regard, and based on the specific circumstances of the case, including the fact that the Private Employment Contract indisputably was signed and stamped by a representative of the Club, the Panel finds that it is up to the Club to discharge the burden of proof to establish that the said contract is not valid for and binding on the Club with relation to the alleged employment relationship with the Player as set out in the same document.

119. In doing so, the Panel adheres to the principle of *actori incumbit probatio*, which is known in several jurisdictions, as foreseen in Article 8 of the Swiss Civil Code, and has been consistently observed in CAS jurisprudence, according to which "*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue, In other words, the party which asserts facts to support its rights has the burden of establishing them (..) The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*" (e.g. *CAS 2003/A/506*, para 54; *CAS 2009/A/1810&1811*, para 18; and *CAS 2009/A/1975*, para 23 *et seqq.*).

120. However, the Panel finds that the Club has not adequately discharged the burden of proof to establish that the Private Employment Contract is not valid for and binding on the Club.

121. To reach this decision, the Panel has conducted an in-depth analysis of the facts of the case and of the information and evidence gathered during the proceedings.

122. With regard to the Club's submission that Mr Ismailov neither had any intention nor any powers to bind the Club legally as the employer of the Player, the Panel initially notes that it is not disputed that Mr Ismailov was no longer the Acting General Director of the Club at the time when he signed the Private Employment Contract. Instead, he was then acting as the Club's Executive Director with no formal legal powers to bind the Club.

123. However, it is also undisputed that Mr Ismailov had in fact signed previous contracts between the Club and players, duly authorised to do so, and that Mr Ismailov continued to sign other contracts with players on behalf of the Club, also after having stepped down from the position of Acting General Director.

124. The Panel further notes that even if the Club submits that the players of the Club were all duly informed about Mr Ismailov not being able to bind the Club anymore, the Club failed to submit any proof of such information, even when specifically requested to do so by the Panel during these proceedings. In addition, the witness (Mr Rivaldo Vitor Borba Ferreira, who is a former player of the Club) testified that he and the rest of the team were never informed about the amended status and legal powers of Mr Ismailov.

125. Moreover, the Player and the witness both explained that the manner in which Mr Ismailov presented himself within the Club never changed, regardless of the fact that they were informed in the course of these proceedings that he apparently was no longer the Acting General Director. In their opinion, at the time, he would still appear to be the Acting General Director of the Club working closely together with Mr Djalalov, who appeared to be the "strong man" in the Club, being the owner of Zeromax.

126. Based on these circumstances and in accordance with the principle of good faith, the Panel finds that the Player was entitled in good faith to believe that Mr Ismailov was in a position to bind the Club when signing on behalf of the Club and using the Club stamp to seal the Private Employment Contract, based on which the Club is now precluded from submitting the opposite with any legal standing.

127. Moreover, the Panel notes that the Club in any case appears to have ratified the Private Employment Contract by allowing the Player to be a part of the Club and its team, benefiting from the Player's services without asking any questions.

128. Finally, and for the sake of good order, the Panel notes that the submissions of the Club regarding Mr Ismailov apparently not being able to read and understand English or Portuguese, and thus allegedly not understanding the content of the Private Employment Contract before signing it, must be dismissed since, and in accordance with CAS jurisprudence (CAS 2013/A/3375 & /3376) "*a party signing a document of legal significance, as a general rule, does so on its own responsibility and is liable to bear the possible legal consequences arising from the execution of the document"*.

129. Regardless of the above, combined with the fact that the Panel finds that the Private Employment Contract is to be considered a valid and binding agreement between the Parties, the Club submits that it was never the intention that the Club should be considered obligated to make any payments to the Player pursuant to the Private Employment Contract, and the Club was only supposed to be obliged to fulfil its obligations towards the Player pursuant to the Standard Employment Contract, which payments were always made in the national currency.

130. According to the Club, all payments made to the Player pursuant to the Private Employment Contract were made in USD by Zeromax, which was domiciled outside Uzbekistan, and it was the intention that all payments to the Player pursuant to the Private Employment Contract should also be made directly by Zeromax.

131. The Club was never in a position to make such payments, neither from a financial point of view nor from a legal point of view due to current national currency restrictions under which payments in foreign currencies to foreign players were illegal.

132. Finally, the Club submits that the FIFA DRC erred in its interpretation of the Private Employment Contract since it was Zeromax that should be responsible for the payment of the agreed remuneration as inserted in the Private Employment Contract.

133. The Player, on the other hand, submits and testifies, *inter alia*, that it was never the intention that the Player should be employed by Zeromax and that it was never discussed nor agreed between the Parties that payments to the Player should be made by Zeromax as the sole party responsible for such payments.

134. In this regard, the Panel initially notes, as already set out above, that the contracting parties named in the Private Employment Contract are the Club, the Player and Zeromax and that the Club and the Player were referred to as "CLUB" and "EMPLOYEE", respectively.

135. Furthermore, it is explicitly stated in the said contract that "*The EMPLOYEE will provide services as a football player, playing in competitions by the employer, that he is participating.*" and that "*The EMPLOYEE is expected to participate in publicity events organized by the EMPLOYER or its sponsors and partners, where required*".

136. The Panel further notes that the following is explicitly stated in the Standard Contract entered between the Club and the Player:

> *"**1.1 Club** undertakes to employ the **Football Player** as a professional football player (non-amateur-football player) of soccer team FK "BUNYODKOR" (Tashkent), to pay wages and to provide with the working conditions necessary for performance of such work and stipulated by the legislation of Uzbekistan, and the **Football Player** undertakes to perform work as the football player of **Club**, using thus all professional skill with the purpose of achievement by **Club** high sports results.*
> ***1.2** The present Contract is a special form of the time limited labour contract and complies with the current legislation of Uzbekistan."*

137. Based, *inter alia*, on that, the Panel finds that it was the intention of the Parties that the Player should provide his services as a professional football player to the Club and not to Zeromax. It is undisputed that the Player did provide such services to the Club as a player to the Club, which was the only party benefiting from that, and, moreover, the Player apparently never provided any services to Zeromax, not even sponsor services or any other services in connection with the image rights of the Player.

138. The Panel further notes that the Player testified that he was never informed about any specific role of Zeromax with regard to the Club. He always regarded himself as a player of the Club and not as an employee of Zeromax.

139. Based on the above, and even if the Player must have noticed that Zeromax was a party to the Private Employment Agreement when signing it, and even if the said contract was apparently never registered as an employment agreement with the Professional Football League of Uzbekistan nor forwarded to the Agency of the Foreign Labor Migration Affairs of Uzbekistan, the Panel feels comfortable in its finding that the Club is to be considered as the employer of the Player pursuant to the Private Employment Contract and, accordingly, is the primary party responsible for paying the Player the agreed remuneration as set out therein.

140. In this regard, the Panel notes the general obligation of an employer as set out in Article 319 (1) and Article 322 (1) of the SCO, which provide as follows, respectively: "*By means of an individual employment contract, the employee undertakes to work in the service of the employer for a limited or unlimited period and the employer undertakes to pay him a salary based on the amount of time he works (time wage) or the tasks he performs (piece work).*" and "*The employer must pay the agreed or customary salary or the salary that is fixed by standard employment contract or collective employment contract.*"

141. The fact that the Club might be covered by national currency restrictions does not invalidate its contractual payment obligations towards the Player, nor does it release it from such obligations.

142. Furthermore, the Panel finds that the fact that the Player's then legal advisor initiated debt collection procedures against Zeromax does not in any way change or terminate the Club's payment obligations towards the Player pursuant to the Private Employment Contract as the Panel finds that the Club is the primary debtor of the remuneration to the Player, even if such payment was previously made via Zeromax under the Private Employment Contract. In this regard, the Panel specifically notes the apparently very close relationship between the Club and Zeromax.

143. As such, the Panel finds that the Private Employment Contract constituted a valid and binding employment contract between the Club as the employer and the Player as the employee.

144. Thus, the Panel agrees with the FIFA DRC that the Club as the employer is responsible for paying the contractual remuneration to the Player in accordance with the Private Employment Contract.

C. Did the Player terminate the Private Employment Contract with or without just cause?

145. The Panel initially notes that Article 13 of the FIFA RSTP defends the principle of contractual stability, stating as follows:

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

146. However, Article 14 of the same regulations sets out that:

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

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

148. Moreover, and in general, the breaching party must have been warned by the other party that the conduct is not in accordance with the agreed contractual obligations and informed about the possible consequences of continuous breach thereof.

149. Based on the facts of the case and the Parties' submissions, including the fact that it is not disputed that it was the Player who terminated the employment relationship with the Club, the Panel finds that it is up to the Player to discharge the burden of proof to establish that the employment relationship was in fact terminated with just cause based on the circumstances of the case.

150. The Panel finds that the Player has adequately discharged this burden of proof.

151. First of all, it is undisputed that, pursuant to the Private Employment Contract, the Player was entitled to receive the total amount of USD 1,300,000 for the 2010 season, such amount which fell due in four instalments: USD 300,000 on 30 January 2010, USD 300,000 on 30 April 2010, USD 300,000 on 30 July 2010, and USD 400,000 on 30 October 2010.

152. While it is not disputed that the Player never received any part of this amount directly from the Club, the Panel agrees with the FIFA DRC that the amount paid by Zeromax to the Player must be taken into consideration with regard to the calculation of the alleged outstanding amount, not least since such payments were not disputed by the Player.

153. In this regard, the Panel finds no reason for disregarding the findings of the FIFA DRC that the Player did in fact receive the amount of USD 200,000, i.e. USD 100,000 on 30 January 2010 and USD 100,000 on 2 August 2010 from Zeromax related to the Private Employment Contract.

154. Thus, at the time of the termination of the employment relationship with the Club, the amount due under the Private Employment Contract amounted to USD 700,000, which was not paid to the Player.

155. The Panel further notes that, as also explained by the witness during the hearing, apparently the Player was not the only player that had not been paid and that several meetings were held with the Club and Zeromax where the outstanding remunerations were discussed in order to find a solution. During these meetings, the Club apparently told the players'

representative several times that the outstanding amounts would be paid to them, however, this never happened.

156. According to the Player, on 7 August 2010, he forwarded a default letter to the Club and to Zeromax, thereby duly putting the Club in default regarding the outstanding amount, and on 9 August 2010, and without having received any payment from the Club (or Zeromax), he terminated the employment relationship.

157. In this regard, the Panel notes that even if, as submitted by the Club, it never received the default letter, the Panel finds that the Club must have been duly informed about the outstanding amount and the Player's actions in this regard, not least due to the very close relationship between the Club and Zeromax and the meetings held.

158. Moreover, the Panel appreciates the conclusion of the FIFA DRC, finding that in light of the said material delay in payment of such a substantial part of the Player's remuneration, the Player could, in any case, in good faith believe that the Club would have persisted in the non-compliance with the financial terms of the Private Employment Contract, even if the Club had received the default letter in early August 2010.

159. Based on these circumstances, coupled with the long delay in payment of such a substantial amount to the Player in accordance with terms of the Private Employment Contract, the Panel agrees with the FIFA DRC that the Player had just cause to terminate his employment relationship with the Club.

D) What are the financial consequences of the Player´s termination of the Private Employment Contract, if any?

160. The Panel notes that since the Parties' contractual relationship was terminated with just cause by the Player, the Panel has to address (i) the Player's claim for payment of the outstanding remuneration and (ii) the Player's claim for compensation for breach of contract.

161. In this regard, and for the sake of good order, the Panel notes that the Player's claim is not time-barred pursuant to Article 25 (5) of the RSTP and that the Club's submission in this regard must be dismissed, not least since on 2 December 2010, the Player lodged his claim against the Club before the FIFA DRC claiming, *inter alia*, outstanding remuneration and compensation for breach of the Private Employment Contract.

162. With regard to the Player's claim for payment of the outstanding remuneration, and in view of the fact that it is undisputed that the Player fulfilled his obligations under the contract until the termination date and in accordance with the general principle of *pacta sunt servanda*, the Panel finds that the Club should have fulfilled its contractual obligations to the Player until the date of termination of their contractual relationship on 9 August 2010.

163. As set out above, at the time of the Player's termination of the contractual relationship on 9 August 2010, the Club was in default on its payments to the Player of USD 700,000 pursuant to the Private Employment Contract.

164. The Panel agrees with the FIFA DRC that the Club is therefore obliged to pay this amount to the Player as outstanding remuneration.

165. With regard to the Player's claim for compensation for breach of contract, and since the Club is held liable for the early termination of the Parties' contractual relationship due to its breach of contract, the Panel finds that the Player is entitled, subject to Article 17 (1) of the FIFA RSTP, to receive financial compensation for breach of contract in addition to the above-mentioned payments of outstanding remuneration.

166. Article 17 (1) of the FIFA RSTP states as follows:

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

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period."

167. With reference to the foregoing, the Panel finds that it is undisputed that no agreement has been concluded between the Parties, with reference to the Private Employment Contract, on the amount of compensation payable in the event of breach of contract.

168. The Panel further notes that the Parties do not disagree that the Player, for the remainder of the period of the Private Employment Contract, would have been entitled to receive a salary of USD 400,000.

169. Moreover, the Panel notes that the Player did not sign any new employment contract during the remainder of the original contractual term.

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

171. Moreover, the Panel observes that Article 337c (1) and (2) of the SCO provides the following: "*(1) Where the employer dismisses the employee with immediate effect without*

good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration. (2) Such damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work."

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

173. The Panel notes in this regard that it finds that the Club had not substantiated its submission regarding the Player allegedly breaching his obligation to mitigate his damages by not signing a new contract with a new club following the termination of employment relationship, which is why the said submission is dismissed.

174. As such, the Panel agrees with the FIFA DRC in the calculation of the amount of compensation granted to the Player in the Appealed Decision for the Club's breach of contract.

X. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Bunyodkor on 16 May 2018 against the decision rendered by the FIFA Dispute Resolution Chamber on 21 September 2017 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 21 September 2017 is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 6 November 2023

THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger
President of the Panel

Dr Marco Balmelli
Arbitrator

Mr Edward Canty
Arbitrator