CAS 2018/A/5741 FC Bunyodkor v. Rivaldo Vitor Borba Ferreira

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.

Rivaldo Vitor Borba Ferreira, 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 ("UFA"), which in turn is affiliated with the *Fédération Internationale de Football Association* ("FIFA").

2. Mr Rivaldo Vitor Borba Ferreira, (the "Respondent" or the "Player") is a former professional football player of Brazilian nationality.

II. FACTUAL BACKGROUND

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 "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 28 August 2008, the Club and the Player concluded an agreement entitled "*The Contract on performance of professional duties by non-amateur-Football player of FK Bunyodkor*" (the "First Standard Employment Contract"), valid as from the date of signing until 28 August 2009. This contract, which was signed and stamped on behalf of the Club by Mr Ismailov, was duly registered with the UFA.

5. The First Standard Employment 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.
[…]
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.

[…]

***5.4.** In case **Football Player** without valid excuse will refuse performance of the present Contract or the Contract will be terminated under the initiative of **Club** because of **Football Player's** fault, **Football Player** pays to the **Club** monetary indemnification at a rate of three-monthly income. Indemnification is paid by **Football Player** within 10 days from the moment of: […]*

[…]

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 FIFA and the Court of Arbitration for Sport.*

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

6. Also on 28 August 2008, the Club, the Player and Zeromax GmbH ("Zeromax") concluded an agreement entitled "Employment contract of the athlete Rivaldo Vitor Borba Ferreria" (the "First Private Employment Contract"), valid as from the date of signing until 28 August 2009 or at the end of the sports season 2008/2009, whichever occurs later. The First Private Employment Contract was signed and stamped on behalf of the Club by Mr Ismailov.

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

"Employment contract of the athlete Rivaldo Vitor Borba Ferreira

[…]

PREAMBLES:

a) [The Club hereby agrees to be transferred in favor to the athlete (SIG)] for one sportive season, from 28, August, 2008 to August, 28th, 2009.

b) The Club wishes to employ the Athlete to act in its Professional Team, for one sportive season, from 28, August, 2008 to August 28, 2009 in accordance with the terms and conditions of the Contract.

c) Company acting as an [unreadable] of Club hereby agrees to make payments under this contract.

[…]

2. REMUNERATION AND ENTITLEMENTS

2.1 For the Period of 28, August, 2008 until the end of the season 2009, and in consideration of the Athlete observing and performing the covenants and obligations of this Contract, the Company shall pay the Athlete a basic salary of € 6.500.000,00 (six million five hundred thousand Euros), plus € 1.000.000,00 (one million Euros) regarding the transferring compensation of the athlete, to be paid as follows:

a) € 3.500.000,00 (three million five hundred thousand Euros) free taxes to be paid on the signing date of the Contract, in a bank account to be indicated in writing by the Athlete, plus:

b) € 2.000.000,00 (two million Euros) free taxes, to be paid on September 25th, 2008.

c) € 2.000.000,00 (two million Euros) free taxes, to be paid on October 25th, 2008.

3. BONUS AND BENEFITS OF THE EMPLOYEE:

3.1 During the entire duration of this Contract between the Athlete, Company and the Club, the Athlete is entitled to:

3.1.1 BONUS PER MATCH:

In accordance with the regulation of ***PFC BUNYODKOR.***

3.1.2 BENEFITS:

a) 12 (twelve) flight tickets in an executive class per season: Uzbekistan – Brazil – Uzbekistan.

b) 1 (one) equipped and furnished house to be selected by the player;

c) Hotel with breakfast, lunch, dinner and laundry service to the athlete and his family, while they do not find a proper residence (at the expenses of the Club).

d) 2 (two) cars – one at the player's disposal and another to his wife's disposal.

e) 1 (one) chauffer at the athlete's and his family's disposal.

f) The club will take the responsibility of putting the athlete's children in an English speaker regular school.

The athlete has 5 (five) children

g) The Club will put at the athlete's and his family's disposal a Russian teacher.

h) The club will provide to the athlete and his family a health insurance.

4. EXTENDING THE CONTRACT:

4.1 the parties may agree at the time and in writing, to extend the present contract, for a further period of one or two sports season for the fixed period of 1, July, 2009 until the end of the season 2010 and/or 1, July, 2010 until the end of the season 2011. In the case of the mutual agreement for the extension of the present contract for a further one or two periods, the Athlete shall be entitled to a remuneration of € 6.000.000,00 free taxes, to be paid as follows:

a) €3.000.000,00 free taxes, to be paid on the signing date of the Contract

b) €3.000.000,00 free taxes, to be paid 60 (sixty) days after signing date of the Contract.

c) The very same bonuses figures and personal/family benefits established for the first terms of the employment contract.

4.2 In the event the Parties mutually agree to extend the term of the present Contract for further season or to extend it only for one further period of 1, July, 2009 until the end of the season 2010, the Parties shall agree in writing by no later than 30 April 2009.

5. JURISDICTION AND CHOICE OF LAW

5.1 Any dispute arising from or related to the present contract will be submitted exclusively to an arbitration procedure before the Court of Arbitration for Sport (CAS-TAS) in Lausanne, Switzerland, and resolved definitively in accordance with the Code of sports-related arbitration.

5.2 The Panel will consist of three arbitrators and the language of the arbitration will be English. The final award shall be unappealable and fully enforceable by and between the Parties before the FIFA Competent Committee, which decision shall be considered as final and binding.

5.3 this contract, its interpretation and any disputes arising thereof shall be governed by and construed in accordance with the laws of Uzbekistan and to the FIFA Regulations and in case of conflict of laws, the FIFA Regulations shall prevail.

[…]"

8. 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.

9. According to the Appellant, Mr Tavakalzhon Kadyrovich Ismailov was the Acting General Director of the Club until 20 September 2008, at which date all his powers with the Club as Acting General Director were terminated. Instead, Mr Ismailov was appointed the Club's Executive Director. It is further submitted that as of the same date, Mr Alexander Ivanovich Shapran was appointed Acting General Director of the Club. Finally, and according to the Club, Mr Ismailov's employment relationship with the Club terminated on 1 April 2009.

10. On 17 November 2008, the Player, the Club and Zeromax concluded an agreement entitled "TERM OF EMPLOYMENT CONTRACT EXTENSION" (the "Second Private Employment Contract"), valid as from the date of signing until 31 December 2011. The Second Private Employment Contract was signed and stamped on behalf of the Club by Mr Ismailov. The Club disputes that the Club was bound by the signature of Mr Ismailov.

11. The Second Private Employment Contract stated as follows:

*"**TERM OF EMPLOYMENT CONTRACT EXTENSION***

*1) **PFC BUNYODKOR** located at UZBEKISTAN, 100115, TOSHKENT, CHOPON Str. 81, hereby represented by its Director General, MR. TAVAKAL K. ISMAILOV (hereinafter: "**Employer**") and:*

*2) **Mr. Rivaldo Vitor Borba Ferreira ("Rivaldo")**, Brazilian citizen, resident at the city of **Tashkent, Uzbekistan,** holder of the Brazilian Passport nº CO 850648 (hereinafter: "**Employee**");*

*3) ZEROMAX GmbH company located at Switzerland, Switzerland, Baar, Lindenststrasse 4, CH-6340, hereby represented by its director, Mr. Miradil S. Djalalov (hereinafter referred to as "**Company**"). (from now related here as "**contracted**") , decides to prorogue, inside of the states period established in **clause 4.1 and 4.2** of **the Employment contract** firmed between them in **28 of august of 2008, the stated period of validity of related contract**, in the following terms:*

1.** From this date, 17 of November of 2008, are extending the employment contract firmed between Employer and Contracted in 28 of august of 2008, starting to have validity in the period of 28 of August of 2008 up to 31 of December of 2011, being since already, exerted the right of extension for the parts, as **clauses 4.1 and 4.2 of the originary Employment contract.

***2.** For the contractual however extending period the [parts] establish the values and dates of payment below mentioned, remaining for the season of 2009 the waked up values and dates already in **clause 2 and 2.1** of the originary Employment contract:*

*a) For the season of **2010** the Employer will pay Contracted to the importance net (liquid) of six Million Euros (6.000.000,00), divided in two (2) equal parcels of tree Million Euros (3.000.000,00), being the first one in day 25 of august of 2009 and the second one in 25 of September of 2009.*

*b) For the season of **2011** the Employer will pay Contracted to the importance net (liquid) of six Million Euros (6.000.000,00), divided in two (2) equal parcels of tree Million Euros (3.000.000,00), being the first one, in day 25 of august of 2010 and the second one in 25 of September of 2010.*

*c) They are revoked the wages and adjusted dates of payment in **clause 4.1** of the Employment and Contracted in 28 of August of 2008, starting to invigorate the values and dates adjusted in the letters **"a" and "b" of the clause 2 of this Instrument of Extension.***

***3.** To be continue being valid for the contractual however extending period, all the rest clauses of the Employment contract firmed between Employer and Contracted in 28 of August of 2008 and that they had not damaged no modification with the present Instrument from Extension.*

***4.** For being the parts of full agreement with the clauses of the present Instrument of Extension of the Employment contract firmed between Employer and Contracted in 28 of August of 2008, they give for contracted right and they sign the present Instrument in two (2) ways of equal text, declaring that they had read and they understood the obligations however assumed.*"

12. On 1 April 2009, the Club, the Player and Zeromax concluded a Service Contract (the "Service Contract") (drafted in Portuguese/English), valid as from 1 April 2009 until 30 December 2011, under which the Player would act as a consultant to the Club. The Service Contract was signed and stamped on behalf of the Club by Mr Ismailov, who was referred to as the President of the Club.

13. The Service Contract stated, *inter alia*, as follows:

"*1 – THE OBJECT OF CONTRACT*

1.1 ***The CLUB,*** *taking into consideration the career of soccer exercised by the* ***contract****, work experience lived in the large Brazilian and foreign clubs for which he served, and the reputation that its name represents the world football scene, resolves hire him on condition* ***CONSULTANT*** *to advise the* ***club*** *on the assembly's football team, the Technical Commission, modernizing the management of soccer, identification of talents, acting, even when prompted, the recruitment of players, comment on financial terms for the loan and pay the athlete in search quality technical and professional athletes to be engaged in training and creation of conditions for training and preparation for the athletes to think in terms of training to be established, and represent the* ***Club*** *in all countries and clubs to football that is requested to be present in that capacity.*

[...]

1.3. The task now agreed with the ***contractor*** *may be held concurrently the function of the professional athlete who had been hired by the* ***club,*** *without this implying in conflict with the role of football player, not providing therefore no reason for breach of contract signed between* ***club*** *and Contracts.*

[...]

4 – THE VALUE OF PAY

4.1 For services rendered, the ***CLUB TO CONTRACT pay 26% the importance equal amount from his salary established in the contract of employment*** *signed on August 28, 2008 and the* ***term of Option*** *signed on* ***17/11/2008,*** *this amounts to be paid on the same dates of those contracts.*

[…]

5 – THE RIGHT OF IMAGE

5.1 ***The Club*** may use the image of the ***contract*** for the disclosure of his, with, and therefore warn you in advance of at least fifteen (**15**) days where the event to be held depends on the physical presence of the ***contract***.

[…]"

14. On 20 January 2010, the Club and the Player signed a *Contract on performance of professional duties by non-amateur-Football player of FK Bunyodkor*" (the "Second Standard Employment Contract"), valid as from 6 January 2010 until 31 December 2010, whose content was the same as that of the First Standard Employment Contract, with the exception that the Court of Arbitration for Sport (the "CAS") was not listed in article 7.1 of the Second Standard Employment Contract.

15. On 1 August 2010, the Player played his last game for the Club.

16. By letter of 9 August 2010 (the "Termination Letter"), the Player informed the Club and Zeromax as follows, thus terminating his "work contract":

"In order that you haven't paid the salaries mentioned in my correspondence to the club and the company on July 26 this year, I hereby announce that as of this date I consider my work contract terminated for nonpayment, as lay down the FIFA regulations by irresoluto of EUR 3.000.000 that should have been paid on August 25th, 2010 and 3.000.000 euros, which also should have been paid on the date setember 25th, 2010. We establish a new deadline of 72 hours from the date of this communication to pay the amounts outstanding, if not being paid I announce that we launche legal actions in FIFA. In the case of not being paid we announce the launch of legal actions in FIFA claiming breach of contract and payment of the total contract winning amounts on December 31, 2011. I Clarify and inform you also that it is imperative not allowed to disclose my name voice or image on the site or elsewhere, the club and the company, failing to take appropriate action.
On August 7 was sent by mail in care of Ms. Barno, Office of the President of the club, over a communication informing the situation and establishing another new term to contact us. Today's date no response was received from the club."

17. Furthermore, on the same date, the Player wrote as follows to Zeromax:

"Dear Mrs.Barno
You are not leaving us that much opening for negotiating, as it could be narrowing soon if you insist on stating that mail is not operational in your country, furthermore that you do not receive the electronic correspondence.
I am confident in the capacity of the government to provide Uzbekistan with the most sophisticated network, so that people can interact easily.
Now that a prominent player such as Rivaldo is concerned, I leave to you the full responsibility to explain throughout the world the failure of your communication systems.
In order to give you a full and clear overview, I would like to remind you what turned out until now:
- *On five occasions already, Mr. Rivado has held conversations with Mr. Miradil Djalalov about the delays for settling his salary and the wages of other subcontracted players, who I have the assignment to represent in the related cases.*
- *Mr. Rivaldo Vitor Borba Ferreira has attended uncountable meetings between September of 2009 and July 2010 with the President of the club.*
- *Many promises have been made to Mr. Rivaldo Borba Ferreira, but none of them have been held.*
- *On July 26th of 2010, Mr. Rivaldo Vitor Borba Ferreira has duly noted the refusal of the President of the club to acknowledge receipt of the written reminders handed to him and that he had previously read.*
- *As his demand had been turned down, Mr. Rivaldo Vitor Borba Ferreira sent the same letters by registered mail and copy of the postal receipt is attached.*
- *On 31st July of 2010, Mr. Rivaldo Vitor Borba Ferreira gave you by e-mail all details of the expenses laid out for the club, but you did not have the decency to reply.*
- *On Tuesday 3rd August of 2010, Mr. Rivaldo Vitor Borba Ferreira informed on the training ground the full staff and all players that, if he should not get any feedback from the club within Friday 6th of August, he would leave the club and the same would apply for the members who have mandated me.*
- *On Monday 9th of August 2010, I have notified Mrs. Kegel of Zeromax GmbH in Baar of our decisions.*

Please note that reference is made here to delays, ranging from 9 (nine) to 12 (twelve) months, depending from the person concerned. Some of them could not even purchase food !

In order to prevent you to make up any excuse, we are providing herewith following documents :

- copies of the last written monitions before terminating the contracts, sent on 26th of July 2010;

- copies of the letters confirming terminations of said contracts dt. 9th of August 2010.

Of course if need be, I shall readily send you again all powers of attorney."

18. Attached to the letter to Zeromax was a letter dated 26 July 2010 (the "Default Letter"), allegedly forwarded from the Player to the Club and Zeromax, which read as follows:

*"**I, RIVALDO VITOR BORBA FERREIRA**, as a professional soccer player and consultant of **PFC Bunyodkor and Zeromax GMBH Company,** according the employment contract and Extension of Employment Agreement signed on August 28, 2008 and November 17, 2008, respectively, agreed in the Clause 2, "a" Term of the Contract Extension, who on August 25, 2009 should pay me the net amount Three Million Euro (3,000,000.00), and on 25 September 2009 should pay me the net amount Three Million Euro (3,000,000.00).*
As the total of the two portions of my contract player in EURO is EUR 6,000,000.00 (six million euros)
However, after more than 11 months from the date of payment agreed upon, I never drove up to you Mr. to complain or press for receiving my payment, on the contrary, until today I put my particular money to pay the physiotherapist and translator salary of the club, rent of the players house's and tickets for players, physiotherapist, translator, coach and his auxiliaries with their families.
All that my procedure occurred because of the confidence that always I deposited and i continue to have on you Mr.
However, the things came to a point that the impression that I have, because of the attitudes and actions that being taken with me, is being done deliberately and in order to force me to ask to terminate my contract, because even the particular money that i put into the club to supply the urgent needs of the athletes because I felt this obligation as a consultant, and, according to the last conversation that we had, you Mr. told me that you determined the payment, and until the present date you didn't pay me.
In any club that I played I passed for the situations that I'm living here and I'm sure, are not being created for you Sir.
Staying for a year without receiving any money, not exist anywhere in the world, and this only happened for the enormous trust that I placed on you sir, but this situation has reached a point that is no longer possible to wait more for to solve.
Incidentally, the other athletes who I brought to strengthen the team, Edson Ramos, João Victor, Denilson, Gustago physiotherapist and Marcelo translator, are in the same situation and questioning me all the time, including Gustavo the physical therapist even have a house to live does not have and is currently and residing in my house since he had been kicked out of who his lived and the club didn't taken any action to resolve his situation.
Faced with all the situation that I'm living and I'd never imagined having to pass here or any other club, I've been through this let expressly set that i wish to receive the full amount agreed upon in the clause 2, letter "a" of the Extension of Term Employment Contract, and any other expenses that I had with the club, at the latest, within 10 days, under penalty on one side of termination of the employment contract."

The Club submits that it never received the Default Letter, which was only forwarded to Zeromax.

19. Later on 9 August 2010, Barno Djalilova, on behalf of Zeromax, wrote as follows to the Player's representative:

"Dear Mr. Pereira !
Unfortunatelly you sent your message with information about dead-line for receiving any answer from our side only to our swiss office' e-mail on Saturday, 7.08.2010, evening. On my e-mail it was sent only copies of authorisations from four players, Gustavo Bella and Mogi Mirim club. Due to the days off in our swiss office and time difference between Tashkent and Baar, I just received your message, which was resent to me by my swiss collegue. Hereby we would like to inform you that Rivaldo Vitor Borba Ferreira, Denilson Nascimento Martins, Edson Ramos, Gustavo Perlato Bella and Joao Vitor Albuquerque Bruno still have opened contracts with FC Bunyodkor, and officially they are players of Club. They unexpectedly left club without any official reports to management of Club or to Head coach. Taking into account above mentioned we need time to coordinate present situation with our swiss lawyers, we'll resend them all information as well as your letter and they'll be back to you at soonest.

With best regards,
Barno Djalilova"

20. On 11 August 2010, the Player's then legal representative initiated a debt collection request against Zeromax before the Debt Collection Office of Baar, Switzerland. The request was based on the Second Private Employment Contract and on the Service Contract.

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

22. On 19 August 2010, the Player lodged a claim against the Club before the FIFA Dispute Resolution Chamber (the "FIFA DRC"), claiming outstanding remuneration and compensation for breach of the Second Private Employment Contract and the Service Contract.

23. On 17 April 2011, the Player, still represented by his then legal representative, submitted claims to the Bankruptcy Office of Zug, Switzerland, regarding Zeromax, claiming collection in the first class as a claim based on the employment relationship between him and Zeromax.

24. On 6 November 2014, the FIFA DRC decided that the Club was liable for breach of contract and that, therefore, the Club should pay to the Player outstanding remuneration and compensation for breach of contract.

25. Moreover, the FIFA DRC considered that the claim of the Player based on the Service Contract was inadmissible.

26. On 18 February 2015, the Club filed an appeal with the CAS requesting, *inter alia*, that the FIFA DRC decision be annulled and that the case be referred back to the FIFA DRC for review.

27. On 4 July 2016, and after the Parties agreed to limit the scope of the CAS proceedings – not to enter into the merits of the case – the CAS rendered an award (the "First CAS Award") setting aside the decision of the FIFA DRC, finding, *inter alia*, as follows:

"i. The FIFA DRC was competent to adjudicate and decide the matter at hand.

ii. The Club's right to be heard was violated during the proceedings before the FIFA DRC.

ii. The legal proceedings related to the claim filed by the Player against the Club are referred back to the FIFA DRC for review, observing the due process of law.

28. The First CAS Award was appealed by the Club to the Swiss Federal Tribunal ("SFT"), which later decided to reject the appeal and confirm the decision.

29. Following the First CAS Award, the proceedings before the FIFA DRC were reopened.

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

The submissions of the Parties

30. On 20 June 2017, the Player submitted his amended replica to the claim submitted on 19 August 2010, requesting the following:

"Outstanding remuneration:
EUR 6,000,000 on the basis of the contractual extension, plus 5% interest p.a. on EUR 3,000,000 as from 25 August 2009 and 5% interest p.a. on EUR 3,000,000 as of 25 September 2009;

Compensation for breach of contract:
EUR 5,683,674.30 taking into account the residual value of the contractual extension and his income with a new club, plus 5% interest p.a. as from 9 August 2010; and that sporting sanctions be imposed on the Club."

31. In support of his claim, the Player submitted, *inter alia*, that the Club had failed to pay the instalments that fell due on 25 August 2009 and 25 September 2009 in the amount of EUR 3,000,000 each in accordance with the Second Private Employment Contract.

32. Furthermore, the Player stated that the Club was put in default in writing on 26 July 2010, after several unsuccessful meetings, giving the Club a deadline of at least 10 days to comply with the request. However, without any payments made by the Club of the outstanding instalments, on 9 August 2010, the Player terminated the employment relationship with just cause, considering that his remuneration for the entire 2010 season had been outstanding for almost a year.

33. The Player further noted that, before his termination of the employment relationship, he had also contacted Zeromax in order to receive the outstanding amounts since Zeromax had also signed the relevant contracts and was the owner of the Club.

34. Finally, the Player submitted that, after the termination of his employment relationship with the Club, he had eventually signed a new contract with the Brazilian club, São Paulo (the "New Club"), valid as from 27 January 2011 until 31 December 2011, for a monthly salary of Brazilian Real ("BRL") 70,000.

35. In its reply to FIFA, and although, following the First CAS Award, the Club was invited to submit its position as to the subject-matter only, the Club held that the FIFA DRC had no competence to hear and decide the dispute since, *inter alia*, the First CAS Award and the subsequent decision of the SFT were not applicable as to the FIFA DRC´s jurisdiction in the present matter, given that both were based on incomplete facts.

36. The Club further submitted, *inter alia*, that the Club was not a party to the extended contractual relationship between the Player and Zeromax, that it had no payment obligation to the Player and that the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") were not applicable to the case. Instead, the real dispute is between the Player and Zeromax, to which the said regulations do not apply.

37. In any case, still according to the Club, the Player's claim is 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.

38. 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.

39. In any case, and due to national restrictions, the Club is not allowed to make foreign-exchange transactions to the benefit of football players, and the Club only made payments to the Player in its local currency and in accordance with the First Standard Employment Contract and the Second Standard Employment Contract. Any other payments to be made to the Player should be arranged and paid by Zeromax. By initiating debt collection proceedings against the said company, the Player clearly acknowledged that fact and only filed his claim against the Club when realizing that Zeromax might not be in a position to fulfil its obligations.

40. In any case, the Club was never aware of any of the arrangements between the Player and Zeromax and was never informed about the extension of the contractual relationship, and such contracts were never duly signed on behalf of the Club.

41. With regard to the Player's termination of the employment relationship, the Club submitted that it never received any default notice from the Player and, in any case, that the amount claimed must be reduced.

42. In his replica, the Player held that the arguments regarding the competence of FIFA should not be considered due to the First CAS Award and recalled the argument of the CAS in the said award that "*the Panel would like to emphasise again that the dispute between the parties deals only with the payments under the [contractual extension] and, indeed under this contract only the [Club] (the "Employer") was responsible for the payments to the [Player].*"

43. Moreover, the Player maintained, *inter alia*, that it was the Club, as employer, which failed to pay the Player the outstanding amount and that the Club never presented any proof in support of ever having paid such an amount to the Player. Any involvement of Zeromax was

only secondary, and the Club was always the primary debtor, even if Zeromax had been making payments on behalf of the Club in the past. As such, the Player had just cause to terminate the employment relationship and file the claim against the Club.

44. Finally, the Player held that the FIFA RSTP and Swiss law should be applicable.

45. In its final comment, the Club requested that Zeromax should join the proceedings and further submitted, *inter alia*, that the Player had failed to prove that he had never received the alleged outstanding amount.

46. Finally, the Club submitted that, in any case, any payments made by Zeromax should reduce the Player's claim against the Club.

The decision of the FIFA DRC

47. Initially, the FIFA DRC took note that the Club had challenged the competence of the FIFA DRC to adjudicate the dispute. However, based, *inter alia*, on the First CAS Award and the subsequent confirmation by the SFT and the circumstances of the case, it was not necessary to proceed with any further analysis and discussion on the issue of jurisdiction since the competence of the FIFA DRC to deal with the present dispute had already been determined in the First CAS Award.

48. Having established its competence to deal with the matter, 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 19 August 2010, and as the event giving rise to the dispute occurred on 9 August 2010, the FIFA DRC rejected such allegation. The chamber further concluded that since the claim was filed on 19 August 2010, the 2009 edition of the FIFA RSTP was applicable to the matter at hand.

49. The FIFA DRC then recalled the facts of the case and found that in line with its initial findings in the initial procedure, the Service Contract was not strictly employment-related within the framework of a player-and-a-club relationship and, therefore, did not fall under the FIFA DRC's competence, based on which any amount claimed on such grounds cannot be considered.

50. The FIFA DRC then went on to analyse whether the Player had just cause to terminate his employment relationship with the Club, taking into account the submissions of the Parties.

51. In this regard the FIFA DRC initially rejected the Club's request to have Zeromax joining the proceedings "*considering that a company is not a member of FIFA and thus, cannot be a party in the present matter.*"

52. The FIFA DRC found that the argument by the Club that it was not bound by, *inter alia,* the Second Private Employment Contract could not be upheld for the mere reason that the Player, in good faith, could reasonably believe that the contracts were signed by a person legally authorised to sign them on behalf of the Club, not least since the Club had not proven that the Player was duly informed about the opposite based on the specific circumstances of the case.

Moreover, it was stressed that the signatures on the relevant contracts were accompanied by the Club's stamp.

53. The FIFA DRC further concluded that the arguments raised by the Club regarding the currency restrictions and its alleged unawareness of the First and Second Private Employment Contracts could not be upheld since both contracts were signed and stamped by the Club.

54. The FIFA DRC then went on to analyse the content of the Second Private Employment Contract, which extended the employment relationship as to determine the party responsible for paying the Player his remuneration. In this regard, the FIFA DRC found that it clearly defines the Club as the "Employer" and clearly establishes that the "Employer" is responsible for paying the Player's remuneration.

55. In this regard, the Chamber also recalled the wording of the First Standard Employment Contract, according to which the Club undertook, *inter alia*, to employ the Player as a professional player of its team. Furthermore, and having taking note of the different employment-related contracts concluded by and between the Player and the Club, as well as by and between the Player, the Club and Zeromax, the FIFA DRC established that the Player and the Club entered into an employment relationship and that the Player would render his services to the Club only. In other words, there was no reciprocal exchange of obligations between the Player and Zeromax, and it is therefore unquestionable that the Player carried out his services as a player on behalf of the Club and not on behalf of Zeromax. Moreover, there is a clear link between the Club and Zeromax, and it appears that the latter was merely included as a third party in the relevant contracts as a payment instrument.

56. Based on that, the FIFA DRC established that the Club was the party responsible for paying the Player his remuneration established in, *inter alia*, the Second Private Employment Contract.

57. By signing the Second Private Employment Contract, the Parties extended their employment-relationship until 31 December 2011, and the Player was thus entitled to receive the amount of EUR 6,000,000 for each of the 2010 and 2011 seasons, to be paid in two equal instalments of EUR 3,000,000, due on 25 August and 25 September 2009 for the season of 2010 and on 25 August and 25 September 2010 for the season of 2011.

58. While the Player terminated the employment relationship on 9 August 2010 alleging that the aggregate amount of EUR 6,000,000 for the 2010 season was still outstanding, the Club held that any payments made by Zeromax to the Player should also be taken into consideration and that such payments amounted to EUR 11,010,053 between 29 August 2008 and 10 December 2009, which amount was not disputed by the Player.

59. Pursuant to the First Private Employment Contract, valid until 28 August 2009, the Player was entitled to receive a total remuneration of EUR 7,500,000, and as the Player had received the amount of EUR 11,010,053 until 10 December 2009, the FIFA DRC considered that the difference of EUR 3,510,053 corresponds to the remuneration that fell due in accordance with the Second Private Employment Contract, of which the first instalment in the amount of EUR 3,000,000 fell due on 25 August 2009.

60. As such, the FIFA DRC found that the Club, without any valid reason, failed to remit to the Player a big portion of the instalment due on 25 September 2009, i.e. the amount of EUR 2,489,947, which amount was still outstanding on 9 August 2010 when the Player terminated the contract, thus seriously neglecting its financial obligations towards the Player.

61. 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 contract.

62. 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. EUR 2,489,947.

63. 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.

64. Since the Second 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 EUR 6,000,000 (i.e. the residual value until the end of December 2011) should serve as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.

65. The FIFA DRC noted that the Player had in fact signed a new employment contract, according to which the Player was entitled to a total amount of BRL 770,000, approximately equal to EUR 336,000, for the overlapping period of time, thus concluding that the Player had in fact mitigated his damages in the total amount of EUR 336,000, which should be taken into consideration in the calculation of the amount of compensation for breach of contract.

66. In view of the above, it was decided that the Club must pay the amount of EUR 5,664,000 to the Player as compensation for breach of contract. Based on the fact that the Player's request for interest was only included in his amended statement of claim of 20 June 2017, and due to the considerable amount of time in light of the various proceedings, it was further decided that it would not be appropriate to grant the Player interest on the amounts awarded.

67. On 21 September 2017, the FIFA DRC rendered the Appealed Decision and decided, *inter alia*, that:

> *1. The claim of [the Player] is partially accepted, insofar as it is admissible.*

*2. [The Club] has to pay to [the Player] outstanding remuneration in the amount of EUR 2,489,947, **within 30 days** as from the date of notification of this decision.*

*3. [The Club] has to pay to [the Player] compensation for breach of contract in the amount of EUR 5,664,000, **within 30 days** as from the date of notification of this decision.*

4. In the event that the amounts due to [the Player] in accordance with the abovementioned numbers 2. and 3. 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.

5. Any further claim lodged by [the Player] is rejected.

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.

68. On 25 April 2018, the Appealed Decision was communicated to the Parties.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

69. 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 (2017 edition) (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.

70. 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, the decision being a monetary award.

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

72. 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 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. […]"

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

74. 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

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

76. 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.

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

78. 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 discussions are not successful within a reasonable time, we would inform you and ask you to resume the proceedings.*"

79. 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.*"

80. 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.

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

82. 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:

"(a) Appellant's requests

The Panel has noted that the Appellant requests the production by the Respondent of (i) "all relevant bank account statements for the period August 2008 to August 2010 evidencing from which entity he received payments under the 2008 Agreement and the Agreement on Extension of the 2008 Agreement"; (ii) "any correspondence between himself and/or his wife Ms Eliza Kaminski Ferreira and/or Mr Logbl Henouda, FIFA Agent No 51479, with Mr Miradil Djalalov and/or Ms Bamo Djalilova, the representatives of Zeromax, for the period from July 2008 to August 2010 relating to the 2008 Agreement and the Agreement on Extension of the 2008 Agreement"; (iii) "any correspondence between himself and/or his wife Ms Eliza Kaminski Ferreira and/or Mr Logbi Henouda, FIFA Agent No 51479, with any representatives of the Club, for the period from July 2008 to August 2010 relating to the 2008 Agreement and the Agreement on Extension of the 2008 Agreement"; and (iv) "any correspondence between himself and/or his wife Ms Eliza Kaminski Ferreira and/or Mr Logbi Henouda, FIFA Agent No 51479, with Mr Miradil Djalalov and/or IVIs Barno Djalilova, or any other representatives of Zeromaz, relating to Mogi Mirim."

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 request (i).

Regarding requests (ii), (iii), and (iv), even if one could argue that some of this correspondence between the Parties may exist, the Panel also considers such requests as a kind of fishing expedition, which is not allowed under the IBA Guidelines on the taking of Evidence in International Arbitration. Furthermore, the Panel does not find that the Appellant succeeded in describing these requests in such a manner that the requested correspondence would be relevant to this case.

In light of the above, Appellant's requests (ii), (iii) and (iv) are dismissed.

(b) Respondent´s request

The Panel has noted that the Respondent request the disclosure by the Appellant of (a) "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") as well as with Mr. Luis Felipe Scolari ("Felipão"); and (b) the written announcement of a new General Director in September 2008 as well as a copy of any evidence whatsoever, which could confirm that the Respondent did actually receive it.

With respect to request (a), 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 (a) is denied.

With respect to the request (b), the Panel rules that such announcement might be relevant in order to assess whether the Respondent was in fact informed of the alleged announcement.

In light of the above, the the Respondent's request for disclosure of documents (b) is granted and the Appellant is instructed to provide the CAS Court Office, by ***28 February 2022****, with a copy of the written announcement, if any."*

83. By letter of 20 September 2022, the Parties were invited to inform the CAS Court Office about their availability for various proposed hearing dates at the end of January 2023/beginning of February 2023, but 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.

84. 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 2 February 2023, which date was already confirmed by the Respondent.

85. By letter of 10 October 2022, the Parties were informed that the hearing was to be held in Lausanne on 2 February 2023, and on 17 October 2022 the Order of Procedure was forwarded to the Parties to be signed and returned.

86. On 24 October 2022, the Respondent signed and returned the Order of Procedure.

87. 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.

88. 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.*"

89. 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 both the Respondent and his counsel had already travelled to Europe in order to attend the hearing.

90. 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.*"

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

92. 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*."

93. 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 2 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."

94. On 2 February 2023, a hearing was held at the CAS Court Office in Lausanne, Switzerland.

95. 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.

96. 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 witness to attend the hearing, and 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.

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

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

98. At the outset of the hearing, the Respondent confirmed that he had no objections to the constitution of the Panel. Furthermore, he informed the Panel that he would like to dismiss Mr Edson Ramos as a witness, which the Panel accepted.

99. The Panel heard the evidence of the Respondent and of Mrs Eliza Kaminski Ferreira, a witness called by the Respondent, who were 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.

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

101. After the Parties' 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.

102. 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

103. 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, their verbal submissions at the hearing and the contents of the Appealed Decision were all taken into consideration.

The Appellant

104. 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.

[…]

As to the Costs:

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."

105. 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 two contracts; the First Standard Employment Contract valid until 28 August 2009 and the Second Standard Employment Contract valid until 31 December 2010. Both these contracts were registered with the Professional Football League of Uzbekistan. These contracts were negotiated by Mr Boboyev on behalf of the Club.

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

- Furthermore, the Player concluded the related First and Second Private Employment Contracts with Zeromax. The contracts, which were only signed in two copies, were 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.

- 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 Player had a close relationship with Mr Djalalov, but the latter was not representing the Club and was not able to bind it legally.

- Due to currency restrictions, the Player would be paid in Euros pursuant to the two Private Employment Contracts by Zeromax, which was domiciled outside the country. The Club was not in a position to pay the Player the amounts agreed between the Player and Zeromax and never made any payments to the Player in foreign currency. The Club only made payments to the Player in Som (the national currency of Uzbekistan) pursuant to the two Standard Employment Contracts.

- Zeromax paid a total amount of EUR 11,010,053 to the Player pursuant to the two Private Employment Contracts, in addition to expenses occurred.

- The Player negotiated regarding the outstanding payments and his termination of contract exclusively with Zeromax and never contacted the Club nor Mr Ismailov in such regard. Furthermore, the Club never received the alleged default letter of 26 July 2010. The burden of proof to show otherwise rests on the Player.

- 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.

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

- However, the Player has failed to prove that the said contract constituted a valid agreement between the Player and the Club which imposed obligations on the Club in any regard, including that (i) the Club knew about the contract, (ii) the Club intended to be a part of such a contract and thus became the debtor, (iii) the Club was legally represented when allegedly concluding such an agreement and that (iv) any claim arising from the said contract was not time-barred.

- The FIFA DRC erred in its interpretation of the Second Private Employment Contract when finding that the Club was to be understood as the "*Employer*", and thus as the debtor of the Player. It only based its interpretation on one single word and neglected all other interpretation elements.

- In fact, the word "*Employer*" should be understood as "the Club and Zeromax together", meaning that it was Zeromax that had to continue paying the Player his salaries.

- The Second Private Employment Contract was drafted by the Player's then legal representative and translated by the Player's wife, which is why all ambiguities of the contract are attributable to the Player.

- Moreover, the Club had no knowledge of the said contract and was never involved in any negotiation in its regard, and thus had no intention to enter into and be bound by it.

- The Club was not a party to the Second Private Employment Contract and there was never any consensus between the Parties regarding the content of the said contract. It was never the intention of the Parties that the Club should be the debtor with regard to payments pursuant to the said contract.

- On the contrary, there was always consensus between the Player and Zeromax that the latter should be the only one obligated to make the payments to the Player, as was the situation pursuant to the First Private Employment Contract. This is supported by the fact that all payments under both these contracts were always made exclusively by Zeromax.

- With regard to Mr Ismailov, who allegedly signed the Second 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 contract does not alter that.

- First of all, when signing the said 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 said contract, and an Executive Manager has 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 said 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 were aware of. The contract was never translated into Uzbek or Russian.

- Furthermore, Mr Ismailov was never informed about the differences between the First and the Second Private Employment Contract, *inter alia*, of the fact that the Club was now, allegedly, the debtor to the Player. If he had been informed, he would never have signed the Second Private Employment Contract. Thus, it was never the intention of Mr Ismailov to bind the Club in any way.

- Furthermore, it must be stressed that it was always financially and legally impossible for the Club to perform its alleged obligations pursuant to the Second 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 EUR, the Club would have violated the national legislation.

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

- Furthermore, it must be mentioned that the Player had no legitimate expectations regarding the Club being the debtor pursuant to the Second Private Employment Contract.

- As such, the Club had no payment obligations towards the Player pursuant to the Second Private Employment Contract, and the Club did fulfil all its obligations pursuant to the two Standard Employment Contracts, which is not disputed.

- In any case, any claim against the Club under the said 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 is 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.

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

- The First CAS Award and the subsequent decision from the SFT are not applicable to the present case regarding FIFA jurisdiction since both decisions are based on incomplete facts and evidence.

- As their scope of review as appellate bodies only was narrow, the findings of these two bodies must be reconsidered in view of the entire facts of the dispute.

- 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 Second 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 Second Private Employment Contract makes no reference whatsoever to FIFA, and the FIFA DRC is not recognised as a true court of arbitration.

- Both the First and the Second Private Employment Agreements provide clear and valid arbitration clauses in favour of ordinary arbitration proceedings before the CAS, and the FIFA DRC was consequently not competent to adjudicate the dispute.

- 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.

- With regard to the financial claim of the Player for unpaid remuneration pursuant to the Second Private Employment Contract, it is undisputed that Zeromax paid at least EUR 3,510,053 of the said amount.

- Furthermore, the Player's claim must be further reduced in any case since the Player breached his obligation to mitigate damages by not signing a new contract with another club for several months after the termination of the employment relationship with the Club.

- 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 Second Private Employment Contract.

The Respondent

106. 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 50,000."

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

- Initially, it must be noted that the Player was under contract with AEK F.C. when negotiations regarding a possible transfer to the Club were initiated, and the Player eventually paid EUR 800,000 as due compensation to AEK F.C. in order to terminate this contract by agreement in order to be able to join the Club.

- During his stay with the Club, the Player started providing several other services to the Club apart from being a football player, i.e. recruiting players and staff and managing the re-structuring of the physical and medical set-ups.

- The Player received the total amount of EUR 7,500,000 during his stay with the Club, and the Club thus in essence complied in full with the payment of the remuneration set out in the First Private Employment Contract.

- However, the Club failed to pay to the Player the remuneration set out in the Second Private Employment Contract, i.e. EUR 6,000,000 for the 2010 season and EUR 6,000,000 for the 2011 season.

- The Player tried over a period of time to settle the matter with the Club, but finally, on 26 July 2010, the Player forwarded the Default Letter to the Club, requesting, in particular, the payment of the two outstanding instalments of EUR 3,000,000 due on 25 August 2009 and 25 September 2009, respectively.

- By letter of 9 August 2010, and without having received any further payment, the Player terminated the employment relationship with the Club.

- With regard to the jurisdiction of the FIFA DRC to adjudicate the Player's claim against the Club, the jurisdiction has already been confirmed by the CAS in the First CAS Award and subsequently confirmed by the SFT.

- As such, the jurisdiction issue is covered by *res judicata* and thus prevented from being assessed anew. In this regard, the so-called "*triple identity*" test is met since the objection raised by the Club regarding the alleged lack of jurisdiction (i) is the same subject-matter, (ii) is based on the same legal grounds (iii) and is between the same parties.

- The Club has failed to prove that the alleged new facts, as submitted by the Club, should have as a consequence that the Panel shall be entitled to decide on the question of FIFA jurisdiction again. Furthermore, the alleged new facts were in fact not new at all and could have been submitted by the Club during the previous proceedings before the CAS.
- As such, the First CAS Award is valid and binding, and, 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 Second Private Employment Contract and, alternatively, of the First Private Employment Contract.
- Rights and obligations between football clubs and football players are 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.
- When the Player left his former Greek club in order to go to Uzbekistan, he was still a professional football player who intended to carry on with his career and provide his services as a football player to the Club, and not to Zeromax, which is not a professional football club and not a part of the football family.
- 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).
- Both the First and the Second Private Employment Contracts comply with the formal requirements and are valid and binding contracts.
- In the Second Private Employment Contract, the Club is named as the "Employer" and the Player as the "Employee", the 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 contracts are clear in this regard, and any alleged "poor wording" does not alter this.
- In this regard, it is irrelevant whether the Club "knew" about the content of the said 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 still with the Club, which would have been a reasonable question if the Club was not aware of the employment relationship having been extended. Moreover, the Club was the party benefiting the most from it, i.e. by being able to play one of the best football players in the world.

- If the Club now submits that it is not bound by the Second 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 contract on behalf of the Club, as also confirmed in Mr Ismailov's witness statement during these proceedings. 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.

- Moreover, Mr Ismailov stated that he "*did not see any problem in signing such agreement in the absence of [the Acting General Director] and I was sure that it would be approved.*" and, what is more, Mr Ismailov signed several other contracts in the same manner and in the same position.

- 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, not least since this also happened a few months ago without any problems whatsoever.

- 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 (the "SCO"), *inter alia*, since the Club in any case ratified the Second Private Employment Contract by having the Player continue with the Club after the expiry of the initial contracts.

- Moreover, pursuant to the Second Private Employment Contract, it was always the Club as the employer which was responsible for paying the Player his remuneration, which is also in line with Swiss law and CAS jurisprudence (Article 319 (1) and Article 322 (1) of the SCO and CAS 2006/A/1180).

- The payment obligation towards the Player pursuant to the Second Private Employment Contract was not assigned to Zeromax, and even if that would have been the case, the Club, as the employer of the Player, would hold primary responsibility towards the Player as its employee.

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

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

- As such, the Appealed Decision must 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, which is why the claim is not time-barred.

- Finally, any procedures before the Brazilian ordinary courts regarding the club Mogi Mirim E.C. are irrelevant to the Player´s claim against the Club.

VI. JURISDICTION

108. 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. […]"

109. 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.

110. 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

111. 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. […]*"

112. 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.*”

113. 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.

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

115. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

116. 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.”

117. 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.”

118. Furthermore, the Parties refer to Clause 5.3 of the First Private Employment Contract, which states as follows*:*

“this contract, its interpretation and any disputes arising thereof shall be governed by and construed in accordance with the laws of Uzbekistan and to the FIFA Regulations and in case of conflict of laws, the FIFA Regulations shall prevail.”

119. 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.

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

121. 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.

122. Moreover, and for the sake of good order, the Panel notes that since the dispute was originally filed before FIFA on 19 August 2010, the 2009 edition of the FIFA RSTP is applicable to the dispute.

IX. MERITS

123. Initially, the Panel notes that the relevant factual circumstances of this case are – in essence – undisputed by the Parties, including the fact that on 18 November 2008, the Player and Mr Ismailov, allegedly on behalf of the Club, and Zeromax, signed the Second Private Employment Contract, valid as from the date of signing until 31 December 2011.

124. 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 EUR 6,000,000 pursuant to the Second Private Employment Contract.

125. However, the Parties are in dispute, *inter alia*, with regard to whether the Club is in fact legally bound by the Second 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.

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

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

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

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

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

128. The Club submits that FIFA did not have jurisdiction to adjudicate the dispute based on the Second Private Employment Contract since, *inter alia*, the Club was never a 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.

129. Without going further into the substance of the Club's submissions in this regard, the Panel notes that the issue regarding the jurisdiction of the FIFA DRC in relation to the Second Private Employment Contract was already decided by the CAS in CAS 2015/A/3938, in which the panel confirmed the jurisdiction of the FIFA DRC to hear and decide the dispute between the Parties arising out of the Second Private Employment Contract. The said CAS award was subsequently confirmed by the SFT.

130. In this regard, 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 and, furthermore, that it does not find that the alleged new evidence submitted by the Club has as a consequence that the findings regarding the jurisdiction issue has to or even can be reconsidered by this Panel.

131. 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 Second Private Employment Contract.

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

133. 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.*).

134. 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 Second Private Employment Contract only deals with the relations between the Parties.

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

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

136. With regard to the Second 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 contract was never validly signed on behalf of the Club.

137. The Player, on his side, submits that the said contract is to be considered as a valid and binding employment contract between the Club and the Player.

138. In this regard, the Panel initially notes that it is undisputed that pursuant to the explicit wording of the Second 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 "Employer" and "Employee", respectively, while Zeromax is referred to as "Company". Moreover, the title of the contract is "Term of Employment Contract Extension".

139. 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.

140. In view of the foregoing, the Panel is comfortable in finding that the Second 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.

141. In this regard, and based on the specific circumstances of the case, including the fact that the Second 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.

142. 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*.).

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

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

145. 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 Second Private Employment Contract. Instead, he was then acting as the Club's Executive Director with no formal legal powers to bind the Club.

146. However, it is also undisputed that Mr Ismailov had in fact signed the previous contracts between the Club and the Player, 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.

147. 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 Player testified that he and the rest of the team were never informed about the amended status and legal powers of Mr Ismailov.

148. Moreover, the Player and the witness (Mrs Eliza Kaminski Ferreira) 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.

149. 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 stamp the Second Private Employment Contract, based on which the Club is now precluded from submitting the opposite with any legal standing.

150. Moreover, the Panel notes that the Club in any case appears to have ratified the Second Private Employment Contract by allowing the Player to stay with it after the First Private Employment Contract expired on 28 August 2009, benefiting from the Player's services without asking any questions. This is also in line with the statement of Mr Ismailov in his witness statement, in which he stated that he "*did not see any problem in signing such agreement in the absence of [the Acting General Director] and […] was sure that it would be approved by the latter.*"

151. 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 Second 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.*".

152. Regardless of the above, and the fact that the Panel finds that the Second 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 First and Second Private Employment Contract, and the Club was only supposed to be obliged to fulfil its obligations towards the Player

pursuant to the First and Second Standard Employment Contract, which payments were always made in the national currency.

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

154. 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 making payments in foreign currencies to foreign players illegal.

155. Finally, the Club submits that the FIFA DRC erred in its interpretation of the word "*Employer*" in the Second Private Employment Contract since "*Employe*r" should correctly be understood as the Club and Zeromax together and with the latter being responsible for the payment of the agreed remuneration as inserted in the Second Private Employment Contract.

156. 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.

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

158. Furthermore, it is explicitly stated in the said contract that "*the Employer will pay*…..", which, the Panel notes, is in line with 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 wager) 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.*"

159. Furthermore, and based on the evidence on file, it was also the intention 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, who was the only one benefiting from that, and moreover, the Player apparently never provided any services to Zeromax, not even sponsor service or any other services in connection with the image rights of the Player.

160. The Panel further notes that the Player testified that he was never informed about any specific role of Zeromax with regard to the Club and that Mr Ismailov and Mr Djalolov would more or less always be present at the same time as a part of the Club, including during meetings with the Player regarding the outstanding payments pursuant to the Second Private Employment Contract. The Player always understood himself as a player of the Club and not as an employee of Zeromax.

161. Based on the above, and even if the Player must have noticed that Zeromax was a party to the Second 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 said contract and, accordingly, is the primary party responsible for paying the Player the agreed remuneration as set out in the same.

162. 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. The Panel notes in this regard that the Player testified that he did in fact receive cash payments directly from the Club in USD during his stay with the Club.

163. Furthermore, the Panel does not find that the fact that the Player's then legal adviser, apparently without informing the Player about it, initiated debt collection procedures against Zeromax, in any way changes or cancels the Club's payment obligations towards the Player pursuant to the Second Private Employment Contract, as the Panel finds that the Club is the primary debtor of the remuneration to the Player, even if such payment previously was made via Zeromax pursuant to the First Private Employment Contract. In this regard, the Panel specifically notes the apparently very close relationship between the Club and Zeromax.

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

165. 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 their agreement.

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

166. 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.*"

167. 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.*"

168. 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).

169. 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.

170. 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.

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

172. First of all, it is undisputed that, pursuant to the Second Private Employment Contract, the Player was entitled to receive the total amount of EUR 6,000,000 for the 2010 season, which amount fell due in two instalments: EUR 3,000,000 on 25 August 2009 and EUR 3,000,000 on 25 September 2009.

173. 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 between 29 August 2008 and 10 December 2009 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 and were also documented during both the FIFA and the present proceedings.

174. 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 EUR 3,510,053 from Zeromax related to the Second Private Employment Contract.

175. As such, the Panel finds that the amount of EUR 2,489,947, which is a material part of the instalment that fell due on 25 September 2009, was never paid to the Player in accordance with the Second Private Employment Agreement.

176. The Panel further notes that the Player testified that he was not the only player not being paid and that he attended several meetings at the office of the Club with Mr Ismailov and Mr Djalalov, where the outstanding remunerations were discussed in order to find a solution. During these meetings, the Player was apparently told several times that the outstanding amount would be paid to him, however, this never happened.

177. According to the Player, on 26 July 2010, he forwarded the 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 by forwarding the Termination Letter.

178. 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 with the Player.

179. 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 Second Private Employment Contract, even if the Club had received the Default Letter in late July 2010.

180. 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 Second 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 Second Private Employment Contract, if any?

181. 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.

182. 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 19 August 2010, the Player lodged his claim against the Club before the FIFA DRC claiming, *inter alia*, outstanding remuneration and compensation for breach of the Second Private Employment Contract.

183. 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 contracts 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.

184. 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 EUR 2,489,947 for the 2010 season pursuant to the Second Private Employment Contract.

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

186. 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.

187. 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."

188. 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 Second Private Employment Contract, on the amount of compensation payable in the event of breach of contract.

189. The Panel further notes that the Parties do not disagree that the Player, for the remainder of the period of the Second Private Employment Contract, would have been entitled to receive a salary of EUR 6,000,000.

190. Finally, it is undisputed that the Player, after the termination of the contractual relationship with the Club, signed a new employment contract with the New Club, valid as from 27 January 2011 until 31 December 2011, for a monthly salary of BRL 70,000, according to which the Player should receive a total remuneration of BRL 770,000, which corresponds to the approximate amount of EUR 336,000, for the overlapping period between this new contract and the Second Private Employment Contract.

191. 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).

192. Moreover, the Panel observes that Article 337c (1) and (2) of the Swiss Code of Obligations ("CO") 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.*"

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

194. 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 for several months following the termination of employment relationship, which is why the said submission is dismissed.

195. 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