CAS 2021/A/8141 Michal Jeřábek & FK Jablonec a.s. v. FK Teplice a.s. & Football Association of the Czech Republic

ARBITRAL AWARD

delivered by

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

sitting in the following composition:

President: Dr András Gurovits, Attorney-at-law in Zürich, Switzerland

Arbitrators: Prof Dr Vanja Smokvina, Professor of Law in Rijeka, Croatia
Mr Bernard Hanotiau, Attorney-at-law in Brussels, Belgium

in the arbitration between

Mr Michal Jeřábek, Czech Republic
Represented by Ms Markéta Vochoska Haindlova, Attorney-at-law, Prague, Czech Republic

- First Appellant -

&

Fotbalový Klub Jablonec, **a.s.**, Czech Republic
Represented by Ms Markéta Vochoska Haindlova, Attorney-at-law, Prague, Czech Republic

- Second Appellant -

and

FK Teplice a. s., Czech Republic
Represented by Ms Anna Vejmelková, Attorney-at-law, Prague, Czech Republic

- First Respondent-

&

Football Association of the Czech Republic (FACR), Czech Republic
Represented by Mr Marek Hejduk, Attorney-at-law, Prague, Czech Republic

- Second Respondent -

I. THE PARTIES

1. Mr Michal Jeřábek (the "First Appellant" or the "Player") is a professional football player with Czech nationality.

2. Fotbalový Klub Jablonec a.s. (the "Second Appellant") is a professional football club in the Czech Republic, which is affiliated with the Football Association of the Czech Republic (the "FACR").

3. FK Teplice a. s. (the "First Respondent") is a professional football club in the Czech Republic, which is affiliated with the FACR.

4. The FACR (the "Second Respondent") is the governing body of football in the Czech Republic, which is in turn affiliated with the Fédération Internationale de Football Association ("FIFA").

II. THE FACTS

5. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute and is without prejudice to any subsequent finding of fact by the Panel in this proceeding. Additional facts may be set out, where relevant, in connection with the legal discussion.

6. On 1 January 2016, the Player and the First Respondent concluded a professional league contract (the "First Contract") with a duration from 1 January 2016 to 30 June 2019.

7. On 1 September 2017, the Player and the First Respondent entered into a professional league contract (the "Second Contract"), extending the contractual relationship until 30 June 2020.

8. In August 2019, the First Respondent offered the Player an extension of the Second Contract. The Player, however, did not accept said offer.

9. On 21 September 2019, the Player got injured during a match of his team. Thereafter, the Player missed a number of matches because of his health problems.

10. On 4 January 2020, the First Respondent informed the Player that he had been demoted to the First Respondent's "B" team with effect as from 6 January 2020. That decision was preceded by various public announcements by the First Respondent that it was no

longer counting on the Player because he had refused the First Respondent's offer to extend the Second Contract.

11. On 13 January 2020, the Player sent a first notice to the First Respondent requesting his reinstatement to the club's "A" team and complaining about the training and rehabilitation possibilities provided to him.

12. On 4 February 2020, the Player sent a further notice to the First Respondent reiterating his request for his reinstatement to the "A" team and his complaint about the unfavourable training and rehabilitation conditions.

13. On 12 February 2020, the Player gave notice of termination of the Second Contract for cause.

14. On 17 February 2020, the Player and the Second Appellant entered in to a professional league contract for a fixed period until 30 June 2022.

15. On 15 April 2020, the First Respondent lodged a request for arbitration against the First Appellant and the Second Appellant before the FACR Board of Arbitrators, requesting payment of CZK 3'632'848 as compensation for damages incurred as a result of the unilateral termination of the Second Contract by the Player.

16. On 4 November 2020, the FACR Board of Arbitrators decided that the Player did not have just cause to terminate the Second Contract, and held that the Player and the Second Appellant were jointly liable to pay the First Respondent the amount of CZK 2'000'000 as compensation for unjustified termination of the Second Contract.

17. On 11 December 2020, the Player filed his appeal against said decision before the Appeal Senate of the FACR Board of Arbitrators, and on 14 December 2020, the Second Appellant filed its appeal before the Appeal Senate of the FACR Board of Arbitrators.

18. On 23 April 2021, the Appeal Senate of the FACR Board of Arbitrators decided to confirm the arbitral award of 4 November 2020 and dismissed the appeals lodged by the Appellants (the “Appealed Decision”).

19. On 24 June 2021, the Appealed Decision was notified to the parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 7 July 2021, the Appellants filed with the Court of Arbitration for Sport (the “CAS”) their Statement of Appeal against the Respondents with respect to the Appealed Decision, pursuant to Article R48 of the Code of Sports-related Arbitration (2020

edition; the "CAS Code") and nominated Prof Dr Vanja Smokvina as an arbitrator. Their Statement of Appeal included a request for a stay of execution of the Appealed Decision.

21. On 23 July 2021, the Appellants filed their Appeal Brief in accordance with Article R51 of the CAS Code.

22. On 26 July 2021, the First Respondent nominated Mr Ercus Stewart as an arbitrator. By letter of the same day, the CAS Court Office reminded the Respondents that they were to jointly nominate an arbitrator and requested the Respondents to inform the CAS Court Office by 30 July 2021 about their joint nomination of an arbitrator.

23. On 29 July 2021, the Second Respondent informed the CAS Court Office that the Respondents had jointly nominated Mr Bernard Hanotiau as arbitrator in the present proceeding, and requested that the time limit to file its Answer be fixed once the advance of costs had been paid by the Appellants.

24. On 30 July 2021, the First Respondent confirmed the joint nomination by the Respondents of Mr Bernard Hanotiau as arbitrator in this proceeding and also requested that the time limit to file its Answer be fixed once the advance of costs had been paid by the Appellants.

25. Also on 30 July 2021, the CAS Court Office informed the Parties that the time limit with respect to the Respondents to submit their Answer was set aside, further to Article R55 of the CAS Code.

26. Still on 30 July 2021, the Appellants raised concerns about a potential conflict of interest of the Second Respondent and its counsel. The First Respondent rejected the Appellants' contentions by letter of 2 August 2021, and the Second Respondent filed its objections by letter of 4 August 2021.

27. By letter of 6 August 2021, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had appointed as President of the Panel Dr András Gurovits, Attorney-at-law in Zurich, Switzerland. The Parties were further provided with disclosures by Dr Gurovits further to Article R33 of the CAS Code.

28. On 13 August 2021, the CAS Court Office informed the Parties that the Appellants had paid their share as well as the First Respondent's share of the advance of costs and granted the Second Respondent a deadline of 24 August 2021 to pay its share of the advance of costs.

29. On 16 August 2021, the CAS Court Office re-set the Respondents' respective Answer deadlines and informed the Parties that no challenge had been filed against the appointment of Dr András Gurovits within the deadline prescribed in Article R34 of the CAS Code.

30. On 31 August 2021, the First Respondent filed its Answer further to Article R55 of the CAS Code.

31. On 13 September 201, the CAS Court Office confirmed timely payment of its share of the advance of costs by the Second Respondent.

32. On 15 September 2021, after having been granted an extension further to Article R32 of the CAS Code, the Second Respondent submitted its Answer further to Article R55 of the CAS Code.

33. On 24 September 2021, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

    President: Dr András Gurovits, Attorney-at-Law in Zurich, Switzerland;

    Arbitrators: Prof Dr Vanja Smokvina, Professor of Law in Rijeka, Croatia;
    Mr Bernard Hanotiau, Attorney-at-law in Brussels, Belgium.

34. On 27 September 2021, the Appellants and the Second Appellant stated that their preference was for a hearing to be held.

35. By letter of 6 October 2021, the CAS Court Office invited the Appellants to indicate whether they maintained their request for a stay of the Appealed Decision as such request had been made in the Statement of Appeal, but was not subsequently addressed in the Appeal Brief.

36. By letter of the same 6 October 2021, the Appellants confirmed that they maintained their request for a stay of the execution of the Appealed Decision.

37. By another letter of 6 October 2021, the CAS Court Office granted the Respondents a time limit until 18 October 2021 to provide their response to the Appellants' request for a stay of the execution of the Appealed Decision.

38. The First Respondent submitted its response on 12 October 2021 and the Second Respondent submitted its response on 18 October 2021. Both Respondents referred to their respective comments made in their Answers.

39. On 28 October 2021, the Panel issued its Order on Request for a Stay dismissing the Appellants' request for a stay of execution of the Appealed Decision.

40. On 7 December 2021, following various exchanges between the CAS Court Office and the Parties, and further to Articles R44.2 and R57 of the CAS Code, the CAS Court Office informed the Parties that the hearing would take place by videoconference on 6 January 2022.

41. By letter of 8 December 2021, the CAS Court Office sent the Order of Procedure to the Parties.

42. On 8 December 2021, the First Respondent provided its List of Hearing Participants to the CAS Court Office, while the Appellants did so on 9 December 2021 and the Second Respondent did so on 10 December 2021.

43. On 9 December 2021, the Appellants and the First Respondent returned the signed Order of Procedure, while the Second Respondent returned the signed Order of Procedure on 10 December 2021.

44. By letter of 14 December 2021, the Second Respondent requested the CAS to exclude two of the Appellants' participants from attending the hearing.

45. By letter of 15 December 2021, the CAS Court Office requested the other Parties to provide their comments on the Second Respondent's request by 20 December 2021. By letter of the same 15 December 2021, the Appellants filed their comments concerning the Second Respondent's letter of 14 December 2021.

46. By letter of 17 December 2021, the CAS Court Office sent a Draft Tentative Hearing Schedule to the Parties and invited them to provide any comments that they might have by 22 December 2021.

47. On 18 December 2021, the Appellants provided their comments no the Draft Tentative Hearing Schedule and requested to not admit the witness called by the Second Respondent.

48. By letters of 29 December 2021, the Respondents submitted their respective comments on the Appellants' communication of 18 December 2021.

49. By letter dated 4 January 2022, the CAS Court Office informed the Parties that the Panel had decided the Appellants' participants and the Second Respondent's witness were allowed to participate at the hearing. By the same letter, the CAS Court Office sent the Parties the final Tentative Hearing Schedule.

50. On 6 January 2022, a hearing was held by means of video-conference, further to Articles R44.2 and R57 of the CAS Code. The Panel was assisted by Ms Kendra Magraw, CAS Counsel. In addition, the following persons attended the hearing:

i. for the Appellants: Mr Michal Jeřábek (First Appellant); Mr Jaroslav Doležal (representing the Second Appellant); Ms Markéta Haindlová (counsel); Mr Jakub Porsch (counsel); Mr Ondrej Siřínek (counsel); Ms Chaitra Veena Ravoori (counsel); Ms Marta Kolisková (interpreter).

ii. for the First Respondent: Mr Rudolf Řepka (representing the First Respondent); Ms Anna Vejmelková (counsel).

iii. For the Second Respondent: Mr Martin Procházka (representing Second Respondent); Mr Marek Hejduk (counsel); Mr Vojtech Jiraský (counsel); Mr Daniel Slanina (witness).

51. At the opening of the hearing, all Parties confirmed that they had no objections to the composition of the Panel. During the hearing, the Parties made submissions in support of their respective cases, and were able to examine the Second Respondent's witness. At the closing of the hearing, the Parties confirmed that they had no objections in respect of their right to be heard and that they had been given the opportunity to fully present their cases.

IV. THE POSITIONS OF THE PARTIES

52. The following is a summary of the Parties' written and oral submissions and does not purport to be comprehensive. However, the Panel has thoroughly considered in the discussion and deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference is made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.

A. THE APPELLANTS

53. The Appellants submitted the following requests for relief:

> "*A. To confirm that the Respondent 2 violated the Appellants' rights under art. 6 of the European Convention of Human Rights and art. 10 of the Universal Declaration of Human Rights.*

B. To requalify the Contract signed between the Appellant 1 and Respondent 1 as an employment contract.

C. To rule that the Player did have just cause to terminate the contract.

D. To rule that:

1. The Challenged Decision of the appeal senate of the FACR Board of Arbitrators is amended as follows:

I. Ruling no. I. of the Challenged Decision is amended as follows:

Ruling no. I of the arbitral award of 4 November 2020 is amended to dismiss the Claimant's (Respondent 1 before CAS) claim for payment of the amount of CZK 2,000,000 and statutory default interest on that amount at the rate of 8.05% per annum from 19 March 2020 until payment.

Ruling no. III of the Arbitration Award of 4 November 2020 is amended to the effect that the Claimant shall pay to Respondent 1 (Appellant 1 before CAS) and Respondent 2 (Appellant 2 before CAS) the costs of legal representation in the first instance of the arbitration proceedings before the Board of Arbitrators of the FACR.

II. Ruling no II. of the Challenged Decision is amended as follows:

The Claimant shall pay to Respondent 1 and Respondent 2 the costs of the proceedings and the costs of legal representation in the appeal proceedings before the Board of Arbitrators of the FACR.

2. The Respondent 1 and the Respondent 2 shall bear, jointly and severally, all the arbitration costs, if any, and shall be ordered to reimburse the minimum CAS Court Office Fee of CHF 1,000 as well as any other advances of costs paid by the Appellant 1 and Appellant 2.

3. The Respondent 1 and the Respondent 2 shall be ordered to reimburse, jointly and severally, all the other costs incurred by the Appellant 1 and Appellant 2 in the framework of these proceedings.

E. In the alternative, if the CAS confirms there was a termination without just cause, to rule that no compensation is due by the Player and the New Club to the Club for breach of Contract.

F. In the further alternative, to rule that the compensation to be payable by the Player and the new Club to the Club for breach of contract is reduced."

54. In support of their appeal the Appellants have submitted, in essence, the following:

1. As to the facts

55. The Player and the First Respondent had entered into the First Contract, i.e. a professional player's contract for the period from 1 January 2016 until 30 June 2019. On 1 September 2017, the Player and the First Respondent entered into the Second Contract.

56. In August 2019, the First Respondent offered the Player an extension of the Second Contract. The Player, however, rejected the offer.

57. On 21 September 2019, the Player got injured and as a result of his injury, he missed six league and two cup matches of his team.

58. On 24 November 2019, the Player played his first match after his injury but got, again, injured. As a result, he was not able to train for one week and was not nominated any more for any match in 2019.

59. In December 2019, the Player and the First Respondent met to discuss the future of the Player.

60. On 19 December 2019, the First Respondent published an article on its website explaining that the Player had decided not to extend the Second Contract with the First Respondent and that the latter could thus no longer count on the Player.

61. Similar public statements were, thereafter, made by the First Respondent's sports director and coach. Both explained, in addition, that the Player would be demoted to the "B" team.

62. On 4 January 2020, the Sports Director of the First Respondent orally informed the Player that they had decided to demote him to the "B" team with effect as from 6 January 2020.

63. On 13 January 2020, the Player sent a written note to the First Respondent complaining about the unjustified demotion to the "B" team and stressing that by demoting the Player, the First Respondent had breached the Second Contract.

64. On 4 February 2020, the Player sent a further written note to the First Respondent and requested, *inter alia*, to be reassigned to the "A" team.

65. On 6 February 2020, the First Respondent responded and set out the reasons allegedly justifying the Player's demotion to the "B" team.

66. On 12 February 2020, the Player sent the First Respondent a written notice of termination of the Second Contract, and on 13 February 2020, the Player sent a request for cancellation of the Second Contract to the FACR secretariat. On 14 February 2020, the registration was cancelled.

67. On 15 April 2020, the First Respondent lodged a request for arbitration against the Player with the FACR Board of Arbitrators requesting payment by the Player of CZK 3'632'88 as compensation for breach of contract. In its award, dated 4 November 2020,

the FACR Board of Arbitrators held that the Player had no just cause to terminate the Second Contract and ordered that the Appellants were jointly and severally liable to pay the First Respondent CZK 2'000'000 as compensation for unjustified termination of the Second Contract.

68. Following an appeal by the Appellants, the Appeal Senate of the FACR Board of Arbitrators rendered the Appealed Decision, dated 23 April 2021, confirming the decision of the award of the FACR Board of Arbitrators of 4 November 2020. The Appealed Decision was notified to the Appellants on 24 April 2021.

2. As to legal considerations

2.1 The jurisdiction of the CAS

69. The CAS has jurisdiction by virtue of Article 15 para. 1 let. f) of the FACR Statutes.

2.2 Procedural issues in the proceedings before the FACR Board of Arbitrators

70. The FACR arbitration bodies lack independence and impartiality, in particular, because the members of the FACR Board of Arbitrators are appointed by the FACR Executive Committee, the Chairman and the Vice-Chairman are elected by the FACR General Assembly, no representatives of the players are members of the FACR Executive Committee, the number of representatives of players and clubs in the FACR Board of Arbitrators is not equal and it is not clear which arbitrator is nominated by the clubs and which is nominated by the players.

71. In light of this lack of independence and impartiality, it must be concluded that Article 6 of the European Convention of Human Rights and Article 10 of the Universal Declaration of Human Rights are violated.

72. The foregoing is particularly troubling as the Second Contract is based on a standard players' contract, which cannot be amended by an individual player. The present matter, thus, concerns a matter of forced arbitration, which is a blatant violation of the Player's human rights.

73. Pursuant to the FACR regulations, the final decision should have been rendered within nine months from the day of filing the application for the initiation of the proceedings. The application for the initiation was filed on 15 April 2020, while the Appealed Decision was sent to the Appellants on 24 June 2020 [*recte*: 2021]. This is a manifest violation of the relevant procedural rules of the FACR.

74. Pursuant to the FIFA rules on national dispute resolution chambers, the proceedings should be free of charge. The FACR, however, have requested both Appellants to pay

an appeal fee on the basis of completely insufficient and ambiguous statutory regulations regarding fees. The gaps in these regulations should be eliminated in order to maintain legal certainty in the FACR proceedings.

75. By obliging the Appellants to pay an appeal fee, the FACR limited the Appellants' access to justice.

2.3 The Player's assignment to the "A" team

76. In the FACR system there are two different types of standard contracts: (i) the league professional contract for players and clubs participating in the first and second leagues; and (ii) the standard professional contract for players who do not regularly play in the first and second league.

77. Both the First Contract and the Second Contract between the Player and the First Respondent were based on the league professional contract. It was clear that the purpose of the First Contract and the Second Contract was to regulate the engagement of the Player as a member of the "A" team.

78. Before his knee injury the Player always played in the "A" team where he was a key player in the starting line-up of the team. Even after his recovery from the first injury and after only one week of training the Player was included in the starting line-up in the match of 24 November 2019 against FC Banik Ostrava. All of this demonstrates the importance and the good performance of the Player.

2.4 The nature of the Second Contract

79. Under the Second Contract, the Player is considered to be self-employed. This qualification, however, is inaccurate and incompatible with the applicable rules.

80. Various elements indicate, however, that the Player was, in fact, an employee of the First Respondent. For instance, the “autonomous agreement regarding the minimum requirements for standard player contracts in the professional football sector in the European Union and the rest of the UEFA territory” (the "Autonomous Agreement") that resulted from the EU social dialogue and was driven by FIFPRO, the European Club Association (“ECA”) and the European Professional Football Leagues (“EPFL”) clarifies that an agreement between a club and a professional football player is an employment contract. Also the jurisprudence of the European Court of Justice (“ECJ”), e.g. the judgment of 3 July 1986, case 6685, *Deborah Lawrie Blum v. Land Baden-Württemberg*, leaves no doubt about the proper qualification of a professional football player. Furthermore, the EC has always considered professional football players as workers in the sense of Article 45 of the Treaty on the Functioning of the European

Union ("TFEU") and the qualification of a professional football player's contract as employment agreement is also consistent with CAS jurisprudence (e.g. CAS 2017/A/5402). And, finally, even the Second Contract at hand contains various provisions, such as Clause III para. 2.2 and Clause III para. 2.3, that indicate that the First Respondent was actually an employer.

81. The Second Respondent's position that Czech labour law does not allow employers and employees to repeatedly conclude fixed-term contracts and, therefore, the Second Contract cannot be re-qualified as an employment agreement, is ill-founded. It is striking, according to the Appellants, that the Second Respondent is more concerned with the realities of the football transfer market than the correct application of the law.

82. Also other laws, such as Dutch law, have specific rules on fixed-term contracts and the number of times that parties can conclude a fixed term contract. Nevertheless, the social partners excluded said rule in football and agreed not to apply it in the relevant collective bargaining agreement.

83. Should the Panel, however, conclude that the Player was self-employed, none of the fines could have been legitimately imposed on the Player as in such case the First Respondent would have had no right of instruction vis-à-vis the Player. A fine for not complying with an instruction of a club would only make sense if the Player was employed under an employment agreement.

2.5 Alleged breaches of the Second Contract

84. The First Respondent argued that the Player violated the Second Contract by not wearing a special knee brace and, thus, did not comply with the medical instruction he had received from the First Respondent. The First Respondent, however, did not issue any warning and did not impose any sanction on the Player for this alleged breach that occurred in the year 2019. The First Respondent raised the argument of breach of Second Contract only after the Player had requested, in January 2020, remedy by the First Respondent of its own breach of the Second Contract by demoting the Player to the "B" team.

85. After having consulted other doctors and realizing that opinions of the doctors differed as to the fixation of the knee, the Player consulted again with the First Respondent's doctor and followed the instructions given by him.

86. The First Respondent could not establish that not wearing the knee fixation brace actually resulted in a prolonged recovery period.

87. The First Respondent also reproached the Player for performing sports activities outside the team. However, this was in the best interest of the Player to get back in shape quickly. In addition, this approach was quite common in the football environment. It was also common for other players of the First Respondent who also completed additional individual trainings and never got sanctioned or demoted to the "B" team by the First Respondent. It is known that some world-class players spend their free time in gyms beyond their normal training hours.

88. The First Respondent continued to offer the Player an extension of the Second Contract. This contradicts the First Respondent's allegations that the alleged breaches of the Second Contract by the Player and his alleged underperformance were the reasons for the Player's demotion to the "B" team.

2.6 The Player's demotion to the "B" team

89. When assessing whether or not the First Respondent was entitled to demote the Player to the "B" team, the case CAS 2015/A/4286 where the CAS panel followed a six-question test scheme in the context of analysing the justification of a reassignment of a player to a lower team must be considered. The Appellants claim that the analysis of the six prongs of this test come out in favour of the Player, as follows:

i. Why was the player dropped from the first team?

90. It is established in CAS jurisprudence that a club may assign a player to the reserve team for sporting reasons and for a limited period of time, for instance, for recovery after an injury.

91. In the case at hand, however, the sole reason for the demotion of the Player to the "B" team was the fact that the Player had decided not to enter into an extension of the Second Contract as suggested by the First Respondent. This is clear from the official statements of the First Respondent. Nothing was said in these statements that was related to the alleged poor performance of the Player. No other reason that could justify his demotion to the "B" team was mentioned.

92. The Player's resistance to signing the extension of the Second Contract was of a temporary nature only. He wanted to move forward and see whether he could possibly obtain a better offer. Further, he was prepared to properly fulfil his obligations under the Second Contract.

93. In sum, the decision of the First Respondent to demote the Player to the "B" team was a sanction for the Player's decision not to extend the Second Contract for the time being.

ii. Did the Player still receive his full wage?

94. This is the only question that can be answered in favour of the First Respondent as the Player actually received the full wage.

95. One must, however, also note that as a result of his re-assignment to the "B" team, the Player lost the chance to also earn bonuses for played matches in the first league.

iii. Was the demotion a temporary measure?

96. It is clear that the Player's performance would have been good enough to be assigned to the "A" team and that the decision to demote him to the "B" team was of permanent nature.

97. The Player was actually re-assigned to the "B" team from 6 January 2020 to 12 February 2020, i.e. for more than one month. Had he not terminated the Second Contract, this situation would have continued.

98. In light of this analysis of the above three criteria and in light of the leading case CAS 2015/A/4286, the unlawful conduct of the First Respondent against the Player is already established.

iv. Were there adequate training facilities for the Player with the reserve team?

99. The training facilities were not adequate. The First Respondent did not provide the Player with an appropriate training environment in accordance with the terms of the Second Contract. In particular, the quality of the teammates was lower, physiotherapy was not available anymore when the "B" team finished training, and the sauna as well as the whirlpool were mostly switched-off. In addition, the conditions in the training camp for the "B" team were much poorer compared with those of the "A" team.

100. By demoting the Player to the "B" team, the First Respondent prevented the Player from participating in matches at the appropriate level and from developing his career.

v. Did the Second Contract provide for an express right to reassign the Player?

101. The Second Contract does not provide for an express right of the First Respondent to reassign the Player to the reserve team.

102. When the Second Contract was entered into, it was the clear intention of the parties that the Player would be a member of the "A" team.

103. It is also important in this context to recall a recent decision of the CAS in the matter CAS/A/6041 where the CAS held that the reassignment of a player to the lower-level team without any respective rule in the contract constitutes an unauthorized change of the terms of the contract.

vi. Was the Player training alone or with a team?

104. While it is undisputed that the Player was training with a team, it must be stressed that the "B" team did not reach any appropriate quality level.

2.7 The calculation of the alleged damages

105. The calculation of the compensation conflicts with the jurisprudence of the CAS, Article 22 of the FACR Transfer Rules and Article 17 of the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP"). In addition, the previous instances should have applied the Czech Labor Code instead of the Czech Civil Code.

106. The calculation of compensation was based on some sort of "asking price", i.e. a price that a representative of the Second Appellant mentioned in a SMS message. This amount was, however, never agreed. Furthermore, such criterion is not foreseen in any applicable regulation. As the FACR's calculation of the damages was solely based on this criterion, it should be annulled entirely.

107. If the compensation is not annulled in its entirety, it must be considered that pursuant to Article 22 para. 7 of the FACR Transfer Rules, the amount of compensation to be paid to a player (in case of termination without just cause by the club) would be equivalent to the remaining value of the contract. The same would have to apply in case of termination by the player. In addition, pursuant to CAS jurisprudence, in particular CAS 2019/A/6445, compensation can be reduced if the damaged party contributed to the termination of the contract. Thus, should the Panel come to the conclusion that compensation is to be paid, the amount would have to be significantly reduced.

B. THE FIRST RESPONDENT

108. The First Respondent submitted the following requests for relief:

> "- *to dismiss /reject the Mr JEŘÁBEK/FK JABLONEC's appeal in full.*
> - *to condemn the player Mr JEŘÁBEK and the club FK JABLONEC to payment of the whole CAS administration costs and Arbitrators' fees.*
> - *to fix a sum of 20,000 CHF to be paid by the player Mr JEŘÁBEK and the club FK JABLONEC to the club FK Teplice as a partial compensation of its legal fees and other expenses (incl. translation services) incurred in connection with this proceeding".*

109. In support of the above, the First Respondent has submitted, in essence, the following:

1. As to the facts

110. On 1 January 2016, the Player and the First Respondent entered into a professional contract with effect until 30 June 2019 (the First Contract). On 1 September 2017, the Player and the First Respondent entered into a new professional league contract with a term until 30 June 2020 for a monthly remuneration of CZK 84'000 (incl. 21% VAT), i.e. the Second Contract).

111. In August 2019, the First Respondent sent the Player's agent an offer to extend the Second Contract, which the Player, however, did not accept as he was hoping to negotiate an international transfer for the winter transfer window.

112. The Player participated in individual training sessions without the consent of the First Respondent. The individual training resulted in overtraining and fatigue of the Player, and, as a result, the Player's performance was inadequate.

113. During his recovery, the Player did not consistently follow the instructions of the club's doctor to wear a knee support although his recovery was crucial for the "A" team.

114. On 21 September 2019, the Player got injured and subsequently missed several matches. His first match after his injury was the match of 21 September 2019 against FC Banik Ostrava. He finished the match with a few game mistakes and his previous injury affected his performance.

115. After said match, the Player again faced health issues and on 1 December 2019 he refused to go with the "A" team to play the match against Mladá Boleslav after he found out that he was not selected for the line-up due to his inadequate physical performance and worsened health condition. The Player then also excused himself from the next match on 7 December 2019, as a result of which he did not get selected for the match of 15 December 2019.

116. During December 2019, the First Respondent again submitted an offer to extend the Second Contract to the Player. The latter, however, wanted to wait for the results of the negotiations relating to an international engagement.

117. On 30 December 2019, the Second Appellant requested information from the Second Respondent as to the duration of the Player's current contract (i.e. the Second Contract) and a possible transfer.

118. On 6 January 2020, the First Respondent re-assigned the Player to the "B" team.

119. Still at the beginning of January 2020, the Player definitely refused to extend the Second Contract due to his reassignment to the "B" team.

120. On 10 January 2020, the Second Appellant repeated its request for information about the Player.

121. On 13 January 2020, the First Respondent received a letter from the Player requesting his reinstatement in the "A" team.

122. On 29 January 2020, the First Respondent received an offer from the Second Appellant for the transfer of the Player in exchange for a transfer fee of CZK 3'000'000, while the First Respondent had requested an amount of CZK 5'000'000. The First Respondent did not, therefore, accept the offer.

123. On 4 February 2020, the Player sent another note to the First Respondent requesting again his assignment to the "A" team and claiming breach of the Second Contract by the First Respondent. The First Respondent responded on 6 February 2020 and explained that the Player's assignment to the "B" team did not constitute a breach of the Second Contract as the Second Contract did not guarantee that the Player had a right to be exclusively a member of the "A" team.

124. On 12 February 2020, the Player sent a notice of unilateral termination of the Second Contract, and on 17 February 2020, the Player entered into a new agreement with the Second Appellant for a term until 30 June 2022. The Player's new remuneration was CZK 181'000 (incl. 21% VAT). The Second Appellant acquired the Player for free, without any obligation to pay any transfer fee.

125. On 15 April 2020, the First Respondent filed its request for arbitration before the FACR Board of Arbitrators, which issued its decision on 4 November 2020 obliging the Appellants to pay the First Respondent the amount of CZK 2'000'000. Following an appeal of the Appellants, on 23 June 2021, the Appeal Senate of the FACR Board of Arbitrators issued the Appealed Decision and confirmed the decision of the FACR Board of Arbitrators.

2. As to legal considerations

2.1 Procedural issues in the proceedings before the FACR Board of Arbitrators

126. The Appellants raised many procedural objections, which, however, are not summarized herein as they are not relevant for the case at hand; as will be seen in the merits section, the Panel finds that they did not affect the correctness of the Appealed Decision.

2.2 The Player's assignment to the "A" team

127. The Player errs when he argues that the Second Contract provided for his right to be exclusively part of the "A" team because the Second Contract was based on the FACR standard league professional contract. The league professional status of a player within the meaning of the FACR regulations does not mean that a player must necessarily be a member of an "A" team only. Despite the Player's demotion to the "B" team, his status as a professional player remained unchanged.

128. Many provisions under the Second Contract clearly show that the Player's sporting activity shall not be restricted to the "A" team. Rather, the First Respondent retained the right to decide for which team the Player should play and the Player had the obligation to comply with the First Respondent's directions. In fact, the Second Contract allowed the Player to be included in both the "A" team and the "B" team.

129. The Player did not raise the requirement to be a member exclusively of the "A" team when the Second Contract was negotiated.

2.3 The nature of the Second Contract

130. The Player wants the Second Contract to be re-qualified as an employment agreement. By signing the Second Contract, the Player, however, accepted that the employment regulations would not apply.

131. Further, the Second Contract contains various provisions that show that the Player was behaving as a self-employed party. When negotiating the First Contract and the Second Contract, the Player never questioned the legal nature of the contractual relationship and he voluntarily signed both Contracts.

132. Under Czech law, everything that is not forbidden is permitted. There is nothing in Czech law or in the FIFA RSTP that would require the parties under a professional player contract to establish an employment relationship.

133. Contrary to what the Player contends, the Autonomous Agreement's purpose is only to ensure the fundamental rights of players, but not to establish the legal nature of a contract. Moreover, not all fundamental rights guaranteed under the Autonomous Agreement could be fulfilled under Czech law as there are mandatory provisions that are in conflict with these rights.

134. It is an established practice in the Czech Republic, which is also recognised by the Czech courts, that a professional player performs his duties under a business contract as an entrepreneur, rather than an employment contract. Professional players fall outside the scope of labour law.

135. The use of the standard league professional contract is only recommended, but not mandatory. It is, therefore, not correct for the Player to argue that individual players cannot amend the contract. Rather, each player would have the chance to negotiate the terms and conditions.

136. The Player errs when he argues that a fine was imposed on him. The truth is that he was not sanctioned; even the reassignment to the "B" team cannot be considered a sanction.

2.4 Alleged breaches of the Second Contract

137. Even if the Player rejects the First Respondent's arguments, it is clear that he breached the Second Contract, in particular, as he was not wearing the knee support he was required to wear and as he was participating in other sporting activities and participating in individual training sessions with his own coach outside the training and relaxation schedule set by the First Respondent.

138. By not wearing the knee support, the Player prolonged his recovery after the injury. In addition, the Player discussed his health issues exclusively with his own doctor and did not consult the First Respondent's doctor.

139. The First Respondent does not, principally, consider individual training sessions to be negative, but they are only acceptable after prior consultation with the club. It is generally known that a lack of regeneration and relaxation can lead to a reduction in the subsequent performance of players. And, in fact, the Player's performance significantly decreased as a result of these individual training sessions.

2.5 The Player's demotion to the "B" team

i. Why was the player dropped from the first team?

140. Although representatives of the Second Respondent mentioned that the Player's decision not to extend the Second Contract was a reason for his demotion to the "B" team, this was only one reason out of a series of other reasons. The First Respondent explained the reasons for the Player's reassignment in its letter of 6 February 2020.

141. However, even if this had been the sole reason, the First Respondent would not have acted illegitimately. If the preparedness and enthusiasm for the play of a player do not imply that the player really intends to be part of the team and if the player publicly confirms that he no longer wants to remain with a club, then that club cannot reasonably be expected to save a place in the team for this particular player.

142. Other reasons for the re-assignment of the Player included the Player's lack of performance, lack of preparedness for the game due to his overtraining caused by his individual training sessions, as well as his earlier injury and related medical restrictions that resulted in missed games.

143. The Player himself had admitted that his performance was inadequate due to his overtraining caused by individual training sessions outside the club.

144. With regard to the Player's decision not to extend the Second Contract, it must also be noted that the First Respondent repeatedly expressed its interest in the Player's staying with the club, while the Player repeatedly delayed the execution of the extension of the Second Contract. Against his background, the First Respondent reasonably got the impression that the Player was no longer interested in playing for the club.

ii. Was the Player still receiving his full wage?

145. It is undisputed that the Player received the same remuneration even after his re-assignment.

146. The Player's remarks that as a result of his re-assignment to the "B" team he could no longer earn any bonus are irrelevant as bonuses would have been uncertain even if he had continued to play for the "A" team.

iii. Was it a permanent measure?

147. While the Appellants argue that the Player's re-assignment was permanent, the First Respondent is of the opinion that it was never definitely determined whether the re-assignment was permanent or not.

148. It is common practice of clubs that players who are re-assigned to a "B" team for their poor performance or health reasons return to the "A" team after improvement of their condition.

149. The First Respondent still needed the Player in the basic line-up of the "A" team. This is why the Player's performance was still monitored. Had his performance improved (which it did not), the Player would have been re-assigned back to the "A" team.

150. Although it cannot be proven that the Player's reassignment was temporary, it also cannot be proven that it was permanent.

iv. Where there adequate training facilities?

151. Although it cannot be doubted that there are differences between an "A" team and a "B" team, the players of the "B" team of the First Respondent were provided with adequate conditions in respect of training, implementation of daily routine, diet, regeneration and rehabilitation. They had the same access to the stadium grounds and facilities as players of the "A" team.

152. The fact that there are inherent differences in terms of training times, training places, diet and others does not mean that the members of the "B" team were degraded in any way.

153. The Second Contract did not provide that the Player would always receive those favourable conditions that are reserved for the "A" team.

154. Finally, the Player was never really affected by his re-assignment to the "B" team, because after conclusion of his new contract with the Second Appellant, he was able to regularly participate in the latter's "A" team.

v. Was there an express right to drop the Player to the "B" team?

155. The Second Contract did not provide that the Player had always to be a member of the "A" team.

156. Pursuant to the Second Contract, the Player was obliged to participate at the activities of that team for which he was nominated by the First Respondent.

vi. Was the Player training with a team?

157. It is undisputed that the Player was training with the "B" team.

158. If the Player contends that the level of the "B" team was not as high as the one of the "A" team, he should be reminded that he did not reach the quality level either.

2.6 The termination of the Second Contract

159. The Player's reassignment to the "B" team was fully legitimate. The Player did, therefore, not have any right to terminate the Second Contract.

160. The First Respondent repeatedly showed its interest in keeping the Player, because they simply needed him.

2.7 The compensation

161. As the Player terminated the Second Contract without just cause, he is liable for all damage caused to the First Respondent in accordance with Article 22 para. 3 of the FACR Transfer Rules in conjunction with Article 17 para. 1 of the FIFA RSTP.

162. In the FACR proceedings, the First Respondent specified in detail the calculation of the compensation in the total amount of CZK 3'744'620, consisting of the average residual value of the Player, a penalty increase in light of termination during the protected period and the loss of profit of the First Respondent relating to the future transfer fee.

163. Even though the FACR bodies followed a different approach that may not be fully in line with the FACR regulations and FIFA regulations, it accepted the result as fair for all parties involved.

164. In addition, the First Respondent should note that the offered transfer fee is generally considered as relevant in connection with the calculation of the loss of profit by the FIFA and CAS practice.

C. THE SECOND RESPONDENT

165. The Second Respondent submitted the following requests for relief:

> "(*a*) *REJECT the Appellants' request regarding the declaration of a violation of the ECHR and the IUDHR as inadmissible;*
>
> *(b) REJECT the Appellants' request regarding the requalification of the Contract as an employment contract as inadmissible;*
>
> *(c) DISMISS the Appellants' appeal against the Decision in full, to the extent the relief sought is admissible;*
>
> *(d) CONFIRM the Decision in full;*
>
> *(e) ORDER that the Appellants bear all costs of this arbitration;*
>
> *(f) ORDER that the Appellants pay to Respondent 2 a contribution towards its legal fees and other expenses incurred in connection with these proceedings;*
>
> *(g) ORDER any such further and other relief as it may deem just and appropriate".*

166. In support of the above the Second Respondent has submitted, in essence, the following:

1. As to the facts

167. In its summary of the facts the Second Respondent basically confirmed what the First Respondent has stated.

2. As to legal considerations

2.1 Jurisdiction of the CAS and the applicable law

168. The CAS has jurisdiction by virtue of Article 15 para. 1 let. f) of the FACR Statutes.

169. Pursuant to Article R58 of the CAS Code, the FACR regulations are applicable and, subsidiarily, Czech law.

2.2 The FACR proceedings

170. The FACR Board of Arbitrators is an independent intra-society dispute resolution body organised under the FACR Statutes. Proceedings before the FACR Board of Arbitrators are not arbitrations in the sense of the Czech Arbitration Act. Its decisions do not have final and binding character in terms that they are not able to be directly enforceable by the courts. Non-compliance can only be pursued through the disciplinary regime of the Second Respondent.

171. However, players and clubs are equally represented in the FACR Board of Arbitrator's pool of arbitrators, who are all independent and impartial professionals, thus ensuring a fair trial.

172. The only stakeholders that can nominate a member of the FACR Board of Arbitrators are players and clubs. The members are appointed in a transparent manner and are elected for an indefinite period. The number of members is principally unlimited.

173. The members of the FACR Board of Arbitrators are all esteemed Czech sports law professionals. When accepting a mandate, each member must disclose all facts that may give reasonable doubt as to his/her independence. The proceedings are held in two instances.

174. The relevant FACR regulations are in line with FIFA Circular No. 1010 of 20 December 2005, which sets out certain criteria that must be fulfilled by a tribunal.

175. The ECJ decision referred to by the Appellants is of no relevance.

176. Each of the Appellants has a distinct personality. Therefore, each of them had to pay an appeal fee, which amounted to CZK 20'000 or approximately EUR 700. The Appellants' argument that the obligation to pay an appeal fee violated their rights is groundless. Should the Appellants prevail in the present arbitration, they would be entitled to have their appeal fees reimbursed.

177. The 9-month time limit foreseen in the FACR regulations is indicative only. In the present case, the Appealed Decision was rendered within one year and two months, despite the Covid-19 pandemic. This duration falls within the average of the duration of other FACR proceedings during 2019 and 2020.

178. The Appellants' contentions regarding the alleged manifest infringement of the FACR procedural rules are exaggerated and irrelevant for the outcome of the present arbitration.

3. As to legal considerations

3.1 As to the requalification of the Second Contract

179. The Panel has no power to requalify the Second Contract. The Player agreed to sign the Second Contract under self-employed status, and not as an employee. According to the *pacta sunt servanda* principle, the Player is bound by the Second Contract and cannot now request a re-qualification.

180. The Second Contract, further, complies with Czech law. The Czech Supreme Administrative Court confirmed that professional football players and clubs have the right to agree that the player shall be engaged as a self-employed. This has even been confirmed by a judgement in respect of a contract between a professional football player and the Second Appellant.

181. Not only Czech courts but also the FIFA Dispute Resolution Chamber have confirmed in a case involving a Czech club that they are not in a position to re-qualify the contract into an employment agreement.

182. The Autonomous Agreement as well as the jurisprudence of the European courts that the Player is referring to are irrelevant for the case at hand. The Autonomous Agreement is not intended to interfere with national legislation, and the ECJ judgment in the *Lawrie-Blum* case only addressed the definition of the term "worker", but has no relevance with respect to the qualification of an agreement.

183. A re-qualification would, finally, entail severe implications since mandatory provisions under Czech labour law were to apply that would not fit for a contract entered into by professional football player and a club.

3.2 As to the unilateral termination of the Second Contract

184. The Appealed Decision duly applied well-established CAS practice in respect of re-assigning a player to a club's reserve team.

185. A complex of several reasons caused the First Respondent to demote the Player to the "B" team. The Player always received his remuneration. The re-assignment was only a temporary measure. The Player was provided appropriate training conditions even when he was assigned to the "B" team. The Player was training with a team, i.e. the "B" team.

3.3 As to the compensation

186. The compensation awarded to the First Respondent was calculated on the basis of the FACR panels' analysis of applicable rules and application of CAS jurisprudence as well as pertinent Czech law.

V. CAS JURISDICTION

187. In accordance with Article 186 of the Swiss Federal Act on Private International Law ("PILA"), the CAS has the power to decide upon its own jurisdiction.

188. The jurisdiction of the CAS derives in the matter at hand from Article R47 of the CAS Code in connection with Article 15 para. 1 let f. of the FACR Statutes.

189. Article R47 of the CAS Code states that "*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*"

190. Article 15 para. 1 let. f) of the FACR Statutes reads as follows:

> "*[Every member of the Association has the following rights in particular ...] to file a complaint, after exhausting all means ensuing from these Statutes and regulations issued on the basis hereof, with a court of law demanding the invalidation of a decision made by a body of the Association due to its being contrary to the law or these Statutes; every member of the Association also has the right to demand a review of a decision made by a body of the Association before the Lausanne-based Court of Arbitration for Sport, as stipulated in FIFA and UEFA regulations*".

191. The Appellants filed their appeal in application of the above provisions to the CAS, and the Respondents did not object to the jurisdiction of the CAS. Furthermore, all Parties confirmed the jurisdiction of the CAS by signing the Order of Procedure.

192. It follows from all of the above that the CAS has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

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

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

194. The Appealed Decision was notified on 24 June 2021. The Appellants filed the Statement of Appeal on 7 July 2021, i.e. within the 21-day time limit. It follows that the appeal is admissible.

195. The Appeal Brief was sent to the CAS Court Office on 23 July 2021, i.e within the deadline prescribed by Article R51 para. 1 of the CAS Code.

VII. OTHER PROCEDURAL ISSUES

196. By letter of 14 December 2021, the Second Respondent requested the CAS to exclude two of the Appellants' participants from attending the hearing. The Second Respondent argued that those two persons had not been notified to the Czech Bar Association as a member of the law firm of the Appellants' counsel and cannot therefore act as legal counsel under the applicable Czech regulations regarding the legal profession. Admitting those two persons could thus circumvent the non-public nature of the CAS hearing and jeopardize the confidential nature of the present proceedings. On 18 December 2021, the Appellants requested to not admit to the hearing the witness called by the Second Respondent. The Appellants argued that close links existed between the legal counsel of the Second Respondent and the witness and that such close links could "undesirably motivate" the witness' testimony.

197. The Panel notes that neither the Appellants nor the Second Respondent had established compelling reasons to exclude the other Party's participants or witness, respectively. The Panel also notes that pursuant to Article R59 of the CAS Code, the Parties are bound by confidentiality obligations. The Panel also observes that during the hearing, the Parties would have the chance to make any comments they had about the alleged conflict of the Second Respondent's witness and that the Panel will have discretion to assess the reliability of the witness testimony. The Panel therefore decided that the Appellants' participants and the Second Respondent's witness were allowed to participate at the hearing. The CAS Court Office informed the Parties about the Panel's decision by letter of 4 January 2022.

VIII. APPLICABLE LAW

198. The starting point for determining the applicable law on the merits is – first and foremost – the *lex arbitri*, i.e., the arbitration law at the seat of the arbitration. Since the CAS has its seat in Switzerland (Article S1 and Article R28 of the CAS Code), Swiss arbitration law applies. According to Article 176 para. 1 of the PILA, the provisions of Chapter 12 of the PILA for international arbitration proceedings shall apply if the place of residence and/or domicile of at least one party was outside Switzerland at the time of the execution of the arbitration agreement. It is undisputed that this prerequisite is fulfilled in the case at hand.

199. Article 187 para. 1 of the PILA stipulates in regard to the applicable law on the merits as follows:

> *"1 The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected. 2 The parties may authorize the arbitral tribunal to decide ex aequo et bono."*

200. The Parties have entered into a choice-of-law agreement by their submitting the present dispute to the CAS. Reference is made insofar to CAS jurisprudence, in particular to CAS 2014/A/3850, nos. 45 et seq., where the CAS panel held as follows:

> *"The PILA is the relevant law. ... Art. 187 para. 1 of the PILA provides – inter alia – that 'the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected' ... According to the legal doctrine, the choice of law made by the parties can be tacit and/or indirect, by reference to the rules of an arbitral tribunal. In agreeing to arbitrate the present dispute according to the CAS Code, the Parties have submitted to the conflict-of-law rules contained therein, in particular to Article R58 of the CAS Code. ..."*

201. The conflict-of-law provision in the CAS Code is to be found in Article R58 of the CAS Code, which 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".*

202. Article R58 of the CAS Code provides, in other words, that the dispute shall be decided first and foremost according to the 'applicable regulations'. In the case at hand, the applicable regulations are the regulations of the FACR.

203. While the Appellants and the First Respondent have not expressed themselves about the applicable law, the Second Respondent argues that the law applicable to the merits are

the FACR regulations and, subsidiarily, Czech law. This is in line with the Panel's conclusions.

204. Consequently, the Panel will, first, revert to the regulations of the FACR as the 'applicable regulations' within the meaning of Article R58 of the CAS Code in order to resolve the dispute. In a second step, and only for questions not covered by the FACR's regulations, the Panel shall consider Czech law, which is the law of the country where the FACR is domiciled.

IX. MERITS OF THE APPEAL

205. The main issues to be resolved by the Panel are the following:

1. Alleged procedural flaws in the FACR proceedings
2. The nature of the Second Contract
3. Did the Player terminate the Second Contract with just cause?
4. If so, what is the result?

206. The Panel will address these issues in turn.

1. Alleged procedural flaws in the FACR proceedings

207. The Appellants complain about various procedural flaws in the FACR proceedings, such as the duration of the proceedings and the requirement to pay an appeal fee. Moreover, according to the Appellants, the FACR arbitration bodies lack independence and impartiality. According to them, Article 6 of the European Convention of Human Rights and Article 10 of the Universal Declaration of Human Rights were violated.

208. The Panel, however, finds that the above is irrelevant for the outcome of the present arbitration for the following reasons.

209. Pursuant to Article R57 para. 1 of the CAS Code, the Panel has full power of review of the facts and of the law, i.e. to review the matter *de novo*. This power of CAS panels is due to the fact that appeals to CAS are, in principle, the first opportunity for the parties to bring their case before an independent arbitral tribunal, since the jurisdictional organs of sports organizations usually do not meet the criteria to be considered as independent arbitration tribunals (cf. also Mavromati/Reeb, "The Code of the Court of Arbitration for Sport, Commentary", 2015, p. 507). This is particularly relevant in the present case, where even the Second Respondent has confirmed that proceedings before the FACR Board of Arbitrators are not arbitration proceedings within the meaning of the Czech Arbitration Act, but merely intra-society proceedings governed by the FACR regulations.

210. The CAS is a completely independent and impartial arbitration court as the Swiss Federal Tribunal ("SFT") has confirmed on various occasions (cf. SFT 129 III 445, "*Lazutina*"; SFT 4A_612/2009 consid. 3.1.3, "*Pechstein*"). The Appellants were granted the unrestricted right to present their case in the present arbitration proceedings before the CAS, and the CAS Panel deals with, as already mentioned, the case *de novo*, evaluating all facts and legal issues involved in the dispute.

211. In light of this wide mandate of the Panel, any procedural flaws and irregularities of the previous instance proceedings purported by the Appellants could be cured in the present appeal proceedings before the CAS. At the end of the hearing held on 6 January 2022 in this proceeding, all of the Parties confirmed that their right to be heard has been respected in the course of the present proceedings.

2. The nature of the Second Contract

212. The Parties disagree as to the nature of the Second Contract. While the Respondents argue that the Second Contract is an agreement on the basis of which the Player was engaged as a 'self-employed' person, the Appellants take the view that the Second Contract must be "re-qualified" as an employment agreement.

213. When analysing this question, the Panel first notes that pursuant to its Clause IX. para. 6, the Second Contract "*is governed by the laws of the Czech Republic*" and that the parties "*undertake to apply their mutual rights and obligations in accordance with the laws of the Czech Republic, in particular the provisions of the Civil Code, the EU regulations, the regulations of the FACR, UEFA and FIFA*".

214. The Panel, in a next step, moved on to analyse the judgement of the Czech Supreme Administrative Court of 13 July 2017 that the Second Respondent produced as part of its Answer. The Supreme Administrative Court explained, *inter alia*, that

> *"the activity of professional athletes is so unclear and essentially unregulated in law that it offers relative contractual freedom in the sense that the activity of a player for a sports club can be contractually determined either in the form of self-employment or in the form of an employment contract, and therefore the content of the contract on the basis of which the activity is performed must always be relied upon" (para. 24).*

215. The Czech Supreme Administrative Court went on to explain that the "*activity of a professional football player is borderline in that regard*", i.e. it is borderline as to whether the activity of a player is an independent activity or a dependent activity under an employment agreement.

216. The Czech Supreme Administrative Court then again stressed the importance of the actual content of the contract at hand before it concluded that

> *"an interpretation which is clearly disadvantageous and unwanted for both parties to the contractual relationship in question, i.e. for the athlete and his club, cannot be applied without further consideration. All of the above professional contracts of the complainant clearly show the intention of both parties to regulate their relationship so that the complainant would carry out the activity of a football player as a self-employed activity. […] The Supreme Administrative Court does not intend to question the conclusions of its previous case-law and concludes that the complainant's activity as a professional football player must, for the reasons set out above, be regarded as a self-employment within the meaning of Section 7 of the Income Tax Act" (para. 26).*

217. While this judgement was apparently rendered by an administrative court in the context of taxation, the Appellants have not argued, nor provided any evidence, that a civil court in the Czech Republic would have decided otherwise.

218. The Panel concludes that in the Czech Republic, clubs and professional football players enjoy a certain discretion in respect of the content of their agreement and its qualification and are, in particular, in the position to agree that a player shall be treated as self-employed. It has, however, not been demonstrated that the contract that was the subject matter of scrutiny by the Czech Supreme Administrative Court is the same as, or comparable with, the Second Contract at hand in the present proceedings. Thus, even if the Panel acknowledges that in the Czech Republic it is apparently permissible for a professional football club to engage a professional player on the basis of a self-employment agreement, the Panel is hesitant to simply rely on that decision of the Czech Supreme Administrative Court decision without any further reflexion.

219. The Panel concurs with the Czech Supreme Administrative Court's conclusions that the content of a contract is most relevant, and that the question of whether the Second Contract is to be considered a contract for self-employment or, as the Appellants request, an employment agreement, can ultimately be left open. In line with the findings of the Czech Supreme Administrative Court, the Panel holds that the "*content of the contract on the basis of which the activity is performed must always be relied upon*" and that the answer to the relevant question at hand, i.e. whether or not the Player violated the Second Contract by giving notice of early termination, must be determined first and foremost by analysing the text of the Second Contract.

220. This question will be analysed in the following section.

3. Did the Player terminate the Second Contract with just cause?

a) Introduction

221. The Panel has already noted that pursuant to Clause IX. para. 6 of the Second Contract, the parties shall, inter alia, apply their rights (also) in accordance with the FIFA Regulations. In addition to this general rule, Clause XIII. para. 13 of the Second Contract provides a specific rule in respect of the termination of the Second Contract and sets out that the parties

> *"are further entitled to terminate the contract in accordance with relevant provisions of the FIFA Regulations on the Status and Transfer of Players as amended from time to time".*

222. Article 14 of the FIFA RSTP (2019 edition, effective as of 1 June 2019) provides:

> *"14 Terminating a contract with just cause*
> *1.*
> *A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.*
> *2.*
> *Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause".*

223. Through reference in Clause IX. para. 6, Article 14 of the FIFA RSTP became an integral part of the Second Contract, which means that the Player would have had the right to give notice of early termination if there had been just cause within the meaning of the FIFA RSTP.

224. In respect of what 'just cause' means, the FIFA Commentary on the Regulations on the Status and Transfer of Players (ed. 2021) (the "RSTP Commentary") gives pertinent guidance. According to Article 14.1 b), referring to and summarizing relevant FIFA and CAS case law, for a valid reason for a unilateral contract termination to exist:

(i) the breach of the contract must be sufficiently serious so as to justify an early termination,
(ii) the breach will be considered sufficiently serious when there are objective circumstances that would render it unreasonable to expect the relationship to continue and
(iii) the termination of the contract should be an action of last resort (*ultima ratio* action), which typically requires that the terminating party has previously warned the other party and given it a chance to comply with its obligations.

225. Considering the above, the Panel went on to analyse the seriousness of the (potential) breach of the Second Contract by the First Respondent and, in a next step, to assess whether the Player's termination was, indeed an *ultima ratio* measure under Article 14 para. 2 of the FIFA RSTP complying with the criteria set out above in Article 14.1 b) of the FIFA RSTP Commentary.

b) Was the breach sufficiently serious to justify the unilateral early termination?

226. In respect of Article 14 para. 2 of the FIFA RSTP referring to abusive conduct (that came into force on 1 June 2018), the FIFA RSTP Commentary explains that

> *"Classic examples of such conduct include a club deciding for a prolonged period of time to separate a player from the rest of the team".*

and then provides that in accordance with relevant CAS jurisprudence (e.g. CAS 2015/A/4286; CAS 2014/A/3642):

> *"key questions to consider when assessing whether separating a player from the first team constitutes abusive conduct include:*
>
> - *Why was the player sent to the reserve team […]?*
> - *When was the measure implemented? Was it imposed while (official) matches were being played?*
> - *Was the player still being paid their full salary and remuneration?*
> - *Was it a permanent or temporary measure?*
> - *Were there adequate training facilities for the player to use when training?*
> - *Did the contract between the club and the player expressly grant the club the right to drop the player to the reserve team?*
> - *Did the contract between the club and the player expressly guarantee the player the right to only play and train for the first team?*
> - *Was the player training alone or with the team?"*

227. The Panel holds that in the present case there is no reason to deviate from this well-established practice, but in light of *inter alia* the circumstances of the case, holds that the main questions to be assessed in the present case include: (i) why was the Player sent to the "B" team? (ii) was it a permanent or temporary measure? (iii) did the Second Contract expressly grant the First Respondent the right to demote the Player to the "B" team?

i. Why was the Player re-assigned to the "B" team?

228. As to the question of why the Player was demoted to the "B" team, the Panel considered, *inter alia*, the Appellants' explanations that the sole reason for the First Respondent to re-assign the Player to the reserve team was the Player's resistance to signing an extension of the Second Contract. The Panel, in particular, considered the Appellants' explanations as to public statements made by officials of the First Respondent in that respect.

229. According to the Appellants, on 19 December 2019, the First Respondent's Sports Director made, *inter alia*, the following statement on the First Respondent's website:

"We don't count on Michal for spring, even though he still has a contract for half a year, but it didn't pay off for us with Vaněček. He didn't have a good finish, he admitted it. That's why we decided to do it. I have already informed Jeřábek that it is not promising for us and will start in a flat 5 on January 6, if there is no person interested in his services. I am open to negotiations with potential applicants, but we want to get the most out of it for the club".

230. On 23 December 2019, the First Respondent's Coach gave an interview for iSport.cz where he said, *inter alia*, the following in respect of the Player's future:

"We offered him a contract extension for half a year and we argued with him. In the final, he told us that he would not extend, he would like to try it abroad. For me as a coach, this is a closed chapter. He finishes. He will start with the "B" team from January".

231. On 6 January 2020, the First Respondent published another article on its website where the First Respondent's Sports Director and Coach stated, *inter alia*, the following:

"From today, Manel Royo, who is looking for an engagement, and Michal Jeřábek, whose contract ends in summer, will be preparing with the "B" team".

232. In a video published as part of the aforementioned article, the First Respondent's Sports Director also stated:

"Of course, he has a signed contract, we will pay him as we should, but I don't count with him in the future and now it depends, I say, only on him and the agent if they can find him something. And whether he likes it, I say, I informed him well in advance, adding that, of course, I respect him for his decision, that the situation will simply develop like this, it develops like this, I followed, what I said, and now, I say, it's up to them".

233. In the same video, the First Respondent's Coach noted that:

"However, Jéřa told me that he simply no longer wanted to play for Teplice and I as a coach could not ask the player to wear a yellow and blue jersey and I just started to include a player who respects the jersey, see Knapík, and so on".

234. The foregoing statements were not contested by the Respondents.

235. Likewise, the Player's explanations as part of his Party statements during the hearing that the First Respondent had threatened to re-assign him to the "B" team if he did not sign the extension of the Second Contract and, while being with the "B" team, offered to move him back to the "A" team should he sign, remained uncontested.

236. The Respondents, however, explain that the Player's demotion to the "B" team was mainly the result of the injury of the Player as well as his inadequate physical performance that had been caused by the Player's omission to wear the knee support and by his individual training sessions that he had undertaken without the First Respondent's

approval. The First Respondent further explained that pursuant to the Second Contract, it had the sole discretion to determine to which team the Player would be assigned.

237. The Panel, after careful review of the arguments and evidence that the Parties have brought forward, is of the opinion that, indeed, it appears that the First Respondent's decision to demote the Player to the "B" team" was the result of the Player's decision not to extend the Second Contract. The Panel is of the opinion that the First Respondent's public statements – in particular, those referred to above – clearly demonstrate the First Respondent's frustration about the Player's position not to extend the Second Contract and the First Respondent's decision to re-assign the Player to the "B" team so as to allow other players of the First Respondent to join the "A" team squad.

238. In the Panel's view, the First Respondent's explanations as to why they re-assigned the Player to the "B" team are, on the other hand, not convincing. First, their statements that the Player was demoted because of his injury and reduced physical performance contradict the above-mentioned statements made by the First Respondent's representatives vis-à-vis the public. In these public statements, none of the First Respondent's representatives mentioned the Player's injury and purported reduced physical performance as a reason for the Player's re-assignment to the "B" team. Rather, they complained about the Player's resistance to signing the Second Contract extension and explained that they could no longer count on him. Furthermore, the Panel is of the opinion that the First Respondent is contradicting itself in that it contends, on the one hand, that the Player's physical performance was reduced, but, on the other hand, explains that after terminating the Second Contract and signing a new contract with the Second Appellant, the Player played for the Second Appellant's "A" team. Had the Player been in that bad physical shape as the First Respondent contends, the Player would have hardly been in a position to play in the top league after his transfer. The foregoing is a proper conclusion even if the Panel noted that according to the Player, he did not play the first matches of his new team as the second half of the season had already started when he moved and it was for this reason difficult to get a place in the new team's line-up. The Second Appellant, however, confirmed that the Player at the time of his joining the new team was perfectly fine, even in better shape than some other players of the new team.

239. In respect of the purported breaches by the Player of the Second Contract by not following the First Respondent's instructions to wear a knee support and by undergoing unauthorized individual trainings, the Panel is of the opinion that the First Respondent should have immediately intervened and given the Player a formal warning and/or undertaken any other suitable measure to stop the Player's (alleged) violations of the Second Contract. According to the Player's statement during the hearing, which was not contested by the First Respondent, the latter never addressed the Player's attitude before his re-assignment to the "B" team. It was only after the Player had requested re-

instatement into the "A" team that the First Respondent raised the issue of injury and not wearing the knee support. The First Respondent, on the other hand, did not establish that they had actually given the Player any formal warning for non-compliance by the Player with the First Respondent's directions. The First Respondent, rather, continued to submit an offer to the Player for the extension of the Second Contract, because, as the First Respondent explains, they simply needed and thus wanted him. In the Panel's view, it has been established that the decision of the First Respondent to re-assign the Player to the "B" team had been taken after they had realized that the Player was still not ready to extend the Second Contract.

ii. Did the Second Contract allow the First Respondent to reassign the Player to the "B" team?

240. The Panel does, further, not agree with the First Respondent when it argues that the Second Contract allowed the First Respondent to assign the Player to the reserve team at its discretion. Clause IX. para. 1 of the Second Contract provides that the parties shall exercise their mutual rights and obligations, *inter alia*, in accordance with the regulations of FIFA, i.e. in particular, the FIFA RSTP. The FIFA RSTP rules on contractual stability are a core objective of the football system applicable throughout the football family worldwide and reflect generally accepted principles of contract law, such as the principle of *pacta sunt servanda* (cf. FIFA RSTP Commentary, introduction to Chapter IV; p. 101).

241. Pursuant to Clause II. para. 2, the subject matter of the Second Contract is, *inter alia*, "*the Player's obligation to perform the activities of a professional football player and the activities associated with the status of a professional football player*". The Panel is of the opinion that in conjunction with Annex No. 01 to the Second Contract, which sets out the bonuses that the Player was to earn for playing matches in the Czech football league, it is evident that the Player had been engaged to play, in principle, in the First Respondent's "A" team.

242. This does not mean that the Player had the right to play under all circumstances exclusively for the "A" team. But, in accordance with established CAS jurisprudence (e.g. CAS 2014/A/3642, no. 113), the Panel is of the opinion that even if the Second Contract does not expressly set out that the Player shall be a member of the "A" team, the Player does, in principle, have certain fundamental rights, such as his personality rights, and that those would be violated if the Player was re-assigned to the reserve team without valid reasons. Even if a team's coach has and must have the right to move players between teams for reasonable sporting reasons, this will not mean that the coach or the club can do so at their free discretion without having regard to the rights and needs of a player. This means, in particular, that demoting the Player to the reserve team because he is not willing to sign an extension to his existing Contract as he is looking

for options to further his career is not justifiable, even if the Second Contract does not expressly provide that the Player has been engaged to exclusively play for the "A" team. Doing so would deprive the Player from freely deciding for which team he wants to play after the expiration of his existing Contract and would, thus, violate his right to develop his career at his own choice.

243. The foregoing does not exclude that a coach or club, respectively, can send a player to the reserve team or the “B” team, either just to play matches with that team or to join the reserve team also for trainings. But the Panel is of the firm opinion that such measures are only justified in case of objective sporting, medical or disciplinary reasons and for a limited period of time. The Panel acknowledges that it may well be justified for a coach or club to re-assign a player to the "B" team or to have the player train alone for a certain period of time, if he did, e.g. not behave well and disregarded the coach's instructions; or if the player needs a reduction of his workload due to an injury; or if he is re-assigned for other appropriate reasons.

244. In the case at hand, however, it has been established that the main reason for re-assigning the Player to the "B" team was his decision to not sign the extension of the Second Contract offered by the First Respondent, as the Player wanted to check other options for his future after the expiry of his existing Contract. The First Respondent could not establish, in the Panel's view, that their decision to demote the Player to the "B" team was mainly due the Player's injury and his lack of physical performance. The evidence on file, particularly those in respect of the public statements made by representatives of the First Respondent, speak another language. Had the physical conditions of the Player actually been reasons for concern, the First Respondent could and should have set out and discussed with the Player a plan to bring him back as soon as possible to a satisfactory level so that he could join the "A" team again. If the injury of the Player and his reduced physical condition had actually been the reasons for the First Respondent to re-assign the Player to the "B" team, also the First Respondent's goal should have been to bring the Player back to the first team as soon as possible. Simply assigning the Player to the "B" team without further ado is not an appropriate measure to bring back a player into the first team as quickly as possible.

iii. Was the Player's re-assignment a temporary or permanent measure?

245. The First Respondent also argued that the Player's demotion to the "B" team was not permanent or that, at least, it cannot be established that it was permanent. The Panel, again, disagrees with the First Respondent. The evidence on file clearly indicates otherwise. It is uncontested that, e.g., the First Respondent's Sports Director publicly said "*We don't count on Michal for spring, even though he still has a contract for half a* year" and the First Respondent's coach said "*For me as a coach, this is a closed chapter. He finishes*". In the Panel's view, this cannot be understood as anything other than

expressing the First Respondent's decision that the Player would remain with the "B" team for the remainder of the season and that the Player's re-assignment to the "B" team was thus permanent.

iv. Other factors

246. The Panel notes that the Second Contract did not provide for an express right of the Player to always be a member of the "A" team, that he continued to receive his (basic) remuneration and that he could train with a team, i.e. the First Respondent's "B" team. However, none of the factors going in favour of the First Respondent outweigh the negative effects that the Player had to sustain as a result of the First Respondent's conduct.

v. Final remark

247. As a final point, the Panel also considered whether the demotion of the Player could have been used by him as a pretext to unilaterally terminate the Second Contract with just cause in order to be able to immediately join the Second Appellant's team. The Panel considered, in particular, that in economic terms, the transfer was favourable for both the Player and the Second Appellant. While the Player managed to sign a contract with a significantly higher remuneration, the Second Appellant was able to hire the Player during the season without the need to pay a transfer fee, as after the termination of the Second Contract the Player was a free agent. The Panel, however, holds that even if the course of action provides some indications that this could have been the case, it noted that, first, the Player had, indeed, good reason to terminate the Second Contract and, second, the Second Appellant plausibly explained during the hearing that there had been no contact between the Player and the Second Appellant prior to his termination of the Second Contract, albeit there had been some interest in the Player after the Second Appellant had heard about the Player's demotion to the "B" team. Furthermore, the Panel noted that the Respondents did not argue or demonstrate otherwise.

c) Was the termination an ultima ratio *action by the Player?*

248. The Appellants have established that on 13 January 2020, the Player sent a first written notice to the First Respondent requesting re-instatement into the first team (i.e. the “A” team) and noting that an early termination of the Second Contract would be considered the last resort to resolve the situation. The Player sent a similar written notice on 4 February 2020, in which the Player requested to be re-instated in the first team within three days and explained, *inter alia*, that if the situation was not rectified by the First Respondent, the breach of the Second Contract by the First Respondent may lead to the unilateral termination by the Player of the Second Contract for just cause. As the First Respondent had not reinstated the Player into the "A" team, on 12 February 2020 – i.e.

30 days after sending the first written notification – the Player sent the First Respondent a written notice of termination of the Second Contract.

249. The aforementioned was not contested by the Respondents. Given that the Player was with the "B" team for a period of 38 days and further given that the Player sent two written requests for re-instatement into the "A" team and reminded the First Respondent in both notices about the option of early termination, and ultimately gave the Club 30 days to cure the defect, which the Club did not, the Panel takes the view that the Player's termination was, indeed, an *ultima ratio* action and the Player had given the First Respondent a reasonable chance to comply with its obligations before he terminated the Second Contract. The Panel is of the opinion that the Player could not have been reasonably expected to remain with the "B" team until the end of the season as this could have significantly affected his career and further development.

4. Result

250. Given that (i) the First Respondent re-assigned the Player to the "B" team because the Player had not agreed to extend the Second Contract (and not for sporting or medical reasons as the First Respondent contends), (ii) the First Respondent excluded the Player from the "A" team for the remainder of the season and thus the Player's re-assignment must be considered permanent, (iii) the Second Contract did not allow the First Respondent to permanently re-assign the Player to the "B" team for this reason, (iv) the Player had been with the "B" team for 38 days before he terminated the Second Contract, (v) the Player had sent two written notices to the First Respondent requesting re-instatement into the "A" team and had given the First Respondent a reasonable chance of 30 days to cure the breach of the Second Contract before he decided to terminate the Second Contract, and (vi) the termination is to be considered an *ultima ratio* measure of the Player, the Panel holds that the First Respondent had seriously violated the Second Contract (even though they continued to pay the remuneration) and, as a result, the Player had the right to terminate the Second Contract for just cause.

X. CONCLUSION

251. Against the above background, the Panel concludes that the appeal must be upheld and the Appealed Decision is to be annulled.

252. For this reason, all other motions or prayers for relief are dismissed.

XI. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Michal Jeřábek and Fotbalový Klub Jablonec, a.s. on 7 July 2021 against the decision issued by the Appeal Senate of the Board of Arbitrators of the Football Association of the Czech Republic on 23 June 2021 is upheld.
2. The decision rendered by the Appeal Senate of the Board of Arbitrators of the Football Association of the Czech Republic on 23 June 2021 is annulled.
3. (…).
4. (…).
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne
Date: 10 November 2023

THE COURT OF ARBITRATION FOR SPORT

András Gurovits
President of the Panel

Vanja Smokvina
Arbitrator

Bernard Hanotiau
Arbitrator