TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2022/A/8571 Mezökövesd Zsory FC v. Serder Serderov

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: **Ms. Yasna Stavreva**, Attorney-at-law, Sofia, Bulgaria

in the arbitration between

Mezökövesd Zsory FC, Hungary
Represented by Dr. Istvan Demeter, Attorney-at-law, Demeter Law Firm, Miskolc, Hungary

- Appellant -

and

Mr. Serder Serderov, Russia
Represented by Mr. Mikhail Prokopets, Mr. Sergey Lysenko and Ms. Daria Lukienko, Attorneys-at-law, SILA International Lawyers, Moscow, Russia

- Respondent -

I. PARTIES

1. Mezökövesd Zsory FC (the "Appellant" or the "Club") is a Hungarian professional football club with its seat in Mezökövesd, Hungary. It is affiliated to the Hungarian Football Federation (the "HFF"), which in turn is an affiliated member of the Fédération Internationale de Football Association (the "FIFA").

2. Mr. Serder Serderov (the "Respondent" or the "Player"), born on 10 March 1994, is a professional Russian football player who was in an employment relationship with Mezökövesd Zsory FC until 11 June 2021.

3. The Appellant and the Respondent are jointly referred to as the "Parties".

II. INTRODUCTION

4. The appeal is brought by the Appellant against the decision of the FIFA Dispute Resolution Chamber (the "FIFA DRC") dated 3 November 2021 with regard to the payment of outstanding salaries and compensation for breach of contract (the "Appealed Decision").

III. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the remote hearing held on 30 May 2022. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, she refers in her Award only to the submissions and evidence she considers necessary to explain her reasoning.

6. On 6 August 2020, the Appellant and the Respondent concluded an employment contract valid as from the date of signature until 30 June 2023 (the "Contract"), whereby the Appellant undertook to pay to the Respondent a monthly salary of Hungarian Forint (HUF) 4,660,000 net (approx. EUR 13,000), payable until the 10th day of every month.

7. Article 10 of the Contract reads as follows:

> *"The professional management or the management of the Employer may determine in his sole discretion at what team – or in line with the content of sub-point 8.a) individually, or otherwise shall the Employee perform his training work, or in the matches of what team he is obliged to participate. The decision to order the Employee to undergo individual trainings or participate for a team other than main team of the Employer shall be based exclusively on medical reasons not allowing the Employee to participate in training with the main team. Any such decision shall not effect the essential conditions of the present contract, including those outlined in the Personal Conditions."*

8. In addition, Article 47 of the Contract provides as follows:

"The Employee acknowledges that if he is not included in the first team of the Employer, or based on the decision of the professional management he is transferred to the second or further teams of the Employer, his base wage will be reduced to the percentage determined in the Personal Conditions of the amount given in point 15 – but to max. its 50% from the 15th day of the month following the decision."

9. Regarding jurisdiction in case of disputes, Article 49 of the Contract states as follows:

"The Parties agree that they shall make efforts to settle their possible dispute in amicable way by negotiations. If these efforts fail – in cases determined by the rules of MLSZ or FIFA – the Parties may turn to the organizational units with MLSZ or FIFA scope of authority, in case of labour dispute to the Administrative and Labour Court having competence and scope of authority, and in all other disputes arising out of their legal relationship the Parties stipulate the exclusive jurisdiction of the Sports Standing Arbitration Court based on the Article 47 of the Sports Law. The number of arbitrators is three; the procedure is determined by the Procedural Rules of the Arbitration Court."

10. On 31 January 2021, the Appellant sent a letter to the Respondent informing him that with immediate effect he would be part of the Appellant's second team and that his salary would be reduced by 50% in accordance with Article 47 of the Contract.

11. The letter dated 31 January 2021 stipulated – in its relevant parts – as follows:

*"Considering that you **as a professional soccer player would not be the member of the first soccer team of Mezökövesd Zsory FC Kft.,** and in accordance with the decision of the management of Mezökövesd Zsory Futball Club Korlatort Felelösségü Tarsasag start on the 31th January 2021 you would become a member of the Mezökövesd II soccer team. From the aforementioned date you are obliged to train together with the Mezökövesd Zsory II. soccer team.*

*Also considering the circumstances described hereabove I also inform you that based on the **Chapter XI (Miscellaneous provisions) point 47. of the employment contract your base salary will be reduced by 50 percent, which will come into effect on the 15th February 2021.**"*

12. On 10 February 2021, the Respondent sent a letter to the Appellant objecting the decision to ban him from the first team and to reduce his salary explaining that such decision may be based exclusively on medical reasons which had not existed at that time. In the same letter, the Respondent requested *"**the Club to make payment of the remaining monthly salary for January 2021 in the amount of HUF 2 330 000 and return me to the main team**"* within 10 days.

13. On 10 March 2021, the Respondent received a monthly salary of HUF 1,790,000.

14. On 16 March 2021, the Respondent put the Appellant in default and requested payment of HUF 5,200,000 (the difference to the full amounts of his monthly salaries for January and February 2021).

15. On 19 March 2021, the Appellant sent a letter to the Respondent rejecting his requests, as in its view, the reduction of the Respondent's salary and his ban from the first team was in accordance with Article 10 and Article 47 of the Contract.

16. On 4 May 2021, the Respondent requested in writing from the Appellant information if he *"was included in the official first team players' squad list of Mezökövesd for the season 2020/2021"* and if he *"should be available to play for Mezökövesd first team in OTP bank liga 2020/2021 season"*.

17. On 18 May 2021, the Respondent put the Appellant in default and requested payment of HUF 9,320,000 corresponding to 50% of his salaries between January and April 2021 within 15 days, however to no avail. In addition, he repeated its request to be reinstated in the Club's first team.

18. On 5 June 2021, the Respondent granted the Appellant an additional and final deadline of 5 days to comply with its financial obligations towards him.

19. On 9 June 2021, the Appellant rejected the Respondent's requests.

20. On 10 June 2021, by means of an audio message via WhatsApp, the Appellant ordered the Respondent to train individually.

21. On 11 June 2021, the Respondent terminated the Contract with the Appellant due to the overdue payments of his salaries. In the termination notice, the Player requested the Appellant to pay the outstanding salaries plus a compensation for breach of Contract equal to the residual value of the Contract in the total amount of HUF 111,840,000 (*i.e.* for the period June 2021 till June 2023).

22. On 16 June 2021, the Appellant sent a letter to the Respondent with a plan of *"individual training sessions"* in which the Respondent was requested to attend.

23. On 17 June 2021, the Respondent informed the Club that the Contract was terminated on 11 June 2021.

24. According to information contained in FIFA's Transfer Matching System (the "TMS"), the Respondent signed a new employment contract with the Croatian club NK Istra 1961, valid as from 28 July 2021 until 31 May 2023, including a monthly salary of EUR 3000 (approx. HUF 1,080,000).

IV. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

25. On 23 June 2021, the Respondent lodged a claim against the Appellant before the FIFA DRC which included, *inter alia*, the following requests for relief:

> *"1. The Respondent, Mezökövesd Zsory FC Kft., has to pay to* the [Player], *Mr Serder Serderov, the amount of HUF 11,650,000 net as outstanding remuneration, plus interest as follows:*
>
> - *5% p.a. on the amount of HUF 2,330,000 as from 11 February 2021 until the date of effective payment;*

- *5% p.a. on the amount of HUF 2,330,000 as from 11 March 2021 until the date of effective payment;*

- *5% p.a. on the amount of HUF 2,330,000 as from 11 April 2021 until the date of effective payment;*

- *5% p.a. on the amount of HUF 2,330,000 as from 11 May 2021 until the date of effective payment;*

- *5% p.a. on the amount of HUF 2,330,000 as from 11 June 2021 until the date of effective payment;*

2. The Respondent, Mezökövesd Zsory FC Kft., has to pay to the [Player], *Mr Serder Serderov, the amount of HUF 111,840,000 net as compensation for breach of contract, as well as 5% interest p.a., starting from 12 June 2021until the effective date of the payment;*

3. The Respondent, Mezökövesd Zsory FC Kft., is sanctioned with a ban from registering any new players, either nationally or internationally for two entire and consecutive registration periods."

26. The Appellant, when being notified for the claim contested the competence of FIFA on the basis of Article 49 of the Contract. According to the Appellant, FIFA was not competent to deal with the present matter because a lawsuit was already pending in front of the labour tribunal of Miskolc, Hungary, allegedly submitted on 2 July 2021. Furthermore, the Appellant submitted that Article 49 of the Contract constituted an exclusive jurisdiction clause.

27. On 3 November 2021, the FIFA DRC rendered a decision (the "Appealed Decision"), in which the claim of the Respondent was partially accepted.

28. The operative part of the Appealed Decision states as follows:

"1. The claim of the Claimant, Serder Serderov, is admissible.

2. The claim of the Claimant is partially accepted.

3. The Respondent, Mezökövesd Zsory FC Kft. has to pay to the Claimant the following amount:

- Hungarian Forints (HUF) 2,330,000 net as outstanding remuneration plus 5% interest p.a. as from 11 February 2021 until the date of effective payment;

- HUF 2,330,000 net as outstanding remuneration plus 5% interest p.a. as from 11 March 2021 until the date of effective payment;

- HUF 2,330,000 net as outstanding remuneration plus 5% interest p.a. as from 11 April 2021 until the date of effective payment;

- HUF 2,330,000 net as outstanding remuneration plus 5% interest p.a. as from 11 May 2021 until the date of effective payment;

- HUF 2,330,000 net as outstanding remuneration plus 5% interest p.a. as from 11 June 2021 until the date of effective payment;

- HUF 106,720,000 net as compensation for breach of contract plus 5% interest p.a. as from 12 June 2021 until the date of effective payment;

4. Any further claims of the Claimant are rejected.

*5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.*

*6. Pursuant to art. 24bis of the Regulations on the Status and Transfer of Players (February 2021 edition), if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:*

1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be up to three entire and consecutive registration periods.

2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.

7. The consequences shall only be enforced at the request of the Claimant in accordance with art.24bis par.7 and 8 and art.24ter of the Regulations on the Status and Transfer of Players.

8. This decision is rendered without costs."

29. Regarding the competence, the FIFA DRC held as follows:

"(…) The Chamber however noted that the Respondent challenged the competence of FIFA to hear the dispute at stake, as it is allegedly affected by lis pendens. In particular, the Respondent points out that the Claimant has already lodged a claim with the same parties and object in front of the labour tribunal in Miskolc, before lodging the claim at FIFA on 23 June 2021.

Furthermore, the DRC noted that the Respondent failed to submit any documentation that such alleged claim in front of a Hungarian labour court was indeed lodged before the proceedings were initiated before FIFA. What is more, according to the Respondent said proceedings in Hungary were initiated on 2 July 2021, whereby the player lodged his claim in front of FIFA already on 23 June 2021.

In addition, the Chamber referred to clause 49 of the employment contract, according to which: 'The Parties agree that they shall make efforts to settle their possible dispute in amicable way by negotiations. If these efforts fail – in cases determined by the rules of MLSZ or FIFA – the Parties may turn to the organizational units with MLSZ or FIFA scope of authority, in case of labour dispute to the Administrative and Labour Court having competence and scope of authority, and in all other disputes arising out of their legal relationship the Parties stipulate the exclusive jurisdiction of the Sports Standing

Arbitration Court based on the Article 47 of the Sports Law. The number of arbitrators is three; the procedure is determined by the Procedural Rules of the Arbitration Court.'

The Chamber, after analysing the wording of the jurisdiction clause, concluded that such clause did not clearly and exclusively establish the competence of the labour court in Hungary.

As a consequence, the Chamber was of the opinion that the Respondent's objection to the competence of FIFA to deal with the present matter has to be rejected and that the Dispute Resolution Chamber is competent, on the basis of art. 22 lit. b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance."

30. In substance, the FIFA DRC held as follows:

"(…) The Chamber started to examine the circumstances of the player's removal from the first team, since the reduction of his salaries is connected therewith.

(…) Taking into account the documentation on file, the members of the Chamber noted that the Respondent failed to reply to the player's various requests for the reasoning of his removal from the first team. There is no proof on file that the club ever informed the player of the reasons of his removal from the first team and about a possibility to rejoin the first team.

Taking into account the club's actions, the DRC has concluded that player's removal from the first team was permanent and not solely based on his recovery. In this context, the Chamber took notice that on 10 June 2021, the player was even excluded from the team training with the second team and sent to train alone.

In connection with said removal from the first team without a valid reason, the club reduced the player's salary by 50% a period between January 2021 and May 2021. Consequently, the Chamber established that the Respondent had thus repeatedly and for a significant period of time been in breach of its contractual obligations towards the Claimant.

The Chamber concluded that such actions of the club in combination shall not be accepted. Taking into account the player's default notices and requests to be reinstated, the DRC established that the player had just cause to terminate the contract on 11 June 2021."

31. On 15 December 2021, the grounds of the Appealed Decision were notified to the Parties.

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

32. On 5 January 2022, the Appellant lodged a Statement of Appeal with the Court of Arbitration for Sports ('CAS") against the Respondent with respect to the Appealed Decision, pursuant to Articles R47 and R48 of the CAS Code of Sports-related Arbitration, 2021 edition (the "CAS Code"). In the Statement of Appeal, the Appellant requested an extension of 30 days of the time limit to submit its Appeal Brief. It also requested a Sole Arbitrator to be appointed.

33. On 14 January 2022, the Respondent informed the CAS Court Office that he agreed to the extension of the deadline to file its Appeal Brief until 3 February 2022 and to submit this matter to a Sole Arbitrator.

34. On 24 January 2022, the CAS Court Office acknowledged FIFA's right to renounce possible intervention in the present proceedings on the basis of Article R41.3 and Article R52.2 of the CAS Code.

35. On 3 February 2022, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

36. On 4 February 2022, the CAS Court Office acknowledged receipt of the Appellant's Appeal Brief and set a 20-day time limit for the Respondent to file his Answer.

37. On the same date, the Respondent requested the time limit to file his Answer to be set aside and fixed after the payment of the Appellant's share of the advance of costs pursuant to Article R55 para. 3 of the CAS Code.

38. On 16 February 2022, the CAS Court Office informed the Parties that the Appellant has paid the total of the advance of costs for this procedure and set a 20-day deadline for the Respondent to file his Answer in accordance with Article R55 of the CAS Code. In addition, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code, the Panel had been constituted as follows:

    Sole Arbitrator: Ms Yasna Stavreva, Attorney-at-law in Sofia, Bulgaria.

39. On 16 February 2022, the Respondent requested a 20-day extension of the time limit to file his Answer.

40. On 18 February 2022, the Appellant agreed to the Respondent's extension request.

41. On 24 March 2022, the Respondent requested an extension to file his Answer until 11 April 2022 which was granted on 25 March 2022 in absence of any objection by the Appellant.

42. On 8 April 2022, the Respondent requested a third extension of the time limit to file his Answer until 18 April 2022.

43. On 18 April 2022, the Respondent filed his Answer in accordance with Article R51 of the CAS Code.

44. On 19 April 2022, the CAS Court Office invited the Parties to inform it whether they prefer a hearing to be held or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

45. On 23 May 2022, a copy of an Order of Procedure was sent to the Parties which was returned and duly signed by the Appellant on 24 May 2022 and by the Respondent on 23 May 2022.

46. On 24 May 2022, the Appellant filed a document entitled "Statement" which admissibility was objected by the Respondent.

47. On 30 May 2022, a hearing was held by video-conference. Besides the Sole Arbitrator and Mr. Björn Hessert, CAS Counsel, the following persons attended the hearing:

- Dr. Istvan Demeter, Attorney-at-law at Demeter Law Firm, representative of the Appellant
- Dr. Adam Gyoker, Attorney-at-law at Demeter Law Firm, representative of the Appellant
- Dr. Hajnalka Ritter, Attorney-at-law at Demeter Law Firm, representative of the Appellant
- Mr. Sergey Lysenko, Attorney-at-law at SILA International Lawyers Moscow Office, representative of the Respondent
- Ms. Daria Lukienko, Attorney-at-law at SILA International Lawyers Moscow Office, representative of the Respondent

48. At the beginning the Parties confirmed that they had no objections on the constitution of the Panel. Then, the Parties made full oral submissions and at the end of the hearing they expressly stated that their rights to be heard had been fully respected.

VI. SUBMISSIONS OF THE PARTIES

A. The Appellant's Position

49. In its Statement of Appeal and Appeal Brief, the Appellant submitted the following requests for relief:

> *"The Appellant kindly requests the CAS:*
>
> *- To annul and set aside in its entirety the Decision issued by the Council of the FIFA DRC (Ref.Nr.FPSD-2879) on 3rd November 2021 and received 9th November 2021. having* [sic] *regarded Serder Serderov had his employment terminated unlawfully,*
>
> *- grants the relief sought by the Appellant,*
>
> *- release the Appellant from the financial obligation to pay laid down in the Decision issued by the Council of the FIFA DRC (Ref.Nr.FPSD-2879),*
>
> *- suspend the execution of the Decision issued by the Council of the FIFA DRC (Ref.Nr.FPSD-2879) given that according to the Appellant's opinion the amount claimed by Serder Serderov is disputed in terms of both legal basis and amount, and due to the measures introduced due to the global spread of the COVID-19, it would be a significant difficulty to pay the amount claimed by Serder Serderov to Mezökövesd Zsory FC.*
>
> *- to charge all costs of these proceedings to Club Serder Serderov and to grant a contribution to the legal fees of Appellant of CHF 20.000."*

50. In support of its Appeal, the Appellant's position, in essence, may be summarised as follows:

➢ Applicable law

- The Appellant submits that due to Article R58 of the CAS Code and Article 56 par. 2 of the FIFA Statutes, the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP") shall primarily apply to the present matter, as well as the rules of the Hungarian Football Association (MLSZ) and, subsidiarily, the Hungarian Labour Code.

➢ Jurisdiction of the FIFA DRC

- The Appellant contests the FIFA DRC's competence to deal with the matter at hand and considers that it lacked jurisdiction to resolve the dispute between the Appellant and the Respondent- In this regard, the Appellant submits that since Article 49 of the Contract is an exclusive jurisdiction clause, clearly providing that in case of labour dispute it should be settled by *"Administrative and Labour Court having competence and scope of authority"*, the Labour Tribunal of Miskolc has exclusive jurisdiction to decide the dispute between the Parties.

- Furthermore, the Appellant deems that the provisions of the Contract are in line with Article 22 lit. b) of the RSTP that states:

  "Without prejudice to the right of any player, coach, association, or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

  employment-related disputes between a club and player of an international dimension:

  (…)."

- The Appellant stresses that it had initiated proceedings before the Labour Tribunal of Miskolc prior to the Respondent's claim before FIFA. In its counterclaim lodged in the proceedings before FIFA, it had submitted that there was a labour lawsuit against the Respondent pending before the competent Hungarian court since 17 June 2021, the subject of which was the illegal termination of the employment relationship between the Parties.

- The Appellant points out that it had also informed the FIFA DRC about the case number of the civil procedure before the Labour Tribunal of Miskolc, *i.e.* 4.M.70.127/2021. In addition, a Court Order had been issued on 3 November 2021, declaring that the Respondent unlawfully terminated the Contract.

➢ Merits

- The Appellant holds that the Respondent terminated the Contract without just cause, breaching the Contract.

- According to the Appellant, its decision to move the Respondent to train with the second team was *"temporary and transitional in nature"* due to the Respondent's *"injury and poor performance until he recovers from his injury and comes into shape"*. The Respondent was one of the best professional players and the aim of the Club was to get him back to the first team as soon as possible.

- In this regard, the Appellant submits that the Parties were in constant *"verbal communication"* about the issue and that the Appellant had informed the Respondent several times about the reasons for his transfer to the second team. On 22 December 2021, the Respondent was aware that he was transferred to the second team due to rehabilitation needs.

- Furthermore, the Appellant submits that the Contract gave the right to its professional management to decide on its own discretion about the Player's training process and his movement to the different teams, without the need of providing any justification therefor.

- According to the Appellant, the Respondent acted in bad faith as he sent letters with the sole purpose of the unilateral termination of the Contract and receipt of compensation. He neither had the intention to return to the first team nor to train and cooperate with the Appellant.

- The Appellant further states that it acted in accordance with the Contract, especially in conformity with Articles 10 and 47.

- Finally, the Appellant presumes that the Appealed Decision violates Articles 8 a), f), l) and n), 10, 47 and 49 of the Contract, Articles 22 lit. b) and 17 par. 1 of the FIFA RSTP and § 6 and § 52 of the Hungarian Labour Code. Accordingly, the Appealed Decision is to be annulled and set aside in its entirety.

B. The Respondent's Position

51. In his Answer to the Appeal Brief, the Respondent submitted the following requests for relief:

> *"1. The appeal filed by Football Club Mezökövesd Zsory FC Kft. against Mr Serder Serderov with respect to the decision issued on 3 November 2021 by the FIFA Dispute Resolution Chamber in the case Ref. FPSD-2879 is rejected.*
>
> *2. The decision issued on 3 November 2021 by the FIFA Dispute Resolution Chamber in the case Ref. FPSD-2879 is confirmed.*
>
> *3. Football Club Mezökövesd Zsory FC Kft. shall bear all the costs incurred with the present procedure.*
>
> *4. Football Club Mezökövesd Zsory FC Kft. shall pay to Mr. Serder Serderov a contribution towards its legal and other costs in the amount to be determined at the discretion of the Sole Arbitrator."*

52. In support of his defence, the Respondent, in essence, submitted the following:

➢ Applicable law

- The Respondent submits that in consideration with Article R58 of the CAS Code and Article 56 par. 2 of the FIFA Statutes, the FIFA RSTP shall apply to the merits of the case and, subsidiarily, Swiss law.

➢ Jurisdiction of the FIFA DRC

- The Respondent first argues that the issue of FIFA's jurisdiction shall not be decided in the present proceedings as the Appellant did not summon FIFA as a respondent. According to him, when the dispute concerns both "horizontal" and "vertical" disputes, two different parties have standing to be sued – he himself, on one side, regarding the "horizontal" (contractual) element and FIFA, on the other side, regarding the "vertical" issue of its jurisdiction.

- The Respondent underlines further in his submission that the FIFA DRC had jurisdiction to decide on the present matter for the following reasons:

- The jurisdiction clause, contained in Article 49 of the Contract, is ambiguous and does not exclude the competence of FIFA stipulated in the FIFA RSTP. Furthermore, the jurisdiction clause explicitly enumerates FIFA bodies as one of the possible fora of dispute resolution, the jurisdiction of which is implicitly accepted by the Appellant as it filed an appeal against the Appealed Decision on the merits of the case to CAS.

- The provisions of the FIFA Statutes generally prohibit recourse to ordinary courts of law while Article 22 of the FIFA RSTP provides an exception from the FIFA competence to hear employment – related disputes of international dimension. This exception will apply only if an independent arbitral tribunal exists at national level which means that the choice is between FIFA and the national arbitration tribunal. Accordingly, recourses to national ordinary courts, such as the Labour Tribunal of Miskolc. For the purposes of interpreting the jurisdiction clause, FIFA shall take precedence over the competent court in Hungary.

- The Appellant did not provide any evidence to prove the ongoing proceedings before the Labour Tribunal of Miskolc and the issuance of its decision on 3 November 2021 both before the FIFA DRC and CAS.

- The alleged proceedings before the Labour Tribunal of Miskolc, if such existed (*quod non*), could not cause the application of the *lis pendens* principle in front of FIFA and cannot cause the application of the *res judicata* principle before CAS.

➢ Merits

- The Respondent submits that he had just cause to terminate the Contract on 11 June 2021, pursuant to Article 14bis of FIFA RSTP, due to the following reasons:

- The Appellant did not have any legal grounds to unilaterally reduce the Respondent's salary. In addition, the fact that the Appellant failed to pay the Respondent two monthly salaries is undisputed. The Respondent received only half of his salary in the period from January 2021 until May 2021 which gave him a reason to object the reduction of the salary by sending several letters to the Appellant.

- The transfer of the Respondent to the Appellant's second team was illegal as it was not in compliance with Article 10 of the Contract and, thus, could not serve as a basis for the decrease of his salary.

- Article 47 of the Contract did not provide any legal effect and could not apply to the case at hand because of its unilateral and potestative character which was to the disadvantage of the Respondent and *"confines his freedom of contract excessively"*.

- In compliance with Article 14bis of the RSTP, the Respondent put the Appellant in default and provided 15 days for it to fully comply with its financial obligations. The deadline was even extended for 5 more days. However, the Appellant did still not pay the outstanding salaries within the granted time limit. Therefore, the Respondent had no other option but to unilaterally terminate the Contract by means of the Termination Notice dated 11 June 2021.

- Furthermore, the Respondent submits that he had just cause to prematurely terminate the Contract based on Article 14 of the FIFA RSTP due to the breach of his personality rights. According to him, his removal from the first team was not in accordance with Article 10 of the Contract which stipulates "medical reasons" as the only reason for such action. In this regard, the Player points out that he has never been given any reason for his ban from the first team and that he was sent to train alone on 10 June 2021. The illegal assignment to train with the second team, in violation with Article 10 of the Contract, accompanied by the unlawful reduction of his salary continued for almost half a year. The Appellant severely breached the essential conditions under which the Contract was concluded. As a consequence, the Appellant acted in bad faith and could therefore not expect that the Respondent would continue the employment relationship under such circumstances. Thus, the Respondent was left with no other option but to terminate the Contract.

- Lastly, the Respondent comments on the financial consequences of the termination of the Contract with just cause and considers that the calculation made in the Appealed Decision shall be entirely confirmed. According to him, he shall be entitled to:

    - the outstanding remuneration at the moment of termination of the Contract amounting to HUF 11,650,000 net, plus a default interest of 5% per year as from the due dates, i.e. the 11th day of the following month, until the date of effective payment;

    - a compensation for the breach of Contract (i.e. the residual value of the Contract) amounting to HUF 116,500,000 and additional compensation on

the base of Article 17 par.1 lit. ii) of the FIFA RSTP, equal to three monthly remunerations, amounting to HUF 13,980,000, reduced with the remunerations the Respondent had earned under the new contract with the football club NK Istra 1961, plus a default interest of 5% per year as from 12 June 2021 until the date of effective payment.

VII. JURISDICTION AND ADMISSIBILITY

53. The jurisdiction of CAS, which is not disputed by the Parties, derives from Article 57(1) of the FIFA Statutes (2021 edition), providing that *"appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"* and Article 47 para. 1 of the CAS Code providing that *"an appeal against the decision of a federation, association or sports-related bodies maybe 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"*.

54. The jurisdiction of CAS was also confirmed by the Order of Procedure duly signed by both Parties.

55. It follows that CAS has jurisdiction to decide on the present dispute.

56. Additionally, the grounds of the Appealed Decision were notified to the Parties on 15 December 2021. The Statement of Appeal was filed on 5 January 2022 and therefore within the deadline set forth in Article 57(1) of the FIFA Statutes. The Statement of Appeal also complied with the requirements of Article R48 of the CAS Code. Consequently, the appeal is admissible.

VIII. APPLICABLE LAW

57. Article 187 para.1 of the Swiss Private International Law Act ("PILA") provides:

> *"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such choice, according to the rules of the law which in the case has the closest connection."*

58. Article R58 of the CAS Code provides as follows:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the Parties or, in 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

59. Article 57(2) of the FIFA Statutes (2019 edition) stipulates the following:

"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law."

60. The Appellant submits that the present dispute shall be governed first and foremost by the FIFA Regulations, in particular FIFA RSTP and the Hungarian Football Association and the Hungarian Labour Code. Principles of Swiss law shall apply subsidiarily.

61. The Respondent confirms the applicability of the FIFA Regulations, in particular the FIFA RSTP and objects to the application of the laws of Russia and Hungary on subsidiary basis.

62. The Contract does not contain any specific choice-of-law clause.

63. As regards the FIFA RSTP, the February 2021 edition applies to the substance in accordance with Article 26 of the FIFA RSTP.

64. In view of the above, the Sole Arbitrator finds that primarily the various rules and regulations of FIFA are applicable, in particular the FIFA RSTP (February 2021 edition), and, additionally, Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

IX. MERITS

65. Based on the Parties' written submissions the main issues to be resolved by the Sole Arbitrator are:

a. Was FIFA DRC competent to decide on the present matter?

b. If the FIFA DRC had jurisdiction to resolve the present dispute, then was the employment contract concluded between the Appellant and the Respondent terminated with just cause?

c. If the employment contract was terminated with just cause what are the consequences of the unilateral termination and was the Respondent entitled to the outstanding salaries, compensation and interest?

66. However, before addressing these main issues, the Sole Arbitrator considers it necessary to address the following preliminary point on the merits.

A. Preliminary remark on the merits – Standing to be sued

67. In his Answer to the Appeal Brief the Respondent raised an objection before CAS that the Sole Arbitrator shall not decide on the issue of the FIFA DRC's jurisdiction because FIFA was not summoned as a respondent. He submitted that the case at hand concerns both "horizontal" and "vertical" disputes which means that two different entities had to be sued – the Respondent regarding the "horizontal" (contractual) element of the dispute and FIFA regarding the issue of its jurisdiction, which according to the CAS jurisprudence (awards CAS 2016/A/4836, CAS 2016/A/4837) was *"clearly a vertical issue".*

68. When assessing if FIFA has standing to be sued in this procedure, the Sole Arbitrator would like to refer to CAS 2014/A/3690 where the CAS Panel concluded that *"CAS shall examine the issue whether the DRC had jurisdiction over the dispute even if the Appellant has not summoned FIFA as a respondent before the CAS."*

69. The CAS Panel in CAS 2014/A/3690 further reasoned, *inter alia*, as follows:

> *"The fact that the DRC's jurisdiction is being put into question still does not affect any FIFA's direct interest – notwithstanding the position expressed by FIFA in its letter (…) – because the authority granted by the FIFA rules to that FIFA body is merely instrumental to the adjudication of a horizontal dispute between indirect members. As a result, the Panel may examine the issue whether the DRC had jurisdiction over the present dispute even if the Appellant has not summoned FIFA as a respondent in this CAS proceeding. Of course, FIFA always has a general interest that its rules governing the relationship between indirect members (such as the FIFA RSTP) be correctly interpreted and applied; accordingly, if FIFA feels that in a given CAS case it has some matter of principle to look after or some interest at stake, FIFA is always entitled – when not summoned by the appellant – to intervene as a party or, with the agreement of the Panel, as an amicus curiae (pursuant to Articles R41.3 and R41.4 of the CAS Code). However, FIFA's choice to stay absent from a CAS appeal proceeding deriving from a horizontal dispute – having been informed of the appeal – does not prevent the appointed CAS Panel from addressing all relevant issues with full scope of review and, eventually, from adjudicating the horizontal dispute at hand."*

70. Being mindful of different CAS jurisprudence in this regard, the Sole Arbitrator fully agrees with the reasoning of the CAS Panel in CAS 2014/A/3690. More specifically, the Sole Arbitrator deems that in the present matter the arguments speak in favour of a horizontal dispute. The question of whether or not one of FIFA's adjudicatory bodies had jurisdiction to deal with a contractual, i.e. vertical dispute in first instance does not put FIFA in a better position to defend its jurisdiction. Based on the interest at stake, the question of jurisdiction can also not be characterised as horizontal in nature. FIFA's general interests as an adjudicatory body in the first instance are not affected differently than the interests of the Parties. Therefore, FIFA is not in a better position to defend the consistent interpretation and application of its rules and regulations. In fact, the Respondent is in the best-suited position to defend FIFA's jurisdiction based on the Contract between the Parties.

71. Additionally, if FIFA considered it relevant to express its views with respect to the FIFA DRC in the proceedings leading to the Appealed Decision, even not summoned, it had the right to request its possible intervention in accordance with Article R41.3 of the CAS Code, as it was invited to do by letter of the CAS Court Office dated 12 January 2022. However, FIFA renounced its right to do so.

72. Consequently, the Sole Arbitrator finds that FIFA has no standing to be sued in the present matter and the Sole Arbitrator is entitled to address the Appellant's requests for relief in the CAS proceedings.

B. Main issues – Was the FIFA DRC competent to decide on the present matter?

73. In the Appealed Decision, the FIFA DRC held that it was competent to deal with the present matter since it considered that: 1) it was an employment-related dispute of an international

dimension, arising from the nationality of the Appellant and the Respondent (a player with Russian nationality and a Hungarian club) and 2) the jurisdiction clause in the Contract did not clearly and exclusively establish the competence of the labour court in Hungary.

74. It is reminded that, according to the Appellant, the FIFA DRC did not have jurisdiction to hear the dispute at stake because Article 49 of the Contract constitutes an exclusive choice-of-forum clause, conferring jurisdiction to the labour court in Hungary. The Appellant was also allegedly affected by the legal principal of *lis pendens* because before the Respondent lodged a claim at FIFA on 23 June 2021, it had already lodged a claim in front of the Labour Tribunal of Miskolc on 17 June 2021, involving the same parties and object.

75. The Respondent, in turn, argues that the FIFA DRC was competent and contests the exclusive jurisdiction of the labour court in Hungary. Article 49 of the Contract was ambiguous and did not exclude FIFA's jurisdiction. The FIFA Statutes and FIFA RSTP did not permit recourse to ordinary courts and the Appellant did not discharge its burden of proof regarding the pending litigation before the Labour Tribunal of Miskolc. Therefore, the alleged proceedings before the Labour Tribunal of Miskolc could not cause the application of the principals of *lis pendens* before FIFA and *res judicata* before CAS.

76. In light of the above, the starting point of the Sole Arbitrator's analysis is Article 22 lit. b) of the FIFA RSTP, which provides as follows:

> *"Without prejudice to the right of any player to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:*
>
> *(…)*
>
> *b) employment – related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principal of equal representations of players and clubs."*

77. The Sole Arbitrator further reiterates that Article 49 of the Contract provides as follows:

> *"The Parties agree that they shall make efforts to settle their possible dispute in amicable way by negotiations. If these efforts fail – in cases determined by the rules of MLSZ or FIFA – the Parties may turn to the organizational units with MLSZ or FIFA scope of authority, in case of labour dispute to the Administrative and Labour Court having competence and scope of authority, and in all other disputes arising out of their legal relationship the Parties stipulate the exclusive jurisdiction of the Sports Standing Arbitration Court based on the Article 47 of the Sports Law. The number of arbitrators is three; the procedure is determined by the Procedural Rules of the Arbitration Court."*

78. Given that the Appellant is based in Hungary and the Respondent is of Russian nationality, the dispute has an international nature. The dispute further concerns an employment relationship. Consequently, the competence of the FIFA DRC is, in principle, given.

79. However, Article 22 of the FIFA RSTP allows to deviate from the competence of the FIFA DRC if a club and a player *"explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or collective bargaining agreement"* or if the parties have decided by contract to submit any such dispute to a competent national ordinary court.

80. As confirmed by CAS jurisprudence (CAS 2019/A/6569),*"it follows from Article 59 par.2 of the FIFA Statutes that recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations. Precisely, recourse to ordinary courts is permitted by the FIFA Regulations on the Status and Transfer of Players…"* when a clear reference is made in the employment contract, *i.e.* when an exclusive jurisdiction clause exists.

81. Accordingly, the Sole Arbitrator needs to examine whether the Parties have explicitly opted in Article 22 of the FIFA RSTP and, consequently, opted out of Article 22 lit. b) of the RSTP when they agreed to Article 49 of the Contract.

82. When analysing the wording of Article 49 of the Contract, the Sole Arbitrator notes that it refers to four possible different *fora* of dispute resolution, competent to decide in case of a contractual dispute between the Parties. These *fora* are (i) the *"organizational units of MLSZ"*, (ii) the *"organizational units of FIFA"*, (iii) the *"Administrative and Labour Court"* and (iv) the *"Sports Standing Arbitration Court"*. In view of the Sole Arbitrator, the jurisdiction clause is not clear on its face. However, a closer look at the wording of Article 49 of the Contract reveals that the provision itself distinguishes between different types of disputes upon which the jurisdiction of the respective *fora* is to be determined. More specifically, the Administrative and Labour Court has exclusive competence *"in case of labour dispute"*, whereas the Parties may file claims before FIFA *"in cases determined by the rules of MLSZ or FIFA"* that are not of an employment-related dispute. Consequently, when agreeing on Article 49 of the Contract, the Parties opted out of Article 22 lit. b) of the FIFA RSTP and, at the same time, clearly and exclusively opted in Article 22 of the FIFA RSTP in favour of the jurisdiction of the Administrative and Labour Court.

83. Against this background, the Sole Arbitrator finds that the national ordinary court was exclusively competent to examine the dispute at hand, irrespective of whether or not a claim had already been filed with the Labour Tribunal in Miskolc. Accordingly, the FIFA DRC had no competence to deal with the dispute between the Parties in first instance pursuant to Article 22 of the FIFA RSTP in conjunction with Article 49 of the Contract. The Appellant further objected to the jurisdiction of the FIFA DRC in the proceedings before FIFA.

84. In summary, Article 49 of the Contract established the exclusive jurisdiction of the Administrative and Labour Courts in employment-related disputes between the Parties. This clear and unequivocally agreement between the Parties to refer employment-related decision exclusively to Administrative and Labour Courts must be respected by the FIFA DRC. As a consequence, the FIFA DRC incorrectly decided to have jurisdiction to deal with the dispute between the Parties.

C. Conclusion

85. The Sole Arbitrator finds that the FIFA DRC was not competent to decide the employment-related dispute between the Parties. Consequently, the appeal must be upheld and the Appealed Decision set aside. Furthermore, the Sole Arbitrator's power of review is limit to the scope of the dispute before the FIFA DRC. Hence, the Sole Arbitrator is prevented from entering into the merits of the present dispute.

X. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 5 January 2022 by Mezökövesd Zsory FC against the decision rendered on 3 November 2021 by the FIFA Dispute Resolution Chamber is upheld.

2. The decision issued on 3 November 2022 by the FIFA Dispute Resolution Chamber is set aside.

3. The FIFA Dispute Resolution Chamber has no jurisdiction to adjudicate and decide on the claim brought by Serder Serderov against Mezökövesd Zsory FC.

4. (…).

5. (…).

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

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

THE COURT OF ARBITRATION FOR SPORT

Yasna Stavreva
Sole Arbitrator