CAS 2024/A/10725 Anorthosis Famagusta FC v. Erik Sabo

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. José Juan Pintó Sala, Attorney-at-Law in Barcelona, Spain

Ad hoc Clerk: Mr. Alejandro Naranjo Acosta, Attorney-at-Law in Barcelona, Spain

in the arbitration between

Anorthosis Famagusta FC, Larnaca, Cyprus
Represented by Mr. Marinos Mitrou, CEO of Anorthosis Famagusta FC, Larnaca, Cyprus

Appellant

and

Erik Sabo, Slovakia
Represented by Mr. Boaz Sity of Goldfarb Gross Seligman & Co. in Tel Aviv, Israel

Respondent

I. PARTIES

1. Anorthosis Famagusta FC (the "Club" or the "Appellant") is a Cypriot professional football club with its registered office in Larnaca, Cyprus. The Club is affiliated to the Cyprus Football Association, which, in turn, is affiliated to the Fédération Internationale de Football Association ("FIFA"), the world governing body of football.

2. Erik Sabo (the "Player" or the "Respondent") is a Slovakian professional football player.

3. The Club and the Player are hereinafter referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as submitted by the Parties in their written submissions. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties, it refers in the Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 7 July 2022, the Club and the Player concluded an Employment Agreement (the "Employment Agreement") which was valid from 7 July 2022 until 31 May 2024 and included the following remuneration to the Player (emphasis added in the original wording):

*"From **31/08/2022** until **31/05/2023**, a monthly gross salary of **€11'498.78**, a total annual of **€114'987.78 (€10'000.00 net** monthly, a total annual of **€100'000,00** net).*

*From **31/08/2023** until **31/05/2024**, a monthly gross salary of **€11'498.78**, a total annual of **€114'987.78 (€10'000.00 net** monthly, a total annual of **€100'000,00** net)."*

6. On 28 July 2022, the Club and the Player signed a supplementary agreement (the "Supplementary Agreement") which modified the Player's remuneration as follows (emphasis added in the original wording):

*"1. The Club will pay to the Player, for the period starting 31/08/2022 and ending 31/05/2023 the total amount of **€200.00** (two hundred thousand euro) **net** and subject to the terms of the present agreement, in then (10) equal monthly instalments of **€20.000** (twenty thousand euro) net.*

*2. The Club will pay to the Player, for the period staring 31/08/2023 and ending 31/05/2024 the total amount of **€200.000** (two hundred thousand euro) net and subject to the terms of the present agreement, in the (10) equal monthly instalments of **€20.000** (twenty thousand euro) net.*

3. Extra Payments
*3.1 The Club will pay to the Player an extra allowance of **€10.000** (ten thousand euro)*

net per season in the 10 (ten) installments along with the Player's salary every month, for the Player's personal expenses such as housing, car rental etc.

*3.2 The Player will receive an extra participation bonus of **€10.000** (ten thousand euro) net for every season the contract is active, if the Player is in the starting line-up of at least 70% od the Official Championship and Cup Games. This payment is payable one month after the end of the season, if the goal is succeeded.*

*3.3 The Club will pay to the Player an extra bonus of **€500** (five hundred euro) net for every goal or assist that results to goal in official games. This payment is payable at the end of every month after the bonus is succeeded.*

(...)

7. On 10 January 2024, the Club and the Player concluded a termination and settlement agreement (the "Termination Agreement") in order to finalize their employment relationship, the most relevant clauses of the Termination Agreement are the following (emphasis added in the original wording):

*"2. The Player shall be paid the total amount of €220.000 (two hundred twenty thousand euro) representing the abovementioned agreed compensation for the mutual termination of his employment agreement and his salaries up to 31 January 2024 (the **"Total Payment"**)*

3. The Total payment shall be paid as follows:
3.1 €19.000 (nineteen thousand euro) on or before 31/1/2024
3.2 €19.000 (nineteen thousand euro) on or before 29/2/2024
3.3 €19.000 (nineteen thousand euro) on or before 31/3/2024
3.4 €19.000 (nineteen thousand euro) on or before 30/4/2024
3.5 €18.000 (eighteen thousand euro) on or before 31/5/2024
3.6 €18.000 (eighteen thousand euro) on or before 30/6/2024
3.7 €18.000 (eighteen thousand euro) on or before 31/7/2024
3.8 €18.000 (eighteen thousand euro) on or before 31/8/2024
3.9 €18.000 (eighteen thousand euro) on or before 30/9/2024
3.10 €18.000 (eighteen thousand euro) on or before 31/10/2024
3.11 €18.000 (eighteen thousand euro) on or before 30/11/2024
3.12 €18.000 (eighteen thousand euro) on or before 31/12/2024

4. Above amounts, as described in articles 3.1 to 3.12, will be paid in the Player's bank account, no later than the dates prescribed therein. However, a payment will be considered an overdue payable only after the Player put the Club in default, in writing, and granted the Club fifteen (15) additional days to fully comply with its financial obligation pursuant to this agreement. After the lapse of such period, the Player could initiate procedures for the breach of this agreement. The due and timely payment of the Total Payment, according to the payment plan above, is a condition precedent to any waiver of the Player's rights and remuneration under the Employment Contract. Without derogating from the above, should the Club fail to pay any of the abovementioned amounts after the lapse of the grace period, then the Club will be immediately obligated to pay the rest of the payments stipulated herein (acceleration of the entire Total

Payment) with 15% (fifteen per cent) interest per annum from the date of any supposed payment until the effective date of the payment.

(...)

9. The present agreement is signed as a full and final settlement for all the Parties' contractual obligations arising from the employment agreement and the Parties have no further claims and/or obligations against each other.

10. The Player accepts the abovementioned payment as complete and final settlement of all his due payables from the Club"

8. On 1 February 2024, the Club and the Player signed an amendment to the Termination Agreement (the "Amendment Agreement") which in its relevant part reads as follows:

"Notwithstanding articles 2 and 3 of the Termination Agreement, the Total Payment of €220.000 net (two thousand euro) should be paid as follows:

2.1 €5.000 (nineteen thousand euro) [sic] on or before 5/2/2024
2.2 €14.000 (nineteen thousand euro) [sic] on or before 18/2/2024
2.3 €19.000 (nineteen thousand euro) on or before 29/2/2024
2.4 €19.000 (nineteen thousand euro) on or before 31/3/2024
2.5 €19.000 (nineteen thousand euro) on or before 30/4/2024
2.6 €18.000 (eighteen thousand euro) on or before 31/5/2024
2.7 €18.000 (eighteen thousand euro) on or before 30/6/2024
2.8 €18.000 (eighteen thousand euro) on or before 31/7/2024
2.9 €18.000 (eighteen thousand euro) on or before 31/8/2024
2.10 €18.000 (eighteen thousand euro) on or before 30/9/2024
2.11 €18.000 (eighteen thousand euro) on or before 31/10/2024
2.12 €18.000 (eighteen thousand euro) on or before 30/11/2024
2.13 €18.000 (eighteen thousand euro) on or before 31/12/2024"

9. On 20 February 2024, the Player put the Club in default for payment of the instalments for the sum of EUR 5,000 and EUR 14,000 due on 5 and 18 February 2024 respectively, additionally the Player granted the Club a deadline of 15 days to comply with such installments. Finally, the Player noted that his *"waiver with respect to his employment contract with Club are conditioned upon the timely payment of the amounts, which means that if the Club defaults in payments – the Player may claim the entire remuneration due under his employment contract. This is in addition to the acceleration of all the payments, as well as interest for default."*

10. On 29 February 2024, the Club paid the Player the first instalment of the Termination Agreement for the amount of EUR 5,000.

11. No further payments were made by the Club to the Player.

III. PROCEEDINGS BEFORE THE FIFA FOOTBALL TRIBUNAL

12. On 19 March 2024, the Player filed a claim against the Club before the Dispute Resolution Chamber of the FIFA Football Tribunal (the "DRC"). In such claim, the Player's request for relief were the following:

"1) Order the Club to immediately pay the Player an amount of EUR 295,000 net, with an interest of 18% p.a. until the effective payment.

2) Alternatively – order the Club to immediately pay EUR 215,000 net, with an interest of 18% p.a. until the effective payment.

3) In any way, in the event the special interest rate agreed between the parties in[sic] *inapplicable for any reason – in accordance with the long-standing practice of the FIFA Football Tribunal, order the Club to pay 5% interest p.a. until the effective payment date."*

13. In his claim, the Player argued that upon the breach of the Termination Agreement, the Player was entitled to claim all the amounts under the Employment Agreement. This meant that out of the total value of EUR 325,000 of the Employment Agreement, the Club paid to him EUR 35,000 net and consequently the Club owed him EUR 295,000.

14. Subsidiarily, the Player requested to be awarded the unpaid portion of the Termination Agreement, *i.e* EUR 215,000 plus 18% interest per annum.

15. As a further subsidiary request, the Player requested to be awarded a 5% interest per annum and all the amounts to be awarded to him to be net.

16. The Club did not submit an answer to the Player's claim.

17. On 30 May 2024, the DRC issued the Decision FPSD-14134 (the "Appealed Decision") ruling as follows (emphasis in the original):

"*1. The claim of the Claimant, Erik Sabo, is partially accepted.*

2. The Respondent, Anorthosis Famagusta, must pay to the Claimant the following amount(s):

***- EUR 215,000 net as outstanding remuneration** plus 15% interest p.a. as of 19 March 2024 until the date of effective payment.*

3. Any further claims of the Claimant are rejected.

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

*5. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, 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 of 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.

*6. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*

7. This decision is rendered without costs."

18. On 21 June 2024, the DRC notified to the Parties the grounds of the Appealed Decision, which can be summarized as follows:

- The chamber noted that in FIFA Football Tribunal proceedings, if a respondent failed to submit an answer to a claim, a decision would be issued based on the file.
- The chamber deemed that was undisputed that the Club failed to comply with the Termination Agreement.
- The chamber highlighted that Clause 4 of the Termination Agreement did not specify that any amount due as per the Employment Agreement would be payable in case the Club failed to comply with the Termination Agreement but rather provides for the eventual and theoretical possibility to claim amounts under the mentioned Employment Agreement.
- Furthermore, such lack of specification is cured by the same Clause 4 where the Parties agreed on the consequence that would follow the Club's non-payment with the amounts stipulated on the Termination Agreement:
  "*Without derogating from the above, should the Club fail to pay any of the abovementioned amounts after the lapse of the grace period, then the Club will be immediately obligated to pay the rest of the payments stipulated herein (acceleration of the entire Total Payment) with 15% (fifteen per cent) interest per annum from the date of any supposed payment until the effective date of the payment"*
- The chamber further considered that pursuant Clauses 9 and 10 of the Termination Agreement, the Parties agreed that the amounts due as a termination fee (EUR 220,000 net) constituted the final settlement to the dispute and no further amounts would be payable.
- Moreover, on the Termination Agreement the Parties agreed on an interest rate of 15% per annum which falls within the limits provided by the jurisprudence of the Football Tribunal. Additionally, the Player failed to specify the dies a quo of the interest requested and did not request interest from the due dates of the claimed amount.
- Consequently, the Chamber rejected the Player's claim in connection with the Employment Agreement and the requested interest rate of 15% per annum and awarded him the payment of EUR 215,000 net as the outstanding amount from the Termination Agreement with a 15% interest rate as from 19 March 2024, the date of the claim.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 8 July 2024, the Club filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS"), pursuant to Article R48 of the Code of Sports-related Arbitration 2023 edition (the "CAS Code"), directed against the Player, to challenge the Appealed Decision. In such Statement of Appeal, the Club requested the appointment of a Sole Arbitrator to decide over the dispute and to proceed with the appeal in English.

20. On 14 July 2024, the Player informed the CAS Court Office that he does not object the appointment of a Sole Arbitrator to decide the present matter nor to the language of the arbitration being English.

21. On 7 August 2024, within granted extended deadline, the Club filed its Appeal Brief pursuant Article R51 of the CAS Code.

22. On 14 October 2024, the Player submitted its Answer to the Appeal Brief, pursuant to Article R55 of the CAS Code.

23. On the same date, the CAS Court invited the Parties to inform whether they preferred a hearing to be held or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions and whether they requested a case management conference to be held in order to discuss procedural issues.

24. On 16 October 204, the Player informed the CAS Court Office that he considered that a hearing was required in the present matter and that he deemed not necessary to hold a case management conference.

25. On 21 October 2024, the Club informed the CAS Court Office that it preferred that the Sole Arbitrator to issue the award based solely on the Parties' written submissions.

26. On 22 October 2024, the CAS Court Office, pursuant Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, informed the Parties that the Panel appointed to decide the case was composed by:

    Sole Arbitrator: Mr. José Juan Pintó Sala, Attorney-at-Law in Barcelona, Spain

27. On the same day, the Player reconsidered his position regarding the need of holding a hearing and informed that he does not object to the Sole Arbitrator to issue an award based solely on the Parties' written submissions, exhibits and written evidence.

28. On 13 November 2024, the CAS Court Office invited the Club to confirm that, given its preference regarding to hold a hearing in the present matter or not, it waives the examination of the witness indicated in its Appeal Brief.

29. On 17 November 2024, the Club confirmed that it waived the examination of the witnesses indicated in its Appeal Brief.

30. On 6 December 2024, The CAS Court Office informed the Parties that the Sole Arbitrator deemed himself sufficiently well-informed to decide this case based solely on the Parties'

written submissions without the need of holding a hearing, as also requested by both Parties. Additionally, the Parties were that Mr. Alejandro Naranjo Acosta Attorney-at-Law in Barcelona, Spain had been appointed as *ad-hoc* Clerk in this procedure. Finally, the CAS Court Office sent to the Parties the Order of Procedure to be signed and returned by them.

31. The Order of Procedure was duly signed and returned by the Player and the Club on 8 December 2024 and 14 January 2025 respectively.

V. THE PARTIES' SUBMISSIONS

32. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by them. The Sole Arbitrator, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the Parties, even if there is no specific reference to those submissions in the following section.

A. THE CLUB'S POSITION

33. In its Appeal Brief, the Club requested the following prayers for relief:

"We request CAS to:

A. Set aside the decision of the FIFA DRC with which the Respondent was awarded the amount of EUR 215,000, as outstanding remuneration plus 15% interest p.a. as from 19 March 2024 until the date of effective payment.
B. Decide that the Respondent is not entitled to any outstanding remuneration.
C. Decide that FIFA DRC was not competent to hear the dispute.
D. Order the Respondent to fully pay the procedural and all other costs arising out of the present proceedings and to reimburse the Appellant with the CAS Court Office Fee.
E. Order the Respondent to pay a contribution towards the Appellant's legal fees incurred in connection with the present proceedings."

34. The Club's written submissions and the arguments therein can be, in essence, summarized as follows:

35. The Club requests to the Appealed Decision to be taken aside as a) the DRC did not had jurisdiction to hear the case, and b) the Parties orally agree to change the terms of the Termination Agreement.

a. <u>The DRC's jurisdiction</u>

36. The Club considers that DRC was not competent to hear the dispute filed by the Player because the Parties signed a valid arbitration clause in the Article 13 of the Standard Employment Contract granting exclusive competence to the CFA National Dispute Resolution Chamber (the "CFA NDRC").

37. The bad faith of the Player is evident from the fact that he did not disclose the complete Standard Employment Agreement before the DRC.

38. Regarding the possibility to opt for national dispute resolution chambers, the Club recalls the following CAS awards:

    i. CAS 2012/A/2983 ARIS Football Club v. Márcio Amoroso dos Santos & Fédération Internationale de Football Association (FIFA)
    ii. CAS 2014/A/3656 Olympiakos Volou FC v. Carlos Augusto Bertoldi & FIFA
    iii. CAS 2016/A/4846 Amazulu FC v. Jacob Pinehas Nambandi & FIFA & National Soccer League South Africa.

39. According to the mentioned awards, in evaluating whether a national dispute resolution chamber (a "nrdc") is independent and impartial and satisfies the exception of Article 22 (b) of the FIFA Regulations on the Status and Transfer of Players (the "RSTP"), a CAS panel must examine the following:

    a. Whether there exists an explicit and clear arbitration clause in favour of the nrdc excluding the DRC.
    b. Whether the nrdc respects the principle of parity (equal representation).
    c. Whether the nrdc respects the right to an independent and impartial tribunal.
    d. Whether the nrdc respects the principle of a fair hearing.
    e. Whether the nrdc respects the principle of contentious proceedings.
    f. Whether the nrdc respects the principle of equal treatment.
    g. Whether the nrdc imposes any financial barrier detrimentally affecting a party's right to access justice.

    b. Merits of the dispute.

40. The Player should have not be allowed to proceed with his claim before the DRC because after the Club delayed the payment of the first instalment, as it was agreed in the Amendment Agreement, the Parties discussed over the phone and the Player accepted to be paid the whole amount, EUR 215,000 until 31 December 2024, *i.e.* when the last instalment would have been paid according to the Termination Agreement.

41. In other words, the Player had orally accepted to receive only EUR 5,000 until 19 February 2024 and the remaining sum of the total amount of EUR 215,000 to be received by the Club until 31 December 2024.

42. The Player never informed the Club that he was no longer wiling to wait until 31 December 2024 or that he wanted to proceed with the submitted claim before the DRC.

B. THE PLAYER'S POSITION

43. In his Answer to the Appeal Brief, The Player presented as prayers for relief to:

"a) Dismiss the Appellant's appeal in its entirety.
b) Confirm the Appealed Decision in full and order the Appellant to fully comply with the Appealed Decision.
c) Order the Appellant to bear all the costs of the present proceedings.
d) Order the Appellant to pay a contribution towards the Respondent's legal fees and expenses in the amount of CHF 6,000."

44. The Player's submissions to support the aforementioned prayers for relief may be, in essence, summarized as follows:

a. <u>The Club cannot contest FIFA's competence in the absence of FIFA</u>

45. The Club pretends to contest FIFA's competence to hear the dispute. Nonetheless, the Club had not designated FIFA as a respondent in the present proceedings.

46. The dispute on FIFA's competence is not of horizontal nature but a vertical one, *i.e.* between FIFA as a regulator and the Club as an indirect member of FIFA. A party may only contest FIFA's competence if FIFA is summoned as a respondent.

47. Consequently, as FIFA was not summoned as a respondent to the Appeal, any prayer for relief relating to FIFA's competence to hear the dispute shall be dismissed.

b. <u>The Club is precluded from disputing FIFA's competence in the Appeal proceedings</u>

48. The Club did not contest FIFA's jurisdiction in the proceedings before the DRC as it did not submit any reply to the Player's claim at such proceedings.

49. In this respect, CAS jurisprudence has repeatedly held that a party is precluded from contesting FIFA's jurisdiction only in the subsequent appeal procedure before CAS (e.g. CAS 2019/A/6160, CAS 2015/A/4083, CAS 2012/A/2899 and CAS 2015/A/3883).

50. Therefore, if a party intends to contest FIFA's competence, it must first raise its arguments before the DRC. This stance is also present in the FIFA's Commentary on the RSTP (edition 2023 page 452):

"If FIFA's jurisdiction is not contested despite a clear and exclusive arbitration clause in favour of the national body, the DRC will accept jurisdiction. It will not consider whether the choice of forum was clear and specific enough, or whether the national body complies with the minimum procedural requirements. If one party invites FIFA to adjudicate on the dispute, and the other party does not contest FIFA's jurisdiction, the parties are considered to have entered into a tacit agreement concerning FIFA's jurisdiction which supersedes any previous agreement. As CAS has confirmed, this approach is also legitimate where the respondent refuses to respond to the claim made against it.759 In a recent award, CAS recalled that, even if a written agreement signed

between a player and a club contains a clause that refers to the jurisdiction of another body, FIFA's jurisdiction must be contested. In other words, a party may decide not to raise an objection on the grounds of lack of jurisdiction and to validly accept the competence of a FIFA judicial body called upon by another party (…).
Along the same lines, in a recent award involving FIFA as a party, CAS confirmed that the plea of lack of jurisdiction needs to be raised before the DRC in order to be raised before CAS."

51. These principles shall apply when a party was given an opportunity to contest FIFA's jurisdiction but chosen not to do so. A party's refusal to respond to a claim equates to a tacit agreement to authorize FIFA to hear the dispute. Therefore, the Club's request with respect to FIFA's jurisdiction shall be rejected.

c. <u>The Parties explicitly agreed on FIFA's competence to hear the dispute</u>

52. Based on Article 22 of the RSTP, FIFA holds the default jurisdiction to hear an employment-related dispute as the foregoing. Nevertheless, such article allows the parties to explicitly opt-out FIFA's jurisdiction and opt for such disputes to be heard "*by an independent arbitration tribunal that has been established at national level".* However, for such agreement to be valid, it must:

1. Be included directly in the contract or in a collective bargaining agreement applicable on the parties;
2. Be explicit and clear in excluding FIFA's jurisdiction;
3. Name a specific arbitral institution or court to hear the dispute;
4. Give exclusivity to such an institution or court.

53. The arbitration clause referred to by the Club does not comply with these prerequisites considering that: a) the language of the clause does not specifically and explicitly exclude FIFA's jurisdiction, in fact, it does not mention FIFA; and b) the alleged exclusive jurisdiction of the CFA NDRC is more ambiguous and unclear considering the Parties agreed in the Termination Agreement to submit all disputes to the exclusive jurisdiction of FIFA.

d. <u>The CFA NDRC does not comply with the principles established in Article. 22 b) of the RSTP</u>

54. For the CFA's NDRC to gain jurisdiction, it must comply with Article 22 b) of the RSTP. The Player emphasizes that the Club bears the burden to prove that the CFA NDRC complies with the mentioned Article 22 b) of the RSTP, including by providing the necessary documents required to examine the fulfilment of the criteria, such as laws and regulations.

55. However, the Club has not provided any document to establish or substantiate that the CFA NDRC is independent, guarantees fair hearings and respects the principle of parity

between players and clubs. Accordingly, the Club did not afford the CAS nor the Player opportunity to assess the basis for its arguments or their validity in this regard.

56. Moreover, the Club cites three CAS awards (CAS 2012/A/2983, CAS 2014/A/3656 and CAS 2016/A/4846) which are meant to support its arguments. However, these CAS awards are irrelevant to the case, as they concern arbitral tribunals of other countries not the CFA's arbitral tribunal. In the opposite sense, in the DRC decision FPSD-11383, the DRC refused to recognize the competence of the CFA NDRC and it was deemed non-compliant for various reasons. Accordingly, FIFA maintained jurisdiction and decided the dispute on its merits.

57. Thus, the Club's claims with respect to FIFA's jurisdiction is baseless and should be dismissed.

e. Substance of the matter.

58. Regarding the Club's statement that the Parties discussed over the phone and the Player accepted to be paid the whole amount until the 31 December 2024, the Player manifest that he never agreed such thing and there is no evidence in the file to prove the Club's statement.

59. Additionally, the Club did not provide any details to corroborate its statement, such as:

- When the Parties discussed over the phone.
- Who initiated the alleged discussion and why.
- Who participated in the alleged phone discussion.
- Details of such conversation.
- Why would the Player agree to an agreement in which agree to receive 98% of the amount after one year, especially when weeks later the Parties had agreed on an emended payment schedule.
- Why the alleged oral agreement had not materialized into written form.

60. The Club's statement is inconsistent with the Parties behavior:

- On 1 February 2024, the Parties agreed, on writing and signature, to split the first instalment of EUR 19,000 into two payments of EUR 5,000 and EUR 14,000. It would be inexplicable that the Parties agreed on amending the payment schedule without materializing it in writing.
- On 20 February 2024, the Player put the Club in default and the Club did not reply nor specify any reason for the non-payment, also it did not invoke any oral agreement to postpone the payment.
- On 29 February 2024, the Club paid to the Player the first instalment of EUR 5,000

and did not invoke any oral agreement regarding the other instalments.

- The Club did not raise any factual claim before the DRC procedure.

61. The Player insists that the Club is the one who must discharge its burden of proof, especially considering that it seeks to claim that an alleged phone discussion replaces or supersedes the written and signed Termination Agreement. CAS jurisprudence has consistently dismissed arguments of alleged oral arrangements in the absence of clear, convincing, and conclusive evidence (e.g. CAS 2022/A/9328, CAS 201/A/6129 and CAS 2015/A/3999).

VI. JURISDICTION

62. The CAS jurisdiction derives from Article R47 of the CAS Code that provides as follows:

"*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*."

63. Article 56 (1) of the FIFA Statutes, May 2022 edition (the "FIFA Statutes") reads as follows:

"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, football agents and match agents."

64. Moreover, the Parties did not dispute CAS jurisdiction, which is further confirmed by the Order of Procedure, duly signed and returned by the Parties.

65. Consequently, the Sole Arbitrator concludes that CAS has jurisdiction to adjudicate and decide the present Appeal.

VII. ADMISSIBILITY

66. 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."

67. Article 57 (1) of the FIFA Statutes states:

"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."

68. Additionally, the Appealed Decision confirmed that

"A*ccording to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision*."

69. The Sole Arbitrator notes that the admissibility of the Appeal is not contested by the Parties.

70. The grounds of the Appealed Decision were notified to the Parties on 21 June 2024 and the Statement of Appeal was filed on 8 July 2024, *i.e.* within the time limit required both by the FIFA Statutes and the CAS Code.

71. Consequently, the Sole Arbitrator finds that the Appeal filed by the Club is admissible.

VIII. APPLICABLE LAW

72. Article R58 of the CAS Code reads 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."

73. In addition, Article 56 (2) of the FIFA Statutes establishes 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*."

74. Moreover, the Sole Arbitrator notes that the only reference in the Termination Agreement to an applicable law is found on Clause 11 as follows:

"Any dispute arising out of the present agreement shall fall within the exclusive jurisdiction of FIFA's Football Tribunal pursuant to FIFA's regulations"

75. Lastly, while the Club's Appeal Brief only mentions an applicable law by referring to Article 22 (b) of the RSTP, the Player stated that the FIFA Statutes and and the RSTP shall be applicable as Swiss law shall be applied subsidiarily, moreover he considered that given CAS jurisprudence (e.g CAS 2017/A/5111, CAS 2013/A/3407 and CAS

2008/A/1517), in appeal proceedings concerning decisions taken by FIFA's decision-making bodies, any possible choice of law made by the parties only applies in case of *lacuna* in FIFA's Statutes or regulations.

76. Accordingly with the abovementioned, the Sole Arbitrator confirms that the present dispute shall be resolved based on the applicable FIFA regulations and, subsidiarily, on Swiss Law.

IX. MERITS

77. The present arbitration concerns the Appealed Decision ordering the Club to pay to the Player the amount of money of EUR 215,000 plus interest found to be due under the Termination Agreement. On one hand, the Club requests the Appealed Decision to be set aside. The Player, on the other hand, seeks its confirmation.

78. Based on the Parties' written submissions and the evidence filed, the Sole Arbitrator identifies as undisputed the following facts:

- On 7 July 2022, the Club and the Player concluded the Employment Agreement which was modified on 28 July 2022 by the Supplementary Agreement modifying the Player's remuneration.
- On 10 January 2024, the Parties signed the Termination Agreement in order to finalize their employment relationship and by which the Club committed to pay to the Player the sum of EUR 220,000 within a payment schedule.
- On 1 February 2024, the Parties concluded the Amendment Agreement by which they amended the payment schedule by dividing the first instalment into two instalments.
- The Club has paid to the Player only the first instalment for the amount of EUR 5,000.

79. Given the Parties' submissions and their prayers for relief, the Sole Arbitrator identifies that the two issues to be solved are:

a. Was the DRC competent to decide the present dispute?
b. Was the Termination Agreement orally modified by the Parties?

80. The Sole Arbitrator addresses such issues as follows:

a. <u>Was the DRC competent to decide the present dispute?</u>

81. As seen, the Club argues that the DRC was not competent to hear the present matter as the Parties signed an arbitration clause included in the Employment Agreement in its Clause 13.

82. Indeed, the Sole Arbitrator finds that the Employment Agreement mentions in its Clause 2.1 and 2.2 that:

> *"2.1 The present Contract is regulated by the provisions of the Standard Employment Contract, as these have been agreed between the Cyprus Football Association (CFA) and the Cyprus Footballers' Union (PASP) and these provisions have been codified in Annex 1 of the CFA Registration and Transfer of Players Regulations.*
> *2.2 The terms of the Standard Employment Contract constitute an integral part of the present Contract having full and direct implementation."*

83. Accordingly, the Standard Employment Contract (included as an annex of the Employment Agreement) states in its Clause 13 that *"[a]ny employment dispute between the Club and the Player shall fall under the exclusive jurisdiction of the National Dispute Resolution Chamber of the CFA and shall be resolved according to the applicable regulations of the CFA."*

84. However, as seen from the undisputed facts of the case, the Parties had already finalized the Employment Agreement with the Termination Agreement which clearly establishes:

> *"Whereas subject to the terms and conditions stipulated in this agreement, the Parties mutually decided to terminate the Employment Agreement upon the payment of a compensation of 64.000 (sixty-four thousand euro) by the Club to the Player, provided that the Player will be paid all his payables up to 31/1/2024 which are 156.000 (one hundred and fifty-six thousand euro).*
> *(...)*
> 5. *Subject to the due payment of the Total Payment, the employment agreement dated 27/7/2022 and every other agreement related to the Player's employment by the Club are hereby mutually terminated with immediate effect."*

85. Consequently, the Sole Arbitrator finds that the present dispute does not directly relate to the Employment Agreement but to the compliance of the payment established in the Termination Agreement which ended the employment relationship of the Parties. Accordingly, the Sole Arbitrator identifies the Termination Agreement as the ruling document for the Parties which stipulations must be applied to decide the foregoing dispute.

86. Considering the abovementioned, Clause 11 of the Termination Agreement reads as follows:

> *"Any dispute arising out of the present agreement shall fall within the exclusive jurisdiction of FIFA's Football Tribunal pursuant to FIFA's regulations."*

87. The Sole Arbitration insists that the present dispute arises directly from the non-payment of the Termination Agreement rather than the Employment Agreement and, therefore, the first instance body competent to hear the present dispute was indeed the FIFA Football Tribunal by the DRC as settled by the Parties in the Termination Agreement.

88. Moreover, the Sole Arbitrator does not leave unnoticed that the Club did not respond to the Player's claim in the DRC procedure, nor it has presented any justification for such

silence. In fact, it appears that the Club had knowledge of such proceedings as in its Appeal Brief before CAS, the Club alleges that the Player did not file the complete Employment Agreement (missing the "Standard Employment Contract" of the CFA) before the DRC.

89. In this regard, the Sole Arbitrator recalls CAS jurisprudence as in the award CAS 2020/A/7267 in which the sole arbitrator stated:

"Consequently, even though there is no provision in the CAS Code, nor in the FIFA Procedural Rules which states that a party must object to the jurisdiction of FIFA during the proceedings of first instance, the Sole Arbitrator observes that, in accordance with the CAS jurisprudence, a party proceeding before the FIFA PSC (or FIFA Dispute Resolution Chamber, hereinafter the "FIFA DRC") without raising any objection to the jurisdiction of such legal bodies of FIFA must be deemed to have waived its right to challenge their jurisdiction in appeal proceedings (CAS 2005/A/937; CAS 2011/A/2331; CAS 2012/A/2899; CAS 2015/A/3883; CAS 2015/A/4083).
This principle of deemed waiver is also applied by the Swiss Federal Tribunal which has held constantly that objections to jurisdiction must be raised at the earliest possible opportunity (ATF 4P.298/2005 reason 2.3). This rule, also reflected in Article 186(2) PILA, shall apply in the present proceedings."

90. Furthermore, the Sole Arbitrator finds in the award CAS 2021/A/8991 similar circumstances as the present dispute, in such award the sole arbitrator made the following considerations applicable to the case at hand:

"According to CAS jurisprudence, the burden of proving the alleged competence of the GFF Dispute Committee, as an exception of the general competence of the FIFA DRC, lies entirely on the Appellant. As the Appellant did not submit before the FIFA DRC any documents concerning the structure, characteristics and operation of the GFF Dispute Committee that could have proved that such body complies with the requirements set out in Article 22(b) of the FIFA RSTP (as further specified in FIFA Circular No. 1010), nor has the Appellant submitted any such proof in this CAS proceeding, it must be confirmed the FIFA DRC was competent to deal with the employment-related dispute between the Appellant (a Georgian football club) and the First Respondent (a Brazilian player)."

91. With all the abovementioned considerations, the Sole Arbitrator confirms that the DRC was competent to hear and decide on the present dispute.

b. <u>Was the Termination Agreement orally modified by the Parties?</u>

92. Moving to the merits of the matter, the Sole Arbitrator notes that the Club's Appeal is based on a) the undisputed fact that it was signed a Termination Agreement to finalize the Employment Agreement being the Termination Agreement composed by a compensation sum of EUR 64,000 and EUR 156,000 of outstanding payables; b) the undisputed fact that the Parties amended the Termination Agreement in order to modify the payment schedule fixed by the Termination Agreement and divide the first instalment; and c) the alleged fact that the Parties have settle by phone to modify again the payment schedule by eliminating the instalments and the Player simply agreed to receive the whole outstanding sum of 215,000 of the credit until 31 December 2024.

93. In other words, the Club did not deny the outstanding amount of EUR 215,000 but alleged that the payment schedule was modified by phone by the Parties.

94. In this sense, the Sole Arbitrator finds that indeed an oral agreement is enforceable as confirmed in the CAS award CAS 2021/A/8252 in which the sole arbitrator pointed:

"It is well-established CAS jurisprudence that contracts can be concluded in different forms, written or oral, and remain legally enforceable as confirmed in CAS 2013/A/3091, 3092 & 3093, in which the Panel concluded as follows:
"The Panel considers that, absent any express rule to the contrary, an agreement between two parties does not have to follow any specific form and may, in fact, simply result, for example, from a verbal agreement (Article 11 CO). However, parties opting to conclude non-written agreements may obviously face increased challenges in terms of proof".

95. However, the Sole Arbitrator finds that the Club has not filed any proof to sustain the statement of the oral agreement between the Parties which the Player alleges to be false, *i.e.* that such phone conversation and the supposed agreement never took place.

96. Given that the core of the dispute resides on an unproven fact, the Sole Arbitrator recalls Article 8 of the Swiss Civil Code that establishes:

"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact."

97. In this regard, long-standing CAS jurisprudence has been consistent in considering that, in principle, the party claiming a fact is the one that bears the burden to prove it. In the award CAS 2023/A/9438 the panel manifested:

"…the Panel adheres to the principle established by CAS jurisprudence that "in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (...). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46; and CAS 2009/A/1975, paras. 71ff)"

98. Furthermore, in the award CAS 2023/A/9444 the sole arbitrator recalled:

"The burden of proof behooves on the party claiming certain facts (actori incumbit probatio). Longstanding CAS jurisprudence has underscored this point:
"According to the general rules and principles of law, facts pleaded have to be proven by those who plead them, i.e. the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proven by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In

accordance with Article 8 of the Swiss Civil Code: Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.
It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites include the concept of 'burden of proof' are (i) the 'burden of persuasion' and (ii) the 'burden of production of the proof'. In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party" (CAS 2016/A/4580, para. 91, with further references to CAS 2015/A/309; CAS 2007/A/1380, CAS 2005/A/968 and CAS 2004/A/730).".."

99. Moreover, the Sole Arbitrator notes that such principle was also applied in the Appealed Decision which mentions:

"The Chamber recalled the basic principle of burden of proof, as stipulates in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof."

100. Specifically considering that the alleged fact was an oral agreement, the Sole Arbitrator also recalls the award CAS 2018/A/5607 in which the panel considered:

"The Panel, however, need not address whether the particular circumstances of the case at hand permit the Player to rely on the alleged oral agreement under Swiss law, because the Player - who carries the burden of proof in this regard - has failed to sufficiently substantiate that such agreement ever existed."

101. Furthermore, in the case CAS 2019/A/6129 the panel indicated:

"... In particular, the Panel holds that the Appellant failed to discharge its burden of proof to support the allegation that it had reached a verbal agreement for a payment plan with the Agent. The Appellant did not present any shred of evidence to substantiate that it had reached such agreement by mutual consent..."

102. Moreover, the Sole Arbitrator also notes that the Club failed to provide any proof of the specifications or justifications of such alleged phone call.

103. With all, the Sole Arbitrator concludes that it must be applicable the Termination Agreement as it is written (with its posterior written Amendment on 1 February 2024). Therefore, by the principle *pacta sunt servanda* and the Parties agreement on the Termination Agreement, the Player is entitled to the payment of EUR 215,000.

104. For the sake of completeness, the Sole Arbitrator recalls that the safeguard of Swiss public policy must be reviewed *ex officio* (without incurring in going *ultra petita*) as CAS awards, being issued by an arbitral tribunal seated in Switzerland, can be set aside by the Swiss Federal Tribunal if found to be contrary to such public policy.

105. Accordingly and although the Parties did not dispute, in the present procedure, the 15% per annum interest that was stipulated in Clause 4 of the Termination Agreement, the Sole Arbitrator notes that such interest rate surpasses the general rate of 5% established in Articles 73 and 104 of the Swiss Code of Obligations. However, no rule prevented the Parties to establish such 15% interest rate.

106. In this regard, the Sole Arbitrator recalls CAS long-standing jurisprudence as in the award CAS 2021/A/7673 & CAS 2021/A/7699 where the sole arbitrator stated that *"the Swiss Federal Tribunal held that an interest rate as high as 18% per annum was acceptable (ATF 93 II 189). It ruled that above this limit, the interest rate was usurious and, therefore, contrary to public morals (ATF 93 II 189; GRANGES M., Les intérêts moratoires en arbitrage international, Zurich 2014, p. 236)."*

107. Therefore, the Sole Arbitrator confirms that the 15% interest rate stipulated by the Parties is not excessive and shall be applied to the matter at hand from 19 March 2024 until the date of effective payment.

108. In conclusion, the Appealed Decision is hereby confirmed. All other prayers for relief are rejected.

X. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Anorthosis Famagusta FC against the Decision FPSD-14134 rendered on 30 May 2024 by the Dispute Resolution Chamber of the FIFA Football Tribunal is dismissed.

2. The Decision FPSD-14134 rendered on 30 May 2024 by the Dispute Resolution Chamber of the FIFA Football Tribunal is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland

Date: 25 February 2025

THE COURT OF ARBITRATION FOR SPORT

José Juan Pintó Sala

Sole Arbitrator

Alejandro Naranjo Acosta

Ad hoc Clerk