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

CAS 2024/A/10571 UTA Arad Football Club Association v. Marko Roganovic and FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Olivier Carrard, Attorney-at-Law, Geneva, Switzerland

in the arbitration between

UTA Arad Football Club Association, Romania

Represented by Mr Andrei Iordăchescu – Attorney-at-Law, Romania

Appellant

and

Mr Marko Roganovic, Montenegro

Represented by Mr Zoran Damjanovic and Ms Ksenija Damjanovic – Attorneys-at-Law, Serbia

First Respondent

and

Fédération Internationale de Football Association, Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios, Litigation Sub-Division, United States of America

Second Respondent

* * * * * * * * *

I. PARTIES

1. UTA Arad Football Club Association (the "Appellant" or "UTA" or the "Club") is a professional football club affiliated to the Romanian Football Federation, which in turn is affiliated to the *Fédération Internationale de Football Association* ("FIFA").

2. Mr Marko Roganovic (the "First Respondent" or the "Player") is a professional football player of Montenegrin nationality born on 21 June 1996.

3. The *Fédération Internationale de Football Association* (the "Second Respondent" or "FIFA") is the world governing body for football, who also acts as the legislator in all kinds of football activities.

4. The Appellant and the First Respondent are jointly referred to as the "Parties", as the Second Respondent declined to participate in the procedure as explained below.

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established based on the written submissions of the Parties and the evidence examined during the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence considered necessary to explain his reasoning.

A. Background Facts

6. On 22 June 2023, the Parties entered into a Sports Activity Contract numbered 145 (the "Employment Contract") valid from 22 June 2023 until 30 June 2024.

7. As far as it is relevant for the present proceedings, in accordance with Article 4 of the Employment Contract the Club undertook to pay the Player as follows:

> "*Article 4: Remuneration*
>
> *i. The Club undertakes to pay the Player for his professional services a monthly gross basic remuneration of XX..../net amount of 32 000 lei 3 (in words: thirty two thousand), to be paid at the latest on 25 of the month for the previous month.*
>
> *ii. If the Sports Activity Contract is extended, the monthly pay will be 37 000 (thirty seven thousand) Lei netto.*

> *iii. The Player's remuneration and other financial entitlements will be paid to the Player as follows, always indicating the reason for the relevant payment (eg "Payment June 2023") (please specify the applicable payment method): (...)*".

8. On 30 November 2023, the Parties decided to terminate their Employment Contract early by means of a Termination Agreement numbered 973 (the "Termination Agreement"), pursuant to which the Club undertook to pay to the First Respondent the amount of Romanian New Lei (RON) 128,000.00 until 25 January 2024:

> "*(2) The Player has only received up to date only a total of 2 monthly salaries (64.000 Romanian lei net) and the corresponding amount for the time period between 22.06.2023 until the 01.07.2023 (9.600 Romanian lei net) totaling 73.600 Romanian lei net from the Club. As such, on today's date the residual value of the Sports Activity Contract is of 320.000 Romanian lei net.*
>
> *(3) The Parties have mutually agreed to an early termination on today's date having the Club the obligation to pay the Player the value of 128.000 Romanian lei net by no later than the 25.01.2024".*

9. The Termination Agreement further details in its Article 5: "*[s]hould, for any reason whatsoever, the Club fail to make the herein contracted payment of 128.000 Romanian lei net to the Player by no later than 25.01.2024, the Player has the right to the residual value of the Sports Activity Contract described herein".*

10. On 24 January 2024, the Player issued a formal warning to the Club to obtain payment of RON 128,000.00 by 25 January 2024 at the latest, failing which he would take the issue before FIFA and would not accept the late payment.

B. Proceedings before the FIFA Dispute Resolution Chamber

11. On 29 January 2024, the Player filed a claim against the Club before the Dispute Resolution Chamber of FIFA (the "FIFA DRC"), concerning the non-compliance with the payment obligation established in Article 5 of the Termination Agreement entered by the Parties on 30 November 2023.

12. In his claim, the Player requested payment of RON 320,000.00, plus 5% interest *p.a.* as of 25 January 2024.

13. In this context, the Player argued that the Club failed to remit the payment agreed upon in the Termination Agreement by 25 January 2024, and that he therefore is entitled to the residual value of the Employment Contract, as established in Article 5 of the Termination Agreement.

14. On 18 March 2024, UTA requested an extension of the time limit for the answer by 48 hours due to exceptional personal circumstances of the attorney representing the Club.

15. On 19 March 2024, FIFA indicated that the second extension request could not be granted and concluded that the extension request was not admissible.

16. On 26 March 2024, considering among others that the Club's Answer was out of time, the FIFA DRC issued its decision by which it upheld the First Respondent's claim (the "Appealed Decision").

17. On 26 March 2024, a single judge of the FIFA DRC (the "Single Judge") rendered the Appealed Decision, with the following operative part:

> *"1. The claim of the Claimant, Marko Roganovic, is partially accepted.*
>
> *2. The Respondent, UTA ARAD, must pay to the Claimant the following amount(s):*
>
> *- RON 320,000 plus 5% interest p.a. as from 26 January 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 11 April 2024, the Club paid the Player the sum of RON 128,000.00.

19. On 22 April 2024, the FIFA DRC notified the Parties of the Appealed Decision's grounds.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 13 May 2024, the Appellant filed a Statement of Appeal with the CAS (the "Appeal"), with the following requests for relief:

"➢ *Admit the present Appeal and to annul the Decision passed on 26 March 2024 by FIFA – Dispute Resolution Chamber and, as a consequence, to reject the Claim of the Player Marko Roganovic.*

➢ *To order the Respondent to pay the Appellant a contribution toward its legal and other costs generated by this case represented by attorney fee and arbitration costs etc".*

21. On 20 May 2024, the First Respondent sent a letter in which it reserved its acceptance of the Appellant's partial payment of the amounts granted by the Appealed Decision. Concretely, the First Respondent acknowledged the payment made by the Appellant but requested the payment of the outstanding RON 192,588.00 along with the corresponding interests within the next 7 days.

22. On 24 May 2024, FIFA wrote to CAS stating that it had no legal interest in the matter and requested that it be excluded as a Respondent in the proceedings, reserving the right to claim legal costs against the Appellant as a consequence of its unnecessary participation.

23. On 3 June 2024, the CAS Court Office referred to its letter dated 27 May 2024 and once again invited the Appellant to state its position on the Second Respondent's participation in the proceedings.

24. On 17 July 2024, the Appellant filed its Appeal Brief (the "Appeal Brief").

25. On 9 October 2024, the CAS Court Office noted that the Second Respondent did not file its Answer within the set deadline.

26. On 22 October 2024, the CAS Court Office provided a copy of Mr Olivier Carrard's "Arbitrators' Acceptance and Statement of Independence" form to the Parties and drew their attention to the disclosure made by Mr Carrard.

27. On 30 October 2024, the CAS Court Office noted that no challenge had been filed against the appointment of Mr Olivier Carrard within the set deadline in accordance with R34 CAS Code of Sports-related Arbitration (2023 edition) (the "CAS Code").

28. On 11 November 2024, the First Respondent filed his Answer.

29. On 12 November 2024, the CAS Court Office informed the Parties on behalf of the Deputy President of the CAS Appeals Arbitration that the Arbitral Tribunal appointed to decide this case is constituted as follows:

Sole Arbitrator: Mr Olivier Carrard, Attorney-at-law in Geneva, Switzerland.

30. On 20 November 2024, the CAS Court Office informed the Parties that, in view of the First Respondent's letter of 19 November 2024 and the lack of response from the Appellant, no

hearing would be held in this matter. The Sole Arbitrator considered himself sufficiently informed based on the Parties' written submissions in accordance with Article R57(2) CAS Code.

31. On 26 November 2024, the CAS Court Office issued an Order of Procedure in accordance with Article R56(2) CAS Code.

32. On 2 and 3 December 2024, the Appellant and the Respondents respectively provided their signed copy of the Order of Procedure, agreeing to the main elements of the arbitration procedure. By signing the Order of Procedure, they confirmed their agreement that the Sole Arbitrator decide the matter based solely on their written submissions and that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Appellant

33. The Club's submissions, in essence, may be summarised as follows:

- The Player alleges that both Parties mutually agreed to terminate their contract early on 30 November 2023. The Club was supposed to pay the Player RON 128,000.00 by 25 January 2024. However, when the payment was not made, the Player, believing there was no chance for a peaceful resolution, sought intervention from FIFA on 26 January 2024. The Player claims entitlement to the "residual value" of the Employment Contract, RON 320,000.00, due to the Club's non-payment. The Player has asked for the Club to be ordered to pay this amount, along with a 5% *p.a.* penalty from 25 January 2024 until the actual payment date. Additionally, the Player has requested payment for penalty-related charges.

- The Parties confirmed the payment of RON 73,600.00 to the Player for financial rights for June, July, and August 2023. They also mutually agreed to pay the Player for the months of September, October, November, and December 2023, totalling RON 128,000.00. Notably, UTA agreed to pay for October and December, despite the Player not being active in October and the Employment Contract ending in November. If the amount of RON 128,000.00 is not paid by 25 January 2024, the Club would be required to pay a late payment penalty of RON 192,000.00, which is the difference between the residual amount and the agreed financial rights.

- The Parties involved in the Employment Contract agreed to a fixed contract duration for the 2023/2024 competitive season, from 22 June 2023 to 30 June 2024. the Player was to receive a monthly remuneration of RON 32,000.00 net, payable by the 25th of the following month. The Parties also reaffirmed the possibility of terminating the contract early by mutual agreement.

- The FIFA DRC determined that UTA had waived its right to respond to the Player's claim, disregarding UTA's notices of 7 and 18 March 2024. FIFA wrongly concluded that UTA had waived its right of defence. FIFA also found that the Club had implicitly

accepted the Player's claims. Furthermore, FIFA found that the Club had not paid its debt on time and that, therefore, if payment was not made, the residual value specified in the Termination Agreement would be due.

- The amount of RON 128,000.00, as stated in Article 3 of the Termination Agreement, encompasses all sums that UTA owes to Mr Marko Roganovic. This includes payments for services rendered, early termination payments and any other considerations.

- If the Club had not paid the Player his salary entitlements, the compensation due, as per Article 17 RSTP, would have been less than the amount the Player is claiming as a penalty for late payment. This compensation would have been further reduced by the value of the new agreement.

- The penalty of RON 198,000.00 divided by the 76 days of delay results in a daily penalty of RON 2,605.26 (approximately EUR 550/day) for the Club. According to established practice, this penalty is deemed excessive and disproportionate.

- Despite the fact that the penalty is payable even if no damage has been suffered, in accordance with Article 161 of the Swiss Code of obligations, the Player is requesting a penalty equivalent to six months' financial rights for a delay of 76 days. This is even though he did not work for UTA during this period, but for another club. This situation could be considered as unjust enrichment.

- The Parties' intent was to establish the payment of salaries for 10 months as a penalty only if the salaries for 4 months were not paid on time and for the late payment, the Club owes a penalty of 5% *p.a.* to the Player.

- Subsidiarily, to avoid a situation of unjust enrichment, the Club considers that the Player is entitled to receive a penalty at most equal to the value of the financial right due to him from the due date (25 January 2024) to the date preceding payment of the principal debt of RON 128,000.00 (10 April 2024).

- This penalty amounts to RON 80,859.00 and is made up of an amount of RON 64,000.00 for the months of February and March, an amount of RON 6,193.00 for the 6 days in January and an amount of RON 10,666.00 10 days for April.

34. On this basis, the Club submits the following prayers for relief in its Appeal Brief:

- *"Admit the present Appeal and to annul the Decision passed on 26 March 2023* [sic] *by FIFA – DRC and, as a consequence, based on article 163 from SCO, to reduce the penalty clause to 5%/year;*

- *Subsidiary, admit the present appeal and to annul the Decision passed on 26 March 2023* [sic] *by FIFA – DRC and, as a consequence, based on article 163 from SCO, to reduce the penalty clause to the residual value of the contract for the period 25.01.2024 (due date) – 10.04.2024 (date of payment).*

- *To order the Respondents to pay the Appellant a contribution toward its legal and other costs generated by this case represented by attorney fee, amounting 4000 EURO".*

35. The Club suggested mediation once again to reach an amicable agreement resulting in a payment of RON 80,859.00 to the Player.

B. The First Respondent

36. The Player's submissions, in essence, may be summarised as follows:

- The First Respondent could not provide his services to the Appellant for most of October 2023 due to the Appellant's failure to fulfil its legal obligations as an employer.

- The Appellant misinterprets the Termination Agreement and provides incorrect legal qualifications, in a manner that favours its position, rather than in accordance with the mutual agreement and true intentions of both Parties.

- Under the Termination Agreement, the Club undertook to pay the Player RON 128,000.00 by 25 January 2024 at the latest and to issue the Player's international transfer certificate ("ITC") on first request, taking all necessary due diligence measures.

- The clear wording of Article 5 of the Termination Agreement, read in conjunction with Articles 2 and 3, leads to the conclusion that the Player is entitled to the full unpaid value of the Employment Contract of RON 320,000.00 net in the event of late payment.

- The net amount of RON 320,000.00 includes both the unpaid amortized value of the Employment Contract and the amounts that the Player would have received if the Employment Contract had been properly performed.

- Indeed, the residual value of the Employment Contract, as described in Article 2 of the Termination Agreement, is RON 320,000.00 net (RON 393,600.00 - RON 73,600.00). This residual value corresponds to the initial value of the Employment Contract, less the amounts that the Appellant has already paid to the Respondent.

- The true intention of the Parties was to mutually agree to the following terms: if the Club does not pay the Player the net amount of RON 128,000.00 by 25 January 2024, the Club is obliged to pay the Player a net amount of RON 320,000.00.

- The Appellant did not comply with the First Respondent's warning and was therefore in breach of its obligation. It was only after the Appealed Decision of the Single Judge of the FIFA DRC that the Appellant partially complied with the payment.

- Article 5 of the Termination Agreement is not a penalty clause, but an alternative obligation in favour of the First Respondent if the Appellant does not comply with its obligations, namely the payment to the Player of the sum of RON 128,000.00 before

the deadline of 25 January 2024, then the residual value of the Employment Contract was due.

- In any hypothesis, if Article 5 of the Termination Agreement were to be qualified as a penalty clause, then the CAS jurisprudence cited by the Appellant in support of its Appeal Brief must be qualified by other CAS and Swiss Federal Tribunal jurisprudence in which a reduction in the amount of the penalty clause was not allowed, notably on the grounds that a reduction infringes the Parties' freedom of contract.

- Furthermore, case law does not consider that penalty clauses are not automatically considered abusive even if they exceed the actual damages suffered by the creditor. Penalty clauses may include a punitive element and are not required to precisely correspond to the damages incurred.

- CAS case law has established criteria for determining whether a penalty clause is excessive, which are not met in this case concerning Article 5 of the Termination Agreement.

37. On this basis, the Player submits the following prayers for relief in his Answer:

"*1. To dismiss the Appellant`s appeal against the decision of the Single Judge of the Dispute Resolution Chamber of 26 March 2024, ref.no. FPSD - 13525 and to confirm the Appealed decision in its entirety;*

2. To order that the Appellant pays to the Respondent amount of 192.588,00 RON net (countervalue RON/EUR 38.750,00 EUR net) plus corresponding interests of 5% p.a. calculated as follows:

• 5% p.a. on 320.000,00 RON as from 26 January 2024 until 11 April 2024

and

• 5% p.a. on 192.588,00 RON as from 12 April 2024 until the date of effective payment.

3. To order the Appellant to bear all costs of the present procedure;

4. To order the Appellant to contribute to the legal fees and expenses of the Respondent in relation to the present procedure in the amount of at least 5.000,00 CHF".

V. JURISDICTION

38. Article R47(1) CAS Code provides the following:

> "*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*".

39. The jurisdiction of CAS derives from Article 57(1) FIFA Statutes, as it determines that "[a]*ppeals 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 R47 CAS Code.

40. The jurisdiction of the CAS arises from the FIFA Statutes, is not disputed by the Parties and is further confirmed by the signing of the Order of Procedure.

41. Therefore, the Sole Arbitrator has jurisdiction to render this Arbitral Award.

VI. ADMISSIBILITY

42. Article R57(1) CAS Code provides as follows:

> "*The Sole Arbitrator has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. The Sole Arbitrator may request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal. Upon transfer of the CAS file to the Sole Arbitrator, the Sole Arbitrator shall issue directions in connection with the hearing for the examination of the parties, the witnesses and the experts, as well as for the oral arguments".*

43. Article R57(1) of the CAS Code grants the Sole Arbitrator full power of review on a *de novo* basis, which has been confirmed by CAS precedents.

44. Considering that the case could be heard, without ruling on a possible violation of the Appellant's right to be heard before the FIFA DRC, the Sole Arbitrator decided to exercise the power of cognizance in law and in fact, as permitted under Article R57(1) of the CAS Code.

45. The Statement of Appeal of 13 May 2024, filed against the FIFA DRC's decision of 26 March 2024, was lodged within the 21-day time limit set by Article 57(1) of the FIFA Statutes. The Appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

46. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

47. According to Article R58 CAS Code:

> "*The Sole Arbitrator 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 Sole Arbitrator deems appropriate. In the latter case, the Sole Arbitrator shall give reasons for its decision".*

48. Article 56(2) FIFA Statutes provides 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".*

49. It should be noted that pursuant to Article 7 of the Termination Agreement:

> "*Any dispute arising in connection with the aforementioned agreement must be resolved definitively in accordance with FIFA regulations and Swiss law before FIFA's dispute resolution bodies*".

50. The Sole Arbitrator finds that the applicable regulations are the Statutes and various regulations of FIFA, in particular the Regulations on the Status and Transfer of Players ("FIFA RSTP"). As to the applicable edition of the FIFA RSTP, the Sole Arbitrator notes that, since the Player's claim was lodged with the FIFA DRC on 29 January 2024, the May 2023 edition is applicable, as was also held by the FIFA DRC in the Appealed Decision.

51. Additionally, in accordance with Article 56(2) FIFA Statutes, Swiss law is applicable should the need arise to fill a possible gap in the various rules of FIFA.

VIII. MERITS

52. The main issues to be resolved by the Sole Arbitrator are as follows:

A. What was the true intention of the Parties by including Article 5 in the Termination Agreement?

B. Is the amount stipulated in Article 5 of the Termination Agreement subject to reduction?

A. What was the true intention of the Parties by including Article 5 in the Termination Agreement?

53. Based on the Parties' written submissions, the Sole Arbitrator finds that the payment of RON 128,000.00, by 25 January 2024, as mutually agreed by the Parties for the early

termination of the Employment Contract according to Article 3 of the Termination Agreement is not in question in the present matter.

54. The Sole Arbitrator also notes from the Appellant's Appeal Brief that it does not contest the validity of the existence of Article 5 of the Termination Agreement, which states:

> "*Should, for any reason whatsoever, the Club fail to make the herein contracted payment of RON 128.000 net to the Player, by no later than 25.01.2024, the Player has the right to the residue value of the sport activity contract described herein".*

55. The main subject of the dispute is the qualification of the amount due of RON 320,000.00 stipulated in Article 5 of the Termination Agreement, as well as its justification and scope.

56. In the absence of FIFA regulations concerning the interpretation of agreements, Swiss law must be applied.

57. Article 18 of the Swiss Code of obligations ("SCO") states that:

> "*When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".*

58. The Sole Arbitrator further notes that Article 18 SCO is consistent with the CAS' established jurisprudence on how to interpret contractual clauses:

> "*In order to establish whether a contract has been entered into, who the parties to the contract are and what the exact scope of the contractual relationship is, the judge must interpret the parties' declarations of intent. At first, he must seek to discover the true and mutually agreed upon intention of the parties, if necessary empirically, on the basis of circumstantial evidence (Decision of the Swiss Federal Tribunal, 4A_155/2017, 12 October 2017, consid. 2.3; ATF 132 III 268 consid. 2.3.2, 131 III 606 consid. 4.1). To be taken into account are the content of the statements made – whether they are written or oral - and also the general context; i.e. all the circumstances, which could give an indication as to the real intention of the parties. Also relevant are the statements made prior to the conclusion of the contract as well as the subsequent events and conduct of the parties (ATF 118 II 365 consid. 1, 112 II 337 consid. 4a). The judge must assess the situation according to his general experience of life (ATF 118 II 365 consid. 1 and references). When the mutually agreed real intention of the parties cannot be established, the contract must be interpreted according to the requirements of good faith (ATF 129 III 664; 128 III 419 consid. 2.2 p. 422). The judge has to seek to determine how a declaration or an external manifestation by a party could have been reasonably understood depending on the individual circumstances of the case (ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422). The requirements of good faith tend to give the preference to a more objective approach. The emphasis is not so much on what a party may have meant but on how a reasonable man would have understood its declaration (ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422). The relevant circumstances in this respect are only those which preceded or accompanied the declaration of intent*

and not the subsequent events (Decision of the Swiss Federal Tribunal, 4A_155/2017, 12 October 2017, consid. 2.3; and references)" (CAS 2017/A/5219 Gaetano Marotta v. Al Ain FC, award of 20 April 2018, para. 93).

59. The clause states the Player "*has the right to the residue value"* upon non-payment. This formulation implies a right to a predetermined amount triggered by a specific event, namely non-payment on 25 January 2024, rather than a punitive measure. The term "*residual value"* itself refers to a pre-established figure tied to the intrinsic worth of the contract, rather than a distinct penalty. It represents the remaining value of the contract, not a separate sanction for breaching a payment obligation.

60. The Termination Agreement aimed to resolve the existing salary dispute and provide a clean break. The amount of RON 128,000.00 represented a compromise – a reduced amount accepted by the Player in exchange for a swift resolution and his ITC.

61. The Termination Agreement also conspicuously avoids terms such as "*penalty*", "*fine*" or "*sanction*". This absence reinforces the argument that Article 5 of the Termination Agreement was not designed as a punitive measure, but rather as a mechanism to guarantee the compensation due to the Player.

62. While recalling that, under Swiss law, the rules of interpretation do not stop at the terminology used by the parties to the contract, but rather the intention of the parties The sum of RON 320,000.00, representing the Employment Contract's residual value, served as an incentive for the Club to honour the compromise. It was the Player's fallback position, ensuring he received the Employment Contract's remaining value if the Club failed to uphold its part of the Termination Agreement. This context strongly suggests an alternative obligation – either pay the agreed settlement or the full residual amount.

63. The Termination Agreement was not a one-sided concession by the Player. The Club also benefited from the agreement by securing a clean break and avoiding potential further disputes or claims related to the early termination. The alternative obligation in Article 5 the Termination Agreement ensured a balance of interests. The Club had the choice: either fulfil the compromise payment promptly or face the consequence of paying the full residual amount of the Employment Contract. This reciprocal structure further supports the interpretation of Article 5 of the Termination Agreement as a core component of the agreement's mutual exchange, not a mere penalty provision.

64. This context strongly suggests an alternative obligation - either the Club pays the sum agreed in the settlement before 25 January 2024, or it pays the full residual amount after this contractually fixed date.

65. The Player had a legitimate expectation that the RON 320,000.00 would serve as his guaranteed minimum. He agreed to accept a reduced upfront payment (RON 128,000.00) based on the Club's assurance that the full residual value of the Employment Contract would be paid in the event of default. Treating Article 5 of the Termination Agreement as a penalty clause subject to reduction undermines this reliance, effectively punishing the Player for the Club's breach and creating an inequitable outcome.

66. Moreover, the "*residual value*" is not an arbitrary figure; it is a clearly defined amount directly tied to the original Employment Contract, as established by the Parties in Article 3 of the Termination Agreement. This value represents the remaining financial obligations owed to the Player under the Employment Contract, adjusted by any payments already made. This inherent connection to the original contract differentiates it from a penalty, which is typically a separate, punitive sum designed to sanction a breach. By explicitly referencing the "*residual value*," the Termination Agreement incorporates this pre-existing contractual obligation into its structure, effectively framing it as an alternative performance option.

67. The Sole Arbitrator finds the argument that awarding the RON 320,000.00 would unjustly enrich the Player to be clearly unfounded. This amount merely ensures that the Player receives the compensation he was originally entitled to under the Employment Contract, minus the sums already paid. It reflects the intrinsic value of his contractual rights—a value he agreed to compromise on, in the Termination Agreement.

68. The principle of *pacta sunt servanda* dictates that agreements must be kept. The Termination Agreement, including Article 5, represents a valid contract. Interpreting it as an alternative obligation upholds this principle by enforcing the agreed-upon terms.

69. Therefore, Article 5 of the Termination Agreement should be interpreted as an alternative obligation, guaranteeing the Player the Employment Contract's residual value of RON 320,000.00 upon the Club's failure to meet the agreed payment deadline. This interpretation aligns with the Termination Agreement's wording, context, and the principle of *pacta sunt servanda*, ensuring a fair outcome and discouraging contractual breaches.

70. The Parties' intention in concluding Article 5 of the Termination Agreement was therefore not to agree on a penalty clause, but on an alternative obligation (the "Alternative Obligation").

71. In conclusion, the Sole Arbitrator rules that Article 5 of the Termination Agreement is not a penalty clause, and the arguments relating to the penalty clause will subsequently be dismissed.

B. Is the amount stipulated in Article 5 of the Termination Agreement subject to reduction?

72. The provisions related to penalty clauses, particularly Article 163 SCO which allows for the reduction of excessive penalties, do not apply in this case. The Sole Arbitrator acknowledges the parties' freedom of contract, as previously recognized by the Single Judge of the FIFA DRC. In this matter, the Parties explicitly and intentionally included Article 5 to guarantee the Player a minimum payment. Reducing the RON 320,000.00 would violate this freedom of contract and undermine the carefully negotiated terms of their agreement. The agreed-upon amount reflects a compromise between the full value of the Employment Contract and the terms of the Termination Agreement, further reinforcing the argument against any reduction.

73. An alternative obligation is subject to reduction, in particular when one of the performances is initially impossible (Article 20 SCO), and the obligation is thus reduced to the possible performance, unless it is thought that the parties would not have concluded under these conditions, and that a defect in consent could be invoked (FABIENNE HOHL, *in*

THÉVENOZ/WERRO, Commentaire Romand du Code des obligations I, ad. Article 72 N 6, Basel 2021 TERCIER/PICHONNAZ, Le droit des obligations, Basel 2019, N 1094).

74. The Sole Arbitrator notes that no argument has been raised as to any impossibility on the part of the Club to honour the amount of RON 328,000.00. Moreover, the Parties did not raise any arguments relating to lack of consent.

75. As Article 5 of the Termination Agreement is not a penalty clause, the Appellant's calculation that the amount of the contractual penalty of RON 198,000.00 should be divided by the 76 days of delay, which would result in a daily penalty of RON 2,605.26/day for the Club, i.e. excessive and disproportionate according to established practice, is irrelevant. Article 5 of the Termination Agreement was not a fixed amount per day of delay, but an alternative obligation payable by the Appellant if it did not comply with the date of the payment set out in Article 3 of the Termination Agreement, namely 25 January 2024.

76. The same applies to the reasoning that if the Club had been passive and had not paid the Player the salary to which he was entitled, the compensation due, calculated in accordance with Article 17 of the FIFA RSTP, would have been less than the amount claimed by the Player as a penalty for late payment. The purpose of the alternative obligation in Article 5 of the Termination Agreement was not to penalize the non-payment of the sum of RON 128,000.00 due on the date fixed in Article 3 of the Termination Agreement, namely 25 January 2024.

77. The First Respondent's letter of 20 May 2024 does not constitute a waiver of the amount of the RON 320,000.00, but rather a reservation as to the acceptance of the partial payment by the Appellant of the amounts awarded by the Appealed Decision. The First Respondent noted the payment made by the Appellant but asked him to pay the balance of RON 192,000.00.

78. The sum of RON 128,000.00 was paid by the Club to the Player on 11 April 2024, leaving a balance of RON 192,000.00 to be paid to the Player. In the absence of FIFA regulations concerning the amount of the concerning the calculation of interest in this specific case, Swiss law must be applied. Interest on this sum is also due from 12 April 2024 at a rate of 5% according to Article 104 paragraph 1 SCO.

C. In conclusion, the Sole Arbitrator considers that the true and mutually agreed intention of the Parties was that Article 5 of the Termination Agreement be an alternative obligation in the amount of RON 320,000.00 in favour of the Player, the choice of which excludes the performance of the initial principal debt of the Termination Agreement and is not subject to any reduction.

D. Conclusion

79. Based on the foregoing analysis and after due consideration of all the specific circumstances of the case, the evidence produced and the arguments submitted by the Parties, the Appeal is confirmed, with the Sole Arbitrator concluding that:

    a. the Alternative Obligation may be applied in the present dispute and is valid under Swiss law;

b. the Alternative Obligation, to be paid by the Appellant to the First Respondent, is not reduced;

c. The Player is entitled to receive from the Club the balance of the compensation for breach of the Termination Contract in the amount of RON 192,000.00 net, plus interest at a rate of 5% *p.a.* as from 12 April 2024 until the date of effective payment;

d. The Appealed Decision is confirmed in full and the Club's appeal is dismissed.

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

IX. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 13 May 2024 by UTA Arad Football Club Association against the decision issued on 26 March 2024 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is dismissed.

2. The decision issued on 26 March 2024 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 12 February 2025

THE COURT OF ARBITRATION FOR SPORT

Olivier Carrard
Sole Arbitrator