Decision of the Single Judge of the Players' Status Committee

passed in Zurich, Switzerland, on 21 February 2020,

by

Roy Vermeer (the Netherlands)

Single Judge of the Players' Status Committee,

on the claim presented by the coach

Dimitar Dimitrov, Bulgaria
represented by Mr Radostin Vasilev

as "*Claimant*"

against the club

FC Irtysh Pavlodar, Kazakhstan
represented by Mr Claude Ramoni

as "*Respondent*"

regarding an employment related dispute between the parties

I. Facts of the case

1. On 10 July 2018, the Bulgarian coach, Mr Dimitar Dimitrov (hereinafter: *the Claimant* or *the coach*) and the Kazakh club, FC Irtysh Pavlodar (hereinafter: *the Respondent* or *the club*) signed an employment contract (hereinafter: *the contract*) valid as from the date of signature until 30 December 2020 according to which the coach was employed as *"Head Coach"*.

2. Article 3 of the contract provided the following payments, each payable *"not later than the first ten days of the following month"*:
   2.1. USD 25,000 as a net monthly salary during the 2018 season;
   2.2. USD 37,500 as a net monthly salary as from 1 January 2019.

3. According to article 9 of the contract, *"all disputes arising in the course of implementation of this Employment contract, the Parties shall resolve through negotiations"* and *"the Parties agreed that any disputes arising from or in connection with this Employment contract or connected with it shall be settled by FIFA, in accordance with the procedures provided by FIFA Disciplinary regulations"*.

4. Furthermore, article 12.4 of the contract provided that: *All other mutual relations between Parties, which are not regulated by the present labour contract, are subject to the Code".* Said code is later specified as the *"Labour code of the Republic of Kazakhstan"*.

5. What is more, clause 3 par. 10 of the *"Official Duties"* of the *"Job Description"* signed between the parties on 9 January 2019 provided the following:

   "10) to participate in the development of a comprehensive program for preparation of the players and the team for sports competitions in the respective field of work. To be responsible for the outcome of official matches of [the club]*. In case of five or more defeats (lost matches) of the team during the championship, the employer is entitled to terminate the employment contract with the employee without paying any compensation for termination after sending notice of termination 10 days prior to the date of termination. Furthermore, the employee is not entitled to compensation for such termination."*

6. On 30 April 2019, the coach sent an email to the Respondent, in which he declared the following:

   "Recently [the coach] *received a statement that he is temporarily detached from the coach duties. He has been informed he is no longer Head coach of the team and he will no longer be permitted to execute his working obligations.*
   All of the above stated is a gross violation of [the coach's] *contract. By now* [the coach] *has strictly fulfilled all of his contract obligations and he would like to continue his Head coach responsibilities with* [the club]*. Therefore I insist the employer immediately stops violation of the contract and keeps the contract obligations, immediately*

providing access to [the coach's] *working place and all conditions for a normal training activities."*

7. On 30 April 2019, it was announced in the local media that the club had dismissed the Claimant.

8. On 1 May 2019, the club sent an email to the coach, in which it declared that the coach was absent from a pre-match meeting prior to a fixture of the Kazakh Premier League 2019 and requested a *"valid reason for* [his] *absence from* [his] *workplace"*. The club summoned the coach to a meeting the following day, and reminded the coach of his duties.

9. On 2 May 2019, the club sent a correspondence to the coach asking him to provide by no later than 5 May 2019, *inter alia*, documents and reports regarding the performance of the team and the players and explanations regarding the bad results of the team. In addition, the club sent a termination letter to the coach in which it declared, *inter alia*, that *"the club considers that* [the coach] *intentionally did not appear (…) for the official match 1 May 2019, pushing the club to terminate unilaterally the Employment contract and* [the coach] *to receive compensations for such termination. Although, your violation of the terms of the Employment contract and the jobs description is a fact and such acts from you that violates the contractual and sports stability are unacceptable. On 1 May 2019, the club officially contacted* [the coach] *(via email) for explanations for your absence from work, i.e. from the important game on 1 May 2019. Based on the above, in view of your absence from work on 1 May 2019 (for which the team suffered a great defeat) and on the basis of your violation of the Employment contract and job description,* [the club] *informs you that terminates (sic) the Employment contract.* The club] *hereby inform* [the coach] *that* [he] *is obliged to duly provide the information requested by the club (reports, plan and etc. of the team) in accordance with the notice of 2 May 2019, in turn,* [the cub] *undertakes to pay the salary for the time* [the coach] *worked"*.

10. On the same day, the coach replied to the club, *inter alia*, by stating that on 30 April 2019, a unfruitful meeting was held on 30 April 2019 with the club regarding a mutual termination of the contract in view of dissatisfactory results, and that in the aftermath of said meeting the club asked the coach and his assistants to leave the training session they were coaching in. The coach emphasized that his absence from the fixture of 1 May 2019 was due to the fact that the coach was barred from entering the club's facilities by a security guard. As such, the coach declared that the club terminated the contract without just cause.

11. Between 3 and 7 May 2019, the coach sent several correspondence to the club requesting to discuss an amicable settlement to their dispute otherwise he would have no other option but to lodge a claim in front of FIFA.

12. On 10 May 2019, the Respondent notified to the Claimant that it agreed to discuss a settlement and sent its offer on 15 May 2019, an offer that was rejected by the coach on the same day.

13. On 4 June 2019, the coach lodged a claim in front of FIFA, requesting the following:
    (1) The club terminated the contract without just cause on 2 May 2019;
    (2) The club has to pay the amount outstanding salary of May 2019 in the amount of USD 2,419.34 *"net"* + 5% interest p.a. as from 3 May 2019 until the date of effective payment;
    (3) The club has to pay compensation for breach of contract in the amount of USD 747,580.43 *"net"* + 5% interest p.a. as from 3 May 2019 until the date of effective payment;
    (4) The club to be banned on registering new players for two registration periods;
    (5) The club has to bear the costs of the proceedings.

14. The coach maintained that the club unlawfully terminated the contract on 2 May 2019.

15. More in particular, the coach affirmed that on 30 April 2019, he had been invited for a meeting with the club's general director to talk about the club's poor performance and that he had been threatened and requested to give his resignation letter. Furthermore, the coach held that, on the same day, the general director and president of the club interrupted a training session and asked him and his assistant coaches to leave immediately the club's premises" *because they are dismissed from work*". Moreover, the coach stated that on the same day, several newspapers reported that he had been fired by the club.

16. On 30 April 2019, the coach addressed a correspondence to the club and declared that he was ready to fulfil his contractual obligations despite having been dismissed earlier that day.

17. On 1 May 2019, the coach held that the first team had an official match and that he was not allowed to access the club's facilities despite having sent a text message to the director. The coach stressed that the director negligently ignored him and did not reply to his messages. In this regard the coach submitted documentation in support of his allegations.

18. Furthermore, the coach stated that he received an email from the club on 1 May 2019, requesting an explanation as to why he did not attend a meeting and why he was absent from the match played on the same day.

19. On 2 May 2019, the coach affirmed that he had been invited to a formal meeting and that the club unilaterally terminated his contract "*in view of your absence from work on 1 May 2019 (for which the team suffered a great defeat) and on the basis of your violation of the employment contract and job description*". In this context, the coach claimed that he had been told during said meeting that he was no longer the head coach of the team and that he was "*free*".

20. In particular, the coach claimed that the club intentionally prevented him from "*effectively perform the work he was hired for*" and that the club "*seriously violated the Claimant's personality rights (in particular his right to work) and the right of effective occupation*".

21. Furthermore, the coach stated that after having terminated the contract, the club addressed another correspondence to him, claiming that the contract had not been terminated and that he had been requested to perform his contractual obligations "*until the date of the official termination of the employment contract (12 May 2019)*" in accordance with the contract and the 10 days' period of notice enshrined in the job description.

22. In addition, the coach affirmed that the unilateral termination clause provided in the "job description" must be declared null and void in accordance with the FIFA Regulations, Swiss law, and FIFA's jurisprudence. What is more, the coach held that "*even if we assume for a moment that the unilateral clause 3.10 from the job description is valid and that the Respondent has duly executed the procedure (which absolutely is not the case as the Respondent fail to give the Claimant 10 days prior notice), the job description does not have the effect of a contract*". In this regard, the coach affirmed that the job description does not have the effect of a valid contract.

23. Finally, the coach declared that by means of a correspondence dated 14 May 2019, the club informed him that his salary of April 2019 had been paid and requested from the latter to appear at work.

24. For its part, the club claimed that the parties agreed on the application of Kazakh law and that the contract contains numerous other provisions which make it clear that the parties' intention was to submit their relationship to Kazakh law. In this regard, the club affirmed that the Players Status Committee shall rule on the merits of the case at hand according to Kazakh law.

25. Furthermore, the club affirmed that the sporting performance of the team under the coaching of the coach throughout the 2018 season was not satisfactory. In this context, the club alleged that the parties agreed to include a clause in the job description for the 2019 season "*providing that in case of 5 or more defeats of the main team during the championship, the Respondent was allowed to terminate the employment agreement without compensation*".

26. The club further sustained that no meeting was held between the parties on 30 April 2019 and that the training session was never interrupted as claimed by the coach. Furthermore, the club affirmed that the coach did not show up at the pre-match meeting on 1 May 2019 and that "*the circumstances of the arrival of the coach at the stadium are not clear*" and that "*there were many options for the coach other than simply writing two text messages*". In fact, the club stated that it had texted the coach twice on the day of the fixture asking where he was but the coach did not reply. What is more, the club declared that the coach *"abandoned"* the team the evening before by

being absent at the team hotel, absent from the pre-match meeting in the morning of the game and being absent for the game.

27. Finally, the club deemed that on 2 May 2019, the coach was invited by the club to a meeting to notify him a notice of termination "*which was to take effect 10 days later with the issuing by the club of an order to terminate the employment agreement*". In this regard, the club alleged that contrary to the allegations of the coach, the "*notice of termination does not mention any immediate effect*". In this respect, the club held that on 3 and 4 May 2019, it had sent an email to the coach, informing him that he had to come to work during the termination notice, to no avail.

28. In this respect, the club declared that as per the notification of termination, the club had 10 days to terminate the contract, i.e. until 12 May 2019, but in view of the fact that the coach and the club agreed to try to find an amicable settlement to the matter, the club did not terminate the contract on 12 May 2019. As such, the club underlined that it did not terminate the contract. What is more, the club stated that it was willing to continue the contractual relationship, but that the coach's letter dated 2 May 2019 indicated that the coach did not and rather wished to lodge a claim in front of FIFA.

29. The club insisted that by refusing to agree on an amicable settlement despite the contract not being terminated proved that "[the coach's] *intention was clearly to obtain a monetary compensation from the Respondent despite leaving the club"*.

30. Moreover, the club sustained that "*the job description explicitly provided the possibility for the club to terminate the contract without compensation in case of 5 or more defeats of the team, with a 10 days prior notice*" and "*that such clause is valid according to Kazakh law*".

31. Upon request of the FIFA administration, the coach indicated that, on 24 October 2019, he signed an employment contract with the Bulgarian club, PFC Beroe-Stara Zagora EAD, valid as from the date of signature until 10 June 2021, according to which he would be entitled to a net monthly remuneration of USD 2,253 over the relevant period.

II. Considerations of the Single Judge of the Players' Status Committee

1. First of all, the Single Judge of the Players' Status Committee (hereinafter also referred to as: *the Single Judge*) analysed whether he was competent to deal with the matter at hand. In this respect, the Single Judge took note that the present matter was submitted to FIFA on 4 June 2019. Taking into account the wording of art. 21 of the 2019 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.

2. Subsequently, the Single Judge referred to art. 3 par. 1 and 2 of the Procedural Rules and confirmed that in accordance with art. 23 par. 1 and 4 in combination with art. 22 lit. c) of the January 2020 edition of the Regulations on the Status and Transfer of Players, he is competent to adjudicate on an employment-related dispute between a coach and a club that has an international dimension.

3. The Single Judge observed that the Respondent had argued that Kazakh labour law was applicable to the matter. In this respect, the Single Judge recalled the well-established jurisprudence according to which in proceedings in front the decision-making bodies of FIFA, the FIFA Regulations on the Status and Transfer of Players generally prevail over any national law chosen by the parties.

4. Furthermore, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that in accordance with art. 26 par. 1 and par. 2 of the Regulations on the Status and Transfer of Players (edition January 2020), and considering that the present claim was lodged on 29 June 2019, the June 2019 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance. What is more, the Single Judge pointed out that the contract at the centre of the dispute contained a clear and unambiguous clause in favour of FIFA's jurisdiction. Therefore, the Single Judge concluded that he was competent to hear the matter as to the substance.

5. His competence and the applicable regulations having been established, and entering into the substance of the matter, the Single Judge started his analysis by acknowledging the facts of the case and the arguments of the parties as well as the documents contained in the file. However, the Single Judge emphasized that in the following considerations he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.

6. In this respect, the Single Judge acknowledged that, on 10 July 2018, the coach and the club had concluded an employment contract valid until 30 December 2020 which provided for the coach to work as *"Head Coach"* against a monthly remuneration of USD 25,000 for the period 10 July-31 December 2018, and USD 37,500 as from 1 January 2019, along with performance incentives as well as benefits in kind.

7. In continuation, the Single Judge remarked that, in his claim to FIFA, the Claimant had accused the Respondent of having terminated their contractual relationship without just cause invoking an unjustified absence on the day of a championship fixture on 1 May 2019. The Single Judge also noted that, as such, the Claimant deemed *inter alia* being entitled to claim from the Respondent the payment of outstanding remuneration in the amount of USD 2,419.34, together with 5% interest p.a. as from 3 May 2019, and of compensation for breach of contract in the sum of USD 747,580.43 corresponding to the residual value of the contract, together with 5% interest p.a. as from 3 May 2019.

8. In addition, the Single Judge noticed that, for its part, the Respondent, had rejected the claim of the Claimant arguing that the coach did not show up for an important game without any notice, which led the team to a defeat. After sending notices and requesting the coach to come to work, the club stated that, in line with Kazakh labour law, the coach's conduct and absences amounted to just cause for termination of the contract.

9. After having thoroughly analysed the submissions of the parties as well as the documentation at his disposal, the Single Judge deemed that the first question to be addressed in the present matter was whether any of the parties had breached the contract on 30 April and 1 May 2019.

10. The Single Judge took note of the argumentation of the parties with regard to the events that allegedly took place on 30 April 2019 and 1 May 2019 and pointed out that (1) on the one hand, the coach declared that he had been effectively put aside from the first team of the club on 30 April 2019, and was barred from accessing the club's stadium on the match day on 1 May 2019, while on the other hand (2) the club stated that the coach was not dismissed on 30 April 2019 and that no meeting took place in this respect, and that the coach abandoned the team and did not really attempted to enter the stadium on match day. In particular, the Single Judge duly noted that both parties provided extensive written and photographic evidence as well as footage in support of their respective positions.

11. Having analysed the aforementioned evidence, the Single Judge concluded that based on the evidence at his disposal, it could not be sufficiently determined whether the coach had indeed been put aside from his coaching duties by the club on 30 April 2019 and was barred from entering the club's facilities on 1 May 2019 or if the coach indeed left his coaching position on 30 April 2019 and did not comply with his head coach duties on 1 May 2019. The documentation provided by both parties contradicts and it can therefore not with certainty be established which version of events was accurate.

12. In this context, the Single Judge then turned his attention to the so-called *"notice of termination"* of 2 May 2019.

13. In this the Single Judge recalled that the Respondent considered that the *"Notice of termination"* sent on 2 May 2019 was not a termination letter, but rather a pre-termination letter indicating its intention to terminate the contract 10 days later. The Single Judge duly noted that the club stated that the coach was not dismissed on 2 May 2019, and was indeed asked to carry on working.

14. On the other hand, the Claimant argued that the club simply terminated the contract on 2 May 2019 following a meeting with the club where he was told of his dismissal.

15. Analysing the contents of the *"Notice of termination"*, the Single Judge paid particular attention to the following abstract:

"the club considers that [the coach] *intentionally did not appear (…) for the official match 1 May 2019, pushing the club to terminate unilaterally the Employment contract and* [the coach] *to receive compensations for such termination. Although, your violation of the terms of the Employment contract and the jobs description is a fact and such acts from you that violates the contractual and sports stability are unacceptable. On 1 May 2019, the club officially contacted* [the coach] *(via email) for explanations for your absence from work, i.e. from the important game on 1 May 2019. Based on the above, in view of your absence from work on 1 May 2019 (for which the team suffered a great defeat) and on the basis of your violation of the Employment contract and job description,* [the club] *informs you that terminates (sic) the Employment contract.* The club] *hereby inform* [the coach] *that* [he] *is obliged to duly provide the information requested by the club (reports, plan and etc. of the team) in accordance with the notice of 2 May 2019, in turn,* [the club] *undertakes to pay the salary for the time* [the coach] *worked"*.

16. In view of the above, the Single Judge remarked that the club had unequivocally and unambiguously terminated the contract on 2 May 2019 by sending the *"notice of termination"* to the Claimant, thus despite the club arguing of the contrary. In fact, the Single Judge insisted that such correspondence could not be interpreted any other way, and that upon receipt of such notice one could only assume that his contract had been terminated with immediate effect.

17. Consequently, the Single Judge concluded that the club unilaterally terminated the contract on 2 May 2019.

18. Subsequently, the Single Judge acknowledged that it had to examine whether the reason put forward by the Respondent in the *"notice of termination"* dated 2 May 2019 could justify the termination of the contract in the present matter.

19. In this regard, the Single Judge highlighted that the club terminated the contract on the basis of the coach's *"absence from work on 1 May 2019"*.

20. Having said that, the Single Judge referred to the well-established jurisprudence of FIFA and emphasised that, as a general rule, only a breach or misconduct which is of a certain severity justifies the premature termination of a contract. In other words, only when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to ensure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an *ultima ratio* measure.

21. Despite the diametrically opposed positions of the parties, the Single Judge emphasised that the club terminated the contract with the coach on 2 May 2019, only one day after his alleged absence, an absence the coach contested. In addition, the Single Judge was keen to highlight that there was no evidence on file suggesting that the coach had an extensive disciplinary record, i.e. that he had been warned or fined by the club in relation to his conduct, nor that he had previously conducted himself in an improper manner nor that he had been previously absent without justification, if at all.

22. In view of all the above, the Single Judge concluded that, in accordance with the constant jurisprudence of the FIFA DRC and FIFA PSC, it could not be determined that the conduct of the coach did reach a sufficient degree of severity, if any, that could justify a premature termination of contract.

23. In view of all the aforementioned, the Single Judge was of the firm opinion that the club did not have just cause to prematurely terminate the employment contract with the coach.

24. After having established the foregoing, the Single Judge turned his attention to the compensation payable to the coach by the club following the termination without just cause of contract by the latter. The Single Judge held that it first of all had to clarify whether the pertinent employment contract contained any clause, by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. In this respect, the Single Judge observed that no such clause existed in the contract. As a result, the Single Judge established that the amount of compensation due to the coach had to be assessed in accordance with other criteria, in line with the jurisprudence of the Players' Status Committee.

25. Bearing in mind the foregoing, the Single Judge proceeded with the calculation of the monies payable to the coach under the terms of the employment contract as from the date of termination without just cause by the Respondent until its natural expiration, bearing in mind that he would have received in total USD 750,000 as remuneration for the period as from May2019 until December 2020. Consequently, the Single Judge concluded that the amount of USD 750,000 serves as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.

26. Equally, the Single Judge verified as to whether the coach had signed a new employment contract after having been dismissed by the club on 2 May2019 by means of which he would have been enabled to reduce his loss of income. According to the constant practice, such remuneration under a new employment contract would be taken into account in the calculation of the amount of compensation for breach of contract in connection with the coach's general obligation to mitigate his damages.

27. The Single Judge noted in this respect that the coach had signed a new employment contract with the Bulgarian club PFC Beroe Stara Zagora according to which he would earn USD 38,318 over the course of the relevant period.

28. In view of the above, the Single Judge concluded that the amount of USD 711,682 is to be paid by the club to the coach as compensation for breach of contract.

29. Equally and with regard to the coach's request for interest, the Single Judge, in accordance with the well-established jurisprudence, decided that the club has to pay to the coach 5% interest p.a. on the amount of USD 711,682 as from 4 June 2019 until the date of effective payment.

30. In addition, the Single Judge established that any other request of the coach had to be rejected.

31. Lastly, the Single Judge referred to art. 25 par. 2 of the Regulations in combination with art. 18 par. 1 of the Procedural Rules, according to which in the proceedings before the Players' Status Committee and the Single Judge, costs in the maximum amount of CHF 25,000 are levied. The costs are to be borne in consideration of the parties' degree of success in the proceedings and are normally to be paid by the unsuccessful party.

32. In this respect, the Single Judge reiterated that the claim of the coach is almost fully accepted and that the club is the party at fault. Therefore, the Single Judge decided that the club has to bear the costs of the current proceedings in front of FIFA.

33. Furthermore and according to Annexe A of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute. Consequently and taking into account that the total amount at dispute in the present matter is higher than CHF 200,001, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000.

34. In conclusion and in view of the numerous submissions that had to be analysed in the present matter but taking into account that the present decision was taken by the Single Judge and not by the Players' Status *in corpore*, the Single Judge determined the costs of the current proceedings to the amount of CHF 20,000.

35. Consequently, the Single Judge determined that the club has to pay the amount of CHF 20,000 in order to cover the costs of the present proceedings.

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III. Decision of the Single Judge of the Players' Status Committee

1. The claim of the Claimant, Dimitar Dimitrov, is partially accepted.

2. The Respondent, FC Irtysh Pavlodar, has to pay to the Claimant, **within 30 days** as from the date of notification of the present decision, compensation for breach of contract in the amount of USD 711,682, plus 5 % interest *p.a.* as from 4 June 2019 until the date of effective payment.

3. In the event that the aforementioned sum plus interest is not paid by the Respondent within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

4. Any further claim lodged by the Claimant, is rejected.

5. The final costs of the proceedings in the amount of CHF 25,000 are to be paid by the Respondent, as follows:

   5.1 The amount of CHF 20,000 has to be paid to FIFA to the following bank account with reference to case nr. 19-01209/sje:

   UBS Zurich
   Account number 366.677.01U (FIFA Players' Status)
   Clearing number 230
   IBAN: CH27 0023 0230 3666 7701U
   SWIFT: UBSWCHZH80A

   5.2 The amount of CHF 5,000 has to be paid directly to the Claimant.

6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances under points 2. and 5.2 above are to be made and to notify the Players' Status Committee of every payment received.

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Note related to the publication:

The FIFA administration may publish decisions issued by the Players' Status Committee or the DRC. Where such decisions contain confidential information, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 20 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber).

Note relating to the motivated decision (legal remedy):

According to art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

Court of Arbitration for Sport
Avenue de Beaumont 2
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For the Single Judge of the
Players' Status Committee

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