CAS 2018/A/6044 Etzaz Hussain v. FC Astana & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Prof Luigi Fumagalli, Attorney-at-Law, Milan, Italy
Arbitrators:	Mr Mika Palmgren, Attorney-at-Law, Turku, Finland
	Dr Anna Bordiugova, Attorney-at-Law, Kyiv, Ukraine
Ad hoc clerk:	Ms Stephanie De Dycker, Attorney-at-law, Signy, Switzerland

between

Mr Etzaz Muzafar Hussain, Norway

Represented by Mr Stuart Baird and Mr Matthew Bennet, Attorneys-at-Law, Centerfield LLP, Knott Manchester, United Kingdom

- Appellant -

and

Football Club Astana, Astana, Kazakhstan

Represented by Mr Paul Anthony Ashworth, Executive Director, and Mr Gazinur Alimov, Head of Legal Department, Astana, Kazakhstan

- First Respondent -

&

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr Jaime Cambreleng Contreras and Ms Marta Ruiz-Ayucar, FIFA Litigation Department

- Second Respondent -

I. PARTIES

1. Mr Etzaz Hussain (the "Player" or the "Appellant") is a Norwegian professional football player.

2. The Football Club Astana ("FC Astana, the "Club" or the "First Respondent") is a football club in Kazakhstan. It is affiliated with the Kazakhstan Football Federation.

3. The Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") is the governing body of football worldwide. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, coaches, officials and players belonging to its affiliates. Its seat is in Zurich, Switzerland, and it has legal personality under Swiss law.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' submissions and allegations. Most of such facts are in fact disputed by the Parties. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. According to the Appellant, during a meeting that was held in Astana, Kazakhstan, on 30 September 2016, the latter signed an employment contract (the "Employment Contract") with the First Respondent valid as from 1 January 2017 until 31 December 2019. In accordance with this Employment Contract, the Appellant was entitled to receive a monthly remuneration of EUR 41,500.

6. In addition, according to the Appellant, on the same date, i.e. 30 September 2016, he signed with the First Respondent two side agreements, which were attached as annexes to the Employment Contract. Pursuant to the first side agreement (Annex I), the Appellant was entitled to receive EUR 150,000, to be paid in three equal instalments on 30 March 2017, 30 March 2018 and 30 March 2019. Pursuant to the second side agreement (Annex II), the Appellant was entitled to receive EUR 50,000 on 30 October 2016. According to the Appellant, it was however agreed that this latter payment would be postponed until the actual start of the Employment Contract in January 2017.

7. In addition, according to the Appellant, a representation contract was signed on the same day between the First Respondent and the Player's agent, Mr Jim Solbakken, who was present at the meeting.

8. According to the Appellant, the above-mentioned contracts, in particular his Employment Contract and its annexes, were signed by Mr Sayan Khamitzhanov in his capacity of General Manager of the First Respondent at the time of the relevant events.

9. The First Respondent denies having signed any contract with the Appellant and/or the Player's agent.

10. On 7 October 2016, the Appellant signed an employment contract with the Croatian football club NK Rudeš ("Rudeš") covering the period between 7 October 2016 and 15 June 2017 (the "Rudeš Contract"). As a result, in October 2016, i.e. after the signature of the Employment Contract with the First Respondent, the Appellant registered with Rudeš. According to the Appellant, he registered with Rudeš upon invitation to do so from the First Respondent, in order for the Appellant to continue training before the start of the Employment Contract with the First Respondent on 1 January 2017.

11. The Appellant played four matches with Rudeš between October and November 2016.

12. On 12 December 2016, the Rudeš Contract was terminated.

13. On 16 January 2017, the Appellant's counsel sent to the First Respondent a formal notice, inviting it to "*take immediate steps to remedy its breaches of contract in full, including but not limited to: i) registering the Employment Contract with the [Professional Football League of Kazakhstan]; ii) taking all necessary steps to ensure the Player is registered with the [Football Federation of Kazakhstan]; and iii) making arrangements for the Player to join the other members of the Astana first team on the Pre-season Tour*", and informing the First Respondent that "*in the absence of such confirmation (…) the Player will have no option but to enforce the terms of the Employment Contract against Astana before the competent body*".

14. In the absence of any reaction from the First Respondent, the Appellant's counsel sent a second formal notice to the First Respondent on 23 January 2017, granting it a 48-hour deadline to provide him "*with the details of the schedule for the remainder of Astana's pre-season tour (…) and (…) make arrangements for him to travel to join the rest of Astana's squad in Dubai immediately*", and informing the First Respondent that in the absence of receipt of the above, he "*will have no option but to take action before FIFA, including requesting the imposition of Sporting Sanctions on Astana for its unilateral termination of the Employment Contract without just cause*".

15. On 30 January 2017, the Appellant's counsel sent a last formal notice to the First Respondent informing him that, in the absence of any confirmation within the next 24 hours that the First Respondent "*intends to perform its obligations under the Employment Contract with immediate effect*", the Appellant will "*take action before FIFA to recover damages and to request the imposition of Sporting Sanctions on Astana in accordance with Article 17 of the FIFA Regulations on the Status and Transfer of Players*" and "*seek employment opportunities with other football clubs*".

16. On 14 February 2017, in the absence of any reaction by the Club to the notices sent, the Appellant filed a claim against the First Respondent before the FIFA Dispute Resolution Chamber (the "FIFA DRC") requesting payment for a total amount of EUR 1,544,000, corresponding to the compensation for the loss of income as consequence of the First Respondent's unilateral breach of the Employment Contract. In addition, the Appellant requested to be awarded interests on the claimed amount, and that the First Respondent be sanctioned and ordered to pay the procedural costs.

17. On 24 August 2018, the FIFA DRC issued a decision (the "Appealed Decision") holding that:

"*1. The claim of the Claimant, Etzaz Hussain, is rejected*".

18. The grounds for the Appealed Decision were communicated to the Appellant on 16 November 2018, indicating in essence that:

"*[I]t was up to the [Appellant] to prove the existence of the employment contract on the basis of which compensation for breach of contract by the [First] Respondent is claimed. (…). [D]espite having been invited to do so, the [Appellant] did not provide the relevant employment contract in its original form signed by the hand of the parties. On account of these considerations, (…) the fact that the [Appellant] had only submitted a copy of the disputed contract was insufficient to establish the existence of the alleged contractual relationship. (…) For the sake of completeness, (…) the signature of Mr. Khamitzhanov on the disputed document looks rather different than the signature on other documents provided during the course of the proceedings as well as documents contained in the Transfer Matching System. (…) Furthermore, (…) the side agreement does not contain the essential element of the signature of both the employer and the employee, as a result of which such document cannot be considered as valid and binding upon the parties. (…) [T]he members of the Chamber had to conclude that the documents presented by the [Appellant] did not prove beyond doubt that the [First] Respondent and the [Appellant] had validly entered into an employment contract. (…) As a consequence, (…) there was no possibility for the Chamber to enter into the question whether or not such alleged employment contract had been breached by the [First] Respondent.*"

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 10 December 2018, in accordance with Article R47 of the Code of Sports-related Arbitration (2017 edition) (the "CAS Code"), the Appellant filed his Statement of Appeal against the Club and FIFA with the Court of Arbitration for Sport (the "CAS") challenging the Appealed Decision. In his Statement of Appeal the Appellant appointed as arbitrator Mr Mika Palmgren, Attorney-at-law in Turku, Finland.

20. On 17 December 2018, FIFA requested the CAS Court Office to be excluded from the present proceedings in light of the fact that they "*relate to a dispute between the Appellant and the club FC Astana (the First Respondent) in connection with the execution of a contract signed by the Appellant and the First Respondent"* and "*that FIFA (…) acted in the matter at stake as the competent deciding body of the first instance and was not a party to the dispute*". Moreover, "*(…) from the Appellant's statement of appeal it would appear that the only reason for which the Appellant has called FIFA as a party in the present procedure is that the said player is requesting the imposition of sporting sanctions on the First Respondent.*" FIFA therefore informed the CAS Court Office: "*we reserve our right to claim against the Appellant for the legal costs incurred by FIFA as a consequence of the unnecessary involvement in the present procedure.*"

21. On 20 December 2018, the Appellant informed the CAS Court Office that "*FIFA is correct that the reason it is called as a party in the proceedings is because the Appellant is seeking the imposition of sporting sanctions*" and that "*we understand it is well-established in CAS jurisprudence that if an appellant does not name FIFA as a party to*

an appeal, then the CAS has no power to rule on the imposition of sporting sanctions". The Appellant concluded that "*the CAS should have the ability to make determinations in this regard and if this can only be achieved by FIFA being named/ involved in the proceedings, then the Appellant does not agree to FIFA's request to be excluded. If, however, we have misunderstood the position or FIFA confirms that the CAS has the power to impose sporting sanctions even where FIFA is excluded from the proceedings, then the Appellant is happy to reconsider his position.*"

22. On 7 January 2019, the Appellant filed his Appeal Brief with the CAS Court Office, pursuant to Article R51 of the CAS Code.

23. On 8 January 2019, the CAS Court Office invited the Respondents to file their Answers.

24. On 11 January 2019, the Second Respondent informed the CAS Court Office that, pursuant to Article R55 of the CAS Code, it wished the deadline to file its Answer to be fixed once the Appellant paid its share of the advance of costs, and that it agreed to the First Respondent's proposal to appoint Dr Anna Bordiugova, Attorney-at-law in Kyiv, Ukraine, as arbitrator.

25. On 14 January 2019, the First Respondent confirmed that it agreed to nominate Dr Bordiugova as arbitrator, jointly with the Second Respondent.

26. On 31 January 2019, the Appellant informed the CAS Court Office that he had paid the advance of costs.

27. On 1 February 2019, the CAS Court Office invited the Second Respondent to file its Answer within twenty days upon receipt of its letter and that the deadline for the First Respondent to file its Answer had remained 20 days from the receipt of the CAS Court Office's letter of 8 January 2019.

28. On 8 February 2019, the CAS Court Office acknowledged receipt of the First Respondent's Answer filed on 4 February 2019, pursuant to Article R55 of the CAS Code.

29. On 19 February 2019, pursuant to Article R54 of the CAS Code, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Parties that the Panel appointed to decide the present case was constituted as follows:

President:	Prof Luigi Fumagalli, Attorney-at-Law, Milan, Italy
Arbitrators:	Mr Mika Palmgren, Attorney-at-Law, Turku, Finland
	Dr Anna Bordiugova, Attorney-at-Law, Kyiv, Ukraine

30. On 26 February 2019, the Second Respondent filed its Answer pursuant to Article R55 of the CAS Code.

31. On 27 February 2019, the CAS Court invited the Parties to indicate whether they wished a hearing to be held in this matter.

32. On 5 March 2019, the Appellant confirmed that he preferred that a hearing be held.

33. On 6 March 2019, the First Respondent informed the CAS Court Office that it believed that the written submissions would suffice for the Panel to issue an award, but that it would participate in the hearing if the Panel would decide to convene such hearing. The Second Respondent did not provide its position in this regard.

34. On 8 March 2019, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in this matter.

35. On 28 March 2019, after having consulted the Parties, the CAS Court Office confirmed that a hearing would be held on 11 June 2019 in Lausanne, Switzerland.

36. On 3 April 2019, the CAS Court Office informed the Parties that Ms Stéphanie De Dycker, Attorney-at-law in Signy, Switzerland, had been appointed as *ad hoc* Clerk to assist the Panel in the present matter.

37. On 24 May 2019, the Appellant requested the production of documents from the First Respondent and invited the Panel "*if it deems it appropriate, to exercise its power under Article 44.2 of the CAS Code to summon Mr. Khamitzhanov to the hearing for examination*".

38. On 31 May 2019, the First Respondent sent copies of documents as requested by the Appellant but informed the CAS Court Office that it was not in a position to confirm, at that time, the participation of Mr Khamitzhanov at the hearing.

39. On 5 June 2019, the CAS Court Office sent to the Parties an Order of Procedure, which the Parties returned duly signed to the CAS Court Office on 6, 7 and 9 June 2019.

40. On 9 June 2019, the Appellant sent to the CAS Court Office new pieces of evidence requesting their admission into the case file.

41. A hearing was held in Lausanne on 11 June 2019. In addition to the Panel, Ms Kendra Magraw, CAS Counsel, and the *ad hoc* Clerk, the following persons attended the hearing:

For the Appellant:	Mr Etzaz Hussein, Appellant
	Mr Stuart Baird and Mr Matthew Bennett, Counsels
For the First Respondent:	Mr Paul Anthony Ashworth, Executive Director Mr Gazinur Alimov, Head of Legal Department Ms Daria Solenik, Interpreter
For the Second Respondent:	Mr Mario Flores Chemor and Ms Imen Larabi, Legal Counsel

42. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the Panel. The Panel informed the Parties that, in light of their disagreement, it had decided to accept only one of the additional pieces of evidence submitted by the Appellant on 9 June 2019, namely an extract of legal doctrine, because it was publicly available and had already been cited in the Appeal Brief.

43. The Panel heard evidence from the following persons, in order of appearance:

i. Mr Jim Solbakken: a football agent for over 20 years, and who had known the Appellant since the Appellant was 16–years-old. In September 2016, he entered into contact with Mr Sergey Barkovskyy, whom he knew as the First Respondent's scout, and arranged a meeting with the Appellant and Mr Barkovskyy on 23 September 2016. Mr Barkovskyy confirmed the interest of the Club in registering the Appellant at the next available opportunity. After receiving a formal employment offer for the Appellant from the First Respondent through Mr Barkovskyy, he travelled with the Appellant to Astana on 28 September 2016 in view of finalising an employment contract with the Club. He and the Appellant had productive meetings with Mr Barkovskyy and the First Respondent's Sporting Director, Mr Kultaeff, and, on 30 September 2016, they signed the Employment Contract in presence of the General Manager of the First Respondent, Mr Sayan Khamitzhanov. During their visit in Astana, it was agreed that the Appellant would join on a temporary basis Rudeš, which was presented to him as a partner club of the First Respondent, so as to continue training before the start of the Employment Contract on 1 January 2017. He returned to Oslo on 1 October 2016 and the Appellant stayed in Astana for a few more days before travelling to Croatia to be registered with Rudeš. Thereafter, he assisted the Appellant and the First Respondent to complete the Appellant's temporary registration with Rudeš. As the start date of the Employment Contract approached, he contacted Mr Barkovskyy to enquire about the situation and learned that there was an internal dispute within the First Respondent between its officials, including Mr Khamitzhanov, and the coaches about whether or not the Appellant was wanted on the team;

ii. Mr Etzaz Hussain: heard by the Panel as a witness, he confirmed the facts regarding the signature of the Employment Contract, as evidenced by Mr Solbakken's witness examination. He added that at the hotel in Astana, he underwent a medical examination by the Head Physiotherapist of the Club, which included an examination of his blood pressure and of his joints;

iii. Ms Fiona Marsh M.Sc.: an expert in the scientific examination of documents and handwriting, who compared the signatures of Mr Khamitzhanov on the Employment Contract to the signatures of Mr Khamitzhanov on some reference documents ("known signatures") in view of determining whether the same person who made the reference signatures ("known signatures") wrote the signatures on the Employment Contract ("questioned signatures"). Ms Marsh declared that she had found that there were both similarities and differences between the known and the questioned signatures, and that either: (i) the Employment Contract was signed by the same person who wrote the known signatures; or (ii) the questioned signatures are attempts to copy the normal signature of Mr Khamitzhanov by someone familiar with his signature. It therefore confirmed that it was a real possibility that the signature on the Employment Contract was genuine signature of Mr Khamitzhanov. In any event, Ms Marsh would not qualify the differences between the signature on the Employment Contract and the known signatures as manifest differences.

44. All witnesses were invited by the President of the Panel to tell the truth subject to the

sanctions of perjury under Swiss law. The Parties and the Panel had the opportunity to examine and cross-examine the witnesses.

45. The Parties then had full opportunity to present their case, submit their arguments and answer the questions posed by the Panel. At the end of the hearing, the Parties confirmed that they were satisfied with the hearing and that their right to be heard was respected.

IV. THE PARTIES' SUBMISSIONS

46. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

47. The Appellant's submissions may be summarized as follows:

- In light of a series of factual elements evidenced by the case file (i.e.: the employment offer by Mr Barkovskyy, the alleged First Respondent's scout, to the Appellant on 26 September 2016; the communications from other agents confirming the First Respondent's interest in the Appellant; the Appellant and his agent's visit to Astana on 29-30 September 2016; their clear and detailed recollection of their meetings in Astana, including with Mr Khamitzhanov at the Revolving Restaurant at the Beijing Palace Soluxe Hotel, where, according to the Appellant, the Employment Contract was signed; their witness statements in this respect; the expert opinion on the signature of the Employment Contract; the email and WhatsApp exchanges with the alleged First Respondent's scout covering *inter alia* travel arrangements and the subsequent release of the Appellant's International Transfer Certificate from his previous club; the recordings of conversations between Mr Solbakken and the alleged First Respondent's scout in January 2017), the Employment Contract is presumed to be valid and this is sufficient for the Panel to find in his favour, unless the First Respondent can prove otherwise. In order to rebut the presumption of validity of the Employment Contract, the First Respondent should demonstrate beyond reasonable doubt or, alternatively, to the Panel's comfortable satisfaction, that it is invalid. In particular, the presumption of validity of the Employment Contract is not rebutted by the mere allegation of the First Respondent that Mr Khamitzhanov did not sign it and that, as a result, the copy of the Employment Contract on file is a falsified document. On the contrary, according to the case law of the FIFA DRC, the authenticity of Mr Khamitzhanov's signature shall be presumed until evidence to the contrary is produced, unless evident and manifest differences between the signatures at stake can be ascertained.
- In light of the above, the independent handwriting expertise submitted by Ms Marsch supports the fact that Mr Khamitzhanov, the General Manager of the First Respondent at the time, did sign the Employment Contract and, in any case, that there is no evident and manifest difference between the signatures she examined. In addition, the use of an old or forged seal does not *per se* invalidate the Employment Contract and there was no reason to doubt that the individuals, with whom the Appellant and his agent were in contact, validly represented the

First Respondent or that the "*.gmail*" address that was used to send the contractual documents to the Appellant was the true email address of the First Respondent.

- As a result, the First Respondent unilaterally terminated the Employment Contract and therefore is liable to pay compensation to the Appellant and is subject to sporting sanctions, in accordance with Article 17 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP").

48. The Appellant therefore requested the Panel to decide as follows:

I. "The Appeal is admissible and well-founded; and

II. The Decision is annulled and replaced with a new decision which declares that:

(a) the Employment Contract is valid;

(b) the First Respondent unilaterally breached the Employment Contract without just cause;

(c) the First Respondent is liable to pay compensation to the Appellant as a consequence of the First Respondent's unilateral breach of the Employment Contract;

(d) interest is payable on such compensation;

(e) the First Respondent shall be banned from registering players, either nationally or internationally, for two entire consecutive registration periods pursuant to Article 17 (4) of the FIFA Regulations on the Status and Transfer of Players; and

III. the First Respondent shall pay in full, or in the alternative, a contribution towards:

i.) the costs and expenses, including the Appellant's legal costs and expenses, pertaining to these appeal proceedings before the CAS; and

ii.) the costs and expenses, including the Appellant's legal costs and expenses, pertaining to the proceedings before the DRC; and

IV. the Appellant is not liable to pay procedural costs awarded against him in the Decision."

49. The First Respondent's submissions may be summarized as follows:

- It never concluded any employment contract with the Appellant, on the date of 30 September 2016 or any other date. The copy of Employment Contract submitted by the Appellant contains signatures that are similar to the signature of Mr Khamitzhanov but are not true signatures of its former General Manager. Moreover, the persons with whom the Appellant and his agent were in contact were not authorized representatives of the First Respondent.

- The alleged contract and other agreements were sent from the personal address of one of the contact persons of the Appellant, it contained a seal impression that was no longer valid, and the Appellant could not have undergone a normal medical assessment at the hotel (where the Player was staying when in Astana), because for a due medical appraisal of a professional player appropriate facilities

are required.

- As admitted by the Appellant, after signing the alleged Employment Contract with the First Respondent, the Appellant signed another employment contract with Rudeš, which was valid as from the date of signature, on 7 October 2016, until 15 June 2017. Therefore, the Employment Contract with the First Respondent, even if the Panel considers it valid – *quod non* –, was terminated by the Appellant's signature of the employment contract with Rudeš, in accordance with Article 18 paragraph 5 of the FIFA RSTP.

50. The First Respondent therefore requests the Panel to decide as follows:

"*dismiss in total the Appeal Brief as ill-grounded with respect to both, the facts and the law and issue.*

(…) and (…) order the Appellant to pay [the costs of legal representation and legal assistance], in an amount to be determined at the discretion of the CAS but no less than CHF 50'000."

51. The Second Respondent's submissions may be summarized as follows:

- With respect to the requests made under sections II (a) to (d) of the Appellant's prayers for relief, the Second Respondent lacks standing to be sued in accordance with Article 75 of the Swiss Civil Code. Indeed, since these requests concern a contractual dispute between the Player and the Club, for which the role of the FIFA was that of an adjudicative first-instance body rather than a party to the dispute, the Second Respondent is not personally obliged by the disputed rights.
- In addition, with respect to the request by the Appellant to impose sporting sanctions upon the First Respondent, in accordance with Article 17 paragraph 4 of the RSTP, the Appellant lacks standing to appeal, because he has no legitimate interest in requesting the imposition of sporting sanctions.
- In any event, the Appealed Decision is correct, as it follows the jurisprudence of the FIFA DRC and its procedural rules.

52. The Second Respondent therefore requests the Panel to decide as follows:

"*In light of all of the above considerations, we request for the present appeal against FIFA to be rejected and the relevant decision to be confirmed in its entirety. All costs related to the present procedure as well as the legal expenses of FIFA shall be borne by the Appellant.*"

V. JURISDICTION OF THE CAS

53. The question of whether or not the CAS has jurisdiction to hear the present dispute must be assessed on the basis of the *lex arbitri.* As Switzerland is the seat of the arbitration and not all Parties are domiciled in Switzerland, the provisions of the Swiss Private International Law Act ("PILA") apply, pursuant to its Article 176 para. 1. In accordance with article 186 of PILA, the CAS has the power to decide upon its own jurisdiction ("*Kompetenz-Kompetenz*").

54. Pursuant to Article R27 of the CAS Code:

"*These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings).*

Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport."

55. Article R47 of the CAS Code 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.*

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned."

56. Moreover, the Appellant relied on Article 58 paragraph 1 of the FIFA Statutes, which states as follows:

"*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.*"

57. The Panel notes that the Appealed Decision qualifies as a "*decision of a federation"* in the meaning of Article R47 of the CAS Code, and that the FIFA Statutes provide for a possibility to appeal its final decisions before the CAS. Moreover, the Panel notes that the jurisdiction of CAS is not disputed by the Parties and was further confirmed by the Order of Procedure duly signed by the Parties.

58. It follows that the CAS has jurisdiction to hear this dispute.

V. ADMISSIBILITY

59. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*"

60. Article 58 of the FIFA Statutes reads as follows:

"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."

61. The grounds of the Appealed Decision were notified to the Parties on 16 November 2018. The Statement of Appeal was filed on Monday 10 December 2018.

62. None of the Parties objected to the admissibility of the appeal. It follows that the Appeal is admissible.

VI. APPLICABLE LAW

63. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

"*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.*"

64. In addition, Article 57 paragraph 2 of the FIFA Statutes stipulates the following:

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

65. The Panel is satisfied to primarily apply the various regulations of FIFA, and chiefly the FIFA RSTP, and, subsidiarily, Swiss law.

VII. MERITS OF THE APPEAL

66. In light of the submissions made by the Parties, the Panel shall start its examination of the merits of the present matter with the preliminary issues relating to the standing to be sued and to the standing to appeal in the present proceedings.

A. Preliminary issues: Standing to be sued and Standing to appeal

67. The Second Respondent submits that it lacks standing to be sued with respect to the claims made under Section II (a) to (d) of the Appellant's prayers for relief (the "Contractual Claims"), since these submissions relate to a contractual dispute between the Appellant and the First Respondent, for which the role of the Second Respondent was that of an adjudicative first-instance body rather than a party to the dispute. With respect to the Appellant's request to impose sporting sanctions on the First Respondent, the Second Respondent submits that the Appellant lacks standing to appeal since it has no legitimate interest in requesting the imposition of such sporting sanctions.

68. With respect to the standing to be sued, the Appellant argues that had he not brought FIFA as a respondent in the present proceedings, the Panel would not have been competent to impose sporting sanctions to the First Respondent since disciplinary sanctions can only be imposed by CAS panels if FIFA is a party to the proceedings.

69. The First Respondent did not express any position in this regard.

70. The Panel first examines the issue of standing to be sued. It acknowledges the fact that neither the applicable FIFA rules and regulations, nor the CAS Code, provide for rules on the issue of standing to be sued. As a result, the Panel shall apply Swiss law when deciding upon this issue (*CAS 2015/A/3999 & 4000*, para. 73; *CAS 2015/A/3910*, para. 130; *CAS 2012/A/2830*, para. 196; *CAS 201/A/3910*, paras. 130 *et seq.*; *CAS 2013/A/3140*, paras. 8.11 *et seq.*; *CAS 2008/A/1639*, para. 27).

71. Article 75 of the Swiss Civil Code provides as follows:

"Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof."

72. As confirmed on several occasions by CAS panels, a party has standing to be sued if it has some stake in the dispute because something is sought against it and it is personally obliged by the disputed rights at stake (*CAS 2006/A/1206*, para. 26; *CAS 2008/A/1518*, para. 22; MAVROMATI/REEB, The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials, 2015, p. 411, nr. 65). Moreover, according to a general principle of Swiss law, only the debtor of the disputed rights has standing to be sued ("*la qualité pour défendre appartient à celui qui l'obligé du droit litigieux*"). In case there is no standing to be sued, the appeal must be dismissed (in this respect: ATF 114 II consid. 3a; 126 III 59 cons. 1a; ATF 126 III 59 consid. 1; 107 II 82 consid. 2a).

73. According to doctrine and CAS case law, a decision rendered by an association deciding on a dispute between two of its members does not fall into the category of the decisions emanating from Article 75 of the Swiss Civil Code. In such a case, the association does not decide on a question related to itself but is called to rule as a first-instance jurisdictional body. (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials, 2015, p. 413, nr. 70; BERNASCONI/HUBER, Appeals against a Decision of a (Sport) Association: The Question of the Validity of Time Limits stipulated in the Statutes of an Association, SpuRt, 2004, Nr. 6, p. 268 *et seq.*; *CAS 2015/A/4000*, para. 75; *CAS 2006/A/1192*; *CAS 2008/A/1517*; *CAS 2008/A/1708*; *CAS 2014/A/3690*).

74. In the present matter, the Panel notes that the Appellant's submissions under Section II (a) to (d) of its prayers for relief (i.e. the Contractual Claims) relate exclusively to the contractual dispute between the Appellant and the First Respondent, for which the Second Respondent acted as a first-instance adjudicative body. In addition, since FIFA already has accepted, in its Statutes, to comply with CAS awards, including FIFA as a co-Respondent would not help opposing a CAS award against it. As a result, the Panel finds that the Appellant has no claim against FIFA in this respect either.

75. The Panel therefore finds that FIFA has no standing to be sued with respect to the

submissions under Section II (a) to (d) of the Appellant's prayers for relief, which shall be dismissed with regard to the Second Respondent.

76. The Panel then turns to the examination of the issue of standing to appeal. The Second Respondent argues that the Appellant has no standing to request the imposition of sporting sanctions against the First Respondent. The Appellant contests the Second Respondent's position. The First Respondent did not express any position in this regard.

77. The Panel first notes that, in light of the absence of any relevant provision in the FIFA rules and regulations or in the CAS Code on the issue of standing to appeal, Swiss law shall also govern such issue.

78. According to CAS jurisprudence, a party has standing to sue or to appeal if it has a direct and legitimate interest, be it financial or sportive, in the relevant decision being annulled (*CAS 2013/A/3140*, para. 8.3; see also: *CAS 2008/A/1674*; *CAS 2010/A/2354*; DE LA ROCHEFOUCAULD, Standing to sue, a procedural issue before the CAS, CAS Bulletin 1/2011, p. 12 ff.). Similarly, according to the Swiss Federal Tribunal, the party appealing a decision "*must have an interest worthy of protection to the annulment of the decision under appeal. The interest worthy of protection is the practical usefulness that the Appellant would derive from his appeal being admitted, preventing him from economic, moral, material or other injury, which the decision under appeal would cause him (…). The interest must be present, namely it has to exist not only at the time the appeal is filed but also when the judgment is issued.*" (4A_620/2015, consid. A.1.1.).

79. In the present matter, besides the Contractual Claims for which it finds that the Second Respondent lacks standing to be sued, the Appellant is requesting the imposition of sporting sanctions upon the First Respondent. The issue of whether a professional football player has standing to request the imposition of sporting sanctions against a football club has been consistently decided upon by various CAS Panels:

"*[I]t is uncontroversial that the DRC did not impose any sanction upon the Player or his new club. The only party to the present arbitration proceedings to disagree with the DRC findings with regard to the absence of disciplinary sanction is the Appellant. The question, which arises, is whether the Appellant has the standing to require that a sanction be imposed upon the Player and/or (the) Club.*

In this regard, the Panel endorses the position articulated by DUBEY J-P, Counsel to the CAS (The jurisprudence of the CAS regarding Article 17 para. 3 of the FIFA regulations on the status and transfer of players, in CAS Bulletin, 1/2010, page 40):

> *'(...) the Panel in the Mexès case found that the duration of a suspension regarding a player who is not anymore part of its roster had no effect on this player's former club. Therefore, the latter had no legally protected interest to require that a sanction be imposed on the player or that the sanction be aggravated [TAS 2004/A/708, para. 78].*
>
> *The CAS confirmed this orientation in a later case in which the Panel stated that no rule of law, either in the FIFA Regulations or elsewhere, was allowing the club victim of the breach of contract to request that a sanction be pronounced. Indeed, the system of sanctions laid down rules that applied to the FIFA, on the one side, and to the player or to the club that hired the player, on the other side.*

A third party had no legally protected interest in this matter [TAS 2006/A/1082 & 1104, para. 103]'." (*CAS 2014/A/3707*, para. 168; see also: HAAS, Standing to Appeal and standing to be sued, International sport Arbitration, 6th conference CAS & SAV/FSA Lausanne 2016, pp. 68-69)

80. This approach was followed again more recently in *CAS 2016/A/4826*, where the panel confirmed that:

"*The Player does not have standing to request that sporting sanctions be imposed on the Club. It is solely within FIFA's prerogative to determine whether the imposition of such sporting sanctions is warranted in a concrete case or not.*" (*CAS 2016/A/4826*, para. 124; *CAS 2016/A/4718*)

81. The Panel agrees with this view. It therefore finds that the Appellant has no standing to request the imposition of sporting sanctions upon the First Respondent, and, as a result, the Appellant's request to impose sporting sanctions upon the First Respondent is dismissed.

B. The Contractual Claims made by the Appellant against the First Respondent

82. Considering the above, the Panel now turns to the examination of the Contractual Claims made under Section II (a) to (d) of the Appellant's prayers for relief as directed against the First Respondent only.

83. In this respect, the Appellant submits that, even if he is not in a position to produce an original copy of the signed Employment Contract, based on a series of factual elements on the file, he has a *prima facie* case that an Employment Contract was signed between himself and the First Respondent on 30 September 2016, which was to run from 1 January 2017 until 31 December 2019. The factual elements that the Appellant brings in support of his claim are essentially the following: the employment offer by the alleged First Respondent's scout to the Appellant on 26 September 2016; the communications from other agents confirming the First Respondent's interest in the Appellant; the Appellant and his agent's visit to Astana on 29-30 September 2016; their clear and detailed recollection of their meetings in Astana, including with Mr Khamitzhanov at the Revolving Restaurant at the Beijing Palace Soluxe Hotel, where (according to the Appellant) the Employment Contract was signed, and their witness statement in this respect; the expert opinion on the signature of the Employment Contract; the email and WhatsApp exchanges with the alleged First Respondent's scout covering *inter alia* travel arrangements and the subsequent release of the Appellant's International Transfer Certificate from his previous club; and recordings of conversations between Mr Solbakken and the alleged First Respondent's scout in January 2017. The Appellant further submits that the First Respondent was not able to produce any evidence that would have had the effect of rebutting the presumption of validity of such Employment Contract.

84. The First Respondent challenges the fact that its General Manager (at the time of the relevant events) ever signed a contract with the Appellant, on the date of 30 September 2016 or any other date, and argues that the copy of the Employment Contract produced by the Appellant is a falsified document, as it contains signatures that are similar to the

signature of Mr Khamitzhanov, but that are not his true signatures. In addition, the First Respondent contends that: the persons with whom the Appellant and his agent were in contact were not its authorized representatives; the alleged contract and other agreements were sent from the personal address of one of the contact persons of the Appellant; it contained a seal impression that was no longer valid; and the Appellant could not have undergone a normal medical assessment at the hotel, because for a due medical appraisal of a professional player appropriate facilities are required. Subsidiarily, the First Respondent submits that the Appellant's signature of an employment contract with Rudeš after signing the alleged Employment Contract with the First Respondent, for a period starting from the date of signature until 15 June 2017, had the effect of terminating the Employment Contract with the First Respondent pursuant to Article 18 paragraph 5 of the FIFA RSTP.

85. After due examination of the file, the majority of the Panel finds that it is unnecessary to examine in detail the contradictory factual elements indicated by the Parties in support of their respective positions in order to determine whether or not an Employment Contract was signed between the Appellant and the First Respondent. (Although the majority of the Panel notes that, on the evidence submitted to the record, the Appellant would have had difficulty meeting the burden of proof.)

86. In fact, the majority of the Panel notes Article 18 paragraph 5 of the FIFA RSTP, which reads as follows:

"*If a professional enters into more than one contract covering the same period, the provisions set forth in Chapter IV shall apply.*"

Chapter IV of the FIFA RSTP – "*Maintenance of contractual stability between professionals and clubs*" – is comprised of Articles 13 to 18, which address, e.g., respect of the contract and termination of the contract with and without (sporting) just cause.

87. The Commentary to the FIFA RSTP indicates in respect of Article 18 paragraph 5 of the FIFA RSTP that:

"*If [the Player] signs a second contract, the player effectively terminates the first one. Besides the circumstances surrounding the breach committed by the player, the role played by the second club for inducement to contractual breach must also be ascertained. (…) [T]he only situation in which a player is entitled to enter into two employment contracts for the same period of time is whenever the player transfers on loan to a third club.*"

88. The Panel notes that while the Commentary to the FIFA RSTP is not binding, it is well-recognized interpretive guide to the FIFA RSTP and has been relied upon frequently in CAS jurisprudence.

89. In the present case, the fact that the Appellant signed the Rudeš Contract for a period starting from the date of signature, 7 October 2016, until 15 June 2017 is undisputed. Hence, even if the Panel was to find that the alleged Employment Contract of 30 September 2016 between the Appellant and the First Respondent was indeed valid, according to the majority of the Panel, this means that the Appellant would have signed another employment contract with another football club a few days thereafter. Since

both employment contracts provided that they would be valid during an identical period of time, namely from 1 January 2017 until 15 June 2017, the majority of the Panel finds that the second contract, i.e. the Rudeš Contract, effectively terminated the Employment Contract with the First Respondent, if any. In addition, the Panel notes that the Appellant claims that he signed the Rudeš Contract upon indication of the First Respondent to do so in order to continue training before the start of the Employment Contract on 1 January 2017. The Panel, however, finds that there is no evidence on the file that the Croatian football club NK Rudeš is a partner club of the First Respondent nor is there any evidence whatsoever that the First Respondent was involved in the signature of the Rudeš Contract. As a result, the majority of the Panel finds that the Contractual Claims are to be dismissed, since the Employment Contract on which they are based, if it had been concluded, was in any case effectively terminated by the Appellant himself, when he signed the Rudeš Contract. The fact that the Rudeš Contract was reportedly terminated in December 2016 by mutual agreement does not erase the consequences of the effective termination of the Employment Contract, if it had been signed; the Player still would have signed two contracts overlapping for the same period, and there was no evidence of a loan arrangement between the First Respondent and Rudeš.

90. In light of the First Respondent's denial that it signed any Employment Contract with the Appellant, there is no need to examine the consequences of the termination by the Appellant of the alleged Employment Contract with the First Respondent, if concluded, or whether the Player had just cause to terminate – which in any case the Panel was not requested to decide.

91. In addition, the Panel observes that the Employment Contract, even assuming that it could be established that it were valid, was effectively terminated by the Appellant at a moment in time – i.e. at the moment of signature of the Rudeš Contract on 7 October 2016, which was before the alleged entry into force of the Employment Contract on 1 January 2017 – when no rights would have yet vested in the Appellant under the Employment Contract, if it were valid. After the date of effective termination, he would no longer be entitled to claim any benefits that would have been bestowed upon him by the Employment Contract, if it were established to have existed.

92. The majority of the Panel therefore determines that the Appellant's appeal is dismissed.

VIII. COSTS

93. Article R64.4 of the CAS Code, which applies to this proceeding, provides the following:

"*At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of the arbitration, which shall include: the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties.*"

94. Article R64.5 of the CAS Code reads as follows:

"*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.*"

95. Having taken into account the outcome of the arbitration, in particular the fact that the Appealed Decision is upheld, the Panel determines that the costs of this arbitration proceeding shall be borne by the Appellant.

96. Furthermore, the Panel notes that both Respondents request the Appellant to be ordered to pay their legal expenses. In light of the outcome of the present proceedings, the Panel finds that, pursuant to Article R64.5 of the CAS Code, the Appellant shall be liable to pay to the First Respondent an amount of 3,000 CHF as a contribution towards its legal fees and other expenses incurred in connection with the proceedings. The Second Respondent was not assisted by outside counsel and is not granted any contribution towards its legal fees and other expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules by majority that:

1. The appeal filed by Etzaz Hussain against the decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 24 August 2018 is dismissed.

2. The costs of arbitration, to be determined and served separately by the CAS Court Office, shall be paid by Etzaz Hussain.

3. Etzaz Hussain shall pay an amount of 3,000 CHF (three thousand Swiss Francs) to FC Astana as a contribution to the latter's legal expenses. The Fédération Internationale de Football Association shall bear its own expenses.

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

Seat of arbitration: Lausanne, Switzerland
Date: 29 May 2020

THE COURT OF ARBITRATION FOR SPORT

Luigi Fumagalli
President of the Panel