CAS 2020/A/6792 PAS Lamia 1964 FC v. Noe Acosta Rivera & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Ms Svenja **Geissmar**, General Counsel Arsenal FC, London, UK
Clerk: Ms Stéphanie **De Dycker**, CAS Clerk, Lausanne, Switzerland

in the arbitration between

PAS Lamia 1964 FC, Lamia, Greece

Represented by Mr Panagiotis Katsantonis, Attorney-at-law, Lamia, Greece

- Appellant -

and

Mr Noe Acosta Rivera, Spain

Represented by Mr Ariel Reck, Attorney-at-law, Buenos Aires, Argentina

- First Respondent -

and

Fédération Internationale de Football Association, Zurich, Switzerland

-Second Respondent -

I. PARTIES

1. PAS Lamia 1964 FC is a Greek professional football club based in Lamia (the "Appellant" or the "Club"). The Club is a member of the Hellenic Football Federation (the "HFF"), which in turn is a member of the Fédération Internationale de Football Association.

2. Mr Noe Acosta Rivera is a professional football player of Spanish nationality (the "First Respondent" or the "Player").

3. The Fédération Internationale de Football Association is the governing body for football worldwide. It has its headquarters in Zurich, Switzerland (the "Second Respondent" or "FIFA").

4. The Club, the Player and FIFA are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

A. Background facts

5. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, and the evidence examined in the course of the proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, she refers in this Award only to the submissions and evidence she considers necessary to explain her reasoning.

6. On 9 August 2017, the Player concluded an employment contract with the Club valid from the date of signature until 30 June 2018 (the "Contract").

7. Article 2.3 of the Contract stipulated the following:

"2.3. The two parties are equally entitled to legally extend of [sic] the present contract, or terminate earlier the agreement by mutual consent."

8. According to Article 4.1 of the Contract, the Player was entitled to "*the monthly salary of an unskilled worker set out in the National Collective Bargaining Agreement*" in the amount of EUR 785.50, payable at the end of each month.

9. In addition, following Article 4.4 of the Contract, the Player was entitled to EUR 15,160, payable as follows:

- EUR 3,000, on 30 September 2017;
- EUR 3,000, on 15 December 2017;
- EUR 3,000, on 28 February 2018;
- EUR 3,000, on 15 April 2018;
- EUR 3,160, on 30 June 2018.

10. Finally, Article 10 of the Contract contained the following dispute resolution clause:

"10. Resolution of disputes
All disputes between the parties are settled by the Appeals Committee for the Resolution of Financial Disputes (FEEOD) at first instance, and the Court of Arbitration of the HFF at second instance"

11. The Contract was registered with the HFF.

12. Together with the Contract, the Club and the Player also signed an additional agreement (the "Additional Agreement") stating the following:

"If the FC remain in Super League after the end of the period 2017-2018, then in the newer contract which the player will sign with [PAS Lamia 1964] for the period 2018-2019, the annual salary of the player will be not less than 65.000 euros."

13. The Additional Agreement was not registered with the HFF.

14. On 9 July 2018, the Player arrived in Greece after having received the following flight tickets from the Club:

Madrid – Athens: 9 July 2018
Athens – Madrid: 11 July 2018

15. On 10 July 2018, the Player's agent sent a letter to the Club with, *inter alia,* the following contents:

"Through this document, I request that you send me the official contract of player (...) Having the club sent the plane tickets to the player on the date 08/07/2018, and finding the player in the city of Lamia, for reasons that we don't know, the Club doesn't recognize the validity of the cited document.(...) If in a period of 72 hours from the day 11/7/2018 we don't receive the requested documentation, we regret to communicate that we will undertake the legal actions necessary to resolve this situation as soon as possible."

16. On 16 July 2018, the Player sent a further notice to the Club containing, *inter alia,* the following:

"Up to this date and despite my efforts, nobody from the new club contacted me. So I don't know my current federative and sporting situation.

(...)

Accordingly I formally summon you to immediately i.e. in the next five natural days confirm me officially that I am registered at the Greek FA and Superleague to play officially with the first team for the next season or in the alternative to arrange the immediate signature of the required federative forms."

17. On 23 July 2018, the Club sent its reply to the Player in the following terms:

"1. The contract you signed with PAE PAS LAMIA 1964 was binding for both parties only for the period 2017-2018 and expired in 30.06.2018

(...)

2. By the time we signed the above contract, we also agreed that if our F.C. achieve its objective to remain in SUPERLAGUE, then, if both parties agree to renew the contract for the next period (2018-2019), then we will sign a newer contract, in which your annual salary will be not less than 65.000 euros.

(...)

5. You are also aware that on July 8, you travelled to Lamia only to get paid for the rest money we owe you for the last period 2017-2018 according to the contract which has already expired (...) So, when you came to Lamia on July 8, it was clear and accepted for both parties that we will not sign a new contract for the period 2018-2019."

18. On 27 July 2018, the Player sent a termination notice to the Club with, *inter alia*, the following contents:

"Your interpretation of the extension agreement is unacceptable, it does not reflect our negotiations and moreover, it is senseless.

The private agreement is clearly an extension agreement binding for both parties in case the triggering factor occurs. These relegation or non-relegation agreement are very common and usual in the football business.

(...)

As a result of your position I have no further choice but to start legal procedures at FIFA and report your conduct before the Greek league and federation for licensing purposes."

19. According to the information contained in TMS, on 13 August 2018, the Player concluded an employment contract with the Romanian club, ACS Petrolul, valid from 13 August 2018 until 30 June 2019.

20. In this respect, a document signed by the CEO of the Club and dated 16 August 2018 was uploaded into TMS. Said document stated the following:

"This is to confirm that the employment contract between [the Club] and the player (...) expired on 30.06.2018."

21. However, according to TMS, on 27 August 2018, ACS Petrolul concluded a termination agreement with the Player. According to Article 2 of said agreement, the parties to said agreement expressed that *"there are no due obligations"*.

22. On 29 August 2018, the Player concluded an employment contract with the Greek club, AEL Larissas, valid from the date of signature until 30 June 2019 (i.e. 10 months).

23. According to Article 4 of the aforementioned contract, the Player was entitled to "*the monthly salary of an unskilled worker set out in the National Collective Bargaining Agreement*" in the amount of EUR 654.50, payable at the end of each month. In addition, and following Article 4.4 of said agreement, the Player was entitled to a total amount of EUR 26,400 from 30 September 2018 until 30 June 2019.

B. Proceedings before the FIFA Dispute Resolution Chamber

24. On 29 August 2018, the Player lodged a claim before FIFA for breach of the Contract without just cause and requested the payment of a total amount of EUR 65,000, corresponding to the amount stated in the additional agreement, plus 5% interest p.a. from 27 July 2018. In addition, the Player requested the imposition of sporting sanctions against the Club.

25. In its reply, the Club rejected the claim of the Player.

26. On 5 December 2019, the Dispute Resolution Chamber of the FIFA (the "FIFA DRC") rendered the following decision (the "Appealed Decision"):

"

1. The claim of the Claimant, Noe Acosta Rivera, is admissible.

2. The claim of the Claimant is partially accepted.

3. The Respondent, PAS Lamia 1964 FC, has to pay to the Claimant, compensation for breach of contract without just cause in the amount of EUR 32,945, plus 5% interest p.a. as from 29 August 2018 until the date of effective payment.

4. Any further claim lodged by the Claimant is rejected. [...]

7. In the event that the amount due is not paid by the Respondent within 45 days as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

8. The aforementioned ban will be lifted immediately and prior to its complete serving, once the due amount is paid.

9. In the event that the aforementioned sum is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision."

27. The Appealed Decision with grounds was notified to the Parties on 31 January 2020. The Appealed Decision reads in its pertinent parts as follows:

"[...]
the Dispute Resolution Chamber would, in principle, be competent to decide on the present litigation involving a Spanish player and a Greek club regarding an alleged breach of the

employment contract concluded between the aforementioned parties. [...] However, the Chamber acknowledged that the Respondent contested the competence of FIFA's deciding bodies on the basis of clause 10 of the employment contract [...].[...] In view of the above, and considering that the club's assumption is that the contract expired on 30 June 2018, the members of the Chamber understood that appears to be clear that the club did not register him within the HFF as from this date. As a result, the members of the Chamber considered that, as from said date, the player could not fall under the jurisdiction of the HFF. [...] Thus, while analysing whether it was competent to decide on the present matter, the Chamber first referred to this specific element. The Chamber held that, as a consequence of the fact that the player ceased to be registered before the HFF after 30 June 2018, the player had accordingly also ceased to fall under the jurisdiction of the HFF. The foregoing fact was, in the Chamber's view, the first basis on which it could be established that the relevant arbitration bodies in Greece were not competent to adjudicate on the matter between the Claimant and Respondent. [...] As a result, and taking into consideration the above circumstances, the Dispute Resolution Chamber concluded that the Respondent's objection to the competence of FIFA to hear the present dispute has to be rejected, and that the Dispute Resolution Chamber is therefore competent, on the basis of art. 22 b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance. [...] The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. [...] In relation to said contract, the Chamber noted that the parties concluded an "Agreement" (the additional agreement) stating that, "if the [Club] remain in Super League after the end of the period 2017-2018, then in the newer contract which the player will sign with [PAS Lamia 1964] for the period 2018-2019, the annual salary of the player will be not less than 65.000 euros". [...] the members of the Chamber understood that it is uncontroverted that said contract was duly signed and concluded between the parties. The members of the Chamber also noted that it included a single clause, namely a promise that the player's annual salary would increase to EUR 65,000, "if the club remain in Super League after the end of the period 2017-2018." [...] Within this context, the members of the Chamber observed that the sporting condition established in said agreement was met and is of public knowledge. The Chamber further underlined that this element also appears to be undisputed between the parties. [...] In addition, and for the sake of clarity, the Chamber understood that the additional agreement should be understood as an extension clause concerning the first contract. [...] In view of the above, the Chamber, the members of the Chamber unanimously agreed that the player could rely that the club would extend the contract for the following season, but the latter failed to do so for no valid reason. As such, by refusing to apply a mutually agreed extension, the club de facto terminated the contract as from 1 July 2018, i.e. the day when the renewal should have come into force. [...] In sum, the Chamber unanimously concluded that, by refusing to comply with the extension, the club terminated the contract without just cause as from 1 July 2018, and is therefore to be held liable for the early termination of the contract.[...] In continuation, having established that the Respondent is to be held liable for the termination of the contract with just cause by the Claimant, the Chamber decided that, in accordance with art. 17 par. 1 of the Regulations, the club is liable to pay compensation to the player. [...] Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract and its extension. In particular, the members of the Chamber observed that, per the additional agreement, the player would have been entitled to "not less" than of EUR 65,000. Consequently, the Chamber concluded that the amount of EUR 65,000 serves as the reference for the final determination of the amount of compensation for breach of contract in the case at hand. [...] The Chamber observed, as mentioned above that, from the player concluded an employment contract with the Romanian club, ACS Petrolul, valid as from 13 August 2018 until 30 June 2019, which ended via a termination agreement stipulating that "there are no due obligations".

[...] Moreover, the Chamber noted that, on 29 August 2018, the player concluded an employment contract with the Greek club, AEL Larissas, valid as from the date of signature

until 30 June 2019 and that, according to art. 4 of the aforementioned contract, the player was entitled to the monthly salary of an unskilled worker set out in the National Collective Bargaining Agreement in the amount of EUR 785.50, payable at the end of each month. In addition, and following art 4.4 of said agreement, the player was entitled to a total amount of EUR 26,400 from 30 September 2018 until 30 June 2019.
[...] Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand as well as the player's general obligation to mitigate his damage, the Chamber decided to partially accept the player's claim and that the club must pay the amount of EUR 32,945 as compensation for breach of contract in the case at hand, which is deemed as an appropriate and reasonable amount given the circumstances at stake. [...] In addition, taking into account the player's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the Chamber decided that the club must pay to the player interest of 5% p.a. on the payable compensation as from the date of the claim. [...] Furthermore, taking into account the consideration the previous considerations, the Chamber referred to par. 1 and 2 of art. 24bis of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time. [...] Therefore, bearing in mind the above, the DRC decided that, in the event that the Respondent does not pay the amounts due to the Claimant within 45 days as from the moment in which the Claimant, following the notification of the present decision, communicates the relevant bank details to the Respondent, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on the Respondent in accordance with art. 24bis par. 2 and 4 of the Regulations. [...]"

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 21 February 2020, in accordance with Article R47 of the Code of Sports-related Arbitration, edition in force since 1 January 2019 (the "CAS Code"), the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS") against the First Respondent and the Second Respondent to challenge the Appealed Decision. In its Statement of Appeal, the Appellant requested the present matter to be decided by a sole arbitrator.

29. On 27 February 2020, the Appellant requested an extension of the time limit provided for under Article R51 of the CAS Code to file its Appeal Brief.

30. On 27 February 2020, the CAS Court Office granted an extension of the time limit to file its Appeal Brief requested by the Appellant and invited FIFA and the Player to indicate whether they agreed to the appointment of a sole arbitrator.

31. On 7 March 2020, the Appellant filed its Appeal Brief.

32. On 9 March 2020, FIFA informed the CAS Court Office that it agreed to refer the matter to a sole arbitrator as long as it is selected from the football list. The Player did not respond.

33. On 11 March 2020, the CAS Court Office informed the Parties that pursuant to Article R50 of the CAS Code, in the absence of any agreement between the Parties regarding the number of arbitrators, it will be for the President of the CAS Appeals Arbitration

Division, or her Deputy, to decide on the issue of the number of arbitrators taking into account the circumstances of the case.

34. On 11 March 2020, the CAS Court Office invited the Player and FIFA to file their Answers in accordance with Article 55 of the CAS Code.

35. On 31 March 2020, FIFA filed its Answer in accordance with Article R55 of the CAS Code.

36. On 26 May 2020, the CAS Court Office informed the Parties that the Panel appointed to decide the present dispute was constituted as follows:

Sole Arbitrator: Ms Svenja Geissmar, General Counsel, Arsenal FC, London (UK)

37. On 24 June 2020, the Player filed his Answer in accordance with Article R55 of the CAS Code.

38. On 25 June 2020, the CAS Court Office invited the Parties to indicate whether they would prefer a hearing to be held in this matter or for the Panel to issue an award based solely on the Parties' written submissions.

39. On 1st July 2020, FIFA informed the CAS Court Office that it considered that a hearing was not necessary in the present matter. On 10 July 2020, the First Respondent informed the CAS Court Office that it agreed that a hearing was not necessary in this matter but requested a second round of written submissions in accordance with Article 44.1 of the CAS Code.

40. On 27 July 2020, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to grant a second round of written submissions and invited the Appellant to file its Rejoinder.

41. On 17 August 2020, within the prescribed time limit, the Appellant filed its Rejoinder with the CAS Court Office.

42. On 7 September 2020, within the prescribed time limit, FIFA filed its Second Submission with the CAS Court Office.

43. On 11 September 2020, within the prescribed time limit, the First Respondent filed his Second Submission with the CAS Court Office.

44. On 16 October 2020, the CAS Court Office informed the Parties that the Sole Arbitrator deemed herself sufficiently well-informed to render an award based solely on the Parties' written submissions and that an award will be rendered in due course.

45. On 2 November 2020, the CAS Court Office issued on behalf of the Sole Arbitrator an order of procedure (the "Order of Procedure") confirming *inter alia* the jurisdiction of the CAS and requested the Parties to return a signed copy of it.

46. On 3, 4 and 9 November 2020, the Appellant, the First Respondent and the Second Respondent, respectively, returned a signed copy of the Order of Procedure.

IV. THE PARTIES' SUBMISSIONS

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

A. The Appellant

48. In its Appeal Brief, the Appellant requested the Sole Arbitrator to decide as follows:

"[...]
1. to set aside the challenged decision;
2. to rule that the DRC of the Second Respondent had no jurisdiction to decide on the present matter and that the judicial bodies of the [HFF] are the only competent bodies to hear the present dispute;
3. to condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred;
4. to establish that the costs of the arbitration procedure shall be borne by the Respondents.

Subsidiarily, and only in the event that the above is rejected:

1. *To set aside the challenged decision;*
2. *To rule that no contractual relationship and/or obligation existed between the Appellant and the First Respondent for the season 2018-2019 and, as a result, there was no breach of any contract;*
3. *To rule that no compensation or any other amount whatsoever is due by the Appellant to the First Respondent;*
4. *To condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred;*
5. *To establish that the costs of the arbitration procedure shall be borne by the Respondents."*

49. The Appellant's submissions in support of such request may be summarized as follows:

- The FIFA DRC was not competent to decide on the present dispute in the previous instance, but rather exclusively the judicial bodies of the HFF were. Indeed, the present dispute relates to the employment relationship between the Player and the Club, and therefore falls within the scope of the dispute settlement mechanism of Article 10 of the Contract. The fact that the Player was no longer registered with the HFF when he initiated the procedure is not relevant since the competence is based on the employment relationship from which the dispute arises.

- Alternatively, since the Player was registered with the HFF from 29 August 2018, the Player was indeed registered at the time he lodged his claim before the FIFA DRC.

- Even if the present dispute relates to the Additional Agreement, the latter is based on the Contract and subject to the pre-existence of such Contract. As a result, the arbitration

clause contained in Article 10 of the Contract, which applies to "*All disputes between the parties*" is relevant in the present matter.

- The Additional Agreement is not a contract nor a pre-contract since several essential terms are missing. It shall not be understood as a binding extension clause of the Contract either. It was a mere promise of the Club to the Player about his minimum annual salary in case the team achieved its target to remain in the Greek Super League and the two parties had wanted to extend their employment contract for the next year (period 2018-2019). The Additional Agreement does not oblige the Club to extend the duration of the Contract for the period 2018-2019. The Player travelled to Greece on July 2018 only to receive his salary under the Contract.

B. The First Respondent

50. The First Respondent requested the Sole Arbitrator to decide as follows:

> "
>
> 1. *Rejecting the appeal in its entirety and confirming the DRC decision.*
> 2. *In any case, imposing the costs of the proceedings to PAS LAMIA and fixing a contribution towards our legal fees and costs, payable by PAS Lamia in the amount of CHF 10.000.-"*

51. The First Respondent's submissions in support of such requests may be summarized as follows:

- The Sole Arbitrator shall decide on the present dispute based on FIFA rules and regulations, and subsidiarily, Swiss law.

- The FIFA DRC was competent to decide on the present dispute at first instance. On 30 June 2018, the Contract expired without being extended; as a result, the Player was deregistered from the HFF. Since the Player was deregistered from the HFF, the judicial bodies of the HFF lack jurisdiction to decide on his claim.

- The fact that the Player was registered with the HFF again by another Greek club at the time he lodged his claim before the FIFA DRC is not relevant. The competence of the judicial bodies of the HFF is not determined by the registration of the Player but rather the registration of the disputed contract.

- In addition, the Player's claim is based on the Additional Agreement which is a standalone contract for which there is no arbitration clause. As a result, the FIFA dispute resolution mechanism shall apply.

- Finally, since the judicial bodies of the HFF only deal with claims based on registered contracts and the Additional Agreement was not registered with the HFF, the Player would – if the Sole Arbitrator considered that the FIFA DRC lacked jurisdiction in the present matter – find herself in a situation of denial of justice.

- The Additional Agreement is a valid, standalone and binding contract as it contains all essential elements for the existence of a contract. It is not even an extension of a primary

agreement i.e. the Contract. In addition, the Additional Agreement contains only one binding condition, i.e. the non-relegation of the Club at the end of the 2017-2018 season. In case this unique condition is fulfilled – which the Parties undisputedly recognise – the Club commits itself to hire the Player for the following season at the minimum salary conditions provided therein. The reference in the Additional Agreement to the fact that a new contract will be signed confirms that such new contract was not subject to the parties' future agreement or consent but rather that such consent was already expressed in the Additional Agreement. The "*contra proferentem*" interpretational principle leads to the same result.

- Since the Club did not hire the Player for the consecutive season despite its commitment to do so, the Club terminated the Contract without just cause and the Player is entitled to compensation in the amount provided for in the Appealed Decision.

C. The Second Respondent

52. The Second Respondent requested the Sole Arbitrator to decide as follows:

"*a) rejecting the Appellant's appeal in its entirety;*

b) confirming the decision rendered by the FIFA DRC on 5 December 2019."

53. The Second Respondent's submissions in support of such requests may be summarized as follows:

- The Sole Arbitrator shall decide on the present dispute based on FIFA rules and regulations, and subsidiarily, Swiss law.

- In accordance with the reasoning of the Appealed Decision to which FIFA refers expressly, the judicial bodies of the HFF lacked jurisdiction to decide at first instance on the present dispute since the Player had ceased to fall under the jurisdiction of the HFF from 30 June 2018. Indeed, the Contract, which was not renewed, expired on that date and therefore Player ceased to be registered with the HFF after 30 June 2018.

- In accordance with the reasoning of the Appealed Decision to which FIFA refers expressly, the Additional Agreement should be understood as an extension of the Contract. The Player could therefore rely on the fact that the Club would extend the contract for the following season, but the latter failed to do so for no valid reason. As such, by refusing to apply a mutually agreed extension, the Club *de facto* terminated the contract effective on 1 July 2018, i.e. the day when the renewal should have come into force. As a result, the Player is entitled to compensation in the amount provided for in the Appealed Decision.

V. JURISDICTION OF THE CAS

54. The question 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 the Parties are domiciled in Switzerland, the provisions of the Swiss Private International Law Act ("PILA") apply, pursuant to its Article 176.1. In accordance with

Article 186 of PILA, the CAS has the power to decide upon its own jurisdiction ("*Kompetenz-Kompetenz*").

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. [...]*"

56. Article 58 (1) of the FIFA Statutes provides 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.*"

57. The Sole Arbitrator notes that the Appealed Decision represents a final decision taken by FIFA in the meaning of Article 58 (1) of the FIFA Statutes, and that therefore the CAS holds jurisdiction to decide on the present appeal. In addition, the jurisdiction of the CAS to hear the appeal filed by the Appellant against the Appealed Decision is confirmed by the signature of the Order of Procedure.

58. Based on the above considerations, the Sole Arbitrator finds that the CAS has jurisdiction to decide on the present appeal.

VI. 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.*"

60. The Sole Arbitrator notes that the grounds of the Appealed Decision were notified to the Appellant on 31 January 2020 and that the Statement of Appeal was filed on 21 February 2020. As a result, the Sole Arbitrator notes that the Statement of Appeal was filed within the time limit provided under Article 58 (1) of the FIFA Statutes. The Sole Arbitrator also notes that the other requirements provided under Article R48 of the CAS Code are fulfilled, including the payment of the CAS Court Office fee. Moreover, the admissibility of the present appeal is not contested among the Parties. As a result, the present appeal is admissible.

VII. APPLICABLE LAW

61. Pursuant to Article R58 of the CAS Code:

> "*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.*"

62. Pursuant to Article 57 (2) of the FIFA Statutes:

> "*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.*"

63. To decide on the present matter, the Sole Arbitrator shall therefore apply primarily the FIFA Statutes and other FIFA rules and regulations, in particular the FIFA Regulations on the Status and Transfer of Players ("RSTP"), and, on a subsidiarily basis, Swiss Law.

VIII. MERITS

64. In light of the Parties' submissions, the Sole Arbitrator will examine in the present section the following issues:

A. whether FIFA DRC held jurisdiction to decide at first instance on the present dispute;

B. whether the Club terminated the Contract without just cause; and, in the affirmative,

C. what are the consequences thereof.

A. Did the FIFA DRC hold jurisdiction to decide at first instance on the present dispute?

a.) Position of the Parties

65. The Appellant submits that pursuant to Article 10 of the Contract, the judicial bodies of the FIFA DRC were exclusively competent to decide on the present dispute in the first instance. Indeed, as provided for under Article 10 of the Contract, the present dispute is a dispute between the parties to the Contract and relates to their employment relationship which is primarily governed by the Contract. Finally, at the time he lodged his claim before the FIFA DRC, the Player was registered with the HFF since he had signed another employment contract with another Greek football club.

66. The Respondents in turn contend that the judicial bodies of the HFF did not hold jurisdiction since the Contract had expired on 30 June 2018 and as a result the Player was no longer registered with the HFF when he lodged his claim. The fact that the Player

was registered with the HFF for another contract is not relevant. Finally, the claim is based on the Additional Agreement which is a standalone contract and does not contain an arbitration clause in favour of the judicial bodies of the HFF.

b.) Position of the Sole Arbitrator

67. The Sole Arbitrator first notes that according to Article 22 b) read in combination with Article 24 par. 1 of the FIFA RSTP:

"[...] FIFA [DRC] is competent to hear:[...] employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs".

68. The Sole Arbitrator further notes that it is undisputed that the present matter constitutes an "*employment-related dispute[s] between a club and a player of an international dimension*".

69. The Sole Arbitrator further notes that the Parties disagree as to whether Article 10 of the Contract, *"[a]ll disputes between the parties [to the Contract] are settled by [the judicial bodies of the HFF]*" applies in the present matter. Hence, the Sole Arbitrator shall examine whether the judicial bodies of the HFF held jurisdiction to decide on the present dispute in the first instance based on the arbitration clause contained in the Contract.

70. In accordance with clear case law of the FIFA DRC (FIFA DRC decision No. 8132676 dated 30 August 2013; FIFA DRC Decision No. 4150167 dated 14 April 2015), if a player is not registered with a member association, that player cannot fall under the jurisdiction of that association's judicial bodies. The Parties agree that the Contract expired on 30 June 2018 since it was not extended and no new contract was signed between the Player and the Club. This was even confirmed by the CEO of the Club in a document dated 16 August 2018 and uploaded on TMS which states that *"[...] the employment contract between [the Club] and the player (...) expired on 30.06.2018."* If the Contract had expired on 30 June 2018, the Player was no longer registered with the HFF from that same date. As a result, the Sole Arbitrator finds that from 30 June 2018, the Player no longer fell under the jurisdiction of the judicial bodies of the HFF.

71. The Appellant further alleges that the Player was registered with the HFF at the time he lodged his claim before the FIFA DRC since he had signed an employment contract with another Greek football club, AEL Larissa on 29 August 2018. The Sole Arbitrator disagrees. In order for an arbitral tribunal to have jurisdiction, it is required that Parties consented to arbitration by such arbitral tribunal with respect to the agreement that constitutes the legal cause of the dispute at stake. The Player cannot claim jurisdiction to decide on a specific contractual dispute by relying on the arbitration clause contained in another contract, which has nothing to do with the present dispute and which involves another party.

72. Based on the above considerations, the Sole Arbitrator finds that the FIFA DRC was competent to decide on the present dispute at first instance.

B. Did the Club terminate the Contract without just cause

a.) Position of the Parties

73. The Appellant argues that the Additional Agreement is a mere promise of the Club to the Player about his minimum annual salary in the event that the team achieved its target to remain in the Greek Super League and the two parties, i.e. the Player and the Club, expressed the will to extend their employment contract for the next year (2018-2019). It is neither a standalone contract or a binding extension of the Contract. As a result, the Club was free to refuse to continue the employment relationship with the Player, which expired on 30 June 2018 as provided in the Contract.

74. The First Respondent argues that the Additional Agreement is a standalone contract, which contains only one binding condition, i.e. the non-relegation of the Club at the end of the 2017-2018 season. Since this unique condition was undisputedly realised, the Club committed itself to hire the Player for the following season at the minimum salary conditions provided therein. The reference in the Additional Agreement to the fact that a new contract will be signed confirms that such new contract was not subject to the parties' future agreement or consent but rather that such consent was already expressed in the Additional Agreement. In addition, based on an interpretation "*contra proferentem*", the Additional Agreement shall be interpreted in favour of the Player who did not draft it.

75. Finally, the Sole Arbitrator finds that there is no evidence on file to show that the round-trip ticket submitted by the Club was for the Player to collect his wages from the previous season.

76. FIFA contends that the Additional Agreement is an extension of the Contract, that is subject to a unique condition i.e. the non-relegation of the Club at the end of the 2017-2018 season. Since this unique condition was undisputedly realised, by not extending the Contract, the Club terminated the Contract without just cause.

b.) Position of the Sole Arbitrator

77. The Additional Agreement provides as follows:

"If the FC remain in Super League after the end of the period 2017-2018, then in the newer contract which the player will sign with [PAS Lamia 1964] for the period 2018-2019, the annual salary of the player will be not less than 65.000 euros."

78. The Sole Arbitrator first notes that the Additional Agreement clearly identifies the parties and is signed both by the Club and the Player; it also contains a determinable duration, i.e. "*the period 2018-2019*" as well as a minimal annual salary, i.e. "*not less than 65.000 euros*". It is further undisputed that the Additional Agreement was signed together with the Contract and therefore there is no doubt, in the Sole Arbitrator's view, that the Additional Agreement concerns an employment relationship. As a result, the

Sole Arbitrator finds that the Additional Agreement contains the *essentialia negotii* of a binding agreement.

79. The Sole Arbitrator is further unconvinced by the Club's argument according to which the extension of the employment relationship between the Club and the Player was subject to the expression of the Parties' will to sign a new contract. Indeed, in the Sole Arbitrator's view, the reference in the Additional Agreement to "*the newer contract which the player will sign with [the Club]*" is only an indication that some elements of the employment relationship still needed to be specified in a new contract; it does not deprive the Additional Agreement of its binding effect. The word "*will*" rather indicates that the parties to the Additional Agreement already exchanged their consent to sign such new contract. Finally, it is undisputed that the Additional Agreement was drafted by the Club, and it shall therefore be interpreted in favour of the Player in accordance with the principle "*contra proferentem*".

80. As a result, the Sole Arbitrator finds that the Additional Agreement is a binding agreement to extend the Contract. Moreover, this agreement was subject to a unique condition, which was undisputedly satisfied, i.e. the non-relegation of the Club at the end of the 2017-2018 season. Therefore, at the end of the 2017-2018 season, the Club was under the obligation from 1 July 2018 to continue the employment relationship with the Player for the 2018-2019 season at the minimum salary conditions provided in the Additional Agreement. By not doing so, the Club terminated such employment agreement without just cause.

C. Consequences

81. Having concluded that the Club terminated the employment contract with the Player on 1 July 2018 without just cause, the Club is liable to pay compensation to the Player in accordance with Article 17 para. 1 of the RSTP.

82. The Sole Arbitrator notes that according to the Additional Agreement, the Player was entitled to be hired for the 2018-2019 season and for a minimum annual salary of 65,000 euros. Therefore, the Sole Arbitrator finds that the amount of 65,000 euros shall serve as reference for the final determination of the amount of compensation due to the Player.

83. Moreover, in accordance with Article 17 para. 1 of the RSTP, salaries paid to the Player by other football clubs in the relevant period shall be deducted from the amount of compensation due to the Player. The Sole Arbitrator notes that the Player signed two employment agreements with other clubs in the relevant period. Firstly, the Player concluded an employment agreement with a Romanian club, ACS Petrolul, valid from 13 August 2018 until 30 June 201[9]; this contract however ended by a termination agreement providing that "*there are no obligations*". Secondly, the Player signed an employment agreement with another Greek club, AEL Larissas, valid from 29 August 2018 until 30 June 2019 for a monthly salary of 654.50 euros[1] and a total amount of 26,400 euros from 30 September 2018 until 30 June 2019. Taking into account the salaries paid to the Player in the period 2018-2019, the Sole Arbitrator concludes that the compensation due to the Player shall amount to 32,055 euros [i.e. 65,000 – (654.50

[1] And not 785.50 euros as incorrectly indicated in the Appealed Decision.

x 10) + 26,400] instead of 32,945 euros as provided in the operative part of the Appealed Decision.

84. Moreover, in accordance with Articles 102 and 104 of the Swiss Code of Obligations, the Sole Arbitrator finds that the Club shall pay to the Player interest of 5% p.a. on the compensation due from the date the Player lodged his claim with the FIFA DRC.

85. Finally, there is no legal justification for refusing to confirm the measures adopted by the FIFA DRC in the Appealed Decision in case of failure of the Club to pay the compensation in due time.

IX. COSTS

86. Article R64.5 of the CAS Code provides 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 and without any specific request from the parties, 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.*"

87. Having considered the outcome of the arbitration, in particular the fact that the appeal was very partially upheld due to a miscalculation of figures, the costs of the arbitration, as notified by the CAS Court Office, shall be borne by the Appellant.

88. Furthermore, pursuant to Article R64.5 of the CAS Code, and in consideration of the complexity and outcome of the proceedings, the financial resources and the conduct of the Parties, as well as the reasons for which the present appeal must formally partially be upheld, the Sole Arbitrator rules that a contribution in the amount of CHF 2,000 shall be awarded for legal costs and other expenses incurred in connection with these proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 21 February 2020 by PAS Lamia 1964 FC with respect to the Decision taken by the Dispute Resolution Chamber of the Fédération Internationale de Football Association dated 5 December 2019 is partially upheld.

2. The Decision by the Dispute Resolution Chamber of the Fédération Internationale de Football Association dated 5 December 2019 is confirmed save for the following item:

   "3. *The Respondent, PAS Lamia 1964 FC, has to pay to the Claimant, compensation for breach of contract without just cause in the amount of EUR 32,055, plus 5% interest p.a. from 29 August 2018 until the date of effective payment.*"

3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne entirely by PAS Lamia 1964 FC.

4. PAS Lamia 1964 FC shall pay to Mr Noe Acosta Rivera the amount of CHF 2,000 for the legal costs and other expenses incurred in connection with these proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 24 March 2021

THE COURT OF ARBITRATION FOR SPORT

Svenja Geissmar
Sole Arbitrator

Stéphanie De Dycker
Clerk