



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2020/A/6873 Benjamin van den Broek v. FIFA & FC Universitatea Cluj

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Patrick Grandjean, Attorney-at-law, Lausanne, Switzerland
Arbitrators: Mr Gareth Farrelly, Solicitor, Liverpool, United Kingdom
Mr Lars Hilliger, Attorney-at-law, Copenhagen, Denmark

in the arbitration between

Benjamin van den Broek, the Netherlands

Represented by Mr Louis Everard and Mr Roy Vermeer, Attorneys-at-law, Hoofddorp, the Netherlands

- Appellant -

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Mr Roberto Nájera Reyes, Senior Legal Counsel of FIFA Litigation Department

- Respondent 1 -

FC Universitatea Cluj, Cluj, Romania

Represented by Mr Dan Mihai and Mrs Maria Ilin, Attorneys-at-law with Mihai & Co, Bucharest, Romania

- Respondent 2 -

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I. PARTIES

1. Mr Benjamin van den Broek is a professional football player of Dutch nationality (the “Player”).
2. The Fédération Internationale de Football Association (“FIFA” or, together with FC Universitatea Cluj, “the Respondents”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.
3. FC Universitatea Cluj is a football club with its registered office in Cluj, Romania (the “New Club” or, together with FIFA, “the Respondents”). It is a member of the Romanian Football Federation (“RFF”), itself affiliated with FIFA.

II. FACTUAL BACKGROUND

A. Background facts

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings, and evidence adduced in these proceedings. References to additional facts and allegations found in the Parties’ written submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its award only to the submissions and evidence it deems necessary to explain its reasoning.

B. The Player’s claim against the New Club

5. On 3 February 2015, the Player signed with S.C.F.C. Universitatea Cluj S.A. (the “Old Club”) a contract valid for 15 months, as from 3 February 2015 until 30 June 2016.
6. At the time of the signature of the contract, the Old Club was playing in League 1 and was already “*in judicial reorganisation (...) monitored by A&A Consultants IPURL – judicial administrator, through Munteanu Vlad Ioan – special administrator.*”
7. Whereas the Player fully performed his contractual obligations, he did not receive any payment from the Old Club. As a consequence, he unilaterally and prematurely terminated his employment contract and filed a claim against the Old Club before the FIFA Dispute Resolution Chamber (“DRC”).
8. On 18 March 2016, the DRC passed a decision ordering the Old Club to pay to the Player “*the amount of EUR 25,850 plus 5% interest p.a. as of 23 September 2015 until the date of effective payment.*”

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9. Via email of 4 May 2016, the Player requested the relevant payment from the judicial administrator of the Old Club. He received no answer.
10. On 26 May 2016, the Player requested FIFA to forward the file to its Disciplinary Committee to impose disciplinary sanctions upon the Old Club.
11. On 3 June 2016, FIFA summoned the Old Club to immediately pay to the Player the amount awarded by the DRC.
12. On 23 June 2016, FIFA informed the Player and the Old Club that the matter had been forwarded to the FIFA Disciplinary Committee for consideration and a formal decision.
13. On 29 September 2016, the civil court of Botosani, Romania, initiated bankruptcy proceedings against the Old Club.
14. On 5 October 2016, an “*Insolvency Procedures Bulletin*” was published, which listed the creditors of the Old Club. The Player was not among them as he claims – in the present arbitral proceedings – that he “*only became aware of this document in December 2016*”.
15. On 10 October 2016, the RFF informed the FIFA Disciplinary Committee that the Old Club was still affiliated with it but was no longer participating in any competition organized under its auspices.
16. On 22 December 2016, the FIFA Disciplinary Committee opened disciplinary proceedings against the Old Club. The reference number of the case was 160652. Taking into consideration the fact that the Old Club was undergoing bankruptcy proceedings, the disciplinary proceedings were, on the same day, declared suspended until the liquidation process was finalised in accordance with Romanian law.
17. On 3 January 2017, the Player complained to the judicial administrator of the Old Club that his email of 4 May 2016 received no reply and that he was not among the creditors mentioned in the “*Insolvency Procedures Bulletin*” of 5 October 2016.
18. At the request of the judicial administrator, the Player eventually filed a formal application and its claim was included in the “*Definitive List of Creditors*” of the Old Club published in the “*Insolvency Procedure Bulletin*” on 21 February 2017. FIFA was not aware of this fact until the present arbitral proceedings.
19. On 30 August 2018, the Player reported to FIFA that “*a club named FC Universitatea Cluj is currently participating in the second division of the competitions organised under the auspices of the [RFF]*” and alleged that this football club “*is the same club and/or the sporting successor of the [Old Club]*”. He requested the FIFA Disciplinary Committee to “*immediately continue the execution of the FIFA DRC decision against the club which is currently competing in the Romanian championship under the name FC Universitatea Cluj.*”
20. On 15 July 2019, the RFF informed FIFA that “*S.C. Football Club Universitatea S.A. is no longer an affiliated member of the [RFF] and implicitly does not participate in any*

competition organized by [it]". It submitted several documents, among which a decision dated 1 August 2017, whereby its Executive Committee decided to disaffiliate the Old Club.

C. The Decision of the Deputy Chairman of the FIFA Disciplinary Committee

21. On 2 September 2019, the Head of the FIFA Disciplinary Department notified the RFF that disciplinary proceedings were initiated against "*FC Universitatea Cluj*" for a potential failure to respect "*a decision passed by a body, a committee or an instance of FIFA or a CAS decision*". In addition, it stated that the case would be submitted to a member of the FIFA Disciplinary Committee for evaluation on 19 September 2019 and invited "*FC Universitatea Cluj*" to provide its position regarding the allegations made by the Player. The Head of the FIFA Disciplinary Department requested the RFF to forward its letter to "*FC Universitatea Cluj*".
22. The New Club did not submit its position following the disciplinary proceedings initiated by the FIFA Disciplinary Committee.
23. On 25 September 2019, the Deputy Chairman of the FIFA Disciplinary Committee issued the following decision:

“(…)

 1. *All charges against the club FC Universitatea Cluj are dismissed.*
 2. *The disciplinary proceedings initiated against the club FC Universitatea Cluj are hereby declared closed.*”
24. On 3 October 2019, the operative part of the decision issued by the Deputy Chairman of the FIFA Disciplinary Committee was communicated to the Player and to the RFF, which was "*requested to forward this decision to its affiliated club concerned*".
25. The Player requested the motivated reasons of the decision within ten days of its notification. The grounds of the decision issued by the Deputy Chairman of the FIFA Disciplinary Committee were notified on 27 February 2020 (the "Appealed Decision").
26. In his decision, the Deputy Chairman of the FIFA Disciplinary Committee considered that "*although the New Club, FC Universitatea Cluj, is to be considered the sporting successor of the Original Debtor, FC Universitatea Cluj, (...) no disciplinary sanctions shall be imposed on the New Club and all charges against the latter shall be dismissed, as a result of the lack of diligence of the Creditor in collecting his debt in the bankruptcy proceedings*". He took his decision based upon the following considerations:
 - The New Club appeared to be the sporting successor of the Old Club. To come to this conclusion, the Deputy Chairman of the FIFA Disciplinary Committee pointed out the following:

- The New Club never took a position in the dispute initiated before FIFA and therefore the Player's allegations as well as the documents on file must be considered as accurate and true.
 - According to the jurisprudence of the Court of Arbitration for Sport ("CAS") "*a "new" club had to be considered as the "sporting successor" of another one in a situation where a) the "new" club created the impression that it wanted to be legally bound by obligations of its predecessor, i.e. the "old" club, b) the "new" club took over the licence or federative rights from the "old" club and c) the competent federation treated the two clubs as successors of one another. By the same token a "sporting succession" is the result of the fact that 1) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, 2) the "new" club accepted certain liabilities of the "old" club, 3) after the acquisition of the assets of the "old" club, the "new" club remained in the same city and 4) the "new" club took over the licence or federative rights from the "old" club.*"
 - The above jurisprudence of the CAS was reflected in Article 15 (4) of the 2019 FIFA Disciplinary Code ("FDC").
 - In the present case, the New Club had the same name, played in the same stadium, used the logo/crest and the colours of the Old Club and employed some of its trainers and staff members.
- However, the New Club was not liable to pay the amount awarded by the DRC in its decision of 18 March 2016, as the Player failed to pursue diligently his claim in the bankruptcy proceedings of the Old Club. As a matter of fact, he was not listed as a creditor in the judgement of the Romanian civil court of Botosani dated 29 September 2016. "*This being said, it appears that the Creditor decided not to participate in the bankruptcy proceeding at national level – or at least remained passive –, therefore waiving his right to collect his debt within the frame of the bankruptcy proceedings.*"

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 16 March 2020, the Player lodged his Statement of Appeal with the CAS in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code"). FIFA and the New Club were named as Respondents.
28. On 20 March 2020, the CAS Court Office acknowledged receipt of the Player's Statement of Appeal, of his payment of the CAS Court Office fee and took note of his nomination of Mr Gareth Farrelly as arbitrator. It noted that the Player chose English as the language of the arbitration. In this respect, it informed the Respondents that, unless they objected within three days, the procedure would be conducted in English.
29. On 23 March 2020 and on behalf of the New Club, Mr Bogdan Cantor sent an email to the CAS Court Office stating "*Whe (sic) are not us this club!!!*". Attached to this email, was a 12-page long letter sent by the New Club to FIFA, whereby it claimed that it received "*a Notification of opening disciplinary proceedings, ref no. 200222*" only on 12

- February 2020 and filed an application to be given the opportunity to expose all the reasons why it could not be regarded as the sporting successor of the Old Club and could not be held liable for its debts.
30. On 25 March 2020 and due to the COVID 19 pandemic, the New Club requested that these proceedings be stayed “*until the state of emergency by the Romanian Authorities is ended.*” It also requested that the case be referred to a sole arbitrator.
 31. On 25 March 2020, the CAS Court Office invited the Player and FIFA to file their position with respect to the New Club’s requests by 30 March 2020.
 32. On 25 and 27 March 2020, FIFA and the Player confirmed that they objected to suspending the present procedure and to submit the matter to a sole arbitrator.
 33. On 30 March 2020, the New Club insisted on the fact that it was unaware of the disciplinary proceedings initiated by FIFA against it until 20 March 2020 and, in view of the circumstances as well as of the complexity of the case “*a stay of the procedure is justified, in order to reduce the inequality between the parties procedural rights*”.
 34. On 26 March 2020, the Player filed his Appeal Brief in accordance with Article R51 of the Code.
 35. On 31 March 2020, FIFA asked the CAS Court Office that the time limit for the filling of its Answer be fixed after the payment by the Player of his share of the advance of costs.
 36. On 31 March 2020, the CAS Court Office took note of FIFA’s request and confirmed that the deadline to submit the Answer was set aside. Furthermore, it informed the Parties that the Deputy Division President ruled that the complexity of the present case justified its submission to a panel composed of three arbitrators and that the state of emergency decreed in Romania following the COVID 19 outbreak did not prevent these arbitral proceedings to carry on.
 37. On 1 April 2020, the New Club asked the CAS Court Office that the time limit for the filling of its Answer be fixed after the payment by the Player of his share of the advance of costs. Its application was eventually granted.
 38. On 7 April 2020, the Respondents confirmed that they agreed on the appointment of Mr Lars Hilliger, attorney-at-law, as arbitrator.
 39. On 19 May 2020, each of the Respondents applied for a 14-day extension of the deadline to file their Answer, which was eventually granted pursuant to Article R32 (2) of the Code and to the CAS Emergency Guidelines of 16 March 2020.
 40. On 27 May 2020, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Mr Patrick Grandjean, President of the Panel, Mr Gareth Farrelly and Mr Lars Hilliger, Arbitrators.

41. On 8 June 2020, the CAS Court Office acknowledged receipt of the Answers filed by FIFA on 8 June 2020 and by the New Club on 5 June 2020. It invited the Parties to state by 15 June 2020 whether their preference was for a hearing to be held in the present matter.
42. On 10, 11 and 12 June 2020, the Player, FIFA and the New Club respectively confirmed to the CAS Court Office that they preferred for the matter to be decided solely on the basis of their written submissions.
43. On 13 July 2020, the CAS Court office sent to the Parties the Order of Procedure which was returned duly signed on behalf of FIFA, the Player and the New Club on 13, 14 and 15 July 2020, respectively. It also confirmed that the Panel would deliver its award solely based on the Parties' written submissions, without holding a hearing.
44. On 14 July 2020 and on behalf of the Panel, the CAS Court Office invited the Player to provide information a) on the current status of the Old Club's bankruptcy proceedings, b) on whether he had obtained anything from the said proceedings, c) on the concrete measures he took and the contacts he had with the Old Club's administrator in order to obtain the payment of his wages.
45. Within the granted extension of his initial deadline, the Player provided the following additional information on 3 August 2020:
 - The Player did not have direct contact with the administrator of the bankruptcy of the Old Club and has not received recent information with regard to his entitlement. Yet, the Player was regularly updated on the Old Club's situation by the Asociația Fotbaliștilor Amatori și Nonamatori din România ("AFAN"), which is the players' association in Romania. This was evidenced by a string of emails sent on 13 January 2017, 16 August 2018, 27 March 2019, 21 May 2019, 17 June 2019 and 26 June 2019 between the Player's representatives and AFAN.
 - The Player has not received anything from the bankruptcy procedure of the Old Club and the bankruptcy proceedings are still pending. In this regard, he insisted on the fact that bankruptcy procedures of Romanian football clubs tend to be rather lengthy and no potential bidders showed any interest in the Old Club's assets over the last years, in spite of very low starting prices. These statements were supported by an excerpt of an "*insolvency proceedings bulletin*" and other official publications related to the bankruptcy procedures initiated in 2010 against another Romanian football club (CS FC Bihor Oradea), which is not closed yet.
 - Before he filed a claim with FIFA, the Player tried to obtain the payment of his wages directly from the Old Club. He submitted copies of emails dated 9 and 18 April 2015 as well as a copy of the confirmation of the notification of a letter sent on 5 May 2015 to Mr Vlad Munteanu, the special administrator of the Old Club. In this correspondence, Mr Vlad Munteanu was urged to pay the outstanding salaries to the Player.

46. On 14 July 2020 and on behalf of the Panel, the CAS Court Office requested FIFA “*to establish that the notification of 2 September 2019 informing the New Club of [the] opening of disciplinary proceedings (ref no. 160652) was actually received by the New Club, i.e. the Second Respondent*”.
47. On 30 July 2020, FIFA confirmed that its letter of 2 September 2019 (informing the New Club of the opening of disciplinary proceedings ref no. 160652) and the Appealed Decision were duly received by the RFF. This is evidenced by two delivery notifications received from the RFF. Based on Article 44 (4) FDC, FIFA submitted that the said documents must be considered as having been communicated properly to the New Club. FIFA also insisted on the fact that, in any event, the New Club admitted that it was made aware of the Appealed Decision “*when it received the subpoena directly from CAS, via email*” on 20 March 2020. As a consequence, had the New Club any disagreement with the findings of the Appealed Decision, it should have filed an appeal on or before 10 April 2020. “*At the most, the Appealed Decision would have had to be challenged within the one-month time limit established in Article 75 of the Swiss Civil Code (...)*”.
48. On 5 August 2020 and on behalf of the Panel, the CAS Court Office informed the Parties that they were given ten days to make any observation on the submissions filed by the Player and by FIFA in response to the questions raised on 14 July 2020.
49. Whereas the Player and FIFA did not file any observation within the prescribed time limit, the New Club applied for a 10-day extension of its deadline, which was eventually granted.
50. On 17 August 2020, the New Club submitted its observations on the answers filed by FIFA and the Player on 30 July and 3 August 2020. It supported its arguments with the following documents:
- A statement issued by the RFF (and freely translated from Romanian to English by the New Club) confirming that “*1. Decision no. 160652 of September 25, 2019 pronounced by the Disciplinary Commission of FIFA was not communicated to the club of the Sports Association Football University Club Cluj (former “Black and White” Sports Club Association of Cluj Students). 2. The FIFA decision has not been communicated to [the New Club] by the FRF since it was addressed to the S.C. Football Club Universitatea Cluj S.A., club that at the date of communication was no longer an affiliated member of the FRF, which had been communicated to FIFA on July 15, 2019*” (emphasis added by the New Club).

As a result, the New Club submitted that it was not aware of the fact that disciplinary proceedings had been initiated against it for a potential failure to respect “*a decision passed by a body, a committee or an instance of FIFA or a CAS decision*”. It argued that it had never been given the opportunity to exercise its right to be heard, which was therefore breached.

Furthermore, the New Club insisted on the fact that, on 25 September 2019, the Appealed Decision was notified without grounds. Bearing in mind the operative part of the Appealed Decision (“*1. All charges against the club FC Universitatea Cluj are*

dismissed. 2. The disciplinary proceedings initiated against the club FC Universitatea Cluj are hereby declared closed.”), the New Club had no reason to lodge an appeal against a decision which was in its favour. Even if the Appealed Decision had been notified to the New Club, it would have not challenged it and not asked for its grounds. In this respect, the New Club highlighted the fact that the operative part of the Appealed Decision does not make any reference to the fact that the New Club was considered to be the sporting successor of the Old Club, which is, in its opinion, a crucial issue for the resolution of the present arbitral proceedings.

- Two documents entitled “*Insolvency file information on payments*” and “*Insolvency file status*”, respectively.

The New Club is of the opinion that these documents prove that other players, in a similar situation as the Appellant’s, were able to recover their outstanding wages either by asking to be paid by the judicial administrator of their insolvent club or, in the absence of reply from him, by the competent court. The Player did not need to file a claim before FIFA.

- An article written in English and published in an unidentified media, dated 29 July 2020.

Based on this article, the New Club argued that it had never been in the Player’s intention to actually be paid. According to the New Club, the Player only wanted to be able to unilaterally and prematurely terminate his employment contract with a just cause or a sporting just cause, in order to escape his contractual obligations with the Old Club and sign with a new employer as a free agent.

51. On 17 September 2020 and on behalf of the Panel, the CAS Court Office requested a copy of the FIFA file in the current matter, which was delivered on 13 October 2020.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

52. In his Appeal Brief, the Player submitted the following requests for relief:

“On account of all of the above, the Appellant is respectfully requesting the Court of Arbitration for Sport:

- a) To partially annul the decision of the FIFA Disciplinary Committee dated 25 September 2019.*
- b) To annul the conclusion of the FIFA Disciplinary Committee that no disciplinary sanctions shall be imposed on FC Universitatea Cluj and that all charges shall be dismissed, due to the lack of diligence of the Appellant.*
- c) To accept the appeal of the Appellant.*
- d) To rule that FC Universitatea Cluj is responsible to pay the amounts imposed by the FIFA DRC on 18 March 2016 to the Appellant.*

- e) *To rule that the Appellant did not fail to perform due diligence and did not waive his rights to collect his debt.*
- f) *To order FIFA to enforce the FIFA DRC decision dated 18 March 2016 against FC Universitatea Cluj.*
- g) *To order FIFA to impose disciplinary sanctions on FC Universitatea Cluj for the non-compliance of said club with the FIFA DRC decision dated 18 March 2016.*
- h) *To condemn the Respondents to pay the entire CAS administration costs and the arbitration fees and to reimburse the Appellant of any and all expenses he incurred in connection with this procedure.*
- i) *To rule that the Respondents have to pay the Appellant a contribution towards legal costs.”*

53. The submissions of the Player, in essence, may be summarized as follows:

- The Deputy Chairman of the FIFA Disciplinary Committee appropriately determined that the New Club is the sporting successor of the Old Club. This part of the Appealed Decision is final and binding.
- Contrary to the findings of the Appealed Decision, the Player did not fail to pursue diligently his claim in the bankruptcy proceedings of the Old Club at national level. He certainly did not remain passive or waive his right to collect his credit within the frame of the bankruptcy proceedings. He filed all the necessary applications in order to register his claim in the insolvency procedure of the Old Club and, as a consequence, was included in the “*Definitive List of Creditors*” of the Old Club published in the “*Insolvency Procedure Bulletin*” on 21 February 2017. For this reason alone, the Appealed Decision should be overturned.
- The Player was not aware of the fact that his participation in the bankruptcy procedure of the Old Club was crucial for the outcome of the Appealed Decision. Had he known that he was expected to provide the Disciplinary Committee with the evidence of the registration of his claim in the bankruptcy proceedings of the Old Club, he would have done so.
- There is no obligation under the FIFA Rules and Regulations that requires a player to file his claim in the bankruptcy proceedings of the old club as a pre-condition to have a decision issued by the DRC enforced against the sporting successor. Such a requirement is not provided under the newly implemented Article 15 (4) FDC. “*Therefore, should FIFA have intended to exclude a sporting successor from being held non-compliant in accordance with art. 15 par. 4 of the FDC in case the creditor did not register his credit in the bankruptcy of the old club, it would come to reason that FIFA would have specifically mentioned this in said article” (emphasis by the Player).*
- Such a requirement does not exist when a sporting succession occurs without the old club going in bankruptcy. “*It follows therefore that the extra requirement*

*created by the Appealed Decision violates the principle of equal treatment as it imposes an **incredible high burden** on creditors trying to succeed in their case of sporting succession compared to other creditors involved in a sporting succession matter in which, however, no bankruptcy proceedings took place.”*

- The Appealed Decision is inconsistent with the jurisprudence of the FIFA Disciplinary Committee.

B. The Respondents

FIFA

54. FIFA submitted the following requests for relief:

“Based on the foregoing, FIFA respectfully requests the Panel to issue an award on the merits:

- i. Assessing the Appellant’s diligence within the scope of the Old Cluj’s insolvency proceedings and, in light of the new evidence presented by the Appellant, decide whether:*
 - a. The Appealed Decision shall be confirmed;*
 - Or,*
 - b. The case shall be referred back to FIFA for the eventual imposition of sanctions against the New Cluj;*
- In any case,*
- ii. Ordering the Appellant to bear the full costs of these arbitration proceedings”.*

55. The submissions of FIFA, in essence, may be summarized as follows:

- The Appealed Decision is final and binding in so far as it concerns the issue of the sporting succession between the Old and the New Clubs.
- Contrary to the Player’s submissions, the fact that the New Club is found to be the sporting successor of the Old Club, does not automatically lead to the conclusion that the New Club can be held liable for the amounts awarded by the DRC and be sanctioned for the failure to pay the Old Club’s debt. This is confirmed by the consistent CAS case law.
- Whether the New Club can be sanctioned for the failure to respect the decision passed by the DRC on 18 March 2016 depends on a two-step evaluation:
 - The first step is to assess whether the New Club is the sporting successor of the Old one.
 - The second step consists in analysing the effects of the sporting succession, *i.e.* whether the New Club has to be sanctioned or not. In this context, it is necessary to verify that the creditor has done everything in his power to obtain payment of his claim from the Old Club. This second step is all the more crucial that,

otherwise, “it only takes a creditor to wait until a new entity is formed in order to request FIFA to enforce a credit, ignoring any issues deriving from the *par conditio creditorum* and the legitimate prerogatives of State courts to handle these issues and to offset debts in accordance with the applicable public laws in each country. Such a conclusion has the untenable effect of wiping away with a broad brush any discussion about foreign bankruptcy law and the efforts that the sports jurisprudence, the CAS in primis, made in order to reconcile the purpose and goals of that field of law and the objective of the enforcement procedures envisaged in the FDC”.

- This second stage has to be done on a case-by-case basis, taking into account the specificity of each situation. Sporting successions involving bankruptcy proceedings are different from other cases of sporting succession. The fact that those different situations are not treated in the same manner does not infringe the principle of equal treatment.
- Based on the evidence on file, the Deputy Chairman of the FIFA Disciplinary Committee concluded that the Player “*decided to not participate in the bankruptcy proceedings at national level – or at least remained passive –, therefore waiving his right to collect his debt within the frame of the bankruptcy proceedings*”. At the moment the Appealed Decision was rendered, the only document made available by the Player or the RFF with respect to the bankruptcy proceedings of the Old Club was the “*Insolvency Procedures Bulletin*” published on 5 October 2016. The Player was not listed among the creditors of the Old Club. It is only during the present proceedings before the CAS that the Player filed for the first time the “*Insolvency Procedures Bulletin Nr. 715/13.01.2017*” and the “*Definitive List of Creditors Nr. 477/20.02.2017*”.
- “*(...) considering that the Disciplinary Committee possibly would have taken a different decision which would have avoided the present arbitration, if the Appellant had previously filed the documents presented during this procedure, the Appellant has to bear the entire costs of the present CAS procedure if the Panel finally decides to annul or amend the Appealed Decision based on this new evidence that had not been made available by the Appellant to the Disciplinary Committee.*”
- The Appealed Decision is consistent with the jurisprudence of the FIFA Disciplinary Committee.

The New Club

56. The New Club submitted the following requests for relief:

- “*On grounds of R55 of the Code the Second Respondent respectfully asks the Panel:*
- A. to dismiss the Appeal lodged by the Appellant against the challenged Decision rendered by the FIFA Disciplinary Committee.*
 - B. to maintain and consider undisturbed the conclusions of challenged Decision.*
 - C. to analyse de novo the succession matter and to observe that the Second Respondent is not the successor of the Insolvent Club.*

D. subsequently, to deny all the prayers for relief made by the Appellant.

E. to order the Appellant to pay all costs, expenses and legal fees relating to the arbitration proceedings before CAS encumbered by the Second Respondent.

F. To grant a contribution to the legal expenses of the Second Respondent”.

57. The submissions of the New Club, in essence, may be summarized as follows:

- The Player has been an international professional player for many years and is assisted by experienced agents. When he signed the employment contract with the Old Club, he could not ignore that it was confronted with severe financial difficulties, which could lead to bankruptcy. As a matter of fact, as expressed in the contract, the Old Club was “*in judicial reorganisation (...) monitored by A&A Consultants IPURL – judicial administrator, through Munteanu Vlad Ioan – special administrator.*” As a consequence, it was incumbent upon the Player to be all the more vigilant with regard to the payment of his wages since claims deriving from employment relationships are privileged and can be recovered with priority over claims of other creditors.
- Instead of taking advantage of all “*the legal instruments to obtain his monthly payments, due to his privileged position in the insolvency procedure*” and asking his monthly payments directly from the judicial administrator of the Old Club, the Player chose to file a claim before FIFA. By doing so, the Player obtained a decision from the DRC but lost the preferential treatment of employees’ wage claims in case of employer’s bankruptcy. “*The [Player’s] lack of diligence created a worse situation for him and diminished the chances of receiving his outstanding amounts fully, immediately and without being in the contest with any other creditor. Under such conditions, the [Player’s] right to request any disciplinary sanction is precluded and any of his belated actions does not create him any supplementary rights.*”
- In view of the Player’s lack of diligence, disciplinary sanctions cannot be imposed upon the New Club.
- If the Player’s claim before the FIFA Disciplinary Committee is successful, he will obtain a distinct and preferential way to recover his wages, outside the insolvency procedure. He will have a clear advantage over the other creditors in the same situation as him, which is incompatible with the general principles universally applicable in insolvency/bankruptcy proceedings.
- Until the present procedure before the CAS, the New Club was not aware that Disciplinary proceedings had been initiated against it. Under these circumstances, the New Club has never been in a position to exercise its right to be heard, in particular with respect to the fact that the New Club can be regarded as the sporting successor of the Old Club. “*Therefore the ‘de novo’ analysis of the successor’s matter before CAS is mandatory and allows to cure any of the procedural flaws of FIFA’s procedure.*”

- The New Club is not the sporting successor of the Old Club. It did not take any assets or federative rights from the Old Club, it did not replace the Old Club in competitions and did not enter into any agreement with the latter. When it first started its activity, the New Club's name was "*Asociatia Club Sportiv de Fotbal 'Alb-Negru' al Studentilor Clujeni*". It then obtained the right to use the company name "*FC Universitatea Cluj*" from the trademark owner, Cluj-Napoca Municipality. The stadium used by the Old Club and the New Club has always belonged to the County council of Cluj. The two clubs have different associates and have different legal structure, the Old Club being a privately-owned company and the New Club being an association. There is no connection between the executive bodies of the two clubs, which both had different financial sources of income.

V. JURISDICTION

58. The jurisdiction of the CAS, which is not disputed, derives from the Articles 57 *et seq.* of the applicable FIFA Statutes and Article R47 of the Code. It is further confirmed by the order of procedure duly signed by the Parties.
59. It follows that the CAS has jurisdiction to decide on the present dispute.
60. Under Article R57 of the Code, the Panel has the full power to review the facts and the law.

VI. ADMISSIBILITY

61. The appeal is admissible as the Player submitted it within the deadline provided by Article R49 of the Code as well as by Article 58 (1) of the applicable FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code.

VII. APPLICABLE LAW

62. Article R58 of the Code provides the following:

"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."

63. Pursuant to Article 57 (2) of the applicable FIFA Statutes, "[t]he 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".
64. As a result, in light of the foregoing, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply complementarily, whenever warranted.
65. The Player requested FIFA to forward the file to its Disciplinary Committee to impose disciplinary sanctions upon the Old Club on 26 May 2016, *i.e.* after April 2016 and 1

August 2011, which are the dates when a) the FIFA Statutes, edition April 2016, and the FIFA Disciplinary Code, edition 2011, came into force.

66. These are the editions of the rules and regulations, which the Panel will rely on to adjudicate this case.

VIII. MERITS

67. On 18 March 2016, the DRC rendered a decision ordering the Old Club to pay to the Player “*the amount of EUR 25,850 plus 5% interest p.a. as of 23 September 2015 until the date of effective payment.*”
68. The issue at stake is whether this decision can be enforced against the New Club. It is not controversial that a positive answer to this question requires a finding that the New Club is the sporting successor of the Old one.
69. Both the Player and FIFA assert that, in line with the criteria set by the constant jurisprudence of the CAS and in light of the evidence on file, the Deputy Chairman of the FIFA Disciplinary Committee rightfully concluded that the New Club is the sporting successor of the Old Club. They submit that the part of the Appealed Decision concerning the issue of the sporting succession between the two clubs has become final and binding as it has not been appealed against by the Player or by the New Club. The Player and FIFA are therefore of the opinion that there is no room for any further analysis on this topic. In other words, the Player and FIFA submit that the Appealed Decision has a *res judicata* effect as far as the sporting succession issue is concerned.
70. Hence, the main questions to be resolved by the Panel are:
- A. Has the Player the standing to challenge the Appealed Decision?
 - B. Is the Appealed Decision vested with a *res judicata* effect as regards the sporting succession issue?
 - C. Is the New Club the sporting successor of the Old Club?
 - D. Is the New Club liable to pay to the Player the amount awarded by the DRC in its decision of 18 March 2016?

71. The Panel will address these issues in turn below.

A. Has the Player the standing to challenge the Appealed Decision?

72. In the present arbitral procedure, none of the Parties raised the issue of the Player’s potential lack of standing to sue, which is a question related to the merits of the case (CAS 2016/A/4903 para. 76 and references) and must be examined *ex officio* (ATF 126 III 59 para. 1 a).
73. The Appealed Decision is based on Article 64 of the applicable FIFA Disciplinary Code and was issued by the Deputy Chairman of the FIFA Disciplinary Committee following

the New Club's failure to comply with the decision rendered by the DRC on 18 March 2016. According to the jurisprudence of the CAS and of the Swiss Federal Tribunal, the nature of such proceedings before the FIFA Disciplinary Committee is mainly disciplinary (CAS 2015/A/4162 and references).

74. FIFA disciplinary proceedings are primarily meant to protect an essential interest of FIFA and FIFA's (direct and indirect) members, *i.e.* the full compliance with the rules of the association and with the decisions rendered by FIFA's decision-making bodies and/or by CAS (CAS 2017/A/5227 para. 38 and references). In CAS 2012/A/2817 (para. 103), the Panel held that "*the Swiss Federal Tribunal, in the judgment of 5 January 2007 (4P.240/2006, at consid. 4.2) (...), examined the nature of the power exercised by FIFA on the affiliates (such as clubs and players) to its member federations in order to sanction the failure to comply with financial obligations following the instructions given by a FIFA body. The Federal Tribunal came to the conclusion that the exercise of such power does not amount to the use of an enforcement power: it simply consists in a reaction to the failure by an associate to comply with the rules of the association. In this respect, the Federal Tribunal confirmed that Swiss law allows an association to sanction the associates for their breach of the association rules.*"
75. It is undisputed that the Player was not a party to the disciplinary procedure initiated against the New Club for failing to comply with the decision of the DRC. Whether he has a right to request the CAS to order the FIFA Disciplinary Committee to institute or impose sanctions against the New Club appears, at first glance, to be questionable since Article 64 FDC is primarily punitive in nature, *i.e.* a disciplinary measure (Ulrich Haas, *The Enforcement of Football-Related Arbitral Awards by the Court of Arbitration for Sport (CAS) International Sports Law Review 2014*, p. 21). In other words, the Player would have only the right to report an alleged incompliance with a decision, as opposed to obtaining a right for the New Club to be sanctioned.
76. However, in numerous cases related to disciplinary proceedings initiated as per Article 64 FDC following the failure of the debtor to comply with a decision issued by a FIFA body, CAS Panels have dealt with appeals lodged by creditors (who requested that FIFA be ordered to enforce its awards) without examining the creditors' standing to sue. In a very recent case (CAS 2020/A/6745 of 1 December 2020), which is very similar to the present procedure as the FIFA Disciplinary Committee accepted that the New Club was the sporting successor of the Old Club but dismissed the charges against the latter as a result of the lack of diligence of the Player in collecting his debt in the bankruptcy proceedings of the Old Club, the Sole Arbitrator a) partially upheld the Player's appeal, b) confirmed that the New Club was the sporting successor of the Old Club, c) held that the Player did not fail to pursue diligently his claim and d) referred the case back "*to the FIFA Disciplinary Committee so that the disciplinary proceedings resume.*"
77. Conversely, in a recent decision, a Sole Arbitrator dismissed the request for intervention in a CAS procedure of a creditor, to whom the Appellant was ordered by the Single Judge of the FIFA Player's Status Committee to pay a certain amount. The said creditor was not

a party to the subsequent disciplinary proceedings before the FIFA Disciplinary Committee, the decision of which was subsequently appealed before the CAS. In this situation, the creditor who had applied for intervention “*was considered not to be covered by the scope of the decision under appeal and the relevant request for intervention was therefore rejected (...). [The] Sole Arbitrator considers that, since the present proceedings concern disciplinary matter, [the creditor] has no legal interest (in the sense of CAS Code) with regard to the imposition of a disciplinary sanction by FIFA on the Appellant (“principle of verticality”), as it merely involves the exercise of the statutory powers of FIFA towards a club affiliated to one of its member*” (CAS 2019/A/6287 para. 114 and 115).

78. With respect to the right to appeal of a non-addressee of a first instance decision, the Panel agrees with the findings exposed in CAS 2016/A/4903 according to which such a right must be admitted “*in very restricted cases. As a general rule, the appellant’s interest must be concrete, legitimate, and personal. A purely theoretical/indirect interest is not sufficient. In addition, the decision being challenged must affect the appellant directly, concretely, and with more intensity than others. Finally, the interest must exist not only at the time the appeal is filed but also at the time when the decision is issued. CAS jurisprudence found that in order to have standing to sue, the appellant must have an interest worthy of protection or a legitimate interest. This is found to exist if (i) the appellant is sufficiently affected by the appealed decision, and if (ii) a tangible interest of a financial or sporting nature is at stake. Only an aggrieved party who has something at stake and thus a concrete interest in challenging a decision adopted by a sports body may appeal against that decision to CAS. Sufficient interest is a broad, flexible concept free from undesirable rigidity and includes whether the appellant can demonstrate a sporting and financial interest*” (CAS 2016/A/4903 para. 76 et seq. and numerous references).
79. In the present case, whether the Player has a concrete interest to challenge the Appealed Decision is a complex issue, especially in a context of sporting succession. Whereas it cannot be denied that the Player is not directly impacted by the operative part of the Appealed Decision and being well aware of the fact that – apparently – the Player does not have a claim against FIFA to have a disciplinary measure imposed on another member, the Panel observes nevertheless that there is a number of elements, which speak in favor of the Player’s standing to sue:
- As a general principle, the FIFA Disciplinary Committee cannot review or modify the substance of a previous FIFA or CAS decision that is final and binding and therefore enforceable. The sole task of the FIFA Disciplinary Committee is to determine whether the debtor complied with the final and binding decision of the relevant body. Hence, the only question to be assessed by the FIFA Disciplinary Committee is simply whether or not the financial amounts as defined in the decision were paid by the debtor to the creditor (CAS 2019/A/6287 para. 143; CAS 2018/A/5779 para. 51).

However, in the present case, the Deputy Chairman of the FIFA Disciplinary Committee entered into at least two questions of substantive nature: he examined a)

whether the New Club was the sporting successor of the Old Club and b) whether the Player had been diligent enough when he pursued his claim in the bankruptcy proceeding of the Old Club. With respect to this last question, the Deputy Chairman of the FIFA Disciplinary Committee explained that it was of paramount importance that a creditor seeking to recover his credit participated in the bankruptcy proceedings at national level.

Under these circumstances, if the Player is not a party to the procedure before the FIFA Disciplinary Committee or cannot take part in the appeal procedure before the CAS, then the question arises as to how he can establish that he was diligent enough in collecting his debt in the insolvency/bankruptcy proceedings of the Old Club. This is even more true as there is no obligation under the FIFA Rules and Regulations that requires a creditor to file his claim in the bankruptcy proceedings of the old club as a pre-condition to have a decision issued by the DRC enforced against the sporting successor. Such a requirement is not provided under the previous version of the FDC or the newly implemented Article 15 (4) FDC.

- In the present case, the Deputy Chairman of the FIFA Disciplinary Committee held that the Player failed to pursue diligently his claim in the bankruptcy proceedings of the Old Club. It is only before the CAS, that the Player was for the first time in the position to prove that he did not remain passive as he filed all the necessary applications in order to register his claim in the insolvency/bankruptcy procedure of the Old Club. In the present arbitral procedures, FIFA admitted that the Player had been diligent and asked the CAS to refer the case back to FIFA for the eventual imposition of sanctions against the New Club.
80. This said, the Panel finds that the resolution of the present dispute does not call for another decision that would deviate from one or the other CAS precedents highlighted above. As a matter of fact, the Panel shares the opinion expressed in CAS 2016/A/4093, according to which the Player's standing to challenge the Appealed Decision does not necessarily have to be addressed first because standing is a question related to the merits of a case and because an arbitral tribunal is free to determine how to address the sequence of the different substantive questions at stake in legal proceedings.
81. In light of the foregoing considerations, in view of the CAS precedents highlighted above, bearing in mind that none of the Parties has questioned the Player's standing to sue and that on the basis of the evidence filed by the Player during the present arbitral proceedings, FIFA requested the CAS to refer the case back to its Disciplinary Committee, accepting thereby that the Player had a direct and concrete interest to challenge the Appealed Decision, the Panel does not deem necessary to determine whether the Player has standing to challenge the Appealed Decision, as, for the reasons exposed hereafter, it will not change the outcome of the present procedure.

B. Is the Appealed Decision vested with a *res judicata* effect as regards the sporting succession issue?

82. The Appealed Decision was rendered on 25 September 2019 by the Deputy Chairman of the FIFA Disciplinary Committee.
83. The principle of *res judicata* prohibits an identical claim that has already been decided in a final manner being reheard in a new procedure between the same parties (Decision of the Swiss Federal Tribunal, 4A_536/2018, 16 March 2020, consid. 3.1.1).
84. With respect to the Res Judicata effect of a decision issued by a Tribunal of a sport body, the CAS has ruled the following in a very recent decision issued on 18 September 2020 (CAS 2019/A/6483, para. 121):

“The Panel notes that according to Swiss law the principle of res judicata only applies to arbitral awards and court decisions. The types of decisions that enjoy res judicata effects are defined by law. It is not within the Parties’ autonomy to extend the number or types of decisions that are vested with res judicata effect. If it were otherwise, a violation of the res judicata principle could not – contrary to jurisprudence of the SFT – constitute a violation of the ordre public. There is no provision in Swiss law that confers res judicata effects to decisions of association tribunals. Decisions of a judicial body of a sport federation, which are not arbitral tribunals, are mere embodiments of the will of the federations concerned (SFT 4A-374/2014, consid. 4.3.2 and SFT 4A_222/2015, consid. 3.2.3.1).”

85. The Panel does not see any reason to depart from the foregoing considerations. It results that the Appealed Decision cannot be vested with a *res judicata* effect.
86. Moreover, in any manner, the binding effect of a judgment applies only to the operative part of the award and not to its grounds, even if the latter may complement the meaning of the operative part. This is particularly true in cases where the operative part simply dismisses the claim. It follows that in matters of partial claims, the grounds of the first judgment have no binding effect on subsequent trials, even if the questions which arise are typically the same (Decision of the Swiss Federal Tribunal, 4A_536/2018, 16 March 2020, consid. 3.1.1 and references).
87. In the present case, the operative part of the Appealed Decision is as follows:

“(…)

1. *All charges against the club FC Universitatea Cluj are dismissed.*
2. *The disciplinary proceedings initiated against the club FC Universitatea Cluj are hereby declared closed.”*

88. The Panel observes that the operative part of the Appealed Decision makes no reference to the sporting succession issue. Therefore, the factual findings and legal grounds of the Appealed Decision with respect to this issue do not bind the Panel, which, pursuant to Article R57 of the Code, has full power to review the facts and the law.
89. In light of the above and contrary to the Player’s and to FIFA’s submissions, the Appealed Decision has no *res judicata* effect as far as the sporting succession issue is concerned.

C. Is the New Club the sporting successor of the Old Club?

90. The concept of “sporting successor” is the direct result of several CAS cases, which have been materialised in the latest version of the FDC. Article 15 (4) of the FDC (edition 2019), which is not applicable to the present case, reads as follows:

“The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned.”

91. It seems useful to the Panel to briefly go over the CAS leading cases, which applied the “sporting successor” concept, in order to determine whether they share common elements with the dispute at stake:

- CAS 2007/A/1355. This is one of the first CAS awards, which address the matter. It was issued on 25 April 2008. The dispute arose between two clubs which were using a similar name, identical colours and logo, liable to create confusion therewith. The first club took action against the second club for the illegal use of its personality rights and obtained a favourable ruling from the CAS (“First Ruling”), which ordered the second club a) to use its earlier name, or adopt another name that would not create any confusion and b) to pay a compensation to the first club. However, during the proceedings before CAS, the second club assigned its rights to a third club, which was not a party to the CAS proceedings and which, therefore, claimed that it was not bound by the First Ruling. In a subsequent ruling (*i.e.* CAS 2007/A/1355), the CAS Panel held that the third club was indeed not the same legal person as the second club and that the two clubs “*have separate juridical personalities and were different kinds of artificial legal person: (...). It does not however follow that the [third club] is not bound by the original CAS decision. The [third club] acquired the rights of the [second club] (with which it is plainly closely connected) to participate in Liga 1 and thereafter treated itself as being bound by the Award. It was for all practical purposes the successor of [the second club] which was then reduced to turning out junior and youth teams. The original CAS Award envisaged that the award might be enforceable against a successor to [the second club] at par 6.19 where it stated: “In case the sum [of compensation] has not been paid to [the first club] by this deadline, [the second club] or whoever might be its legal successor at present is ordered to pay 5% interest p.a”. Both FIFA and the RFF treated the [the third club] as being the successor of the [second club] for the purposes of being bound by the Award. The [third club] itself accepted that it was bound by the Award. (...) We therefore conclude that the [third club] is now bound by the original CAS Award.”*
- CAS 2011/A/2646: In this award issued on 30 April 2012, the Panel held that “*If an entity purchases in a public auction the assets of a bankrupt club, continues the activity formerly developed by the bankrupt club with the same image, badge, hymn, representative colours, emblems and placement, and is on the basis of the federative*

rights acquired in the auction participating in the national competitions, replacing the former club with the consent and approval of the national football federation, it is to be understood as the legal successor of the bankrupt club.” In this case, the sporting succession was confirmed on the basis of the following grounds: a) the New Club was set up with the specific purpose of acquiring the assets of the Old Club; b) the New Club acquired from the Old Club, within the frame of the bankruptcy proceedings, “*the (i) Federative Rights at the National Association of Professional Football, (ii) Player’s transfers, (iii) Trophies, (iv) Sporting equipment and (v) All the goods inventoried in the bankruptcy proceedings*”; c) the New Club accepted and committed itself to maintain unaltered “*the image of [the Old Club], its names, badges, hymns, emblems, t- shirts and colours red and black*”; d) the New Club stayed in the same city; e) according to “*Act 20.019 (...) the foundations, corporations or legal entities which by means of any act, agreement or legal fact acquire or enjoy the same federative right and place in the sporting professional association, are considered as legal successors of the current clubs*”; f) the New Club undertook “*to fulfil with the National Association of Professional Football all the pecuniary, administrative, sporting and any other kind of obligations which are currently held by the Old Club*”; g) the New Club “*took the position formerly held by [the Old Club in the [national] sporting institutions and championships.*”

- CAS 2016/A/4550 – 4576: In this award issued on 24 November 2016, the Panel translated from Spanish into English a section of another decision issued by a CAS Sole Arbitrator (CAS 2013/A/3425), who held that “*a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus, the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected; and on the other side, that the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognised, even when dealing with the change of management companies completely different from themselves*”. In the case dealt in the award CAS 2016/A/4550-4576, a player terminated his employment contract without just cause and, within the following two months, signed/terminated consecutively an employment contract with three other clubs; *i.e.* the Belgian club Sint Truidense VV and the Hungarian clubs Újpest FC Kft and Újpest 1885. The Player left Újpest FC Kft for Újpest 1885 as the first Hungarian club went under a judicial liquidation procedure a little over a month after the signature of the employment contract. Újpest 1885 was the only club which obtained the player’s ITC following his departure from his first employer. In accordance with the Hungarian “Law on sport” and after consultation with UEFA, the Hungarian Football Federation accepted that the new legal entity, Újpest 1885, resumed the remaining of the ongoing football season under the name “Újpest FC” in the place of Újpest FC Kft. Újpest 1885, under the name Újpest FC, won the Hungarian Cup this season. The Panel had to decide whether a sanction imposed upon Újpest FC Kft could be extended to the new legal entity, Újpest 1885. The panel held that Újpest FC Kft. and Újpest 1885 a) competed in the first division of the Hungarian championship under

the name “Újpest FC”; b) The logo and colours of “Újpest FC” remained identical; c) both the old and the new clubs were registered at the same address; and d) had the same managing director (who appeared also to be the owner of Újpest 1885). In addition, and according to the witness statement of the owner of Újpest 1885, a year before the signature of the contract with the player, *“the management team realised that Újpest FC would more than likely not be able to overcome certain difficulties and to avoid liquidation. [The owner] also stated that at this time Újpest 1885 started the licensing process before liquidation of Újpest FC and were trying to buy assets from the latter. With regard to the links between Truidense and Újpest FC, [the owner] stated that they had an ‘historical collaboration’”*. Under these circumstances, the Panel found that Újpest 1885 was the sporting successor of Újpest FC.

- CAS 2018/A/5618: In this award issued on 10 October 2018, the Sole Arbitrator held that *“[the] approach of CAS 2013/A/3425 has been subsequently approved and applied in a number of decisions of the CAS including CAS 2016/A/4550 & CAS 2016/A/4576. The effect of these decisions is that the sporting successor of a former, no longer existing club can, as a matter of principle, be liable to meet the financial obligations of that former club notwithstanding that the successor is not a party to any agreement, arrangement or understanding pursuant to which the financial obligation arose or a privy of any of the parties to any such agreement, arrangement or understanding and regardless of whether there has been a change of management or corporate structure or ownership of the club in question”*. In this case, the Sole Arbitrator confirmed that the New Club was the Sporting Successor of the Old Club on the following grounds: a) the Old Club (consisting of several clubs) merged into the New Club following an official decree issued by the competent national authority; b) the merger was confirmed in a press release issued by the competent national football federation; c) the New Club's founding year was identical to the Old Club's; d) the name of the merged entity incorporated parts of the name of each club composing the Old Club; e) numerous players listed on the players' roster for the Old Club for the 2016/2017 season also appear on the players' roster for the New Club for the 2017/2018 season; f) *“Five of the six named coaching and management staff that were engaged by the [Old Club] continued in their roles with the newly merged entity”*; g) the New Club continued to play its home games in the same stadium as the one used by the Old Club; and h) in September 2017, the Professional League Committee agreed to grant the New Club the right to place several stars over the logo on the jersey of the team to reflect the tournaments won by the Old Club. *“This is a further recognition of the historical continuity of the [Old Club] as part of the newly merged entity”*.

92. It results from these CAS precedents that the concept of “sporting successor” is not applied simply because the new club has the same appearance (same logo, same colours, etc.) as the old one. On the contrary, each situation has been analysed on a case-by-case basis, and several other criteria were taken into account:

- In CAS 2007/A/1355, were also decisive the facts that a) there was a close connection between both clubs, b) both FIFA and the national football federation treated the new

- club as the successor of the old one and c) the new club acquired the rights of the old club to participate in Liga 1 and d) the new club accepted to be bound by an award issued against the old club.
- In CAS 2011/A/2646, the new club was set up with the specific purpose of acquiring the assets of the old club and obtained from the old club, within the frame of the bankruptcy proceedings, “*the (i) Federative Rights at the National Association of Professional Football, (ii) Player’s transfers, (iii) Trophies, (iv) Sporting equipment and (v) All the goods inventoried in the bankruptcy proceedings*”. Much more, according to an official regulation, “*the foundations, corporations or legal entities which by means of any act, agreement or legal fact acquire or enjoy the same federative right and place in the sporting professional association, are considered as legal successors of the current clubs*”.
 - In CAS 2016/A/4550-4576 and CAS 2018/A/5618, the new club was also set up with the specific purpose of acquiring the assets of the old club. In the second case, the old club actually merged into the new one.
93. According to the Panel, the concept of sporting succession should be applied very carefully and only in a restrictive way. As a matter of fact, the club found to be the sporting successor will have to take over the liabilities and commitments of the original debtor and may have to assume debts or obligations of significant magnitude. Just the outstanding salaries of the staff and players could amount to considerable sums. In addition, the sporting successor may have to defend disciplinary charges based on transactions (e.g. employment contracts) in which it was never involved. Under these circumstances, it is striking that the concept of sporting successor is implemented in disciplinary regulations as its implications encompass important civil consequences, similar to the ones observed in mergers, consolidations or asset acquisitions.
94. In this respect, and even if not directly applicable to this matter, one may wonder what the purpose of Article 15 (4) FDC actually is. If this provision is of disciplinary nature, it seems reasonable to assume that it aims to a) punish some poor behaviour, b) enforce rules and regulations, c) deter the offender from repeating his offence and/or d) deter others from committing similar acts. In the present case, there is no evidence to support a finding that the New Club breached any provision and rule and/or harmed any protected interests by its actions.
95. During the procedure before the FIFA Disciplinary Committee, the Player submitted that the New Club was the Old Club’s sporting successor on the basis of the following elements: a) both clubs have the same name; b) they played in the same stadium; c) the New Club uses the Old Club’s logo, colours (black and white) for its website and shirts; d) both clubs have the same founding year (i.e. 1919); e) the Facebook account of the New Club contains “*a significant number of references to the [Old Club] (...) Most notably, the Facebook account of the ‘new club’ contains a Facebook post dated 2 February 2015 where the player, Benjamin van den Broek, is being presented as a new signing*”; f) in its website, the New Club refers to various legends of the Old Club as well as to events which go back to 1919; g) the New Club has hired some of the Old Club’s

staff (this last affirmation is only supported with pictures of several men, supposed to have been working in both clubs without further evidence).

96. It appears that the Player's case (that the New Club is the Old Club's sporting successor) relies exclusively on appearances. As exposed hereabove and in light of the constant CAS jurisprudence, this is not enough. Nevertheless, the Deputy Chairman of the FIFA Disciplinary Committee agreed with the Player and held that *"there is no other alternative but to conclude that the New Club (...) appears to be the sporting successor of the Original Debtor"*. Such a finding seems inconsistent with the Appealed Decision itself, which recalled that *"a "new" club had to be considered as the "sporting successor" of another one in a situation where a) the "new" club created the impression that it wanted to be legally bound by obligations of its predecessor, i.e. the "old" club, b) the "new" club took over the licence or federative rights from the "old" club and c) the competent federation treated the two clubs as successors of one another. By the same token a "sporting succession" is the result of the fact that 1) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, 2) the "new" club accepted certain liabilities of the "old" club, 3) after the acquisition of the assets of the "old" club, the "new" club remained in the same city and 4) the "new" club took over the licence or federative rights from the "old" club."*
97. At no moment has the Player established that the New Club met the requirements described under letters a), b) c) and figures 1 to 4 of the section of the Appealed Decision quoted in the above paragraph.
98. With regards to the burden of proof, it is the duty of the Player to objectively demonstrate the existence of what he alleges (Article 12 (3) of the applicable FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber; Article 8 of the Swiss Civil Code). It is not sufficient for him to simply assert a state of fact for the Panel to accept it as true.
99. In the present case, the following observations can be made:
- There is no indication that the New Club was set up with the specific purpose of escaping the obligations entered into by the Old Club or of continuing the exact same activities as the Old Club. In this respect, there is no evidence on file suggesting that there was any connection whatsoever between both clubs, that they entered into any contractual agreement or that they even shared any common interest. According to the New Club (and that is not contradicted by the Player or FIFA), both clubs had distinct management and executive bodies. It is also undisputed that the New Club did not hire any of the Old Club's players.
 - The New Club has not acquired any right of the Old Club. According to the Player's own submissions, no potential bidders showed any interest in the Old Club's assets over the last years, in spite of very low starting prices. In particular, the New Club did not replace the old club in the championship, as it started its existence under the initial name *"Asociatia Club Sportiv de Fotbal 'Alb-Negru' al Studentilor Clujeni"* (or in English *"Black and White Football Sports Club Association of Cluj students"*)

and played its first season (2016/2017) in the lower division (League IV), whereas the Old Club was playing in League I, when it signed the Player.

- The RFF has never treated the New Club as the successor of the Old one. On the contrary, it forwarded the Appealed Decision and the related communications to the Old Club and not to the New one.
 - The New Club has never accepted to be the Old Club's successor.
 - With respect to the name and logo "*Universitatea Cluj U 1919*", the New Club filed two documents (and their translation into English), the authenticity of which has not been contested:
 - o An agreement dated 12 August 2016 between the New Club and the municipality of Cluj-Napoca, which appears to be the owner of the name. With this document, the municipality of Cluj-Napoca assigned to the New Club, "*the right of exclusive, total and perpetual use, free of charge on the trademark 'Universitatea Cluj U 1919' ('Trademark') registered at the State Office for Inventions and Trademarks under no. 089906, deposit number M 2006 07795, whose graphic representation is provided in Annex 1 to the contract, for all classes of products and services for which it is registered on the entire territory of Romania, namely classes 35 and 41.*"
 - o A Court Order which reads as follows: "*By civil conclusion no. 8618/CC/22.07.2016 pronounced by the Cluj-Napoca Court in file no. 14134/211/2016, the request made by the petitioners was admitted and, consequently, legal personality was granted to the 'Black and White' Football Sports Club Association of Cluj students and it was ordered to register it in the register of legal entities of this court. Subsequently (...) it was decided to change the name of the association according to the proof of availability of the name issued by the Ministry of Justice under no 15165/21.02.2017, the new name being ASOCIATIA SPORTIVA FOTBAL CLUB UNIVERSITATEA CLUJ*".
 - Just like its name, the stadium also did not belong to the Old Club, but to the County Council of Cluj.
100. In light of the foregoing and in view of all the circumstances of the case, the Panel holds that the New Club is not the sporting successor of the Old Club.
- D. Is the New Club liable to pay to the Player the amount awarded by the DRC in its decision of 18 March 2016?**
101. For the reasons exposed hereabove, the New Club is not the sporting successor of the Old Club and, as a consequence, it has not taken over the Old Club's obligations. In particular, the New Club is not bound by the award rendered on 18 March 2016 by the FIFA DRC and, therefore, cannot be sanctioned for not complying with it.

102. In the absence of a legal or contractual relationship, the Player has no means of claiming the payment by the New Club of his outstanding wages.
103. Under these circumstances, it is irrelevant to determine whether the Player failed to pursue diligently his claim in the bankruptcy proceedings of the Old Club at national level.
104. The above findings make it unnecessary for the Panel to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

IX. COSTS

105. Article R64.4 of the Code, which is applicable to this proceeding, provides:

“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. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.”

106. Article R64.5 of the 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 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.”

107. In the present case, the appeal must be dismissed. Therefore, the Player should bear the entirety of the costs of the present arbitration, which will be determined and served to the Parties by the CAS Court Office in a separate letter.
108. Furthermore, as a general rule the award grants the prevailing party a contribution toward its legal fees and other expenses incurred in connection with the proceedings.

109. In the present matter, FIFA did not ask for any indemnity. In addition, the Panel holds that FIFA indeed prevailed in these proceedings but not for the reasons exposed in the Appealed Decision or in its Answer. In both cases, it wrongly maintained that the New Club was the Old Club's sporting successor. Accordingly, no contribution shall be granted to FIFA for its legal expenses.
110. With respect to the New Club, it was assisted by professional legal advisers, who filed lengthy submissions. It incurred costs with respect to the translation of several documents. Under these circumstances and bearing in mind that no hearing took place before the CAS, the Panel finds equitable that the Player should contribute to the costs incurred by the New Club in an amount of CHF 3,000 (three thousand Swiss Francs).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Benjamin van den Broek against the decision issued by the Deputy Chairman of the FIFA Disciplinary Committee on 25 September 2019 is dismissed.
2. The decision issued by the Deputy Chairman of the FIFA Disciplinary Committee on 25 September 2019 is confirmed.
3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office in a separate letter, shall be borne by Mr Benjamin van den Broek in their entirety.
4. Mr Benjamin van den Broek is ordered to pay to FC Universitatea Cluj an amount of CHF 3,000 (three thousand Swiss Francs) as a contribution towards the legal fees incurred in connection with these arbitration proceedings.
5. All other motions or prayers for relief are dismissed.

Lausanne, 6 May 2021

THE COURT OF ARBITRATION FOR SPORT

Patrick Grandjean
President of the Panel

Gareth Farrelly
Arbitrator

Lars Hilliger
Arbitrator