CAS 2020/A/7001 Sportclub Ritzing v. Miroslav Sedlák & Fédération Internationale de Football Association

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark

in the arbitration between

Sportclub Ritzing, Austria

Represented by Mr Wolfgang Rebernig, Attorney-at-Law in Vienna, Austria, and Mr Simon Karlin, LL.M. (Boston, USA), Attorney-at-Law in Munich, Germany

Appellant

and

Miroslav Sedlák, Slovakia

Represented by Mr Peter Lukášek, Attorney-at-Law in Bratislava, Slovakia

First Respondent

&

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

Represented by Mr Miguel Liétard Fernández-Palacios, Director of Litigation, and Mr Alexander Jacobs, Senior Legal Counsel

Second Respondent

I. THE PARTIES

1. Sportclub Ritzing (the "Appellant" or the "Club") is a professional football club based in Austria and affiliated with the Austria Football Association (the "ÖFB"), which in turn is affiliated with the Fédération Internationale de Football Association. The Club is currently participating in the Landesliga Burgenland (the "League"), which is the fourth tier of Austrian football.

2. Mr Miroslav Sedlák (the "First Respondent" or the "Player") is a professional football player of Slovakian nationality. The Player is currently not under any professional contract.

3. The Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") is the world governing body of football, whose headquarters are located in Zurich, Switzerland.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations as established by the Sole Arbitrator on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (the "FIFA DRC" or the "Chamber") on 12 February 2020 (the "Appealed Decision"), the written and oral submissions of the Parties and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Sole Arbitrator refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 1 February 2019, the Club and the Player entered into a Player Contract (the "Contract"), valid as from 1 February 2019 until 15 June 2020.

6. According to the Contract, the Player was entitled, *inter alia*, to a monthly basic salary of EUR 950, paid monthly. Pursuant to the Contract, the basic salary *"shall be paid monthly, between the 10th and 15th day of the following month, plus a 10-day period of grace"*.

7. The Contract, in its English translation, furthermore stated, *inter alia*, as follows

> *"1. Subject matter of the Contract.*
>
> *1. The Player is employed by the Club as a football Player under the terms and provisions set forth in this contract. The labour and social law provisions for employees shall apply.*
>
> *2. Additionally, the parties agree that the following shall apply: the statutes of the Austrian Federal Football League (Österreichische Fußball-Bundesliga), the Match*

Operation Guidelines of the Austrian Federal Football League, the statutes as well as the special provisions and regulations of the Austrian Football Association (OFB), the Regulations for Clubs and Players affiliated to the Austrian Football Association as well as the provisions of the Fédération Internationale de Football Association (FIFA) and the Union of European Football Associations (UEFA), all as amended from time to time and insofar as they are relevant to the present contractual relationship.

3. All provisions of the Collective Agreement concluded between the Austrian Federal Football League and the Union of Municipal Employees – Arts, Media, Sports, Freelance Professions as amended shall apply, unless the Collective Agreement itself provides for any transitional provisions."

[...]

IX Final Provisions

[...]

3. The Player undertakes to bring in particular all disputes arising out of the Player contract before the responsible Senates/competent bodies [depending on the translation – please see para 8*] of the Austrian Football League before calling upon the competent courts, to exhaust the right appurtenant to the statutes of the Austrian Football League, and to make use of the association's internal possibility of arbitration provided in the status.*

[...]

8. This contract shall be governed by Austrian law. Subject to Section IX.3 of this contract, all disputes between the Parties arising out of or in connection with the legal relationship regulated by this contract shall be decided exclusively by the competent regional court, as industrial and appeal tribunal."

8. For the sake of good order, the Sole Arbitrator notes that the Appellant, in its Appeal Brief, translated the original German wording *"die zuständigen Senate der Österreichischen Fussball-Bundesliga"* to *"the competent bodies of the Austrian Football league"*, while in the professional translation submitted by the Appellant, the translation states *"the responsible Senates of the Austrian Football League"*.

9. By correspondence of 3 May 2019, received by the Club on 14 May 2019, the Player put the Club in default for the payment of EUR 1,900, corresponding to the monthly salaries of February and March 2019, granting the Club a deadline of 10 days to pay the overdue amount.

10. Subsequently, by correspondence of 5 June 2019, received by the Club on 12 June 2019, the Player put the Club in default for the payment of EUR 2,850, corresponding to the monthly salaries of February, March and April 2019.

11. Without receiving any payments as a result hereof, by correspondence of 27 June 2019, received by the Club on 3 July 2019, the Player terminated his employment relationship with the Club, relying on the Club's failure to comply with its contractual obligations.

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

12. On 17 July 2019, the Player lodged a claim against the Club in front of FIFA, requesting the payment of outstanding remuneration and compensation for breach of contract in the amount of EUR 16,150 plus interest at a rate of 5% p.a. from 4 July 2019 until the effective date of payment. Furthermore, the Player requested that sporting and disciplinary sanctions be imposed on the Club.

13. In support of his claim, the Player submitted that the Club had failed to pay him any salaries and therefore, in accordance with article 14bis of the Regulations on the Status and Transfer of Players (the "Regulations"), the termination was made with just cause. The Player furthermore referred to article 17 (1) of the Regulations, according to which the Club, which had breached the Contract without just cause, is liable for payment of compensation. Finally, upon being asked by FIFA, the Player maintained that he remained unemployed as from the termination of the Contract.

14. In its reply, the Club argued that FIFA was not competent to deal with the matter at hand with the consequence that the Player's claim should be deemed inadmissible.

15. In this respect, the Club referred to clause IX.3 of the Contract, arguing that the Parties had agreed that in case of a dispute relating to the Contact, the decision-making bodies of the Austrian Football Federation would be competent.

16. In addition, the Club maintained that the Contract also contained a clause in favour of the national courts and further argued that the matter was an exclusively national matter as the Club is an Austrian club playing in the Austrian league.

17. The FIFA DRC initially noted that in accordance with article 22 b) of the Regulations, the Chamber would, in principle, be competent to deal with the matter at stake, as it concerned an employment-related dispute with an international dimension between an Austrian club and a Slovakian player.

18. However, the Chamber acknowledged that the Club contested the competence of the FIFA DRC to deal with the present case, alleging the exclusive competence of the decision-making bodies of the Austrian Football Federation, based on clause IX.3. of the Contract. On the other hand, the Player referred to the competence of the FIFA DRC to adjudicate in and on his claim against the Club.

19. The Chamber initially emphasised that in accordance with article 22 b) of the Regulations, it is competent to deal with a matter such as the one at hand unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national

level within the framework of the association and/or collective bargaining agreement. With regard to the standards to be imposed on an independent arbitration tribunal guaranteeing fair proceedings, the Chamber referred to FIFA Circular no. 1010 dated 20 December 2005 and to the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations (the "NDRC Standard Regulations"), which entered into force on 1 January 2008.

20. Furthermore, and in relation to the above, the Chamber stressed that one of the basic conditions that needs to be met in order to establish that a body other than the FIFA DRC is competent to settle an employment-related dispute between a club and a player of an international dimension, is that the jurisdiction of the relevant national arbitration tribunal or national court derives from a clear reference in the employment contract.

21. In order to decide on its own competence, the FIFA DRC considered that it should, first and foremost, analyse whether the Contract at the basis of the dispute contained a clear jurisdiction clause.

Having examined the wording of clause IX.3 of the Contract, the Chamber underlined that not only did said clause not name a specific decision-making body, but the Club also failed to provide any relevant documentation in this matter.

22. Moreover, and noting the Club's argument referring to the competence of national courts, the Chamber deemed that such reference only applied in the second instance and, in view of the foregoing, said argument could not be taken into consideration.

23. On account of the above, and since the dispute was of an international dimension, the Player being of Slovakian nationality, the Chamber established that the objection to the competence of FIFA to deal with the present matter had to be dismissed and that the FIFA DRC is competent to consider the present matter as to the substance.

24. Having established its competence, the Chamber concluded that the June 2019 edition of the Regulations is applicable to the matter at hand.

25. Bearing in mind that pursuant to the applicable rules, any party claiming a right on the basis of an alleged fact carries the burden of proof, the Chamber acknowledged the facts of the case and highlighted that the underlying issue in this dispute was to determine whether the Contract had been terminated by the Player with just cause and, in the affirmative case, subsequently, to determine the consequences thereof.

26. Based on the above, the Chamber held that on the date of termination of the Contract, the Club had allegedly failed to pay the Player's remuneration due as from February 2019.

27. The Club, even given the opportunity to reply to the claim, had failed to present its response to the substance, based on which the Chamber deemed that the Player's allegations as to the substance remained undisputed and, therefore, that the Club accepted the said allegations.

28. On that account, the Chamber concluded that the Club failed to remit any remuneration in respect of the aforementioned instances of default and therefore established that the Club, without any valid reason, failed to remit to the Player his remuneration totalling EUR 4,750.

29. Consequently, and referring to article 14bis of the Regulations, the Chamber considered that, when the Player terminated the Contract by correspondence of 27 June 2019, at least two months' salaries were due despite the fact that the Player had provided the Club with the required deadline to remedy the default, and therefore the Player had just cause to unilaterally terminate the Contract.

30. In accordance with the principle of *pacta sunt servanda*, the Chamber then went on to decide that the Club is liable to pay to the Player the amount of EUR 4,750 as outstanding remuneration.

31. Moreover, and having established that the Club is to be held liable for the early termination of the Contract by the Player with just cause, and taking into consideration article 17 (1) of the Regulations, the Player was found entitled to receive from the Club compensation for breach of contract in addition to the aforementioned outstanding remuneration.

32. Taking into consideration, *inter alia*, the remuneration due to the Player under the Contract until its regular expiry date of 15 June 2020, coupled with the fact that the Player had not entered into any other employment relationship following the termination of the Contract, the Chamber decided that the Club must pay to the Player the amount of EUR 10,925 as compensation for breach of contract, equal to 11.5 monthly salaries.

33. The FIFA DRC, in the Appealed Decision rendered on 12 February 2020, decided, *inter alia*, as follows:

> *"1. The claim of the Claimant, Miroslav Sedlák, is admissible.*
>
> *2. The claim of the Claimant is partially accepted.*
>
> *3. The Respondent, SC Ritzing, has to pay to the Claimant the amount of EUR 4,750 plus 5% interest p.a. as from 4 July 2019 until the date of effective payment.*
>
> *4. The Respondent has to pay to the Claimant compensation for breach of contract in the amount of EUR 10,925, plus 5% interest p.a. as from 17 July 2019 until the date of effective payment*
>
> *5. Any further claim lodged by the Claimant is rejected.*
>
> *(...)*
>
> *8. In the event that the amounts due in accordance with points 3. and 4. above are 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 amounts are paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfers of Players.

9. *The ban mentioned in point 8. above will be lifted immediately and prior to its complete serving, once the due amounts are paid.*

10. *In the event that the amounts due in accordance with points 3. and 4. Above are still not paid by the end 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."*

34. On 30 March 2020, the grounds of the Appealed Decision were communicated to the Parties.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. On 17 April 2020, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code") against the Respondents with respect to the Appealed Decision.

36. On 27 April 2020, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

37. By letter of 20 July 2020, the First Respondent requested the suspension of the proceedings until the Appellant had provided all submitted documents in English, with which request the Second Respondent concurred by letter of 22 July 2020.

38. On 24 July 2020, the Parties were informed by the CAS Court Office, *inter alia*, that the Respondents' time limit for filing their Answers would be fixed once the English translations had been provided.

39. On 18 August 2020, and in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark.

40. By letter of 24 September 2020, the First Respondent requested the Sole Arbitrator to issue a Termination Order since, according to the First Respondent, the Statement of Appeal filed by the Appellant was incomplete and since the Appellant had failed to complete it within a reasonable time.

41. By letter of 25 September 2020, the Parties were informed that the Sole Arbitrator had rejected such a request.

42. By letters of 25 September 2020, 12 October 2020 and 28 October 2020 from the CAS Court Office, the Appellant was given new deadlines to provide certain translations of documents already submitted by the Appellant, which translations were eventually provided by the Appellant.

43. Finally, on 10 November 2020, the Parties were informed by the CAS Court Office that the present proceedings were resumed as of the same date.

44. On 16 November 2020, the First Respondent filed his Answer in accordance with Article R55 of the CAS Code, and on 9 December 2020, the Second Respondent filed its Answer accordingly.

45. In his Answer, and with reference to Article R57 of the CAS Code, the First Respondent requested the Sole Arbitrator to exclude evidence from the present proceedings, *inter alia*, since the Appellant had failed to submit it before FIFA.

46. On 10 December 2020, the Appellant and the Second Respondent were granted the opportunity to provide their comments, if any, on the First Respondent's request for exclusion of evidence.

47. While the Second Respondent did not file any substantive comments on the request for exclusion of evidence, on 5 January 2021, the Appellant filed its comments on the request to exclude evidence together with written arguments regarding *"(II) Additional Remarks by the First Respondent"* and *"(III) Applicability of Austrian law and its provisions concerning the present case"*.

48. By letter of 8 January 2021, the Parties were informed by the CAS Court Office that the Sole Arbitrator had decided to reject the First Respondent's request to exclude the evidence filed by the Appellant, and that the reasons for this decision would be explained in the final award. Moreover, and with regard to the additional submissions by the Appellant in its submission of 5 January 2021 (*i.e. "(II) Additional Remarks by the First Respondent"* and *"(III) Applicability of Austrian law and its provisions concerning the present case"*), the Parties were informed that the Sole Arbitrator had noted that the Appellant had gone beyond the opportunity granted to provide its comments regarding only the request to exclude evidence from the file, but that the Parties would be granted the opportunity to take a position on the Appellant's submissions (both on the admissibility and potential merits of the submission) during the upcoming hearing.

49. Furthermore, the Parties were informed that the Sole Arbitrator had decided to hold a hearing in this matter.

50. On 12 April 2021, the CAS Court Office sent the Parties the Order of Procedure, which the Parties returned duly signed.

51. By email of 15 April 2021, the Appellant forwarded a Statement of the Appellant with Exhibits 10 and 11 to the CAS Court Office, requesting it to be admitted into the file.

52. Given the objections received from the Second Respondent with regard to the admissibility of the Appellant's Statement of 15 April 2021, and since he found no exceptional circumstances for the late filing of such documents, by letter of 19 April 2021, the Sole Arbitrator rejected the request with reference to Article R56 of the CAS Code.

53. Later on the same date, the First Respondent submitted a short letter, in which he agreed fully with the arguments of the Second Respondent and concurred with the objection to the Appellant's request.

54. On 20 April 2021, a virtual hearing was held via Webex conferencing system.

55. In addition to the Sole Arbitrator and Ms Carolin Fischer, Counsel to the CAS, the following persons attended the hearing:

For the Appellant:

- Mr Wolfgang Rebernig, legal counsel
- Mr Simon Karlin, LL.M., legal counsel
- Mr Harald Reiszner, President of the Appellant

For the First Respondent:

- Mr Peter Lukášek, legal counsel

For the Second Respondent:

- Mr Miguel Liétard Fernández-Palacios, Director of Litigation
- Mr Alexander Jacobs, Senior Legal Counsel.

56. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel and the appointment of the Sole Arbitrator.

57. In its pleading, the Second Respondent addressed the Appellant's submission of 5 January 2021 on *"(II) Additional remarks by the First Respondent"* and *"(III) Applicability of Austrian law and its provisions concerning the present case"* and objected to the submission being allowed into the file with reference to Article R56 of the CAS Code.

58. The Parties were afforded ample opportunity to present their case and submit their arguments.

59. After the Parties' final submissions, the Sole Arbitrator closed the hearing.

60. Upon the closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

61. On 27 April 2021, the CAS Court Office, on behalf of the Sole Arbitrator, informed the Parties that based on the objection raised at the hearing regarding points (II) and (III) of the Appellant's submission of 5 January 2021, and since he found no exceptional circumstances for the late filing of these parts of the submission, the Sole Arbitrator rejected the request to have them included in the file with reference to Article R56 of the CAS Code.

V. PARTIES' REQUESTS FOR RELIEF AND SUBMISSIONS

A. The Appellant

62. In its Appeal Brief, the Appellant requested the CAS to rule as follows:

> *"1. The Appeal of the Appellant is admissible.*
>
> *2. [The Appealed Decision] is set aside.*
>
> *3. The claim of the Player is not admissible because DRC is not competent to deal with the case.*
>
> *4. The claim of the Player is rejected.*
>
> *5. The arbitration costs shall be borne by FIFA and the Player jointly and severally.*
>
> *6. FIFA and the Player shall be ordered to contribute, jointly and severally, to the Appellant's legal and other costs."*

63. The Appellant's submissions, in essence, may be summarised as follows:

- Initially, it is correct that pursuant to the Regulations, the FIFA DRC has competence to adjudicate on employment-related disputes between a club and a player that have an international dimension, which is the case in this dispute.
- However, and also pursuant the Regulations, the parties may explicitly opt in writing to refer such disputes to an independent arbitration tribunal that has been established 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 to the parties, and the independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs.
- In this dispute, the Parties agreed freely in the Contract that in case of a dispute relating to the Contract, the decision-making bodies of the Austrian Football Federation should be competent.
- Due to this competence of the Austrian independent arbitration tribunal, the FIFA DRC has no competence to hear the case.

- The Austrian independent arbitration tribunal fulfils all the requirements to be met for a national arbitration tribunal to be considered independent and guaranteeing fair proceedings and respecting the principle of equal representation of the clubs and players.
- First of all, the competence derives from a clear reference in the Contract, especially since *"the competent bodies of the Austrian Football League"* may in any case be determined by way of contractual interpretation, thus fulfilling the requirement for a clear reference in writing.
- Moreover, the Contract does not contain multiple fora to be addressed by the Parties, and the wording is clear and unambiguous.
- Furthermore, the Austrian independent arbitration tribunal in question, Senate 2, fulfils the entire list of requirements to be considered independent and guaranteeing fair proceedings and respecting the principle of equal representation of the clubs and players, which was already confirmed by the FIFA DRC in a decision rendered in 2010, according to which the FIFA DRC declared itself incompetent on the basis of the Regulations, holding that the very same Austrian independent arbitration tribunal met the minimum procedural standards.
- In addition, the reference in the respective contract related to the 2010 case decided by the FIFA DRC had a similar wording, fully comparable to the wording of the reference in the Contract.
- The composition of and the proceedings of the Austrian independent arbitration tribunal are still the same today and hence comparable to the situation in 2010, and FIFA itself , by means of its 2010 FIFA DRC decision, has already confirmed that the Austrian Football League (the "ÖFBL") arbitration tribunal meets the procedural standards for independent arbitration tribunals under the FIFA NDRC Standard Regulations.
- All in all, the requirements of the Regulations to shift the competence of the FIFA DRC to the ÖFBL Football Arbitration Tribunal are met, and the FIFA DRC was not competent to deal with the case underlying the Appealed Decision.
- The fact that the dispute is of an international dimension and the fact that the Appellant is not participating in the first or second tier of Austrian football should not be of relevance in order to rule out the competence of Senate 2.
- With regard to the merits of the Player's claim, it is not disputed that the Club has failed to pay to the Player his monthly basic salaries for February, March and April 2019 in the amount of EUR 2,850.
- However, the Club explicitly disputes the breach of contract and the premature termination of contract by the Player.

B. The First Respondent

64. In its Answer, the First Respondent requested the CAS as follows:

"1. The appeal filed by the Sportclub Ritzing is dismissed in full.

2 (The Appealed Decision) is upheld in full and Sportclub Ritzing shall bear:

2.1 full amount of administrative costs and costs of the proceedings ordered by the Court of Arbitration for Sport within 15 days of notification of the present decision;

2.2 full amount of costs including legal costs incurred by Mirolav Sedlák in connection with the arbitration proceedings within 15 days of notification of the present decision."

65. The First Respondent's submissions, in essence, may be summarised as follows:

- The FIFA DRC in the Appealed Decision clearly and precisely implemented the standard test when considering the arbitration clause in the Contract and was correct in deciding that the Contract does not explicitly name the specific decision-making body allegedly competent to hear the present dispute.
- Moreover, the Club, before the FIFA DRC, did not provide any evidence to the extent that there is an independent tribunal at national level in Austria.
- Even during the proceedings in front of the CAS, the Club failed to prove the existence of such an independent tribunal at national level competent to decide on the present dispute.
- The Club's allegation that Senate 2 should be regarded as the independent body with competence to decide on the present dispute between the Club and the Player is denied.
- The Procedural Rules of the ÖFB only provide for general and specific rules of procedure, but do not address the competence/jurisdiction of said Senate 2 or any other specific body that serves as an independent arbitration body to resolve employment-related disputes.
- Said rules only provide for the generic jurisdiction of any so-called "*control committees*" that might be set up at the level of each regional association, without being specific as to the composition or even existence at regional level.
- On the other hand, the Statutes of the ÖFBL identify Senate 2 as an arbitration body with competence to decide employment-related disputes between members and players.
- However, the Statutes of the ÖFBL are not applicable to the relation between the Club and the Player since the Club is not a member of the ÖFBL, which, according to its own statutes, is the association of all football clubs of the two top divisions of Austria.
- The Club is currently playing in the League, which is the forth tier of Austrian football, and is therefore not a member of the ÖFBL, and "Senate 2" has consequently no jurisdiction to decide the employment-related dispute between the Club and the Player.

- In addition, it must be stressed that the Contract also refers to the exclusive competence of Austrian civil courts to decide on disputes "in connection with the legal relationship regulated by this contract".
- Moreover, and based on the fact that the Club is solely responsible for discharging its burden of proof in relation to the lack of jurisdiction of the FIFA DRC, the Club failed to provide any evidence or argument that "Senate 2" or any other body at national level was *de facto* composed/created/elected in line with the standard requirements and principles of independent arbitration bodies.
- As such, the appeal must be dismissed.
- With regard to the merits of the dispute, the First Respondent contends that the Club has no real desire to dispute the Player's entitlement to receive overdue payables, unilateral termination of the employment contract for just cause by the Frist Respondent or entitlement to receive compensation for breach of contract without just cause.
- Moreover, even during the proceedings in front of CAS, the Club confirmed its readiness to make a payment to the Player, even if such payment was never made.
- The Club only stated that it *"explicitly disputes the breach of contract and the premature termination of contract by the Player"*, and without any further argument, the issue of the Player's entitlement to receive outstanding salaries and compensation for breach of contract must be deemed undisputed.
- All in all, by not providing any arguments or evidence whatsoever to dispute the findings and grounds of the Appealed Decision, the Club did not discharge its burden of proof, and the appeal must therefore be dismissed.

C. The Second Respondent

66. In its Answer, the Second Respondent requested the Sole Arbitrator to:

"(a) Reject the Appellant's appeal in its entirety;

(b) Confirm the Appealed Decision and, in particular, that the DRC was competent to deal with the dispute between the Appellant and the Player;

(c) Order the Appellant to bear all costs incurred with the present procedure; and

(d) Order the Appellant to make a contribution to FIFA's legal costs."

67. The Second Respondent's submissions, in essence, may be summarised as follows:

- Initially, it is fundamental to point out that the FIFA DRC, the competence of which is disputed by the Club, forms part of a private dispute resolution system of a Swiss association, founded in accordance with Article 60 ff. of the Swiss Civil Code (the "SCC").
- In this regard, article 22(b) of the Regulations provides that FIFA, as a general rule, will be competent to hear employment-related disputes between a club and a player

of an international dimension unless the parties explicitly opt to refer their dispute to an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs at national level within the framework of the association and/or a collective bargaining agreement.

- Thus, and since the international dimension of the present dispute is no longer disputed by the Club in the proceedings in front of CAS, if an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs exists at national level, a dispute between parties of an international dimension may be referred to said body, provided that the parties have explicitly chosen to submit such a dispute thereto by means of a clear, specific and exclusive arbitration clause.
- However, in cases where – despite the parties' explicit concrete choice of forum in favour of a national decision-making body – one of the parties nevertheless refers a dispute to the FIFA DRC and the counterparty disputes the competence of said FIFA decision-making body, the FIFA DRC would examine whether, according to the documents on file, the relevant national decision-making body is an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs. In the affirmative, the FIFA DRC would decline its jurisdiction and refer the parties to the national decision-making body initially chosen by the parties.
- However, if the relevant requirements are not met by the aforementioned body, the FIFA DRC would not recognise its jurisdiction, and it would consequently accept its own competence to adjudicate on the matter as to substance.
- As a general rule, in order to establish whether a national body is an independent arbitration tribunal, it must be proven by the party challenging the competence of the FIFA DRC, in the present case the Club, that the pertinent national body meets the minimum procedural standards set out in the different FIFA regulations and as implemented by FIFA in various documents, including FIFA Circular no. 1010 and the NDRC Standard Regulations.
- With regard to the explicit and clear reference to a competent national dispute resolution chamber, such an arbitration clause must be clear, specific and exclusive to meet the requirements of the Regulations.
- The objective of this requirement is to ensure that the parties to a contract have a clear and unequivocal understanding of the specific body they should revert to in case of a dispute. Moreover, such an arbitration clause must be included in the contract between the parties.
- Clause IX.3 of the Contract does not contain the *essentialia negotii* of a valid arbitration clause as it does not (i) define a specific legal relationship and does not (ii) unequivocally mention a specific body competent to entertain claims arising out of that relationship. These two requirements need to be present to prevent an arbitration clause from being pathological or deficient, as reiterated by the Swiss Federal Tribunal.

- Firstly, the reference to *"all disputes arising from the player's contract"* fails to define the specific legal relationship to which the arbitration clause is supposed to apply, which in itself is sufficient to consider the clause relied upon by the Club as ineffective since it does not define the legal relationship.
- Secondly, and for the sake of completeness, the arbitration clause does not clearly indicate the tribunal to which the Club and the Player decided to refer their disputes.
- By referring only to "*the competent bodies of the Austrian Football League*" and *"internal arbitration"* without specifying which exact body or bodies of the Austrian Football League are competent or from which basis such competence is derived, the Club and the Player failed to indicate precisely which body they wished to refer their dispute to.
- Thus, the reference is not clear, it is not specific, and it does not appear to be exclusive in view of the plurality of options.
- Moreover, the Club did not provide any relevant document before the FIFA DRC with regard to the existence and functioning of the supposed NDRC, and the FIFA DRC was consequently not in a position to verify the existence or functioning of such alleged bodies.
- Although the Club has now submitted certain regulations, it remains unclear how these regulations apply to the matter at stake.
- In addition, the Contract also contains a clause referring the Parties to the competent regional court.
- The mere presence of different clauses referring to two different legal fora for dispute resolution demonstrates in itself the total lack of clarity for the Player to know which forum to turn to in case of a dispute.
- Not even by means of contractual interpretation, as argued by the Appellant, is it possible for the Player to interpret where to address his claim.
- With regard to the 2010 decision of the FIFA DRC referred to by the Club, it must be stressed that the circumstances of the two cases are not comparable for the mere reason that the two arbitration clauses are not similar.
- In conclusion, the Club and the Player did not expressly opt to have their disputes decided by a specific and independent arbitration tribunal established at national level within the framework of the association and/or a collective bargaining agreement in accordance with article 22 b) of the Regulations.
- In the unlikely event that the Sole Arbitrator should find that indeed, instead of the FIFA DRC, the *"competent bodies of the Austrian Football League"* are competent to pass decisions regarding disputes resulting between the Club and the Player under the Contract, it is clear that the Club failed to discharge its burden of proof to show that the dispute resolution system it relies upon (especially Senate 2) complies with the minimum requirements established by article 22 b) of the Regulations.

- Moreover, the Club failed to put the Sole Arbitrator in a position to be able to properly address the dispute resolution system its relies upon.
- In particular, the Club has failed to demonstrate that the competent bodies of the Austrian Football League or any other element of the system it relies upon can be regarded as an independent and impartial arbitration tribunal in the sense of article 22 b) of the Regulations and respecting the principles contained in FIFA Circular no. 1010.
- With regard to the merits of the dispute, this dispute is entirely "horizontal" in nature insofar as no reliefs are sought against FIFA with respect to the contractual dispute between the Club and the Player.
- Consequently, FIFA does not have the standing to be sued in relation to the contractual relationship between the Club and the Player and will therefore not comment any further on the dispute, which exclusively concerns the other Parties.

VI. JURISDICTION

68. 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.* [...]"

69. With respect to the Appealed Decision, the jurisdiction of the CAS derives from article 58 par. 1 of the FIFA Statutes as it determines that *"*[a]*ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question."* and Article R47 of the CAS Code.

70. The Sole Arbitrator notes that even if the jurisdiction of the CAS as an appeal body to decide on the Appellant's claim depends on the existence of the FIFA DRC's jurisdiction to decide on such a claim, the Sole Arbitrator finds that the CAS is competent to deal with the question on whether the FIFA DRC was wrong in accepting competence.

71. It follows that the CAS has jurisdiction to decide on the appeal of the Appealed Decision with regard to the jurisdiction of the FIFA DRC, which the Sole Arbitrator will address in the merits section below.

72. Furthermore, and in case the Sole Arbitrator finds that the FIFA DRC had jurisdiction to decide on the Player's claim, the CAS is competent to deal with the merits of the matter as well.

73. In addition, none of the Respondents objected to the jurisdiction of the CAS, and all Parties confirmed the CAS' jurisdiction when signing the Order of Procedure.

VII. ADMISSIBILITY

74. The grounds of the Appealed Decision were notified to the Appellant on 30 March 2020, and the Statement of Appeal was lodged on 17 April 2020, *i.e.* within the statutory time limit of 21 days set out in article 58 par. 1 of the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

75. It follows that the appeal is admissible, which is furthermore not disputed by the Respondents.

VIII. APPLICABLE LAW

76. Pursuant to article 57 par. 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."*

77. Article R58 of the CAS Code provides as follows:

> *"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."*

78. The Parties agree that the applicable regulations in these proceedings for the purpose of Article 58 of the CAS Code are the rules and regulations of FIFA, and, subsidiarily, Swiss law.

79. Based on the above, the Sole Arbitrator is satisfied that the various regulations of FIFA are primarily applicable, in particular the Regulations and the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (2018 edition) (the "FIFA Procedural Rules") and, subsidiarily, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

IX. MERITS

80. Initially, the Sole Arbitrator notes that the factual circumstances of this case are in essence undisputed by the Parties, including the fact that the Club and the Player entered

into the Contract on 1 February 2019, valid as from 1 February 2019 until 15 June 2020, according to which the Player was entitled, *inter alia*, to a monthly basic salary of EUR 950, paid monthly.

A. Jurisdiction of the FIFA DRC

81. The Contract, in its English translation stated, *inter alia*, as follows:

> *"IX Final Provisions*
>
> *[...]*
>
> *3. The Player undertakes to bring in particular all disputes arising out of the Player contract before the (responsible Senates/competent bodies) [*depending on the translation, please see para 8 above*] of the Austrian Football League before calling upon the competent courts, to exhaust the right appurtenant to the statutes of the Austrian Football League, and to make use of the association's internal possibility provided in the status.*
>
> *[...]*
>
> *8. This contract shall be governed by Austrian law. Subject to Section IX.3 of this contract, all disputes between the Parties arising out of or in connection with the legal relationship regulated by this contract shall be decided exclusively by the competent regional court, as industrial and appeal tribunal."*

82. Furthermore, it is undisputed that, in May and June 2019, the Player put the Club in default for the payment of outstanding salaries, since the Club had never paid any salaries to him pursuant to the Contract.

83. Without receiving any payments as a result hereof, by letter dated 27 June 2019, the Player terminated his employment relationship with the Club, relying on the Club's failure to comply with its contractual obligations to the Player.

84. Consequently, on 17 July 2019, the Player filed a claim in front of FIFA against the Club, requesting the payment of outstanding remuneration and compensation for breach of contract in the amount of EUR 16,150 plus interest.

85. Before the FIFA DRC, the Club argued that FIFA was not competent to decide on the dispute with the consequence that the Player's claim should be deemed inadmissible.

86. However, on 12 February 2020, the FIFA DRC rendered the Appealed Decision and found the claim of the Appellant admissible since, *inter alia*, it was found that the arbitration clause set out in the Contract *"not only did not name a specific deciding body, nevertheless the [Club] also failed to provide any relevant documentation in this matter."*

87. With regard to the merits of the dispute, the FIFA DRC found that the Player terminated the Contract with just cause due to the failure by the Club to make payments in accordance with the terms of the Contract and that the Club is consequently liable to pay to the Player the amount of EUR 4,750 as outstanding remuneration and the amount of EUR 10,925 as compensation for breach of contract.

88. Following the Appellant's appeal to the CAS of the Appealed Decision, the Sole Arbitrator now has to decide on the issue of FIFA jurisdiction and, if indeed FIFA had jurisdiction to decide he has to decide on the merits of the dispute, *i.e.* the Player's claim.

89. The Sole Arbitrator initially notes that it is undisputed between the Parties that any possible jurisdiction of FIFA to decide on the claim of the Player must originate from the regulations of FIFA.

90. Article 3 par. 1 of the FIFA Procedural Rules provides, *inter alia*, as follows:

> *"The Players' Status Committee and the DRC shall examine their jurisdiction, in particular in the light of arts 22 to 24 of the Regulations on the Status and Transfer of Players. [...]".*

91. Article 22 of the Regulations states, *inter alia*, as follows:

> *"Competence of FIFA*
>
> *Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:*
>
> *a) [...]*
>
> *b) 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; [...]".*

92. With regard to the present dispute, the Sole Arbitrator notes that it is now undisputed between the Parties that the dispute between the Club and the Player is an employment-related dispute between a club and a player of an international dimension, the Appellant being an Austrian football club and the Player being a professional football player of Slovakian nationality.

93. In accordance with the above, the Sole Arbitrator further notes that if an independent arbitration tribunal, established at national level within the framework of the association and/or a collective bargaining agreement and guaranteeing fair proceedings and

respecting the principle of equal representation of players and clubs, were to exist at national level, the dispute between the Club and the Player may be referred to the said body, provided that the parties have explicitly chosen to summit their dispute thereto by means of a clear, specific and exclusive arbitration clause.

94. Moreover, the Sole Arbitrator notes that in a case like the present dispute, where one of the parties refers the dispute to the FIFA DRC and where the other party disputes the competence of the FIFA DRC, it is up to the FIFA DRC to examine to start with and based on the evidence before it, whether the above-mentioned requirements have been fulfilled, in which case, and in the affirmative, the FIFA DRC will decline its own jurisdiction and then refer the parties to the national decision-making body initially chosen by parties.

95. However, if the relevant requirements have not been met, the FIFA DRC will decline the jurisdiction of said body and accept its own jurisdiction, as was the case with the Appealed Decision.

96. In order to decide on the issue of FIFA jurisdiction, the Sole Arbitrator initially finds, based on the facts of the case and the Parties' submissions, that it is up to the Club to discharge the burden of proof to establish that the Club and the Player, by means of a clear, specific and exclusive arbitration clause, have explicitly chosen to summit their dispute to an independent arbitration tribunal established at national level within the framework of the association and/or a collective bargaining agreement and guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs.

97. In doing so, the Sole Arbitrator adheres to the principle of *actori incumbit probatio*, which has been consistently observed in CAS jurisprudence, and according to which *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (...). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (*e.g.* CAS 2003/A/506, para 54; CAS 2009/A/1810&1811, para 46; and CAS 2009/A/1975, para 71ff).

98. However, the Sole Arbitrator finds that the Club has not adequately discharged the burden of proof to establish that the necessary requirements of the arbitration clause and the national decision-making body have been fulfilled to show that the FIFA DRC is not competent to decide on the present dispute.

99. The Sole Arbitrator notes that the relevant criteria are derived from general legal principles and furthermore recalled in FIFA Circular no. 1010 of 20 December 2005. Moreover, the principles have been confirmed in CAS jurisprudence, *e.g.* in CAS 2008/A/1518.

100. With regard to the requirement of a clear, specific and exclusive arbitration clause, as confirmed by CAS jurisprudence, *e.g.* in CAS 2019/A/6569, the Sole Arbitrator finds that the objective of such a requirement is, *inter alia*, to ensure that the parties to a contract have a clear and unequivocal understanding of which specific body they should revert to in case of a dispute.

101. As such, the possible competence of a concrete national decision-making body must be explicitly stipulated by the parties in the relevant contract, at least with a clear reference to the national regulations providing for such competence.

102. Based on a thorough analysis of the Contract, and without going into details as to whether or not, by the end of the day, such a decision-making body is in fact guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, the Sole Arbitrator finds that the Contract does not contain such a clear, specific and exclusive reference which would result in the finding that the FIFA DRC is not to consider itself competent to decide on the dispute between the Player and the Club.

103. First of all, the Sole Arbitrator finds that the wording (in either of the translations submitted by the Appellant) in clause IX.3 of the Contract, which refers to the *"responsible Senates"* or alternatively *"competent bodies"*, does not provide sufficient information, not even by means of interpretation, regarding which specific decision-making body the parties need to refer to as the competent body to decide on a possible dispute between them.

104. Having analysed the Statutes of the ÖFBL and the Disciplinary Regulations of the ÖFB, it is still not clear to the Sole Arbitrator as to why, according the Club, the "Senate 2" should be the competent body to which the Club and the Player allegedly had referred to as the competent body.

105. Furthermore, it is not even clear to the Sole Arbitrator on which basis the Statutes of the ÖFBL are supposed to be applicable to the Club and the Player. This is because it follows directly from said Statutes that the ÖFBL is the association of all football clubs of the two top divisions of Austrian football, the Club however is currently participating in the fourth tier of Austrian football.

106. Moreover, the Sole Arbitrator notes that clause IX.8 of the Contract states, *inter alia*, as follows: *"[...] Subject to Section IX.3 of this contract, all disputes between the Parties arising out of or in connection with the legal relationship regulated by this contract shall be decided exclusively by the competent regional court, as industrial and appeal tribunal."*, and thereby apparently refers competence to the "regional court" *for "all disputes between the Parties arising out of or in connection with the legal relationship regulated by this contract"*.

107. The Sole Arbitrator agrees with FIFA that the mere presence of different clauses referring to two different legal fora for dispute resolution demonstrates in itself the lack

of clarity for the Player to know which forum to turn to in the case of a dispute with the Club.

108. Based on these considerations alone, and without going further into detail regarding the further non-fulfilment of the above-mentioned requirements, including the requirement to specify which potential disputes must be considered covered by the arbitration clause, the Sole Arbitrator is confident in concluding that the Club and the Player did not opt, in a clear, specific and exclusive manner, for a specific independent arbitration tribunal to decide on the present dispute.

109. Based on that, the Sole Arbitrator agrees with the FIFA DRC that the FIFA DRC was competent to decide on the merits of the Player's claim as it did in the Appealed Decision.

B. The Player's claims in front of the FIFA DRC

110. With regard to the merits of the Club's claim, the Sole Arbitrator initially notes that the Club never disputed FIFA's argument that FIFA does not have the standing to be sued in relation to the contractual relationship between the Club and the Player. As such, the Sole Arbitrator is satisfied to accept this argument, reason for which FIFA is not to be considered a party to the present proceedings with regard to this aspect of the present dispute. The Sole Arbitrator further notes that this is in line with the jurisprudence of CAS in purely horizontal disputes between, *e.g.* a club and a player.

111. Furthermore, the Sole Arbitrator notes that the Club also never disputed that it has never paid the Player his remuneration due under the Contract, neither during the employment relationship, nor after the Player's termination of the Contract.

112. The Club nevertheless disputes the breach of contract and the premature termination of contract by the Player, albeit without at any stage of the proceedings, even during the hearing, submitting any arguments or evidence in support of its submission.

113. Based on that, and after a thorough analysis of the Appealed Decision, the Sole Arbitrator finds no grounds for not agreeing in full with the FIFA DRC in its conclusion that the Contract was terminated by the Player with just cause due to the failure by the Club to make payments in accordance with the terms of the Contract.

114. Moreover, the Sole Arbitrator finds no grounds for disagreeing with the FIFA DRC in its decision on the consequences of the Player's termination of the Contract, *i.e.* the liability of the Club to pay outstanding remuneration and compensation for breach of contract to the Player in the amount decided in the Appealed Decision.

115. As such, the Appealed Decision is confirmed in its entirety.

X. COSTS

116. Article R64.4 of the CAS Code provides as follows:

"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of 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."

117. 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."

118. In the present case, in consideration of the outcome of the proceedings, the Sole Arbitrator rules that the costs of arbitration, as calculated by the CAS Court Office, must be borne by the Appellant, in their entirety.

119. Furthermore, as a general rule, the award may grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. Taking into consideration that FIFA was not represented by outside counsel, the Sole Arbitrator rules that the Appellant must pay a contribution towards the First Respondent's legal fees in the amount of CHF 4,000 (four thousand Swiss Francs), while the Second Respondent must bear its own legal fees and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Sportclub Ritzing on 17 April 2020 against the decision rendered by the FIFA Dispute Resolution Chamber on 12 February 2020 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 12 February 2020 is confirmed in its entirety.

3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne entirely by Sportclub Ritzing.

4. Sportclub Ritzing is ordered to pay to Mr Miroslav Sedlák an amount of CHF 4,000 (four thousand Swiss Francs) as a contribution towards the expenses incurred in connection with these arbitration proceedings.

5. Sportclub Ritzing and the Fédération Internationale de Football Association shall bear their own legal fees and expenses incurred in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 19 August 2021

THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger
Sole Arbitrator