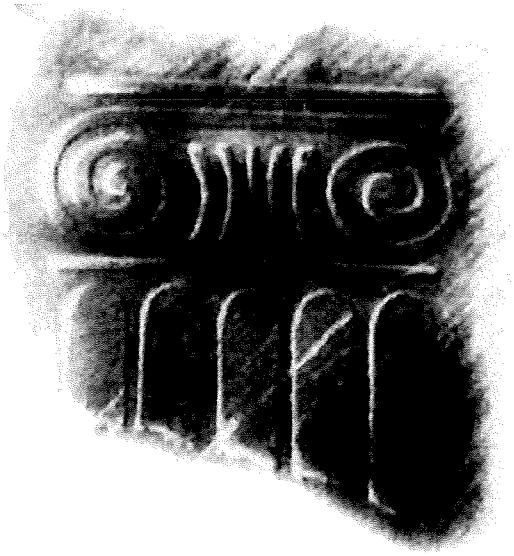
TAS / CAS

Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte



ARBITRAL AWARD

Aliaksandr Paulavets, Belarus

v.

FC Dynamo Brest, Belarus

&

Fédération Internationale de Football Association, Switzerland

CAS 2021/A/7865 - Lausanne, January 2023

CAS 2021/A/7865 Aliaksandr Paulavets v. F.C Dynamo Brest & Federation Internationale de Football Association

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Gareth Farrelly, Solicitor, Liverpool, United Kingdom

in the arbitration between

Aliaksandr Paulavets, Belarus

Represented by Mr Mikhail Prokopets, Mr Ilya Chicherov and Mr Yury Yakhno, Attorneys-at-Law, SILA International Lawyers, Moscow, Russia

Appellant

and

FC Dynamo Brest, Brest, Belarus

Represented by Mr Dmitriy Stasyuk, Director of the Legal Department, Lawyer, FC Dynamo Brest, Brest, Belarus

First Respondent

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr Miguel Lietard, Director of Litigation, and Mr Roberto Nájera Reyes, Senior Legal Counsel, FIFA, Zurich, Switzerland

Second Respondent

I. PARTIES

1. Aliaksadr Paulavets (the "Appellant" or the "Player") is a professional football player of Belarusian nationality, currently employed with the Russian Football Club, FC Rostov with its registered office in Rostov, Russia.

2. FC Dynamo Brest (the "First Respondent" or the "Club") is a football club with its registered office in Brest, Belarus. The Club currently plays in the Russian Premier League. It is a member of the Russian Football Union ("RFU") which itself is in turn affiliated to FIFA.

3. Federation Internationale de Football Association (the "Second Respondent" or "FIFA") is the governing body of international football, based in Zurich, Switzerland.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the written submissions of the Parties, their pleadings and evidence adduced during the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

A. Background Facts

5. On 10 January 2019, the Player entered into an employment contract with the Club from 11 January 2019 until 10 January 2020. The Player and the Club then entered into an additional agreement extending the contract until 10 January 2021.

6. Based on article 4.6 of the additional agreement, the Player was entitled to a monthly salary of Belarusian robles (BYN) of 18,837.36 gross, consisting of an official salary of BYN 1,633.53 and an incentive payment of BYN 17,203.83. This equated to a net amount of BYN 16,200.13 as per article 4.7 of the additional agreement.

7. From March 2020, the Club failed to pay the Player his monthly salary in full. By September 2020, the Club owed the Player BYN 64,766.64.

8. On 21 September 2020, the Player put the Club in default for the outstanding amount of BYN 64,766.64, providing a 10 day deadline to remedy the its default and warning the Club that in the event of non-compliance he would terminate the contract with just cause.

9. The Club did not pay within the deadline set. On 2 October 2020, after further communication with the Club, the Player extended the deadline by giving the Club a further 15 days to settle the outstanding debt. The Club did not repay the outstanding amount or engage with the Player.

10. On 6 October 2020, the Club sent a letter to the ABFF's Player Status Committee, explicitly confirming that the contract between the Club and the Player was terminated stating – "*In the current situation, taking into account the severity of violations committed by the football player of the terms of the current employment contract, LLC FC Dynamo Brest decided to terminate the employment contract No.6 dated 10.01.2019 with A.V Paulavets due to violation of performance and labor discipline, which caused damage to the organisation in the amount of 350,000 euros*".

11. On 8 October 2020, the Player unilaterally terminated the contract due to the outstanding salaries. It would appear that the Player did not know about the steps the Club had taken until 15 October 2020, that being the termination of the Player's contract.

12. On the same day, the Club informed the Player that he was released for participation in matches for the national team until 14 October 2020, and that since he was on official international duty, the Club could not have terminated his contract.

13. On 9 October 2020, the Player signed a contract of employment with the FC Rostov. (the "New Club").

14. On 13 October 2020, the New Club requested the Player's ITC via FIFA TMS.

15. On 15 October 2020, the Club requested the Player return to the Club's premises as the contract was not terminated, to which the Player replied that the contract had been terminated on 8 October 2020.

16. On the same day, the Player requested that ABFF adjourn the hearing of the First Respondent's statement due to a lack of time to consider it and draft a reply.

17. On 16 October 2020, the Player responded to the Club and reiterated that he validly terminated the contract and through the statement, the Club expressed a lack of will to continue with the employment relationships.

18. On 20 October 2020, the ABFF rejected the TMS request for the ITC on the pretext that the Player's contract with the Club was not terminated.

19. On 22 October 2020, the New Club submitted to FIFA requesting a provisional registration for the Player via the Football Union of Russia (FUR). This was granted on 4 November 2020 as the reason provided by the ABFF was not a valid reason based on article 8.2.4 lit. b and 8.2.7 of Annex 3 of the FIFA Regulations.

20. On 29 October 2020, the Player lodged a Statement of Claim before FIFA DRC.

21. It is alleged that on 6 November 2020, the ABFF passed a decision, on the basis of which it confirmed that the Club had the right to terminate the contract with the Player, and that it was entitled to an amount of EUR 125,000.

22. The Player's claim against the Club, requested the outstanding amount of BYN 85,147.00, set out as follows:

- The amount of BYN 4,139.72, the outstanding part of the March 2020 salary, as well as 5% interest per annum, as from 10 April 2020 until the date of effective payment;

- The amount of BYN 8,061.87, the outstanding part of the April 2020 salary, as well as 5% interest per annum, as from 10 May 2020 until the date of effective payment;

- The amount of BYN 13,240.54, the outstanding part of the May 2020 salary, as well as 5% interest per annum, as from 10 June 2020 until the date of effective payment;

- The amount of BYN 13,118.25, the outstanding part of the June 2020 salary, as well as 5% interest per annum, as from 10 July 2020 until the date of effective payment;

- The amount of BYN 13,103.13, the outstanding part of the July 2020 salary, as well as 5% interest per annum, as from 10 August 2020 until the date of effective payment;

- The amount of BYN 13,103.13, the outstanding part of the August 2020 salary, as well as 5% interest per annum, as from 10 September 2020 until the date of effective payment;

- The amount of BYN 20,830.13 the outstanding part of the September 2020 salary, as well as 5% interest per annum, as from 10 October 2020 until the date of effective payment.

23. The Player sought compensation for breach of contract in the total amount of BYN 86,583.13, specified as follows:

- The residual value of the contract with the Club in the period between October 2020 and January 2021 in the amount of BYN 49,645.61;
- Minus the value of the Player's contract with FC Rostov in the period between October 2020 and January 2021 in the amount of RUB 352,419.35, equivalent to BYN 11,662.77.

24. The Player claimed additional compensation consisting of three-monthly salaries of BYN 16,200 net, the total amount of BYN 48,600.39 plus 5% interest per annum as from 9 October 2020 until the effective payment date.

25. The Player denies that he was in breach of article 2.18 of the ABFF Regulations, as said article entitles him to negotiate with other clubs in the last 6 months of his employment contract.

26. The Player further claimed that he had a just cause to terminate the contract and that he is entitled to the outstanding remuneration and compensation for breach of contract.

27. In its reply to the claim the Club requested that FIFA should declare the claim inadmissible and that the Player's claim has no legal basis.

28. The Club explained that it validly, temporarily reduced the 'bonus payments' to all its employees in view of the Covid-19 pandemic.

29. In addition, the Club argued that the Player should have duly explained the reason for the termination of the contract, which then should consequently, based on article 1, paragraph 4 of the ABFF Regulations, verify and confirm such reason.

30. On 29 October 2020, the Player also submitted to the ABFF that it had no jurisdiction to adjudicate on the dispute as there was an international dimension to it. Therefore, it should be considered by FIFA.

31. On 3 November 2020, FIFA informed the Club of the Player's claim and invited them to provide their position.

32. On 6 November 2020, the ABFF passed a decision declaring that the Club's statement admissible and partially upheld it, condemning the Player to pay the Club EUR 125,000 compensation for the breach of contract.

33. On 17 November 2020, the Player appealed against the ABFF decision before the ABFF Football Arbitration.

34. On the same day, the Club paid the Player the outstanding remuneration, without the interest claimed.

35. On 23 December 2020, Football Arbitration decided not to consider the appeal of the Player. It was ruled, that in sending the appeal only be email, despite all previous corresponding with the ABFF being by email, this did not comply with the formal procedural rules.

III. DECISION OF THE FIFA DISPUTE RESOLUTION CHAMBER (DRC)

36. The members of the FIFA DRC referred to Article 3 paragraph 1 of the Procedural Rules and confirmed that, in accordance with Article 24 paragraph 1 in combination with Article 22 (a) of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP" or the "Regulations"), the FIFA DRC shall, in principle, adjudicate on disputes between clubs and players in relation to the maintenance and of contractual stability when there has been an ITC request and a claim from an interested party in relation to this ITC request.

37. In seeking to determine if this matter did fall within the scope of Article 22 (a) of the Regulations, the Chamber wished to point out that as per its well-established jurisprudence and opposed to the CAS award quoted by the Player, that being *TAS 2018/A/5575*, its jurisdiction is limited to cases, in which there is a shared nationality between the player and the former club, and in which the former club of the player lodges a contractual claim against the player and his new club.

38. In situations like the matter at hand, in which it was the player who lodged a claim against his former club, and where no consequences can arise for the new club of the player, the Chamber concluded that no relation between the employment related dispute and the ITC request existed. Furthermore, in this matter, it was the Player who terminated the contractual relationship with his former club.

39. Consequently, the Chamber concluded that it did not have jurisdiction to hear this dispute on the basis of Article 22 (a) of the Regulations.

40. Subsequently, the members of the Chamber referred to Article 3 paragraph 1 of the Procedural Rules and concluded that, pursuant to Article 24 paragraph 1 and Article 22 (b) from the Regulations, the Chamber was the competent decision making body to hear employment related disputes between a club and a player of an international dimension.

41. In view of the foregoing, the Chamber had found it useful to stress that in principle, and without prejudice to the right of any player, coach, association or club to seek redress before a civil court for employment related disputes, it is within its jurisdiction to deal with any employment related disputes of an international dimension between a club and a player, except in the case where an independent arbitral tribunal was established at the national level.

42. The members of the Chamber referred to the preliminary provisions of the Regulations, and in particular article 1 thereof, according to which certain principles stipulated in the Regulations are also binding on the national level and each association is required to draw up its own regulations. Within the framework of their autonomy, associations are free to adapt their internal regulations to the needs and particularities of the country concerned.

43. Consequently, FIFA's jurisdiction was limited to disputes and transfers with an international dimension.

44. In addition, in the context of labour disputes, the Chamber wished to point out that as a general rule, the international dimension is represented by the fact that the player concerned is not a national of the country of the association to which the club concerned is affiliated.

45. However, when both parties have the same nationality, the dispute must be considered as national or internal, which has the consequence that the rules and regulations of the association concerned apply to the dispute and the proceedings decisions provided for by the said national rules and regulations must decide the case. Any other interpretation would lead to a situation in which the relevant FIFA decision making body, dealing with such an internal matter, would infringe the internal competence of FIFA members.

46. In light of the foregoing, and in particular considering the nationality of the parties (Belarusian) to the present dispute, the Chamber had established that the present case was devoid of an international dimension. As a result, the Chamber deemed itself not competent to decide on the present dispute.

47. On 25 February 2021, the Chamber found, therefore, that "*The claim of the Claimant, Aliaksandr Paulavets, is inadmissible*" (the "Appealed Decision").

IV. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION OF SPORT

48. On 13 April 2021, the Appellant filed his Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision in accordance with Article R47 and R48 of the Code of Sports-related Arbitration (the "Code") with respect to the Appealed Decision.

49. On 24 May 2021, in accordance with Article R51 of the Code and within the previously extended time limit, the Appellant filed his Appeal Brief.

50. On 23 June 2021, in accordance with Article R55 of the Code, the First Respondent filed its Answer.

51. On 28 July 2021, in accordance with Article R55 of the Code, the Second Respondent filed its Answer.

52. On 28 July 2021, the CAS Court Office, pursuant to Article R54 of the Code and on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that the Panel appointed to decide the present case was constituted as follows:

Sole Arbitrator: Gareth Farrelly, Solicitor in Liverpool, United Kingdom

53. On 24 September 2021, and after having consulted the Parties, the CAS Court Office informed them that the Sole Arbitrator had decided to hold a hearing, to be conducted via videoconference.

54. On 15 October 2021, both the Appellant and Second Respondent signed and returned the Order of Procedure.

55. On 18 October 2021, the First Respondent signed and returned the Order of Procedure.

56. On 10 November 2021, a hearing was held via videoconference. The Sole Arbitrator was assisted by Mr Giovanni Maria Fares, Counsel to the CAS. The following persons attended the hearing for the Parties:

For the Appellant: Mr Mikhail Prokopets, Counsel
Mr Ilya Chicherov, Counsel
Mr Yury Yakhno, Counsel

First Respondent: Mr Dmitriy Stasyuk, Counsel at FC Dynamo Brest
Mr Ernest Nikolaichuk, FC Dynamo Brest Director
Mr Andrey Lazaruk, Counsel at FC Dynamo Brest

Mr Evgeny Trotsiuk, Interpreter

Second Respondent: Mr Roberto Nájera Reyes, Senior Legal Counsel

57. At the opening of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel, recognised that conducting the hearing via videoconference was an acceptable means of communication and confirmed that the fact that the hearing was taking place virtually would not be used as a ground to challenge or seek the annulment of the award.

58. During the hearing, the Parties had the opportunity to present their cases, submit their arguments and answer any questions posed by the Sole Arbitrator. At the end of the hearing, the Parties and their Counsel expressly declared that they did not have any objections with respect to the procedure adopted by the Sole Arbitrator and that their right to be heard had been fully respected.

59. On 16 November 2021, the CAS Court Office wrote to the Appellant on behalf of the Sole Arbitrator requesting to file, within ten days, English translations of any and all provisions in the Statutes of the ABFF and any other applicable regulations governing dispute resolution mechanisms at national level, with particular focus on legal remedies provided for against decisions issued by the bodies of the ABFF.

60. On 25 November 2021, it is noted that the First Respondent filed a translation of the ABFF Statutes and a previous CAS decision.

61. On 26 November 2021, the Appellant filed a translation of the pertinent provisions in the ABFF Articles of Association, as well as translations of ABFF PSC Regulations and Football Arbitration Regulations.

V. SUBMISSIONS OF THE PARTIES

62. This section of the Award does not contain an exhaustive recitation of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant

63. In its Appeal Brief, the Appellant submitted the following requests for relief:

1. *Set aside the decision 20-01585 issued on February 25 2021, by the FIFA Dispute Resolution Chamber;*

2. *Issue a new decision with the following terms*

   a. *The Appellant has terminated the employment contract with Respondent 1 with just cause on October 8 2020, or alternatively, the Respondent 1 terminated the employment contract with the Appellant without just cause on October 6, 2020;*

   b. *The Respondent shall pay the Appellant the following amounts:*

      - ***BYN 86,583.18** as compensation for breach of contract plus 5% p.a from October 9, 2020, until the date of effective payment;*

      - *5% p.a on the amount of BYN 4,139.72 from April 10, 2020, to November 17, 2020;*

      - *5% p.a on the amount of BYN 8,061.87 from May 10, 2020, to November 2017, 2020;*

      - *5% p.a on the amount of BYN 13,240.54 from June 10, 2020, to November 17, 2020;*

      - *5% p.a on the amount of BYN 13,118.25 from July 10, 2020, to November 17, 2020;*

      - *5% p.a on the amount of BYN 13,103.13 from August 10, 2020, to November 17, 2020;*

      - *5% p.a on the amount of BYN 13,103.13 from September 10, 2020, to November 17, 2020;*

      - *5% p.a on the amount of BYN 20,380.81 from October 10, 2020, to November 17, 2020.*

   3. Order the Respondents to bear the costs incurred with the present procedure.

64. The detailed submissions of the Appellant, in essence, may be summarised as follows:

- It was the Appellant's position that FIFA erred in its conclusion that the dispute lacked the necessary international dimension, and that the FIFA Regulations did not provide the Appellant with the possibility to lodge a claim before FIFA.

- It was averred that the dispute did have an international dimension and falls within the competence of FIFA.

- The First Respondent had breached the contract and should be obliged to pay compensation to the Appellant.

- The Appellant submits that in accordance with Article 22(a) RSTP, FIFA shall have jurisdiction "where there has been an ITC request and claim from an interested party

in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract".

- The Appellant further relies on Article 8.2 para 7 of Annex 3 of the RSTP, according to which the professional player, the former club and/or the new club are entitled to lodge a claim with FIFA in accordance with Article 22.

- Hence, the Appellant submits that Article 22 (a) of the RSTP gives FIFA the competency to hear disputes where the parties are a club and a player, concerning contractual stability, or where there has been an ITC request and a claim from an interested party concerning that ITC request. The Appellant maintains that the present dispute falls within these criteria: The First Respondent terminated the contract and the Appellant's new club and the FUR made an ITC request.

- The Appellant also relies on the FIFA Commentary to Article 22 (a) RSTP, according to which FIFA would be "*competent whenever a player signs for a club affiliated to another association as a result of an employment-related dispute, and the new association asks for the ITC to be issued*", being it "*irrelevant if the players has the nationality of the country where the former club is based*".

- The Appellant argues that the ITC request from the New Club and the FUR on 13 October 2020, automatically awarded the FIFA DRC with competence to hear the present dispute, since Article 22 (a) RSTP is an offer by FIFA to resolve the dispute at hand concerning the international transfer of the Appellant from a Belarusian club to a Russian club, accepted by the Appellant.

- The Appellant relies on several CAS precedents in support of his position, in particular *TAS 2018/A/5575, CAS 2017/A/4935, CAS 2020/A/6767* and *CAS 2020/A/7029* considered:

65. It was submitted that although the First Respondent submitted a claim before the ABFF Players' Status Committee, the Appellant maintains that the present dispute falls within the competence of the FIFA DRC, and the Appellant did not recognise the jurisdiction of the NDRC in the current dispute.

66. Furthermore, paragraph 3.10 of the Contract provided that the Appellant has the right to protect his other rights according to the statutes, regulations, decisions and other regulatory documents of FIFA, UEFA, and ABFF.

67. Finally, it was claimed that the ABFF PSC does not comply with FIFA Standard Regulations on National Dispute Resolution Chambers, which again evidences the procedure's invalidity before the ABFF PSC.

68. In particular, despite the principle of equal representation anchored by FIFA NRDC Standard Regulations, ABFF Statutes set forth the following as to the establishment and composition of the ABFF PSC:

> *6.15. The Executive Committee [of ABFF] appoints and dismisses members of the Players' Status and Transfers Committee. The Players' Status and Transfers Committee comprises five members, including the Committee Chairman, the Deputy Chairman, the Secretary. The quorum for decision making is at least three members. The Players' Status and Transfers Committee acts on the basis of the regulations established by the Executive Committee. The term of office of the Players' Status and Transfers Committee is four years.*

69. Therefore, the members of the Belarusian NDRC, namely the ABFF PSC are appointed at the sole discretion of the ABFF Committee in direct contravention of the FIFA NDRC Standard Regulations, and it should follow that their decisions are not recognised.

70. It was submitted that FIFA had jurisdiction under Article 22 (a) of the RSTP to adjudicate the dispute, the claim was admissible, and the FIFA DRC was the competent body to adjudicate on this matter.

71. Consequently, CAS should cure FIFA's error in determining the admissibility of the Appellant's claim in a *de novo* procedure.

72. The Appellant also claimed that the First Respondent was liable for the termination of the employment contract. In *CAS 2015/A/4039* the question as to whether the Appellant was justified in bringing the contract to an end at the time of termination should be established based on the grounds invoked in the Termination Notice.

73. The Appellant raises the fact that he was not aware of the First Respondent's statement before the ABFF PSC, dared 6 October 2020, through which the First Respondent terminated the contract until 15 October 2020.

74. It was claimed that the First Respondent, in its statement alleged that the Appellant's right to freely negotiate an employment contract with another club under Article 11 paragraph 1 of ABFF RSTP is restricted by a 'contractual mechanism' stipulated by paragraph 2.18 of the contract, which the Appellant has breached.

75. The Appellant's contract was due to expire on 10 January 2021. Therefore, from 10 July 2020, he was free to negotiate and conclude an employment agreement with any other club.

76. The Appellant notes that the plain text of the FIFA RSTP or ABFF RSTP does not require an agreement of the current club to negotiate and conclude a new contract within six months before the expiration of the old contract.

77. This is reflected in the Official Commentary to the FIFA RSTP, which in Article 18 section 4 addresses 'approaching a player'. Paragraph 2 also confirms the player's right to freely conclude a new contract within six months before the expiration of the old one:

> *"A player whose contract is due to expire cannot wait until after the expiry of his current contract in order to sign a new contract and thus secure his existence, as otherwise the possibility of finding new employment would be limited. The Regulations therefore allow*

a player to conclude a new contract with another club if the contract with his current club has expired or will expire within the next six months. The six month rule is a reasonable period of time for a player to enter into negotiation with and sign for a prospective club and for the current club not to suffer any instability as a result of the departure of the player caused by external factors. The player's new contract may not include anything that would interfere with the proper completion of the existing contract. It goes without saying that the attitude of the player shall not hinder the correct conclusion of the current contract".

78. It is submitted that the First Respondent's reasoning is flawed. The Appellant was entitled to enter into negotiations with a new club, given the fact that his contract would expire within six months. The Appellant had complied with both the FIFA and ABFFC Regulations and therefore, the First Respondent had no just cause to terminate the employment contract.

79. Conversely, the Appellant invoked his termination notice on 8 October 2020 due to the fact that from March 2020, the First Respondent had failed to pay the Appellant his salary in full and did not comply with the respective notices to remedy the debt within the deadline provided. The outstanding remuneration due to the Appellant exceeded two months salaries.

80. The Appellant submitted that he had just cause to terminate the employment contract and also cited the provision of *pacta sunt servanda*, which in essence means that the parties act in good faith, must respect agreements, and observes that delays in payment of the monthly salaries have never been recognised as anything other than a breach of this principle and the corresponding contracts.

81. Article 14 paragraph 1 of the RSTP states that a contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause:

"*In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligations*".

82. The Appellant reiterated his position that before 13 October 2020, the date of the ITC request, the dispute at stake was not of an international dimension. Therefore, the Appellant considered Article 13 of the ABFF Regulations on the Status and Transfer of Players, allowing the Appellant to grant a 10-day deadline for the First Respondent to comply with its obligations.

83. However, considering the further extension of time granted to the First Respondent through the second extension of 2 October 2020, the total time limit to settle the debt was 16 days, which reflects the time period set out in Article 14 of the RSTP. Based on these considerations, the Appellant had just cause to terminate the contract.

84. Finally, the Appellant submitted that the First Respondent had acted in bad faith. After 6 October 2020, when the statement was filed with the ABFF, it maintained to the Appellant that the contract was still valid. The Appellant is at a loss to understand this position. According to well established CAS jurisprudence, a party cannot suddenly change its course of action to the detriment of another party when it has caused the other party to rely on those actions. This is under the principle of *venire contra factum proprium* and the general duty of good faith of contracting parties.

85. It was submitted that at the very least having received the Appellant's termination notice on 8 October 2020, the First Respondent did not disclose the fact that they had terminated the player's contract themselves on 6 October, in its numerous replies to the Appellant after this date.

86. The Appellant does note that the First Respondent did pay the outstanding remuneration on 17 November 2020. However, it did not pay default interest.

VI. FIRST RESPONDENT

87. The First Respondent submitted the following request for relief in its Answer:

> 1. *That the dispute shall NOT be admissible to consideration by the FIFA Dispute Resolution Chamber due to the explicit national nature of the dispute.*
>
> 2. *Claims of Aliaksandr Paulavets regarding the requirement to pay contractual amounts of salary are not subject to satisfaction in connection with the performed final settlement with the Claimant;*
>
> 3. *Claims regarding the application of penalties in conditions of weakened commercial and football activities of the Club are unjustified, unfair and not subject to satisfaction.*

88. The submissions of the First Respondent, in essence, sought to address the Appellant's case as follows:

89. With regard to the pretension of the player sent on 21 September 2020, the Club responded pointing to the temporary nature of the reduction of the bonus payments to all employees, and that such measure was necessary "*due to the current difficult economic state of the financial and economic activities both the Club and all its partners, sponsors and advertisers without an exception due to the spread of Covid-19 virus.*"

90. The pandemic had caused a difficult situation for the Club. The Club had been required to take a host of measures to ensure the health and safety of the staff, whilst also having to manage the financial consequences. The Club sought to preserve the performance of the football Club and maintain the labour relations of the current team. The Club considered the FIFA recommendations as well as government proposals. It was agreed that bonus payments would be reduced, as a measure to preserve jobs and the team as a whole. This was recognised as a temporary measure. On a monthly basis, the Head of

the Club met with the collective of players who made a collective decision to reduce the bonus payments.

91. The First Respondent submitted that in its appeal to the ABFF on the termination of employment relations with the player, and the recognition of the reasons as justified, the Club paid the player the amount owed in full. The Club took all possible actions and measures to maintain the employment relationship.

92. On 2 October 2020, the player sent a further pretension. In its response, the Club again stated "*....at the present time the Employer is making a calculation to establish the exact* amount *of arrears on your salary. When the amount of the unpaid salary is established, the resulting debt will be paid off*".

93. In response to the player's termination notice of 8 October 2020, the Club considered this, and the player was asked to return to the location of the Club to consider the notice on the merits, taking into account the requirements of the current labour legislation of the Republic of Belarus. On the same day, there was a statement from the Club on the termination of labour relations and the reason for such termination. It was submitted that the player had left the location of the Club without permission in order to conclude an employment contract with a third club.

94. With regard to the admissibility of the dispute, the First Respondent submitted that, it is necessary to pay attention to the circumstances establishing (or limiting) the Appellant's right to appeal to CAS. Thus, in the current situation, a request for the ITC was made to Belarusian Football Association. The latter, in pursuance of the requirement of Article 2 Annex 3 of the RSTP asked the Club to confirm whether the professional's contract had expired, whether there had been a mutual agreement on early termination or there was a dispute. Due to the fact that no agreement was reached between the parties the national association refused to issue the ITC.

95. It is submitted that a specific feature of the Regulations of the Belarusian Football Federation on the RSTP, enshrined in Article 13 paragraph 4 is the need to establish (confirm) the corresponding fact of the presence (or absence) of a valid reason for the early termination of the contract by one of the parties to the relevant dispute. Accordingly, the interested party, having made the decision to terminate the contract for a good reason, is obliged to perform the appropriate the procedure for confirming the existence of such a reason. The counter party must comply with this procedure as if he himself was the initiator of the unilateral contract termination.

96. In the decision of 6 November 2020, the Committee noted that this approach is aimed at the maintenance of contractual stability in Belarusian football and is confirmed by the adopted FIFA legal regulation given the current situation in the football world caused by the pandemic. For completeness, the FIFA Manual sets out that when making a decision on the early termination of contracts for a just reason, it is necessary to carefully consider the economic situation in football clubs caused by the consequences of the pandemic.

97. It is evident from the circumstances, taking into account the citizenship of the Appellant, membership of the Club in a national association, the dispute will be admissible to the national jurisdictional body and when considering such a dispute, the rules and regulations of the relevant association, in this case the Belarusian Football Federation will apply. As a result, the FIFA DRC correctly deemed itself not competent to decide on the present dispute.

VII. THE SECOND RESPONDENT

98. The Second Respondent submitted the following prayer for relief in its Answer:

1. *Rejecting the reliefs sought by the Appellant and dismissing the appeal in full;*
2. *Confirming the Appealed Decision;*
3. *Ordering the Appellant to bear the full costs of these arbitration proceedings.*

99. The Second Respondent's submissions sought to address the Appellant's case as follows:

100. It was submitted that the core of the present dispute is very simple and primarily relies on the question of whether FIFA can hear the dispute between the Player and the Club. The answer to this question is no.

101. The present case derives from the stubbornness of the Appellant in alleging the competence of the FIFA to deal with a matter which involves a Belarusian Player claiming overdue payables from a Belarusian Club. Taking into account the particularities of this case, the FIFA DRC cannot be competent to decide a conflict that does not have the necessary international dimension as required by Article 24 (1) in combination with Articles 22 (a) or 22 (b) FIFA RSTP.

102. Article 22 (a) is limited to cases where the former club lodges a contractual claim against the player and the new club, where the dispute arises from, and is connected with, the international move of the player. It is clear that the situation in hand, in which the Player lodged a claim against his former Club, both with the same nationality, has no elements of internationality, especially when no legal consequences can arise for the New Club.

103. For this reason, and upon the Club's objection to FIFA DRC's competence, the deciding bodies of FIFA were prevented from analysing and deciding on the Club's alleged breach of the contract since this undertaking was exclusively reserved for the BFF's deciding bodies as agreed in the contract.

104. According to Article 22 (b) RSTP, FIFA has the competence to hear "*employment related disputes between a club and a player of an **international dimension***". In this regard, the FIFA Commentary has clarified since 2006 that "***the international dimension is represented by the fact that the player concerned is a foreigner in the country concerned***". In other words, the FIFA DRC will only be competent to hear a dispute when the player and the club have different nationalities.

105. Thus, it shall be firstly concluded that FIFA cannot hear and decide the present dispute in terms of Article 22 (b) RSTP, as the "internationality" element of this provision (i.e that the Player and the Club have different nationalities) is not met *in casu*.

106. There is clear SFT jurisprudence which distinguishes between employment disputes (falling under the FIFA DRC's realm as per Article 22 (a) or (b) FIFA RSTP) and ITC administrative disputes (falling under the PSC's jurisdiction as per Article 23 (2) and (3) FIFA RSTP) by stating that, in the latter scenario, the conflict not only involves two contracting parties, but also two FIFA member associations and a new employer club.

107. It is evident that the present dispute differs from the administrative procedure involving the issuance of the ITC and therefore does not involve any FIFA member associations and not even the New Club. For the sake of clarity, and contrary to the Appellant's statements, the dispute at stake is limited to the employment relationship between him and the Club and is not related to the issuance or request of the ITC.

108. In essence, it shall be highlighted that the Club did not file a claim before the FIFA DRC against the Player and/or New Club but it was the Player himself who decided to terminate the contract and claim against the Club before FIFA's deciding body. Thus, it is clear that the present matter is limited to a national employment dispute, and the relevant ITC request is not linked at all to what the Player was requesting. Moreover, no consequences against the New Club can arise from the Appellant' claim and, thus, the dispute is completely national and internal.

109. Based on the aforementioned considerations, it shall be concluded that Article 22 (a) FIFA RSTP does not apply to the present matter and that FIFA is not competent to deal with the domestic dispute of the Player and the Club.

110. For completeness, the Second Respondent submitted that in the event that the Sole Arbitrator was to consider that the FIFA DRC was mistaken in its reasoning (quod non), it shall be concluded that, in any case, the FIFA DRC prevented from resolving the present matter for reasons of *res judicata*.

111. It was clear that the Club had lodged a claim before the BFF concerning the termination of the contract. The Player had defended this claim, and subsequently appealed against the decision of the BFF. The BFF had decided not to consider the appeal of the Player as he had not complied with the relevant formal requirements. At that time, the BFF decision became final and binding and therefore, by the time the decision was rendered, 25 February 2021, the dispute was already *res judicata*.

112. It was averred that the decision of the DFF prevented the FIFA DRC from re-assessing the case which had already been decided, and that it was bound by the BFF decision rendered on 6 November 2020. The same effects apply to the Sole Arbitrator in this forum.

VIII. JURISDICTION

113. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body. [...]"

114. Article 57 para. 1 of the FIFA Statutes ed. 2019 reads as follows:

"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents."

115. Article 58 para. 1 of the FIFA Statutes ed. 2019 reads as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question."

116. Article 24 para. 2 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP" or the "Regulation") provides:

"[...] *Decisions reached by the DRC or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS)."*

117. The present appeal is directed against a final decision of the FIFA DRC and therefore, the CAS, in light of the above provisions, has jurisdiction to rule on the appeal filed by Aliaksandr Paulavets. Moreover, it should be noted that the jurisdiction of the CAS has not been contested and is further confirmed by the Order of Procedure signed by the Parties.

118. According to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law and can hence decide the dispute *de novo*.

IX. ADMISSIBILITY

119. Article R49 of the Code reads as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. [...]"

120. In accordance with Article 58 para.1 of the FIFA Statutes:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question."

121. It has not been disputed that the Statement of Appeal, as explained above, was filed within the statutory permissible period of 21 days following the notification of the Appealed Decision. Moreover, the Appellant's appeal complies with all other requirements of Article R48 of the Code.

122. Hence, the Sole Arbitrator finds the appeal admissible.

X. APPLICABLE LAW

123. Article R58 of the Code reads 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."

124. Article 57 para. 2 of the FIFA Statutes ed. 2019, provides as follows:

"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".

125. Accordingly, the Sole Arbitrator shall decide the present matter according to the relevant FIFA Regulations, and more specifically, the FIFA RSTP, as in force at the relevant time of the dispute, and Swiss law shall be applied complimentarily.

XI. MERITS

126. In order to adjudicate the case under review, the fundamental question that needs to be addressed is, if the FIFA DRC had the requisite competence to decide on the employment dispute between the Appellant and the First Respondent. This is aside from the particular facts of the case, the decisions taken by the ABFF, and the conduct of the Appellant and First Respondent throughout.

127. The Sole Arbitrator notes that this dispute related to outstanding salaries due to the Appellant. However, the FIFA DRC concluded that it did not have the competence to hear the dispute on the basis of Article 22 (a) of the RSTP.

128. The FIFA DRC stated that, in relation to Article 22 (a) of the RSTP, and as per its well-established jurisprudence, its jurisdiction is limited to cases, in which there exists a shared nationality between the player and the former club, and in which the former club of the player lodges a contractual claim against the player and his new club.

129. In this case, the Appellant seeks to rely on the unilateral breach of the employment contract as satisfying the prescribed criteria in Article 22 (a) of the RSTP. This would appear to be due to the fact that the parties are a club and a player, the dispute concerns contractual stability, as well as the ITC request from the FUR, which it was claimed is an interested party. With regard to the termination of the contract, the Appellant claimed that there is no prejudice as to the party which made it.

130. In its simplest form, the Appellant claims that FIFA acquired jurisdiction and competence to deal with this matter from the moment of the ITC request on 13 October 2020. This was due to the ITC request coming from the FUR. It is accepted by the Appellant that before the ITC request was made by the New Club, the dispute at stake lacked the necessary international dimension.

131. The First Respondent's position is that FIFA is not competent to deal with the case. It refers to Article 22 of the employment contract which holds the following clause: "*In the event of a dispute between the parties on the execution of this contract, they will take all possible measures for the peaceful settlement of such a dispute. In case of impossibility of an amicable settlement, the dispute must be referred to the competent legal authorities of the ABFF in accordance with the Chamber of the ABFF*".

132. The First Respondent states that "*taking into account the citizenship of the player, the membership of the club in a national association, the dispute will be admissible to the national jurisdiction body*".

133. The First Respondent argues that the national association validly rejected the ITC, as there was no agreement between the parties as to the termination of the contract.

134. The Second Respondent claims that when both parties have the same nationality, the dispute must be considered as national or internal, which has the consequence that the rules and regulations of the association concerned apply to the dispute, and the proceedings decisions provided by the said national rules and regulations must decide the case. This has to be right. The Sole Arbitrator concludes that the FIFA DRC was correct in stating that any other interpretation would lead to a situation where the relevant FIFA decision making body, dealing with such an internal matter, would infringe the internal competence of FIFA members. This is two-fold. Firstly, the Appellant's employment contract clearly set out, inter alia, that in the event of a dispute between the parties, that dispute must be referred to the competent legal authorities of the ABFF, in accordance with the Charter of the ABFF. It is incontrovertible that the Appellant engaged in this process. Secondly, under Article 1 of the FIFA RSTP, the autonomy granted to NDRCs includes the ability to adapt their internal regulations to the needs and particularities of their own country. FIFA's jurisdiction, or ability to intervene is limited to those disputes with an international element. That was not the case here.

135. The FIFA DRC found that it is within its jurisdiction to deal with any employment-related dispute of an international dimension between a club and a player, except where an independent arbitral tribunal has been established at national level.

136. Furthermore, it is noted that within the framework of their autonomy, associations are free to adapt their internal regulations to the needs and particularities of the country concerned. This power has been delegated to certain national associations by FIFA.

137. It is the Appellant's position that his claim was admissible, as under Article 22 (a) RSTP FIFA was competent to hear disputes between clubs and players, when the dispute concerns the maintenance of contractual stability, where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions, or compensation for breach of contract.

138. The Sole Arbitrator does not accept the Appellant's submissions that Article 22 (a) RSTP is applicable to this case. He agrees with the analysis undertaken by the FIFA DRC. The Appellant lodged the claim against his former club, and there was no relation between the employment related dispute and the ITC request in existence. The ITC request relates to a separate procedural step. It does not of itself, then cure the lack of international dimension required for the FIFA DRC to assume jurisdiction. The dispute was of an employment nature involving nationals from that same country. Therefore, the correct forum was that of the ABFF dispute resolution mechanism. It is not accepted that the ITC request in some way supersedes the applicable domestic regulation or perceived ambiguity in the interpretation of the ABFF Regulations and then provides the necessary international element to activate FIFA jurisdiction. For completeness, those Regulations and devolution of power to the BFF has been granted by FIFA. The Appellant was bound by these Regulations.

139. The Second Respondent submitted that Article 22 (a) RSTP covers situations in which a shared nationality exists between the player and his former club, and in which the club lodges a contractual claim against the player and his new club requesting compensation for breach of contract (in terms of Article 17 (1) RSTP) and specifically looking for joint and several liability of the new club (in terms of Article 17 (2) RSTP), and, also requesting the imposition of the relevant sporting sanctions against both, the player and the club (in terms of Article 17 (3) and (4) RSTP).

140. In case of that nature, the ITC and the international transfer of the player to a foreign club, is intrinsically connected to the consequences resulting from the potential breach of the contractual stability and FIFA would necessarily hold jurisdiction because an NDRC would not be competent to condemn a foreign club, outside its jurisdiction, to the payment of set amounts and to impose sanctions against a player or club that are not under its realm.

141. That is not the case in this matter. The Appellant brought the claim. The Sole Arbitrator finds, therefore, that the Appellant is not entitled to rely on Article 22 (a) RSTP.

142. In addition, the Appellant sought to rely on Article 22 (b) RSTP, claiming FIFA has the competence to hear "*employment-related disputes between a club and a player of an international dimension*". The Second Respondent states that FIFA Commentary has clarified that "*the international dimension is represented by the fact that the player concerned is a foreigner in the country concerned*". In essence, the FIFA DRC will only be competent to hear a dispute when the player and the club have different nationalities. The Appellant claimed that this provision was activated as he had signed for a foreign club.

143. The Sole Arbitrator notes that in this case, both the Appellant and the First Respondent share the same nationality. Both parties had terminated the employment contract at different times. The Appellant has claimed that he never recognised the competence of the ABFF to decide on the dispute. However, it would appear that both parties engaged in correspondence with the ABFF. The Appellant requested that the initial hearing of the dispute be adjourned due to the lack of time for him to prepare a response to the Club case. In addition, after the decision at first instance, the Appellant filed an appeal to challenge the decision. This appeal was rejected, claiming that the appeal was incorrectly filed, and inadmissible. This was due to the fact that the Regulations of the ABFF PSC require that all correspondence be filed by courier.

144. FIFA claims its jurisdiction is limited to disputes and transfers of an international dimension. Furthermore, the international dimension is represented by the fact that the player concerned is not a national of the country to which the club concerned is affiliated. That is not the case in this matter. Both parties are citizens of Belarus.

145. It is difficult to reconcile the Appellant's position. It is evident that the dispute is of an employment nature. The Appellant engaged in the national dispute resolution process. It is noted that the ITC request is an administrative procedure, invariably undertaken by the Players' Status Committee, and as per *CAS 2019/A/6621*, the dispute did not arise as a result of the request by the Appellant's New Club for the ITC. The dispute had been ongoing from March 2020 and came to a head on the 6 or 8 October 2020, dependent on whose termination notice is adopted. The Appellant signed a contract of employment with his New Club on 9 October 2020. The Appellant averred in his own submissions that the matter only took on an international dimension when the ITC was requested. However, the Sole Arbitrator is in agreement with the Second Respondent that the request for the ITC is an administrative request, not linked to the employment dispute. The employment dispute involved two parties from the same country. There was no international dimension to this dispute, despite the submissions of the Appellant.

146. Moreover, with regard to the resolution of disputes, the Articles, in keeping with the FIFA RSTP state that the Members of the Association shall refer such disputes for review to the competent bodies of these organisations, that being FIFA and UEFA where applicable, and to CAS if the 'dispute is international'. It cannot be said that the applicable Regulations permit jurisdiction to FIFA in the first instance or expressly to CAS. It is accepted from well established CAS jurisprudence, namely *CAS 2005/A/952* that submission to CAS must be express and unambiguous. This was not an international dispute, with any international element.

147. The dispute had started before the ITC had been requested. As per *CAS 2019/A/6621*, it cannot be held that this dispute, the appeal in question, was a result of the employment dispute, was in any way linked to the ITC request, or that is due to an "*envisaged international transfer*".

148. Furthermore, the initial request for the ITC had been rejected by the ABFF on the grounds that the employment contract with the First Respondent had not been terminated. It would appear that the Appellant then concluded that the ITC request, by its very nature provided a mechanism to bring its case outside of the national forum. This is despite engaging in the national dispute resolution process, which had not been concluded at this time.

149. It is for these reasons that the Sole Arbitrator finds that Article 22 (b) RSTP is also not applicable to this case. This is a domestic dispute, lacking the necessary international dimension.

150. Given the decision of the Sole Arbitrator, it is not necessary to rule on the submissions of the Second Respondent regarding the principle of *res judicata*. Accordingly, the Sole Arbitrator ultimately comes to the same decision as the FIFA DRC did, and finds that it is without jurisdiction to hear the present case. Therefore, the appeal must be dismissed.

XII. COSTS

151. Art. R64.4 of the Code provides that:

"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."

152. In line with this, Art. R64.5 of the Code provides that:

"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."

153. In the present case, the appeal must be dismissed. Therefore, the Appellant should bear the entirety of the costs of the present arbitration proceedings, which will be determined and served to the Parties by the CAS Court Office in a separate letter(s).

154. In addition, for what concerns R64.5, the Sole Arbitrator, considering the conduct and the financial resources of the Parties, and that the Respondents did not retain outside counsel, and that no travel and accommodation costs were incurred due to the hearing being held by video conference, finds its reasonable that each Party bear their own legal fees and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Aliaksandr Paulavets on 13 April 2021 against the decision of the FIFA Dispute Resolution Chamber dated 25 February 2020 is dismissed.

2. The decision of the FIFA Dispute Resolution Chamber dated 25 February 2020 is confirmed.

3. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne entirely by Aliaksandr Paulavets.

4. Each party shall bear its own costs and other expenses incurred in connection with this arbitration.

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

Seat of arbitration: Lausanne, Switzerland
Date: 17 January 2023

THE COURT OF ARBITRATION FOR SPORT

~~Gareth Farrelly~~
Sole Arbitrator