TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2023/A/10003 FK Liepāja v. Slaviša Radović, FK Sarajevo & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Alexander McLin, Attorney-at-law in Lausanne, Switzerland

in the arbitration between

Biedrība FK Liepāja, Liepāja, Latvia
Represented by Ms Olga Polozova and Mr Ihar Tsapliuk, Riga, Latvia

- Appellant -

and

1/ Mr Slaviša Radović, Mostar, Bosnia and Herzegovina
Represented by Mr Feđa Dupovac, Attorney-at-Law, Sarajevo, Bosnia and Herzegovina

- First Respondent -

2/ Udruženje Fudbalski Klub Sarajevo, Sarajevo, Bosnia and Herzegovina
Represented by Messrs Hrvoje Raić, Tomislav Kasalo and Ivan Ostojić, Attorneys-at-Law, Split, Croatia

- Second Respondent -

3/Fédération Internationale de Football Association (FIFA), Zurich, Switzerland
Represented by Roberto Nájera Reyes, FIFA Litigation Department, Zurich

- Third Respondent -

I. PARTIES

1. Biedrība FK Liepājā (the "Appellant" or "Liepājā"), is a professional football club affiliated with the Latvian Football Federation ("LFF"), with its registered office in Liepājā, Latvia.

2. Mr Slaviša Radović (the "First Respondent" or the "Player") is an adult male professional football player of Bosnian nationality.

3. FK Sarajevo (the "Second Respondent" or "Sarajevo") is a professional football club affiliated with the Football Association of Bosnia and Herzegovina ("FABH"), with its registered office in Sarajevo, Bosnia and Herzegovina.

4. The Fédération Internationale de Football Association (the "Third Respondent" or "FIFA") is the world governing body of international football, located in Zurich, Switzerland.

II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and pleadings at the hearing. 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, this Award refers only to the submissions and evidence considered necessary to explain his reasoning.

6. Under an employment contract signed on 28 June 2022 and valid as from 28 June 2022 (the "Employment Contract"), between the Player and Liepāja, the latter undertook to pay the former:

   - EUR 6,000 as monthly salary, payable until the 15th day of the following month; and

   - EUR 250 as accommodation costs.

7. Other relevant provisions of the Employment Contract provide as follows:

   - Art. 5.1.1: "*The total amount of remuneration is 6000 Euro net. It consists of a basic fixed salary and a personal allowance. The basic salary is 4200 Euro net. Additionally the player can be paid a personal allowance not exceeding 30% of the amount of the basic fixed salary after taxes. The amount of this additional payment is set monthly by the club's management and can be paid in order to stimulate the improvement of the quality of work and increase the responsibility of the player for the performance of their duties under the contract and annex 1*".

   - Art. 3.2.8 establishes that the club: "*provide with flight tickets for player and his wife to the Republic of Latvia and back to the country of permanent residence (once a year)*".

- Art. 9.4: "*If the football player terminates this contract with the club on his own initiative (of his own free will) without justified reasons, then the football player shall pay the club a monetary compensation in the amount equivalent to 350,000 Euro net (the Termination clause). The cash payment to the club specified in this clause is made by the football player (or by a third party as directed by the football player) not later than the day of dismissal.*"

- Art. 9.4.1: "*If during the term of this contract the club receives an official written offer from any third club to acquire transfer rights to the player in the amount of at least 350,000 EURO net, the club undertakes to accept this offer and provide the player with the opportunity to transfer to this club*".

- Art. 9.5: "*If the football player terminates this contract, stating a justified reason, and such a justified reason is not recognized or confirmed by the competent judicial (arbitration) authorities, the parties shall establish that the football player is obliged to pay the club an amount of 350,000 Euro net as compensation for losses (liquidated damages).*"

- Art. 9.5.1: "*In case of termination of the contract by the club for a justified reason (including on grounds related to disciplinary sanctions, other punishment), as well as the presence of guilty actions (inaction) of the football player), and such a justified reason is recognized or confirmed by the competent judicial (arbitration) authorities, the parties establish that the football player is obliged to pay the club an amount of 350,000 Euro net as liquidated damages*".

8. On 1 August 2022, Liepājā acknowledged a debt of EUR 1,181 to the Player, corresponding to his salary between 28 June 2022 and 3 July 2023 and guaranteeing payment within the following six months.

9. On 12 September 2022, Liepājā imposed a fine of 30% of the Player's "personal allowance" of October 2022 as well as 20% of that for November 2022 due to two disagreements with the club's head coach.

10. On 1 December 2022, the Player allegedly put Liepājā in default and requested payment within 15 days of EUR 10,481, corresponding to partial salaries from June until October 2022, as well as the salary for November 2022.

11. On 16 December 2022, the Player put Liepājā in default again, requesting the same amount, again within 15 days.

12. On 20 December 2022, Liepājā replied to the Player denying having received the first default notice and the fact that it had any outstanding debt. Liepājā requested that the Player return for training with the reserve team on 28 December 2022.

13. On 23 December 2022, the Player sent a letter to Liepājā insisting on his right to outstanding remuneration and requesting to be reintegrated in the club's first team as of 3 January 2023, when its training was scheduled to start.

14. On 29 December 2022, Liepājā sent the Player a letter, *inter alia* requesting him to resume work.

15. On 2 January 2023, the Player terminated the Employment Contract claiming the following outstanding remuneration:

- Pro-ratio salary for 3 days of June 2022: EUR 580;
- Remaining salary for July 2022: EUR 581;
- Remaining salary for August 2022: EUR 1,500;
- Remaining salary for October 2022: EUR 1,800;
- Remaining salary for November 2022: EUR 1,550;
- December 2022 salary: EUR 6,000;
- Flight tickets reimbursement: EUR 554.

16. On 16 January 2023, the Player signed an employment contract with Sarajevo valid from 1 February 2023 until 30 June 2023, including a monthly salary of Bosnian Mark (BAM) 1,000.

17. On 25 January 2023, the Player lodged a claim before FIFA and requested payment of:

- EUR 600 salary for June 2022 (pro-rata for 3 days) plus 5% interest as from the 1 July 2022.
- EUR 581 remaining salary for July 2022 plus 5% interest as from 1 August 2022.
- EUR 1,500 remaining salary for August 2022 plus 5% interest as from 1 September 2022.
- EUR 1,800 remaining salary for October 2022 plus 5% interest as from 1 November 2022.
- EUR 1,500 remaining salary for November 2022 plus 5% interest as from 1 December 2022.
- EUR 6,000 December salary 2022 plus 5% interest as from 1 January 2023.
- EUR 654 as flight tickets reimbursement plus 5% interest as from 11 October 2022.
- EUR 475 as outstanding housing allowance plus 5% interest p.a. as from 1 December 2022.
- EUR 66,000 as compensation for breach of contract (residual value), plus 5% interest as from 2 January 2023.
- "*The value of two flight tickets (return) for the route Latvia – Bosnia and Herzegovina + 5% interest as from 2 January 2023 until the date of effective payment.*"

18. Liepājā rejected the Player's claim and lodged a counterclaim against him and Sarajevo requesting the following:

- EUR 350,000 as compensation for breach of contract plus 5% interest p.a. as of 3 January 2023;
- "*Establish that the Player's new club, FK Sarajevo, induced the Player to commit the Contract termination without just cause;*

- *Establish that the Player's new club, FK Sarajevo, shall be jointly and severally liable for payment of the compensation to FK Liepājā;*
- *Impose sporting sanctions on the Player in forms of six-month restriction on playing in official matches;*
- *Impose sporting sanctions on the Player's new club, FK Sarajevo, in form of ban from registering any new players, either nationally or internationally, for three entire and consecutive registration periods*".

19. The operative part of the FIFA Dispute Resolution Chamber decision dated 2 August 2023 (the "Appealed Decision") reads as follows:

"*1. The claim of the Claimant / Counter-Respondent I, Slaviša Radović, is partially accepted.*

2. The Respondent / Counter-Claimant, FK Liepāja, must pay to the Claimant the following amount(s):

- EUR 600 as outstanding remuneration plus 5% interest p.a. as from 16 July 2022 until the date of effective payment;

- EUR 581 as outstanding remuneration plus 5% interest p.a. as from 16 August 2022 until the date of effective payment;

- EUR 1,500 as outstanding remuneration plus 5% interest p.a. as from 16 September 2022 until the date of effective payment;

- EUR 1,800 as outstanding remuneration plus 5% interest p.a. as from 16 October 2022 until the date of effective payment;

- EUR 1,500 as outstanding remuneration plus 5% interest p.a. as from 16 November 2022 until the date of effective payment;

- EUR 1,460 as outstanding remuneration plus 5% interest p.a. as from 2 January 2023 until the date of effective payment;

- EUR 63,445 as compensation for breach of contract without just cause plus 5% interest p.a. as from 2 January 2023 until the date of effective payment.

3. Any further claims of the Claimant / Counter-Respondent I are rejected.

4. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.

5. The counterclaim of the Respondent / Counter-Claimant is rejected.

6. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:

1. The Respondent / Counter-Claimant shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.

2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.

7. The consequences shall only be enforced at the request of the Claimant-Counter-Respondent I in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.

8. This decision is rendered without costs."

20. The grounds of the Appealed Decision were communicated to the Parties on 1 September 2023. In brief, its reasoning was that the Player had terminated the Employment Contract with just cause, and that, considering the foregoing, Liepājā had to compensate the Player for outstanding compensation at the time of termination as well as expected compensation for remainder of the Employment Contract term, as mitigated by amounts the Player earned with Sarajevo during that period.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 21 September 2023, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2023 edition) (the "Code"), the Appellant filed its Statement of Appeal against the Appealed Decision with the Court of Arbitration for Sport ("CAS"). In the Statement of Appeal, the Appellant requested that the dispute be referred to a sole arbitrator.

22. On 26 September 2023, the CAS Court Office acknowledged receipt of the Statement of Appeal and invited the Appellant to complete it by providing the name and full address of the First Respondents(s), which the Appellant did by letter of the same day.

23. On 28 September 2023, the CAS Court Office notified the Parties of the Appeal and the fact that the Appellant proposed that the matter be submitted to a Sole Arbitrator.

24. On 29 September 2023, FIFA wrote to the CAS seeking to be excluded from the present arbitration proceedings.

25. On 2 October 2023, the CAS Court Office acknowledged receipt of FIFA's letter and invited the Appellant to state whether it maintained or withdrew its appeal against FIFA.

26. On 3 October 2023, the CAS Court Office acknowledged receipt of correspondence from the First and Second Respondents, noting *inter alia* the First Respondent's agreement to submit the case to a sole arbitrator, the Second Respondent's objection thereto, and the latter's request for the CAS Appeals Division President, or her Deputy, to rule on such issue.

27. On 10 October 2023, FIFA wrote to the CAS insisting to be removed from the present proceedings.

28. On 13 October 2023, the CAS Court Office wrote to the Parties and invited the Appellant once again to state whether it maintained or withdrew its appeal against FIFA.

29. On 16 October 2023, the Appellant wrote to the CAS essentially agreeing to exclude FIFA from these proceedings on the condition that the latter "*bear at least 50% of the costs (if any are imposed on FK Liepājā) in connection with this procedure*".

30. On 20 October 2023, the CAS Court Office acknowledged receipt of the Appellant's letter and stated that unless FIFA expressly agreed with said condition, it would remain a party to these proceedings.

31. On 20 October 2023, FIFA wrote to the CAS agreeing *inter alia* to the appointment of a sole arbitrator and disagreeing to the Appellant's condition on its exclusion from these proceedings.

32. On 24 October 2023, the CAS Court Office acknowledged receipt of various correspondence from individual Parties and confirmed *inter alia* that FIFA would remain a party.

33. On 30 October 2023, the Appellant filed its Appeal Brief further to R51 (1) of the CAS Code.

34. On 31 October 2023, the CAS Court Office acknowledged receipt of the Appeal Brief.

35. On 20 February 2024, the Second and Third Respondents filed their Answers further to Article R55 of the CAS Code.

36. On 23 February 2024, the First Respondent filed his Answer further to Article R55 of the CAS Code.

37. On 26 February 2024, the CAS Court Office acknowledged receipt of the Answers and enquired as to the Parties' preferences with respect to whether a hearing, and potentially a case management conference, should be held.

38. On 28 February 2024, the CAS Court Office informed the Parties, on behalf of the Deputy President of the CAS Appeals Arbitration Division and further to Article R54 of the CAS Code, that the arbitral tribunal for the present matter was constituted as follows:

    - Sole Arbitrator: Mr Alexander McLin, Attorney-at-law, Lausanne, Switzerland

39. On 1 March 2024, the CAS Court Office acknowledged receipt of correspondence from the First and Second Respondents, noting that while neither requested the holding of a case management conference, both considered it necessary for a hearing to be held, with the First Respondent suggesting that it be held by videoconference.

40. On 5 March 2024, the CAS Court Office acknowledged receipt of correspondence from the Appellant requesting a hearing to be held, and the Third Respondent considering that a hearing is unnecessary.

41. On 5 March 2024, the CAS Court Office informed the Parties of the Sole Arbitrator's decision to hold a hearing by videoconference.

42. On 5 April 2024, the CAS Court Office informed the Parties that the hearing would be held on 7 May 2024.

43. On 6 May 2024, the CAS Court Office sent the Parties an Order of Procedure for their signature.

44. On 6 May 2024, the Respondents each returned their respective signed copies of the Order of Procedure.

45. On 7 May 2024, a hearing was held by videoconference. Present for the Parties were:

For the Appellant:	Ms Olga Polozova, Counsel
For the First Respondent:	Mr Slaviša Radović, Player Mr Feđa Dupovac, Counsel Mr Noah Toribio, Witness Mr Zlatko Dugandžić, Expert Ms Renata Merzić, Interpreter
For the Second Respondent:	Mr Tomislav Kasalo, Counsel Mr Ivan Ostojić, Counsel
For the Third Respondent:	Mr Roberto Nájera Reyes, Senior Legal Counsel

46. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.

47. On 8 May 2024, the Appellant returned its signed copy of the Order of Procedure.

IV. SUBMISSIONS OF THE PARTIES

48. The Sole Arbitrator confirms that he has carefully taken into account all the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present Award.

49. The Parties' respective requests for relief are as follows:

- The Appellant's Appeal Brief:

"[…] ***the Appellant respectfully applies that the CAS rules as follows****:*

1. The appeal filed by FK "Liepājā" is upheld.

2. The Decision of the FIFA Dispute Resolution Chamber passed on 2 August 2023 in the case Ref. Nr. FPSD-9031 is annulled and set aside.

3. A new decision is issued, whereby:

3.1. Establish that Mr. Slaviša Radović has been terminated the employment contract with FK "Liepājā" without just cause.

3.2. Establish that ***Mr. Slaviša Radović has to pay FK "Liepājā" the amount of EUR 350,000 net as compensation for termination of the contract without just cause plus 5% interest p.a. as from 03 January 2023*** *until the date of the effective payment or any other amount (but not less EUR 65,000) that the CAS deems acceptable in accordance with FIFA RSTP in this case as compensation for termination of the contract without just cause plus 5% interest p.a. as from 03 January 2023 until the date of the effective payment.*

3.3. Establish that ***FK "Sarajevo" is jointly and severally liable for the payment of compensation*** *for termination of the contract by Mr. Slaviša Radović without just cause.*

3.4. Impose sporting sanctions on Mr. Slaviša Radović in forms of ***six-month restriction on playing in official matches****.*

3.5. Impose sporting sanctions on FK "Sarajevo" (the Player's new club), in form of ban from registering any new players, either nationally or internationally, ***for three entire and consecutive registration periods****.*

4. If the CAS were to find that there was just cause for termination, ***the compensation payable to the Player would have to be reduced by a minimum of 10 times due to its apparent disproportionate nature and the Respondents 1 and 2 outright bad faith behavior****. Plus due to violations of the Article 12(1) of the FIFA Procedural Rules by the FIFA DRC, FIFA to bear at least 50% of the costs (if any are imposed on FK Liepāja) in connection with this procedure in the CAS*

5. Establish that ***Mr. Slaviša Radović and FK "Sarajevo" shall bear all costs incurred with the present procedure****.*

6. Establish that Mr. Slaviša Radović and FK "Sarajevo" shall pay FK "Liepājā" a contribution towards its legal fees and other expenses incurred in connection with the present proceedings, in an amount to be determined at the CAS's discretion." (emphasis original).

- The Player's Answer:

"*[… T]he Respondent proposes to the CAS to reach the following*

DECISION

1. *The appeal filed by the Appellant against the decision of the FIFA DRC no FPSD-9031 dated 2 August 2023 is dismissed and rejected.*

2. *The decision rendered by the FIFA DRC no FPSD-9031 dated 2 August 2023 is confirmed.*

3. *The costs of the present arbitration proceedings shall be borne by the Appellant in their entirety*

4. *The Appellant shall pay to the First Respondent an amount as contribution towards the legal fees and other expenses incurred in connection with these arbitration proceedings.*

5. *Any other motions or prayers for relief are dismissed.*" (emphasis original).

- Sarajevo's Answer:

"*[…] Sarajevo respectfully requests the honorable CAS Panel:*

- *to reject all reliefs sought by the Appellant in its Prayers for Relief from the Appeal Brief, and*

- *to order the Appellant to pay all the costs of the proceedings before CAS, and*

- *to order the Appellant to pay a significant contribution towards the legal fees and other expenses incurred by Sarajevo in connection with these proceedings of at least CHF 4,000.00*".

- FIFA's Answer:

"*[…] FIFA respectfully requests CAS to:*

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

(b) *Confirm the decision rendered by the FIFA Dispute Resolution Chamber on 2 August 2023;*

(c) *To order the Appellant to bear all costs incurred with the present procedure;*

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

50. The Parties' arguments, in essence, are the following:

- The Appellant considers that the Player is making unsubstantiated allegations to justify a breach of contract without just cause, motivated by the intent to sign a new contract with Sarajevo.

- First, Liepājā's debt to the Player was insufficient to constitute just cause to terminate the Employment Contract according to Article 14bis of the FIFA Regulations on the Status and Transfer of Players (the "RSTP") as a club's failure to pay a player at least two monthly salary payments on time must be "unlawful", meaning that such nonpayment creates a presumption that can be rebutted by convincing evidence of a valid reason for the nonpayment.

- As the Employment Contract distinguished between a basic fixed salary representing 70% of the Player's entitled earnings, and a discretionary personal allowance constituting 30% thereof, Liepājā was not in breach as it was entitled, at its discretion and "in order to stimulate the improvement of the quality of work and increase the responsibility of the Player" to reduce the Player's personal allowance, that the decision to do so was based on the Player's "misconduct" and that he never challenged Liepājā's decisions in this respect. Moreover, the Player acted in bad faith when he refused to sign the "Orders on the reduction of Personal allowances" for October and November 2022.

- As a result, Liepājā was at most in arrears of EUR 1,181 towards the Player, and the amount of EUR 10,647 which he claimed in his default notice to Liepājā is unjustified. Moreover, the EUR 1,181 was the subject of a "warranty letter" which the president of Liepājā provided to the Player and for which "the Player has never applied in writing for execution".

- Second, the Player's allegations that he was forced to train alone away from his team are untrue, and, moreover, there is significant CAS case law supporting the position that an assignment to train alone, or reassignment to train with the second team is permissible if reasonable, and may only constitute just cause to terminate "*if it is aimed at forcing a player to terminate an employment contract or otherwise significantly shatter the trust between the parties*", for example in CAS 2013/A/3091,-3092-3093, , award of 2 July 2013; CAS 2014/A/3642, award of 8 April 2015; CAS 2015/A/4286, award of 29 July 2016. In the instant case, the Player was offered to train with Liepājā's reserve team for only three days and "Player's access to training with the team has never been restricted".

- Third, in contrast with the Player who sought unfounded justifications to terminate the Employment Contract, Liepājā acted in good faith in the fulfilment of its obligations, whereas the Player "*did not show any willingness to find an amicable solution*".

- Fourth, the Player's bad faith is illustrated by his failure to provide the FIFA DRC with all relevant information about the matches he did take part in at the training camp, suggesting that he sought to engineer a basis for leaving Liepājā without triggering the penalty clause in the Employment Contract. Such behavior violates the principle of *venire contra factum proprium*.

- Fifth, the Player did not prove the facts that allegedly constitute just cause to terminate the Employment Contract. He did not submit any documents confirming "*the calculation of the validity of his financial claims against FK Liepājā*". The Player did not adequately prove that he sent the default notice dated 1 December 2022. An analysis of the recipient's email address on the relevant message demonstrates an error that explains this.

- Sixth, Sarajevo's behavior, notably its refusal to answer communications from Liepājā at relevant moments, illustrates its less than conscientious behavior which should be considered as evidence of inducement. An annex to the Player's contract with Sarajevo indicates that he was paid substantially more than he declares.

- As the Player lacked just cause to terminate the Employment Contract, the liquidated damages clause in the Employment Contract is to be applied in respect of the *pacta sunt servanda* principle and for purposes of Article 17 FIFA RSTP.

- The First Respondent submits that:

- The Appellant's depiction of the factual history is inaccurate and seeks to demonstrate the existence of bad faith by the Player, when, in reality, he was the subject of negative actions by Liepājā after he rightfully put it on notice of non-payment on 1 December 2022, notice which received no response. The Appellant fails to prove that it met its financial obligations under the Employment Contract, resulting in the existence of just cause to terminate by the Player.

- The notion of a variable Personal Allowance that could be deducted from the agreed monthly salary of EUR 6,000 does not stand up to an objective interpretation of the Employment Contract. The unilateral nature of Liepājā's ability to deduct up to 30% of the Player's salary makes it potestative and therefore invalid further to CAS case law (CAS 2021/A/7931, CAS 2014/A/3675, CAS 2005/A/983 & 984, CAS 2008/A/1517 or CAS 2016/A/4852). Moreover, Liepājā's inconsistent approach to payment of salaries (before and after termination of the Employment Contract) demonstrates the arbitrariness with which Liepājā has handled its payment obligations, and it fails to provide supporting documentation that would justify the amounts withheld.

- The Appellant provides no evidence that the Player was notified of his "bad behavior" and "non-compliance" with instructions of the medical team, which he denies happened. Nor does the Appellant provide any evidence that it paid out the plane tickets owed under the Employment Contract.

- Under the circumstances, the Player had no reason to believe that any debt acknowledged in the "warranty", nor that built up from the "deductions", would ultimately be paid, and it was unconscionable for employment to continue in keeping with Article 337 (2) of the Swiss Code of Obligations (SCO).

- The so-called annex (the "Annex") to the Player's employment contract with Sarajevo (the "Sarajevo Contract") is fabricated with the intention to establish the apparent bad faith of the First and Second Respondents. This is evidenced by the signatures and placement of the stamp on both the Annex and the Sarajevo Contract, which are identical in terms of penmanship, appearance and relative distance to one another.

- Any inferred "collusion" between the First and Second Respondents regarding his move to Sarajevo does not withstand scrutiny, especially as the Player returned to the league he had previously played in prior to Liepājā, which cannot be considered a desirable move from the standpoint of his career evolution.

- With respect to Liepājā's receipt of the emails containing notice of default, the latter's explanations likewise do not withstand scrutiny as both the 1 December 2022 and 16 December 2022 letters were sent in the same manner. It follows from receipt of the second email that the first should be deemed to have been received, in keeping with Swiss law and CAS jurisprudence, whereby an email in the intended recipient's sphere of control may be deemed received (CAS 2022/A/8598, § 123) and facts whose existence must be presumed according to the normal course of events can constitute a basis for judgment even in the absence of supporting evidence if their existence is not put in doubt through suitable indications or proven circumstances (CAS 2017/A/5092).

- Concerning the Player being forced to train alone, the Appellant does not provide any documentation or other suitable basis evidencing the "decision of the coaching staff" to subject him to individual training, and it also fails to explain why the Player continued to be assigned to train with reserves after having gained satisfactory physical shape.

- The Player's right of access to appropriate training is on par with his right to remuneration, as confirmed by FIFA (decision of 6 July 2022 in FPSD-5378) and CAS jurisprudence (*inter alia* CAS 2014/A/3642).

- Since the Appellant was in breach of its essential payment obligation at the time of termination, it should not be the beneficiary of any compensation resulting from the breach, as this would constitute unjust enrichment (see CAS 2019/A/6444 & 6445, CAS 2020/A/7242), and Article 44 (1) SCO.

- Finally, the liquidated damages clause is invalid as it is neither reciprocal, nor proportionate (CAS 2020/A/7187). In addition, there is no basis for reducing the amounts awarded in the Appealed Decision as disproportionate.

- The Second Respondent's position is that:

- It is obvious on the face of the Annex that this document is a fabrication with signatures and stamps that have been "copy-pasted" from the Sarajevo Contract. The Appellant has not produced an original of the document, which further supports the theory of a fraudulent act.

- The total amount of EUR 7,441 which was outstanding at the moment the Player terminated the Employment Contract was the result of repeated underpayment of owed salaries and expenses over a period of six months in the latter half of 2022. The so-called disciplinary justifications (fines) later provided by the Appellant do not hold up as none of the associated "orders" were delivered to the Player, resulting in a lack of basis for the deductions. Moreover, the first such "order" contains a forged signature of the Player. In any event, constant FIFA and CAS jurisprudence holds that disciplinary fines cannot be set off against monthly remuneration.

- The exclusion of the Player from training persisted despite his efforts to put the Appellant on notice, thereby violating his personality rights and sufficing as just cause per se for the Player's termination of the Employment Contract.

- The Appellant's allegations that Sarajevo was actively supporting the Player in his efforts to terminate the Employment Contract lack evidence and should therefore be disregarded.

- The Third Respondent considers that it should not be a party to this case, considering that:

- The case is exclusively about a "horizontal" dispute between Liepājā, the Player and Sarajevo. FIFA has no "standing to be sued" further to applicable Swiss legal doctrine that requires that it have some stake in the dispute.

- None of the Appellant's requests for relief concern FIFA.

- The FIFA DRC has no discretion with respect to the imposition of the consequences provided for in Article 24 FIFA RSTP in the event of non-compliance with DRC sanctions. Moreover, in light of established jurisprudence, the Appellant has no legally protected interest when it comes to the imposition of sporting sanctions on other parties.

- FIFA is owed a contribution to its legal costs by virtue of its superfluous presence in the current proceedings.

V. JURISDICTION

51. The Player filed his claim against the Appellant with FIFA on 25 January 2023. Consequently, the FIFA Statutes and Regulations as were in force at that time will be applicable in this case for the examination of the Appellant's appeal.

52. Article R47 of the Code states 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 him prior to the appeal, in accordance with the statutes or regulations of that body."*

53. The jurisdiction of the CAS is derived from Article 57 (1) of the FIFA Statutes (2022 edition), which states 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 notification of the decision in question*".

54. The Appellant submits that, pursuant to the above provisions, CAS has jurisdiction in the present case.

55. The Parties do not contest the jurisdiction of CAS. In addition, all Parties have signed the Order of Procedure, expressly consenting thereby to CAS jurisdiction.

56. It follows from the above that CAS has jurisdiction.

VI. ADMISSIBILITY

57. The Sole Arbitrator notes that the FIFA DRC rendered the Appealed Decision on 2 August 2023 and that grounds thereof were communicated to the parties by email on 1 September 2023.

58. Considering that Liepājā filed its Statement of Appeal on 21 September 2023, i.e. within 21-day deadline in Article 57 (1) of the FIFA Statutes, the Appeal was filed in a timely manner in view of Articles R31 (3) and R49 of the Code. In addition, the Statement of Appeal complied with the requirements of Article R48 of the Code and is therefore admissible.

VII. APPLICABLE LAW

59. Article 187 (1) of the Swiss Private International Law Act (the "PILA") provides as follows.

> *"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the dispute has the closest connection."*

60. Article R58 of the Code provides more specifically 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

61. Article 57 (2) of the FIFA Statutes states 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."*

62. The Appellant considers the October 2022 edition of the FIFA RSTP, in force when the present matter was submitted to the FIFA DRC by the Player, are applicable. Likewise, the October 2022 edition of the FIFA Procedural Rules Governing the Football Tribunal (the "Procedural Rules"), shall also apply.

63. The case at hand deals specifically with the termination of the Employment Contract, falling squarely within the FIFA RSTP's Articles 13 to 18 dedicated to the maintenance of contractual stability between professionals and clubs. In other words, FIFA has deemed, by virtue of regulating this issue, that it is in the interest of football for termination of employment contracts to be based on uniform criteria rather than national provisions which could vary considerably (see CAS 2019/A/6312 and CAS 2017/A/5465).

64. It is undisputed that the issues for determination on the merits concern: (i) the lawfulness of the early and unilateral termination of the Employment Contract in accordance with Article 14 of the FIFA RSTP; and (ii) the consequences of such termination, addressed by Article 17 of the FIFA RSTP. Moreover, the Employment Contract does not contain a clear, explicit choice of law.

65. In view of the above, and as the Parties agree that the FIFA regulations apply primarily and Swiss law additionally (and subsidiarily in the absence of a specific choice of law provision) the Sole Arbitrator sees no reason to depart from CAS precedent and thus applies primarily the various rules and regulations of FIFA and, additionally, Swiss law where further interpretation of FIFA regulations may be necessary.

VIII. MERITS

66. The questions for adjudication in the present case are principally (a) whether the Player had just cause to terminate the Employment Contract, and (b), as a result, whether and what compensation is owed, and to whom, accounting for the existence of any employment contracts (and resulting compensation) entered into after said termination. In addition, (c) the question of the Third Respondents status in these proceedings is to be determined.

A. Did the Player have just cause to terminate the Employment Contract?

67. Article 14 FIFA RSTP provides as follows:

> "*1. 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.*
>
> *2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause.*"

68. Article 14bis FIFA RSTP provides that:

> "*1. 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 obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.*
>
> *2. For any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered. Delayed payment of an amount which is equal to at least two months shall also be*

> *deemed a just cause for the player to terminate his contract, subject to him complying with the notice of termination as per paragraph 1 above.*
>
> […]

69. The focus of the Appellant's argument appears to be whether the conditions of Article 14bis FIFA RSTP were met and therefore constitute just cause, whereas the Player and Sarajevo argue rather that the existence of just cause should be determined according to Article 14 FIFA RSTP.

70. The Sole Arbitrator understands these two provisions of the RSTP to stand and operate independently of one another. Article 14bis describes situations in which just cause is deemed to exist. It is apparently meant to simplify the analysis concerning the existence of just cause in situations where a certain threshold is manifestly met: non-payment of the equivalent of two months' worth of salary automatically constitutes just cause for termination. It does not follow, however, that non-payment of amounts that do not clearly rise to this threshold cannot constitute just cause for termination. Article 14 provides more general language which permit for various circumstances to be considered in determining whether just cause exists. In light of the Player's reliance on Article 14 FIFA RSTP, the Sole Arbitrator considers that this is the appropriate legal basis to examine in the instant case.

71. The Player and Sarajevo both consider that just cause is grounded in financial as well as sporting considerations.

72. The Sole Arbitrator first looks to the contractual language in order to determine whether financial considerations can constitute just cause. Article 5.1.1 of the Employment Contract states:

> "*The total amount of remuneration is 6000 Euro net. It consists of a basic fixed salary and a personal allowance. The basic salary is 4200 Euro net. Additionally, the player can be paid a personal allowance not exceeding 30% of the amount of the basic fixed salary after taxes. The amount of this additional payment is set monthly by the club's management and can be paid in order to stimulate the improvement of the quality of work and increase the responsibility of the player for the performance of their duties under the contract and annex 1.*"

73. This language is, to say the least, ambiguous. For the following reasons, the Sole Arbitrator considers that the monthly salary owed to the Player is EUR 6,000. First, applying the *contra proferentem* principle, ambiguous language is to be given the interpretation which is most favorable to the party who did not draft the contract (in this case, the Player). Second, it is uncontested that while Liepājā paid the Player EUR 5,419 for June and July 2022, it recognized a debt to the Player of EUR 1,161 in a "warranty letter" dated 1 August 2022, indicating that it understood the amounts owed to the Player to be EUR 6,000 (that amount being prorated for three days of work in June 2022). Finally, if Liepājā's interpretation were to be adopted, the potestative nature of the clause allowing for month-to-month variation would be invalid given that such determinations would be entirely in the Liepājā's control. Indeed, this is what appears

to have been the case, given that the justification for non-payment of certain amounts does not, on the basis of the evidence provided, appear to have been communicated to the Player at the relevant time, denying him the ability to contest the validity of these determinations in a timely fashion.

74. Considering that the December salary was not yet due at the time of termination, the calculation of the amount outstanding at termination amounts to EUR 7,110, as follows:

- EUR 600 salary for June 2022
- EUR 581 remaining salary for July 2022
- EUR 1,500 remaining salary for August 2022
- EUR 1,800 remaining salary for October 2022
- EUR 1,500 remaining salary for November 2022
- EUR 654 flight ticket expenses
- EUR 475 housing allowance

75. While the amounts often represent only a proportion of the amounts owed in a given month, they nevertheless confirm that Liepājā was in breach of its payment obligations to the Player since the beginning of his employment with the club.

76. Liepājā explains the non-payment of these amounts by alleging bad faith on behalf of the Player and seeks justification from the notion that the contractual language allowed Liepājā to deduct amounts for disciplinary reasons. However, for the reasons set forth *supra*, Liepājā erred in assuming that it could subtract amounts from the Player's EUR 6,000 monthly salary. Moreover, the Sole Arbitrator is not convinced, on the basis of the evidence provided, that the Player was put on notice in timely fashion of the so-called disciplinary offenses that appear to be the subject of Liepājā's reproach. Finally, FIFA and CAS precedents are constant in holding that disciplinary fines may not be set-off against a club's remuneration obligations to a player.

77. In addition to the financial considerations, the Sole Arbitrator is convinced that the Player's exclusion from training with the first team was not justified. Moreover, taken in combination with the arrears in payment of remuneration and the amounts withheld for reasons questionably attributed to disciplinary lapses, the Sole Arbitrator finds that this may well constitute abusive conduct aimed at forcing the Player to terminate the Employment Agreement, especially bearing in mind the Player's testimony at the hearing indicating that he was being pressured to leave. Again, significant CAS case law indicates that a player's inability to train at the requisite level can be a basis for termination for sporting just cause.

78. As to the formal aspects of the termination, the Player had the duty to put Liepājā on notice for non-payment, while providing a reasonable time for his employer to cure the breach. By means of indication, Article 14bis of the FIFA RSTP provides that generally, 15 days is a minimum for this purpose. The Player has provided evidence that emails were sent to Liepājā for this purpose on 1 December and 16 December 2022, each providing separate 15-day deadlines. In addition, the Player sent another letter, this time requesting reintegration with the first team for training purposes, on 23 December 2022.

79. Liepājā denies having received the default notice allegedly sent on 1 December 2022. The reason provided for this appears to be the existence of a typographical difference in recipient's email address (which apparently would have been included deliberately, in bad faith). The Sole Arbitrator, having reviewed the relevant communications, does not discern the typo in question, and is convinced by Sarajevo's argument that if the second default notice reached its recipient, the first should equally be deemed to have reached Liepājā in the expected course of events and in the absence of any convincing evidence to the contrary regarding the circumstances around the relevant email communications.

80. For these reasons, the Sole Arbitrator considers that the Player had just cause to terminate the Employment Contract in the manner and at the time he did so.

81. As a result, all of the Appellant's claims regarding the so-called "termination/buyout clause" amounting to EUR 350,000 are moot and therefore disregarded.

B. What consequences result from the determination on just cause?

82. The Sole Arbitrator must determine the financial consequences of the termination with just cause by the Player, taking into account all circumstances of the case.

83. Article 17 FIFA RSTP provides for the financial consequences of breach of contract without just cause. However, the FIFA RSTP does not contain a provision expressly dealing with the consequences of early termination of a contract for just cause.

84. To fill this gap, CAS case law includes awards applying Article 17 RSTP FIFA by analogy, decisions relying on Article 337b SCO as additional law, and even examining the situation from the angle of these two provisions jointly (CAS 2013/A/3398). It is thus generally accepted, regardless of the legal basis used, that a player who terminates the contract for just cause may obtain compensation for his positive interest, i.e. the right to be placed in the position he would have been in if his debtor had performed the contract in full in accordance with the terms of the contract and the conditions stipulated in the contract or provided for by law (CAS 2016/A/4569). Article 337b SCO also stipulates that "[w]*here the good cause for terminating the employment relationship with immediate effect consists in breach of contract by one party, he is fully liable in damages with due regard to all claims arising under the employment relationship*".

85. In the present case, the Sole Arbitrator observes that the remaining due salary of the Player at termination of the employment contract amounted to EUR 7,441, as retained by the FIFA DRC, provided that any deductions for "disciplinary" setoffs are disallowed. Furthermore, the remaining compensation due under the contract term after the date of termination amount to EUR 66,000 (or 11 x EUR 6,000 for the period from January 2023 until November 2023 inclusive). These amounts constitute the basis for the calculation of the compensation due to the Player, subject to the interest rate of 5% per annum.

86. Next, and by virtue of the Player's duty to reduce his damages under Swiss law (Article 337c (2) SCO) and CAS case law (CAS 2018/A/6029, § 118 and cited references), the Sole Arbitrator considers that the compensation must be reduced by the amounts due to

the Player under his new employment contracts until the end of the Employment Contract's natural term, following the termination thereof.

87. At this point, the Sole Arbitrator addresses the matter of the Annex which was produced for the first time by the Appellant in the present proceedings before CAS. The Appellant fails to adequately explain the manner in which this document was obtained, but nevertheless proffers it as evidence (of the "unequivocal fact") that the Player would somehow be the recipient of a considerably higher salary from Sarajevo than that indicated in the body of the Sarajevo Contract. The Sole Arbitrator notes the unusual way this document was produced (without specifying exactly how it was procured by Liepājā), and the fact that it was absent from the FIFA DRC proceedings that led to the Appealed Decision.

88. The Sole Arbitrator has discretion under Article R57 (3) of the Code to exclude evidence that was available to the Parties or could reasonably have been discovered by them before the Appealed Decision was rendered. The lack of information around the circumstances that led to procurement of the Annex ("we were able to obtain") does not establish clearly that this document was available prior to the present proceedings. The Player and Sarajevo contest the authenticity of this document, denying having signed it.

89. In his expert report and at the hearing, Mr Zlatko Dugandžić convincingly confirmed what is obvious to the naked eye: the signatures of the Player and of Sarajevo, as well as Sarajevo's official stamp, appear to have been "copy-pasted" from the Sarajevo Contract itself. If this were not sufficient for the Sole Arbitrator to raise a proverbial eyebrow, the lack of an original document in the file makes the provenance of the document that much more dubious. The Sole Arbitrator is comfortably convinced that this document is indeed fabricated, and the brazenness with which it was introduced as evidence in these proceedings is shocking. In his view, it shrouds with legitimate doubt the presumption that the Appellant is acting in good faith before the CAS.

90. For these reasons, the Sole Arbitrator disregards the Annex for purposes of calculating any amounts that the Player has received under the Sarajevo Contract.

91. The Sarajevo Contract (without the Annex) provides for monthly compensation of EUR 511, which, for the term running from February 2023 to June 2023 inclusive, amounts to EUR 2,555 (i.e. 5 x EUR 511). As a result, when mitigated by this amount, the resulting outstanding amount due to the Player under the Employment Contract as of the date of termination is EUR 63,445 (EUR 66,000 minus EUR 2,555).

C. What is the nature of FIFA's status in these proceedings, and what consequences result from it?

92. FIFA compellingly argues that its presence in the current proceedings is unnecessary, given the horizontal nature of the dispute between the remaining parties, and the lack of the DRC's discretion when it comes to the imposition of sporting sanctions for noncompliance with the Appealed Decision.

93. The Appellant, when given the opportunity to withdraw its case against FIFA, did not provide compelling reasons for maintaining its appeal against FIFA, other than an intent

to reserve its rights generally. FIFA made reservations as to costs resulting from, in its view, unnecessary participation in the instant proceedings.

94. The Sole Arbitrator, given his decision, does not see a reason to formally rule on FIFA's standing to be sued. The matter is moot because FIFA has effectively been compelled to participate in the proceedings thus far and is in essence unaffected by its outcome.

95. The Sole Arbitrator takes this matter into consideration when ruling on costs *infra*.

IX. CONCLUSION

96. The result of the above analysis is that the appeal is rejected in its entirety, and the Appealed Decision is confirmed.

X. COSTS

97. Article R64.4 of the 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. It shall contain a detailed breakdown of each arbitrator's costs and fees and of the administrative costs and shall be notified to the parties within a reasonable period of time. 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*."

98. Article R64.5 of the Code reads as follows:

"*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties*."

99. As quoted above, Article R64.5 of the CAS Code states that in the award, the Sole Arbitrator (*in casu*) shall decide which party shall bear the arbitration costs or in what proportion the Parties shall share them taking into account the outcome of the proceedings. The Sole Arbitrator also has discretion to grant the prevailing party a contribution towards its legal fees and other expenses. When granting such

contributions, he takes into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties.

100. Based on the circumstances of the case, in which the Respondents prevail with their requests for relief, the Sole Arbitrator decides that the costs of the arbitration, to be calculated by the CAS Court Office and communicated separately to the Parties, shall be borne by the Appellant in their entirety.

101. As a matter of principle, except in special circumstances, only costs of the Parties which would have never been incurred if a given event had not occurred (i.e. "differential costs") will be recoverable.

102. The Sole Arbitrator finds it reasonable that the Appellant shall pay CHF 5,000 to the Player towards his legal costs and expenses incurred in connection with these proceedings. Likewise, the Appellant shall pay Sarajevo CHF 3,000 towards its legal costs and expenses. Finally, while FIFA was represented by in-house counsel, it nevertheless raised the issue of the lack of its standing in these proceedings early on, providing the Appellant with the ability to avoid associated costs, which it chose not to do. It is therefore appropriate for the Appellant to pay FIFA CHF 1,000 towards its costs of representation and expenses, even if incurred in-house.

*****

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Biedrība FK Liepāja on 21 September 2023 against the decision of the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* passed on 2 August 2023 is dismissed.

2. The decision passed on 2 August 2023 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is confirmed.

3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne in their entirety by Biedrība FK Liepāja.

4. Biedrība FK Liepāja is ordered to pay CHF 5,000 (five thousand Swiss francs) to Slavisa Radović as contribution towards his legal costs and expenses incurred in connection with these appeal proceedings.

5. Biedrība FK Liepāja is ordered to pay CHF 3,000 (three thousand Swiss francs) to Udruženje Fudbalski Klub Sarajevo as contribution towards its legal costs and expenses incurred in connection with these appeal proceedings.

6. Biedrība FK Liepāja is ordered to pay CHF 1,000 (one thousand Swiss francs) to FIFA as contribution towards its costs and expenses incurred in connection with these appeal proceedings.

7. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 9 September 2024

THE COURT OF ARBITRATION FOR SPORT

Alexander McLin
Sole Arbitrator