



**Arbitration CAS 2006/A/1141 M.P. v. FIFA & PFC Krilja Sovetov, award of 29 June 2007**

Panel: Mr Chris Georghiadis (Cyprus), President; Mr Stephan Netzle (Switzerland); Mr Rui Botica Santos (Portugal)

*Football*

*Unilateral termination of the employment contract without just cause during the protected period*

*Late payment of the remuneration by the club*

*Financial and sporting consequences of the absence of just cause to terminate the employment contract*

- 1. Non-payment or late payment of remuneration by an employer does in principle constitute “just cause” for the termination of the contract. However, firstly, the amount paid late by the employer may not be “insubstantial” or completely secondary, and, secondly, the employee must have given a warning, i.e. he must have drawn the employer’s attention to the fact that his conduct is not in accordance with the contract. This is not the case when the player has not demonstrated that he made any complaints regarding late payment of his salaries nor how this affected his situation to a point where he could no longer be expected to remain in a contractual relationship with his club.**
- 2. Art. 22 para. 2 of the 2001 FIFA Regulations must be construed mainly as a protection of a player who was fired without a just cause. Unlike a player, the club has a claim with regards to the non-amortisation of the transfer fee. Therefore, unlike the player, the club cannot be compensated for the “remaining value of the contract”.**
- 3. A club that neither takes any concrete measures nor gives any formal warning to oblige a player to carry out his obligations and provide his services is responsible for the alleged replacement costs to cover the player’s absence. Therefore, it cannot be compensated for such replacement costs.**
- 4. Art. 23 of the 2001 FIFA Regulations makes suspension mandatory where there is “no just cause” for unilateral breach for the player of the contract save in “exceptional circumstances”.**

M.P. (“the Appellant” or “the Player”) is a professional football player and is of Brazilian nationality. He currently plays with the Brazilian Clube de Regatas Flamengo and is a registered member of the Confederação Brasileira de Futebol (CBF), which has been affiliated to the Fédération Internationale de Football Association since 1923.

The Fédération Internationale de Football Association (FIFA) is the world governing body of Football and has its registered office in Zurich, Switzerland.

PFC Krilja Sovetov is a football club with its registered office in Samara, Russia (“the Respondent” or “the Club”). It is a member of the Football Union of Russia (RFU), itself affiliated to the FIFA.

During the 2003-2004 season, the Appellant played as a professional for FC Spartak Moskova.

On 25 December 2003, FC Spartak-Moskova contractually accepted to transfer the Appellant to PFC Krilja Sovetov for the sum of USD 1,800,000, which was paid in the course of the year 2004.

On 1 February 2004, the Appellant signed with PFC Krilja Sovetov a first labour agreement, which is actually the standard contract form of the RFU. It contains the description of each party’s respective obligations and its main characteristics can be summarised as follows:

- It is a fix-term agreement for three years, effective from 1 February 2004 until 1 February 2007.
- The Appellant contractually obliged himself notably to “*place at the Club’s disposal his entire athletic potential*” (article 1.2.2), “*abstain from any actions which may damage the Club’s interests or impair his ability to perform his obligations under the present Contract in good faith*” (article 1.2.4), “*on instructions from the Chief Coach or other coaches, make appearances in games played by the Club, and also to attend practices, meetings, conferences, play analyses and the like, take exchange training courses and come to stay at the recreation and training facilities, that is, take part in all events organized by the Club*” (article 2.1.1), “*implicitly comply with (...) the general instructions and directives concerning the procedure of trips, meetings and the like*” (article 2.1.5), “*travel together with the rest of the football team, both in Russia and abroad, unquestioningly accepting the routes and the means of transportation selected by the Club*” (article 2.1.6), “*abstain from playing on any other football teams without prior written consent of the Club; from taking part in any other sports events and also from entering into negotiations on employment on another team (by another club), except in cases provided for in the “Status and Procedure for Transfer of Football Players” Regulations*” (article 2.1.7).
- Among other obligations, PFC Krilja Sovetov agreed to pay “*in a timely manner*” to the Appellant a monthly salary of USD 10,000.
- Regarding the working hours and the leaves of absence, article 5 of the contract states the following:
  - “5.1 *The Player’s hours shall be determined in accordance with the regulations concerning the players’ routine adopted at the Club.*
  - 5.2 *The Player shall be entitled to a 28-day annual paid leave, which, however, can only be used off the football season .The actual timing of the leave shall be specified annually, depending on the game schedule.*
  - 5.3 *In case of birth or adoption of a child, marriage and death of a near relation, the Player shall be entitled to an additional five-day paid leave in each of the cases stated above.*
  - 5.4 *In case of illness or accident the Player shall promptly notify the Club to that effect. The Player shall also be liable to provide within 48 hours a medical statement certifying his inability to play football and be prepared to undergo medical examination by the Club’s medical council or doctors”.*

The Appellant and PFC Krilja Sovetov signed another contract dated 4 February 2004, which reads in pertinent part (as translated into English by PFC Krilja Sovetov):

*“Clause One – By this contract the Assignee will pay for sign fee to professional athlete M.P., the amount of*

- 200.000 USD on February 4, 2004
- 50.000 USD on July 31, 2004

*Clause Two – The Assignee shall assure the athlete the following conditions:*

- a) *House, transportation to go the training and go back, medical and dental care, 2 plane tickets for the athlete and a companion for the route Vitoria/Moscou/Vitoria.*
- b) *The athlete shall execute a (3) Three-years agreement, covering a monthly salary of Thirty thousand US Dollars (US\$ 30.000) Net.*

*Clause Four – The parties hereby elect Federation International Football Association (FIFA), to settle any doubts and solve any conflict originated herefrom”.*

It is undisputed that the signing fees amounting to USD 250,000 were paid to the Appellant.

According to PFC Krilja Sovetov, the Appellant received his salary in the following instalments:

- the salary of February 2004 was paid on 20 April 2004,
- the salary of March 2004 was paid on 5 May 2004,
- the salary of April 2004 was paid on 28 May 2004,
- the salary of May 2004 was paid on 25 June 2004,
- the salary of June 2004 was paid on 6 August 2004,
- the salary of July 2004 was paid on 13 August 2004,
- the salary of August 2004 was paid on 29 September 2004.

It is undisputed that the salary of September 2004 was paid to the Appellant in cash between 4 and 8 February 2005. As exposed hereafter, it was the last monthly wage paid to the Appellant by PFC Krilja Sovetov.

On 18 October 2004, the Appellant left Russia to fly to Brazil, allegedly to visit his sick mother. According to a medical certificate dated 20 July 2006, the latter *“presented between October and November of 2004 a grave condition of depression (...), demanding special care and intense accompanying by her relatives”.*

PFC Krilja Sovetov explained on its official website that the Appellant had to leave for Brazil due to *“domestic reasons”.*

Whether the Appellant was authorised by his employer to leave for Brazil is disputed.

PFC Krilja Sovetov initiated an internal disciplinary proceeding immediately after the Appellant had left on 18 October 2004. According to the minutes of its meeting dated 22 October 2004, the

disciplinary committee of PFC Krilja Sovetov issued the following decision (as translated into English by PFC Krilja Sovetov):

1. *To confirm the fact that professional football player **M.P.** had not submitted a written explanation of his absence from work for more than four hours in a row during a working day without a valid reason (...).*
2. *To consider the stated fact culpable neglect committed by professional football player **M.P.** of the labour obligations imposed on him.*
3. *To forward the present act to the General Director for confirmation and consideration of the behaviour of the professional football player as a disciplinary breach”.*

In a document dated 3 November 2004, the General Director of PFC Krilja Sovetov, passed the following order (as translated into English by PFC Krilja Sovetov):

*“I order:*

1. *To apply disciplinary sanctions to professional football player M.P. by way of issuing a reprimand and applying a fine in the amount of the salary for the period of the player’s absence from work, on the basis of the data in the working time register;*
2. *Deputy General Director to translate and read to M.P. the text of the present order for familiarization and written acknowledgement on the part of the player (...).”*

The Appellant contests having ever been notified any decision in connection with the internal disciplinary proceedings initiated against him.

On 4 November 2004, the Appellant presented himself to his employer.

On 6 November 2004, PFC Krilja Sovetov paid to the Appellant, as well as to the other players, bonuses for matches. The Appellant received USD 4,500.

On 8 November 2004, the Appellant left again for Brazil. Whether PFC Krilja Sovetov authorized this second departure is also in dispute. Once again, the Club informed the media that the absence of the Appellant was caused by “*domestic reasons*”.

PFC Krilja Sovetov played its last game of the season on 12 November 2004. It alleges that its official annual vacation period started on 18 November and ended on 15 December 2004.

The Appellant contends that the foreign players of PFC Krilja Sovetov were entitled to leave Russia immediately after the last game of the season and to return beginning of January 2005. According to a page dated 17 December 2004 of the official website of PFC Krilja Sovetov, “*Today Krilja Sovetov fullback Leilton joined the team at the training camp in Kislovodsk and took part in the training session of the general group right away. The rest of the foreigner players will join the team in Moscow on the eve of leaving for the training camp in the UAE*”.

In December 2004 and January 2005, PFC Krilja Sovetov organised two pre-season camps: The first one took place between 15 and 25 December 2004 in Kislovodsk, Russia and the second one

between 5 and 17 January 2005 in Abu-Dhabi, United Arab Emirates. Although the Club allegedly requested his presence, the Appellant did not appear at the said camps.

On 15 January 2005, PFC Krilja Sovetov wrote to FIFA the following letter:

*“Hereby we inform you that Krylja Sovetov Samara FC player M.P. left the team without permission before the end of the football season on October, 18. He did not arrive at the training camps of our team, which took place in Kislovodsk (Russia) in December 15-25, 2004, and in Abu-Dhabi (UAE) in January 5-18, 2005”.*

On 16 February 2005, the Appellant joined his team-mates at a pre-season camp organised by PFC Krilja Sovetov in Valencia, Spain. On a page dated 18 February 2005 of its official website, PFC Krilja Sovetov explained that *“Krylja Sovetov fullback M.P. arrived today at Olvia where the team is staying and immediately started training. The delay of the player in Brazil was caused by the long procedure of the formalization of a new passport which took almost one month”.* The Appellant confirmed to the Panel that there has never been anything wrong with his passport.

During his stay in Spain, the Appellant received USD 30,000 from PFC Krilja Sovetov. It is undisputed that this sum covered the Player’s salary for the month of September 2004.

The Appellant requested to be authorised to fly to Brazil for family reasons. PFC Krilja Sovetov accepted this request for a period of two days only. On 7 March 2005, the Appellant left Spain and never came back to Russia.

On 10 March 2005, the Appellant notified in writing PFC Krilja Sovetov of the fact that he unilaterally terminated their contractual relationship. The termination letter reads notably as follows:

*“Considering wage payment delays alone lead to an unbearable situation, for the player is unable to make his living in normal conditions, the reiterated non-compliance on the club’s side and the non-fulfilment of the promises made provokes a situation of breach of confidence, an essential element in the relationship between employer and employee.*

*Thus, considering that the club has failed to pay wages for October, November, December, January and February, totalling five months of wages in arrears, with no forecast of payment, and failed to reimburse the air fare from Brazil to Europe, we hereby declare the player’s contract with F.C. Krilia Sovetov terminated due to contractual non-compliance, which characterized just cause.*

*Therefore, on this date we communicate to FIFA the termination of the work contract by just cause.*

*With no harm to the already configured termination by just cause, the player requires the full payment of the five months of wages in arrears plus the amount of US\$ 1,200, which amounts to US\$ 151,200, within five days of the receipt of this letter”.*

On 10 April 2005, the Appellant signed a new contract with the Brazilian club Cruzeiro Esporte Clube. His monthly salary was of BRL 17,500, which, at the time, was equivalent to about USD 6,770.

In letters addressed to the FIFA on 20 and 27 April 2005, PFC Krilja Sovetov affirmed that it had learned through the media that the Appellant had entered into an employment contract with Cruzeiro Esporte Clube despite the fact that the contract of February 2004 was still in force. In particular, PFC Krilja Sovetov insisted on the violation by the Player of his contractual obligations and confirmed its intention to claim for compensation. PFC Krilja Sovetov requested FIFA's "*urgent intervention in verifying the authenticity of this information and to protect the rights of [PFC Krilja Sovetov] in accordance with the FIFA Regulations for the Status and Transfer of Players*".

On 26 April 2005, the CBF requested from the RFU the issue of the Appellant's International Transfer Certificate. By fax dated 3 May 2005, PFC Krilja Sovetov confirmed to RFU that it was opposed to the request of the CBF and stated that:

- “1) *The player's employment contract has not expired;*
- 2) *Early termination of the player's employment contract was not mutually agreed; and*
- 3) *A contractual dispute exists”.*

Between the end of April and May 2005, the dispute, which arose between the Appellant and PFC Krilja Sovetov, was formally submitted to the FIFA Dispute Resolution Chamber (the “FIFA DRC”). On 25 May 2005, the Single Judge of the Players' Status Committee authorized the CBF “*to provisionally register the player M.P. for its affiliated club Cruzeiro Esporte Clube, with immediate effect*”.

At that time, PFC Krilja Sovetov had financial difficulties. Until recently, the Club belonged indirectly to an individual. The government of Samara is the current owner.

On 23 March 2006, the FIFA DRC passed a decision (the “Decision”) with regard to the claim presented by PFC Krilja Sovetov against the Appellant. It reached the conclusion that the Appellant was fully responsible for the breach of the contract. It took into consideration the fact that the Appellant was absent from the Club from 18 October 2004 to 17 February 2005, with the exception of a few days from 4 November to 8 November 2004. According to the FIFA DRC, the Player failed to prove that his absence was justified and/or authorized by his employer. Consequently, PFC Krilja Sovetov had good reasons justifying the non-payment of the salaries of the Player.

As a result, the FIFA DRC decided the following:

- “1. *The claim of the Russian club Krilja Sovetov is partially accepted.*
2. *The Brazilian player M.P. is ordered to pay USD 2,040,000 to the club Krilja Sovetov within 30 days as of notification of the present decision.*
3. *The Brazilian club Cruzeiro Esporte Clube Belo Horizonte is jointly responsible for the Payment of the above-mentioned amount if the same is not paid within one month of notification of the present decision.*
4. *If the aforementioned amount is not paid within the stated deadline, an interest rate of 5 % per year shall apply, as from expiry of the stated deadline.*
5. *A restriction of four months on his eligibility to play in official matches is imposed on the player M.P.. This sanction shall take effect from the start of the first season of the player's current club following the*

*notification of the present decision.*

6. *The Brazilian club Cruzeiro Esporte Clube Belo Horizonte is banned from registering any new player, either nationally or internationally, until the expiry of the second transfer period following the notification of this decision.*
7. *In the event that the player M.P. or the club Cruzeiro Esporte Clube Belo Horizonte do not comply with the present decision, the matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.*
8. *Any further request of the club Krilja Sovetov is rejected.*
9. *All requests of the player M.P. against the club Krilja Sovetov are rejected.*
10. *The Club Krilja Sovetov is directed to inform the player M.P. and the club Cruzeiro Esporte Clube Belo Horizonte immediately of the account number to which the remittance is to be made (...).*
11. *According to art. 60 par. 1 of the FIFA Statutes this decision may be appealed before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receiving notification of this decision”.*

The Appellant was notified by fax dated 18 July 2006 of the Decision.

On 2 August 2006, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (CAS).

Together with the statement of appeal, the Appellant filed an application for a stay of the Decision. On 31 August 2006, the Deputy President of the CAS Appeals Arbitration Division allowed the application by the Appellant to stay the said decision.

A hearing was held on 27 February 2007 at the CAS headquarters in Lausanne.

The dispute which arose between FIFA, PFC Krilja Sovetov and Cruzeiro Esporte Clube in connection with the Appellant is the subject of another arbitration proceeding brought before the CAS (CAS 2006/A/1137).

## **LAW**

### **CAS Jurisdiction**

1. The jurisdiction of CAS, which is not disputed, derives from articles 60 ff. of the FIFA Statutes and article R47 of the Code. It is further confirmed by the order of procedure duly signed by the parties.
2. It follows that the CAS has jurisdiction to decide on the present dispute.

3. Under article R57 of the Code, the Panel has the full power to review the facts and the law. The Panel did not therefore examine only the formal aspects of the appealed decision but held a trial *de novo*, evaluating all facts and legal issues involved in the dispute.

### **Applicable law**

4. Article R58 of the Code provides the following:  
*“The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
5. Article 59 par. 2 of the FIFA Statutes provides *“The CAS Code of Sports-Related Arbitration governs the arbitration proceedings. With regard to substance, CAS applies the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and clubs and, additionally, Swiss law”.*
6. Article 10.1 of the contract dated 1 February 2004 states that *“Any disputes as may arise between the parties shall be resolved by means of negotiations. Should the parties fail to resolve a dispute, it shall be referred to the Russian Football Union and the Russian Football Premier League”.* Pursuant to article 10.4 of the same document, *“On any other issues not provided for by the present Contract, the parties shall be guided by the relevant provisions of the effective law of the Russian Federation as well as documents of the Club, the FIFA, the UEFA, the Russian Football Union and the Russian Football Premiere league”.*
7. Clause four of the labour agreement dated 4 February 2004 provides that *“The parties hereby elect Federation International Football Association (FIFA), to settle any doubts and solve any conflicts originated herefrom”.*
8. In the present case it is not clear whether the parties have agreed on the application of any particular law.
9. The reference to Russian law is only made indirectly in article 10.4 of the contract dated 1 February 2004. The wording of this provision is quite ambiguous and does not allow considering that it establishes an election of law. As a matter of fact, it places *“the effective law of the Russian Federation”* on the same footing as *“documents of the Club, the FIFA, the UEFA, the Russian Football Union and the Russian Football Premiere league”.* Furthermore, and according to the said article, it seems that *“the effective law of the Russian Federation”* must be used as a guideline only and that its application is not necessarily compulsory. Finally, article 10.4 is applicable only when *“any other issues [are] not provided”* by the contract dated 1 February 2004. With this regard, it appears to the Panel that article 10.1 of the contract dated 1 February 2004 governs expressly and in an exclusive manner the situations where a dispute arises between the parties. There is therefore no place for the application of article 10.4 with respect to the applicable law in the present dispute. Article 10.1 was then amended by the clause 4 of the contract dated 4



February 2004 so as to confer jurisdiction upon the FIFA “to settle any doubts and solve any conflicts originated herefrom”.

10. Accordingly, the Panel is of the opinion that the parties have not agreed on the application of any particular law. The Panel is comforted in its position by the fact that, in their respective submissions, the parties refer exclusively to FIFA’s regulations. Therefore, subject to the primacy of applicable FIFA’s regulations, Swiss law shall apply complementarily.

### **Admissibility**

11. The appeal was filed within the deadline provided by the FIFA Statutes and stated in the decision of the FIFA Dispute Resolution Chamber. It complied with all other requirements of article R48 of the Code.
12. It follows that the appeal is admissible.

### **Merits**

13. The main issues to be decided upon are:
  - a) Was the Player authorised by the Club to leave Russia? If yes, for how long? What are the consequences for the Player of extending his period of absence, or of failing to return to the Club and provide his services?
  - b) Did the Player have a just cause to terminate the labour contract concluded with the Club?
  - c) If the Player did not have a just cause to terminate the labour contract what are the consequences for so doing?
  - d) Are there reasons for the CAS to differentiate with respect to the financial and sporting sanctions imposed by FIFA DRC?

*A. Was the Player authorised by the Club to leave Russia? If yes, for how long? What are the consequences for the Player of extending his period of absence, or of failing to return to the Club and provide his services?*

14. From the evidence produced it appears that the Club paid the Player’s last salary in September 2004. As between October 2004 and 10 March 2005, (i.e. the time of notification of termination by the Player) the Player was absent from the Club for a considerable amount of time.
15. The Player submitted that the Club systematically delayed payment of his salary causing him serious financial problems. The Player argues that the Club was not entitled to withhold payment of salaries for the period of October until December 2004 since he was either authorised to be absent or was on holiday. The failure of the Club to pay the Player his

salaries for the period of October 2004 to February 2005 gave the Player the right to terminate the labour contract with just cause.

16. The Club argued that as long as the Player failed to satisfy his obligations to make his services available, it had the right to cease payment of his salary. The Club denied that it had authorised the Player's absence in October or November 2004.
17. The Panel is of the opinion that the Player must prove:
  - that the Club authorised or accepted the Player's various absences,
  - that the Club accepted or agreed to the duration of each absence, and
  - that the Club accepted to continue payment of the Player's salary whilst he was absent from the Club.
- a) Did the Club authorise or accept the Player's absence?
18. The Player was not able to produce any written permission with respect to his absence and his travelling to Brazil. The Player submitted that permissions to leave were generally granted verbally by the Club. In the reply that it filed with CAS, and though its representatives during the hearing, the Club acknowledged that permissions were given verbally.
19. In view of the Club's standpoint on the issue, the Panel is of the opinion that every time the Player was authorised to leave Russia and/or to extend his period of absence, permissions were given verbally.
20. The Club published on its website (October and November 2004) that the Player had to leave for Brazil due to "*domestic reasons*". The said publication allows the Panel to conclude that the Club was aware of the Player's family problems. The Panel accepts the Player's statement that he was allowed to visit his sick mother in Brazil and, as a result, the Club verbally authorised or accepted the Player's travelling to Brazil in October and November 2004.
21. The Club submitted evidence, which indicates that it initiated internal disciplinary proceedings immediately after the Player left on 18 October 2004. The Player contends that he was not aware of such proceedings. On 3 November 2004, the Deputy General Director of PFC Krilja Sovetov was ordered to translate and read to the Player the internal disciplinary decision "*for familiarization and written acknowledgement on the part of the player*". The Club did not produce satisfactory evidence to substantiate the alleged notification of the said internal disciplinary proceedings. Consequently the Panel has decided to disregard them. The payment of a bonus to the Player on 6 November 2004, allows the Panel to believe that PFC Krilja Sovetov decided not to notify the decision of its disciplinary body to the Player.
22. As to the annual vacation period, the Player contends that foreign players were as a rule allowed to leave immediately after the last game of the season, which in this particular case was played on 12 November 2004, and return on 5 January 2005. This was also confirmed by

Mr Ronieliton Pereira Santos and Mr José Ivanaldo de Souza, two former foreign players of PFC Krilja Sovetov. The Panel found these witnesses' testimony to be both credible and reliable for they notably confirmed the information published on the Internet by the Club. According to the web page dated 17 December 2004, PFC Krilja Sovetov declared that *"Today Krilja Sovetov fullback Leilton joined the team at the training camp in Kislovodsk and took part in the training session of the general group right away. The rest of the foreigner players will join the team in Moscow on the eve of leaving for the training camp in the UAE"*. Since the training camp in Abu-Dabi started on 5 January 2005, one may infer from the information provided by the Club on its Internet site, that players were expected to be in Russia on 4 January 2005.

23. The Player explained that he did not present himself in January 2005 *"because the club did not send him the flight ticket nor paid him the salaries, overdue since September"*. In addition, he tried to compare his situation with the one of his former team-mate, Mr José Ivanaldo de Souza, who refused to present himself to the Club before he received the payment of his outstanding wages. Mr José Ivanaldo de Souza and PFC Krilja Sovetov reached an arrangement according to which Mr de Souza accepted not to claim his late salaries provided that, in exchange, the Club agreed to terminate his labour contract without any further consequences.
  24. The failure of PFC Krilja Sovetov to provide the Player with the necessary flight ticket cannot be considered as a sufficient just cause for the Player not to return to his Club and make his services available. It is correct to note that according to the contract dated 4 February 2004, the Club should supply the Player with two flight tickets. However, the contract does not mention that the Club has to make the necessary arrangement for the actual purchase of such tickets nor when or how the flight tickets were to be bought. The Player was unable to establish that he actually required PFC Krilja Sovetov to send him flight tickets or that he conditioned his return on the delivery of flight tickets. In addition, the value of the flight ticket is out of proportion compared to the financial consequences of the Player's absence or to his salary. Moreover, and as exposed hereafter, the Player failed to satisfy his obligations under the labour agreement. Under such circumstances the Panel is of the view that the Player cannot reasonably claim specific performance of the contract by the Club.
  25. In referring to the situation relating to Mr Jose Ivanaldo de Souza, the Player did not establish how he could benefit from the fact that Mr José Ivanaldo de Souza had reached an arrangement with PFC Krilja Sovetov. The said deal was concluded between parties who were independent and distinct from the Player. The Player has not proven that his overall situation was similar to Mr José Ivanaldo de Souza's or that he tried to negotiate a similar settlement with the Club.
- b) Did the Club authorise or accept the duration of the Player's various absences?
26. On the evidence produced, the Panel reached the conclusion that PFC Krilja Sovetov authorised the Player to leave for Brazil to visit his mother in October and November 2004. Nevertheless, this does not necessarily mean that the Club left it to the discretion of the Player to determine the length of his stay and, consequently, the date of his return. The Panel

is of the opinion that the Player did not provide sufficient proof to declare that he had the authority to return at his free will.

27. Under the circumstances, the Panel finds it hard to believe that PFC Krilja Sovetov would have granted to one of its regular players an unrestricted right of leave. On 18 October 2004, there were at least four more matches to be played for the regular season. Furthermore, it is very unlikely for a club to accept that one of its key players does not show up at the pre-season training camp attended by all its players, which, in the present case, took place between 5 and 17 January 2005 in Abu-Dhabi, United Arab Emirates.
28. In other words, the Panel is of the opinion that the Player was authorized to leave the club for a few days in October and November. It is also undisputed that he was allowed to fly back to Brazil in March 2005 for two days.
29. Regarding the length of each authorised absence – the one in October and the one in November –, the Panel is of the opinion that it cannot be longer than five days as provided under article 5.3 of the standard form contract dated 1 February 2004, which states that “*In case of birth or adoption of a child, marriage, and death of a near relation, the Player shall be entitled to an additional five-day paid leave in each of the cases stated above*”. Five-day is the contractually agreed limit of authorised leaves in the event of important developments in a player’s life. There is no reason to believe that the Player was entitled to be absent for a longer period. The Player failed to prove that he requested and obtained permission to extend his absence during October 2004, November 2004 and particularly after 4 January 2005.
30. Consequently, the Panel reaches the conclusion that no authority was given to the Player to stay away from the Club except for five days in October, five days in November 2004, the annual vacation period, which ran from 13 November 2004 to 4 January 2005 and for two days in March 2005. In all other cases, the Player extended his absence without any authorisation or just cause.
31. In a nutshell:
  - (i) the Club adopted the practice of granting verbal permission to its players to extend their vacation period or other period of leave; no written authorisations were issued;
  - (ii) the Club accepted that foreign players would return and make themselves available in January of each year;
  - (iii) the Club was aware of the Player’s family problems and for its own reasons choose to conceal these as well as the Player’s lengthy periods of absence;
  - (iv) the Club failed to notify the Player of the disciplinary proceedings and the decisions taken;
  - (v) the case of Mr Jose Ivanaldo de Souza serves only as evidence of the Club’s practice to delay payments but has no relevance to the particular case;
  - (vi) the Player did not seek to conclude a similar agreement to the one concluded by Mr Jose Ivanaldo de Souza;

- (vii) the non-payment of the flight ticket was not a just cause allowing the unilateral termination of the employment contract.
- c) Did the Club accept to continue payment of the Player's salary whilst he was absent from the Club?
32. This question remains only relevant for those periods for which the Player was allowed by PFC Krilja Sovetov to leave for Brazil.
33. As regards the burden of proof, it is the Player's obligation to objectively demonstrate the existence of his rights (Article 8 of the Swiss Civil Code, ATF 123 III 60 consid. 3a; ATF 130 III 417 consid. 3.1). It is not sufficient for him to simply assert a fact for the Panel to consider the matter without further treatment. In the case at hand, the Player adduced no evidence as to the existence of any agreement on the issue i.e. whether the absences were authorised without loss of pay.
34. Based on the foregoing, the Panel assumes that the Player requested special leave without pay. It implies that a corresponding deduction must be made from the salary of the Player.
- B. *Did the Player have a just cause to terminate the labour contact concluded with the Club?*
35. On 10 March 2005, the Player unilaterally put an end to the employment contract for the following reason: *"Thus, considering that the club has failed to pay wages for October, November, December, January and February, totalling five months of wages in arrears, with no forecast of payment, and failed to reimburse the air fare from Brazil to Europe, we hereby declare the player's contract with F.C. Krilia Sovetov terminated due to contractual non-compliance, which characterized just cause"*.
36. In a recent case (CAS 2006/A/1180), the CAS ruled that the *"non-payment or late payment of remuneration by an employer does in principle – and particularly if repeated as in the present case – constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893 [...]; CAS 2006/A/1100 [...] marg. no. 8.2.5 et seq.)"*.

37. In CAS 2006/A/1180, the Panel was of the opinion that both prerequisites were met and that the player validly terminated the employment contract for just cause. Not only did the employer fail to comply with a major part of its payment obligation during the first 4 months of the labour contract but the player was normally providing his services up until the termination of the contract. Furthermore, the player warned several times in writing his employer about the fact that he would not tolerate the said breaches of obligation in the future. In his last warning letter, the player gave one last deadline to settle the outstanding debts. It is only after the expiry of the deadline that the player terminated the contract.
38. The facts of the present case considerably differ from the ones of the CAS 2006/A/1180.
39. As to the salaries for the months of February to August 2004, it is a fact that the first monthly salary received by the Player was paid in April 2004. Since then, USD<sup>o</sup>30,000 were paid every month, with the exception of the salary of June, which was paid in August, together with the salary of July. The Panel observes that during the same period, the Player received his sign-on fee of USD 250,000. The Player has not demonstrated that he made any complaints regarding late payment of his salaries nor how this affected his situation to a point where he could not be expected to remain in a contractual relationship with the Club. In particular, he did not explain why the payments of the salaries could not be considered as made *“in a timely manner”* as provided by the labour contract dated 1 February 2004 and therefore how F.C. Krilia Sovetov did not comply with its obligations. From the beginning of his relationship with the Club, the payments of the salaries were made within two months i.e. with delay. The Player was aware of this situation and did not contest it. He appears to have accepted such practice, contrary to the player in the case CAS 2006/A/1180.
40. Regarding the late payment of the salary of September 2004, the Club submitted that the said wage was about to be paid when the Player suddenly and without notice left for Brazil in October 2004.
- From the evidence produced payments were normally made by way of cash payment in Russia. As a result of which, any payment of salary was to be made while the Player was situated in Russia.
- Without prior notice, the Player returned to Russia on the 4 November 2004. At that time, the Club was allegedly not prepared to make payment of the salary. The Player left again, i.e. four days after his return, before the necessary arrangements could have been made.
- In February 2005 the team was in Spain for preparation when a payment of USD 30,000 was made to the Player using funds which were held for paying the Club’s training expenses in Spain.
41. Considering the above, the Panel accepts that the Player was authorised to be absent from the Club for:
- 5 days in October 2004;
  - 5 days in November 2004;
  - the period of the annual vacation period i.e. 13 November 2004 to 4 January 2005;

- 2 days in March 2005.
42. Altogether, it appears that the Player was entitled to three months and 2 days of salaries when he actually terminated unilaterally his contractual relationship with PFC Krilja Sovetov.
43. Although from a mere mathematical standpoint, the unpaid salaries amount to more than 3 months, which could justify unilateral termination of the contract by the Player, it is not acceptable to expect PFC Krilja Sovetov to pay the Player's salaries immediately after he decided to return, in particular after such long unauthorized absences. As a general rule, obligations under a labour contract are reciprocal in that they are binding on the parties only so long as both sides continue to comply with them. A major violation by one side will release the other side from all further duty to abide by that obligation. With this respect, article 82 of the Swiss Code of Obligation provides that "*A party who wishes to demand performance of a bilateral contract by the other party must either have already performed himself or tender his performance, unless pursuant to the contents or the nature of the contract he is only required to perform later*".
44. Therefore, in a situation where the Player was in a default situation himself, the Panel considers that it was proper for PFC Krilja Sovetov to withhold the payment of overdue salaries, at least until the situation was settled. This leads to the result that the withholding or non-payment of salaries by the Club, even if the amounts exceeded three months, did not entitle the Player to terminate the contract unilaterally.
- C. *If the Player did not have a just cause to terminate the labour agreement, what are the consequences for so doing?*
- a) In General
45. As already exposed, the present dispute is primarily governed by the FIFA Regulations. The case was submitted to the FIFA DRC prior to 1 July 2005. Therefore, and in accordance with article 26 para. 1 of the revised Regulations for the Status and Transfer of Players (edition 2005) and the FIFA Circular Letter No 995 dated 23 September 2005, the previous Regulations for the Status and Transfer of Players (edition 2001) (the "FIFA Regulations") shall govern the decision of this dispute.
46. In case of breach of contract, the FIFA Regulations provide for financial compensation as well as sporting sanctions.
47. Regarding the financial compensation, the FIFA DRC firstly took into consideration the USD 1,800,000 transfer fee paid by PFC Krilja Sovetov to FC Spartak Moskova. It stated that "*The employment contract was signed on 1 February 2004, valid until 1 February 2007 (36 months), and not any-longer respected by the player as of mid October 2004, i.e. after 9 months of its validity. Therefore, the transfer compensation paid by Krilja to the former club of the player, i.e. the amount of USD 1,800,000 was amortised to 1/4, i.e. USD 450,000. The non-amortised part of the transfer compensation amounts to USD 1,350,000*".

48. Secondly, and in the view of the FIFA DRC, the amount of compensation for breach of the contract must also take into account the fact that there were 23 months of contract remaining at the moment the Player unilaterally terminated the labour agreement on 10 March 2005. Considering that the Player was receiving a monthly salary of USD 30'000, the FIFA Dispute Resolution Chamber estimated the «remaining value of the contract» at USD 690,000 (23 months x USD 30,000 = USD 690,000).
49. Based on the foregoing, the FIFA DRC ordered the Player to pay USD 2,040,000 (USD 1,350,000 + USD 690,000) to PFC Krilja Sovetov as a compensation for breach of contract. The Club considered that the non-amortised transfer compensation amounted to USD 1,400,000 and the «remaining value of the contract» amounted to USD 610,000.
- b) Financial Compensation
50. Article 22 of the FIFA Regulations reads as follows:
- “Unless specifically provided for in the contract, and without prejudice to the provisions on training compensation laid down in Art. 13 ff, compensation for breach of contract (whether by the player or the club), shall be calculated with due respect to the national law applicable, the specificity of sport, and all objective criteria which may be relevant to the case, such as:*
- (1) Remuneration and other benefits under the existing contract and/ or the new contract,*
  - (2) Length of time remaining on the existing contract (up to a maximum of 5 years),*
  - (3) Amount of any fee or expense paid or incurred by the former club, amortised over the length of the contract,*
  - (4) Whether the breach occurs during the periods defined in Art. 21.1”.*
51. The CAS has full power to review both the facts and the law of the case. There is no binding authority of precedent (CAS 96/149, CAS Digest I, 251, 258-259).
52. In the present case, the Panel notes that PFC Krilja Sovetov paid USD 1,800,000 to FC Spartak Moskova in order to obtain the federative rights of the Player. The Club paid the transfer fee in order to conclude with the Player a 3-year labour agreement. By terminating prematurely the labour contract, the Player did not allow the Club to amortize the cost of its investment, causing therefore a financial damage to PFC Krilja Sovetov.
53. The Respondents consider that PFC Krilja Sovetov had to cease the amortization as of mid-October 2004. According to them, from that date on the Player had not respected his contractual obligations. In other words the contract was deemed to be breached at that time.
54. Such an allegation is in contradiction with the declarations and the external manifestation of the Club's intention. PFC Krilja Sovetov never issued and communicated a written notice to the Player to carry out his obligations. On the contrary, and oddly enough, the long absence of the Player did not seem to upset the Club, which has never taken any concrete measures or



given any formal warning to the Player. Even the internal disciplinary measures taken against the Player on 3 November 2004 were not notified to him. In addition, each time the Player came back from his absences, he received money from PFC Krilja Sovetov. When the Player returned in November 2004, the Club paid him USD 4,500 and in February 2005, he received USD 30,000. After the termination of the contract on 10 March 2005, the Club waited until 20 April 2005 to finally write to the FIFA and to make inquiries as to the Player's situation. Furthermore, on 3 May 2005, PFC Krilja Sovetov confirmed to RFU that "*the player's employment contract has not expired*".

55. Under such circumstances, the Panel is of the view that the period of non-amortisation begun upon the effective end of the labour agreement in March 2005 and lasted, therefore, 23 months. As a result the financial damage amounts to USD 1,150,000 (USD 1,800,000 / 36 months x 23).
56. Regarding the "*remaining value of the contract*", the Respondents submit that there were 23 months remaining until the contractual end of the labour agreement. Since the Player was entitled to a monthly salary of USD 30,000, PFC Krilja Sovetov suffered a damage corresponding to 23 times USD 30,000, i.e USD 690,000.
57. The Panel is of the opinion that the position of the Respondents is not substantiated for the following reasons:
  - With the unilateral termination of the labour contract 23 months before the fixed term of the contract, the Club did not have to pay the salaries to the Player amounting USD 690,000. Therefore the Panel does not see the correlation between the financial damage incurred by the Club and the fact that the latter did not have to pay the salaries to the Player.
  - Article 22 para. 2 of the FIFA regulations must be understood mainly as a protection of a player who was fired without a just cause. In such a situation and unlike a Club, the player does not have a claim with regards to the non-amortization of the transfer fee. In such a situation, a player can only be entitled to the unpaid salaries through the term of the contract. This is how the said provision must be construed. It is consistent with Article 337c para. 1 of the Swiss Code of Obligations (CO), which states that "*If the employer dismisses the employee without notice in the absence of a valid reason, the latter will have a claim for compensation of what he would have earned if the employment relationship had been terminated by observing the notice period or until the expiry of any applicable fixed-term period*". This provision is mandatory as it cannot be derogated from by agreement, by standard contract of work or by collective agreement to the detriment of the employee (Article 362 para. 1 CO).
58. The Club also asserts that it had to bear important replacement costs to cover the Player's absence in order to allow "*the team to perform to the best of its ability*". Considering the fact the Club did not seem to mind the long absences of the Player and the fact that it had never taken any concrete measures to oblige the Player to provide his services, the Panel is of the opinion that the Club is sole responsible for the alleged replacement costs. In the view of the specific circumstances of the present case and the general behaviour of the Club, the direct and

exclusive link between such possible costs and the early departure of the Player is not obvious or ascertained. Therefore, the Club's claim related to replacement costs must be disregarded.

59. As a result, the Respondents did not provide any evidence of further financial damages suffered by PFC Krilja Sovetov in connection with the unilateral termination of the labour contract by the Player. Consequently, the Panel is of the opinion that PFC Krilja Sovetov is only entitled to the compensation with regard to the non-amortization of the transfer fee, which amounts up to USD 1,150,000, from which must be deducted the three months and 2 days of pending wages. In other words, the damage incurred by PFC Krilja Sovetov is USD 1,058,000.
  60. With regard to the interest and in the absence of a specific contractual clause, the Panel can only apply the legal interest due pursuant to Art. 104 CO. That article provides that the debtor, on notice to pay an amount of money, owes an interest at the rate of 5 % per annum (CAS 2003/O/486).
  61. Regarding the dies a quo for the interest, the FIFA DRC ordered the Player to pay the financial compensation to PFC Krilja Sovetov within 30 days as of notification of its Decision.
  62. It follows that the due date is 30 days after the 18 July 2006. As a consequence, the interest of 5% shall be calculated as of 18 August 2006.
- c) Sporting sanctions
63. Article 23 of the FIFA Regulations provides the following:  
*“Other than in exceptional circumstances, sports sanctions for unilateral breach of contract without just cause or sporting just cause shall be applied: In the case of the player:*  
*(a) If the breach occurs at the end of the first or the second year of contract, the sanction shall be a restriction of four months on his eligibility to participate in any official football matches as from the beginning of the new season of the new club's national championship”.*
  64. This provision makes suspension mandatory where there is “no just cause” for unilateral breach by the player of the contract save in “exceptional circumstances” (CAS 2003/O/482). In the present case, no exceptional circumstances have been shown. The Player unilaterally terminated the labour contract without any formal warning or written notice to PFC Krilja Sovetov to pay his wages. The Player chose to take an active part in the deterioration of the situation with his long and unjustified absences.
  65. The suspension of four months must therefore be confirmed.

- D. *Are there reasons for the CAS to differentiate with respect to the financial and sporting sanctions imposed by FIFA DRC?*
66. Considering the above, the Panel is of the opinion that there are sufficient grounds to adjust the financial sanctions imposed by the FIFA Decision. There are, however, no grounds which will merit the change of the sporting sanctions which remain intact.

**The Court of Arbitration for Sport rules:**

1. The appeal is partially upheld.
  2. The decision issued on 23 March 2006 by the FIFA Dispute Resolution Chamber is annulled.
  3. M.P. is ordered to pay to PFC Krilja Sovetov the amount of USD 1,058,000 (one million and fifty eight thousand US dollars), plus interest at 5% (five percent) as from 18 August 2006.
  4. A restriction of four months on the Player's eligibility to play in official matches is imposed. This sanction shall take effect from the beginning of the first season of the Player's current club following the notification of the present decision.
- (...)
7. All other claims and counterclaims are dismissed.