Arbitration CAS 2008/A/1518 Ionikos FC v. L., award of 23 February 2009

Panel: Dr. Christian Duve (Germany), President; Mr. Jean-Philippe Rochat (Switzerland); Mr. Jean-Jacques Bertrand (France)

Football
Termination of the contract of employment without just cause
Tacit or indirect choice of law made by the parties
Standing to be sued according to the CAS jurisprudence and to Swiss law
Panel's power to review the jurisdiction of the FIFA DRC
Article 75 Swiss Civil Code
Definition of "just cause"
Requirement to attend training sessions and "just cause" for the termination of the contract

1. **The choice of law made by the parties can be tacit or indirect, by reference to the rules of an arbitral institution. Moreover, there will be a tacit choice made by the parties when they submit themselves to arbitration rules that contain provisions relating to the designation of the applicable law. Where the parties to an arbitration before CAS are – even indirectly – affiliated to FIFA and they made a tacit choice of law when they submitted themselves to arbitration rules that contained provisions relating to the designation of the applicable law, parties are bound by the FIFA Statutes and, the Panel applies, accordingly, the various FIFA Regulations and Swiss law. Moreover, CAS jurisprudence has consistently interpreted FIFA Statutes as to contain a choice of law clause in favour of Swiss law governing the merits of the disputes.**

2. **Neither the FIFA Regulations nor the CAS Code contain any specific rule regarding the standing to be sued; according to the CAS jurisprudence and to Swiss law, the defending party has standing to be sued if it is personally obliged by the 'disputed right' at stake, that is only if it has some stake in the dispute because something is sought against it. In this respect, a Respondent to a CAS procedure has standing to be sued if, in filing a claim to FIFA when there might have been a possibility that another national tribunal was competent to hear the case pursuant to the FIFA Regulations, Respondent could have breached his contractual duties. Accordingly, Appellant is entitled to direct its appeal before CAS at Respondent in order to require him to refuse the FIFA's jurisdiction to rule on the issue of sanction and compensation.**

3. **Article 75 of the Swiss CC has consistently been interpreted by Swiss legal doctrine and jurisprudence to mean that it is the association which has capacity to be sued; nevertheless, Article 75 of the Swiss CC does not apply indiscriminately to every decision made by an association but one has to determine the application of Article 75 Swiss Civil Code on a case-by-case basis. If, for example, there is a dispute between two association members (e.g. regarding the payment for the transfer of a football**

player) and the association decides that a club (member) has to pay the other a certain sum, this is not a decision which can be subject to an appeal within the meaning of Art. 75 Swiss Civil Code. The sports association taking a decision is not doing so in a matter of its own, i.e. in a matter which concerns its relationship to one of its members, rather it is acting as a kind of first decision-making instance, as desired and accepted by the parties.

4. **An employment contract which has been concluded for a fixed term can only be terminated prior to expiry of the term of the contract if there is 'good cause': this is any situation, in the presence of which the party terminated cannot in good faith be expected to continue the employment relationship. In this respect, a grave breach of duty by the employee is good cause. Particular importance is attached to the nature of the obligation. A valid reason for the unilateral termination of the contract has to be admitted when the essential conditions under which the contract was concluded are no longer present, whereas only a breach which is of a certain severity justifies termination of a contract without prior warning.**

5. **A club is in abuse of its rights – and therefore the player may terminate the employment relationship with just cause – if the club requires from the player to attend training sessions in odd times, such as at 7:00 am on January 1st, while the rest of the team is officially on Christmas leave.**

FC Ionikos (Appellant, "Ionikos" or the "Club") is a football club of the Greek second division. It is a member of the Greek Football Federation which is, in turn, member of the Fédération Internationale of Football Association (FIFA). FIFA is an association establishment in accordance with article 60 of the Swiss Civil Code and has its seat in Zurich (Switzerland).

L. (Respondent, the "Player") is a professional football player born in Angola on June 6, 1976 who played for Appellant.

The elements set out below are summary of the main relevant facts, as established by the Panel on the basis of the written submission of the Parties, the evidences produced, and the hearing held on October 20, 2008. Additional facts may be set out where relevant in connection with the legal discussion.

In July 2006, Respondent was proposed to Appellant by Mr. Phillippe Kontostavlos. The parties entered into negotiations which culminated in the conclusion of two employment contracts, one written in English and another one written in Greek.

On July 19, 2006, the parties signed an employment contract (the "English Contract" or the "Employment Contract dated July 19, 2006") in English for two years from July 1, 2006 to June 30,

2008. This contract contained neither a choice of applicable law nor an arbitration clause. Moreover, in the English Contract Mr. Philippe Kontostavlos signed as the Player's agent.

Concerning remuneration, the English Contract stipulated the following:

> *"(2) The Player shall receive for the 1st year of the above mentioned contract period, in total EUR 62,000.00 (NET); plus his salary of the 1st year which shall be approximately EUR 8,000.*
>
> *Contract amount of EUR 62,000. (NET) shall be deposited as follows:*
>
> - *EUR 6,200 paid with the signing of the mentioned contract*
> - *EUR 11,160 paid on 30/09/2006*
> - *EUR 11,160 paid on 30/11/2006*
> - *EUR 11,160 paid on 30/01/2007*
> - *EUR 11,160 paid on 30/03/2007*
> - *EUR 11,160 paid on 30/06/2007*
>
> *On the 2nd year of contract, thus from 01/07/2007 till 30/06/2008 the payment periods shall be the same as of the 1st year.*
>
> *(3) Additionally, FC Ionikos shall benefit the football player by providing him an apartment to stay at (rental paid from our club) and (2) airport round tickets (Athens-London-Athens)".*

Furthermore, the English Contract contained a clause stating that: *"If terms of Contract do not apply, then the mentioned above terms in English shall be valid in case of legal dispute".*

In addition to the English Contract, the parties signed another employment contract in Greek language and dated July 25, 2006 (to the "Greek Contract" or the "Employment Contract dated July 25, 2006"). It is unclear when the parties signed this contract. Under the Greek Contract, their employment relationship would last from July 25, 2006 to June 30, 2008 but under different financial conditions than those set forth by the English Contract. In the Greek Contract, the parties agreed that the Player would receive:

- *an ordinary monthly salary of EUR 680 that would not be less than the monthly salary of an unqualified employee;*
- *a Christmas bonus (equal to one ordinary monthly salary);*
- *an Easter bonus (equal to half of one ordinary monthly salary);*
- *a vacation allowance (equal to the Easter bonus).*
- *allowances for rent*
- *two airplane tickets per year Athens-London-Athens.*

Moreover, according to the Greek Contract, the Club would pay the Player EUR 62,000 also in six installments in the following scheme:

- *EUR 6,200 paid on 30/07/2006*
- *EUR 11,160 paid on 30/07/2006*
- *EUR 11,160 paid on 30/09/2006*
- *EUR 11,160 paid on 30/01/2007*
- *EUR 11,160 paid on 30/03/2007*
- *EUR 11,160 paid on 30/06/2007*

Nevertheless, the Greek Contract did not include any references to the remuneration terms for the second year of duration of the employment relationship. In contrast, it contained the following reference:

"In conformity with:

1. *Law 2725/99, as in effect today.*
2. *The Regulation concerning Registrations – Transfers (Regulation No. 1)*
3. *The Regulation concerning the Professional Football Players (R.P.F.), as in effect today*
4. *The K.A.P, as in effect today.*
5. *The Regulations U.E.F.A. – F.I.F.A., where they apply, in conformity with the decisions of the U.F.T. (Union of Football Teams)".*

In the Greek Contract, Mr. Kontostavlos was appointed as the proxy of the football player, giving his address as the contact address for the Player, but he did not sign the contract. Instead, Mr. Dimitris Karpetopoulos, Appellant's legal counsel, signed the contract as the Player's proxy attorney-at-law/Manager.

In September 2006, the minimum salary of an unqualified employee in Greece was increased to EUR 769 a month.

On November 14, 2006, there was an incident between Respondent and another team member, Mr. Giorgos Vourexakis (the "Incident of November 14, 2006"). The nature of this encounter is under dispute. Appellant alleges that Respondent verbally and physically attacked a team-mate. In contrast, Respondent says it was just a verbal disagreement.

On November 29, 2006, Appellant's board summoned the Player to give a written explanation for his defense. This was served on that day on Mr. Kontostavlos.

On November 29, 2006, Respondent provided the Club with a written explanation related to the Incident of November 14, 2006. However, the Player was excluded from the training sessions with the rest of the team.

On December 4, 2006, Appellant's Board decided to impose a disciplinary sanction against Respondent and terminate the employment relationship with him. This decision was notified to Mr. Kontostavlos on December 7, 2006.

On December 6, 2006, Respondent met with Appellant's president, Mr. Christos Kanellakis. During the meeting, Mr. Kanellakis offered to pay Respondent the installment of EUR 11,160 that was due since November 30, 2006 in three payments: one check of EUR 2,500 with payment date January 13, 2007; another check of EUR 2,500 with payment date in February, 2007; and the remaining amount later. However, no agreement was reached at that meeting.

On December 7, 2006, Respondent sent Appellant's president a letter asking him to pay the outstanding salaries of October and November 2006 as well as the amount of EUR 11,160 due since November 30, 2006.

On December 19, 2006, Respondent wrote another letter to Appellant requesting by December 24, 2006 the payment of his salary of November 2006 and the installment of EUR 11,160 due since November 30, 2006.

On December 20, 2006, Appellant filed a petition with the authority of the Hellenic Football Federation ("Hellenic FF") requesting the termination of the employment relationship with Respondent. This decision was notified to Mr. Kontostavlos on December 22, 2006.

On December 23, 2006, Respondent informed Appellant, the Hellenic FF and FIFA's Dispute Resolution Chamber (DRC) that he took notice of the fact that Appellant had unilaterally terminated the employment relationship between them.

On December 28, 2006, Respondent was verbally notified during the training session of two upcoming training sessions taking place on December 31, 2006 at 22:00 and on January 1, 2007 at 7:00. On that same date, Respondent asked Appellant's president for a written notification of the location of the training sessions and for a training schedule.

On December 28, 2006, Respondent submitted a claim before FIFA against Appellant for the unilateral termination of their employment relationship. In his claim, Respondent argued that Appellant had imposed disciplinary measures on him; that it had failed to fulfill its financial obligations deriving from their employment relationship; and finally that it had unilaterally terminated the contractual relationship without just cause. Moreover, Respondent stated that he had signed the Greek Contract, written in Greek, a language that he apparently did not understand, in good faith regarding the remuneration terms.

In his claim, Respondent requested the DRC to order Appellant to pay a total amount of EUR 111,707, amount covering not only the allegedly outstanding remuneration owed to the Player but also a compensation for the unilateral and early termination of the employment relationship by Appellant.

With regard to the allegedly outstanding remuneration, the Player asked for the payment of a total of EUR 16,436, which included the following:

- a share of the salary of September 2006 in the amount of EUR 89.
- a share of the salary of October 2006 in the amount of EUR 69.
- the salaries for the months of November and December 2006 in the amount of EUR 769 each.
- the Christmas allowance of 2006 in the amount of EUR 380.
- a share of the installment of the further payments due on September 30, 2006 in the amount of EUR 1,600.
- the installment of the further payments due on November 30, 2006 in the amount of EUR 11,160.
- the uncovered costs for rent until December 2006 in the amount of EUR 1,600.

Concerning the unilateral breach, Respondent claimed before FIFA's DRC compensation in the amount of EUR 95,271 allegedly corresponding to the remaining value of the employment contract. In particular he claimed the following payments:

- the remuneration for the months of January until July 2007 in the total amount of EUR 5,991.
- the installments of the further payments due on January 30, 2007; March 30, 2007; June 30, 2007; September 30, 2007; November 30, 2007; January 30, 2008; March 30, 2008; and June 30, 2008; in the amount of EUR 11,160 each, i.e. overall the amount of EUR 89,280.

On December 31, 2006 and on January 1, 2007, the Player attended the odd training sessions mentioned in paragraph 21.

On January 3, 2007, Respondent sent a letter to Appellant asking him for the payment before December 24, 2006 of the allegedly outstanding remuneration in the amount of EUR 16,436 for the following:

- a share of the salary of September 2006 in the amount of EUR 89.
- a share of the salary of October 2006 in the amount of EUR 69.
- the salaries for the months of November and December 2006 in the amount of EUR 769 each.
- the Christmas allowance 2006 in the amount of EUR 380.
- a share of the installment of the further payments due on September 30, 2006 in the amount of EUR 1,600.

- the installment of the further payments due on November 30, 2006 in the amount of EUR 11,160.
- the uncovered costs for rent until December 2006 in the amount of EUR 1,600.

On January 3, 2007, Respondent also requested in writing an explanation for holding the training sessions at such abnormal times.

On January 29, 2007, the First-Grade Committee for the Resolution of Financial Disputes ("First-Grade Committee") accepted the petition of Appellant and acknowledged that the Employment Contract dated July 25, 2006 concluded between the parties was dissolved by virtue of the notice and termination on behalf of Appellant dated December 5, 2006 due to the exclusive culpability of Respondent.

On November 2, 2007, the DRC of FIFA decided the following:

> *"1. The claim of the Claimant, L., is partially accepted.*
>
> *2. Respondent, Ionikos, must pay the gross amount of EUR 76,258 to the Claimant, L., within 30 days as from the date of notification of this decision.*
>
> *3. In the event that the above-mentioned total amount is not paid within the stated deadline, an interest rate of 5% per year will apply as of expiry of the aforementioned time limit and the present matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.*
>
> *4. The Claimant, L., is directed to inform Respondent, Ionikos, directly and immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received".*

The DRC based its decision on the following arguments:

Concerning its own jurisdiction, the DRC ruled it was competent to hear the case in accordance with article 22.b of the 2005 edition of the FIFA Regulations on the Status and Transfer of Players ("FIFA Regulations") as:

> *"even though according to the documentation presented by the Hellenic Football Federation it seems to appear that the relevant national deciding bodies may formally be composed of an equal number of player and club representatives, Respondent was unable to prove that, in fact, the First and Second Grade Committees for the Resolution of Financial Disputes of the Hellenic Football Federation dealing with the present matter had met the minimum procedural standards for independent arbitration tribunals as laid down in art. 22 b) of the 2005 edition of the Regulations for the Status and Transfer of Players and in FIFA Circular 1010".*

Furthermore, the DRC found that there was no arbitration clause in favor of the national arbitration within the Hellenic FF; that Respondent had not entered an appearance before either the First-Grade Committee or the Second-Grade Committee but instead explicitly contested their competence; and that the principle of *res iudicata* invoked by Appellant was not applicable to that situation.

Addressing the merits, the DRC ruled that the English Contract was not replaced but completed by Greek Contract employment contract because:

> *"in the employment contract dated 19 July 2006 it was agreed that for the second year of the contract the remuneration terms of the first year of the contract should apply, whereas in the second employment contract dated 25 July 2000 no reference was made to the remuneration terms for the second year of the contract. (…)*
>
> *in view of this lack of substantial contractual terms in the second contract [Greek Contract], the Chamber decided that the first contract [English Contract] could not be considered as replaced but only complemented by the second contract [Greek Contract]. Therefore, the Chamber determined that the Claimant's [Respondent's] claim is based on the first contract [English Contract] in connection with the remuneration terms contained in the second contract[Greek Contract]".*
>
> [Clarifications made by the Panel]

Additionally, with regard to the unilateral termination of the employment relationship, the DRC found that Appellant did not have just cause to terminate. It reasoned that, since it was *"a one-time assault against a team-mate, no matter if verbally or physically, could not constitute per se a valid reason for termination of a labour relationship"*. In particular, the DRC emphasized that *"the party concerned should only have the right to terminate the contractual relationship as* ultima ratio*, i.e. in case of repeated incidents of such kind. Under such circumstances, a player committing such disciplinary infractions would also have to be warned beforehand of the eventual consequences of his actions if they were repeated".*

As a result of Appellant's breach of article 14 of the FIFA Regulations through the unilateral termination without just cause, Respondent was entitled to a compensation based on article 17 (1) of the FIFA Regulations based on the remaining value of the employment relationship between the parties and the amount of time that Respondent actually player for Appellant. The DRC ruled that this compensation would amount to EUR 60,000.

Furthermore, the DRC pointed out that by failing to pay due amounts to Respondent which had partially already been payable in September 2006, the Appellant had in fact itself breached the employment contract concluded with Respondent. Consequently, the DRC also ordered Appellant to pay the outstanding remunerations of Respondent for the period September – December 2006 amounted to EUR 16,258 (including salaries, allowances, and installment payments).

On March 4, 2008, the decision of the DRC was notified by fax on Appellant.

On March 20, 2008, Appellant filed its appeal of the DRC's decision dated November 2, 2007 to the CAS, requesting the following relief:

> *"**In Principle***
>
> *a) The Appeal is accepted and upheld.*
>
> *b) The Dispute Resolution Chamber of FIFA's decision passed in Zürich Switzerland on 2 November 2007 is declared null and void, FIFA is declared to not have jurisdiction over this case.*
>
> *c) The decision of the Appeals Committee of the HFF (no 48/29.01.2007) is confirmed.*

d) L. is to bear all the costs of this arbitration and should be ordered to contribute to Appellant's legal and other costs.

Subsidiary

I. The Appeal is accepted and upheld.

II. FC Ionikos owes no money to L. and is to pay him no money.

III. L. is to bear all the costs of this arbitration and should be ordered to contribute to Appellant's legal and other costs".

On April 4, 2008, Appellant filed the Appeal Brief with the CAS.

On April 11, 2008, the CAS Court Office notified FIFA of the present appeal proceedings and requested a clean copy of the decision issued by the FIFA DRC on November 2, 2007.

On April 11, 2008, the CAS Court Office served Respondent with the statement of appeal on behalf of Appellant after undergoing some difficulties in obtaining Respondent's address. Moreover, CAS invited Respondent to appoint an arbitrator.

On April 16, 2008, Appellant confirmed that it had withdrawn the application for stay of the challenged decision and the CAS Court Office noted this fact by letter on that same date.

On April 17, 2008, FIFA sent the CAS Court Office a letter informing that it renounced its right to intervene in the present arbitration proceeding and provided CAS with a clean copy of the decision taken by the DRC on November 2, 2007.

On April 28, 2008, FIFA sent a fax to the CAS stating that:

> *"having renounced to intervene in the present matter, by the fact that Appellant had not designated FIFA as a Respondent, any question related to the competence of FIFA's deciding bodies to pass a decision on the substance of the present dispute may not be taken into consideration by the CAS and the specific Panel. From a formal point of view, the relevant aspect does not fall within the discretion of any deciding body anymore. A different interpretation would per se constitute a violation of FIFA's right to be heard.*
>
> *In other words, the respective part of the challenged decision must be considered as having become final and binding in the meantime. Consequently, also a decision of the CAS annulling the challenged decision based on consideration about FIFA's competence would be affected by the formal error of a violation of FIFA's right to be heard, and would therefore, at the least, not be binding on FIFA".*

On May 7, 2008, the CAS Court Office acknowledged receipt of FIFA's letter dated April 28, 2008 and noted that the issue raised therein would be decided in due time by the Panel. On that same date, the CAS Court Office forwarded the letter to the parties.

On June 16, 2008, Respondent filed its answer to the appeal, requesting the following relief:

> *"The Appeal of Appellant against the decision of the FIFA Dispute Resolution Chamber dated 2 November 2007 is to be entirely dismissed.*

Appellant is to be obliged to pay Respondent the amount of EUR 76,258 plus interest of 5% per year from 4 April 2008.

The Decision of the FIFA Dispute Resolutions Chamber dated 2 November 2007 is to be approved.

Appellant shall bear all costs of the arbitration proceedings and the legal costs of Respondent".

On July 9, 2008, Respondent filed a new submission alleging the falsification of the witness statement of Mr. Sotirios Konstadinidis dated April 2, 2008. Consequently, he requested the Panel to disregard this statement and take into consideration the statement made by this witness on June 30, 2008 submitted by Respondent.

On July 29, 2008, the CAS Court Office invited the Hellenic FF to provide it with any documents establishing the conformity of the First-Grade Committee with FIFA Circular 1010 as well as for a copy of the relevant provisions of the Statutes of the Hellenic FF where the jurisdiction of the First-Grade Committee was defined.

On July 29, 2008, the CAS Court Office invited FIFA to lodge a copy of its file related to this matter. Moreover, with regard to its letter dated April 28, 2008, it reminded that FIFA had recognized the CAS jurisdiction in its Statutes.

On August 22, 2008, Counsel for Respondent made a new submission before the CAS. He sent the documents and evidence relevant to any employment of Respondent as requested by the CAS Panel on the letter dated July 29, 2008. Furthermore, Respondent argued that the Panel did not have jurisdiction to make document requests to the Hellenic FF and that Appellant bore the burden of proof of the alleged conformity of the First-Grade Committee with the FIFA Circular 1010. Additionally, Respondent submitted that Appellant should not be allowed to supplement its arguments or produce new exhibits.

On August 25, 2008, Counsel for Appellant noted that the Hellenic FF had provided the requested documentation but in their 2007 edition, which were not in force at the time the matter under dispute took place. Therefore, he requested a short extension of the deadline set for August 23, 2008 to produce *"certain relevant documents in light of Greek law"* because he *"would need to be sure that the documents to be filed are relevant in light of the correct applicable law"*. Moreover, he requested an extension of the deadline to indicate CAS whether the hearing of a representative of the Hellenic FF in light of the documents filed was necessary.

On September 5, 2008, Respondent lodged a new submission in response to the letters sent by CAS to the Hellenic FF on September 3, 2008 and to FIFA on September 4, 2008. Concerning the request to the Hellenic FF, Respondent maintained once more that the CAS was not authorized for such request.

Both parties returned the Order of Procedure signed on October 10, 2008.

On October 20, 2008, a hearing was held in the present matter in Lausanne.

LAW

Admissibility

1. The appeal is admissible as it was filed within the deadline stipulated in article 61 of the FIFA Statutes. The decision of the DRC was notified to the parties on March 4, 2008, the Appellant, therefore, had under article 61 of the FIFA Statutes until March 25, 2008 to file the appeal statement, which he did on March 20, 2008. The appeal statement and the appeal brief submitted subsequently fulfill the requirements of the CAS Code. Hence, the appeal is admissible.

Jurisdiction

2. The jurisdiction of CAS, which is not disputed, derives from articles 60 and 61 of the FIFA Statutes and article R47 of the CAS Code gives also basis for the jurisdiction of this Court.

3. The scope of the Panel's jurisdiction is defined in article R57 of CAS Code, which provides that *"the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance"*.

Applicable Law

4. Appellant requested that the Panel applied the FIFA Regulations, the Hellenic FF Regulations and Greek law, for two reasons: first, it claims that the parties signed an Employment Contract dated July 25, 2006 which was explicitly subject to various Statutes and regulations of Greek law; and second, Greek law is to be deemed the law most closely connected to this dispute due to the fact that the contract was concluded and performed in Greece and one of the parties is Greek.

5. In contrast, Respondent denies the applicability of Greek law and argues that there was no choice-of law clause contained in the contract. Thus, Respondent submits that the CAS should decide the dispute in accordance with the FIFA Regulations, and subsidiarily, Swiss law.

6. In the present case, the Panel concludes that the provisions applicable to this case are the FIFA Regulations in their edition of 2005. The 2005 edition of the FIFA Regulations rather than the 2008 edition is applicable for two reasons: first, the parties signed the employment contract in August 2006; and second, their employment relationship was terminated in December 2006 by Appellant's board.

7. Furthermore, the parties in the present case are bound by the FIFA Statutes for two reasons: first, they made a tacit choice of law when they submitted themselves to arbitration rules that contained provisions relating to the designation of the applicable law; and second, all parties are – at least indirectly – affiliated to FIFA. Therefore, this dispute is subject, in particular, to article 60(2) of the FIFA Statutes, which provides that CAS *"shall primarily apply the various regulations of FIFA and, additionally, Swiss law"* (CAS 2006/A/1180, para. 7.9). Hence, due to the indispensable need for the uniform and coherent application worldwide of the rules regulating international football (TAS 2005/A/983-984, para. 24), the Panel rules that Swiss law will be applied for all the questions that are not directly regulated by the FIFA Regulations (cf. CAS 2005/A/871, para. 4.15).

8. The Panel arrives to the above-mentioned conclusions as a result of adopting the following approach.

9. First, in order to determine the applicable law, the Panel examines article R27 of the CAS Code, which states that the provisions of the CAS Code *"apply whenever the parties have agreed to refer a sports-related dispute to the CAS. […]"*.

10. Subsequently, the Panel analyzes article R28 of the CAS Code which determines Lausanne, Switzerland as the seat of the CAS and each Arbitration Panel. Moreover, since neither party had, at the time of concluding the arbitration agreement, its domicile or habitual residency in Switzerland, the provisions contained in Chapter 12 of Switzerland's Federal Code on Private International Law ("PILAct") are applicable to this case (see TAS 2005/A/983-984, para. 17; CAS 2006/A/1024, para. 6.1; and TAS 2006/A/1082-1104, para. 47).

11. Therefore, the Panel examines article 187 of the PILAct, which addresses the issue related to the law applicable to the merits of the case and provides that *"the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected. The parties may authorize the arbitral tribunal to rule according to equity"*. The Panel emphasizes at this point that article 187 of the PILAct establishes a regime concerning the applicable law that is specific and different from those instituted by the general conflict-of-law rules of the PILAct in the subject (see RIGOZZI A., *L'arbitrage international en matière du sport*, Bâle 2005, para. 1166 ff.; KAUFMANN-KOHLER/STUCKI, *International Arbitration in Switzerland,* Zurich 2004, pg. 116; TAS 2005/A/983-984, para. 19 and CAS 2006/A/1024, para. 6.3).

12. The Panel underscores that not only the legal doctrine but also the CAS jurisprudence have acknowledged that article 187 PILAct allows arbitrators to settle the disputes in application of provisions of law that do not originate in a particular national law, such as sport regulations or the rules of an international federation (see RIGOZZI A, *op. cit.*, para. 1178; TAS 2005/A/983-984, para. 20 ff.; CAS 2006/A/1024, para. 6.9; and TAS 2006/A/1082-1104, para. 48).

13. According to the CAS jurisprudence and the legal doctrine, the choice of law made by the parties can be tacit or indirect, by reference to the rules of an arbitral institution. (see RIGOZZI A, *op. cit.*, para. 1172; KAUFMANN-KOHLER/STUCKI, *op.cit.*, pg. 118; CAS 2006/A/1024,

para. 6.5; and TAS 2006/A/1082-1104, para. 49). Moreover, there will be a tacit choice made by the parties when they submit themselves to arbitration rules that contain provisions relating to the designation of the applicable law (see KAUFMANN-KOHLER/STUCKI, *op.cit.*, pg. 120; TAS 2005/A/983-984, para. 34; CAS 2006/A/1024, para. 6.7; and TAS 2006/A/1082-1104, para. 49).

14. Thirdly, the Panel applies article R58 of the CAS Code, which provides that the CAS settles the disputes 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 that the CAS deems appropriate.

15. Consequently, the Panel analyzes article 13(1)d of the FIFA Statutes, which establishes the obligation for all members of FIFA *"to ensure that their own members comply with the Statutes, regulations, directives and decisions of FIFA bodies"*. Additionally, article 12(d) of the Statutes of the Hellenic FF extends the previously-mentioned obligation to comply with the FIFA Statutes, regulations, directives and decisions to that all members of the Hellenic FF.

16. As a result, since all the parties are – at least indirectly – affiliated to FIFA, and are thus bound by the FIFA Statutes (see RIEMER H.M., *Berner Kommentar ad. Art. 60-79 ZGB,* para. 511 and 515; CAS 2004/A/574; TAS 2005/A/983-984, para. 36; CAS 2006/A/1180, para. 7.10), the Panel examines 60(2) of the FIFA Statutes, which states that *"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"*.

17. Lastly, the Panel adheres to CAS jurisprudence stating that *"only if the same terms and conditions apply to everyone who participates in organized sport, are the integrity and equal opportunity of sporting competition guaranteed"*. (CAS 2006/A/1180, para. 7.9). As a result, CAS jurisprudence has consistently interpreted article 60(2) of the FIFA Statutes as to contain a choice of law clause in favor of Swiss law governing the merits of the disputes. For example, the Panel in the case CAS 2004/A/587 ruled that since the FIFA has its seat in Zurich, Swiss law is applicable subsidiarily to the merits of the case (CAS 2004/A/587, para. 8.2). This rule was subsequently supplemented by the Panel in case TAS 2005/A/902-903, which found that since the parties had subjected themselves to the FIFA Statutes and the CAS Code, and since the FIFA has its seat in Zurich, the matter would be settled by application of Swiss law (TAS 2005/A/902-903, para. 16 and 36). More recently, CAS jurisprudence cleared possible doubts and affirmed that *"the reference in article 17(1) of the FIFA Status Regulations to 'the law of the country concerned' does not detract from the fact that according to the clear wording of article 60§2 of the FIFA Statutes, the FIFA intended the interpretation and validity of its regulations and decisions to be governed by a single law corresponding to its law of domicile, i.e. Swiss Law"* (CAS 2007/A/1298-1300, para. 83).

Merits of the Appeal

18. In order to determine whether Respondent is entitled to receive a compensation payment from Appellant for the unilateral termination of the Employment Contract as ordered by the DRC, the Panel must answer the following questions:

    A) Is the Panel competent to review the jurisdiction of the DRC?

    B) Depending on the answer to question A), was the DRC competent to hear the case?

    C) Depending on the answer to question C), was Appellant entitled to terminate the Employment Contract with Respondent? In particular, the Panel shall decide on:

        i. the date of termination of the employment relationship;

        ii. the validity of the Private Agreement; and

        iii. the existence of just cause for Appellant to terminate the Employment Contract

    D) Depending on the answer to question c), what are the legal consequences for Appellant's unilateral termination of the Employment Contract? In particular, the Panel shall decide on:

        i. the amount of compensation owed for the unilateral termination; and

        ii. the outstanding amounts owed to Respondent for the period September 2006 to December 2006.

A. Panel's power to review the jurisdiction of the DRC

19. On April 28, 2008, FIFA sent a letter to the CAS Court Office alleging that the present CAS Panel lacked jurisdiction to review the jurisdiction of the DRC due to the fact that FIFA was not a party to the arbitration. Consequently, the parties addressed this issue in their oral pleadings and discussed whether article 75 of the Swiss CC was applicable to the present dispute. Article 75 of the Swiss CC, under the heading "protection of member's rights", reads: *"every member of an association is entitled by law to apply to the court to avoid any decisions passed by the association without his assent, which are contrary to law or the constitution of the association, provided the application is made within one month from the day on which he became cognizant of such resolution".*

20. In the present case, the Panel is called to settle a financial dispute between the parties based on the employment relationship existent between the same parties. The present matter is clearly not a membership related decision, which might be subject to article 75 of the Swiss CC but a strict contractual dispute. Moreover, both parties and FIFA in its statutes have agreed to the application of article R57 of the CAS Code, which gives the Panel full power to review the matter in dispute. As a result, the Panel holds that L. does have standing to be sued (cf. CAS 2006/A/1192, para. 47) and the present Panel has the power to review the jurisdiction of the DRC.

21. The Panel makes the following considerations to arrive to the previously mentioned holding.

22. First, the Panel examines the issue whether the Player and FIFA have standing to be sued and

notes that neither the FIFA Regulations nor the CAS Code contain any specific rule regarding the standing to be sued. Therefore, the Panel studies the definition given to the term "standing to be sued" by the CAS jurisprudence. In the case CAS 2007/A/1329-1330, the Panel ruled that *"(u)nder Swiss law, applicable pursuant to Articles 60.2 of the FIFA Statutes and R58 of the CAS Code, the defending party has standing to be sued (légitimation passive) if it is personally obliged by the 'disputed right' at stake (see CAS 2006/A/1206 […]). In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (cf. CAS 2006/A/1189; CAS 2006/A/1192)"* (CAS 2007/A/1329-1330, pg. 5, para 27).

23. Second, the Panel considers whether article 75 of the Swiss CC is applicable to the present case, looks into the interpretation given to article 75 of the Swiss CC, and realizes that this article has consistently been interpreted by Swiss legal doctrine and jurisprudence to mean that it is the association which has capacity to be sued (HEINI/SCHERRER, *"Basler Kommentar",* 2nd edition, 2002, no 20 ad Art. 75 Swiss Civil Code; RIEMER H.M, *op. cit*., no 60 ff. ad Art. 75 Swiss Civil Code; cf. BGE 122 III 283).

24. Nevertheless, the Panel indicates at this point that article 75 of the Swiss CC *"does not apply indiscriminately to every decision made by an association (Cf. for example BGE 52 I 72; BGE 118 II 12). Instead, one has to determine in every case whether the appeal against a certain decision by an association falls under Art. 75 Swiss Civil Code, i.e. whether the prerequisites of Art. 75 Swiss Civil Code are met in a specific individual case. If, for example, there is a dispute between two association members (e.g. regarding the payment for the transfer of a football player) and the association decides that a club (member) has to pay the other a certain sum, this is not a decision which can be subject to an appeal within the meaning of Art. 75 Swiss Civil Code. […]* ***A dispute between two football clubs, i.e. two association members, therefore, is not a dispute which can be appealed against under Art. 75 Swiss Civil Code. The sports association taking a decision is not doing so in a matter of its own, i.e. in a matter which concerns its relationship to one of its members, rather it is acting as a kind of first decision-making instance, as desired and accepted by the parties****"* (BERNASCONI/HUBER, *Appeals against a Decision of a (Sport) Association: The Question of the Validity of Time Limits stipulated in the Statutes of an Association,* published in German in the review SpuRt 6/2004, p. 268 ff.) [Emphasis added by the Panel].

25. Subsequently, the Panel abides by the CAS jurisprudence which supports the above-mentioned scholarly interpretation. For example, the Panel in the case CAS 2006/A/1192 was called to settle a dispute between the parties that had originated when the employment contract was breached by the club when it terminated the employment contract with the Player with immediate effect. When analyzing the applicability of article 75 of the Swiss CC, the Panel stated that *"at any rate, the present matter is clearly not a membership related decision, which might be subject to Article 75 CC but a strict contractual dispute. Accordingly, the Panel holds that Mr. Mutu does have standing to be sued"* (CAS 2006/A/1192, para. 41-48).

26. As a result, the Panel notes that FIFA in the present case offered a system of resolution of disputes, where FIFA was not a party but a neutral entity that was called to settle a strict contractual dispute between its members in a matter that did not concern FIFA's relationship

to one of its members. Furthermore, this neutral position was not changed by the fact that Appellant had the chance to get the case reviewed by CAS pursuant to FIFA's recognition of the jurisdiction of the CAS in the FIFA Statutes. Nevertheless, the Panel recognizes that the appeal filed before CAS challenging the decision of the DRC could concern FIFA. Therefore, FIFA could have intervened in the CAS arbitration proceedings by making use of article 41.3 of the CAS Code. However, when FIFA was given the opportunity to participate in these proceedings under article 41.3 of the CAS Code, it declined to do so.

27. Finally and with regard to the Player's standing to be sued, the Panel notes that, in filing a claim to FIFA when there might have been a possibility that another national tribunal was competent to hear the case pursuant to the FIFA Regulations, Respondent could have breached his contractual duties. Accordingly, Appellant was entitled to direct its appeal before CAS at Respondent in order to require him to refuse the FIFA's jurisdiction to rule on the issue of sanction and compensation.

B. DRC's competence to hear the case

28. The Panel rules that the DRC was competent to settle the dispute. In order to arrive to this conclusion, the Panel considers: firstly, the relevant provisions of the FIFA Regulations and their interpretation; secondly, the indirect reference to arbitration contained in the Greek Contract and the provisions of the Greek laws 2725/99 and 3479/06; and finally, the particular legal situation that governed football-related matters in Greece at the time when the dispute between the parties arose as well as other evidence presented in this case.

29. Initially, the Panel examines article 22b of the FIFA Regulations, which deals with FIFA's jurisdiction. This article states:

***"FIFA is competent** for: (…)*

Employment-related disputes between a club and a player that have an international dimension, ***unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level** within the framework of the Association and/or a collective bargaining agreement (…)"*

[Emphasis added by the Panel].

30. Furthermore, the Panel looks at the interpretation of article 22b of the FIFA Regulations given by the Commentary, which provides:

"FIFA is competent for: (…)

Employment-related disputes between a club and a player that have an international dimension, unless an independent arbitration tribunal has been established at national level. The international dimension is represented by the fact that the player concerned is a foreigner in the country concerned.

(…)

if the association where both the player and club are registered has established an arbitration tribunal composed of members chosen in equal number by players and clubs with an independent chairman, this tribunal is competent to decide on such disputes ***([Footnote 101]: A clear reference to the competence of the national arbitration tribunal has to be included in the employment contract. In particular, the player needs to be aware at the moment of signing the contract that the parties shall be submitting potential disputes related to their employment relationship to this body.)****"*

[Emphasis added by the Panel].

31. Consequently, the Panel finds that, pursuant to article 22b of the FIFA Regulations, the general rule is that all employment-related disputes between a club and a player that have an international dimension have to be submitted to the DRC. Only if the following conditions are met, can a specific employment-related dispute of international dimensions be settled by an organ other than the DRC:

- there is an independent arbitration tribunal established at the national level;
- the jurisdiction of this independent arbitration tribunal derives from a clear reference in the employment contract; and
- this independent arbitration tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs.

32. Secondly, the Panel considers the indirect reference to arbitration by a national dispute resolution body contained in Article 1 of the Greek Contract, concluded in July 2006. This reference was limited to saying *"In conformity with Law 2725/99,* ***as in effect today****"* [Emphasis added by the Panel].

33. Article 95 of law 2725/99, under the title "Financial dispute resolution committees", provides:

"The financial disputes arising from the contracts between athletes or coaches and sports clubs or sports associations which maintain a department of remunerated athletes are resolved by the Financial Dispute Resolution Committees, unless otherwise explicitly provided for within the contract.

(…)

3. The First-Grade Committees are composed by five (5) members as follows:

a) by one Chairman Judge of the Civil or Criminal Court of first instance and by two Judges of the Civil or Criminal Court of first instance acting as members, appointed by lot from a triple number of judges, which is appointed upon decision of the Tripartite Administrative Board of Athens' Court of first instance, according to the procedure set forth in the Organization of Courts and upon request of the relevant sports club or the plenary of the departments of remunerated athletes and, where no such plenary exists, of the athletic federation. One (1) Chairman judge and one (1) judge of a Civil Court of first Instance are appointed by lot following the same procedure. The knowledge and experience in matters relating to sports are particularly taken into account for the assignment of judges.

b) by one member of the executive board of the relevant sports club or the plenary session of the departments of remunerated athletes or, otherwise, by the executive board of the relevant

federation, preferably a lawyer, along with his deputy, appointed as appropriate upon a decision taken by the executive board

c) by one representative of the athletes, or, where appropriate, of the coaches, preferably a lawyer, together with his deputy appointed upon a proposal of the players' or coaches' Sports Union.

[Loose translation provided and clarifications made by the Panel]

34. However, the Panel emphasizes that, when the dispute between the parties arose in November 2006, article 29(12) of the law 3479/06 (which was in force since June 2006) had partially derogated law 2725/99 in matters of Greek football. Article 29(12) of the law 3479/06 reads:

"Especially for football issues, all issues relative to the function and organisation of football of the Hellenic FF and its members are regulated autonomously by Hellenic FF and its organs according to its statute and its regulations, along with the statute and regulations of the European and International Football federation, even if law 2725/1999 and other sports-related legislation provide otherwise. Issues of financial control for the subsidies that the Hellenic FF receives by the State, judicial review, public order and security remain to the exclusive competence of the State" [Loose translation provided by the Panel].

35. Following the prescription of article 29(12) of law 3479/06, the Hellenic FF amended its Statutes. Hence, on August 18, 2006, the dispute resolution system set forth in article 95 of law 2725/99 was replaced *ipso facto* by a new one which provided for a different composition of the First-Grade Committee.

36. Therefore, from the evidence presented in this case, the Panel makes the following findings:

- the Greek Contract was written in Greek, a language which Respondent does not speak or understand;
- this Greek Contract contained an unclear reference to arbitration, as it referred only to the number of a law but did not transcribe its contents; and
- this unclear reference was made to a dispute resolution system that was not the one that issued the decision in this case (as the dispute resolution system changed between the time the contract was signed and the dispute arose).

C. Legality of Appellant's termination of the employment relationship with Respondent

37. To begin section C., the Panel will address in subsection a) the issue concerning the date of termination of the employment relationship.

38. Subsequently in subsection b), the Panel will determine the characteristics of the employment relationship between the parties by deciding on the validity and legal nature of the Greek Contract.

39. Finally in subsection c), the Panel will address the issue whether Appellant was entitled to unilaterally terminate the employment relationship with Respondent. In other words, whether Appellant had just cause to terminate the employment relationship with Respondent.

a) Date of termination of the employment relationship

40. Related to the date of termination of the employment relationship, the Panel notices three relevant events: first, that Appellant filed its petition before the First-Grade Committee to terminate the employment relationship with Respondent on the December 21, 2006; second, that this petition was notified on Respondent on December 22, 2006; and third, that on December 23, 2006, Respondent acknowledged receipt of such petition and of the decision of Appellant's board to terminate the employment relationship.

41. As a result, the Panel decides to uphold the position taken by the DRC and rules that the employment relationship was terminated on December 21, 2006.

b) Validity and legal nature of the Greek Contract

42. Concerning the validity and legal nature of the Greek Contract, the Panel notes the different arguments made by the parties.

43. On one hand, Appellant argues that the English Contract was abandoned by mutual agreement by the parties as a result of the new negotiations between them. Moreover, it submits that this English Contract was not valid because it was never submitted to the Hellenic FF for approval. In contrast, the Greek Contract was submitted to the Hellenic FF for approval, which validated the agreement. Accordingly, Appellant claims that the only document governing its relationship with Respondent is the Greek Contract.

44. On the other hand, Respondent denies Appellant's allegations that the parties abandoned the English Contract by mutual agreement as a result of the new negotiations between them by claiming that if that would have been the case, the Greek Contract would contain an agreement on the cancellation of English Contract and would include provisions regarding the remuneration for the second year, making it complete. Thus, Respondent argues that the Greek Contract was just a complement to the English Contract, not a replacement and both documents would thus govern the employment relationship between the parties. Finally, with regard to the validity of the English Contract, Respondent claims that even if the English Contract was never submitted to the Hellenic FF for approval, this should not result in a disadvantage to Respondent, as it was Appellant's duty to submit it.

45. As a result of the divergence in views of the parties, the Panel deems it necessary to make reference to article 18(1) of the Swiss Code of Obligations ("Swiss CO"), which provides:

"When interpreting the form and the contents of a contract, the mutually agreed real intention of the parties must be considered and not incorrect terms or expressions used by the parties by mistake or in order to conceal the true nature of the contract […]".

46. According to the interpretation given to this article by CAS jurisprudence, "*(u)nder this provision,*

the parties' common intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention (Winiger, Commentaire Romand – CO I, Basel 2003, n. 18-20 ad Art. 18 CO). This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them (Winiger, op. cit., n. 26 ad art. 18 CO; Wiegand, Obligationenrecht I, Basel 2003, n. 19 ad art. 18 CO). The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation (Winiger, op. cit., n. 33, 37 and 134 ad art. 18 CO; Wiegand, op. cit., n. 29 and 30 ad art. 18 CO)" (CAS 2005/A/871, pg. 19, para. 4.29).

47. *"By seeking the ordinary sense given to the expressions used by the parties, the real intention of the parties must – according to the jurisprudence of the Swiss Federal Court – be interpreted based on the principle of confidence. This principle implies that a party's declaration must be given the sense its counterparty can give to it in good faith ('Treu und Glauben': WIEGAND W., op. cit., n. 35 ad art. 18 CO), based on its wording, the context and the concrete circumstances in which it was expressed (ATF 124 III 165, 168, consid. 3a; 119 II 449, 451, consid. 3a). Unclear declarations or wordings in a contract will be interpreted against the party that drafted the contract (ATF 124III 155, 158, consid. 1b): It is of the responsibility of the author of the contract to choose its formulation with adequate precision (*In dubio contra stipulatorem – *WINIGER B., op. cit., n. 50 ad 18 CO). Moreover, the interpretation must – as far as possible – stick to the legal solutions under Swiss law (ATF 126 III 388, 391, consid. 9d), under which the accrued protection of the weakest party"* (CAS 2005/A/871, pg. 19, para. 4.30).

48. Consequently, in order to decide whether the Greek Contract completed the English Contract as found by the DRC, the Panel looks at *"the mutually agreed real intention of the parties"* pursuant to article 18 of the Swiss CO and rules that, at the time of conclusion of the Greek Contract, Respondent was under the impression that he was signing the equivalent of the English Contract in Greek language for the purpose of getting the validation from the Hellenic FF. In view of that, the Panel concludes that the Greek Contract does not replace the English Contract but complements it. Moreover, the Panel finds that, in case of conflict among the provisions of the English Contract and the Greek Contract, the terms of the English Contract will prevail as expressly agreed by the parties in the English Contract.

49. The Panel arrives at the aforementioned conclusions based on the following reasons.

50. Initially, it is common for football players playing abroad in a country where they do not speak the official language of the club's league to negotiate their contracts in a language that they understand, frequently English, and to then sign two documents: one in the official language of the club's league and a second one in a language that they speak.

51. Subsequently, the Panel compares the English Contract and the Greek Contract and notes that both the English Contract and the Greek Contract have approximately the same length of roughly two years, both expiring on June 30, 2008. However, the Panel indicates at this point that there are several differences among these two employment contracts. First, the payment of installments during the second year of employment was only provided for in the English Contract. Second, the payment of the Christmas allowance, Easter allowance and vacation allowance were only provided for in the Greek Contract. Lastly, the Greek Contract contained

references to the applicability of Greek law and Greek Football Regulations, which were not contained in the English Contract.

52. From the testimonies produced at the hearing, the Panel notes that both employment contracts were drafted by Appellant but only the English Contract was toughly negotiated by the parties due to the fact that Respondent, who does not speak Greek, could not understand the provisions of the Greek Contract. Hence, even though he was told by Mr. Kontostavlos that both employment contracts contained the same provisions, Respondent requested for the inclusion of a clause expressly stating the prevalence of the English Contract in case of legal dispute. Finally, the Panel indicates that the condition for validation of the Greek Contract before the Hellenic FF requiring that the Player is represented by an attorney was not materially respected and that Mr. Karpetopoulos, despite the conflict of interests involved, signed on the Player's behalf.

53. Accordingly, the Panel finds that, at the time of conclusion of the Greek Contract, there was no mutual agreement reached between the parties to abandon the English Contract through the conclusion of the Greek Contract based on two reasons: first, Appellant drafted both contracts; and second, Respondent does not speak Greek and therefore could not have noticed the differences between the contracts, particularly as he was not represented by an attorney as required by the Hellenic FF and Mr. Kontostavlos falsely told him that there were no differences.

54. Contrary to Appellant's claims, the Panel holds that the English Contract evidences that the parties recognized the signature of the Greek Contract and expressly agreed in the English Contract that, in case of legal dispute, the terms of the English Contract would prevail. Consequently, the Panel cannot but hold that the Greek Contract complements the English Contract insofar its provisions are not conflicting with the provisions contained in the English Contract. In case of conflict, the terms included in the English Contract will prevail.

c) Existence of "just cause" for Appellant to terminate the employment relationship with Respondent

55. After determining that the employment relationship between the parties is governed by the English Contract and complemented by the non-conflicting provisions of the Greek Contract, the Panel has to look into article 13 and 14 of the FIFA Regulations to determine whether Appellant was entitled to terminate the employment relationship with Respondent.

56. On one hand, article 13 of the FIFA Regulations defends the principle of contractual stability by expressly stating that a contract between a player and a club can only be terminated on due date or by mutual agreement. Article 13 of the FIFA Regulations provides that *"a contract between a Professional and a club may only be terminated on expiry of the term of the contract or by mutual agreement"*.

57. On the other hand, the principle of contractual stability is not an absolute one as article 14 of

the FIFA Regulations allows both clubs and players to terminate the employment contract for a just cause. Article 14 of the FIFA Regulations provides: *"(a) contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) in the case of just cause".*

58. In this regard, the Panel studies the Commentary, which affirms that *"the Regulations aim to ensure that in the event of a club and a player choosing to enter into a contractual relationship, this contract will be honoured by both parties. A contract between a player and a club may therefore only be terminated on expiry of the contract or by mutual agreement. Unilateral termination of contract without just cause, especially during the so-called protected period, is to be vehemently discouraged"* (Commentary on the Regulations for the Status and Transfer of Players, pg. 38)

59. However, the FIFA Regulations do not define what constitutes *"just cause"*. Therefore, abiding by ample CAS jurisprudence, the Panel examines the relevant provisions of Swiss law, applicable to the interpretation of the FIFA Regulations.

60. For example, in the case CAS 2006/A/1062, the Panel stated that since *"the FIFA Regulations do not define when there is such "just cause". One must therefore fall back on Swiss law. Pursuant to this, an employment contract which has been concluded for a fixed term can only be terminated prior to expiry of the term of the contract if there is 'good cause' (see also ATF 110 I 167). In this regard Art. 337(2) of the Code of Obligations ("CO") states - in loose translation: 'Particularly any circumstance, the presence of which means that the party terminated cannot in good faith be expected to continue the employment relationship, is deemed to be good cause.' The courts have consistently held that a grave breach of duty by the employee is good cause (ATF 121 III 467; ATF 117 II 72)"* (CAS 2006/A/1062, para. 13). Additionally, another CAS Panel ruled that *"according to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (…). Particular importance is thereby attached to the nature of the obligation. The Swiss Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, of an objective or personal nature, under which the contract was concluded are no longer present (…). In other words, it may be deemed as a case of application of the clausula rebus sic stantibus. According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (…). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties such as serious breach of confidence (…). Pursuant to the jurisprudence of the Swiss Federal Supreme Court, the early termination for valid reasons shall be however restrictively admitted"* (CAS 2006/A/1180, para. 8.4)

61. Furthermore, the Panel considers the example given by Commentary of a situation which would constitute just cause, which states: *"player A, employed by club X, has displayed an uncooperative attitude ever since his arrival at the club. He does not follow the directives given by the coach, he regularly argues with his team-mates and often fights with them. One day, after the coach informs him that he has not been called up for the next championship fixture, the player leaves the club and does not appear for training on the following days. After two weeks of unjustified absence from training, the club decides to terminate the player's contract. The player's uncooperative attitude towards the club and his team-mates would certainly justify sanctions being imposed on the player in accordance with the club's internal regulations. The sanctions should, however, (at least in the beginning) be a reprimand or a fine. The club would only be justified*

in terminating the contract with the player with just cause if the player's attitude continued, together with the player disappearing without a valid reason and without the express permission of the club" (Commentary on the Regulations for the Status and Transfer of Players, page 40, para. 4).

62. As a result, the Panel concludes that Appellant violated the principle of contractual stability contained in article 13 of the FIFA Regulations in three ways: first, by prematurely terminating the employment relationship with Respondent without just cause on December 21, 2008; second, by failing to fulfill its financial obligations towards Respondent; and third, by abusing its rights to ask Respondent to participate at odd training sessions. The Panel bases its conclusion on the following findings.

63. First, concerning the legality of Appellant's unilateral termination, the Panel finds that the evidence produced by the parties (in particular testimonies of the witnesses provided at the hearing) established that by the time of the decision to terminate the employment relationship made by Appellant's Board, even if the Incident of November 14, 2006 was of a physical nature, it would not be severe enough to justify the termination of the employment relationship, especially since Respondent was not given a previous warning of the ultimate consequences of his actions if they were to be repeated. In this regard, the Panel agrees with the decision of the DRC and concludes that *"a one-time assault against a team-mate, no matter if verbally or physically, could not constitute per se a valid reason for termination of a labour relationship (…) the party concerned should only have the right to terminate the contractual relationship as ultima ratio, i.e. in case of repeated incidents of such kind. Under such circumstances, a player committing such disciplinary infractions would also have to be warned beforehand of the eventual consequences of his actions if they were repeated".*

64. Secondly, with regard to the outstanding payments, the Panel rules that Appellant has failed to particularly argue before this Panel that all the due payments until the termination of the contract had been accomplished. In particular, it failed to provide proof of payment of these amounts like, for example, receipts duly signed by Respondent or bank statements showing deposits in Respondent's bank account. Hence, this Panel agrees with the holding of the DRC and rules that Appellant was, at the time of termination, in breach of the employment contract due to non fulfillment of its financial obligations.

65. Finally, in connection with the training sessions that Respondent had to attend on December 31, 2006 at 22:00 and on January 1, 2007 at 7:00, the Panel understands that Appellant was still entitled to require Respondent to participate in training session until its petition pending with the Hellenic FF authorities for the termination of the employment relationship with Respondent was resolved. However, the Panel finds that making Respondent attend training sessions at such odd times constitutes an abuse of its rights. Consequently, Respondent was entitled to terminate the employment relationship with just cause.

D. Legal consequences of termination without just cause of the employment relationship between the parties

a) Amount of compensation owed to Respondent for the unilateral termination of the employment relationship

66. In the present case, the DRC ruled that it was adequate to award Respondent compensation for the breach of contract in the amount of EUR 60,000, after considering the remaining value of the employment relationship as well as the fact that Respondent had been playing with Appellant during approximately a quarter of the originally agreed contract period.

67. The Panel has to decide whether the amount of compensation as calculated by the DRC is reasonable and fair according to the conditions provided for under article 17(1) of the FIFA Regulations, which establishes the consequences of terminating the employment contract without just cause, i.e.: the disciplinary sanctions for Players that breach their contract during the protected period, and the monetary compensation owed to the injured party regardless of the time when the breach occurred.

68. Article 17(1) of the FIFA Regulations provides that:

"The following provisions apply if a contract is terminated without just cause: In all cases, the party in breach shall pay compensation. Subject to the provisions of Art. 20 and annex 4 in relation to Training Compensation, and unless otherwise provided in the contract, compensation for breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the Former Club (amortized over the term of the contract) and whether he contractual breach falls within a Protected Period. Entitlement to compensation cannot be assigned to a third party. If a Professional is required to pay compensation, the Professional and his New Club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties. In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period (…)".

69. With the purpose of interpreting article 17 of the FIFA Regulations, the Panel resorts to Swiss law, which under article 97 of the Swiss CO requires that the injured party receives an integral reparation of his damages by stating that:

"The debtor who fails to perform his obligation or does not fulfill it properly is liable for damages, unless he proves that there is no fault on his part […]".

70. CAS jurisprudence agrees that *"in principle the harmed party should be restored to the position in which the same party would have been had the contract been properly fulfilled"* (CAS 2005/A/801, para 66; CAS 2006/A/1061, para. 15; and CAS 2006/A/1062, para. 22). In particular, it declared that:

"According to Swiss legal doctrine, the injured party is entitled to an integral reparation of its damages pursuant to the general principles set forth in article 97 of the Swiss CO. Thus, the damages taken into account are not only those that may have caused the act or the omission that justify the termination but also the positive interest. The positive damages of the employee are the salaries and other material income that he would

have had if the contract would have been performed until its natural expiration. (…) (ENGEL P., Contrats de droit Suisse, Staempli Editions SA Berne (2000), pg. 499, section 2.1.2)" (CAS 2007/A/1447, para. 91).

71. Additionally, article 337c (1) of the Swiss CO is also relevant in this case as it addresses the consequences of unjustified employment termination. Article 337c (1) of the Swiss CO provides:

"If the employer dismissed the employee without notice in the absence of a valid reason, the latter shall 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 expiration of the fixed agreement period".

72. The Panel underscores the importance of article 337c (1) of the Swiss CO that can be evidenced by the fact that, by application of article 362(1) of the Swiss CO, the parties cannot deviate from its provisions to the detriment of the employee. If the parties were to do so, such detrimental stipulations or provisions would be considered void under article 362(2) of the Swiss CO.

73. Under Swiss law, therefore, the Player would be entitled to claim payment of the entire amount he could have expected, and compensation for the damages he would have avoided, if the employment relationship had been implemented up to its natural maturity. As a result, the compensation should be calculated taking into consideration all the amounts due to the Player until June 30, 2008. In other words, he would have received his monthly salary of EUR 769 from January 2007 to June 2008 (which would amount to EUR 13,842); an Easter allowance in 2007 and an Easter allowance in 2008 (which would amount to EUR 769); an vacation allowance in 2007 and an vacation allowance in 2008 (which would amount to EUR 769); a Christmas allowance in 2007 of EUR 769; the three remaining installments for the first year of employment amounting to EUR 33,480; and the six installments of the second year of employment amounting to EUR 62,000. In other words, Respondent would be entitled to receive a total of EUR 111,629 under article 337c (1) of the Swiss CO.

74. As it can be seen from the calculations, Respondent would be entitled to a larger amount under Swiss law than the one awarded by the DRC. However, since Respondent asked the Panel to reject the Appeal filed by Appellant and to confirm the decision of the DRC, the Panel cannot rule *ultra petita* and will have to abide by the figures awarded by the DRC (see TAS 2007/A/1233-1234, para 66).

b) The outstanding amounts owed to Respondent for the period September 2006 to December 2006

75. In addition to the compensation for the unilateral breach, by application of the principle of integral reparation crystallized in article 97 of the Swiss CO, Respondent is entitled to receive the outstanding payments that Appellant owes to him for the period September 2006 to December 2006.

76. These outstanding payments were calculated by the DRC in the amount of EUR 16,258. The Panel notes that the DRC considered all the claims made by Respondent during the proceedings before FIFA for outstanding payments of salaries, allowances and installments. Furthermore, the Panel underscores that neither Appellant nor Respondent provided any evidence either during the proceedings before the DRC or the present arbitration proceedings that this Panel could use to review the amount awarded by the DRC for outstanding payments. Additionally, the Panel takes into consideration that the fact that Respondent is entitled to these outstanding payments was not contested by either party. Consequently, the Panel finds that the amount awarded by the DRC was neither arbitrary nor excessive and therefore concludes that there is no need to review the amount fixed by the DRC, which appears appropriate under the circumstances and conforms to article 97 of the Swiss CO.

The Court of Arbitration for Sport rules:

1. The appeal filed by Ionikos FC against the decision issued on November 2, 2007 by the Dispute Resolution Chamber of FIFA is rejected.

2. The Decision issued on November 2, 2007 by the Dispute Resolution Chamber of FIFA is confirmed.

3. Ionikos FC is to pay L. the total gross amount of EUR 76,258, with interest accruing on such amount at the annual rate of 5% (five percent) as from April 4, 2008.

(…)

7. All other prayers for relief are dismissed.