Arbitration CAS 2008/A/1568 M. & Football Club Wil 1900 v. FIFA & Club PFC Naftex AC Bourgas, award of 24 December 2008

Panel: Mr. Hendrik Willem Kesler (the Netherlands), President; Mr. Michele Bernasconi (Switzerland); Mr. Efraim Barak (Israel)

Football
Contract of employment
Unilateral termination of the contract without just cause during the Protected Period
Validity of the contract of employment
Primacy to the contractual agreement in terms of stipulating the compensation for damages
Interpretation of art. 17 of the FIFA Regulations
Specificity of sport
Joint and several liability of the new club
Sporting sanctions

1. **The mere fact that there might be an existing contract between a player and a company on some personality rights of that player is not relevant and certainly does not make an employment contract concluded between that player and a club invalid or null and void. In international football sport, the concept of "federative rights" does not exist anymore and has been replaced by the notion – and value – of contractual stability. Therefore, contracts on personality rights between a player and a commercial company may have an "internal" validity and may have consequences in regard to the relations between the player and the company, but do not affect the power of such player to enter into an employment agreement with a football club and do not affect the validity of such employment contract even if the signing of the employment contract may be considered as a breach of the "internal obligation" between the player and the commercial company.**

2. **Art. 17 para. 1 of the FIFA Regulations provides that the adjudicating body must first verify whether there is any provision in the agreement at stake that does address the consequences of a unilateral breach of the contract by either of the party. Such clauses are, from a legal point of view, liquidated damages provisions.**

3. **The amount of the compensation to be awarded when determining the consequences of the unilateral termination of a contract must necessarily take all the specific circumstances of the case into consideration. It is for this reason that article 17 of the FIFA Regulations does not establish a single criterion, or even a set of rigid rules, but rather provides guidelines to be applied in order to fix a just and fair compensation.**

4. **The specificity of the sport must obviously take the independent nature of the sport, the free movement of the players but also the football as a market, into consideration.**

This criterion shall be used by a panel to verify that the solution reached is just and fair not only under a strict civil (or common) law point of view, but also taking into due consideration the specific nature and needs of the football world (and of Parties being stakeholders in such world) and reaching therefore a decision which can be recognised as being an appropriate evaluation of the interests at stake, and does so fit in the landscape of international football. Therefore, when weighing the specificity of the sport a panel may consider the specific nature of damages that a breach by a player of his employment contract with a club may cause. In this context, the asset comprised by a player is obviously an aspect which cannot be fully ignored.

5. **The player's new club is jointly and severally liable with the player for the payment of the applicable compensation. This liability is independent of any possible inducement by or involvement of the new club to a breach of contract.**

6. **The FIFA and CAS jurisprudence on art. 17 para. 3 may be considered not fully consistent, mainly since the decisions are often rendered on a case by case basis. The consistent line however is that if the wording of a provision is clear, one needs clear and strong arguments to deviate from it. It follows from a literal interpretation of the said provision that it is a duty of the competent body to impose sporting sanctions on a player who has breached his contract during the protected period: "shall" is obviously different from "may"; consequently, if the intention of the FIFA Regulations was to give the competent body the power to impose a sporting sanction, it would have employed the word "may" and not "shall". Accordingly, based on the wording of art. 17 para. 3 of the FIFA Regulations, a sporting sanction must be imposed.**

M. (the "Player" or the "First Appellant"), born in 1983, is a football player living in Switzerland.

Football Club Wil 1900 (the "Second Appellant" or "FC Wil"), is a Swiss football club with its headquarters in Wil, Switzerland. FC Wil is a member of the Swiss Football Association, which, in turn is affiliated to the Federation International de Football Association (FIFA).

FIFA (the "First Respondent") is the international federation governing the sport of football at worldwide level. FIFA is based in Zurich, Switzerland. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials, players and players' agents worldwide.

Club PFC Naftex AC Bourgas ("Bourgas" or the "Second Respondent"), is a Bulgarian football club with its headquarters in Bourgas, Bulgaria. Bourgas is a member of the Bulgarian Football Association, which, in turn, is affiliated to FIFA.

This appeal was filed by the Appellants against the decision rendered by the FIFA Dispute Resolution Chamber (DRC) passed on 30 November 2007 (the "DRC Decision"), notified to the Parties on 13 May 2008.

On 3 August 2004, the Player and Bourgas signed an Employment Contract (the "Employment Contract") as a professional player valid until 30 June 2005. A monthly salary of Bulgarian Leva BGN 7,190 plus bonuses for the Player was agreed upon.

By means of an annex, signed by Bourgas and the Player on 2 December 2004, the duration of the Employment Contract was extended until 30 June 2007. The annex stipulate a basic monthly salary for the Player of BGN 1,880.

The notable difference in the amount of the basic salary was the consequence of a decision of Bourgas to change the system of remuneration of the players in order to increase their stimulation and encourage them to put more efforts in participating in matches. Therefore, on 2 December 2004, as a complementary step to the reduction of the basic salary, the Player and Bourgas also signed an agreement whereby the Player ceded the use of his personality rights to Bourgas, in turn of which he would be paid several amounts until 15 January 2007.

By means of another annex signed by Bourgas and the Player on 12 December 2005, the duration of the Employment Contract was extended once again until 30 June 2009. This annex also stipulate a basic monthly salary for the Player of BGN 1,880.

On 1 February 2006, the Player signed an Employment Contract with the Swiss Club FC Wil, the Second Appellant.

On 16 February 2006, the Swiss Football Association (the "Swiss FA") requested the ITC for the Player at the Bulgarian Football Union. The Swiss FA waited until 17 March 2006, and since no answer was received until that day the Swiss FA informed the Bulgarian Football Union that the Swiss FA will proceed to register the Player provisionally starting March 18, 2006.

On 18 March 2006, the Player was provisionally registered by FC Wil at the Swiss FA. The Swiss FA referred to annex III, article 2, no. 5 from the FIFA Regulations concerning the Status and Transfer of Players.

On 25 April 2006 Bourgas filed a claim at FIFA against the Player and FC Wil for compensation for unjustified breach of the Employment Contract between the Player and Bourgas.

On 31 May 2006 the Player and FC Wil provided FIFA – via the Swiss FA – with their answers on Bourgas' claim, and requested that Bourgas' claim should be rejected.

The Player pointed out that he had on 15 July 2004 ceded the use and marketing of his personality and transfer rights to the company Top Kick Sport Management ("Top Kick") until 30 June 2012.

He also pointed out that in continuation, on 3 August 2004, Top Kick and Bourgas concluded an agreement for the loan of the Player's personality and transfer rights until 30 June 2005, and the Player signed with Bourgas an Employment Contract valid also until 30 June 2005.

The Player and Top Kick pleaded that on 30 June 2005, the loan of the Player to Bourgas expired and the Player's transfer rights would than return to Top Kick.

In this respect, the Player presented a letter dated 4 August 2004, signed by Bourgas, whereby the letter confirmed that if until 30 June 2005, Bourgas and Top Kick had not concluded a new agreement for the engagement of the Player, Bourgas will consent to the Player's transfer to a club specified by Top Kick.

The Player furthermore explained that regardless of this contractual situation, he also ceded his transfer and marketing rights to Bourgas on 2 December 2004 and at the same time signed a new Employment Contract with Bourgas valid until 30 June 2007.

Furthermore the Player confirmed that on 12 December 2005 this contract was mutually extended until 30 June 2009. The Player however alleged that Bourgas had pretended that it was acting with Top Kick's permission.

Finally the Player explained that later on, but still in December 2005, he decided that he did not want to fulfil the new contract that he had concluded with Bourgas, but that he wanted to respect the contract that he had signed in 2004 with Top Kick. Therefore, on 17 December 2005, the Player and Top Kick signed a new agreement over the Player's transfer and marketing rights.

Finally on 9 January 2006, Bourgas was informed by the Player that the contracts it had concluded with the Player on 2 December 2004 and 12 December 2005 were in breach with the original agreement signed between the Player, Bourgas and Top Kick in July 2004 and that they were therefore null and void.

Above that the Player pointed out that he terminated the Employment Contract between Bourgas and himself on 9 January 2006, due to outstanding salary payments.

The Player, however asked for that by FIFA, did not specify which exact payments were concerned.

FC Wil basically referred to the Player's arguments and stated that in view of the situation as described above, it presumed that the Player was not contractually bound to any club on 1 February 2006 and that it could therefore sign an Employment Contract with him without any financial consequences to third Parties.

On 27 August and 18 September 2006 Bourgas provided FIFA – via the Bulgarian Football Union – with its position on the answer of the Player and FC Wil and contested completely the Player's and FC Wil's arguments.

Bourgas first of all rejected the allegation that the Player's salaries were not regularly paid, but insisted that all amounts due to the Player were regularly paid.

Furthermore Bourgas declared that it had initially concluded an Employment Contract with the Player on 3 August 2004 by using the agency services of Top Kick and that the latter was paid EUR 20,000 for its services. Such payment was not a loan fee but a payment for agency services. Therefore the agreement between Bourgas and Top Kick was also not a loan agreement.

In continuation Bourgas concluded that it had, on the basis of the duly signed annexes, an employment relationship with the Player until 30 June 2009, contracts that were to be considered as legally valid.

Regardless of his existing contract, after the winter break of the 2005/2006 season, the Player did not return to Bourgas on 9 January 2006, as he was obliged to, but instead terminated his contract and concluded an Employment Contract with FC Wil.

As a result of that, on 25 January 2006, Bourgas informed FC Wil in writing and the Swiss Football Association via phone of the Player's contractual situation. Despite all this FC Wil finally concluded an Employment Contract with the Player on 1 February 2006.

Finally, in accordance with Art. 17 of the Regulations for the Status and Transfer of Players, Bourgas claimed for compensation to be paid by the Player in the amount of EUR 300,000, for sporting sanctions to be imposed on the Player, for the joined responsibility of FC Wil for the compensation to be paid by the Player and for the application of sporting sanctions on FC Wil for inducement to breach the contract.

Finally, Bourgas claimed for training compensation, to be paid by FC Wil for the training of the Player by Bourgas, in accordance with Art. 20 of the aforementioned Regulations.

On 5 January 2007 the Player and FC Wil submitted their second response, entirely rejecting Bourgas' position. In particular, they rejected Bourgas version that Top Kick was only acting as the Player's agent, but they emphasized once again that the Player's right were loaned to Bourgas for one season. In this respect, they referred to the previously submitted letter of Bourgas dated 4 August 2004 whereby Bourgas had acknowledged such legal situation.

Furthermore the Player expressed that Bourgas had put him under pressure for the signature of the Employment Contracts on 2 December 2004 and 12 December 2005 and that he was not aware of the contents of the said contracts, as they were in a language he did not master.

Furthermore the Player reiterated that Bourgas had not regularly paid his salaries and in this respect, stated that Bourgas had not submitted reliable evidence for its allegation that all salaries were regularly paid. The Player also rejected Bourgas' argument that he had been paid an advance payment in December 2005.

However, despite FIFA's specific request to the Player on 27 November 2006, he never specified which exact monthly salaries allegedly have remained unpaid. Finally, the Player invokes that FIFA is not competent to decide on the present matter, since neither the Player nor Bourgas are affiliated to FIFA.

The DRC dealt with the case at stake on 30 November 2007. Entering into the substance of the matter, the DRC concluded first of all that it was the competent body to decide on the present litigation involving a Bulgarian club, a (…) player, and a Swiss club regarding a dispute in connection with the consequences of the established breach of an Employment Contract concluded between the Parties.

The DRC considers also that the lack of direct affiliation of the Parties to the present dispute to FIFA does not affect the competence of the DRC to decide on the matter at stake. In this respect, the DRC emphasized on the one hand that it is competent – its competence is established on the Regulations for the Status and Transfer of Players (Art. 24 par. 1 in conjunction with Art. 22(b)) and the 2005 edition of the Rules Governing the Procedures of the Player's Status Committee and the Dispute Resolution Chamber – and on the other hand that the Parties to the present dispute are to be considered as indirect affiliates to FIFA and are therefore subject to the jurisdiction of the FIFA deciding bodies.

Finally on this item, the DRC concluded that the 2005 Edition of the FIFA Regulations for the Status and Transfer of Players (the "Regulations") are applicable on the case at hand.

Based on the previous considerations, the DRC has also reached the following considerations on the substance of the matter, answering five particular questions.

1) *Has a valid Employment contract existed between the Player and Bourgas at the moment of the signature of an Employment contract between the Player and FC Wil?*

   The DRC underlined that all the contracts between the Player and Bourgas contain all the *essentialia negotii* of a labour contract.

   The DRC furthermore rejected the arguments of the Player that Bourgas had put him under pressure for the signature as well as the Player's argument that he was not aware of the contents of the contract in question, as they were not in a language he did not master.

   Considering the 'pressure-argument', the DRC noted that the Player did not bring any evidence forward to corroborate this allegation.

   As far as the contents and language arguments, the DRC considered that signing a contract despite not knowing its contents due to the language, is a matter that comes for the own responsibility of the Player himself and the negative consequences cannot be borne by the other party to the relevant contract.

   The DRC than took into consideration the question of the contract the Player signed with Top Kick management sports. According to the applicable regulations for the Status and Transfer of Players (Art. 13 to 18), a football player can only be bound by an employment

contract to a football club, but not to a company that is not a football club. Therefore such a company is not in a position to loan a football player to a football club.

As to the validity of the contract, the DRC considered that although the Player sent a termination note to Bourgas on 9 January 2006 due to alleged outstanding salary payments, this termination notice is an approval and admission by the Player that until at least 9 January 2006, there is still an existing employment relationship between the Player and Bourgas.

The DRC finally considered regardless of the above that Top Kick never tried to become a party to current proceedings by an application for intervention. Therefore the DRC decided that the Employment Contracts signed between the Player and Bourgas, which had a duration until 30 June 2009, were concluded validly.

2) *If yes (i.e. if there was a valid Employment agreement), who is responsible for the termination of the Employment contract with Bourgas and was there a just cause for such termination?*

The DRC first of all took into consideration that the Player invoked that he had terminated the Employment Contract with Bourgas on 9 January 2006 due to outstanding salary payments.

The DRC also noted that the Player never specified the exact payments allegedly outstanding, despite that he was asked to do so by FIFA on 27 November 2006.

Finally, the DRC considered that the Player, despite his allegation of unpaid salaries, has never made any request before FIFA against Bourgas for the payment of outstanding amounts, which he could have done easily. In this respect, the DRC estimated that the Player's behaviour is considerably contradictory, as he could have requested the payment of amounts to Bourgas if they were outstanding. Therefore the Player's respective position is, to a certain extent, in lack of credibility.

In view of the above the DRC decided that the Player's position that he had a just cause to terminate the Employment Contract with Bourgas on 9 January 2006 due to outstanding payments could not be followed and had therefore to be rejected.

3) *In case of unjustified breach of contract by the Player: which are the consequences thereof for the Player (compensation and sporting sanctions) and FC Wil (joint and several liability for payment of compensation)?*

The DRC took into account that the contractual employment relationship between the Player and Bourgas had a duration until 30 June 2009, and was breached by the Player on 9 January 2006.

In order to calculate the compensation due, the DRC took into account the remaining value of the Employment Contract between the Player and Bourgas, although the fact that Bourgas did not pay any compensation for the transfer of the Player, as well as the fact that the Player breached his contract not only during the protected period but, in fact just a few days after he had signed a new Employment Contract with Bourgas. Those facts were considered by the DRC as aggravating circumstances for the evaluation of the compensation for breach of contract.

Finally the DRC concluded that the amount of BGN 160,000 as compensation for the breach was to be considered as an appropriate and reasonable amount of compensation payable by the Player to Bourgas.

4) *In case of unjustified breach of contract by the Player: is FC Wil to be presumed to have induced the Player to breach his contract, and if yes, which are the consequences thereof for FC Wil (sporting sanctions)?*

First of all the DRC concluded that in accordance with art. 17 par. 2 of the Regulations, the new club of the Player, i.e. FC Wil, must be jointly and severally responsible for the payment of the above-mentioned amount of compensation. The DRC once more underlined that this joint liability of the Player's new club is independent from the question as to whether the new club has committed an inducement to contractual breach. This conclusion is in line with the well-established jurisprudence of the DRC that was repeatedly confirmed by the CAS.

The DRC furthermore underlined that according to art. 17 par. 4 of the Regulations, it shall be presumed, unless established to the contrary that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach.

The DRC then imposed sporting sanctions on the Player, namely a restriction of four months on his eligibility to participate in any official football match.

As to the question of the inducement by FC Wil, the DRC considered that FC Wil was informed in writing on 25 January 2006, i.e. before it signed a contract with the Player on 1 February 2006, by Bourgas that the Player was still under contract with Bourgas.

In this respect, it was furthermore noted by the DRC that Bourgas has uncontestedly also informed the Swiss FA, to which FC Wil is affiliated, on 25 January 2006 that Bourgas and the Player were still under contract.

As a consequence, the DRC came to the conclusion that FC Wil has clearly induced the Player to breach his Employment Contract with Bourgas and that the respective presumption contained in article 17 para. 4 of the Regulations could not be set aside. The DRC decided to ban FC Wil from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following to the notification of the present decision.

5) *Is training compensation owed by FC Wil to Bourgas for the training of the Player?*

The DRC clearly rejected this claim of Bourgas.

The DRC pointed out that the Player – born on 25 May 1983 – joined Bourgas on 3 August 2004, thus at the age of 21. In view thereof the DRC made reference to Annex 4 article 1 para. 1 of the Regulations, according to which training compensation shall be payable as a general rule, for training incurred up to the age of 21. As the Player was already at the age of 21 when he joined Bourgas, the DRC rejected the claim for training compensation.

Considering all the facts and arguments brought forward by the Parties and the DRC's views on the substantive matters, the following decision was reached by the DRC:

"1. The claim of the Bulgarian club PFC Naftex AC Bourgas is partially accepted.

2. *The player M. has to pay the amount of BGN 160,000 to PFC Naftex AC Bourgas within 30 days of notification of the present decision.*
3. *The Swiss club FC Wil 1900 is jointly and severally liable for the payment of the aforementioned compensation.*
4. *The club PFC Naftex AC Bourgas is directed to inform the player M. and the club FC Wil 1900 directly and immediately of the account number to which the remittance is to be made and to notify the DRC of very payment received.*
5. *If this amount is not paid within the aforementioned time limit, a 5% interest rate per annum as of the expiry of the said time limit will apply and the matter will be submitted to the FIFA Disciplinary Committee for its consideration and decision.*
6. *A restriction of four months on his eligibility to play in official matches is imposed on the player M. This sanction shall take effect as of the start of the next season of the player's new club following the notification of the present decision.*
7. *The club FC Wil 1900 shall be banned from registering any new players, either nationally of internationally, for the two next entire and consecutive registration periods following the notification of the present decision.*
8. *Any further request filed by the club PFC Naftex AC Bourgas is rejected.*
9. *(...)".*

On 3 June 2008, the Player and FC Wil filed the Statement of Appeal against the DRC Decision with the Court of Arbitration for Sport (CAS), pursuant to art. 61 para. 1 of the FIFA Statutes.

On 26 June 2008, the Player and FC Wil filed the Appeal Brief in which it states the facts and legal arguments on which the appeal is based, together with some documents and evidence upon which it intends to rely on. In total 38 exhibits were produced.

On 22 July 2008, FIFA filed its answer in which it states the facts and legal arguments in reply to the appeal.

On 21 July 2008, Bourgas filed its answer in which it states the facts and legal arguments in reply to the appeal, together with all documents and evidence upon which it intends to rely on.

As all Parties involved in this arbitration expressed their views that a hearing would not be necessary and upon careful review of the entire file the Panel decided on 8 September 2008 not to hold a hearing in the case at stake. By letter of the same date, the Parties were informed about this decision of the Panel.

On 8 September 2008 the Panel asked the CAS Administration to make a request to both of the Appellants for further information about the current position of the Player. Also the Second Appellant was asked whether they had received any compensation for the transfer of the Player to the Italian club U.S.O. Calcio Caravaggese.

LAW

Jurisdiction of CAS

1. The jurisdiction of CAS, which is not disputed, derives from article 61 para. 1 of the FIFA Statutes and article R47 of the CAS Code.

2. Additionally, the Parties confirmed the jurisdiction of CAS by signing the order of procedure.

3. It follows that CAS has jurisdiction to decide this dispute. The mission of the Panel follows from art. R57 of the CAS Code, according to which a panel has full power to review the facts and the law of the case. Furthermore, the same article provides a panel may issue a new decision, which replaces the decision challenged, or set the decision aside and refer the case back to the previous instance.

Applicable Law

4. Art. R58 of the CAS Code stipulates 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. Then, Art. 60 para. 2 of the FIFA Statutes provides as follows:

   "The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA [...] and, additionally, Swiss law".

6. In this case the Employment Contract between the Player and Bourgas contains a clause on the applicability of Bulgarian labour law. As none of the Parties appealed on this particular law, the Panel will therefore decide according to the various regulations of FIFA and additionally – if necessary – Swiss Law.

Admissibility

7. The Decision of the DRC was notified to the Parties on 13 May 2008.

8. The Appeals were lodged on 3 June 2008 within the deadline laid down in the FIFA Statutes and referred in the Decision itself.

9. The Statement of Appeal and the Appeal briefs subsequently submitted fulfil the requirements of the Code. The Appeals therefore are admissible.

Admissibility of the reply of the Respondents

10. In a letter, dated 18 September 2008, the Counsel for the Appellants asked that the Respondents answer's must not be taken into consideration by CAS because of the fact that they were filed after the expiration of the time limit set pursuant to the letter of the CAS Administration of 30 June 2008. The Panel rejects this request of the Appellants for the following reason:

11. The Respondents had a deadline of 20 days to file their answer pursuant to the letter of the CAS Administration of 30 June 2008 whereby the appeal brief was notified. The letter with the appeal brief and its exhibits were notified to the Respondents per courier so that the deadline started at receipt of the documents by the Respondents. The 20 day deadline was therefore respected.

Legal merits of the appeal

12. The appeal challenges the merits of the DRC Decision in respect to the following issues:
    a) The First Appellant has to be found not guilty nor responsible for unjustified breach of the Employment Contract with the Second Respondent, and thus no compensation and no sanctions has to be imposed on the First Appellant.
    b) The Second Appellant has to be relieved from all charges, such as bans and several liabilities in connection with wrongdoings, if any, of the First Appellant.
    c) In the event of rejection of the aforementioned petition under two, the several liability of the Second Appellant according to para. 3 of the challenged Decision and the ban according to para. 7 of the challenged Decision have to be cut adequately.

13. The Panel will analyze each of the said issues separately on the basis of legal aspects involved.

A. Validity of the Employment Contract

14. The Panel will first of all have to answer the question if there was a valid employment contract between the Player and Bourgas at the time the Player signed the agreement with FC Wil and will therefore again review the arguments with a legal aspect as submitted by the Parties.

15. Primarily the Panel notes that the First Appellant has not denied that the signature on the contracts annexes concluded between him and Bourgas is indeed his, the Player's.

16. The Player however claims that his registration with the Second Respondent must be considered as null and void because he was put under pressure to sign, was not aware of the

contents of the contract and annexes and moreover that he already signed a contract with an earlier date in which he ceded all his personal and image rights to another company called Top Kick Management.

17. The Panel is of the opinion that these arguments are not valid and therefore should be rejected for the following reasons.

18. In general, players are free to cede or sell their personal rights (or at least some rights) to private companies. To some extent, in the world of professional football this is quite common. Of course those agreements have to be executed (*pacta sunt servanda*) by the Parties involved to them.

19. A player is of course also free to conclude an employment contract with a football club.

20. The mere fact that there might be an existing contract between a player and a company on some personality rights of that player is not relevant and certainly does not make an employment contract concluded between that player and a club invalid or null and void. In international football sport, the concept of "federative rights" does not exist anymore and has been replaced by the notion – and value – of contractual stability. Therefore, contracts on personality rights between a player and a commercial company like Top Kick may have an "internal" validity and may have consequences in regard to the relations between the player and the company, but do not affect the power of such player to enter into an employment agreement with a football club and do not affect the validity of such employment contract even if the signing of the employment contract may be considered as a breach of the "internal obligation" between the player and the commercial company.

21. The Panel notes the allegations of the Player that he had been put under pressure and that he did not know the contents of the documents that he was signing. But the Panel notes that the Player has the burden of proof regarding these allegations. The Panel studied all evidence submitted as well as the FIFA file carefully and can however not find any document which supports the allegation of the Player on this issue. The Panel follows the FIFA in its reply.

22. Finally, the Panel took into consideration the fact that the Player fulfilled his services under the contract even after the termination of the period of the original agreement i.e. 30 June 2005 was and continued his relations with Bourgas during the season 2005/06 acting as a Player until the moment in which he terminated the contract on 9 January 2006.

23. In view of the above the Panel concludes that the Employment Contracts signed between the Player and the Second Respondent, which had a validity until 30 June 2009, are to be considered as valid and binding.

B. Termination of the contract

24. The Panel now will consider the aspects involved with the termination of the valid contracts.

25. It is undisputed that the Player terminated the contract on 9 January 2006 by virtue of a formal termination letter written and sent by his lawyer.

26. The reason for this early and unilateral termination was – according to the Player's position - given by the fact that the Player had allegedly outstanding salary payments.

27. Again considering all evidence submitted and after a careful review of the FIFA file the Panel cannot conclude that this was indeed the case and the reason for the termination of the Employment contract. Even after a special request from FIFA – on 27 November 2006 – the Player did not answer, neither did he make a request before FIFA against the Second Respondent for the payment of these outstanding amounts, neither did he ask in the procedure before the DRC for these amounts, submitting a claim for them.

    The Panel also noted that during the whole period of the agreement, the player did not demand nor claim with the Bulgarian Football Authorities the alleged unpaid amounts and this argument was raised only at a late stage as an attempt of justification of the termination of the contract.

28. The Panel notes that the Player finally produced before CAS some summaries of the amounts allegedly paid by Bourgas during the course of the contract. Going into the details of those summaries, the Panel concludes that the Second Respondent paid him an amount of BGN 62,150.07.

29. Calculating however, the salaries he was entitled to, according to the existing labour contracts, he should have received a sum of BGN 53,764.

30. Therefore, the Panel concluded that the Player's position that he terminated the contract with the Second Respondent because of the fact that there were outstanding payments which he had to receive should be rejected. The Player did not bring forward any convincing evidence to lift his burden of proof on this issue.

31. As the Player did not bring forward any additional arguments for the termination of his contract, which – as already earlier expressed by the Panel – he fulfilled until 9 of January 2006, the Panel can therefore come to no other conclusion that the Player had no just cause for the unilateral breach of his existing and valid Employment Contract with the Second Respondent. Therefore the Panel upheld the DRC conclusion that the Player is responsible for the unjustified breach of the contract during the protected period.

C. Financial compensation for breach of contract

32. As the Player is responsible for an unjustified breach of contract, the Panel has now to consider whether the DRC Decision on the compensation due by the Player should be adjusted, yes or no, as requested by the Appellants.

33. The DRC decided that an amount of BGN 160,000 had to be paid by the Player to the Second Respondent for the unjustified breach of contract on the basis of art. 17 para. 1 of the Regulations.

34. The first consequence of terminating a contract without just cause is that the party in breach is required to pay compensation. According to art. 17 para. 1 of the FIFA Regulations, "unless otherwise provided for 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", some of which are also provided in the same article.

35. The Panel refers to recent CAS awards and agrees with CAS jurisprudence according to which Art. 17 para. 1 of the FIFA Regulations *"asks therefore the adjudicating body to first verify whether there is any provision in the agreement at stake that does address the consequences of a unilateral breach of the agreement by either of the party. Such provisions are for instance so-called buy-out clauses, i.e. clauses that determine in advance the amount to be paid by a party in order to terminate prematurely the employment relationship. Such kind of clauses are, from a legal point of view, liquidated damages provisions"* (cf. CAS 2007/A/1358, N 87 as well as CAS 2007/A/1359, N 90).

36. The Panel notes that the Parties did not include in the Employment Contract any provision with respect to the amount of compensation to be paid in case of unjustified breach of the Employment Contract.

37. To determine the consequences of the unlawful termination of the contract by the Player, in particular the amount of compensation to be awarded, the Panel has to consider the categories of factors provided by art. 17 para. 1 of the FIFA Regulations.

38. First, the Panel considers it important to highlight the ultimate rationale of this provision of the FIFA Regulations, i.e. to support and foster contractual stability (cf. CAS 2005/A/876, p. 17: *"(...) it is plain from the text of the FIFA Regulations that they are designed to further "contractual stability" (...)"*.).

39. Second, the Panel follows existing CAS jurisprudence and considers *"that the amount of the compensation to be awarded must necessarily take all of the specific circumstances of the case into consideration. It is for this reason that article 17 para. 1 of the FIFA Regulations does not establish a single criterion, or even a set of rigid rules, but rather provides guidelines to be applied in order to fix a just and fair compensation. It is against this background that art. 17 requests to establish such an amount in accordance with due consideration of the law of the country concerned, the specificity of sport and further objective criteria, including in particular the remuneration and other benefits due to the player under the existing contract and/or the new contract, the remaining time of the existing contract up to a maximum of five years as well as the fees and expenses paid or incurred by the former club (amortised over the term of the contract). Finally, one has to consider whether the breach occurred within or out of the "Protected Period" (i.e. the period of three entire seasons or three calendar years, whichever come first, following the entry into force of the employment relationship, if the employment agreement was concluded prior to the 28th birthday of the player concerned, while the period is of two years, or two football seasons respectively, if the agreement was concluded after the*

28th birthday of the Player – cf. the section "Definitions" of the FIFA Regulations)" (cf. CAS 2007/A/1358, n. 91 as well as CAS 2007/A/1359, n. 94).

40. The Panel shall now review the factors indicated in art. 17 para. 1 of the FIFA Regulations in order to guide it in the fixing of the compensation to be awarded in this case.

41. The Panel starts by considering that in the present case the basic monthly remuneration paid to the Player, on the date when the Employment Contract was terminated, was of BGN 1,880. Further, the remaining time of the Employment Contract, i.e. the existing contract, was from January 2006 to June 2009, i.e. forty-two months, which means in total BGN 78,960.

42. The DRC however, in the case at stake, did not take into account the salary of the Player under his new contract.

43. The DRC could also not take into consideration presenting offers to the Second Respondent from other clubs that were obviously interested in the services of the Player, neither did the Second Respondent substantiate in any way which could be the economic damage suffered through the loss of the Player as a result of the early termination of his contract.

44. The Panel however, taking in consideration the special circumstances of this case, considers appropriate, fair and just to take into consideration also the salary the Player received with his new club FC Wil, the remuneration he received at his new club in Italy after leaving FC Wil and also the remuneration he receives at his present club in Switzerland.

    These documents were filed by the Appellants on 12 September 2008.

45. The Panel notes that obviously the Player was transferred first to his former club U.S.O. Calcio Caravaggese (an Italian "Serie C2" club) and that FC Wil did not receive any transfer amounts for this transfer, neither as they did for the additional transfer of the Player to his present club, FC La Chaux-de-Fonds. The Panel notes furthermore that the Player earns some CHF 3,000 and has costs for his apartment in about CHF 950. The Panel notes finally that the Player evidently cannot be considered as an international top class Player, because he has not the status as an international and is only playing since his departure with FC Wil at second division level.

46. As mentioned above, one of the criteria of art. 17 para. 1 of the FIFA Regulations is the law of the country concerned. However, in the present case, considering that neither of the involved Parties has made any particular comments or representations under this heading nor brought any evidence in this respect, the Panel is inclined to decide that this criterion is not relevant for the determination of the compensation in relation with the present dispute.

47. The Panel shares the view of other CAS Panels when stressing the importance of the notion of "sport specificity" in the interpretation and understanding of Art. 17 of the FIFA Regulations. Indeed, it is correct to say that *"Art. 17 para. 1 of the FIFA Regulations also refers to the specificity of the sport, without however providing any indication as the content of such factor. The Panel*

considers that the specificity of the sport must obviously take the independent nature of the sport, the free movement of the Players (cf. CAS 2007/A/1298, 1299 & 1300, n. 131 ff.) but also the football as a market, into consideration. In the Panel's view, the specificity of the sport does not conflict with the principle of contractual stability and the right of the injured party to be compensated for all the loss and damage incurred as a consequence of the other party's breach. This rule is valid whether the breach is by a Player or a club. The criterion of specificity of sport shall be used by a panel to verify that the solution reached is just and fair not only under a strict civil (or common) law point of view, but also taking into due consideration the specific nature and needs of the football world (and of Parties being stakeholders in such world) and reaching therefore a decision which can be recognised as being an appropriate evaluation of the interests at stake, and does so fit in the landscape of international football" (CAS 2007/A/1358, n. 104 as well as CAS 2007/A/1359, n. 107).

48. Furthermore, in the same quoted jurisprudence the Panels rightfully stated: *"Therefore, when weighing the specificity of the sport a panel may consider the specific nature of damages that a breach by a Player of his Employment Contract with a club may cause. In particular, a panel may consider that in the world of football, Players are the main asset of a club, both in terms of their sporting value in the service for the teams for which they play, but also from a rather economic view, like for instance in relation of their valuation in the balance sheet of a certain club, if any, their value for merchandising activities or the possible gain which can be made in the event of their transfer to another club. Taking into consideration all of the above, the asset comprised by a Player is obviously an aspect which cannot be fully ignored when considering the compensation to be awarded for a breach of contract by a Player (cf. CAS 2005/A/902 & 903, n. 122 ff.; more restrictive CAS 2007/A/1298, 1299 & 1300, n. 120 ff.)"* (CAS 2007/A/1358, n. 105 as well as CAS 2007/A/1359, n. 108).

49. As is stated above, the provisions of art. 17 para. 1 of the FIFA Regulations are not limitative and grant to the adjudicating body the discretion to have recourse to other objective criteria, which are applicable to the specific case. It should be stressed in this regard that in this particular case the Player is not part of any national team of his country of birth and was afterwards transferred by FC Wil to a small club in Italy – rather unknown outside this country – where he continued to play.

50. Finally, the Panel notes that Bourgas has not pleaded nor substantiated that income, results or performance of its football team declined because it was deprived of the Player's contribution nor did it state that it had to replace the Player by a new player which led to substantial extra costs.

51. Taking into due consideration all of the above and acknowledging that according to art. 42 para. 2 of the Swiss Code of Obligations if the exact amount of damages cannot be established, the judge shall assess them in his discretion, having regard to the ordinary course of events and the measures taken by the damaged party, the Panel comes to the following conclusion:

52. Given the fact that

a) the Player received from the Second Respondent a monthly remuneration of BGN 1,880;

b) the originally agreed termination of the Employment Contract was 30 June 2009;

c) the first new salary of the Player with FC Wil was of an equivalent of CHF 4'000 per month;

d) FC Wil is not known – according to European football standards – as a better performing club than the Second Respondent;

e) The Player earns with his present club in Switzerland only a relatively modest salary of CHF 3,000;

f) The Second Respondent did not indicate that it suffered sporting damages because of the loss of the Player.

53. The Panel therefore is satisfied, for all reasons exposed as above, and taking due into consideration all the elements of the dispute that it is appropriate to fix the compensation to be paid by the Player to the Second Respondent to an amount of BGN 90,000.

D. Joint and several liability of FC Wil (Second Appellant)

54. The DRC decided that FC Wil is jointly responsible for the payment of the above mentioned amount, if the same is not paid within one month of notification of the Decision by the Player. According to art. 17 para. 2 of the FIFA Regulations, FC Wil, as the Player's new club, is jointly and severally liable with the Player for the payment of any applicable compensation. This liability is independent of any possible inducement by or involvement of FC Wil to a breach of contract as committed by the Player.

55. The Panel decides, in this case, to uphold the position of the DRC in this regard.

56. According to art. 17 para. 2 of the FIFA Regulations, FC Wil, as the Player's new club, is jointly and severally liable with the Player for the payment of the applicable compensation. This liability is independent of any possible inducement by or involvement of FC Wil to a breach of contract, as confirmed by the CAS (Cf. CAS 2006/A/1100; CAS 2006/A/1141 and CAS 2007/A/1298, 1299 & 1300).

E. Sporting sanctions on the Player

57. The basis for imposing sporting sanctions is laid down in article 17 para. 3 of the FIFA Regulations. The said provision states that:

"Sporting sanctions shall also be imposed on any player found to be in breach of contract during the Protected Period".

58. It follows from a literal interpretation of the said provision that it is a duty of the competent body to impose sporting sanctions on a Player who has breached his contract during the protected period: "shall" is obviously different from "may"; consequently, if the intention of

the FIFA Regulations was to give the competent body the power to impose a sporting sanction, it would have employed the word "may" and not "shall". Accordingly, based on the wording of art. 17 para. 3 of the FIFA Regulations, a sporting sanction should have been imposed.

59. The Panel knows that the FIFA and CAS jurisprudence on this particular article 17 para. 3 may be considered not fully consistent, mainly since the decisions are often rendered on a case by case basis.

60. The consistent line however is that if the wording of a provision is clear, one needs clear and strong arguments to deviate from it. In the case at stake the Panel could not find any strong arguments to deviate from it. The breach of the contract was obvious and the Panel itself could not find arguments which would justify not imposing the sanctions as laid down in article 17 para. 3 of the FIFA Regulations.

61. This being so, the First Appellant's applications for adjustment of the sanctions is dismissed by the Panel.

F. Sporting sanctions on FC Wil as a consequence of inducement made by this club in the breach of the employment contract by the Player

62. Finally, this Panel has to decide regarding the Second Appellant's application to consider that the imposement of sporting sanctions on FC Wil because they should have induced the Player to breach his contract with the Second Respondent, should be adjusted.

63. The relevant provision is art. 17 para. 4 of the FIFA Regulations, which states that *"sporting sanctions shall be imposed on any club found to be inducing a breach of contract during the Protected Period"* and that *"it shall be presumed, unless established to the contrary, that any club signing a Professional who has terminated his contract without just cause has induced that Professional to commit a breach"*.

64. As a consequence, FC Wil is required to demonstrate that it should not be held liable for having induced the Player to breach the contract.

65. The Panel considers first that this is not an easy issue to consider as there are more Parties involved than just FC Wil and the Player.

66. The Panel notes that there obviously has been a conflict of interest – to summarize it briefly – between the Second Respondent and Top Kick. The collusion of the rights that both Parties were pretending to have with respect to the First Appellant results easily from the "FIFA file".

67. The Panel considers that under these particular circumstances, it seems not quite fair, and there is no sufficient convincing evidence, just on the basis of the registration of the Player at FC Wil to conclude that there was inducement on the side of FC Wil. The Panel notes that

the involvement of Top Kick, which even started civil proceedings against Bourgas, has to be taken into account as well. The DRC considered in its Decision that the mere fact that FC Wil was informed by Bourgas on 26 January 2006 that there was still an existing contract between Bourgas and the Player and that simply on the basis of that announcement FC Wil should have refrained from contracting the Player is not enough reasoning for the inducement of FC Wil.

68. From the FIFA file it is uncontested that FC Wil made serious investigations about the position of the Player. The Panel admits that the fact that the Player says that his club is overdue with salary payments is certainly not enough to justify the attitude of FC Wil.

69. On the other hand the Panel notes that FC Wil made quite serious investigations via its lawyer about the contractual situation of the Player with Bourgas.

70. The Panel underlines that art. 17 para. 4 of the FIFA Regulations gives some space for the new club to convince the football bodies that they might have played a role in contacts with the Player but certainly played a decisive role when it comes to inducement. All relevant circumstances should be considered (see CAS 2007/A/1358 and CAS 2008/A/1453).

71. The Panel also takes into account that the Swiss FA already in March 2006 decided to register the Player provisionally (18 March 2006) as they did not receive any information of the Bulgarian FA on their request for the ITC. The fact that the Bulgarian FA did not answer to the request of the Swiss FA should be credited in favour of Wil FC and confirm the believing of FC Wil that there was no valid contract between the Player and the Second Respondent.

72. The Panel therefore considers that it shall overrule the DRC Decision with regard to the imposement of sporting sanctions on FC Wil, as a result of the considerations as indicated above.

G. Other prayers for relief

73. This conclusion, finally, makes it unnecessary for the Panel to consider the other claims and requests submitted by the Parties to the Panel: accordingly all other prayers for relief are rejected.

The Court of Arbitration for Sport rules:

1. The appeal filed on 30 November 2007 by the Appellants M. and FC Wil against the Decision handed down on 13 May 2008 by the FIFA Dispute Resolution Chamber is partially upheld.

2. The Decision issued on 30 November 2007 by the FIFA Dispute Resolution Chamber is partially reformed in the sense that the player M. is ordered to pay to the Club PFC Naftex AC Bourgas an amount of BGN 90,000, plus interest at 5% per annum starting on 25 April 2006 until the effective date of payment.

3. The Decision issued on 30 November 2007 by the FIFA Dispute Resolution Chamber with respect to the sporting sanction on the player M. is upheld, and with respect to the sporting sanctions on FC Wil changed in the sense that no sporting sanctions on FC Wil are imposed.

4. (…).

5. (…).

6. All other or further claims and counterclaims are dismissed.