Arbitration CAS 2012/A/2996 FC Kryvbas v. Dorian Bylykbashi, award of 21 October 2013

Panel: Mr Mark Hovell (United Kingdom), Sole arbitrator

Football
Contract of employment
Unauthorised leave
Interpretation of the provision of the contract relating to disciplinary sanctions

1. **Absent any documentary evidence produced by either party to support their respective submissions that a player was or was not given permission to leave, it appears on balance unlikely that a club would allow a player to leave two days before a scheduled final match and before further training scheduled too. As such, it can be determined that the player is absent without permission.**

2. **If the drafting of a provision is unclear and leaves itself open to interpretation, priority must be given to a logic and reasonable interpretation of the clause. Therefore, if in the annex to an employment contract the majority of the 16 examples of behaviour that can result in a fine would incur fines of a few hundred US dollars and only 3 behaviours would incur a fine of "100% of salary", the logic and reasonable interpretation of a sanction for unauthorised leave incurring one of these fines of "100% of salary" cannot be 100% of the salary for one month knowing that the player earns a monthly salary of USD 45'000. It can only be meaning 100% of the salary for the days of unauthorised absence.**

1. THE PARTIES

1. FC Kryvbas (hereinafter referred to as the "Club" or as the "Appellant") is a football club with its registered office in Kryvyi, Ukraine. At the commencement of this procedure, it was a member of the Football Federation of Ukraine (hereinafter referred to as the "FFU") and played in the Ukrainian Premier League.

2. Mr. Dorian Bylykbashi (hereinafter referred to as the "Player" or the "Respondent") is an Albanian professional football player.

2. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the parties' written submissions, and evidence adduced in the present proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his award only to the submissions and evidence he considers necessary to explain his reasoning.

4. On 1 July 2009, the Player and the Club entered into an employment contract for the duration of 1 July 2009 to 30 June 2010 (hereinafter referred to as the "Contract").

5. On 14 July 2009, the Contract was registered in the Union of Professional Football Clubs of Ukraine Premier League. Further, on the same date, the Player's annex to the Contract was also registered (hereinafter referred to as the "Annex") which dealt with the financial obligations of the Club and the potential financial sanctions that may be imposed on the Player.

6. The Club scheduled a training camp between 11 and 25 January 2010, in Belek, Turkey.

7. On 11 January 2010, the head of the Club's team, the assistant of the chief coach and the sports physician all sent separate memorandums to the general director of the Club stating that the Player had failed to appear at training at the appointed time on that date and with the latter stating that the Player was absent from his physical examination.

8. On 12 January 2010, the head of the Club's team, the assistant of the chief coach and the sports physician all again sent memorandums to the general director stating that the Player had again failed to report to training and for his physical examination.

9. On the 11 and 12 of January 2010, the head of the Club's team, the administrator of the team and the coach of the team all signed a statement in relation to the Player's absence from training.

10. On 13 January 2010, the Club issued an order to reprimand the Player for failing to attend training on 11 January 2010 (hereinafter referred to as the "First Order"). Further, both the two personnel department inspectors of the Club and the head of the team signed a statement stating that the Player had been provided with the First Order but had refused to sign the same.

11. On 22 April 2010, the Albanian Football Association (hereinafter referred to as the "AFA") wrote to the Club requesting that a number of Albanian players, not including the Player, be released on 18 May 2010 to the AFA until 2 June 2010 to enable them to participate in two friendly international matches. The Player and the other Albanian players at the Club asked if they could leave in advance of that date, but as the squad was still training and had a final game on 9 May 2010, the Club verbally refused their request.

12. On 5 May 2010, the Club issued an order, entitled "Order No 06", for the chief coach of the Club to announce after the final match on 9 May 2010. The announcement was the date of the next training camp commencing on 10 June 2010 at 2pm.

13. On 7 May 2010, the assistant of the chief coach and head of the team both sent a memorandum to the general director of the Club stating that the Player had *"willfully left the location of the team"* on that date and requested him to take appropriate measures. Further, the sports physician sent a memorandum to the general director stating that the Player was absent from his physical examination on that date.

14. On 8 May 2010, the sports physician again sent a memorandum to the general director stating that the Player was absent from his physical examination on that date. Further, the head of team and assistant of the chief coach both sent a further memorandum to the general director stating that the Player was absent on that date.

15. On 9 May 2010, the chief coach, coach and administrator of the team signed a statement providing that the Player was absent when the details of the June training camp was announced to the team.

16. On 9 May 2010, the sports physician again sent a memorandum to the general director stating that the Player was absent from physical examination on 9 May 2010. Further, the head of team and assistant to the chief coach sent a memorandum to the general director of the Club stating that the Player was absent from both the final match with FC Zakarpattia and from the team meeting after the game.

17. On 10 May 2010, the team's chief coach, coach, and administrator all signed a statement in relation to the Player's absence from 7 May 2010.

18. On 10 May 2010, the team's coaches met with the general director in relation to the Player's absence from 7 May to 9 May 2010. They discussed possible sanctions to impose on the Player. They decided that the Player should be deprived of his May 2010 salary payment pursuant to the Contract and the Annex.

19. On 11 May 2010, the Club issued an order entitled "Order No 55-k" (hereinafter referred to as the "Second Order") to set the Player's salary for May 2010 as the amount defined by legislation as the living wage for an able-bodied person in connection with the Player's unauthorized departure on 7 May 2010 and his failure to appear at the training between 7 and 9 May 2010.

20. On 10 June 2010, the sports physician sent a memorandum to the general director stating that the Player was absent from his physical examination. Further, the assistant of the chief coach and head of team both sent a memorandum to the general director stating that the Player did not appear at the training base at the scheduled time on that date.

21. On 11 June 2010, the sports physician sent a memorandum to the general director stating that the Player was absent from his physical examination. The head of the team and assistant of the chief coach sent separate memorandums to the general director stating that the Player was absent from the location of the team.

22. On 11 June 2010, the team's coaches met with the general director regarding the absence of the Player and others from the training camp without good reason and possible sanctions to impose upon them. They decided that the Player should be deprived of his June 2010 payment in accordance with the Contract and the Annex.

23. On 12 June 2010, the sports physician sent a memorandum to the general director stating that the Player was absent from his physical examination. Further, the head of team and assistant of the chief coach sent separate memorandums to the general director stating that the Player did not appear at the training base at the scheduled time on that date.

24. On 13 June 2010, the sports physician again sent a memorandum to the general director stating that the Player was absent from his physical examination. The head of team and assistant of the chief coach sent separate memorandums to the general director again stating that the Player did not appear at the training base at the scheduled time on that date.

25. On 14 June 2010, both the personnel department inspector and the head of the team signed a statement providing that the Player refused to give a written explanation regarding his failure to appear at the training camp on 10 June 2010.

26. On 14 June 2010, the Club issued an order entitled "Order no 74-k" setting the salary of the Player for June 2010 as the living wage for an able-bodied person in connection with the failure to appear at the training camp on 10 June 2010 (hereinafter referred to as the "Third Order").

27. On 17 June 2010, both of the personnel department inspectors and the Club's accountant signed a statement stating that the Player had been provided with the Second Order and the Third Order and had refused to sign the same. Further, stated that the Player did not provide any explanation for his absence.

28. On 13 December 2010, after the Contract had ran its course, the Player submitted a claim in front of the FIFA Dispute Resolution Chamber (hereinafter referred to as the "FIFA DRC") requesting the total amount of USD 90,000 in relation to outstanding salaries for May and June 2010.

29. On 10 May 2012, the FIFA DRC produced its ungrounded decision (hereinafter referred to as the "Appealed Decision") in which it determined that:

    "1. The Claim of the Claimant, Dorian Bylykbashi, is accepted.

    2. The Respondent, FC Kryvbas Kryvyi Rih, has to pay to the Claimant, Dorian Bylykbashi, within 30 days as from the date of notification of this decision, the amount of USD 90,000.

3. If the aforementioned sum is not paid within the above mentioned deadline, an interest rate of 5% per annum will apply as of expiry of the fixed time limit until the dates of effective payment, and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for its consideration and a formal decision.

4. The Claimant, Dorian Bylykbashi, is directed to inform the Respondent, FC Kryvbas, immediately and directly of the account number to which the remittance is to be made and to notify the DRC judge of every payment received".

30. The Appealed Decision was sent to the parties by fax from FIFA on 1 June 2012. A copy was also sent by fax to the FFU.

31. On 26 October 2012, FIFA faxed the grounds for the Appealed Decision to the parties and the FFU.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

32. On 15 November 2012, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as "the CAS"). It challenged the Appealed Decision, submitting the following request for relief:

"1. To cancel the decision of the FIFA DRC of 01.06.2012

2. To refuse all demands of Mr. Bylykbashi as ungrounded and illegal.

3. To award all costs of the procedure before CAS to the Respondent".

33. On 26 November 2012, the Appellant filed its Appeal Brief with the CAS, with the following amended prayers for relief:

"1. To annul the appealed decision of the FIFA DRC in the above case as ill-grounded and passed (without prejudice) in violation of the procedural rights of the Appellant (the Club).

2. To consider all the Player's Bylykbashi demands, put forward before FIFA DRC as ill grounded and illegal.

3. To award all costs of the procedure before the CAS to the Respondent".

34. On 17 December 2012, the Respondent filed his Answer, with the following request for relief:

"… to confirm that the Club has to pay to me the amounts of USD 90.000, -- and to reimburse the costs of the proceedings before the Court of Arbitration".

35. On 30 January 2013, the Appellant requested that this matter be joined with another matter that it was involved in with another Albanian player (Mr. Bulku CAS reference number 2013/A/3073). This player was also represented by the same counsel as the Respondent, and the same Sole Arbitrator had been appointed by the CAS. Whilst not formerly joining the two respondents to the same procedure, the CAS Court Office

endeavoured to consolidate the organisation of the two matters; including looking for one mutual hearing date and issuing consolidated directions.

36. On 25 April 2013, despite the Appellant's initial request for a full hearing in this matter, the Appellant now requested that the Sole Arbitrator convene a hearing at which neither the Club's officials nor its advisers would be present, and that only the witnesses would be present.

37. On 3 May 2013, the CAS Court Office issued directions seeking the parties' final position on whether a hearing was requested, and if so, suggested 23 or 24 May 2013 as potential hearing dates; then to submit detailed witness statements for any witness they sought to rely upon; and then after the exchange of all witness statements, for the opposing party to state whether it wished to challenge such evidence.

38. On 14 May 2013, the Respondent filed witness statements from two former teammates of the Player: I. and A. Furthermore, he announced that he and Mr Bulku would attend the hearing on 23 or 24 May 2013.

39. Later on 14 May 2013, the Appellant filed witness statements from K., Z., O., D. (all employees of the Club), V., S. and R. (all players at the Club). The Appellant requested the matter be dealt with by written submissions.

40. On 15 May 2013, the CAS Court Office received FIFA's case file and forwarded the same to the parties and to the Sole Arbitrator.

41. On 16 May 2013, the Respondent's attorneys indicated that they too were now unable to attend the potential hearing dates, but the Respondent could attend.

42. On 22 May 2013, the Sole Arbitrator suggested that the parties accept each other's witness evidence to the CAS file, including any witness evidence filed in the CAS 2013/A/3073 procedure; be given the opportunity to make final written submissions on the witness evidence of the other party; and the Sole Arbitrator then produce a final award on the basis of such submissions and evidence; without the need for a hearing.

43. On 27 May 2013, the Appellant agreed with the Sole Arbitrator's suggestion. However, the Respondent by its attorneys' letter, also dated 27 May 2013, on the one hand agreed with the Sole Arbitrator's suggestions, but on the other hand suggested *"personal hearings of the* [Respondent's] *independent witnesses"*.

44. On 28 May 2013, the CAS Court Office sought clarification from the Respondent, who agreed with only some of the Sole Arbitrator's suggestions of 22 May 2013. On 4 June 2013, the Appellant confirmed its entire agreement with these suggestions.

45. On 11 June 2013, both parties were granted with the opportunity to submit questions to their counter-party's witnesses within a week.

46. On 18 June 2013, the Respondent submitted a copy of his statement that formed part of the FIFA file and requested the Appellant's witnesses comment on the same. The Appellant did not submit any questions for the Respondent's witnesses.

47. By a letter dated 26 June 2013, the CAS Court Office duly requested the Appellant to request its witnesses to comment upon the Respondent's statement.

48. On 9 July 2013, the CAS Court office made a final request as no further communication had been received from the Appellant.

49. The CAS Court Office attempted to communicate with the Appellant via fax and by DHL courier, however, the courier reported that the Appellant had been subject to an insolvency procedure and no one would accept the letters or respond any further.

50. On 4 October 2013, the CAS Court Office informed the parties that due to the lack of any further correspondences from the Appellant, the Sole Arbitrator would issue his decision based on the CAS file.

4. THE CONSTITUTION OF THE PANEL AND THE HEARING

51. By letter dated 9 January 2013, the CAS informed the parties that the Panel to hear the appeal had been constituted as follows: Mr. Mark Hovell, Sole Arbitrator. The parties did not raise any objection as to the constitution and composition of the Panel.

52. Article R57 of the Code for Sports-related Arbitration (hereinafter the "CAS Code") provides that the Sole Arbitrator may, after consulting the parties, decide not to hold a hearing if he deems himself sufficiently well informed. The Sole Arbitrator noted that neither of the parties eventually requested a hearing. The Sole Arbitrator determined that, having given the parties the opportunity to file detailed witness evidence, the opportunity to add to their written submissions by the further round of submissions and the fact that the Appellant was now apparently insolvent and no longer taking an active part in the procedure, he was sufficiently well informed to decide the case without holding a hearing.

5. THE PARTIES' SUBMISSIONS

A. Appellant's Submissions

53. The Appellant's submissions, in essence, may be summarised as follows:

54. Due to the mistake of an FFU Official, in charge of communications between the Club and FIFA, the Club did not receive any correspondence in relation to the proceedings commenced

by the Player before FIFA. Therefore the Appealed Decision was not based on the true merits of the case and applicable legislation.

55. Initially, Player's attitude toward his obligations was adequate and he became an integral part of the team. Therefore, he enjoyed extraordinary treatment in that his salary, which under the first contract was 15,000 USD per month, was increased by 3 times during the duration of the contract, which did not provide for such increases. In fact, he Player did in fact started to receive 45,000 USD since August 2008. This was 11 months before the expiration of his 2007 contract. Therefore, the Club willingly overpaid the player by 330,000 USD under his previous contract, which makes Player's present claim unscrupulous from a moral standpoint.

56. Since the Player signed the Contract on preferential terms, the Player perceived this as grounds to disregard discipline. The Player considered that regular training did not apply to him and started to approach training without due diligence. This resulted in a decline of his performance as reflected in the Player's stats in 2010. Because of his loss of form, of enthusiasm and of discipline, he was selected to play in only 3 matches.

57. In January 2010, the Player ignored his direct obligation to be present at a training session in Turkey which was scheduled from 11 until 25 January 2010. The Player arrived at the training camp 2 days late without permission for such delay and without any valid reasons. Under the Ukrainian Labour Code (hereinafter referred to as the "ULC"), any absence from work without good reason for longer than 3 hours constitutes absenteeism, and is sufficient grounds for unilateral termination of a contract by an employer. Further, in accordance with the Annex to the Contract, such a violation constituted a ground for the depravation of 100% of the Player's salary. However, the Club did not implement these harsh measures at that stage, and instead reprimanded the Player with the First Order.

58. However, the Player did not draw any lessons from this lenient approach and his negative attitude to his obligations escalated.

59. In April 2010, when the Player's teammates were called by the AFA to partake in the national team, the Player asked the Club to allow him to be released. This request was unambiguously refused as the Club had scheduled training sessions and a game on 9 May 2010. The Club explicitly made the Player aware that he was unable to leave before the end of the May training camp. However, the Player left the vicinity of the training base at his own discretion and did not show up for training from 7 May 2010 onwards without a valid reason. Due to this second unauthorised absence from work, the Player was sanctioned and was deprived of his May 2010 salary only, despite the fact that the Club was entitled to terminate the Contract.

60. In June 2010, the Player did not show up for June's training camp and when asked for an explanation in relation to the same, the Player failed to provide anything in writing. From conversations with the Player, it was clear that he considered himself free to use May and June 2010 to look for another club.

61. In accordance with the clause 6.2 of the Annex, which is subject to the ULC, provided a sanction of 100% depravation of the monthly salary for a breach such as *"not showing up for the training camp gathering without warning and good reason"*. In accordance with the Annex absenteeism was regarded as one of the most serious contractual breaches that can be committed by the Player. By signing the Contract and the Annex to it, the Player was a party to the Contract and submitted himself by his own will to the above sanctions.

62. In accordance with ULC, an employee's absence from work, regardless whether it is for a whole full workday or more than 3 hours in a row or in total within a workday, and without any valid reason is considered absenteeism. So, in accordance with Article 40 of the ULC, an employer can terminate an employment agreement due to an employee's unauthorised absence from work. But instead the Club sanctioned the Player by depriving him of his June 2010 salary.

63. Therefore, the Player's claim regarding the Club's alleged debt arising from the non-payment of a salary for both May and June 2010 is ungrounded as the non-payment of the contractual sums was justified and in compliance with both the Contract and the Annex to the Contract.

64. On 17 June 2010, the Club allowed the Player to use the time left until expiry of the Contract to look for other clubs after which, the Player's irresponsible approach to his contractual obligations became clear. All the sanctions applied by the Club were legitimate and the Club was entitled to terminate the Contract had it wished to do so.

65. The Appellant submitted statements provided by the following witnesses: O. (to confirm the dates the Player left in January and May 2010); D. (to confirm the dates the Player was present and absent during the training camps in January, May and June 2010 and that the Player could communicate without the need for an interpreter); a joint statement by the players V., S. and R. (also to confirm the dates the Player was present and absent during January, May and June 2010 and his conduct during training); K. (to confirm that all the Orders were properly prepared in accordance with Ukrainian law); and Z. (to confirm the dates the Player was present and absent during January, May and June 2010 and the Club's decisions regarding the Orders).

66. In conclusion, the Club could have terminated the Contract but decided to act in a way that was much less detrimental to the Player's career so the Club's actions were just and fair. In addition, the Player did not raise any objections to the financial sanctions imposed upon him for May and June 2010.

B. Respondent's Submissions

67. In summary, the Respondent submitted the following in response:

68. It would appear very surprising that the communication between the UFF and Club was so insufficient that the documents did not reach the Appellant. The Club was under a duty to

inform the UFF about any changes regarding its contact information, i.e. a change in a fax number. If it had done so, the Appellant could have defended itself before the FIFA DRC.

69. That the Player completely rejects the Appellant's pleadings and all other accusations.

70. That the Player may have been out of shape from time to time, however that does not justify his poor treatment by the Club. That the Club acted in the same manner against the Player and also his team mates. The Club was not willing to honour the Player's contract and the contracts of other players under which he and others were entitled to higher wages. Therefore, the Club made up excuses to reduce the Player's income.

71. That the Player has never missed a training session without a valid excuse and has never failed to appear at a training camp without an official permission. The Player was informed by his teammates that the June 2010 training camp commenced on 16 June 2010.

72. The Player refused to sign documents (such as the Orders) presented to him by the Club when the contents were obviously wrong and were related to misconduct that never took place.

73. The Respondent submitted statements of I. and A. (to confirm that the Player fulfilled his contractual duties and that his absence in May and June was with permission).

6. JURISDICTION OF THE CAS

74. Article R47 of the CAS Code provides as follows:

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

75. The jurisdiction of the CAS, which is not disputed by the parties, derives from Article 62 and 63 of the FIFA Statutes as well as Article R47 of the CAS Code.

76. The Sole Arbitrator notes the Appellant's position that it was unaware of the Respondent's claim before the FIFA DRC however, as under Article R57 of the CAS Code, the Sole Arbitrator has the full power to review the facts and the law and may issue a new decision, de novo, superseding entirely or partially, the Appealed Decision, this can cure any defect caused by the FIFA DRC procedure.

7. APPLICABLE LAW

77. Article R58 of the CAS Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

78. Moreover, Article 62 paragraph 2 of the FIFA Statutes provides that the:

"Provisions of the CAS Code of the sport related arbitration shall apply to the proceedings. The CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

79. The "Federation" in the sense of Article R58 of the CAS Code is domiciled in Switzerland; a fact that also requires that Swiss law be applicable.

80. In the present matter, the parties did not agree on the application of any particular law in their recent submissions. The Sole Arbitrator noted that the Appellant referred to Ukrainian legislation (the ULC) and referred to Ukrainian case law. The Respondent was silent as to the applicable law.

81. The Sole Arbitrator ruled that as the decision being appealed to the CAS was the Appealed Decision, the Appeal is subject to the primary application of the FIFA Regulations, but that Swiss law should also apply subsidarily. The Sole Arbitrator also noted that the original issue at hand is whether the conduct of the Player in the circumstances warranted the deduction of his salary which must also be viewed in accordance with the law applying to the Contract (clause 6.1 of the Contract provides that *"parties are liable for non-fulfilment or inadequate fulfilment of their obligations under this Contract in accordance with applicable legislation or the Ukraine"*), as such Ukrainian law should be applicable to that particular issue.

8. ADMISSIBILITY

82. The Appealed Decision, dated 10 May 2012, was faxed to the parties on 26 October 2012. Therefore, pursuant to Article 63 paragraph 1 of the FIFA Statutes, the Appellant had 21 days from receipt of notification of the Appealed Decision to appeal to the CAS.

83. The Appellant duly submitted its Statement of Appeal on 15 November 2012, which was within the stipulated deadline and therefore the appeal is admissible. The Appellant complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.

9. MERITS OF THE APPEAL

84. In these present proceedings, the Sole Arbitrator had to determine the following:

a. Was the Player absent from training from 7 to 9 May 2010 without the Club's consent and without a valid reason? If so, was the Club able to withhold his full monthly salary or another amount?

b. Was the Player absent from training from 10 to 13 June 2010 without consent and without a valid reason? If so, was the Club able to withhold his full monthly salary or another amount?

c. If any sums are to be paid to the Player, should interest accrue?

a. May's salary deduction

85. The Sole Arbitrator notes that the Appellant has apparently become insolvent and, as such, the witness evidence produced by the parties cannot be further examined. Whilst the Appellant at one stage requested a hearing, as the procedure progressed, the Appellant withdrew that request, presumably to keep legal costs and expenses to a minimum. Unfortunately, that leaves the position where the Club says one thing and the Player denies it. Both sides have put forward evidence from officials and/or other players to support their positions. It is difficult, therefore to place much weight on any of the witness statements – to an extent, one side's witness evidence cancels out the other side's. That noted, the burden of proof is for the party making any assertions.

86. The Sole Arbitrator again notes the different stances of the parties. It is not disputed that the Player left on 7 May 2010 to join his national team. The Appellant says it expressly denied his request to leave at that time, instead said that he was required for the last match for the Club on 9 May 2010. The Player said he had permission, but did not say from whom.

87. It is common ground that the Appellant had to release the Player to the AFA on 18 May 2010. The Player was absent for the 11 days in between. The Sole Arbitrator notes that neither party has produced any documentary evidence to support their respective submissions that Player was or was not given permission to leave on 7 May 2010. On balance, the Sole Arbitrator finds it unlikely that the Appellant would allow the Player to leave on 7 May 2010, when there was a final match to be played on 9 May 2010 (and the Sole Arbitrator saw no evidence that the Player had been dropped to the reserve team) and further training scheduled too. As such, the Sole Arbitrator determines the Player was absent without permission for 11 days in May 2010.

88. The second issue at stake is whether the Appellant was entitled to withhold the entire salary for May 2010 for such unauthorised absence.

89. The Appellant has relied upon its rights under the Contract and the Annex.

90. The Appellant submits that the absence was unauthorised and as such, it applied the disciplinary sanctions within the Contract to fine the Player. The Annex lists a number of disciplinary violations, the first two of which are:

"1. Arrival for the training camp in delay more than 15 min. without warning and reason – USD 100

2. No showing up at all for the training camp gathering without warning and good reason – 100% of salary"

91. Is "100% of salary" to be interpreted as, at one extreme, all of his salary under the Contract, or perhaps all his monies for a month, or perhaps all his monies for the days he was absent, or perhaps it's a maximum, so up to 100%? The drafting is unclear and leaves itself open to interpretation.

92. The Appellant submitted that under the ULC, it would have been justified in dismissing the Player, as he was more than 3 hours late, so a fine of 100% of the month's salary was more reasonable. The Appellant also pointed out that most fines were in terms of a few hundred US dollars, but behaviour such as missing training or being drunk would be serious enough to warrant a fine of a full month's salary.

93. The Sole Arbitrator when reviewing the Annex noted the majority of the 16 examples of behaviour that could result in a fine would incur fines of a few hundred US dollars and only 3 examples fell into the "100% of salary" bracket. If it was intended to be a full month's salary, then it would have been easy enough to have included that wording. Further, the Player was earning USD 45,000 a month – as such, the Appellant's interpretation would result in most fines being in the region of USD 300, a few other examples of bad behaviour receiving a fine in the region of USD 500, one further example receiving a fine of USD 1,000, but then the next three examples of behaviours resulting in a fine of USD 45,000. That seemed quite a "jump" to the Sole Arbitrator when the difference in the behaviours was perhaps worse, but not necessarily 45 times worse. Whilst the Appellant argued that not all players earned as much as the Respondent, so their "jump" might not be as marked, the Sole Arbitrator notes no other player contracts were submitted, and further that he is dealing solely with the Respondent and his Contract and its Annex, where the increase between the sanction compared to increased behaviour seems quite marked.

94. The Appellant also referred to its statutory rights, pursuant to Article 112 of the ULC to reduce the Respondent's salary. The Sole Arbitrator was not convinced that the Appellant was exercising a statutory right, which may or may not be applicable. The papers on the CAS file pointed to the Appellant purporting to exercise contractual rights.

95. The Sole Arbitrator follows his determination in CAS 2013/A/3073 and interprets the "100% of salary" as meaning 100% of salary on the days of unauthorised absence. As such, the Appellant was entitled to deduct 11/31st of the monthly salary i.e. USD 15,967 and should therefore have paid the Respondent USD 29,033 for the month of May 2010.

b. June's salary deduction

96. In June 2010, it appears common ground that the training camp started on 10 June 2010, however, the Player submitted that he was not made aware of this and that he was informed by other players that the training camp started on 16 June 2010, so he missed 5 days of training.

97. The Sole Arbitrator notes that the announcement of the date of the June 2010 training camp was made after the match on 9 May 2010. Whilst the Appellant would have been aware that the Respondent was absent at that time and should have made other attempts to notify the Player of the date of the training camp, his absence was unauthorised. As such, the Respondent should have contacted the Club and enquired when the June 2010 training commenced. Instead, the Player states he asked another player. As the Player was responsible for the unauthorised absence in May 2010, in the Sole Arbitrator's opinion, that tips the balance and placed the onus on him to find out from the Club about the details of the June 2010 training. As he did not, then the Sole Arbitrator determines he was 5 days late for training.

98. With that finding, the same issue arises again – could the Appellant fine the Player 100% of his June wages or should it have been limited to 100% of the wages on those days in June 2010 he was absent without permission?

99. Following the finding for May 2010, the Sole Arbitrator determines the Appellant was entitled to deduct 5/30ths of the month's salary i.e. USD 7,500 and should therefore have paid the Respondent USD 37,500 for the month of May 2010.

c. Interest

100. The Sole Arbitrator notes that the Appealed Decision was sent to the Parties on 26 October 2010 and that the payment of the sums due to the Player should have been made 30 days later, failing which interest at the rate of 5% per annum would apply.

101. Neither of the parties submitted arguments regarding the question of interest and as such are deemed to have accepted the FIFA DRC's finding in that regard. As such, the Sole Arbitrator determines that interest on the sum of USD 66,533 shall apply at the rate of 5% from 26 November 2012 until payment is made in full.

Conclusion

102. The Sole Arbitrator partially allows the Appeal and replaces the Appealed Decision with the following:

a. The Appellant shall pay the Respondent the sum of USD 66,533.

b. The Appellant shall pay interest at the rate of 5% per annum upon the sum as stated above from 26 November 2012 until the date of payment.

103. All further prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FC Kryvbas on 11 November 2012 against the decision of the FIFA Dispute Resolution Chamber dated 10 August 2012 is partially allowed and the said decision of the FIFA Dispute Resolution Chamber is replaced as follows:

2. FC Kryvbas shall pay Dorian Bylykbashi the sum of USD 66,533.

3. FC Kryvbas shall pay interest at the rate of 5% per annum upon the sum stated at 2 above from 26 November 2012 until the date of payment.

4. (…).

5. (…).

6. All further prayers for relief are hereby dismissed.