Arbitration CAS 2010/A/2317 SC Fotbal Club Timisoara SA v. FC Slovan Liberec & CAS 2011/A/2323 FC Slovan Liberec v. SC Fotbal Club Timisoara, award of 9 September 2011

Panel: Mr Mark Hovell (England), President; Mr Olivier Carrard (Switzerland); Mr Hendrik Kesler (The Netherlands)

Football
Transfer
Responsibility for carrying out the medical examination
Penalty clause
Duty of the judge to reduce any excessive penalty
Burden of proving an excessive penalty clause
Criteria to consider when assessing whether the penalty is excessive or not

1. **It is custom and practice in the world of football for the purchasing club to take the responsibility for carrying out a medical test on any new player.**

2. **According to art. 160 CO, parties to a contract may agree on a penalty clause in case of non-performance or defective performance of a contract. When the contract has to be performed within a given deadline, parties may agree on penalty fees for each day during which the debtor is in default.**

3. **Pursuant to the principle of contractual freedom, the parties can freely determine the amount of the contractual penalty. However, the Swiss legislator has enacted a limitation to this freedom at art. 163 al. 3 CO in order to warrant public order and the principle of proportionality as a standard in Swiss law. Therefore, the judge (or the panel) shall examine the amount and reduce any excessive penalty. This provision is mandatory and the parties cannot contractually depart from it.**

4. **The burden of proving the facts that lead to conclude that one is in presence of an abusive penalty clause lies within the debtor. However this requirement is lighter concerning the real damage suffered by the creditor because it cannot be assumed that the debtor is aware of this damage. Thus, the creditor has to prove even succinctly his loss.**

5. **According to the Swiss Federal Tribunal, a penalty is abusive when its amount is unreasonable and clearly exceeds the admissible amount in consideration of justice and equity. A balance of interests is required to decide whether a penalty is abusive or not in each case. For this purpose, the creditor's interest, the seriousness of the breach of the contract and the debtor's fault, along with the financial situation of both parties, are determinant. The nature of the agreement, the debtor's professional background and the aim of the penalty also have to be taken into consideration in the balance. However,**

penalty fees may not be deemed automatically as abusive just because they exceed the costs of damages suffered by the creditor. Indeed, including a punishment aspect, the penalty does not have to meet exactly the amount of the damage. The fact that the debtor is a "professional" plays a role in the balance but does not help the judge from reducing the penalty.

The Appellant in CAS 2010/A/2317 is SC Fotbal Club Timisoara ("Timisoara"), a football club currently competing in Romania. It is a member of the Romanian Football Federation (RFF), which is affiliated to Fédération Internationale de Football Association (FIFA).

The Respondent in CAS 2010/A/2317 is FC Slovan Liberec ("Liberec"), a football club currently competing in the Gambrinus Liga in the Czech Republic. It is a member of the Czech Football Association (CFA), which is affiliated to FIFA.

In CAS 2011/A/2323 the Appellant is Liberec and the Respondent is Timisoara.

On 19 December 2007 Timisoara entered into a transfer agreement with Liberec (the "Transfer Agreement") for the professional football player M. (the "Player"). Article 1.2 of the Transfer Agreement provided that the first instalment of EUR 525,000 would be due *"after the ITC has been issued and the player passed the medical test"* on 10 February 2008.

The International Transfer Certificate was issued on 28 February 2008, with an effective date of 1 January 2008.

On 17 March 2008 Timisoara wrote to Liberec regarding the payments for the Player due under the Transfer Agreement. Timisoara stated that the payment would be made as per the Transfer Agreement with penalties for late payments.

Pursuant to the Transfer Agreement, the second instalment of EUR 525,000 fell due on 10 April 2008.

On 7 May 2008, Liberec wrote to Timisoara demanding payment of all sums due under the Transfer Agreement.

On 13 June 2008 the CFA wrote to FIFA explaining that they had been contacted by Liberec regarding the Player and the non-payment of the transfer fee in accordance with the Transfer Agreement.

On 4 August 2008 Liberec made a direct complaint to FIFA regarding the Player and the non-payment of the monies in accordance with the Transfer Agreement.

On 27 August 2008 the Player had surgery on his left knee.

On 3 October 2008 Timisoara wrote to Liberec acknowledging the validity of the Transfer Agreement stating that it would totally honour its obligations concerning the payment of the amount specified in the Transfer Agreement as well as the penalties due. Timisoara further confirmed that the payment will be made in May 2009.

On 23 December 2008 the Player underwent a second operation on his left knee.

On 12 February 2009 Liberec wrote to Timisoara in response to a proposal made by Timisoara altering the due dates of the transfer fee in accordance with the Transfer Agreement and seeking to cap the penalties. Liberec insisted that the deadlines and penalties as provided in the Transfer Agreement be adhered to.

On 18 February 2009 Timisoara wrote to FIFA acknowledging the validity of the Transfer Agreement and stating that it intended to *"fully carry out with our obligation concerning the payment of the amount specified within the contract, as well as all due penalties incurred"*. Timisoara stated that it had encountered an extreme difficult financial situation and that it intended on paying the transfer fee in May 2009.

On 6 March 2009 the Player underwent a third operation on his left knee.

On 4 September 2009 Timisoara wrote to FIFA stating that there were valid grounds for the non-payment.

On 11 August 2010 the Players Status Committee of FIFA ("the PSC") reached a decision (the "Appealed Decision" or the "PSC Decision"), in which it determined that:

"1. *The claim of the Claimant, FC Slovan Liberec, is partially accepted.*

2. *The Respondent, FC Timisoara, has to pay to the Claimant, FC Slovan Liberec, the amount of Euros 1,050,000 in 4 instalments as follow:*
   a. *EUR 300,000 within 30 days as from the date of notification of this decision;*
   b. *EUR 250,000 within 60 days as from the date of notification of this decision;*
   c. *EUR 250,000 within 90 days as from the date of notification of this decision;*
   d. *EUR 250,000 within 120 days as from the date of notification of this decision.*

3. *Any further claims lodged by the Claimant, FC Slovan Liberec are rejected.*

4. *In the event of non-payment of the aforementioned instalments within the stated time limits, the remaining unpaid instalments will fall due immediately and an interest rate of 5% per year will apply on the total unpaid amount as of the day after the relevant unpaid instalments should have been made. Furthermore, the present matters shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and decision.*

5. *The Claimant FC Slovan Liberec, is directed to inform the Respondent, FC Timisoara, immediately and directly of the account number to which the remittances are to be made and to notify the Player's Status Committee of every payment received.*

6. *The final amount of costs of the proceedings amounting to CHF 10,000 are to be paid to the Respondent, FC Timisoara, within 30 days as from the notification of the present decision to the following bank account (…)".*

On 17 August 2010, the operative part of the PSC Decision was notified to the parties.

On 18 August 2010, Liberec wrote to Timisoara attaching an invoice in accordance with the PSC Decision.

On 16 December 2010, the detailed PSC Decision was notified to the parties.

On 23 December 2010, Timisoara filed a Statement of Appeal with the Court of Arbitration for Sport (CAS) against the PSC Decision. This was established as matter CAS 2010/A/2317. Timisoara challenged the PSC decision, submitting the following request for relief:

> *"To set aside the decision of the Single Judge of the Player's Status Committee passed in Zurich, Switzerland on 11 August 2010 in the FIFA case reference MLT08-00969;*
>
> *To condemn the Respondent to the payment in favour of the Appellant of the legal expenses incurred;*
>
> *To establish that the costs of Arbitration procedure should be borne by the Respondent".*

On 5 January 2011, Liberec filed its statement of appeal with the CAS. This was established as matter CAS 2011/A/2323. Liberec challenged the above mentioned PSC decision, submitting the following request for relief:

> *"CAS to condemn as void that part of FIFA decision as described in Article II.12 and III.3 of the decision and to accept the legitimate claim of Appellant to receive due written contractual agreement the penalty fee from the Respondent in the full amount and for the whole duration of delayed period of the basic transfer fee amount payment according to the textation of mutual Contract of Transfer of player (M.) dated 19 December 2007, article 1.3 of this Contract, i.e. to accept the former Appellant's claim towards Respondent in complete extension, not only partly as mentioned in Article III.1 of the FIFA decision. Appellant agrees with Article III.2, III.4, III.5 and III.6 of the FIFA decision. The costs of CAS arbitration proceedings in this case should be borne by the Respondent".*

On 16 January 2011 Timisoara filed its appeal brief, in the matter CAS 2010/A/2317, repeating the prayers for relief made in its statement of appeal.

On 2 February 2011 Liberec filed its joint appeal brief in the matter CAS 2011/A/2323 and its answer in the matter CAS 2010/A/2317.

On 25 February 2011, Timisoara filed its answer to the matter CAS 2011/A/2323.

The parties requested a hearing and all duly signed the Order of Procedure beforehand.

A hearing was held on 28 June 2011 in Lausanne, Switzerland. All the members of the Panel were present. The parties did not raise any objection as to the constitution and composition of the Panel.

There were no witnesses or experts providing evidence or opinions at the hearing. The parties were given the opportunity to present their cases, submit their arguments and to answer any questions posed by the Panel. After the parties' final, closing submissions, the hearing was closed and the Panel reserved its decision to its written award. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their right to be heard and to have been treated equally in these arbitration proceedings. The Panel heard carefully and took into account in its discussion and subsequent deliberation all the evidence and the arguments presented by the parties both in their written submissions and at the hearing, even if they have not been summarised in the present award.

On 23 March 2011 the CAS wrote to the parties requesting the following:

> *"SC Slovan Liberec is required to state, on or before 30 March 2011, if it is in position of any medical records relating to the Player before the transfer and, if that is the case, to send a copy to the CAS Court Office, translated in English.*
>
> *SC Fotbal Club Timisoara SA is requited to state, on or before 30 March 2011, if it did carry out a medical on the Player at the time of the transfer, as stated by the Player himself, and confirm exactly what games and on what dates the Player participated further during 2007/2008 Season and 2008/2009 Season"*.

On 29 March 2011 Timisoara in response to the CAS request submitted its reply stating that it was not and has not been given a medical opinion by a specialist doctor as provided for in the Transfer Agreement and that *"medical opinion for playing is totally different than medical opinion as is undertaken the case of the transfer of the Player and provided by Article 1.2"*. It did not confirm or deny that it had carried out a test on the Player itself.

On 30 March 2011 Liberec responded to the CAS request stating that Liberec was not in possession of personal medical records for the Player, nor could it hold such records as, in accordance with the laws of Czech Republic, these are strictly private documents that an individual or his doctor would hold.

On 7 April 2011 the CAS requested Timisoara to confirm or deny that it had carried out its own medical test on the Player as it had not specifically addressed the CAS's initial request.

On 11 April 2011 Timisoara provided the CAS with a second copy of its correspondence of 29 March 2011.

LAW

CAS jurisdiction

1. The jurisdiction of the CAS, which is not disputed between the parties, derives from Art. 62 and 63 of the FIFA Statutes as well as Art. R47 of the Code of Sports-related Arbitration (the "Code").

2. Further, the order of procedure duly signed by the parties is additional confirmation that the CAS has jurisdiction to hear the matter at hand.

3. Under Art. R57 of the Code, the Panel has the full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the appealed one.

Applicable law

4. Art. R58 of the Code provides the following:

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

5. Moreover, Art. 62 paragraph 2 of the FIFA Statutes provides that the:

   "Provisions of the CAS Code of Sport-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

6. In the present matter, the parties did not agree on the application of any particular law in their written submissions. Timisoara stated that the FIFA Regulations applied. Liberec made no comment. The Panel determined that the rules and regulations of FIFA shall apply primarily and Swiss Law shall apply subsidiarily.

7. The dispute at hand was submitted by Liberec to the PSC on 4 August 2008, after 1 January 2008, which is the date the 2008 version of the Regulations on the Status and Transfer of Players came into force, and as such, the 2008 version of the Regulations are relevant for this case.

Admissibility

8. The detailed PSC Decision was notified to the Parties on 16 December 2010 by fax. Therefore, pursuant to Art. 63, paragraph 1 of the FIFA Statutes, the Parties had until 6 January 2011 to file their Statement of Appeal. Hence, as both of the Statements of Appeal were filed within the stipulated deadline, the Appeals are admissible. The Parties complied with all other requirements of Art. R48 of the Code, including the payment of the CAS Court Office fees.

9. The Answers were filed within the deadlines provided by the Code.

Joinder

10. The appeals procedures CAS 2010/A/2317 and CAS 2011/A/2323 shall be conducted jointly, as the two appeals arise from the same circumstances and are directed at the same PSC decision; the parties are the same in the procedures; the same panel of arbitrators has been appointed for the two appeals; and pursuant to Art. R50(2) of the Code, the parties have expressly agreed to the joinder, confirming the same by signing the Order of Procedure. The Panel will therefore render one common award.

New documents

11. After the hearing, Liberec sent to the CAS a copy of the postal acknowledgement it had received confirming it had posted its invoice to Timisoara. For reasons stipulated below, the Panel did not need to accept this to the CAS file.

The merits

12. The Panel had to determine the following:
    (a) Which party is in breach of the Transfer Agreement?
    (b) What is the compensation for any breach?
    (c) Should any penalty be applied and, if so, what amount?
    (d) Any other prayers for relief?

A. Which party is in breach of the Transfer Agreement?

13. The Panel noted the arguments put forward by Timisoara that there was a condition precedent linked to the payment of the first instalment of the transfer fee, namely that Liberec had to provide a medical report on the fitness of the Player at the time of the transfer, along with his

medical records and his ITC. Their position is that this was Liberec's responsibility and as it was never completed, Liberec are not entitled to the transfer fee. Further, the wording of the Romanian version of the Transfer Agreement adds weight to this position, as it states the condition as *"after the favourable medical note and the issuance of the ITC"*. Timisoara claimed that the Player had been injured whilst on loan, prior to the transfer, that Liberec knew and concealed that fact, in further breach of the Transfer Agreement. They also claimed that they attempted to rehabilitate the Player, but only after it became clear that they could not, did they raise these arguments. Finally, in any event, as they had not received any invoice by post from Liberec, they could not pay any instalments.

14. On the other hand, Liberec point to the wording of the English version of the Transfer Agreement, which states the condition as *"after the ITC has been issued and the player passed the medical test"*. Whilst this is silent as to who caries out the test, it is custom and practice in the world of football for the purchasing club to carry out its own test and that the Player confirmed in writing this had been done. The ITC was provided too, so there were no reasons for Timisoara not to pay the transfer fee in accordance with the Transfer Agreement. Further, for nearly 2 years the only excuse given by Timisoara as to why they could not pay was their financial position. Finally, Liberec had invoiced Timisoara for the instalments, sent these by fax and post, and had exhibited the fax receipt to their appeal. Timisoara had never complained that they had not received the original invoices by post until at the hearing.

15. The Panel noted that Timisoara had not produced a Romanian version of the Transfer Agreement as part of its appeal. They had, whilst seeking to agree a revised timetable for making payments of the instalments, produced a draft appendix for the Transfer Agreement which was a typed document, split vertically down the middle with the Romanian version on the left and English on the right. This was never accepted by Liberec. However, it is a common format where an agreement is produced in 2 languages. The Transfer Agreement itself was not in this format, it was just produced in English and that version was duly executed and exhibited by the parties in this matter. The Panel therefore determined to apply the English version of the condition.

16. The Panel notes the condition is *"the player passed the medical test"*. During the hearing, Timisoara confirmed that they did carry out a medical test on the Player at the time of the transfer, as the Player had stated in his written statement. The Panel shares the position of Liberec in that it is custom and practice in the world of football for the purchasing club to take the responsibility for carrying out a medical test on any new player. As such, the Panel are satisfied that the conditions attaching to the payment of the first instalment were met.

17. Secondly, the Panel has to also consider whether Liberec knew the Player was injured and deliberately concealed this fact from Timisoara, in breach of clause 2.1.2 which states *"(…) Liberec guarantees and undertakes that on the date of this Contract comes into effect (…) he is not withholding (…) any information of any kind which could reasonably influence the decision of Politehnica to enter into this Contract (…)"*. The Panel noted Timisoara exhibited a medical report […], which they claimed

showed the Player was injured at the time of the transfer. Timisoara also pointed to the Player's lack of time on the pitch during his last few games before the transfer.

18. Liberec, on the other hand, stated that the Player was fit and passed his medical test. They noted that the Player then took part in numerous games for Timisoara before getting injured.

19. On this point, the Panel noted the Player passed his medical with Timisoara, played for them many times before his knee problems occurred. The medical report exhibited and referred to by Timisoara only reports on events some nine months after the transfer and does not demonstrate that the Player had any pre-existing medical condition that reoccurred. The Panel did not see any evidence that Liberec had breached clause 2.1.2 of the Transfer Agreement and concluded the only breach was that on the part of Timisoara in not paying the instalments due to Liberec on time or at all.

20. Finally, the Panel noted the late argument of Timisoara relating to the non receipt of the original invoices from Liberec. The Panel could find no mention of original invoices having to be received in the post, within the Transfer Agreement; did note the fax receipts had been exhibited by Liberec; and heard their verbal confirmation that these had been posted too, without any complaint by Timisoara that they had not been received. The Panel determined to reject this argument as any defence as why not to pay the instalments due under the Transfer Agreement.

B. What is the compensation for any breach?

21. The Panel noted that both parties confirmed no payments had been made at all under the Transfer Agreement, as such, the Panel agrees with the PSC Decision in awarding the sum of EUR 1,050,000 to be paid by Timisoara to Liberec.

C. Should any penalty be applied and, if so, what amount?

22. The Panel noted that the Transfer Agreement provided at clause 1.3 *"In case of delay of the payment of the transfer amount of this contract, Politehnica undertakes to pay to Slovan Liberec penalty fees of EUR 1,000 (in words one thousand EUR) for every day of delay until the final amount is paid"*.

23. Throughout the early correspondence between the parties and between Timisoara and FIFA, Timisoara acknowledged it had to pay all penalties in accordance with the Transfer Agreement. However, the Panel notes the PSC Decision rejected this clause, stating it *"represents a clear overreaching in favour of the Claimant and represents an obvious disproportion between the sum agreed by the parties as the transfer compensation and the amount of the penalty clause"*. Timisoara, in their answer to Liberec's appeal on this point, argued the penalty clause was *"abusive"*.

24. The Panel has determined that the rules and regulations of FIFA shall apply primarily and Swiss Law shall apply subsidiarily. Whilst the rules and regulations of FIFA offer no guidance on penalty clauses, the Swiss Code of Obligations (CO) is of assistance to the Panel.

25. According to art. 160 CO, parties to a contract may agree on a penalty clause in case of non-performance or defective performance of a contract. When the contract has to be performed within a given deadline, parties may agree on penalty fees for each day during which the debtor is in default.

26. Pursuant to the principle of contractual freedom, the parties can freely determine the amount of the contractual penalty. However, the Swiss legislator has enacted a limitation to this freedom at art. 163 al. 3 CO in order to warrant public order and the principle of proportionality as a standard in Swiss law (COUCHEPIN G., La clause pénale, Zurich 2008, N. 783).

27. The Panel note that art. 163 al. 3 CO states: *"the judge shall reduce an excessive penalty"*. This provision is mandatory and the parties cannot contractually depart from it. Therefore, the judge (or the Panel, in this matter) shall examine this amount. The Panel notes in this matter Timisoara have challenged the penalty. The burden of proving the facts that lead to conclude that one is in presence of an abusive penalty clause lies within the debtor (ATF 133 III 43, consid.4.1 = JdT 2007 I 236). However this requirement is lighter concerning the real damage suffered by the creditor because it cannot be assumed that the debtor is aware of this damage (Federal Tribunal, judgement of 8 December 2009, 4A_141/2008, consid. 15.1.2). Thus, the Federal Tribunal considers that the creditor has to prove even succinctly his loss (*ibidem*).

28. The criteria according to which contractual penalties shall be deemed as excessive and the extent to which a judge may reduce them are to be found in Swiss case law. First, as the judge can only reduce the penalty when its amount is, at the time of the judgment, abusive, the Federal Tribunal has established several criteria to define what an abusive amount is. According to the Federal Tribunal, a penalty is abusive when its amount is unreasonable and clearly exceeds the admissible amount in consideration of justice and equity (ATF 82 II 142, consid. 3 = JdT 1957 I 104). A balance of interests is required to decide whether a penalty is abusive or not in each case. For this purpose, the creditor's interest (ATF 103 II 129 = JdT 1978 I 159), the seriousness of the breach of the contract (ATF 91 II 372, consid. 11 = JdT 1966 I 322) and the debtor's fault (*ibidem*), along with financial situation (*ibidem*) of both parties, are determinant. The nature of the agreement (ATF 103 II 108 = JdT 1978 I 194), the debtor's professional background (ATF 102 II 420, consid. 4 = JdT 1978 I 230) and the aim of the penalty also have to be taken into consideration in the balance.

29. However, penalty fees may not be deemed automatically as abusive just because they exceed the costs of damages suffered by the creditor (Federal Tribunal, judgement of 8 December 2009, 4A_141/2008, consid. 15.1.2). Indeed, including a punishment aspect, the penalty does not have to meet exactly the amount of the damage (*idem*, consid. 15.1.4).

30. In the present case, the object of the Transfer Agreement is the transfer of the Player from Liberec to Timisoara in exchange of a total price of EUR 1,050,000. Even though the Player was transferred, Timisoara had not paid the sum after 3 years, 5 months and 22 days (the time of delay has to be taken into account from February, the 10th 2008, which constitutes the deadline to pay the first EUR 525'000.--). The total amount of the penalty fees would therefore reach EUR 1.267.000 by July, the 31st 2011. The sum of the penalty exceeds the price of the transfer fee. The Panel determines that this amount is clearly unreasonable as nothing justifies a doubling of the transfer price as a result of the debtor's default.

31. Furthermore, even though on the one hand Timisoara failed to prove that its fault and the breach of the contract were not serious enough to justify such an amount, Liberec, on the other hand, has not proven that it carried damages as a consequence of Timisoara's default. The Panel might have expected a creditor to produce evidence of its bank statements – if it was in overdraft as a result of the non payment, the interest it was having to pay the bank and the like. Timisoara has not paid its debt for more than 3 years which may be considered as a long time in regard to Liberec's interest to be paid. The debtor has initially justified this delay arguing that it was facing an extreme financial situation that helped it from paying the transfer price but then established that the price was not to be paid as the creditor had not fulfilled its own performance to deliver a medical certificate. This last argument shall not be taken into account for the reason detailed above. Nevertheless, Timisoara did explain its financial situation to the creditor and asked for longer deadlines, which were all rejected by Liberec. The Panel noted from the correspondence between the parties that Liberec required the first installment paying before they would consider more time for the second. The Panel felt that a fairer attempt to solve the solution would have been to accept more, smaller installments. Thus, the creditor could have tried to solve the situation better.

32. It is also to be noted that the according to case law, the fact that the debtor is a "professional" plays a role in the balance but does not help the judge from reducing the penalty (Federal Tribunal, judgement of 8 December 2009, 4A_141/2008, consid. 15.4). In the present case, Timisoara as a professional football club has to be considered as a professional (or an expert) in players' transfers.

33. It follows that the amount of the contractual penalty is clearly abusive and, as a consequence thereof, will be reduced.

34. According to the opinion of the Federal Tribunal in the judgment 4C_374/2006 of 15 March 2007, contractual penalties representing 20% of the amount of the purchase price in a contract of an aircraft sale were deemed as abusive (Federal Tribunal, judgment of 15 March 2007, 4C_374/2006, consid. 5.3). Indeed, the Federal Tribunal held that the creditor did not suffer a loss serious enough to justify such a high penalty as the company was able to sell the aircraft to another purchaser no longer after[1]. Moreover, the debtor was not faulty because the reasons

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1 In that case, the contract concerned the sale of an aircraft for USD 17.595.000, penalty fees asked being USD 3.733.500. The creditor was able to sell the aircraft to another company for the same price.

that helped it from paying the sum due were out of his control (Federal Tribunal, judgment of 15 March 2007, 4C_374/2006, consid. 5.3).

35. In another case concerning the building of a villa for CHF 2,325,000, the Federal Tribunal held that a reduction of the penalty for 18 months delay from CHF 1,800,000 to CHF 800,000 was not arbitrary considering the circumstances (Federal Tribunal, judgement of 8 December 2009, 4A_141/2008). First, like in the present situation, the creditor failed to prove that it had suffered damages. Then, the debtor's fault in that case was considered as light (*idem*, consid. 15.2).

36. In the present case, it follows from the evidence brought by Timisoara that the club was facing extreme financial issues and asked several times for deadline extensions, which were all rejected. It is only later, on September, the 4th 2009, that the club started to argue the payment was not due. Whilst that late argument has been rejected by the Panel, the Panel does accept that Timisoara was suffering severe financial difficulties. Finally, as already mentioned, the fact that Timisoara is a "professional" in players' transfers does not help the Panel to reduce the penalty amount but should be taken into account in the reduction extent.

37. In conclusion, contractual penalties are allowed by Swiss law, however the judge shall reduce them when they are clearly abusive. In the light of the abovementioned elements, the penalty fees of more than EUR 1,000,000 are clearly abusive in the present case. Consequently, the Panel shall reduce this amount by taking into account the failure of the creditor to prove its damage, the debtor's fault and the fact that it is a professional in players' transfer.

38. In conclusion, the Panel determined to award the sum of EUR 105,000 as the penalty for late payment, being 10% of the transfer fee, resulting in Timisoara being liable to pay Liberec the total sum of EUR 1,155,000.

D. Any other prayers for relief?

39. All other prayers for relief in both appeals are dismissed.

The Court of Arbitration for Sport rules:

1. The appeal of SC Fotbal Club Timisoara is rejected and the appeal of FC Slovan Liberec is partially allowed. As such, the appealed decision of the FIFA Player Status Committee dated 11 August 2010 is to be replaced by this award.

2. SC Fotbal Club Timisoara is liable to pay FC Slovan Liberec an amount of EUR 1,155,000 as compensation.

(…)

5. Any and all other motions or prayers for relief are dismissed.