CAS 2022/A/9221 Bursaspor Kulübü Derneği v. Luka Capan and the Fédération Internationale de Football Association

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Patrick Stewart, Solicitor in Manchester, United Kingdom

Arbitrators: Mr. Rui Botica Santos, Attorney-at-law in Lisbon, Portugal
Mr. Kepa Larumbe, Attorney-at-law in Madrid, Spain

in the arbitration between

Bursaspor Kulübü Derneği, Turkey
Represented by Ms. Merve Kubra Durmaz of Bursaspor Kulübü Derneği, Turkey

- Appellant -

and

Mr. Luca Kaplan, Croatia
Represented by Mr. Riza Köklü, Ankara, Turkey

- First Respondent -

and

Fédération Internationale de Football Association, (FIFA), Switzerland
Represented by Mr. Miguel Liétard Fernandez-Palacios of the FIFA Litigation Department, Switzerland

- Second Respondent -

I. PARTIES

1. Bursaspor Kulübü Derneği (the "**Appellant**" or "**Bursaspor**") is a professional football club based in Turkey and is a member of the Turkish Football Federation (the "**TFF**") which in turn is affiliated to the Fédération Internationale de Football Association.

2. Luka Capan (the "**First Respondent**" or the "**Player**") is a professional football player from Croatia.

3. The Fédération Internationale de Football Association (the "**Second Respondent**" or "**FIFA**") is an association incorporated under Swiss law with its registered office in Zurich, Switzerland. FIFA is the governing body for international football. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

4. Collectively, Bursaspor, the Player and FIFA will be referred to as the "**Parties**".

II. FACTUAL BACKGROUND

A. Background facts

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this award (the "**Award**") refers only to the submissions and evidence considered necessary to explain its reasoning.

6. On 14 August 2021, Bursaspor and the Player entered into an employment contract under which the Player was engaged to play football for Bursaspor (the "**Employment Contract**"). The Employment Contract included, *inter alia*, the following terms:

   a) Its duration was from date of signature until 31 May 2023.

   b) Under Clause 3.1, Bursaspor agreed to pay the Player the following for season 2021/22:

      i. A total of EUR 350,000, comprising: (i) EUR 50,000 net as an advance payment on signing; and (ii) 10 payments of EUR 30,000 net, payable on the last day of each month from August 2021 to May 2022 inclusive.

      ii. A bonus of EUR 50,000 if Bursaspor was promoted to the Turkish Super League.

   c) Under Clause 3.2, Bursaspor agreed to pay the Player a total of EUR 350,000 for season 2022/23, comprising 10 payments of EUR 35,000 net, payable on the last day of each month from August 2022 to May 2023 inclusive.

d) Bursaspor also agreed to provide the Player with: (i) a house, with all utilities to be paid for by the Player; (ii) a car; and (iii) two round-trip economy class flight tickets to the player's home-country, Croatia.

e) Clause 3 also included the following provision:

"*The bonuses to be paid to the player (win, draw, etc.) shall be determined by the Club Management Board.* [...]"

7. As at 1 February 2023, the Player claimed to have only received the following amounts since the commencement of the Employment Contract: (i) EUR 16,000 as a salary for August 2021; and (ii) EUR 50,000 as advance payment on 1 February 2022. Accordingly, on 1 February 2022, the Player sent a default notice to Bursaspor requesting payment of EUR 164,000 and TRY 63,000 within 15 days.

8. The Player confirmed that, following expiry of the 15-day deadline, he received payments of EUR 96,000 and TRY 73,500.

9. On 16 May 2022, the Player unilaterally terminated the Employment Contract on the basis that the following amounts remained outstanding under the Employment Contract: (i) EUR 7,500, being the balance due on his November 2021 salary; (ii) EUR 150,000 being the salary for December 2021 to April 2022 inclusive; and (iii) TRY 21,000, being two months of house rental.

10. On 2 September 2022, the Player entered into an employment contract with Honved FC, a professional football club from Hungary which included, *inter alia*, the following terms:

a) Its duration was from date of signature until 30 June 2023.

b) Honved FC agreed to pay the Player the following:

i. HUF 2,903.50 as a monthly salary for September 2022 to January 2023 inclusive.

ii. HUF 5,763 as a monthly salary for February 2022 to May 2023 inclusive.

iii. HUF 12,153.50 as an additional payment.

B. Proceedings before the FIFA Dispute Resolution Chamber

11. On 31 May 2022, the Player filed a claim against Bursaspor with the FIFA Dispute Resolution Chamber (the "**FIFA DRC**") with the following requests for relief:

"[Bursaspor is to pay the following to the Player]:

(a) EUR 157,500 net and TRY 21,000 as outstanding remuneration plus 5% interest p.a. from the respective due dates until the date of effective payment as follows:

- *EUR 7,500 net as from 30 November 2021 (salary)*
- *EUR 30,000 net as from 31 December 2021 (salary)*
- *EUR 30,000 net as from 31 January 2022 (salary)*
- *EUR 30,000 net as from 28 February 2022 (salary)*
- *EUR 30,000 net as from 31 March 2022 (salary)*
- *EUR 30,000 net as from 30 April 2022 (salary)*
- *TRY 10,500 net as from 24 March 2022 (rental)*
- *TRY 10,500 net as from 24 April 2022 (rental)*

(b) EUR 470,000 corresponding to (EUR 380,000 as residual value of the contract – May 2022 salary and 2022/2023 season) plus additional compensation in the amount of EUR 90,000 (EUR 30,000 x3) as compensation for breach of contract plus 5% interest rate p.a. from 16 May 2022 until the date of effective payment."

12. Bursaspor denied the Player's claim and commented, *inter alia*, as follows in its response:

"*We hereby present all the payment receipts for the payments which were made to the player. As the payments have been made to the player, the termination of the player is without just cause. Moreover, as the club provided a proper flat and rental car for the player, we hereby reject the claim of the player related to the rental fees.*

Even if we assume that the player terminated his contract with just cause (not an acceptance) as the transfer season is continued in lots of country (sic)*, the player may still sign a contract with a third club. According to the Article 17 of RSTP while the compensation is calculated, the value of the new contract should be deducted from the residual value of the contract.*"

13. While the Player accepted that Bursaspor had made payments to him of TRY 20,000 on 15 April 2022, TRY 20,000 on 29 April 2022, TRY 30,000 on 6 May 2022 and TRY 20,000 on 12 May 2022, the Player submitted as follows:

a) The documents provided by Bursaspor to evidence these payments had not been translated into one of the official languages of FIFA.

b) These payments were actually match bonuses, not payments of salary. In support of this position, the Player noted that the Employment Contract provides for salary to be paid in Euros.

14. On 15 September 2022, the FIFA DRC issued the following decision (the "**Appealed Decision**"), the grounds of which were communicated to the Parties on 4 October 2022:

"*1. The claim of the Claimant, Luka Capan, is partially accepted.*

2. *The Respondent, Bursaspor Kulubu Dernegi, has to pay to the Claimant, the following amount:*

   (a) *EUR 157,500 as outstanding remuneration plus 5% interest p.a. as from the respective due dates until the date of effective payment, as follows:*

   - *on the amount of EUR 7,500 net as from 1 December 2021*
   - *on the amount of EUR 30,000 net as from 1 January 2022*
   - *on the amount of EUR 30,000 net as from 1 February 2022*
   - *on the amount of EUR 30,000 net as from 1 March 2022*
   - *on the amount of EUR 30,000 net as from 1 April 2022*
   - *on the amount of EUR 30,000 net as from 1 May 2022*

   (b) *TRY 21,000 as rental fees plus 5% interest p.a. as from the respective due dates until the date of effective payment, as follows:*

   - *TRY 10,500 net as from 25 March 2022*
   - *TRY 10,500 net as from 25 April 2022*

   (c) *EUR 345,105 as compensation for breach of contract plus 5% interest p.a. as from 31 May 2022 until the date of effective payment.*

3. *Any further claims of the Claimant are rejected.*

4. *Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.*

5. *The Respondent shall be banned from registering any new players, either nationally or internationally, for the next two entire and consecutive registration periods following the notification of the present decision.*

6. *If full payment (including all applicable interest) is not made within 30 days of notification of this decision, the present matter shall be submitted, upon request of the Claimant, to the FIFA Disciplinary Committee.*

7. *The decision is rendered without costs.*"

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 21 October 2022, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (2021 edition) (the "**Code**"), the Appellant filed a Statement of Appeal at the Court of Arbitration for Sport (the "**CAS**") in which it: (i) challenged the Appealed Decision; (ii) requested that the case be submitted to a panel of three arbitrators; (iii) nominated Mr. Rui Botica Santos as an arbitrator; and (iv) requested that the sporting

sanctions imposed by the Appealed Decision be stayed pending the outcome of the Appeal..

16. On 27 October 2022, the CAS Court Office:

a) acknowledged receipt of the Statement of Appeal;

b) invited the Respondents to jointly nominate an arbitrator within 10 days;

c) invited the Respondents to comment within 10 days on the Appellant's application for sporting sanctions to be stayed pending the outcome of the Appeal.

17. On 4 November 2022:

a) The Respondents nominated Mr. Kepa Larumbe as an arbitrator.

b) FIFA objected to the Appellant's application to stay sporting sanctions pending the outcome of the Appeal. The Player advised that he had no objection.

18. On 21 November 2022, the Appellant submitted its Appeal Brief, within the time limit previously extended.

19. On 24 November 2022, the Deputy President of the CAS Appeals Arbitration Division, noting that Bursaspor failed to establish and even address any of the necessary requirements for granting provisional measures in accordance with Article R37 of the Code (irreparable harm, likelihood of success and balance of interests), dismissed Bursaspor's application for sporting sanctions to be stayed pending the outcome of the Appeal.

20. On 31 January 2023, the Player filed his Answer within the extended deadline set pursuant to the Code.

21. On 8 February 2023, FIFA filed its Answer within the extended deadline set pursuant to the Code.

22. On 9 February 2023, the CAS Court Office, on behalf of the Deputy President of the CAS Appeals Arbitration Division, advised that the Panel for the case was constituted as follows:

President: Mr. Patrick Stewart, Solicitor in Manchester, United Kingdom

Arbitrators: Mr. Rui Botica Santos, Attorney-at-law in Lisbon, Portugal
Mr. Kepa Larumbe, Attorney-at-law in Madrid, Spain

23. On 20 February 2023, the CAS Court Office informed the Parties that Bursaspor and the Player had requested the Panel to render its Award based on the Parties' submissions only and that FIFA remained silent on this point. Accordingly, the Panel decided to proceed without a hearing.

24. On 10 March 2023, the CAS Court Office advised the Parties of a point of clarification for FIFA from the Panel.

25. On 14 March 2023, FIFA responded on the point of clarification.

26. On 21 March 2023, Bursaspor and FIFA signed the Order of Procedure provided by the CAS Court Office.

27. On 23 March 2023, Bursaspor filed an unsolicited submission with respect to FIFA's response on the point of clarification. The Panel nevertheless accepted the submission on the file.

28. On 27 March 2023, the Player signed the Order of Procedure provided by the CAS Court Office.

29. On 28 March 2023, the CAS Court Office declared the evidentiary proceedings to be closed.

IV. SUBMISSIONS OF THE PARTIES

30. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in this Section IV of the award.

A. Submissions of the Appellant

31. The Appellant made the following requests for relief:

> "*1. Accept the present Appeal,*
>
> *2. Decide to stay of the execution of the sporting sanction,*
>
> *3. In order to enable the parties to establish an amicable solution to the present dispute, submit the dispute to CAS mediation, as per Arts. S1, S2, S3, S6, S12, S20 of the CAS Code and the CAS Mediation Rules;*
>
> *4. In the event that the Respondents reject CAS mediation, seek to resolve the present dispute by means of conciliation, to set aside the challenged FIFA DRC decision in its entirety and annul the sporting sanctions imposed by the FIFA DRC entirely and set aside the Appealed Decision in case a consent is to be reached to the satisfaction of all parties, as per Arts. R42, R56 and R57 of the CAS Code;*
>
> *5. In the event that a mediation or conciliation is not reached, set aside the Appealed Decision in its entirety and annul the sporting sanctions which is in violation of the principle of legality, as per the well-established jurisprudence of CAS.*

6. *In the event that a mediation or conciliation is not reached, set aside the Appealed Decision regarding compensation for breach of contract.*"

32. The Appellant made the following arguments:

a) Where the parties to a dispute subsequently settle that dispute, sporting sanctions should cease to apply.

b) Pursuant to the Code, the Panel has the authority to refer the dispute to mediation and/or resolve it by conciliation and to annul sporting sanctions pursuant to either process.

c) The imposition of sporting sanctions is unlawful on the grounds of unpredictability.

d) Bursaspor has acted in good faith and this should be considered a mitigating factor which justifies the lifting of sporting sanctions.

e) The compensation for breach of contract has been over-calculated.

33. Each of the above arguments is summarised in further detail below.

Sporting sanctions should not apply post-settlement

34. Bursaspor' s submissions in this regard can be summarised as follow:

a) The objective behind sporting sanctions as provided for in Article 17(4) of the FIFA RSTP is to deter contract breaches during the protected period and promote contractual stability. If a contract is breached and the parties settle the resulting claim, then there is no longer a legal justification for sporting sanctions and their continued application conflicts with the objective of Article 17(4) of the FIFA RSTP.

b) Furthermore, the ongoing imposition of sporting sanctions post-settlement has unconscionable financial consequences for Bursaspor as it prevents Bursaspor from generating new sources of income which will hinder its financial recovery and its ability to fulfil its financial obligations to other players. The creation of such a vicious circle is contrary to the objectives of Article 17(4) of the FIFA RSTP.

c) Accordingly, the continued imposition of sporting sanctions following the settlement of a dispute between a player and club is grossly disproportionate to the original regulatory breach and will reduce the likelihood of parties resolving disputes by way of a negotiated settlement.

d) Furthermore, FIFA has previously accepted the lifting of sporting sanctions by CAS following settlement of the dispute by the parties. This occurred in CAS 2019/A/6646, in which FIFA commented as follows:

"*Bearing in mind the above-described scenario (and that the entire DRC system is aimed at reaching the goal that the parties are satisfied with their respective claims when these are sufficiently proven), FIFA understands that these exceptional circumstances could lead the Panel to render an exceptional award, which will not be disputed by FIFA.*"

The Code gives the Panel the authority to annul sporting sanctions

35. Bursaspor's submissions in this regard can be summarised as follow:

a) It is clear from the following CAS regulations that the dispute between Bursaspor and the Player is eligible for resolution by mediation, even after the commencement of arbitration proceedings:

i. Article S12 of the Code which states, *inter alia*, as follows:

"*CAS constitutes Panels which have the responsibility of resolving disputes arising in the context of sport by arbitration and/or mediation pursuant to the Procedural Rules.*"

ii. Article 1 of the CAS Mediation Rules which states, *inter alia*, as follows:

"*In principle, CAS mediation is provided for the resolution of contractual disputes. Disputes related to disciplinary matters, such as doping issues, match-fixing and corruption, are excluded from CAS mediation. However, in certain cases, where the circumstances so require and the parties expressly agree, disputes related to disciplinary matters may be submitted to CAS mediation.*"

iii. Article 4 of the CAS Mediation Rules which states, *inter alia*, as follows:

"*Where the parties agree to submit an ordinary/appeal arbitration case to mediation, the mediator may consider the request for arbitration/statement of appeal as one party's summary of its dispute and may invite only the other party to submit its summary of the dispute.*"

b) It is also clear from the following CAS regulations that the Panel may seek to broker a settlement of the dispute:

i. Article R56 of the Code which states, *inter alia*, as follows:

"*The Panel may at any time seek to resolve the dispute by conciliation. Any settlement may be embodied in an arbitral award rendered by consent of the parties*".

ii. Article R57 of the Code which provides for a *de novo* review of the dispute by the Panel. This allows the Panel to take into account events which have occurred following the first instance decision, such as a

settlement between the parties in dispute. See CAS 2017/A/4935 in support of this position.

c) The discretion of the Panel with respect to sporting sanctions is limited to either confirming the sanction or disposing of it in its entirety. See CAS 2017/A/5056 and CAS 2017/A/5069 in support of this position.

d) Accordingly, the Panel has the discretion to dispose of the sporting sanctions following settlement of the dispute between Bursaspor and the Player by conciliation.

The imposition of sporting sanctions is unlawful

36. Bursaspor' s submissions in this regard can be summarised as follow:

a) The "principle of legality" was described by the panel is CAS 2014/A/3765 as follows:

"*As held by CAS case law in CAS 2008/A/1545 and CAS 2011/A/2670, the "principle of legality" ("principe de légalité") requires that the offences and sanctions must be clearly and previously defined by law and must preclude the "adjustment" of existing rules to enable an application of them to situations or conduct that the legislator did not clearly intend to penalize. CAS awards have consistently held that sports organizations cannot impose sanctions without a proper legal or regulatory basis for them and that such sanctions must also be predictable ("predictability test").*"

b) Article 17(4) of the FIFA RSTP provides for the imposition of sporting sanctions against any club which breaches a contract during the protected period. However, as explained at page 179 of FIFA's Commentary of the Regulations on the Status and Transfer of Players (the "**FIFA RSTP Commentary**"), a threshold approach has been applied in practice:

"[…] *the DRC has established jurisprudence according to which sporting sanctions are regularly applied against clubs found to have terminated a contract without just cause or having seriously breached contractual obligations such that a player has just cause to terminate their contract, at least four times in the two years preceding the DRC decision concerned.*"

c) This creates an expectation that the FIFA DRC will only apply sporting sanction if there have been four findings of breach in the two years prior to the breach in question. This approach has been followed by the FIFA DRC in the following decisions: 23 June 2022 (Steuble), 5 November 2019 (Hopf), 24 August 2018 (08182152-e-3003203), 2 July 2015 (07150210), 20 August 2014 (0814533).

d) In some cases, the FIFA DRC applies an even higher threshold. For example, in CAS 2014/A/3797, the panel upheld the imposition of sporting sanctions by the FIFA DRC where there had been in excess of 11 prior claims of non-payment in prior years.

e) In the Appealed Decision, the FIFA DRC applied sporting sanctions based on just three prior violations. This is contrary to the FIFA RSTP Commentary and CAS jurisprudence and, as such, constitutes an unpredictable, and therefore, unlawful sanction.

Bursaspor's good faith conduct is a mitigating factor

37. Bursaspor submitted that its failure to pay the Player was as a consequence of financial difficulties brought on by poor sporting performance. Its aim was to be promoted from the Turkish First League to the Turkish Super League at the end of season 2021/22, whereas Bursaspor was actually relegated to the Turkish Second League. As a consequence, it could no longer afford its players' salaries.

38. Bursaspor is currently trying to settle all claims from its creditors and achieve financial stability and requests that its good faith conduct be recognised by annulling the sporting sanctions.

The compensation has been over-calculated

39. Bursaspor submitted that, as the Employment Contract only stipulated the salary payable to the Player in season 2022/23 if it was competing in the Turkish Super League or the Turkish First League, the salary payable for competing in the Turkish Second League in season 2022/23 should be the minimum wage.

40. Accordingly, the compensation payable to the Player by Bursaspor should have been calculated based on the Turkish minimum wage, not the contractual salary payable for Bursaspor competing in the Turkish First League.

B. Submissions of the First Respondent

41. The First Respondent made the following requests for relief:

"*1. To reject the claims of the Appellant and confirm the FIFA decision dated 15 September 2022.*

2. To condemn the Appellant to the payment of CHF 15.000 in the favour of the First Respondent of the legal expenses incurred;

3. To establish that the costs of the present arbitration procedure shall be borne by the Appellant."

42. Other than noting that he had not sought the imposition of sporting sanctions against Bursaspor, the Player made no further submissions with respect to that aspect of the Appeal.

43. The Player rebutted Bursaspor's argument that the compensation payable to the Player should be reduced and made the following arguments in doing so:

a) Clauses 3.2 and 3.3 of the Employment Contract provide as follows with respect to the salary payable for season 2022/23:

"[3.2] *FOR THE 2022/2023 SEASON TO THE PLAYER; (IF BURSASPOR CONTINUES TO PLAY IN THE TFF 1ST LEAGUE)*

A. In total, a net warranty fee of of (sic) *350.000 EUR* […]"

"[3.3] *FOR THE 2022/2023 SEASON TO THE PLAYER; (IF BURSASPOR PLAYS IN THE TURKISH SUPER LEAGUE)*

A. In total, a net warranty fee of 400.000 EUR […]"

b) The wording of these provisions reflects the fact that Bursaspor was participating in the Turkish First League at the commencement of the Employment Contract. The objective of clauses 3.2 and 3.3 was to increase the Player's salary if Bursaspor was promoted to the Turkish Super League for season 2022/23, not to reduce the Player's salary if Bursaspor was relegated to the Turkish Second League. In the absence of any express contract term to reduce the salary in such circumstances, it is clear that the salary was to continue at EUR 350,000 net.

c) To reduce the Player's salary from EUR 350,000 net to TRY 66,000 (i.e. EUR 3,316) would be both unfair and unlawful.

d) When the Player terminated the Employment Contract with just cause (i.e. on 16 May 2022), Bursaspor was still participating in the Turkish First League.

e) When Bursaspor responded on 7 July 2022, it did not dispute the quantum of compensation due for season 2022/23. Indeed, Bursaspor's only submission on quantum was that the amount awarded should be reduced to the extent that the Player had managed to mitigate his loss for season 2022/23.

f) Bursaspor has not made this argument when defending other claims brought by former players for unpaid salary. For example, Bursaspor did not do so in FIFA DRC decision Ref. Nr. FPSD-5952 of 7 July 2022, even though the employment contract for that case contained the same salary clauses for season 2022/23 as those contained in the Employment Contract.

C. Submissions of the Second Respondent

44. The Second Respondent made the following requests for relief:

"[…] *FIFA respectfully requests CAS to issue an award on the merits:*

(a) rejecting the reliefs sought by the Appellant;

(b) confirming the Appealed Decision; and

(c) ordering the Appellant to bear the full costs of these arbitration proceedings."

45. FIFA made no submissions regarding the level of compensation awarded to the Player with respect to the "horizontal dispute" between Bursaspor and the Player, other than to question whether Bursaspor had satisfied its burden of proof as it had not filed a copy of the Employment Contract.

46. FIFA's submissions with respect to the "vertical" element can be summarised as follows:

a) Disciplinary matters cannot be resolved by way of mediation, conciliation or settlement of the horizontal dispute between Bursaspor and the Player.

b) The imposition of sporting sanctions was predictable and therefore lawful. It is clear from Article 17(4) of the FIFA RSTP that a single breach during the protected period can attract sporting sanctions. In any event, this case represents Bursaspor's fourth breach of contract in the last two years.

47. FIFA's arguments are described in further detail below.

No mediation, conciliation or settlement with respect to disciplinary matters

48. FIFA made, *inter alia*, the following submissions:

a) Mediation or conciliation proceedings require the consent of all parties. FIFA rejected the opportunity to refer this case to mediation and explained to Bursaspor that it does not normally settle disciplinary matters such as the present one.

b) FIFA informed Bursaspor that settlement of the horizontal dispute would not have any effect on the imposition of sporting sanctions. It is wrong for Bursaspor to assert otherwise.

c) Established CAS jurisprudence recognises the distinction between a horizontal dispute (i.e. concerning the parties to a contract) and a vertical dispute (i.e. concerning the imposition of a disciplinary sanction by FIFA). See, for example, CAS 2019/A/6263. Settlement of the horizontal dispute after the Appealed Decision does not alter the fact that: (i) Bursaspor breached its financial obligations under the Employment Contract in a manner that warrants disciplinary measures; and (ii) disciplinary consequences arose for Bursaspor on the date that the Player terminated the Employment Contract with just cause.

d) In contrast to a horizontal dispute, a disciplinary breach cannot be cured retrospectively. If that were possible, then the deterrent effect of Article 17 of the FIFA RSTP would be lost.

The imposition of sporting sanctions was not unlawful

49. FIFA rebutted Bursaspor's argument that the imposition of sporting sanctions breached the principle of legality on grounds of unpredictability. In doing so, FIFA made the following submissions:

a) There is no uncertainty as to which offences attract sporting sanctions. Article 17(4) of the FIFA RSTP is unambiguously drafted as follows:

"*In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract* […] *during the protected period.* […] *The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction.* […]"

b) CAS has confirmed that Article 17(4) of the FIFA RSTP provides a clear basis for the imposition of sporting sanctions on any club found to be in breach of contract during the protected period. For example, in CAS 2017/A/5056 and 5069, the panel commented as follows:

"The Panel finds that FIFA's policy to not necessarily impose sporting sanctions in case of a breach of contract during the protected period, since the decisions are rendered ex officio on a case by case basis, does not mean that FIFA cannot impose sporting sanctions in such situation. To the contrary, the legal basis to impose sporting sanctions in this kind of disputes as in the matter at hand, is clearly provided for in Article 17(4) of the FIFA RSTP. As such, the sanction resulting from the offence is predictable and the provision meets the requirement of a clear connection between the incriminated behaviour and the sanction. This should not lead to any controversy, as such policy does not prejudice the Club. FIFA's policy to not necessarily impose sporting sanctions in case of a breach of contract by a club during the protected period is in fact favourable to the Club."

c) It is undisputed that the Player terminated the Employment Contract with cause during the protected period. Accordingly, the FIFA DRC was entitled to impose sporting sanctions.

d) While the FIFA DRC has adopted an approach of almost certainly imposing sanctions when a club has committed a fourth breach of contract, that does not preclude sporting sanctions from being imposed where there are fewer prior breaches. It is not the number of prior breaches that is decisive, but rather the circumstances surrounding the breach of contract during the protected period.

e) Even if it were considered that a threshold applies, the Appealed Decision met that threshold. FIFA submitted that "[w]*hen assessing the number of breaches committed by a given club in the context of the practice mentioned in the Commentary at page 179, the club will be sanctioned for its fourth breach of contract (i.e., the fourth breach being the one under scrutiny when imposing the relevant sanction). Simply put and applied to the case at hand: the fourth breach includes (and actually consists in) the contract termination object of the present proceedings.*"

50. FIFA also rebutted Bursaspor's argument that the imposition of sporting sanctions breaches the principle of legality if the parties to the dispute have settled their differences. It did so on the following grounds:

a) Bursaspor's argument relies on CAS 2019/A/6646 as a precedent, but that case is not on point. Firstly, FIFA was not a party to those proceedings but the panel asked FIFA to consider lifting sporting sanctions based on the genuinely exceptional circumstances of that case – i.e. that the outstanding amounts owed by the club to the player had actually been paid prior to the initiation of proceedings before the FIFA DRC (meaning that the FIFA DRC made its decision "*on an erroneous chain of events*"). Secondly, the parties did not enter into a settlement agreement. Instead conclusive evidence was provided by the club and the player to demonstrate that no contractual breach occurred in the first case.

b) As already submitted, an *ex post* settlement of a horizontal dispute does not alter the fact that a contract breach occurred or justify the annulment of sporting sanctions.

V. JURISDICTION

51. Article R47 of the Code provides as follows:

"An appeal against the 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 as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body."

52. Article 58 (1) of the FIFA Statues (May 2021 Edition) provides as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question."

53. The Parties do not dispute the jurisdiction of CAS and confirmed it by signing the Order of Procedure.

54. It follows that the CAS has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

55. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a

procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties."

56. Article 58 (1) of the FIFA Statues requires appeals to be lodged within 21 days of receipt of the decision in question.

57. The FIFA DRC rendered the Appealed Decision on 15 September 2022 and notified its grounds to the Parties on 4 October 2022. The last day of the 21-day period by which the Appellant was required to have filed the Statement of Appeal was therefore 25 October 2022. The Appellant submitted its appeal on 21 October 2022 and it was therefore submitted in a timely manner.

58. Accordingly, the Appellant's appeal to CAS is admissible.

VII. APPLICABLE LAW

59. Article R58 of the Code provides as follows:

"*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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

60. FIFA is the body which issued the Appealed Decision and it is domiciled in Switzerland. Furthermore Article 56(2) of the FIFA Statutes (May 2021 Edition) 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."

61. Accordingly, the Panel is satisfied that the various regulations of FIFA (and specifically the FIFA RSTP) shall apply and that Swiss law shall apply additionally to fill in any gaps or lacuna when appropriate.

VIII. MERITS

62. According to Article R57 (1) of the Code, the Panel has "*full power to review the facts and the law*". As repeatedly stated in the CAS jurisprudence (e.g. CAS 2007/A/1394), by reference to this provision the CAS appeals arbitration procedure entails a *de novo* review of the merits of the case, and is not confined merely to deciding whether the

ruling appealed was correct or not. Accordingly, it is the function of the Panel to make an independent determination as to merits.

63. In light of the facts and the circumstances of the case, as well as considering the Parties' submissions in support of their claims, the Panel observes that the main issues to be resolved are the following:

a) What is the applicable burden and standard of proof?

b) With respect to a contractual dispute that results in the imposition of sporting sanctions, does settlement of the "horizontal element" also resolve the "vertical element"?

c) Was the imposition of sporting sanctions unlawful for any reason?

d) If the answers to (b) and (c) are in the negative, is there any other reason to lift the sporting sanctions?

e) Should the compensation for breach of contract be reduced?

A. The applicable burden and standard of proof

64. The concept of burden of proof has been considered in many CAS decisions and is well established CAS jurisprudence. It was set out in CAS 2007/A/1380 as follows:

"*According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based.* [...] *It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based.* [...] *The two requisites included in the concept of "burden of proof" are (i) the "burden of persuasion" and (ii) the "burden of production of the proof". In order to fulfil its burden of proof, the Club must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the Club. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party*" (see also CAS 2005/A/968 and CAS 2004/A/730).

65. In CAS 2003/A/506, it was held:

"[In] *CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue… Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence.*"

66. This position is further supported by the provisions of Article 13(5) of the Procedural Rules Governing the Football Tribunal (2022 edition) which states:

"*A party that asserts a fact has the burden of proving it*".

67. It follows therefore that each party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the Panel that the facts it pleads are established.

68. As to the question of what the standard of proof is, the Panel makes the following observations:

a) Neither the Swiss Private International Law Act nor the Code prescribe a "standard of proof" applicable to CAS proceedings.
b) According to legal authorities, the parties to CAS arbitration proceedings are entitled to enter into a separate agreement on the evidential procedures to be followed, provided that these do not depart from mandatory procedural requirements of the Code. See the chapter entitled "Evidentiary Issues Before CAS" by Rigozzi/Quinn which is contained in "International Sports Law and Jurisprudence of the CAS - 4th Conference CAS & SAV/FSA Lausanne 2012, Editions Weblaw 2014" edited by Bernasconi M. ("Rigozzi/Quinn"). In this case, the Parties have not agreed, or otherwise expressed a view as to, the standard of proof to be applied.

c) Consistent CAS jurisprudence has upheld the right of a sports-governing body to set its own standard of proof (see, for example, CAS 2011/A/2426 and CAS 2011/A/2625). The regulations applicable to this case (i.e. the FIFA RSTP) are silent on this.

d) Where no applicable standard of proof is specified in the applicable regulations, CAS jurisprudence confirms that the Panel has the discretion to determine the appropriate standard, although as indicated in CAS 2010/A/2172, the Panel should at least consider consistent CAS jurisprudence in similar fields when exercising this discretion. The Panel notes that previous CAS panels have generally applied the "comfortable satisfaction" standard when considering cases involving the FIFA RSTP. See, for example, CAS 2012/A/2908, CAS 2019/A/6187 and CAS 2020/A/7605. As explained by the panel in CAS 2011/A/2426, that standard is considered to be "*higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt*"".

e) The following FIFA regulations adopt the standard of comfortable satisfaction: (i) Article 35 of the FIFA Disciplinary Code (for the standard of proof to be applied in FIFA disciplinary proceedings); (ii) Article 48 of the FIFA Code of Ethics (for the standard of proof to be applied by FIFA's Ethics Committee); and (iii) Article 68(1) of the FIFA Anti-Doping Regulations (for the standard of proof to establish an anti-doping rule violation).

69. In light of the above observations, the Panel considers it most appropriate to apply the standard of "comfortable satisfaction".

B. Does settlement of the "horizontal element" resolve the "vertical element"?

70. The Panel rejects Bursaspor's argument that settlement of the horizontal dispute between the Player and Bursaspor following the Appealed Decision should result in the lifting of sporting sanctions. The Panel's reasons for this are as follows:

a) Established CAS jurisprudence recognises the distinction between a horizontal dispute (i.e. concerning the parties to a contract) and a vertical dispute (i.e. concerning the imposition of a sanction and involving FIFA). See, for example, CAS 2019/A/6263. Settlement of the horizontal dispute requires the agreement of Bursaspor and the Player, whereas settlement of the vertical dispute requires the agreement of Bursaspor and FIFA. FIFA has not given its agreement.

b) The fact that Bursaspor entered into a settlement agreement with the Player to address the consequences of Bursaspor's breach of the Employment Contract (i.e. the horizontal dispute) does not change the fact that Bursaspor breached the Employment Contract during the protected period and thereby brought Article 17(4) of the FIFA RSTP into play. To recall, the "protected period" is defined in the FIFA RSTP as follows:

"*a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional*".

c) The Panel concurs with FIFA's assessment that a disciplinary breach cannot be cured retrospectively as that would undermine the deterrent effect of Article 17 of the FIFA RSTP. In this regard, the Panel notes the following except from the FIFA RSTP Commentary (page 177):

"*The option to apply sporting sanctions further strengthens the relationship between a professional player and their club and serves as an additional deterrent for clubs and players who may be considering terminating a contract unilaterally or deliberately failing to comply with their contractual obligations.*"

d) The Panel notes Bursaspor's argument that "*the continued imposition of sporting sanctions following the settlement of a dispute between a player and club* […] *will reduce the likelihood of parties resolving disputes by way of a negotiated settlement.*" The counter-argument to this is of course that, by making it possible for sporting sanctions to be annulled, their deterrent effect is diminished and the likelihood increases of parties breaching contracts in the first place.

C. Was the imposition of sporting sanctions unlawful?

71. The Panel recalls that the "principle of legality" creates the following safeguards for any club or player who is subject to FIFA's disciplinary regime:

a) Disciplinary offences and their associated sanctions must be clearly defined within FIFA's rules and regulations.

b) FIFA's judicial bodies must have a proper legal or regulatory basis for imposing a sanction.

c) Any such sanction must be predictable.

d) FIFA may be estopped from applying a rule or regulation in a particular way if precedent has created a legitimate expectation for the club or player that the rule or regulation would not be so applied.

72. The Panel considers that Article 17(4) of the FIFA RSTP: (i) clearly defines a disciplinary offence and associated sanction; and (ii) provided the FIFA DRC with a clear regulatory basis for imposing sporting sanctions on Bursaspor. To recap, it states as follows:

"*In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract* […] *during the protected period.* […] *The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction.* […]"

73. The Panel will now consider whether the imposition of sporting sanctions in the Appealed Decision was predictable and/or whether the FIFA DRC has applied Article 17(4) in a way which has created a legitimate expectation on the part of Bursaspor that sporting sanctions would only be applied to repeat offenders meeting a particular threshold.

74. Of particular relevance in this regard is the FIFA RSTP Commentary as, not only does it contain curated FIFA DRC and CAS jurisprudence with respect to the application of Article 17(4) of the FIFA RSTP, but it is also cited by Bursaspor in its submissions.

75. Firstly, the Panel notes the following excerpt from page 178 of the FIFA RSTP Commentary (emphasis added):

"*Despite the wording of the Regulations, the DRC's consistent jurisprudence suggests it has a certain margin of discretion in this regard. It interprets the Regulations as granting it the power to impose sporting sanctions, rather than placing it under an obligation to do so. Indeed, the DRC has regularly decided not to impose sporting sanctions on both players and clubs, even where breaches of contract have occurred during the protected period.*

CAS has repeatedly and consistently confirmed this approach. For sporting sanctions to be imposed, the specific circumstances surrounding the behaviour of the party in breach must justify sporting sanctions. In other words, a flexible, case-by-case approach is legitimate.

In [CAS 2014/A/3754] *CAS confirmed that the imposition of sporting sanctions was not mandatory, but stated that only specific circumstances could justify a decision not to apply sporting sanctions. If such sanctions were imposed, the party against which those sanctions were directed would need to demonstrate that these specific circumstances were at play to challenge the sanctions."*

76. The Panel considers that the following expectations are created by the above excerpt:

a) The FIFA DRC does not apply Article 17(4) of the FIFA RSTP strictly and regularly opts not to impose sporting sanctions when entitled to do so.

b) CAS will not intervene if the FIFA DRC decides to exercise its discretion not to impose sporting sanctions.

c) If the FIFA DRC does impose sporting sanctions, the burden of proof is on the person who has been sanctioned to demonstrate that there were specific circumstances which should have resulted in the FIFA DRC not imposing them.

77. The Panel now notes the following excerpt from page 179 of the FIFA RSTP Commentary (emphasis added):

"*With respect to the imposition of sporting sanctions on clubs, the concept of "repeat offenders" has gained particular importance. Over time, the DRC began to observe that purely financial sanctions were not proving a sufficient deterrent for certain clubs. This meant urgent action had to be taken with a view to applying stricter sporting sanctions against these clubs. As a result, the DRC has established jurisprudence according to which sporting sanctions are regularly applied against clubs found to have terminated a contract without just cause or having seriously breached contractual obligations such that a player has just cause to terminate their contract, at least four times in the two years preceding the DRC decision concerned.*

CAS has supported this approach [see 2014/A/3765], *finding that a repeat offence should be viewed as a decisive and extremely serious aggravating factor in any wrongdoing.* [*See CAS 2014/A/3765, CAS 2014/A/3740, CAS 2015/A/4220, CAS 2017/A/5056] The fact that clubs (and players) sometimes benefit from lenient approach of the DRC does not imply that sporting sanctions should not be applied in some cases, and four previous instances of unjustified breach of contract are sufficient to qualify as an "aggravating circumstance" allowing sporting sanctions to be imposed. Furthermore, a decision to award only limited financial compensation for breach of contract does not preclude the application of sporting sanctions.* [See CAS 2014/A/3797]"

78. The Panel considers that the following expectations are created by the above excerpt:

a) It is probable that the FIFA DRC will exercise its discretion to impose sporting sanctions against a club, if that club has been found to have committed a Relevant Breach at least four times in the two years preceding the FIFA DRC decision concerned. A "**Relevant Breach**" occurs if a club has breached an employment contract in a way which justifies a player terminating the contract with just cause.

b) Simply because the FIFA DRC applies Article 17(4) of the FIFA RSTP more leniently in some cases, does not mean that sporting sanctions cannot be applied in other cases which fall within the scope of Article 17(4).

c) Four findings of Relevant Breach in the prior two years are sufficient to qualify as an "aggravating circumstance" allowing sporting sanctions to be imposed.

79. Considering the aggregated effect of both excerpts and the jurisprudence referred to therein, the Panel considers that the following expectations are created for clubs:

a) The FIFA DRC exercises discretion when deciding whether to impose sporting sanctions for a Relevant Breach.

b) The mandatory prerequisite for imposing sporting sanctions is that the club has committed a Relevant Breach during the protected period.

c) The FIFA DRC shall only impose sporting sanctions if there are sufficient aggravating circumstances.

d) Four findings of Relevant Breach in the two years preceding the FIFA DRC decision concerned constitute sufficient aggravating circumstances. However, this does not mean that sporting sanctions may only be imposed with respect to repeat offenders or to repeat offenders against whom there have been at least four findings of Relevant Breach in the prior two years. There may be other aggravating factors which justify the imposition of sporting sanctions.

e) If the FIFA DRC does impose sporting sanctions, the burden of proof is on the sanctioned club to demonstrate that same specific circumstances existed with respect to its case as existed with respect to another case in which the FIFA DRC decided not to impose sporting sanctions.

80. The Panel considers that, at the time of the Appealed Decision, there were two findings of Relevant Breach by Bursaspor in the preceding two years – i.e. the second and third of the three FIFA DRC decisions listed at paragraph 44 of the Appealed Decision. The Panel considers that the first of those decisions should not have been considered as a finding as it was still the subject of a CAS appeal at the time of the Appealed Decision. In other words, the Panel considers that only *res judicata* decisions should be considered when assessing prior offences. The Panel acknowledges that is contrary to views expressed by FIFA. Specifically:

a) FIFA submitted that any FIFA DRC decision (including those which are the subject of an ongoing appeal) should be considered as a "finding" when determining the number of prior offences because "[a]*lthough an appeal to CAS may stay the club's financial obligations, it does not detract from the fact that a breach of contract has been committed.*" The Panel disagree with this analysis as it is possible for a finding of breach at first instance to be overturned on appeal. If that were to happen, any decision to impose sporting sanctions based on the overturned decision would itself be vulnerable to appeal.

b) FIFA submitted that, in line with page 179 of the FIFA RSTP Commentary, the breach which resulted in the Appealed Decision should also be included when calculating the number of prior offences in the two years preceding the Appealed Decision. The Panel does not agree with FIFA's interpretation of the relevant section of page 179. To recap, it states as follows (emphasis added): "*sporting sanctions are regularly applied against clubs found to have terminated a contract without just cause or having seriously breached contractual obligations such that a player has just cause to terminate their contract, at least four times in the two years preceding the DRC decision concerned.*" The excerpt only captures findings of breach (i.e. by way of a FIFA DRC decision) in the two years preceding the decision concerned (i.e. the two years coming before the decision concerned). As such, the Appealed Decision cannot be included when calculating the number of prior offences.

81. However, as explained above, the Panel does not consider that the FIFA RSTP Commentary restricts the imposition of sporting sanctions only to repeat offenders or only to repeat offender against whom there have been at least four findings of Relevant Breach in the prior two years. Sporting sanctions may be imposed if there are any sufficiently aggravating circumstances. In this regard, the Panel considers that the following constitute sufficiently aggravating circumstances to justify the imposition of sporting sanctions:

a) The two findings of Relevant Breaches by Bursaspor occurred on 7 July 2022 and 1 September 2022, i.e. in the three-month period preceding the Appealed Decision. The occurrence of three Relevant Breaches within such a short period of time is deemed by the Panel to constitute an aggravating circumstance.

b) Bursaspor started breaching its payment obligations under the Employment Contract immediately following its signature on 16 August 2021 (when it failed to pay the Player the advance fee of EUR 50,000 on signature) and then continued to breach its payment obligations until the Player terminated the Employment Contract on 16 May 2022. Bursaspor claimed that it had acted in good faith and that its failure to pay the Player was caused by financial difficulties brought on by poor sporting performance during season 2021/22. Given that Bursaspor failed to make the very first payment when due, this explanation lacks credibility. Indeed at the point of entering into the Employment Contract, Bursaspor must have known that it could not or would not honour its payment obligations. The Panel considers this to be a further aggravating circumstance.

82. Furthermore, the Panel notes that Bursaspor failed to discharge its burden of proof as it did not refer to any FIFA DRC decisions in which the FIFA DRC decided not to impose sporting sanctions in circumstances similar to its own. Bursaspor only referred to jurisprudence in which sporting sanctions were imposed, with the exception of CAS CAS 2019/A/6646 which the Panel does not consider to be on point as the panel in that case made an exceptional decision based on genuinely exceptional circumstances – i.e. that the outstanding amounts owed by the club to the player had actually been paid prior to the initiation of proceedings before the FIFA DRC, resulting in the FIFA DRC making its decision "*on an erroneous chain of events*".

83. Accordingly, the Panel concludes that the imposition of sporting sanctions in the Appealed Decision was not unpredictable. Furthermore, the Panel does not consider that the FIFA DRC has applied Article 17(4) of the FIFA RSTP in such a way so as to create a legitimate expectation on the part of Bursaspor that sporting sanctions would only be applied to repeat offenders meeting a particular threshold.

84. Given the above, the Panel finds no cause to reverse the imposition of sporting sanctions pursuant to the principle of legality.

D. Is there any other reason for sporting sanctions to be lifted?

85. The Panel does not consider there to be any other reasons to lift the sporting sanctions imposed on Bursaspor by the Appealed Decision.

86. For completeness, the Panel addresses the following further arguments of Bursaspor which are not otherwise addressed in this Award:

a) Bursaspor submitted that: (i) the ongoing imposition of sporting sanctions post-settlement has unconscionable financial consequences for Bursaspor as it prevents Bursaspor from generating new sources of income which will hinder its financial recovery and its ability to fulfil its financial obligations to other players; and (ii) the creation of such a vicious circle is contrary to the objective of Article 17(4) of the FIFA RSTP (i.e. contractual stability). The Panel considers this argument to be without merit. Firstly, it ignores the deterrent effect of Article 17(4). Secondly, sporting sanctions prohibit Bursaspor from registering players (i.e. from incurring new financial obligations with respect to players) not from selling players or generating revenue via other means. Accordingly, the Panel sees no connection between the imposition of sporting sanctions and the ability of Bursaspor to comply with its financial obligations to other players.

b) Bursaspor submitted that its failure to pay the Player and other creditors is as a consequence of financial difficulties brought on by poor sporting performance and that it is currently acting in good faith to settle all claims from its creditors. Bursaspor requested that its good faith conduct be recognised by annulling the sporting sanctions. The Panel does not consider this request to have any merit. Firstly, Bursaspor has submitted no evidence as to the causes of its alleged financial difficulties or its attempts to settle claims with its creditors.

Furthermore, even if Bursaspor had submitted such evidence, the Panel does not consider the alleged circumstances to serve any mitigatory purpose.

E. Should the compensation for breach of contract be reduced?

87. Bursaspor submitted that: (i) as the Employment Contract only stipulated the salary payable to the Player in season 2022/23 if it was competing in the Turkish Super League or the Turkish First League, the salary payable for competing in the Turkish Second League in season 2022/23 must, by implication, be the minimum wage; and (ii) accordingly, the compensation payable to the Player by Bursaspor should have been calculated based on the Turkish minimum wage, not the contractual salary payable for Bursaspor competing in the Turkish First League.

88. For the following reasons, the Panel does not agree with Bursaspor's position:

a) Bursaspor submitted no legal arguments to support its position.

b) Reducing the compensation would require the Panel to include an implied term in the Employment Contract resulting in the salary being reduced from EUR 350,000 net to EUR 3,316 net (i.e. to less than one percent of the original amount) for season 2022/23. The inclusion of an implied term having such a material impact runs contrary to the principle of good faith which exists under Swiss law. For example, Article 2(1) of the Swiss Civil Code requires that "*Every person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations*".

c) Pursuant to the *contra proferentem* principle, where there is doubt about the meaning of a contract, the words will be construed against the person who put them forward. In this case, it is reasonably assumed by the Panel that the Employment Contract was prepared by Bursaspor as it based on a standard TFF template and is drafted in both Turkish and English.

89. For completeness, the Panel acknowledges that: (i) Bursaspor's requests for relief included the following at paragraph 6: "*In the event that a mediation or conciliation is not reached, set aside the Appealed Decision regarding compensation for breach of contract.*"; and (ii) Bursaspor's submissions refer to a settlement agreement between it and the Player. The Panel considered whether it would be appropriate to overturn the element of the Appealed Decision which requires Bursaspor to pay compensation to the Player. However, the Panel decided against this for the following reasons:

a) Bursaspor has not satisfied the burden of proof as to the existence of a settlement agreement between the Appellant and the Player. Bursaspor did not submit a copy of such an agreement in evidence and the Player's submissions made no reference to such an agreement.

b) Even if such an agreement exists, Bursaspor has not satisfied the burden of proof as to it having discharged all of its payment obligations thereunder. Until that point, the financial compensation element of the Appealed Decision remains relevant.

F. Conclusion

90. In light of the above, the Panel concludes as follows:

a) There is no basis for it to revoke the sporting sanctions imposed in the Appealed Decision.

b) There is no basis for it to alter the level of compensation awarded to the Player in the Appealed Decision.

c) Accordingly, Bursaspor's appeal is dismissed and the Appealed Decision is upheld in full.

IX. COSTS

91. Pursuant to Article R64.4 of the Code, the CAS Court Office shall, upon conclusion of the proceedings, determine the final amount of the costs of this arbitration, which shall include the CAS Court Office fee, the costs and fees of the arbitrator, computed in accordance with the CAS fee scale, the contribution towards the costs and expenses of the CAS, and the costs of witnesses, experts and interpreters, if any. Article R64.4 of the Code provides as follows:

"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:
- *the CAS Court Office fee,*
- *the administrative costs of the CAS calculated in accordance with the CAS scale,*
- *the costs and fees of the arbitrators,*
- *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- *a contribution towards the expenses of the CAS, and*
- *the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

92. In addition to the payment of the arbitration costs, the award shall also determine to the prevailing party or parties a contribution towards its legal fees and other expenses incurred in connection with the proceedings. Article R64.5 of the Code provides as follows:

"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties".

93. In exercising its discretion with regards to the costs and contribution, the Panel decides as follows:

a) The Panel takes into consideration: (i) the outcome of these proceedings (in which Bursaspor's appeal was rejected); and (ii) the conduct of the Parties. Accordingly, the Panel finds it appropriate and equitable to order that the total costs of these proceedings shall be paid by Bursaspor. The costs will be determined by the CAS and notified to the Parties in a separate communication.

b) Pursuant to Article R64.5 of the Code, and in consideration of the outcome of the proceedings, the Panel finds that in view of the wide discretion conferred upon it, Bursaspor shall pay a contribution to the expenses of the First Respondent incurred in the present proceedings in the amount of CHF 3,000 (three thousand Swiss Francs). Since FIFA was represented by its in-house Counsel, the Panel decides that FIFA shall bear its own costs and legal expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Bursaspor Kulübü Derneği against the decision issued on 15 September 2022 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.

2. The decision issued on 15 September 2022 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is confirmed in its entirety

3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be paid by Bursaspor Kulübü Derneği.

4. Bursaspor Kulübü Derneği is ordered to pay to Mr. Luka Capan a total amount of CHF 3,000 (three thousand Swiss Francs) as contribution towards the expenses incurred in connection with these arbitration proceedings. The Fédération Internationale de Football Association shall bear its own costs and expenses incurred in connection with these arbitration proceedings.

5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 18 July 2023

THE COURT OF ARBITRATION FOR SPORT

Mr. Patrick Stewart
President of the Panel

Mr. Rui Botica Santos
Arbitrator

Mr. Kepa Larumbe
Arbitrator