Arbitration CAS 2009/A/1974 N. v. S.C.F.C. Universitatea Craiova & Romanian Football Federation (RFF), award of 16 July 2010

Panel: Mr Lars Hilliger (Denmark), President; Mr Jean-Philippe Rochat (Switzerland); Mr Clifford Hendel (USA)

Football
Disciplinary sanction of the club on its former coach
Legal relationship between the RFF and the RPFL and standing to be sued
Duty of the first adjudicating body to inform the parties of their rights to request reasons and file an appeal
Right of the CAS Panel to issue a new decision in replacement of the decision appealed against
Power of the employer to exercise disciplinary control after the end of the contractual relationship

1. **The legal status of RPFL is similar to the organization of football leagues in other countries; the RPFL is neither a body nor an organ of the RFF, but rather a separate legal entity with powers and authority to organize the Romanian professional football championship. Therefore, in decisions rendered by the adjudicating instances of the RPFL, the RFF lacks standing to be sued.**

2. **Generally, in case a decision does not contain any reasons supporting its ruling, the reviewing role of an appeals body is almost an impossible task. It is thus logical and legally sound that a person affected by a decision without reasons shall, as a first step, request that the reasons of the decision are delivered and then file an appeal before the second instance body. On the other hand, given that a possible failure to ask for the reasons is connected to serious legal consequences such as the inadmissibility of an eventual appeal, the body issuing the unreasoned decision must inform the parties of their respective rights to (a) request reasons and (b) file an appeal.**

3. **The power of a CAS Panel in arbitration appeals proceedings to issue a new decision in replacement of the decision appealed from is expressly defined in Article R57 of the CAS Code. In compliance with consistent CAS jurisprudence both in pecuniary and in disciplinary disputes heard upon appeal and having regard to the circumstances of this case, the Panel can opt to review the merits of the case and issue a new decision in the dispute, when the value and complexity of the dispute would not justify a referral of the case back to the first adjudicating instance, for reasons of procedural economy.**

4. **It is a general principle of labour law that an employer is not empowered to exercise any disciplinary control, let alone impose monetary sanctions, on a person that is no longer employed by it. The situation can be different if the parties have expressly agreed that certain terms of the contract shall still be binding on them for a specified period of time after the end of their contractual relationship, which is usually the case**

for "non-disclosure" or "non-competition" clauses. Again, under such a clause the employer suffering from the breach would have a claim against its former employee but not any longer disciplinary authority on him.

N. ("the Appellant") is an Italian professional football coach born in 1962. He currently trains the team of FC Astra Ploiesti.

S.C. Football Club Universitatea Craiova ("the Club" or "the First Respondent") is a Romanian first division football club with its registered office in Craiova, Romania. It is a member of the Romanian Football Federation.

The Romanian Football Federation (RFF or "the Second Respondent") is the national football association of Romania and has its registered office in Bucharest, Romania. It is affiliated to the Union des Associations Européennes de Football (UEFA) and to the Fédération Internationale de Football Association (FIFA).

On 10 May 2008 the Appellant and the Club entered into an employment contract whereby the latter engaged the Appellant as coach for its first team for the season 2008-2009 ("the Contract").

The Contract was executed in the Romanian language; the English translation was provided by the Appellant and has been considered accurate by the Parties and the Panel. Certain other correspondence and documentation referred to in this Award has similarly been submitted without objection with English translation on which the Panel has relied,

The relevant parts of the Contract read as follows:

> *"1. Object of Agreement*
>
> *The object of the agreement is constituted by the training and coaching by the provider of the first team of the U Craiova club, upon the terms and conditions set forth by the latter.*
>
> *2. Duration of agreement*
>
> *The duration of the agreement shall be terminated, one (1) year, the agreement being further executed as from the date of 01.07.2008 until the date of 30.06.2009.*
>
> *3. The fee*
>
> *Art. 1 For the performance of the activities provided in point 1, the provider benefits from a fee payable in RON, at the inter-banking average exchange rate set forth by NBR for the payment date, divided as follows:*
>
> *Season 2008-2009: EUR 180,000 net, out of which EUR 40,000 net payable until the date of 30.06.2008, and the rest of EUR 140,000 net payable in equal monthly instalments. […]*

4. Bonuses […]

- *In case, at the end of the competition season, the team is placed on a position allowing it to qualify in the UEFA CUP, the coach shall benefit from a bonus in amount of EUR 150,000; […]*

5. Parties' rights and obligations […]

2. The provider bonds to: […]

c) not to make statements or give interviews to the press without the written approval of the club for the entire duration of the agreement, under the sanction of decreasing the fee, according to the FRF Regulation. […]

6. Civil agreement changing

The change of any clause of the civil agreement may only be made by parties' consent, agreed upon in writing, by additional document.

7. Termination of the civil agreement

The present civil agreement shall be terminated in the following situations:

a) upon expiry of the term it was concluded for;

b) by parties' agreement.

8. Final provisions

Litigations arising from the execution of the provisions of the present civil agreement shall be ami[c]ably settled, otherwise by the competent instances of FRF".

Apparently, the trainer performed his obligations from July 2008 to May 2009 without any problems and without receiving any warning from the Club.

On 15 May 2009, with the Club's team being at the 6th place of the Romanian first division's standings, the Club served on the Appellant a document entitled "Notification" ("the Termination Letter"):

"The underwritten, S.C. FOTBAL CLUB CRAIOVA S.A., registered office in Craiova, […] duly represented by Mr Mititelu Adrian, as General Director,

We hereby inform you upon the following:

Due to the pour [sic] results in the team training and evolution of FC Universitatea Craiova football team, as well as to the lack of professionalism of which you are showing, we are informing you that, as from the date of 15.05.2009, you will no longer coordinate the trainings of FC Universitatea Craiova team, being dismissed from the position of main coach of this team".

Following receipt of the letter the Appellant remained for a few days in Craiova without any professional activity and then returned to Italy.

The Club did not propose the coach any other activity within the Club. The coach did not receive his salary for May and June 2009.

On 17 June 2009 the Romanian newspaper "Gazeta de Sud" published an article with an interview of the Appellant where several comments about the Club and its management were made. The Club maintained that it had not authorised such an interview. The coach, for his part, denied to have given such an interview.

Following a meeting on 3 July 2009, the Club's board of directors issued its decision Nr 46/08.07.2009 ("the Club's Decision") by which it decided to impose on the Appellant

> *"[…] a financial penalty in quantum of EUR 18,000 representing 10% of the value of the contractual rights entitled to for the season 2008-2009, as he did not comply with the contractual provisions stipulated in art. 5 point 2 letter c) from the Civil Agreement no 1207 from 10.05.2008, respectively he granted interviews to the press and more exact to "Gazeta de Sud" newspaper on the date of 17.06.2009, without having the approval of ou[r] club, although according to art. 5 point 2 letter c) in the agreement concluded with our club under no 1207/10.05.2008 and registered with FRF under no 1725/27.06.2009, there is provided that he is expressly forbidden to grant interviews to the press without written approval from our club, under the sanction of decreasing his agreement".*

The parties are in dispute on whether the Club's Decision was indeed delivered to the Appellant's Italian address mentioned in the Contract, i.e. to Quarta S. Elena, Cagliari, Italy or to the Appellant's Romanian address as mentioned in the registration certificate issued by the Foreigners Office. In addition, the Club's Decision was submitted to the Romanian Professional Football League's (RPFL) Disciplinary Committee ("the RPFL Committee") for ratification, in accordance with the applicable RFF and RPFL regulations.

On 5 August 2009 and following a hearing where only the Club's representative participated and the Appellant defaulted, the RPFL Committee issued a decision without reasons ("the RPFL Decision"), which reads as follows:

> *"Summon procedure duly fulfilled. […]*
> *[B]ased on the evidence produced in the case, with unanimity of votes:*
>
> *DECIDES*
>
> *Based on art. 42 point 6.2 letter e) from the Disciplinary Regulation it is hereby ratified the sanction applied by [the Club] by Decision no 46/08.07.2009 to coach N. Permanent [sic].*
> *With appeal within 2 days since communication".*

On 20 August 2009 the Appellant filed an appeal against the RPFL Decision before the RPFL Appeal Commission.

After hearing the arguments of both parties, on 3 September 2009 the RPFL Appeal Commission dismissed the Appellant's appeal ("the Appealed Decision") as inadmissible because it was directed against a decision without reasons. In summary, the RPFL Appeal Commission initially accepted that the Appellant was properly summoned for the hearing before the RPFL Committee. Further, it considered that the Appellant had a procedural duty to first request the reasons for the RPFL Decision and then file an appeal before the RPFL Appeal Commission. Finally, it considered that the fact that the RPFL Decision did not mention the 3-day deadline to apply for a motivated decision did not exempt the Appellant of his duty, since he should have been aware of the

applicable RFF and RPFL regulations. Therefore, the RPFL Appeal Commission considering itself unable to review a decision without reasons and to examine how the RPFL Committee applied the relevant rules, it accepted the Club's arguments and declared the appeal inadmissible.

The Appealed Decision was notified to the Appellant on 17 September 2009.

On 5 October 2009 the Appellant filed his Statement of Appeal with the Court of Arbitration for Sport (CAS). On 14 October 2010 he supplied further information in relation to his appeal, as requested by CAS.

By letter dated 15 October 2009 the Appellant filed his Appeal Brief and requested from the CAS the following relief:

> "*1. The decision no. 22/03.09.2009 of the Professional Football League, The decision no 8/05.08.2009 of the Professional Football League's Discipline Committee and decision no. 46/08.07.2009 of the S.C. Fo[o]tbal Club U Craiova S.A.*
>
> *Ruling* de novo*, the following award is issued:*
>
> *Principally:*
>
> *2. to establish that Romanian Football Federation shall admit the appeal against decision no 8/05.08.2009 of the Professional Football League's Discipline Committee*
>
> *3. to establish that unilaterally decision no. 46/08.07.2009 of the S.C. Fotbal Club U Craiova is illegally and unfounded*
>
> *4. to establish that Romanian Football Federation shall deny the request of S.C. FC U Craiova of ratification of decision no. 46/08.07.2009*
>
> *5. to establish that the S.C. U Craiova shall pay all amounts according to the contract with the Appellant – the bonus in amount of 150 000 EUR, for qualification in the UEFA Europa League as at the dismissing date, at the round 31/34 of championship the team was ranked on a position that allowed the Respondent Club to qualify for UEFA Europa League and non-qualification is not chargeable to the Appel[l]ant and the salary for the entire period of the contract, that is two last payments for May and June 2009, of each EUR 14,000, a total of 28,000 euros.*
>
> *6. to establish that the S.C. FC U Craiova shall pay compensation to the Appel[l]ant for damaged caused by the illegitimate decision no. 46/08.07.2009*
>
> *Sudisidiary [sic]*
>
> *7. FRR is ordered to issue a decision directed at Respondent Club, containing all the orders of CAS Award*
>
> *8. to condemn the Respondents to the payment of the proceedings costs before the CAS, including Law House's fees and other expenses made during the case.*
>
> *9. to condemn the Respondents to the payments of the proceedings costs before the CAS".*

On 15 October 2009 the CAS Court Office acknowledged receipt of the statement of appeal and – *inter alia*– invited the Respondents to appoint an arbitrator from the list of CAS members within 10 days of receipt of that letter. The Club confirmed receipt of said correspondence on 19 October 2009.

By letter dated 25 October 2009 the Club informed the CAS that it *"challenge[d] Mr. Jean Philippe Rochat as an arbitrator in the Panel"* and on 27 October 2009 submitted the grounds for such challenge.

By letter dated 30 October 2009 the CAS Court Office informed the parties that, as no information from the Respondents concerning the nomination of their common arbitrator reached the CAS within the prescribed deadline, the arbitrator for the Respondents would be appointed by the President of the CAS Appeals Division.

By letter dated 5 November 2009 the RFF filed its Answer with CAS submitting the following:

> *"[…] According to art. 56 paragraph 5 from the Statu[te]s of the Romanian Football Federation, valid since 1st July 2009, in conjunction with the prescriptions [sic] of art. 8 from the Yearly Convention Concluded between the Romanian Football Federation and the Professional Football League, valid since 10th June 2009, the disciplinary matters and the litigations of a club participating to the competition "National Championship of the 1st League" have an only competent body: the Committees having jurisdictional attributions of the Professional Football League.*
>
> *As consequence, please note the lack of passive procedural quality of the Romanian Football Federation in the above case and dispose the pull out of our Federation from the case.*
>
> *Enclosed, we are sending you copies from the Romanian Football Federation Statu[te]s and from the Yearly Convention Concluded between the Romanian Football Federation and the Professional Football League.*
>
> *Please see the provisions of art. 56 and 62 of The RFF Status and the provisions of art. 8 (as modified) and art. 15 of the Convention mentioned above".*

By letter dated 10 November 2009 the Club filed its Answer and submitted the following request for relief to the CAS:

> *"In light of the above, we seek dismissal of the appeal filed by N. and upholding as legal and grounded of the Decision no. 22 of September 3rd, 2009 delivered by the P.F.L. Appeals Commission in Brief no. 16/CR/2009".*

Following written submissions by both parties and the arbitrators concerned, on 4 February 2010 the Board of the International Council of Arbitration for Sport issued its *"Decision on a petition for challenge of an arbitrator"*, ruling as follows:

> *"1. The petition for challenge to the appointment of Mr Jean-Philippe Rochat as arbitrator filed on 25 October 2009 by Universitatea Craiova is rejected. […]".*

On 25 March 2010 the RFF replied that the file was not in its possession since the case had been heard by the RPFL committees and that RFF had taken steps to obtain a copy of the file which it would then translate and submit to CAS. However, the CAS did not receive a copy of the requested file of the case.

The hearing was held on 20 May 2010 at the CAS Headquarter in Lausanne. All the members of the Panel were present.

During the Hearing, the Panel heard oral arguments by the Appellant – and his representative – who, after making submissions in support of his requests for relief, confirmed that he had no objections to raise regarding his right to be heard and had been treated equally and fairly in the arbitration proceedings. The Appellant also confirmed that he had no objection with regard to the composition of the Panel.

LAW

CAS Jurisdiction

A. General

1. Article R47 of the Code of Sports-related Arbitration (the "CAS Code") states:

   "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".

2. Article 120 para. 4 of the RFF Disciplinary Regulations entitled *"Solutions in Appeal. Decision of the Appeal Commission. Challenge of the decisions given by the Appeal Commission to CAS"* provides the following:

   "4. The sanctioned person and the general secretary of the RFF/FPL *may submit an appeal to the Court of Arbitration for Sport in Lausanne against the decision of the* RFF/PFL *Appeal Commission within 21 days from the communication of the decision. In case the decision of the* RFF/PFL *appeal commission is not challenged to CAS within the above provided term, this becomes final and irrevocable".*

3. Further, article 8, para 3 of the agreement between RFF and RPFL dated 2 June 2009 ("RFF-RPFL Agreement") states:

   "3. The decisions passed by the [R]PFL [Appeal] Commission may be appealed with the Court of Arbitration for Sport in Lausanne, in accordance with the RFF Statutes and Regulations".

4. With the exception of the Club's objections regarding the Panel's jurisdiction over points 5 and 6 of the Appellant's prayers of relief (see *infra* under part *B*) the jurisdiction of CAS is not disputed in the present case. The Panel has taken note of the fact that the parties did not in any way challenge the jurisdiction of the CAS at any stage of the proceedings. On the contrary, the jurisdiction of the CAS has been explicitly recognized by the parties in their briefs and in the Order of Procedure they have signed.

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

B. The Appellant's request for payment of salaries, bonuses and compensation

6. The Club argues that the Appellant is not entitled to request the CAS to order the payment of salaries, bonuses or compensation because said requests were not the subject of the proceedings at the previous instances.

7. Article R57 of the CAS Code states:

   "The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. […]".

8. In this respect, the Panel takes note of the CAS Panel's considerations in case CAS 2007/A/1426:

   "It is true that pursuant to art. 57 of the CAS Code the Panel has the full power to review the facts and the law and to issue a decision de novo. However, when a CAS Panel is acting following an appeal against a decision of a federation, association or sports-related body, the power of such a Panel to rule is also determined by the relevant statutory legal basis and, therefore, is limited with regard to the appeal against and the review of the appealed decisions, both from an objective and a subjective point of view. […] [A]s the subsidiary motion of the Appellant was neither object of the proceedings before the Italian sport authorities, not in any way dealt with in the Appealed Decision, the Panel does not consider itself to have the power to decide on it".

9. The Panel finds the above analysis applicable to the present case, in which the issue of whether the Club owes to the Appellant salaries/bonus payments under the Contract or compensation for unjust dismissal has not been raised before the RPFL Committee or the RPFL Appeal Commission. The subject of the proceedings at the previous instances was merely disciplinary, i.e. whether the Club's Decision to impose a fine on the Appellant for his alleged misbehaviour was legitimate or not.

10. In addition, the Panel notes that in his appeal before the RPFL Appeal Commission the Appellant did not file any request concerning outstanding amounts arising from his contractual relationship with the Club. The Panel finds that said requests are not directly related to the matter at hand and, despite the fact that they are also based on the Contract, cannot be raised for the first time in these proceedings.

11. Therefore, the Panel holds that it does not – at least at this point – have jurisdiction to decide on the requests under points 5 and 6 of the Appellant's prayers for relief. The Panel reaches this conclusion without prejudice to the Appellant's right to exercise any claims arising from the Contract before the competent first-instance body.

Applicable law

12. Article R58 of the CAS 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".

13. Both parties in their submissions have referred to the regulations of the RFF and of the RPFL, which are the regulations applicable to the case at hand.

14. Further, the Panel does not find any evidence that the parties have agreed on the application of any specific national law, either in the Contract or after their dispute arose. It is comforted in its position by the fact that, in their respective submissions, the parties refer exclusively to the RFF and RPFL Regulations. As a result, subject to the primacy of applicable RFF and RPFL Regulations and to the extent necessary for the resolution of this dispute, Romanian Law shall apply complementarily.

Admissibility

15. Article R49 of the CAS Code provides the following:

    "In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

16. As mentioned above, article 120 para. 4 of the RFF Disciplinary Regulations provides for a time limit of 21 days *"from the communication of the decision"*.

17. The Appealed Decision was notified to the Appellant on 17 September 2009 and the Appeal was filed on 5 October 2009, well within the above mentioned time limit. Further, the Appellant supplemented his appeal within the time limits fixed by the CAS Court Office and thus complied with all other requirements of article R48 of the CAS Code.

18. It follows that the appeal is admissible.

Merits

19. The main issues to be decided by the Panel are:

    A. Does the RFF have standing to be sued?

    B. Did the RPFL Appeal Commission err when rejecting the appeal as inadmissible?

    C. If yes, was the Club entitled to impose the fine on the Appellant?

A. RFF's standing to be sued

20. In its Answer, the RFF drew the Panel's attention to the following provisions of its own Statutes:

21. Article 56 entitled "Jurisdictional bodies" at paragraph 5 provides:

"As an exception to the above, based on the annual agreement entered between the RFF and the professional leagues, and approved by the RFF Executive Committee, the professional leagues may have, according [to] the competition level at which they activate [sic], their own jurisdictional bodies, i.e. a) Disciplinary Commission; b) National Dispute Resolution Chamber, c) [Appeal] commission".

22. Article 62 entitled "Effective date" provides:

"1. The Statutes were adopted by the RFF General Assembly on 11th May 2009 in Bucharest.

2. These Statutes shall enter into full force and effect as of 1st July 2009".

23. Further, the RFF produced a copy of the RFF-RPFL Agreement, the relevant parts of which read as follows:

"[…]

Article 2

1. This Agreement governs the organization of professional football activity for the period 10th June 2009 – 30th June 2010 [paragraph amended by the so called "Rider No.1" signed by RFF and RPFL].

[…]

3. [R]PFL – an entity set up as a result of the association of the clubs which participate in the "1st League National Championship" competition – is a private law, autonomous, non-governmental, non-political and non-profit entity, which is subordinated to the RFF and recognized as such by the RFF.

Article 8

1. [R]PFL has its own jurisdictional bodies, as follows: a) Disciplinary Commission, b) National Dispute Resolution Chamber, c) [Appeal] Commission.

2. Any disciplinary cases and disputes involving exclusively the clubs that take part in the "1st League National Championship" competition, their officials, senior players and coaches shall be solved solely by the [R]PFL jurisdictional bodies provided for under the previous paragraph. Any disputes arising between the clubs which take part in the competitions organized by RFF shall be solved solely by the RFF jurisdictional bodies. Any disputes arising between the clubs that take part in the "1st League National Championship" which have also 2nd and 3rd League teams and the senior players shall be solved by the RFF or [R]PFL jurisdictional bodies, as the case may be, according to the registering body for each individual contract [paragraph amended by the so called "Rider No.2" signed by RFF and RPFL].

3. The decisions passed by the [R]PFL [Appeal] Commission may be appealed with the Court of Arbitration for Sport in Lausanne, in accordance with the RFF Statutes and Regulations.

24. It is evident from the above provisions that, prior to the Club's Decision of 8 July 2009 and its application to the RPFL Committee, the RPFL had already made use of its right under the

RFF Statutes to constitute its own adjudicating bodies. Such initiative was approved by the RFF upon signing the RFF-RPFL Agreement, which clearly provided that *"the clubs that take part in the 1st League … and [their] coaches … shall be solved solely by the [R]PFL jurisdictional bodies"* (emphasis added). This is exactly the type of dispute brought before this Panel.

25. With respect to the legal relationship between the RFF and the RPFL, Article 2 para. 3 of the RFF-RPFL Agreement leaves no doubt about the legal status of RPFL: similar to the organization of football leagues in other countries (see CAS 2008/A/1525 pp. 13-14) the RPFL is neither a body nor an organ of the RFF, but rather a separate legal entity with powers and authority to organize the Romanian professional football championship.

26. Based on the applicable provisions, the disciplinary dispute between the Appellant and the Club should be – and indeed was – submitted by the Club to the RPFL Committee. Subsequently, the Appellant also submitted himself to the jurisdiction of the RPFL bodies by filing an appeal before the RPFL Appeal Committee.

27. In view of the foregoing, the Panel finds that the Appealed Decision has been issued by a body established and operated by the RPFL, which is a legal entity separate from the RFF. Therefore, the RFF is neither the body that issued the Appealed Decision nor has any authority to interfere with the decisions of the RPFL Committee and the RPFL Appeal Commission.

28. As a result, the Panel holds that the RFF has no standing to be sued in this case.

B. Was the appeal before the RPFL Appeal Commission inadmissible?

29. The RPFL Appeal Commission dismissed the Appellant's appeal considering that he had failed to comply with his procedural duty to first request the reasons for the RPFL Decision and then file an appeal.

30. The Panel notes that, generally, in case a decision does not contain any reasons supporting its ruling, the reviewing role of an appeals body is almost an impossible task. It is thus logical and legally sound that a person affected by a decision without reasons shall, as a first step, request that the reasons of the decision are delivered and then file an appeal before the second instance body. On the other hand, given that a possible failure to ask for the reasons is connected to serious legal consequences such as the inadmissibility of an eventual appeal, the body issuing the unreasoned decision must inform the parties of their respective rights to (a) request reasons and (b) file an appeal.

31. In this respect, Articles 115 and 116 of the RFF Disciplinary Regulations provide the following:

"Article 115 – Judgments without stated reasons

1. The [RPFL Committee] can decide to communicate the party/parties only the operative part of the award. At the same time, the party/parties shall be informed in writing that he/they/ has/have the right to request in

writing the communication of the reasons for the judgment within three days from communication of such reasons. In case this right is not availed of, the judgment becomes irrevocable.
2. If the party/one of the parties requests communication of the reasons for the judgment, the reasons shall be communicated to the party/parties within three days from receipt of such request. The deadline to file an appeal shall run from the date of communication of the reasoned judgment.

Article 116 – Appealable judgments

[…]

3. The time limit to file an appeal is two days from communication of the judgment. Reasons for the judgment shall be stated in writing within three days from the expiry of the above-mentioned deadline".

32. In the present case, the RPFL Committee's decision reads *in fine*:

"With appeal within 2 days since communication".

33. The Panel notes that, contrary to Article 115 para. 1 cited above, the RPFL Decision does not contain any mention about the parties' right to ask for the reasons thereof. In the view of the RPFL Appeal Commission said omission was not substantial:

"The fact that [the Appellant] was not informed by the disposition upon the right to request the motivation of the decision does not absolve him of guilt, as he was acknowledged of his rights (sic) provided in the regulation and, also, he had the intention to formulate an appeal. But an appeal submitted against a non-motivated decision cannot be analysed as there is not known how the basic commission applied the regulatory dispositions. And the [Appellant] should have requested to the [RPFL Committee] to motivate its decision, in order for him to motivate, on his turn, his appeal".

34. The Panel disagrees. Even if one were to accept that a party has a duty to be aware of and comply with the applicable procedural rules, the adjudicating bodies too have duties in this regard. Firstly, the Appellant did not participate in the proceedings before the RPFL Committee and received no other information about the case other than the RPFL Decision. Further, it is undisputed that the RPFL Committee violated the rules by not informing the Appellant – even with a footnote at the body of the RPFL Decisions – that he had three days to request the reasons, otherwise the RPFL Decision would become unappealable.

35. Secondly, given that the time limits set out in the RFF Disciplinary Regulations are extremely stringent (two days for reasons, three days for appeal), the proper communication of the parties' rights is a *condition sine qua non* for a due process. The Panel finds that the information contained in the RPFL Decision was not only incomplete but actually misleading. The Appellant, a foreign coach, followed the instructions of the notice of appeals communicated to him and challenged the RPFL Decision within the time limit of two days, only to find out later that this was not enough for a substantive review of his case. The Panel finds that the Appellant acted *bona fide* and cannot be held liable for a procedural mistake which can be largely attributed to the information provided to him by the RPFL Committee. Thus, by erroneously holding that the appeal was inadmissible, the RPFL Appeal Commission violated the Appellant's right to be heard and to have the appeal tried before the RPFL Appeal Commission.

36. Therefore, the Appealed Decision must be set aside.

37. At this point, the Panel takes note of the Club's contention that the role of the CAS in this case is restricted to examining whether the appeal before the RPFL Appeal Commission was admissible or not. If so, the CAS should simply set aside the Appealed Decision and refer the matter back for a new hearing.

38. However, the power of a CAS Panel in arbitration appeals proceedings to issue a new decision in replacement of the decision appealed from is expressly defined in Article R57 of the CAS Code:

"It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance".

39. In compliance with consistent CAS jurisprudence both in pecuniary (CAS 2008/A/1741, CAS 2009/A/1793, etc.) and in disciplinary (OSCHUETZ F., Sportschiedsgerichtsbarkeit, Berlin 2005, p 348, with reference to CAS jurisprudence) disputes heard upon appeal and having regard to the circumstances of this case, the Panel opts to review the merits of this case and issue a new decision in the dispute at hand. Indeed, the value and complexity of the dispute would not justify a referral of the case back to the RPFL Appeal Commission. Although the Panel did not have the benefit of examining detailed documentation related to the Appellant's alleged disciplinary infraction and thus the RPFL Appeal Commission would probably be closer to the facts of the case, reasons of procedural economy and legal arguments explained below speak in favour of CAS resolving finally the disciplinary aspect of the dispute between the Appellant and the Club. Thereafter, however, the parties may resolve any financial dispute(s) before the appropriate forum.

C. Was the Club entitled to impose the fine on the Appellant?

40. The Club's Decision to impose a fine of EUR 18,000, representing 10% of the Appellant's annual income under the Contract, was based on article 5 of the Contract, which the Appellant allegedly breached by giving an interview without the prior written approval of the Club. Given that the contents of the interview were neither mentioned in the Club's Decision nor documented in the present proceedings, the Panel will focus on whether the Appellant (a) was still bound by the terms of the Contract at the relevant point in time and, (b) if so, whether he indeed violated its terms and received an appropriate sanction by the Club.

41. The parties are in dispute as to when the Contract was terminated. On the one hand the Appellant contends that he was dismissed by virtue of the Termination Letter and thus released from any obligations under the Contract on 15 May 2009. On the other hand, the Club argues that the Contract does not provide for a right of unilateral termination and it expired at the end of its term, i.e. on 30 June 2009. In addition, the Club considers that the Termination Letter did not produce any legal consequences because it was not ratified by the competent RFF Commission, as provided in the applicable rules.

42. At the outset, the Panel notes that in their pleadings the parties consider as common ground that the validity of the Club's Decision to impose a fine is contingent upon the validity of the Contract itself. Indeed, it is a general principle of labour law – and there is no evidence that Romanian law provides otherwise – that an employer is not empowered to exercise any disciplinary control, let alone impose monetary sanctions, on a person that is no longer employed by it. The situation would be different if the parties had expressly agreed that certain terms of the contract would still be binding on them for a specified period of time after the end of their contractual relationship, which is usually the case for "non-disclosure" or "non-competition" clauses. Again, under such a clause the employer suffering from the breach would have a claim against its former employee but not any longer disciplinary authority on him.

43. In the present case, no such clause is contained in the Contract which simply lists in article 5 the Appellant's obligations as follows:

"The [Appellant] bonds to:

a) strictly comply with the training and competition schedule, to participate in advertising activities organised by the club, to strictly comply with the By-laws and [RFF] and [RPFL] Regulations;

b) to make efforts specific to a professional coach's occupation, on levels of the existing standards;

c) not to make statements or give interviews to the press without the written approval of the club <u>for the entire duration of the agreement</u>, under the sanction of decreasing the fee, according to the FRF Regulation.

[…]" (emphasis added).

44. The Panel is unable to find any wording in the Contract suggesting – especially in the context of Article 5 which clearly refers to the duties of the Appellant during his employment by the Club – that the Appellant must obtain permission for an interview after the end of their collaboration. Therefore, the Panel finds at the time of the alleged breach that the validity of the Club's Decision is contingent upon the validity of the Contract.

45. In this respect, the Panel will examine whether the alleged breach took place on a date (17 June 2009) when the Contract was still binding on the parties.

46. In its submissions the Club makes reference to Article 18.6 of the RFF's "Regulations for the Transfer and Status of Football Players, 2009", which the parties agree that applies also to coaches and reads as follows:

"Article 18 – Termination of contractual relationships

[…]

18.6 – Termination of the contractual relationships by mutual agreement/agreement of the parties, arising during the performance of the contract, can be made in writing, explicitly and unequivocally, such termination being established by the qualified commission which shall render a judgment. In the agreement they conclude, the parties shall mention the mode of extinguishing their mutual obligations".

47. The Club argues that article 18.6 is applicable to the present dispute and that the Termination Letter did not satisfy its terms and accordingly produced no legal consequences. The Panel cannot accept the Club's argument. The provision mentioned above is not relevant to the contents of the Termination Letter which was a unilateral declaration and not a mutual agreement for the termination of the Contract. Hence, article 18.6 does not apply and there is no approval or ratification by a RFF/RPFL body required in order for the Termination Letter to have legal effect.

48. The next question is what exactly the legal consequences of the Termination Letter are. The Panel notes that Article 7 of the Contract entitled "Termination of the civil agreement" provides no express right of unilateral termination by either Party: the Contract would end either upon expiry of its term or by agreement of the parties. However, the parties' rights are not only described in the Contract but also in the respective RFF Regulations which are mentioned more than once in the Contract. Indeed, aside from the well established general principle in CAS jurisprudence that each party to an employment agreement has the right to terminate it for just cause, the RFF Regulations also provide that a player's (or coach's) contract can be terminated upon initiative of the club (Article 18.1.c) or of the player/coach (Article 18.1.d). Regarding the latter provisions the Panel notes that, since it had received only a selective translation of Article 18 by the Club, during the hearing the interpreter assisting the Appellant translated the relevant parts upon the Panel's request.

50. The Panel further considers that, on the basis of the applicable regulations and the evidence before it, indeed the Termination Letter produced legal consequences and put an end to the Contract. The Panel has carefully examined the language of the Termination Letter which is unambiguous and leaves no room for interpretation:

"… we are informing you that, as from the date of 15.05.2009, you will no longer coordinate the trainings of EC Universitatea Craiova team, being dismissed from the position of main coach of this team" (emphasis added).

51. In addition, the Appellant immediately after being served with the Termination Letter a) did not train the team again and generally stopped offering his services without any complaint or other reaction from the Club, b) did not receive any further payment from the Club, and c) shortly thereafter decided to return to his home town in Italy. Thus, the Panel finds that as of 15 May 2010 the Appellant was released from his contractual duties and the Contract was no longer in effect. The Panel reached this conclusion without entering into the question whether the Appellant's dismissal was justified and lawful or not, which is not the subject of the present proceedings.

52. Therefore, even if it had been proven – *quod non* – that the Appellant actually gave the interview to Gazeta de Sud on 17 June 2009 without the Club's prior approval, on the basis of the above analysis the Panel finds that the Appellant did not breach the Contract which had already ended since 15 May 2009.

53. Consequently, the Panel holds that the Club's Decision to impose a fine of EUR 18,000 on the Appellant must be annulled.

The Court of Arbitration for Sport rules:

1. The appeal filed on 5 October 2009 by N., inasmuch as it is directed against the decision issued by the Romanian Professional Football League Appeal Commission on 3 September 2009, is upheld.

2. The decision issued by the Romanian Professional Football League Appeal Commission on 3 September 2009 is set aside and the decision dated 8 July 2009, by which S.C.F.C. Universitatea Craiova imposed a fine in the amount of EUR 18,000 on N., is annulled.

(…)

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