Arbitration CAS 2013/A/3133 FC Dnipro Dnipropetrovsk v. Ervin Bulku, award of 28 August 2013

Panel: Mr Stuart McInnes (England), President; Mr Luc Argand (Switzerland); Mr Aliaksandr Danilevich (Belarus)

Football
Employment contract between a club and a player
Determination of the real intent of the parties
Impact of the registration on the validity of a contract

1. **When the interpretation of a contract is in dispute, the Judge seeks the true and mutually agreed upon intention of the parties, without regard to incorrect statements or manner of expression used by the parties by mistake or in order to conceal the true nature of the contract (Art. 18 par. 1 Swiss CO). When the mutually agreed real intention of the parties cannot be established, the contract must be interpreted according to the requirements of good faith. The Judge has to seek how a declaration or the external manifestation of a party could have been reasonably understood dependent upon the individual circumstances of the case. The requirements of good faith tend to give preference to an objective approach. The emphasis is not so much on what the parties may have meant but on how a reasonable man would have understood their declarations. In determining the intent of the parties, or the intent which a reasonable person would have had in the same circumstances, it is necessary to look to the words used or conduct engaged by the parties. However, the investigation is not to be limited to those words or the conduct even if they appear to give a clear answer to the question. In order to go beyond the apparent meaning of the words or the conduct of the parties, due consideration is to be given to all relevant circumstances of the case. This includes the negotiations, any subsequent conduct of the parties and usages.**

2. **Under Swiss law, the registration of a contract is an administrative act that does not have, in principle, an impact on its validity.**

INTRODUCTION

This appeal is brought by FC Dnipro Dnipropetrovsk (hereinafter referred to as "the Appellant" or "FC Dnipro"), against a decision of the FIFA Dispute Resolution Chamber dated 21 September 2012, (hereinafter referred to as "the Appealed Decision"), concerning the alleged breach of a Contract of Employment concluded between FC Dnipro and Ervin Bulku (hereinafter referred to as "the Respondent" or "Mr. Bulku") dated 1 August 2008.

I. THE PARTIES

A. FC DNIPRO DNIPROPETROVSK

1. FC Dnipro is a Ukrainian football club, affiliated with the Football Federation of Ukraine, (hereinafter referred to as "FFU"), which in turn is affiliated with Fédération International de Football (hereinafter referred to as "FIFA").

B. ERVIN BULKU

2. Ervin Bulku is a professional football player of Albanian nationality, born on 3 March 1981, currently resident in Isfahan, Iran, who was contracted to play as a professional footballer for the Appellant under a Contract of Employment dated 1 August 2008.

II. FACTUAL BACKGROUND

3. The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the written submissions of the Parties, the exhibits filed, the Appealed decision rendered by the FIFA Dispute Resolution Chamber on 21 September 2012, as well as the oral pleadings and comments made during the hearing. Additional facts may also be set out, where relevant, in the legal considerations of the present award.

4. On 1 July 2007, the Respondent entered into a fixed term Employment Contract with FC Kryvbas Kryvyy Rig (hereinafter referred to as "FC Kryvbas"), valid from that date until 31 December 2008, ("Contract No. 1").

5 On 1 August 2008, the Respondent entered into a fixed term Employment Contract with the Appellant, valid from that date until 30 June 2011, ("Contract No. 2").

6. The material obligations under Contract No.2 are set out as follows:

Respondent's obligations:

2.1 The footballer undertakes all the obligations - to use all of his forces and sport skills to the interest of the club, to perform all possible actions for the support and increase of the authority of the Club, to not undertake any activity (action or non-action) that might cause damage to the Club or pose a threat in this direction.

2.2 In conformity with the provisions of article 2.1, the Footballer is obliged:

i. To participate in the games of the Club, in the teaching process and the trainings (despite whether they are foreseen or not in the general program, in the individual program or have been specially defined), in all game analyses and in the activities realized in the quality of the preparation for games or matches (…)

ix To not participate in any other football team of other clubs or enter into negotiations for his transfer to another club without prior approval by the clubs leadership.

Appellant's obligations:

3.1 Each month, the club pays to Mr Ervin Bulku the obligations fulfilled by the Footballer, the salary defined in article 1 of the Appendix.

3.5 The Club ensures the organization of the training process and of games under the leadership of qualified specialists

Appendix Article 1

The Club is obliged to pay the salary in the amount of USD 30,000 (thirty thousand) per month.

Other Provisions

4.4 *This contract can be terminated before its expiry date with the approval of the parties.*

7. On 25 February 2009, the Respondent entered into a fixed term Employment Contract, with FC Kryvbas, valid from 26 December 2008 until 30 June 2009 ("Contract No. 3").

8. On 1 July 2009 the Respondent entered into a fixed term Employment Contract, with FC Kryvbas, valid from 1 July 2009 until 30 June 2010 ("Contract No. 4").

9. By letter dated 3 August 2010, addressed to the Appellant, the Respondent's attorneys stated as follows:

"Mr Bulku and Mr […] have signed player-contracts with FC Dnipro. These contracts expire on June 30th 2011.

Our clients where (sic) present in Dnipro for beginning of practice in July. Even though our clients have valid contracts with your club, they were sent away from the training grounds and they were told that they would not be allowed at training of FC Dnipro anymore.

Our clients stayed for one more week in Dnipropetrovsk and then, according to your instructions, flew back to Albani. All this on their own expense.

FK Dnipro has unilaterally and without any reason breached the contracts with our clients. The total amounts agreed in the contracts are therefore due.

Mr Bulku has a contract with FK Dnipro that guarantees him a salary of US 360,000, ---net per year plus bonuses, housing and car (…)

(…) On behalf of our clients we have to ask you for immediate payment of the total due amount of US 900,000 – plus the fees of our law-firm. In case of immediate payment our clients will not ask for additional moneys.

Our clients also ask for immediate official release from your Club, so that they can start looking for a contract with another team (which is going to be very difficult, because, as you know most teams have already started preparation of Championship)".

No response to this letter was apparently made by the Appellant.

10. By letter dated 16 August 2010, the Appellant confirmed that in the event that the Respondent signed a contract with any other football club before the close of the transfer window on 31 August 2010, *"part of the salary mentioned player, agreed with their club will pay FC Dnipro"*. This letter is understood to mean that FC Dnipro would make good any shortfall in salary attained in any new contract signed by the Respondent.

11. By an undated letter (sent by fax on or about August 17 2010) the Appellant confirmed:

"FC Dnipro doesn't object against any transfer of the football player Ervin Bulku to any club.

FC Dnipro doesn't have financial claims to this transfer".

12. On or about 18 August 2010, the Respondent entered into a fixed term Employment Contract, with HNK Hajduk Split, valid from 20 July 2010 until 30 June 2012, ("Contract No. 5"). Under the terms of this new contract, the Respondent was eligible to receive *"for each season 2010/2011 and 2011/2012 a total bruto compensation of the value of 80,000EUR, (eighty thousand euro), equal to the same exchange of the National Croation Bank , divided in 12 (twelve) monthly salaries"*. In addition, HNK Hajduk Split undertook to pay to the Respondent the sum of EUR 25,000 within eight days of signature of the contract and a further payment of EUR 25,000 no later than six months after signing the contract.

13. On 6 September 2010, the Respondent filed a Claim with the Dispute Resolution Chamber of FIFA ("the FIFA proceedings") alleging that the Appellant had breached Contract No. 2 and requesting that FIFA order payment of the sum of USD 360,000, representing salary payable from 1 July 2010 to 30 June 2011 under that contract, but giving credit by way of mitigation of the sum of USD 80,000, representing salary payable under Contract No 5.

14. The Claim was sent by FIFA to FFU on 17 September 2010, seeking the Appellant's response by no later than 7 October 2010.

15. No response to the FIFA proceedings was received from the Appellant.

16. On 14 September 2012, the Appellant, via FFU, and the Respondent, were notified by FIFA that the FIFA proceedings would be submitted to the Dispute Resolution Chamber at its next meeting on 21 September 2010.

17. On 12 October 2012, the Parties were notified by FIFA of the decision of the Dispute Resolution Chamber made on 21 September 2012, as follows:

1. The claim of the Albanian player, Ervin Bulku, is partially accepted.

2. *The Respondent FC Dnipro Dnipropetrovsk, has to pay to the Claimant, compensation for breach of contract in the amount of USD 180,000, within 30 days as from the date of notification of this decision.*

3. *If the aforementioned amount is not paid within the above mentioned deadline, an interest rate of 5% per year will apply as of the expiry of the fixed time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and decision.*

4. *The Claimant is directed to inform the respondent immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber (DRC) of every payment received.*

18. On 15 October 2012 the Appellant requested the grounds of the Appealed decision of the Dispute Resolution Chamber which were notified to the Parties on 8 March 2013.

19. By letter dated 26 March 2013, addressed to the Appellant, the General Director of Premier League Union of Professional Football Clubs of Ukraine confirmed that *"there are no labour agreements (including Transfer ones) between DC "Dnipro" Dnipropetrovsk and the football player Ervin Bulku for the period from 01.08.2007 till 30.06.2011 registered in PL".*

III. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

20. On the 29 March 2013, the Appellant filed an appeal against the Decision of the FIFA Dispute Resolution Chamber dated 21 September 2011 with the CAS and nominated Mr Luc Argand, attorney–at-law, Geneva, Switzerland, as arbitrator. In paragraph 6 of the Statement of Appeal, the Appellant sought confirmation that the filing of the Statement of Appeal should automatically stay execution of the Appealed Decision

21. On 8 April 2013, the Appellant filed its Appeal Brief.

22. On 16 April 2013, the CAS Court Office confirmed that a decision of a financial nature issued by a Swiss association is not enforceable while under appeal and sought confirmation from the Appellant, within three days, of whether the Appellant maintained or withdrew its application for a stay. No response was received from the Appellant.

23. On 23 April 2013, the CAS Court office notified the parties that Mr Aliaksandr Danilevich, attorney–at–law, in Minsk, Belarus, had been appointed by the Deputy President of the CAS Appeals Arbitration Division as arbitrator *in lieu* of the Respondent.

24. In the absence of any response from the Appellant to the CAS Court Office letter of 16 April 2013; by letter dated 24 April 2013, the CAS Court Office invited the Respondent, pursuant to Article R37 of the Code of Sports-related Arbitration (hereinafter referred to as "the Code") to comment on the Appellant's request for a stay of execution of the Appealed Decision within 5 days. No response to that letter was received by the CAS Court Office.

25. On 30 April 2013, the Respondent filed his Answer with the CAS Court Office.

26. On 3 May 2013, the CAS Court Office invited the parties to inform the court whether they wished the matter to be referred to a hearing and in the absence of a response from either party, informed the Parties by letter dated 15 May 2013, that the Panel would decide whether to hold a hearing.

27. By letter dated of the same date, the Respondent notified the CAS Court Office that he would prefer a hearing in this matter;

28. On 21 May 2013, the CAS Court Office notified the parties of the constitution of the Panel as follows:

President: Mr Stuart C McInnes, Solicitor, London, England

Arbitrators: Mr Luc Argand, attorney-at-law, Geneva, Switzerland
Mr Aliaksandr Danilevich, attorney-at-law Minsk, Belarus

29. By letters dated the 31 May 2013, the CAS Court Office requested FIFA to provide a copy of its file to the CAS and pursuant to Art. R44.3 of the Code requested the Appellant to produce the original version of Contract No. 2, as well as all correspondence between the parties (including the letter dated 16 August 2010 referred to in paragraph 4 of the Appealed Decision).

30. The FIFA file was received and forwarded to the Panel and Parties on 27 June 2013. The Appellant failed to produce the requested documents.

31. By letter dated 5 June 2013, the CAS Court Office notified the parties on behalf of the Panel that as *"this appeal is financial in nature and therefore, the execution of the challenged decision is automatically stayed. Accordingly there is no need for the Panel to issue any decision in this regard"*.

32. On 10 June 2013, the Parties were informed that a hearing would be held in the present dispute on 19 July 2013 at 11.00 at the CAS headquarters.

33. On 4 and 5 July 2013 the Respondent and Appellant respectively signed the Order of Procedure.

34. On 19 July 2013, a hearing was held at the CAS Court headquarters in Lausanne, Switzerland (hereinafter referred to as the "Hearing").

IV. HEARING

35. The following persons attended the Hearing:

- For the Appellant: Mr Ralph Isenegger, Attorney-at-law Geneva
  Mr Andriy Stetsenko, Director General, FC Dnipro

- For the Respondent : Dr Skender Fani, Attorney-at-law in Vienna, Austria
  J., Witness
  Mr Marjan Prela, Translator.

36. The Respondent, Mr Ervin Bulku, and Mr Dmytro Pelin, Deputy General Director, FC Dnipro also attended by telephone conference call and were questioned by Counsel for the Parties and by the Panel.

37. The Parties were afforded the opportunity to present their cases, submit their arguments, and to answer questions asked by the Panel.

38. At the end of the Hearing:

i. Mr Stetsenko, on behalf of the Appellant, apologised that he had overlooked the CAS Court Office letter of 31 May 2013, but confirmed that the original documents requested would be sent to the CAS. No such documents were ever received at the CAS Court Office;

ii. Mr Isenegger confirmed that he would file at the CAS Court Office, Power of Attorney, confirming his appointment as Counsel to the Appellant. No such Power of Attorney was ever sent to the CAS Court Office.

iii. The Parties explicitly agreed at the end of the Hearing that their right to be heard and to be treated equally in the arbitration proceedings had been fully observed.

V. POSITION OF THE PARTIES

39. The following outline 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 has been made in what immediately follows.

A. FC DNIPRO DNIPROPETROVSK

40. The Appellant's position is summarised in its Appeal Brief as follows:

1. That in breach of procedural rules the Appellant was not notified by FIFA or the FFU of the FIFA proceedings ;

2. That the Respondent was not registered with FC Dnipro;

3. That the Respondent was registered with FC Kryvbas;

4. FC Dnipro did not transfer the Respondent to FC Kryvbas, HJK Hajduk Split or any other club;

5. FC Dnipro and FC Kryvbas did not enter into any player loan agreements and FC Dnipro may not be regarded as the Respondent's club of origin;

6. On the basis of full and independent employment contracts the Respondent repeatedly concluded contracts with FC Kryvbas and was continuously employed in FC Kryvbas;

7. The Respondent did not fulfil his obligations under the employment contract with FC Dnipro and actually did not become an FC Dnipro employee despite the signed contract; and

8. The Respondent entered into more than one contract covering the same period with different clubs.

41. At the hearing the Appellant confirmed that no submissions would be made in connection with respect of paragraph 40 (1) above.

B. ERVIN BULKU

42. The Respondent's position can be summarised as follows:

1. That the Appellant was on notice of the FIFA proceedings having been sent copies via FFU and that as such all procedural rules were duly observed by FIFA's Dispute Resolution Chamber in coming to its decision dated 21 September 2012;

2. That as of July 2010, the Appellant was fully aware of the Respondent's claims, as evidenced by the fact that two meetings were scheduled at the Appellant's premises on 28 July 2010 and 15 August 2010, the first of which did not take place, but that at the second of which the Appellant's General Director offered to terminate Contract No. 2 at end January 2011;

3. That Contract No. 2 was valid and binding from 1 August 2008 until 30 June 2011; and

4. That the Respondent was subject to an informal loan agreement until 30 June 2010 between the Appellant and FC Kryvbas, which club was a "satellite club" of FC Dnipro, under the joint financial control of the President Mr Ihor Kolomoyskyi.

VI. THE PARTIES' REQUESTS FOR RELIEF

43. The Appellant's requests for relief are the following:

1. Reconsider the case and cancel the Decision of the FIFA Dispute Resolution Chamber dated on 21 September 2012;

2. Consider the case and refuse satisfaction of the claims of the Player, Mr Ervin Bulku; and

3. To charge all the costs related to the consideration of the case from the Player, Mr Ervin Bulku.

44. The Respondent's requests for relief are the following:

1. To confirm the decision of the Dispute Resolution Chamber of FIFA dated 21 September 2012; and

2. To charge all the costs related to the case to FC Dnipro Dnipropetrovsk.

VII. JURISDICTION OF THE CAS

45. Pursuant to Article R47 of the Code:

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 his appeal, in accordance with the statutes or regulations of the said sports-related body.

46. The jurisdiction of the CAS to hear this dispute derives from Articles 66 and 67 of the FIFA Statutes (Edition 2012) and was confirmed by the Parties when signing the Order of Procedure. The jurisdiction of the CAS in the present case was not disputed by the Parties.

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

VIII. ADMISSIBILITY

48. The decision appealed against was notified to the Parties on 8 March 2013. The Statement of Appeal was filed on 29 March 2013, *i.e.* within the time-limit prescribed by Article 67 of the FIFA Statutes and Article R49 of the Code.

49. Consequently the appeal shall be deemed admissible.

IX. APPLICABLE LAW

50. Article R58 of the Code provides that 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.

51. The Contract of Employment dated 1 August 2008 provides in paragraph 4.2 that:

"This contract is regulated by the norms of the work legislation in force acting in the territory of Ukraine and by amendments and completions stipulated in the terms of this Contract".

52. In its Statement of Appeal and its Appeal Brief, the Appellant did not address the issue of the applicable law and made no submissions at the hearing on work legislation in force acting in the territory of Ukraine. Likewise in his Statement of Defence, the Respondent did not address the issue of the applicable law and made no submissions on Ukraine law at the hearing.

53. Article 66 paragraph 2 of the FIFA Statutes provides *"the provisions of the CAS Code of Sports-related Arbitration shall apply to proceedings. CAS shall primarily apply the various Regulations of FIFA, and additionally Swiss law".*

54. The Panel therefore decided that it was the FIFA Regulations (and additionally Swiss Law), that would be applicable to this dispute. As the present matter was submitted to FIFA on 21 December 2011, the 2010 version of the FIFA Regulations on the Status and Transfer of Players (hereinafter referred to as the "RSTP") are applicable. Those Regulations shall thus apply primarily, together with the other applicable rules of FIFA and additionally Swiss law.

X. MERITS

55. The following refer to the substance of the Parties' allegations and arguments without listing them exhaustively. In its discussion of the case and its findings on the merits, the Panel has nevertheless examined and taken into account all of the Parties' allegations, arguments, and evidence on record, whether or not expressly referred to in what follows.

General Observations of the Record

56. It is not disputed by the Parties that they entered into a fixed term Employment Contract dated 1 August 2008 (Contract No. 2), expressed to be for a term of three seasons ending on 30 June 2011.

57. It is, however, averred by the Appellant that the Respondent did not fulfil his obligations under that contract, in that *inter alia* he never played football for the Appellant. The Appellant also avers that Contract No. 2 was not registered with FFU, rendering it "void".

58. The Appellant further maintained that no loan agreements could have been entered into between the Appellant and FC Kryvbas in respect of the Respondent, as between 2007 and 2010 the Respondent was under direct contracts of employment with FC Kryvbas, which contracts were registered at FFU.

59. Thus, the issue to be determined by the Panel is whether Contract No. 2 was terminated, whether the Respondent was the subject of a Loan Agreement or agreements between the Appellant and FC Kryvbas, and whether the non-registration of Contract No. 2 with FFU invalidated Contract No. 2.

60. Pursuant to Article 1 of the Swiss Code of Obligations, a contract requires the mutual agreement of the parties, which obligation may be either express or implied.

61. When the interpretation of a contract is in dispute, the Judge seeks the true and mutually agreed upon intention of the parties, without regard to incorrect statements or manner of expression used by the parties by mistake or in order to conceal the true nature of the contract (Article 18 paragraph 1 of the Swiss Code of Obligations). When the mutually agreed real intention of the parties cannot be established, the contract must be interpreted according to the requirements of good faith (ATF 129 III 664; 128 III 419 consid. 2.2 p. 422). The Judge has to seek how a declaration or the external manifestation of a party could have been reasonably understood dependent upon the individual circumstances of the case (ATF 128 III 419 consid. 2.2 p. 422).

62. The requirements of good faith tend to give preference to an objective approach. The emphasis is not so much on what the parties may have meant but on how a reasonable man would have understood their declarations (ATF 129 III consid. 2.5 p. 122; 128 III 419, consid 2.2 p. 422).

63. In determining the intent of the parties, or the intent which a reasonable person would have had in the same circumstances, it is necessary to look to the words used or conduct engaged by the parties. However, the investigation is not to be limited to those words or the conduct even if they appear to give a clear answer to the question. In order to go beyond the apparent meaning of the words or the conduct of the parties, due consideration is to be given to all relevant circumstances of the case. This includes the negotiations, any subsequent conduct of the parties and usages.

Specific Observations of the Record

64. The Panel carefully examined the documents and considered the testimony of the parties and witnesses and all the documents annexed to the Appeal Brief and Statement of Defence produced to the Panel at the hearing and draws the following conclusions:

65. Mr Stetsenko, on behalf of the Appellant, confirmed that at the end of the 2007/2008 season, the Appellant's then Coach was anxious to transfer the Respondent into the Appellant's squad. Contract No. 2 was entered into between the Respondent and the Appellant on 1 August 2008. However, shortly thereafter that Coach was replaced, and his successor did not want to include the Respondent as part of the squad. The Panel is of the view that the wishes of a Coach would not and could not bring about the termination of the Contract.

66. Although no evidence was adduced to the Panel, the Respondent submitted that FC Kryvbas was a "satellite club" of the Appellant, under the same financial control of the Appellant's President and that he and a number of other players were loaned by the Appellant to FC Kryvbas on an informal basis. No evidence was adduced to the Panel that formal loan agreements were entered into and indeed the Respondent confirmed that he had knowingly entered into Contracts No. 3 and No. 4, which he accepted were registered with FFU, but that those contracts were entered into at the express direction of the Appellant. The Respondent confirmed that he acceded to this request, as the terms of Contracts No. 3 and No. 4 were identical to those in Contract No. 2, and that he believed that payment for his services was made by the Appellant through FC Kryvbas. This evidence was not challenged by the Appellant but the Panel concludes that it is unable to make any finding that informal loan agreements were entered into between the Appellant and FC Kryvbas.

67. There is no dispute between the Parties that on the expiration of contract No. 4, the Respondent attempted to participate in pre-season training with the Appellant, but was refused permission and was sent away and advised to return to Albania.

68. By letter dated 3 August 2010 addressed to Mr Stetsenko, Counsel for the Respondent intimated a claim that the Contract No. 2 remained in force until June 30 2011 and that the refusal to permit the Respondent to train constituted a unilateral breach of contract without reason. No response to that letter was apparently made by the Appellant.

69. Counsel for the Respondent submitted that on or about 15 August 2010, a meeting took place at the premises of the Appellant which was attended by Mr Stetsenko, J., and Mr Fani, at which time Mr Stetsenko allegedly acknowledged the continued existence of Contract No. 2, but suggested that it be terminated by consent, at the end January 2011. J. confirmed in evidence that such a meeting took place and confirmed what was discussed. No evidence was given on behalf of the Appellant in relation to that meeting.

70. Following the meeting, the letters dated 16 and 17 August on the notepaper of the Appellant, both bearing its seal, were sent to Respondent in the following terms:

Letter dated 16 August (in translation from Russian to English)

"Herewith FC Dnipro confirms that in case players Erwin Bulku and […] sign a contract with any other football club before the transfer window closes on Aug. 31 2010, part of salary mentioned players, agreed with their club, will pay FC Dnipro".

Letter dated 17 August (in translation form Russian to English)

"FC Dnipro doesn't object against the transfer of the football player Erwin Bulku to any club

FC Dnipro doesn't have any financial claims to this transfer".

71. The Respondent submitted that there was no reason for the Appellant to write in these terms, unless it acknowledged the continued existence of Contract No. 2. The Appellant submitted that the only reason the letters were written, was to confirm its belief that the Respondent was a "free agent" at liberty to enter into a new contract and that it had no claim for a transfer fee.

72. Having given due consideration to both submissions, the Panel concludes that the submission of the Respondent is to be preferred and that there was no reason for the Appellant to write in those terms if it did not believe that Contract No.2 remained in full force and effect.

73. The Panel was provided with no evidence or precedents to support the Appellant's claim that non-registration of Contract No. 2 rendered the contract void. The Panel is however satisfied that there is established precedent (CAS 2007/A/1351 para. 4.4.15 ff. and TAS 2006/A/1008 & 1104 para. 67 f.) that under Swiss law, the registration of a contract is an administrative act that does not have, in principle, an impact on its validity.

XI. CONCLUSION

74. The Panel, having taken into consideration all the facts, evidence, and legal arguments (even if not directly referred to in the present award) made by the Parties in their written submissions and in the course of the Hearing, concludes that Contract No. 2 was never terminated by the Respondent and that Mr Bulku was entitled to terminate the contract with just cause on the Appellant's refusal to permit him to train with the Appellant in July 2010. Consequently, the Appellant's appeal shall be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules:

1. The appeal filed by FC Dnipro Dnipropetrovsk against the decision of rendered by the FIFA Dispute Resolution Chamber on 21 September 2012 is dismissed

2. The decision of FIFA Dispute Resolution Chamber on 21 September 2012 is upheld.

3. (…).

4. (…).

5. All other claims are dismissed.