4A_246/2014[1]

Judgment of July 15, 2015

First Civil Law Court

Federal Judge Kiss (Mrs.), Presiding
Federal Judge Kolly
Federal Judge Niquille (Mrs.)
Clerk of the Court: Mr. Carruzzo

A._____ SA,
Represented by Mr. Claude Ramoni,
Appellant

v.

1. B._____,
2. C._____,
3. D._____,
4. E._____,
5. F._____,
6. G._____,
7. H._____,
8. I._____,
9. J._____,

Respondents, Players 1-5, 7 and 8 acting through K._____ Association,
10.L._____ Federation,
Respondent

Facts:
A.
A._____ SA (hereafter: A._____) is a professional football club based in X._____ [name of city omitted] and affiliated with L._____ Federation (hereafter: L._____).

[1] Translator's Note: Quote as A._____ SA *v.* B._____ *et al.*, 4A_246/2014.
The original text of the decision is in French. The full text is available on the website of the Federal Tribunal, www.bger.ch.

Between June 2010 and September 2011, A._____ entered into employment contracts with each of the nine following professional football players, all domiciled in Y._____ [name of country omitted]: B._____ (hereafter: Player 1), C._____ (hereafter: Player 2), D._____ (hereafter: Player 3), E._____ (hereafter: Player 4), F._____ (hereafter: Player 5), G._____ (hereafter: Player 6), H._____ (hereafter: Player 7, I._____ (hereafter: Player 8) and J._____ (hereafter: Player 9). These contracts had the peculiarity that they tied the payment of the full monthly salaries to the condition that the players play 70% of the total number of minutes that the matches played by the Club during the month under consideration. On March 13, and April 3, 2013, the players filed several requests with the Dispute Resolution Chamber of L._____ (hereafter: the DRC) with a view to obtaining payment of the unpaid salaries and to obtain a finding that they had validly terminated their employment contracts for cause.

In a decision of April 23, 2013, the DRC upheld the right of the players to terminate their employment contracts as of the same date and ordered the Club to pay various amounts to each player as unpaid salary.

A._____ appealed these decisions to the Appeal Committee of L._____ (hereafter: the Committee). On June 4, and July 11, 2013, the latter found that the appeals filed on July 18, 2013, against the decisions concerning Players 1 to 7 were late. It reduced in part the amount awarded to Player 8 as unpaid salary and confirmed the decision concerning Player 9.

B.
The [nationality omitted] Club seized the Court of Arbitration for Sport (CAS) of several appeals against all decisions issued by the Committee. The cases were consolidated.

By letters of January 14, and 17, 2014, A._____ submitted settlement agreements signed with Players 6 and 9 according to which, they waived their claims and withdrew from the proceedings.

A London barrister was appointed as sole arbitrator (hereafter: the Arbitrator). In an award of March 7, 2014, he closed the cases concerning Players 6 and 9, rejected A._____'s appeals concerning the seven other players and confirmed the decisions of the Committee in this respect.

C.
On April 16, 2014, A._____ (hereafter: the Appellant or the Club) filed a civil law appeal with a request for a stay of enforcement. Arguing a violation of the rule *ne infra petita* (Art. 190(2)(c) PILA[2]), of its right to be heard (Art. 190(2)(d) PILA), and of procedural public policy (Art. 190(2)(e) PILA), it submits that the Federal Tribunal should annul the award under appeal.

[2] Translator's Note: PILA is the most commonly used English abbreviation for the Federal Statute on International Private Law of December 18, 1987, RS 291.

In its answer of December 29, 2014, L._____ submits that the appeal should be rejected. The CAS submits in its answer of January 21, 2015, that the appeal should be rejected to the extent that the matter is capable of appeal. Declaring that it acts for all Respondent Players with the exception of Players 6 and 9, K._____ Association also submits that the appeal should be rejected. Players 6 and 9 filed no answer.

A stay of enforcement was granted *ex parte* by decision of the presiding judge of April 17, 2014.

Reasons:

1.
According to Art. 54(1) LTF,[3] the Federal Tribunal issues its decision in an official language,[4] as a rule in the language of the decision under appeal. When the decision is in another language, (here, English) the Federal Tribunal resorts to the official language chosen by the parties. Before the CAS, they used English. In the brief sent to the Federal Tribunal, the Appellant used French. The Respondents also used that language in their answers. In accordance with its practice, the Federal Tribunal will adopt the language of the appeal brief and consequently issue its judgment in French.

2.
A civil law appeal is admissible against international arbitral awards pursuant to the requirements of Art. 190-192 PILA (Art. 77(1)(a) LTF). Whether as to the object of the appeal, the standing to appeal, the time limit to appeal, the Appellant's submission, or the admissibility of the grievances raised in the appeal brief, none of these admissibility requirements raises any problem in the case at hand. The merits of the appeal may therefore be addressed.

3.
The Federal Tribunal issues its decision on the basis of the facts established by the Arbitral Tribunal (Art. 105(1) LTF). This Court may not rectify or supplement *ex officio* the factual findings of the arbitrators, even if the facts were established in a manifestly inaccurate manner or in violation of the law (see Art. 77(2) LTF, ruling out the applicability of Art. 105(2) LTF). However, as was already the case under the aegis of the federal law organizing the judiciary (see ATF 129 III 727 at 5.2.2; 128 III 50 at 2a and the cases quoted), the Federal Tribunal retains the capacity to review the factual findings upon which the award under appeal is based if one of the grievances mentioned at Art. 190(2) PILA is raised against such factual findings or when some new facts or evidence are exceptionally taken into consideration in the framework of the civil law appeal (see Art. 99(1) LTF).

At n. 8 of its brief, the Appellant states that while reference is made to the factual findings of the award under appeal, "in order to understand well the arguments invoked here, the following clarifications must be added as to the case at hand…". The argument is not admissible in the light of the aforesaid principles. The

[3] Translator's Note: LTF is the French abbreviation of the Federal Statute of June 17, 2005, organizing the Federal Tribunal, RS 173. 110.

[4] Translator's Note: The official languages of Switzerland are German, French, and Italian.

statement based on exhibits 7 to 15 of the appeal brief is inadmissible in particular, when it claims that on November 27, 2013, the Disciplinary Committee of L._____ issued several decisions banning the Appellant from all competitions organized under the aegis of L._____ for failing to settle its financial obligations to the players, such decisions being the subject of appeals that were still pending. Indeed, this statement does not correspond to any finding of the Arbitrator and the Appellant does not indicate why it should be entitled to make it.

4.
L._____'s answer and moreover that of K._____ contain no substantive explanations relating to the various arguments submitted in the appeal brief but rather only some general considerations, as opposed to those formulated by the CAS. Consequently, the latter only will be mentioned in this judgment, even though this Court has reviewed the content of the other two briefs.

5.
In a first argument, based on Art. 190(2)(c) PILA, the Appellant submits that the Arbitrator failed to decide one of the claims.

5.1. According to case law, failure to issue a decision is a formal denial of justice. The federal law here adopted the second ground for appeal contained at Art. 36(c) of the Swiss Arbitration Concordate. By claims ("*Rechtsbegehren*", "*chef de la demande*", "*determinate conclusioni*"), one means the claims or the submissions of the parties. What is referred to here is the incomplete award, namely when the Arbitral Tribunal failed to decide one of the submissions made by the parties (ATF 128 III 234 at 4a, p. 242 and references).

5.2.
5.2.1. In support of its argument, the Appellant states that in the aforesaid letters of January 14, and 17, 2014, to which the settlement agreements signed by Players 6 and 9 were attached, it specifically asked the Arbitrator to question L._____, "with a view to obtaining its agreement to the settlement agreements or to annul the decisions of L._____ concerning these two players" (appeal brief n. 12). According to the Appellant, at the hearing, L._____ accepted neither of these two solutions. As to the Arbitrator, he merely closed the cases concerning Players 6 and 9 and struck them off the case list, so that they, "theoretically remain effective" and cause a risk for the Appellant to be sanctioned in connection with these Players as well, considering the pending disciplinary proceedings. Therefore, according to the Appellant, it behooved the Arbitrator to annul the decisions of L._____, which had become moot because the Federation did not annul them spontaneously. By failing to do so, the Arbitrator would have violated due process from a formal point of view.

5.2.2. In its answer, the CAS states that at the hearing of January 20, 2014, the Arbitrator took notice of the agreements between the Appellant and Players 6 and 9; that it was perfectly clear to the Arbitrator that the decisions of the Committee concerning these two Players had become moot; therefore there was no need to annul them formally in addition. Be this as it may, the CAS submits that it should be found that the

Appellant does not have any sufficient present interest to obtain the annulment of the award under appeal in this respect. This is because if the Club were to be placed in actual difficulty due to its former dispute with Players 6 and 9 in the framework of separate disciplinary proceedings initiated by L._____, it would be in a position to resolve the matter simply by producing the settlements in question. The Appellant's position would not be different in this respect if the Arbitrator had annulled the two decisions of the Committee and if L._____ had initiated disciplinary proceedings against the Club nonetheless. In short, for the CAS, the formal annulment of the decisions of the Committee would have no direct and substantive impact on the Appellant's situation, so that the argument under review, the admissibility of which is more than doubtful, should be rejected anyway.

5.3. At paragraphs n. 33 and 34 of the award, the Arbitrator referred to the settlements between the Appellant and Players 6 and 9 and states that, by way of these, they withdrew from the proceedings and waived their claims. Then, at n. 40, he points out that at the hearing, K._____ confirmed that Players 6 and 9 should no longer be treated as parties to the arbitration in the light of their settlement with the Club ("*… shall not be subject of the present award anymore in view of the Settlement Agreement they had signed with the Club."*[5]). On this basis, the Arbitrator does not mention Players 6 and 9 as to the submissions made by the Appellant in the arbitration (award n. 46) and then adds with reference to the aforesaid settlements that he considers the appeals of Players 6 and 9 as "*terminated*"[6] and that consequently, he shall decide only the appeals of the other five players (award n. 63).

This recall of the pertinent procedural facts, which bind this Court, show that the Appellant gives to its letters of January 14, and 17, 2014, a scope going well beyond that which was held by the Arbitrator. It has been noted that saw there an indication by the Club that Players 6 and 9 were withdrawing from the proceedings which K._____ expressly confirmed as representative of all Players in the CAS. Therefore, when he took notice at § 1 of the dispositive part of the award that the cases concerning Players 6 and 9 were terminated and struck off the case list, the Arbitrator did not decide *infra petita* at all.

Moreover, this Court may adopt the CAS submissions as to the lack of any present interest worthy of protection for the Club to the admission of its appeal concerning Players 6 and 9. The Court is all the more inclined to do so, as the alleged existence of disciplinary proceedings against that Club in connection with these two Players is a statement that cannot be taken into consideration for the reasons indicated above.

6.
In a second argument divided into three parts, the Appellant argues a violation of its right to be heard.

6.1. As guaranteed by Art. 182(3) and 190(2)(d) PILA, the right to be heard does not have a different content in principle than that which is enshrined in constitutional law (ATF 127 III 576 at 2c; 119 II 386 at 1b; 117 II 346 at 1a, p. 347). Thus, it was held with regard to arbitration that each party has the right to

[5] Translator's Note: In English in the original text.
[6] Translator's Note: In English in the original text.

state its views on the essential facts for the judgment, to submit its legal arguments, to propose evidence on pertinent facts, and to participate in the hearings of the arbitral tribunal (ATF 127 III 576 at 2c; 116 II 639 at 4c, p. 643).

As to the right to adduce evidence, it must be exercised in a timely manner and according to the applicable procedural rules (ATF 119 II 386 at 1b, p. 389). The arbitral tribunal may refuse to adduce evidence without violating the right to be heard if the evidence is incapable of forming the basis for a conviction, if the fact to be proved is already established, if it is objectively without pertinence, or if, in its anticipated assessment of the evidence, the tribunal reaches the conclusion that its mind is already made up and that it cannot be modified by the result of the evidence proposed (judgment 4A_440/2010[7] of January 7, 2011, at 4.1). The Federal Tribunal may not review an anticipated assessment of the evidence except from the very narrow point of view of public policy. The right to be heard does not entitle a party to the adducement of evidence with no probative value (judgment 4A_150/2012[8] of July 12, 2012, at 4.1).

The right to be heard in contradictory proceedings within the meaning of Art. 190(2)(d) PILA does not, admittedly, require an international arbitral award to be reasoned (ATF 134 III 186[9] at 6.1 and references). However, it imposes upon the arbitrators a minimal duty to examine and handle the pertinent issues (ATF 133 III 235 at 5.2, p. 248 and the cases quoted). This duty is breached when, due to oversight or by a misunderstanding, the arbitral tribunal does not take into consideration some statements, arguments, evidence, and offers of evidence submitted by one of the parties and important to the decision to be issued. If the award completely overlooks some apparently important elements to decide the dispute, it behooves the arbitrators or the respondent to justify the omission in their observations as to the appeal. It behooves them to demonstrate that, contrary to the claimant's assertions, the items omitted were not pertinent to decide the case at hand or, if they were, that they were refuted by the arbitral tribunal implicitly. However, the arbitrators are not obliged to discuss all arguments invoked by the parties, so they cannot be found in violation of the right to be heard in contradictory proceedings for failing to refute, albeit implicitly, an argument objectively devoid of any pertinence (ATF 133 III 235 at 5.2 and the cases quoted).

Moreover, the arbitrators may exceptionally have an obligation to ask the views of the parties when they consider basing their decision on a provision or a legal consideration which was not discussed in the proceedings and the pertinence of which the parties could not anticipate (judgment 4A_538/2012[10] of January 17, 2013, at 5.1 and the precedent quoted).

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[7] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/claim-of-award-ultra-petita-rejected-claim-of-violation-of-publi

[8] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/federal-tribunal-reiterates-principle-pacta-sunt-servanda-violated-only-when-arbitral-tribunal

[9] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/right-to-be-heard-equality-between-the-parties

[10] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/alleged-lack-authority-representatives-creates-jurisdictional-issue

6.2.

6.2.1. In the first part of the argument under review, the Appellant states that before the CAS it demonstrated that it had not validly been notified of the DRC decisions concerning Players 1 to 7 before June 13, 2013, and that consequently, the appeals it sent to the Committee on the 18th of the same month were filed within the five day time limit contained in the regulations of L._____. Yet, according to the Appellant, the award under appeal does not mention this issue at all. And, the Appellant adds that if the Arbitrator had taken into account the fact that the appeals concerning Players 1 to 7 had wrongly been declared inadmissible by the Committee, it would have had a satisfactory demonstration demonstrating why the payment slips for Players 1 to 7 were not produced to the Committee.

On the basis of the pertinent passage of the appeal brief (n. 26), the CAS replies that the Appellant itself understood that if the Arbitrator addressed the merits of the issue, it would be because he implicitly admitted the Appellant's argument as to the alleged tardiness of its appeals concerning Players 1 to 7.

6.2.2. Like the CAS, the Appellant too appears to admit that the Arbitrator implicitly upheld its argument concerning compliance with the time limit to appeal to the Committee, because he addressed the merits of the matter without wondering whether or not the appeals against the decisions concerning Players 1 to 7 were filed late. Moreover, the unclear explanations of the Appellant do not make it possible to understand the causal relationship that it seeks to establish between the fact that its appeals were declared inadmissible by the Committee and the impossibility in which it would have found itself to produce the payment slips concerning Players 1 to 7 in this appeal body of L._____.

Be this as it may, the passage of the award it quotes (n. 69) shows, at least implicitly, that through its representative M._____, the Appellant had the opportunity to explain at the hearing the reason for which the payment slips were allegedly not available in the two previous jurisdictions. The first part of the Appellant's argument concerning the right to be heard is therefore unfounded.

6.3.

6.3.1. In the second part of the same argument, the Appellant criticizes the Arbitrator for not addressing the issues it raised in connection with Player 2 on the one hand and with Players 1 and 3 on the other hand.

As to Player 2, the Appellant argued that from August 2012 to January 2013, the Player was injured and had to undergo surgery and played no official games, thus failing to meet the requirement on which the payment of his salary depended and that he did not demonstrate that he should have received it despite his inability to work and that his medical expenses should have been borne by the Club. This is why the Appellant paid him nothing for the period and disputed owing him anything.

As to Players 1 and 3, the Appellant claims to have challenged the computation of their salaries and quotes the topical passages of its appeal brief. Yet, here as well, the Arbitrator failed to examine the arguments

submitted in that brief even though they related to an essential element, namely the amount of the salary claims of these two players.

6.3.2. The Appellant's double argument as to a violation of the right to be heard stated in this second part appears founded. It is indeed striking to note that the CAS does not address it in its answer, as opposed to what it does for the other arguments. One actually seeks in vain the passage in the award under appeal in which the Arbitrator rejected the Appellant's arguments, particularly the one concerning Player 2, which is expressly mentioned in the chapter of the award devoted to stating the positions of the parties (n. 45 ii). Yet, the argument concerning this Player was specific and challenged the very existence of the Player's claim based on his inability to work. The Arbitrator should have indicated at the very least if he considered that, in case of inability to work due to injury, the clause of the employment contract subjecting the monthly compensation of the Player under the condition that he would play a specific percentage of the total number of minutes played by the Club in the games of the month under review. He also should have addressed the issue as to who should bear the medical costs, specifically raised by the Appellant.

As to Players 1 and 3, it appears from the passages of the appeal brief to the CAS quoted in the appeal at hand that the Appellant duly challenged the manner in which the DRC applied the aforesaid percentage clause in the two Players' employment contracts (see appeal brief of September 9, 2013, n. 70/71 and 86/87). The very amount of the salary claim to which both were entitled depended upon this argument, whether or not the amounts already paid by the Employer would have been sufficient to extinguish the debt. Therefore, the Arbitrator could not leave this issue aside without violating the Appellant's right to be heard.

6.4. The third argument concerns the Arbitrator's refusal to take into consideration the payment slips that the Appellant submitted to him in order to demonstrate that with the exception of Player 2, to whom it claims owing nothing, the players received their entire salaries during the period under consideration.

6.4.1. The Appellant submits that in its appeal brief it explained that it would usually make advance salary payments to its Players throughout the year against the signature of payment slips and that at the end of the season, it would compute the balance they were owed on the basis of the minutes played by each of them. It would also have stated that the late production of the payment slips could be explained because the documents were requested in the framework of a tax investigation and were consequently not available to the Club during the proceedings in the DRC. It adds that the evidence could not be submitted to the Committee for Players 1 to 7 because it did not address the appeals concerning these Players due to late filing.

According to the Appellant, the Arbitrator merely rejected the evidence on the basis of Art. 317 of the Swiss Code of Civil Procedure (CCP; RS 272) and Art. R57 of the Code of Sport Arbitration (hereafter: the Code) because the Appellant did not validly explain why the payment slips could not be produced in the first or second jurisdiction. In doing so, he would have deprived the Appellant of essential evidence that could demonstrate that the players had received their entire salaries during the determining periods, thus

violating its right to submit evidence. The Arbitrator's reasoning was even more incomprehensible as to Player 8 because the payment slips concerning him were produced before the Committee.

Moreover, still according to the Appellant, the general considerations stated by the Arbitrator at n. 71 of the award were wrong and did not constitute sufficient reasons to set aside the payment slips without further examination.

Furthermore, the Appellant submits that the Arbitrator failed to ask for its views formally before interpreting Art. R57 of the Code in the light of Art. 317 CCP and that it could not anticipate that the latter provision would be applied – to reject allegedly new evidence – in an arbitration against a decision of a sport federation that had absolutely nothing to do with the appeal procedure contemplated by Art. 308 *ff* CCP. According to the Appellant, this would have deprived it of the possibility of submitting its factual and legal arguments that would have demonstrated why the payment slips concerning Players 1, 3, 4, 5, and 6 were produced to the CAS for the first time. And, the Appellant explains these reasons based on the procedural law of [country omitted] and the regulations of L._____ as to the Player's status.

Finally, the Appellant submits that the payment slips concerning "Player 6 (H._____)" (*sic*),[11] which were submitted, were rejected by L._____ without reason and without explanation (appeal n. 43).

6.4.2. In its answer, the CAS denies that the Appellant could claim a violation of its right to be heard because, when asked about the alleged impossibility for it to produce the payment slips earlier, he was able to state its position in this respect but the reasons advanced were not convincing. It emphasizes, moreover, that the Arbitrator denied the evidence had any probative value.

6.4.3.
6.4.3.1. In the case at hand, the Arbitrator holds that the Appellant had the burden of proof in this respect and fails to demonstrate why it would have been impossible to submit the payment slips to the DRC and then to the Committee without explaining in any convincing manner why it could not have produced a copy of these exhibits if the originals were allegedly unavailable due to the ongoing tax investigation. Therefore, he holds the exhibits at issue inadmissible as evidence (award n. 69 and 70). The finding as to the absence of any plausible explanations as to the belatedness of the submission of the evidence in dispute is in the realm of facts and binds the Federal Tribunal. The conclusion drawn by the Arbitrator is consistent with the aforesaid case law, according to which the right to introduce evidence must have been exercised in a timely manner.

6.4.3.2. The Appellant argues in vain that it was surprised. The Arbitrator's reference to Art. 317 CCP at the end of page 15 of his award appears somewhat singular indeed in a dispute between a football club of [name of country omitted] and players of [citizenship omitted] domiciled in Y._____. However, the Arbitrator also applied Art. 57(3) of the Code (award n. 68), which is sufficient to justify the refusal to admit

[11] Translator's note: The "(sic)" appears in the original text.

the exhibits at issue into evidence and can be compared as a matter of principle to the aforesaid provision of Swiss procedural law and he states the following: “The Panel may exclude evidence submitted by the parties if it was available to them or if they reasonably could have discovered it before the decision under appeal was issued.” Yet, it is obvious that the existence of this provisions, which is an essential element of the rules governing appeal proceedings in the CAS, could not be ignored by the Appellant, which was assisted by a lawyer specializing in sport disputes.

6.4.3.3. In any event, the Arbitrator held that the exhibits in dispute – namely the payment slips produced by the Appellant – could not establish the fact in dispute, namely the payment of the entire salaries due to the players because the payments allegedly made according to these exhibits did not appear to correspond to the amounts due pursuant to the contracts between the parties. Moreover, he refused to admit that, according to the employment contracts, the Appellant was free to pay various amounts when it could avail itself of the necessary funds and provided it could. In his view, moreover, it was not possible to establish a direct relationship between the payments made and the respective employment contracts of the players on the basis of the exhibits submitted (award n. 71).

These are alternate reasons sufficient to justify the refusal to take into account the payment slips produced by the Appellant if they had been produced in a timely manner. Such alternate reasons relate to an assessment of the evidence in advance and consequently bind the Federal Tribunal. The Appellant seeks in vain to challenge it at n. 38 of its appeal brief and merely submits arguments in this respect without connection to the violation of public policy (see 6.1, § 2, *in fine*, above).

6.4.3.4. The argument under review must also be rejected as to Player 8. In this respect, the Appellant states that it does not understand why the payment slips concerning this Player were not taken into consideration by the Arbitrator. Yet, the answer to its question is at n. 65 *in fine* of the award under appeal, which points out that this evidence was rejected by the Committee because of its non-compliance with the law of [name of country omitted]. As the Appellant does not claim to have challenged this in the arbitration and to have failed to obtain an answer in this respect, the legal situation concerning this argument is that of evidence which was not validly submitted according to applicable rules. In this case, a violation of the right to submit evidence cannot be envisaged.

6.4.3.5. Finally, the argument concerning Player 6 is inadmissible. First, it is incomprehensible because the Player is not the so-called “H._____”, as stated by the Appellant, but rather G._____. Moreover and above all, it is aimed at L._____ even though the award under appeal was issued by the CAS Arbitrator and therefore does not relate to the decision of an arbitral tribunal within the meaning of Art. 77(1)(a) LTF.

Therefore, the argument under review cannot be considered admissible in any of its three parts.

7.
In a final argument, the Appellant submits that the award under appeal violates procedural public policy.

7.1. Procedural public policy within the meaning of Art. 190(2)(e) PILA is only an alternate guarantee (ATF 138 III 270[12] at 2.3), and guarantees the right of the parties to an independent judgment as to the submissions and the facts presented to the arbitral tribunal in a manner consistent with applicable procedural law; a violation of procedural public policy occurs when some fundamental and generally acknowledged principles are violated, leading to an insufferable contradiction with the notion of justice so that the decision appears to be incompatible with the values recognized in a state of laws (ATF 132 III 389 at 2.2.1).

7.2.
7.2.1. According to the Appellant, the right to an arbitrator with full power of review would be part of procedural public policy to the extent that it constitutes one of the elements of the right to a fair trial guaranteed in particular by Art. 6(1) EHRC. As the internal jurisdictional bodies of L._____ cannot be likened to an independent and impartial tribunal, the appeal to the CAS was the only way for the Appellant to see its case decided by a tribunal meeting these requirements. Yet, in the case at hand, the Arbitrator gave Art. 57(3) of the Code a restrictive interpretation, leading to the rejection of evidence because it concerned exhibits that should have been produced in the jurisdictional bodies of the sport federation involved, which was tantamount to refusing to exercise his full power of review and therefore deprive the Appellant of the right to appear before an independent and impartial judge.

7.2.2. Art. 6(1) ECHR does not prevent the creation of arbitral tribunals with a view to adjudicate certain disputes of a financial nature between litigants as long as the waiving of their right to a tribunal in favor of arbitration is free, legal, and unequivocal (judgment 4A_238/2011[13] of January 4, 2012, at 3.2 and the judgment of the European Court of Human Rights quoted). Once this dispute resolution mechanism has been validly chosen, a party to the arbitration agreement may not validly submit, in the framework of a civil law appeal to the Federal Tribunal against an arbitral award, that the arbitrators violated the ECHR even though its principle may occasionally be used to implement the guarantees it invokes on the basis of Art. 190(2) PILA (last case quoted, at 3.1.2). Moreover, the parties have the right to organize the arbitral procedure as they wish, particularly with reference to a set of arbitration rules (Art. 182(1) PILA) as long as the arbitral tribunal guarantees equal treatment and their right to be heard in contradictory proceedings (Art. 182(3) PILA). This is what they did in the case at hand by submitting to the CAS jurisdiction, which made the Code applicable *ipso iure* (see Art. 27(1) of the Code) including its Art. 57(3). Therefore, no matter what the Appellant claims, the concept of procedural public policy referred to by Art. 190(2)(e) PILA cannot encompass an obligation for the Arbitral Tribunal to address any case submitted to arbitration with full power of review. Once the state proceedings had been regularly waived, it is perfectly conceivable and

[12] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/an-international-arbitral-tribunal-seating-in-switzerland-is-gen

[13] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/swiss-supreme-court-holds-that-opting-out-agreements-pursuant-to

admissible that the parties would agree directly or through their submissions to a set of arbitration rules and limit the power of review of the Arbitral Tribunal, whether as to the subject of its review and/or its depth.

Be this as it may – and as the CAS rightly points out in its answer – one does not see why the refusal to take into account evidence not submitted according to the procedural rules applicable would be tantamount to limiting the power of review of the Arbitral Tribunal.

Consequently, the Arbitrator did not at all disregard Art. 190(2)(e) PILA by rejecting the payment slips at issue to decide the dispute between the parties because of late submission.

8.
This being so, the appeal at hand must be upheld in part, as the Arbitrator violated the Appellant's right to be heard in the matters concerning Players 1, 2, and 3 (see 6.3.2 above).

Case law and legal writing recognize the possibility of partial annulment, irrespective of the fact that an appeal against an international arbitral award may only seek its annulment (see Art. 77(2) LTF, ruling out the applicability of Art. 107(2) LTF) if the issue challenged is independent from the others (judgment 4A_360/2011[14] of January 31, 2012, at 6.2).

This case law may be applied to the case at hand by analogy, insofar as it involves nine cases concerning a salary dispute between an employer and each of the nine players in its employment who sued separately in the DRC, the cases being consolidated in appeal to be dealt with together (see award n. 25). Therefore, numbers 2, 3, and 5 of the dispositive part of the award under appeal shall be annulled insofar as they concerned the cases between A._____, L._____, and the players 1 to 3. The same shall apply to number 4 of the dispositive part of the award, which leaves the entire costs of arbitration to the Club. It is indeed possible that in the new award the CAS may find in favor of one of the three players, entirely or in part, or even in the favor of the three of them, which would call for the expenses to be divided accordingly.

9.
The appeal has been upheld as to three of the nine Respondent players. However, the arguments concerning the other six players have been rejected. Logically and for the sake of simplicity, two thirds of the costs of the federal proceedings shall be borne by the Appellant, the last third being borne by Players 1 to 3 severally as they wrongly opposed the appeal, each of them bearing one third of these costs internally (Art. 66(1) and (5) LTF). As to L._____, one does not see in what capacity it participated in the proceedings at hand, except as the judicial body of first instance through the DRC and the Committee and it shall not bear part of the costs (Art. 66(4) LTF by analogy) and shall not be entitled to compensation either (Art. 68(3) LTF by analogy).

[14] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/icc-award-annulled-for-breach-of-the-right-to-be-heard-post-hear

Players 6 to 9 did not file an answer and cannot claim costs. As to Players 4, 5, 7, and 8, who successfully opposed the appeal insofar as it concerned them, they shall not be awarded costs either because they acted through an association – K._____ – without being represented by counsel. As it prevailed at least in part, the Appellant, represented by counsel, shall be awarded costs to this extent to be paid by Players 1 to 3 severally, as losing parties, each of them bearing one third of these costs in their internal relationship (Art. 68(1), (2) and (4) LTF).

Therefore the Federal Tribunal pronounces:

1.
The appeal is upheld in part.

2.
Numbers 2, 3, 4, and 5 of the dispositive part of the award under appeal are annulled insofar as they concern the cases related to Players B._____ (CAS …), C._____ (CAS …) and D._____ (CAS …). Otherwise they are confirmed.

3.
The judicial costs set at CHF 5'000 shall be borne by the Appellant for two thirds and for one third by B._____, C._____, and D._____ severally, one third being borne by each of them in their international relationship.

4.
B._____, C._____, and D._____ are severally ordered to pay to the Appellant an amount of CHF 2'000 as reduced costs, with each of them bearing one third in their internal relationship.

5.
This judgment shall be notified to the parties and to the Court of Arbitration for Sport (CAS).

Lausanne, July 15, 2015

In the name of the First Civil Law Court of the Swiss Federal Tribunal

Presiding Judge:	Clerk:
Kiss (Mrs.)	Carruzzo