CAS 2024/A/10816 Saado Abdelsalam Fouflias v. Ismaily SC

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Andrew Mercer, United Kingdom

in the arbitration between

Mr. Saado Abdelsalam Fouflias, Greece

Represented by Ms. Bárbara Monzerrat Meré Carrión of FIFPRO, Hoofddorp, The Netherlands and Mr. Nick Williams, Mr. Sam Kasoulis and Mr. Marko Lavs of Morgan Sports Law, London, United Kingdom

Appellant

and

Ismaily SC, Ismailia, Egypt

Represented by Mr. Alexandre Zen-Ruffinen and Ms. Emilie Weible of INLAW, Neuchatel, Switzerland

Respondent

I. PARTIES

1. Mr. Saado Abdelsalam Fouflias (the "Player" or the "Appellant") is a Greek/Palestinian football player.

2. Ismaily SC (the "Club" or the "Respondent") is a professional football club based in Ismailia, Egypt.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties' written and oral submissions, pleadings and evidence adduced in the course of the present proceedings and at the hearing. Additional facts and allegations found in the parties' written and oral submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

4. On 23 December 2022, the Player travelled from Greece to Egypt. The flight was arranged by the Player's agent and the price of the ticket was paid by the Player. The Player claims that he purchased the ticket after the Club had expressed an interest in his services.

5. The Player participated in trials with other clubs in Egypt in January 2023.

6. The Player started a trial with the Club on 16 January 2023. The Player claims that he stopped any training activities with other clubs in Egypt when he went on trial with the Club.

7. In January and February 2023, the Player attended training sessions of the Club and played for the Club in several friendly matches. This is confirmed by photographic evidence and various social media postings of the Club.

8. The Player claims that the Club was interested in signing him and that negotiations began on 6 February 2023 with representatives of the Club.

9. The Player claims that one such representative was Mr. Ibrahim Abu Zeid ("Mr. Zeid").

10. The Club contests that Mr. Zeid is a representative of the Club and suggests that he is just an independent mediator who cannot bind the Club.

11. According to the Player, such negotiations took place orally at the Club's training centre and without the presence of his agent.

12. The Player alleges that he and the Club signed an employment contract on 8 February 2023 with a term starting on the date of signature and expiring at the end of July 2024, and pursuant to which the Player was entitled to total remuneration of USD 200,000 (the "Disputed Contract").

13. The Player claims that Mr. Zeid was present at the time of the alleged signing.

14. The Player has submitted several photographs in support of this claim, notably one showing the Player and Mr. Zeid together holding what looks to be a document folder bearing the name of the Egyptian Football Association and the words *"Contract of Football Player"* (the "Disputed Photograph"). The Player alleges that the document folder contained the Disputed Contract.

15. The Club denies that the document folder shown in the Disputed Photograph contained a copy of the Disputed Contract.

16. After the alleged signing of the Disputed Contract, the Player claims that he was given a jersey number to reflect him being in the Club's first team squad, that the media reported on him signing for the Club and being in the first team squad, and that he participated in social activities alongside first team players of the Club. Various images from the Club's social media channels, as well as media articles, are provided by the Player in support of these claims.

17. Various WhatsApp audio conversations took place between the Player's agent and Mr. Zeid around the time of the alleged signing of the Disputed Contract. Recordings of the same have been provided. The Player alleges that, *inter alia*, Mr. Zeid indicated that the Player would be registered for the Club. The Club considers that only potential registration was discussed.

18. On 16 February 2023, an instruction was entered into the FIFA Transfer Matching System ("TMS") in respect of the Player by the Club (the "TMS Entry").

19. The TMS Entry identifies the Club as the *"new club"* and *"Ashraf Mohamed ABD EL KRIM"* as the *"TMS Manager"*, and includes the following details of the *"Player's new employment contract with Ismaily SC"* – a start date of 17 February 2023, an end date of 1 August 2024 and total remuneration of EGP 2,750,000.

20. Notwithstanding the foregoing, the Player alleges that the Club seemingly lost interest in his services at some point following the alleged signing of the Disputed Contract and that he was informed that he was not registered to play for the Club.

21. The Player further states that he was not provided with a copy of the Disputed Contract at any stage.

22. The Player alleges that, on 26 February 2023, he requested a meeting with the Club.

23. On 27 February 2023, the Player visited the Club's headquarters. Mr. Zeid was present. The Player requested a copy of the Disputed Contract and to be registered with the Club. Mr. Zeid allegedly stated that there had been a misunderstanding regarding the Disputed

Contract and that a copy could not be provided as it had been misplaced. No copy of the Disputed Contract was provided to the Player on the occasion of this visit, although the Player alleges that it was promised to him. The Player provided a video recording of the meeting in support of these claims.

24. The Player's position is that he gave the Club one more day to provide him with a copy of the Disputed Contract (i.e. until 28 February 2023), however, he did not hear from the Club.

25. The Player deemed that the Disputed Contract had been terminated by the Club without just cause as of 1 March 2023.

26. On 6 March 2023, the Player left Egypt and returned to Greece.

27. On 25 October 2023, the Player sent a default notice to the Club in which he stated that the Club had terminated the employment contract without just cause on 1 March 2023 and requested that compensation of USD 200,000 be paid within 15 days (being the alleged residual value of the Disputed Contract). No reply or payment was received from the Club.

B. Proceedings before the Dispute Resolution Chamber of FIFA

28. On 3 January 2024, the Player filed a claim against the Club with the Dispute Resolution Chamber of the FIFA Football Tribunal (the "FIFA DRC") for breach of contract without just cause. The Player requested USD 200,000 plus 5% interest as compensation.

29. In reply, the Club requested that the Player's claim be dismissed.

30. Further submissions were made by the Club and the Player during the course of the FIFA DRC proceedings including, at the invitation of the FIFA DRC, comments on the TMS Entry.

31. On 6 June 2024, the FIFA DRC issued its decision in which it rejected the Player's claim (the "Appealed Decision").

32. On 5 August 2024, the FIFA DRC notified the grounds of the Appealed Decision to the Club and the Player.

33. In the grounds of the Appealed Decision, the FIFA DRC noted that its first task was to answer the question of whether an employment contract had been validly concluded by the Club and the Player. If so, it would then be necessary to consider the circumstances under which such contract had been terminated and the consequences of the same.

34. In this respect, the FIFA DRC recalled the basic principles upon which the existence of an employment contract is established – i.e. in order to give rise to a valid and binding employment contract, the requirements of *essentialia negotii* must be met.

35. The FIFA DRC explained that there must be sufficient evidence of the terms of a supposed agreement, including the remuneration payable to the player, the term of the contract, the indication that he would be employed as a professional football player and a signature (or similar) indicating the parties' intention to be bound.

36. With this in mind, the FIFA DRC analysed the evidence provided by the Club and the Player in order to address the question of the Disputed Contract's validity. By way of summary:

- On the Disputed Photograph, the FIFA DRC found that this image did not point to the satisfaction of the criteria set out by the doctrine of *essentialia negotii* and stated that this kind of evidence is not sufficient to establish the existence of a valid and binding employment relationship upon which a monetary claim can be based.

- On the various media reports and social media postings, the FIFA DRC concluded that, whilst such reports appeared to suggest that the Club was interested in the Player, they did not concretely demonstrate the existence of a valid and binding employment contract or substantially support the satisfaction of the standard set by the doctrine of *essentialia negotii*.

- It was the FIFA DRC's opinion that the recorded audio and video evidence did not contain a concrete link to any recognised representative of the Respondent, or any form of identification of the parties involved, to the extent that it would support the Player's allegations.

- Further, the FIFA DRC considered that these recordings were provided out of context and referred to circumstantial matters such as the Player's passport and his participation in training/friendly matches. These matters are not seen exclusively in employment relationships, but also in other forms of arrangements (such as trials).

- The FIFA DRC recalled that the Player had acknowledged that he was training and/or trialing with another team in Egypt at the same time as the alleged conclusion of the Disputed Contract.

- On the matter of the TMS Entry, the FIFA DRC was deterred by the notable difference (both in amount and in currency) between the total remuneration claimed by the Player and the remuneration indicated in the TMS Entry. It was considered that this inconsistency undermined the certainty of the terms of any alleged contract and cast doubt as to whether a consensus had been reached concerning the remuneration to be paid and the circumstances under which such remuneration would be payable.

- The FIFA DRC commented that unlike an offer, draft contract or an exchange of written correspondence negotiating terms, the TMS Entry did not serve the purpose of creating a legitimate expectation of the Claimant that there was an agreement.

- The FIFA DRC underlined, however, that the Club's assertion that the TMS Entry was just a draft TMS instruction was not very convincing and did not detract from the reality that it existed and was accessible on the TMS.

- At the same time, the existence of the TMS Entry was not, in the opinion of the FIFA DRC, equal to an admission by the Club that the parties had reached a consensus as to the substantial terms of an employment contract, particularly in light of the aforementioned determinations that the supporting evidence failed to point to a contract having been validly concluded.

- The FIFA DRC noted that, had there been any documentation at all which could have supported the existence of the transfer instruction in TMS (such as e-mail communication between the Player and a representative of the Club negotiating the terms or a draft employment agreement), a stronger argument in favour of the existence of a conclusive employment relationship could have been formed.

- The FIFA DRC further observed that no evidence of any communication with the Club following the supposed signature of the Disputed Contract urging the Club to rectify its behaviour was submitted to the file. In fact, it appeared from the file that the Player completely broke off contact as from the alleged date of termination (i.e. 1 March 2023) until the date of the first default notice (i.e. 25 October 2023), making it difficult to ascertain the circumstances of a potential contractual termination.

37. In conclusion, it was held that the Player had fallen short of meeting the burden of proving that the requirements of *essentialia negotii* were met, both on the grounds of remuneration and the mutual intention to be legally bound. Consequently, given that the FIFA DRC had concluded that there was no employment agreement in place between the Club and the Player, the Player's petition bore no contractual basis and the claim was rejected in its entirety.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

38. On 20 August 2024, the Appellant filed his Statement of Appeal, challenging the Appealed Decision.

39. The Player then filed his Appeal Brief on 14 September 2024 (having previously been granted an extension of time of 10 days).

40. On 27 September 2024, the Athletes' Commission of the International Council of Arbitration for Sport ("ICAS") issued an Order granting assistance for the CAS arbitration costs from the Football Legal Aid Fund.

41. The parties did not agree on the number of arbitrators to be appointed. Pursuant to Article R50 of the Code of Sports-related Arbitration (the "Code"), the matter was required to be decided by the President of the CAS Appeals Arbitration Division or her

Deputy. The Division President decided that the matter would be decided by a sole arbitrator.

42. In this regard, the appointment of Mr. Andrew Mercer as Sole Arbitrator in this case was duly communicated to the parties on 30 October 2024. In view of the Order on Legal Aid issued on 27 September 2024, he accepted to perform his mission *pro bono*.

43. On 7 November 2024, the Respondent filed its Answer (having previously been granted two extensions of time, totalling 30 days).

44. In the Answer, the Respondent indicated that it intended to call Mr. Zeid, Mr. Mahmoud Elyassky - Contract Manager at the Club ("Mr. Elyassky") and Mr. Ashraf Abd Elkereem - Director of Player Affairs at the Club ("Mr. Elkereem") as witnesses.

45. Subsequently, both parties requested that a hearing be held.

46. The Sole Arbitrator's decision to hold a hearing in the present matter was duly communicated to the parties on 25 November 2024.

47. Subsequently, an online hearing was scheduled for 22 January 2025.

48. Orders of Procedure were duly executed and submitted on behalf of the Club and the Player, dated 13 December 2024 and 18 December 2024 respectively.

49. On 18 December 2024, the Appellant requested that the Sole Arbitrator order the Respondent to disclose any and all copies of the Disputed Contract (including any draft copies) and provide summaries of the expected testimonies of the witnesses.

50. On 19 December 2024, the Respondent was notified of the aforementioned requests and given a deadline of 26 December 2024 to provide the document(s) or reasons for its objection.

51. On the same day, the Respondent requested an extension of time to reply.

52. On 31 December 2024, the Respondent was given an extension of time until 6 January 2025 to reply.

53. On 6 January 2025, the Respondent provided the summaries of the expected testimonies of its witnesses. With regard to the Disputed Contract, the Respondent stated that no draft exists and thus nothing could be filed.

54. On 7 January 2025, the Appellant provided various observations on the Respondent's position that no draft of the Disputed Contract exists and reiterated his request that the Sole Arbitrator order the Respondent to disclose the document (including any draft copies).

55. On 8 January 2025, the Respondent notified that Mr. Zeid was unable to attend the hearing.

56. On 9 January 2025, the parties were advised that the Sole Arbitrator had determined that the Respondent had already been requested to produce the draft Disputed Contract or provide its position, and that it had complied with such request. Further, the Sole Arbitrator had decided that the issue of the existence – or not – of the draft Disputed Contract would be discussed at the hearing, and, if it became apparent during the arbitration that the Respondent had wrongly asserted the non-existence or non-availability of the document, the Appellant's request for production could be renewed and proceedings adjourned, with a negative inference drawn.

57. On 16 January 2025, the Appellant requested to file additional evidence in the case in response to Mr. Zeid's withdrawal from the hearing. Further, the Appellant requested that the matter of the Disputed Contract's existence and any consequent request for production be dealt with as a preliminary matter at the hearing.

58. Subsequently, the Respondent was given a deadline of 20 January 2025 to provide its comments on these requests.

59. On 21 January 2025, after the deadline, the Respondent confirmed that it objected to both requests.

60. Also on 21 January 2025, the Respondent confirmed that Mr. Zeid would now be able to attend the hearing.

61. On 22 January 2025, a hearing was held by video-conference. Besides the Sole Arbitrator and Ms. Delphine Deschenaux-Rochat, CAS Counsel, the following people also attended:

For the Appellant:

- Mr. Saado Abdelsalam Fouflias, the Player
- Mr. Nick Williams, counsel
- Mr. Sam Kasoulis, counsel
- Mr. Marko Lavs, counsel
- Ms. Bárbara Monzerrat Meré Carrión, counsel

For the Respondent:

- Ms. Emilie Weible, counsel
- Mr. Nasr Abou Elhasan, President of the Club
- Mr. Mahmoud Elyassky, witness
- Mr. Ibrahim Abu Zeid, witness
- Mr. Ashraf Abd Elkereem, witness
- Mr. Yehia Farrag, interpreter

62. At the outset of the hearing, the parties confirmed that they had no objections with respect to the Sole Arbitrator hearing the appeal.

63. The Sole Arbitrator confirmed that he had decided to admit the additional evidence submitted by the Appellant on 16 January 2025 into the case file on an exceptional basis,

as well as the Respondent's response dated 21 January 2025. Such evidence was considered pertinent in the context of Mr. Zeid's testimony.

64. The Sole Arbitrator decided that it was not necessary to hear arguments concerning the Disputed Contract's existence as a preliminary matter at the hearing and rejected the Appellant's request for the same. It was determined that assessing this topic inevitably involved covering much of what would be covered in the main hearing and the hearing of the witnesses and so, from a practical standpoint, there was no need to divide the hearing. However, the Sole Arbitrator reiterated the content of his instructions as communicated on 9 January 2025.

65. It is further noted that, during the hearing, the Respondent requested the inclusion of additional documentation into the case file in support of its case (comprising certain jurisprudence). The Sole Arbitrator rejected this request on the basis that this documentation had been submitted late and the Appellant would have no opportunity to prepare his position.

66. At the hearing, the parties were given a full opportunity to present their cases, submit their arguments and answer any questions from the Sole Arbitrator.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

67. The Appellant's submissions, in essence, may be summarised as follows:

- The Appellant argues that the parties demonstrated their mutual intent to be legally bound and that all *essentialia negotii* of an employment contract were present. Accordingly, the parties had entered into a valid and binding employment relationship.

Mutual intent to be legally bound

- The Appellant contends that not only drafts of the Disputed Contract, emails or paper evidence should be taken into account in order to conclude that the parties had the intent to be contractually bound, but also *"in application of the principle of reality"* other elements of the parties' behaviour should be analysed.

- The Appellant explains that he had ceased to train with other clubs once he had started training with the Respondent on 16 January 2023 and that the FIFA DRC was informed of this. The Appellant suggests that this is not reflected correctly in the grounds of the Appealed Decision.

- The Appellant further contends that the existence of the TMS Entry reflects the Respondent's intent to be legally and contractually bound, even if there was no draft written Disputed Contract. Such action was taken at the sole discretion of the Respondent and the only reason to initiate the instruction on TMS would be to subsequently register the Appellant.

- The Appellant points to the fact that the Club involved him in social activities with the first team (namely, a visit to an orphanage).

- Details are provided of the Respondent's continued engagement with the Appellant in a training session which took place after the Respondent had allegedly become aware of the Appellant's amateur status and decided that it was no longer interested in the Appellant's services (i.e. according to the Club, on 18 February 2024).

- Overall, the Appellant contends that the contradiction between the Respondent's legal arguments and its actions at the time lead to the conclusion that it did have the intent to be contractually bound, and that the parties were in fact contractually bound.

Essentialia negotii

- The Appellant underlines that the only reason he does not have a copy of the Disputed Contract (in draft form or otherwise) is because the Respondent failed to provide it.

- It is the Appellant's position that the Disputed Contract did in fact exist and the Disputed Photograph is proof of this. The Appellant claims that Mr. Zeid is a representative of the Respondent.

- The Appellant points to multiple conflicting statements in the Respondent's written submissions (including the summary of Mr. Zeid's witness testimony and the Answer) which he argues indicate that an actual draft of the Disputed Contract does exist, and that the Respondent has acted in bad faith by not providing it.

- The Appellant argues that Mr. Zeid is a representative of the Club and provides evidence of him seemingly holding himself out as working in *"Contracts and Marketing Management"* at the Club since 4 January 2023 on his personal social media channel.

- Notwithstanding the foregoing, even without having a copy of the Disputed Contract (in draft form or otherwise), the Appellant considers that all *essentialia negotii* were met.

- The Appellant claims that the duration and value of the Disputed Contract were mutually agreed by the parties, although it is acknowledged that there is a *"slight discrepancy between what the Parties signed and what the TMS instruction states"*.

- In this regard, the Appellant's primary position is that the Disputed Contract was valid from 8 February 2023 and not 17 February 2023 (as is shown in the TMS Entry).

- After the alleged signing of the Disputed Contract, the Appellant claims that he was given a jersey number to reflect him being in the Respondent's first team squad, that the media had reported on him signing for the Respondent and being in the first team squad, and that he had participated in social activities alongside first team

players of the Respondent. Various images from the Respondent's social media channels, as well as media articles, are provided by the Appellant in support of these claims.

- The Appellant trained and participated in friendly matches for the Respondent between 9 and 23 February 2023, thus he alleges that work was effectively performed since he rendered his services after the signing of the Disputed Contract.

- Various WhatsApp audio conversations took place between the Appellant's agent and Mr. Zeid around the time of the alleged signing of the Disputed Contract. Recordings of the same were provided by the Appellant. The Appellant alleges that, *inter alia*, Mr. Zeid indicated that the Appellant would be registered for the Respondent.

- In any event, the Appellant underlines that the months and years stated in the TMS Entry coincide with those of the Disputed Contract as alleged by the Appellant.

- The Appellant's primary position is that the agreed total remuneration under the Disputed Contract was USD 200,000 and not EGP 2,750,000 (as shown in the TMS Entry).

- In the opinion of the Appellant, the existence of the TMS Entry confirms that the Club initiated the transfer instruction because the parties had reached agreement and were bound by an employment contract, and further shows that the Club never completed the necessary arrangements (including the registration of the Appellant) and thus breached that contract.

- The Appellant points to the events of 27 February 2023 at which he alleges that Mr. Zeid confirmed that the TMS Entry was pending because of a misunderstanding with the contract, but that it would be taken care of. In this context, the TMS Entry was a clear indicator of the agreement reached by the parties.

- Consequently, the information found on the TMS Entry further proves and confirms that, despite the fact that the Appellant was never provided with a copy of his contract, a contract was indeed signed between the parties which was valid from February 2023 until the end of July 2024.

- The Appellant contests the Respondent's claim that it did not want to sign players after the registration window had closed (i.e. 31 January 2023) on the basis that it allegedly signed another player on 12 February 2023. The Appellant also provides a photograph concerning this circumstance which was posted on the Respondent's social media channel and which the Appellant suggests is similar in format to the Disputed Photograph.

- The Appellant argues that, in light of the factual circumstances, the Appellant complied with his contractual obligations by effectively rendering his services and being available to perform his duties, and the Respondent was still receiving the Appellant and having him under subordination.

Termination

- Having purportedly shown the existence of the employment relationship and the effective execution of the Disputed Contract, the Appellant argues that he was subject to abusive behavior by the Respondent and that the Respondent had acted in bad faith towards the Appellant.

- In particular, the Respondent had failed to register the Appellant (which was a necessary step for him to play in official matches), provide the Appellant with a copy of his employment contract and remunerate the Appellant.

- These factors indicated that the Respondent had no interest in the services of the Appellant and, by behaving in this manner, it had terminated the employment relationship without just cause on 1 March 2023 (i.e. after the deadline of 28 February 2023 that the Appellant had given to the Respondent at the meeting on 27 February 2023).

- In the alternative, such factors led the Appellant to lose trust in the Respondent and had given the Appellant just cause to terminate the employment relationship, which he did on 6 March 2023 when he left Egypt.

68. The Appellant's requests for relief are as follows:

"1. To annul the decision of the FIFA DRC dated 6 June 2024.

2. To pass a new decision accepting the Appellant's claim in its entirety.

3. To confirm that the Appellant and the Respondent entered into an employment relationship.

4. To confirm that the Respondent terminated said employment relationship without just cause.

Alternatively, to confirm that the Appellant terminated the employment relationship with just cause.

5. To rule that the Respondent must pay the Appellant compensation for breach of contract in the amount of USD 200,000 plus 5% interest p.a. as of the day of termination until the effective day of payment.

Alternatively, to lower the amount awarded as compensation for breach of contract to EGP 2,750,000 plus 5% interest p.a. as of the day of termination until the effective day of payment.

6. To condemn the Respondent to pay the entire CAS administration costs and the arbitration fees and to reimburse the Appellant of any and all expenses he incurred in connection with this procedure.

7. To rule that the Respondent has to pay the Appellant a contribution towards his legal costs."

B. The Respondent

69. The Respondent's submissions, in essence, may be summarised as follows:

- The Respondent argues that no employment contract was concluded by the parties as they never agreed on the essential terms of a contract.

Mutual intent to be legally bound

- The Respondent argues that its internal procedure for contracting new players was not completed in its dealings with the Appellant. This is supported by the testimony of Mr. Elyassky (Contract Manager at the Club).

- The Respondent argues that the FIFA procedure for registering new players via TMS was not completed in its dealings with the Appellant. This is supported by the testimony of Mr. Elkereem (Director of Player Affairs at the Club and the Club's TMS manager).

- The Respondent explains that in January 2023 it signed two new professional players before the end of the registration period (i.e. 31 January 2023) and extended/renewed the contracts of several existing players. Such developments were publicised on the Respondent's social media channels. The Respondent's position is that it did not carry out similar publicity activities for the Appellant.

- The Respondent claims that, by February 2023, it was no longer interested in signing the Appellant for the upcoming season partly because the registration period for players had closed (i.e. on 31 January 2023).

- Mr. Zeid is not a representative of the Respondent. He acted as an independent mediator between the Respondent and the Appellant as the Appellant's agent was not present in Egypt. He cannot bind the Respondent and is not aware of the internal procedure of the Respondent regarding transfers and player registrations. The foregoing is supported by the witness testimony of Mr. Elkereem.

- Regarding the meeting on 8 February 2023 and the Disputed Photograph, the Respondent states that this photograph with Mr. Zeid was taken at the Appellant's request.

- It is stated in the summary of Mr. Zeid's witness testimony that the document shown in the image is *"an unsigned and uncompleted draft version of the potential future employment contract of the player with Ismaily"*.

- The Respondent explains that the Disputed Photograph was not used by it in an official manner (for example, it was not used on the Respondent's social media channels) and did not feature any of its representatives.

- The Respondent asked Mr. Zeid to provide certain details of the Appellant in order to initiate the first step of registration on TMS. On 11 February 2023, Mr. Zeid provided copies of the Appellant's passport and his previous contract with A.S. Rodos in Greece. The foregoing is supported by the witness testimony of Mr. Zeid.

- On 16 February 2023, the TMS Entry was created by Mr. Elkereem. At this time, the Respondent claims that it had thought that the Appellant was a professional player. It contends that the information was in draft form and the instruction was not progressed further on TMS.

- An additional screenshot of the TMS Entry is provided by the Respondent in the file which refers to A.S. Rodos as the *"Counter club"* and identifies the status of the instruction as *"Draft"*. This screenshot further shows that the International Transfer Certificate process has not been initiated. It is the Respondent's position that the TMS Entry corresponded to a draft which would subsequently, only upon formal conclusion of an employment contract, be amended and finalised on TMS.

- After the TMS Entry was created, the Appellant continued on trial with the Respondent. However, on 18 February 2023, Mr. Zeid informed the Respondent via WhatsApp message that the Appellant had falsely indicated that his previous club was A.S. Rodos (where he was registered as a professional player) and it was actually Nafpaktiakos Asteras in Greece (where he was registered as an amateur player). The foregoing is supported by the witness testimony of Mr. Zeid.

- The Respondent claims that it abandoned the contractual negotiations and TMS registration process after learning of this circumstance due to financial considerations and a breakdown in trust. The foregoing is supported by the witness testimonies of Mr. Elkereem and Mr. Elyassky.

- The Respondent argues that none of its representatives were present at the meeting at its headquarters on 27 February 2023. In attendance were the Appellant, an associate of the Appellant and Mr. Zeid. The foregoing is supported by the witness testimony of Mr. Zeid.

- The Appellant did not travel to Egypt at the request of the Respondent and has not proven that he stopped his activities with other clubs in Egypt after starting his trial with the Respondent as he claims.

- If the Respondent had been interested in finally signing the Appellant, there would have been conversations between appropriate persons representing the Respondent and the Appellant's agent. Indeed, the Appellant's agent has not even contacted the Respondent regarding the alleged employment contract following the player returning to Greece.

- The fact that the Respondent included the Appellant in first team-related activities (including training sessions and friendly matches) does not mean that the Respondent intended to employ the Appellant. Further, media coverage of the same

is not a reliable means by which to infer that an employment contract had been effectively concluded.

- No inferences should be drawn from the use of jersey numbers and the posting of photographs on the Respondent's social media channels. The Respondent contests that the Appellant used a consistent first team jersey number after 23 February 2023 and argues that the images on its social media channels of training sessions, etc. do not solely focus on the Appellant but show the whole team.

Essentialia negotii

- The Respondent argues that the discrepancies between the details on the TMS Entry and the Appellant's claims as to start date, duration and remuneration clearly show that there was no agreement between the parties on these essential elements.

- Further, no document was ever signed by the parties.

- The status of the TMS Entry information was merely a draft, not a final and binding agreement.

- In claiming that the parties agreed a starting date of 8 February 2023 and total remuneration of USD 200,000 but, in the alternative, proposing that the details from the TMS Entry be utilised for the purposes of his claim, the Appellant is himself highlighting that no agreement had been reached on these essential elements.

- The Respondent argues that neither of the alleged start dates for the Disputed Contract makes sense as the registration window closed on 31 January 2023, meaning that the Appellant could not have been registered with the Respondent for the remainder of the (as then) current sporting season even if the contract had been finally approved.

- No request for registration via TMS was ever confirmed. The Respondent simply entered the Appellant's data and provisional terms in the TMS Entry, but such terms had not been approved by the parties.

Termination

- If it is found that a contract existed between the parties, the Respondent claims that it had just cause to terminate such contract. In this regard, the Respondent points to the circumstances surrounding it becoming aware that the Appellant was an amateur player.

70. The Respondent's requests for relief are as follows:

"Mainly:

1. Dismiss Mr. Saado Abdelsalam Fouflias' claim in its entirety;

Subsidiarily:

2. Consider that the Club terminated the contract with cause so that no compensation shall be awarded to the Player;

Even more subsidiarily:

3. Reduce Mr. Saado Abdelsalam Fouflias' claim to a maximum of EGP 2'750'000.00;

In any case:

4. Order Mr. Saado Abdelsalam Fouflias to pay all costs of the arbitration.

5. Order Mr. Saado Abdelsalam Fouflias to pay a contribution towards Ismaily Sporting Club's legal fees and other expenses."

V. JURISDICTION

71. Article R47 of the Code provides as follows:

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

72. The Appellant relies on Article 50 para 1 of the FIFA Statutes – May 2024 Edition (the "FIFA Statutes") which provides as follows:

"Appeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question."

73. The jurisdiction of the CAS is not contested by the Respondent.

74. The jurisdiction of the CAS has further been confirmed by the parties by means of their signatures on the Order of Procedure.

75. It follows that the CAS has jurisdiction to hear the present case.

VI. ADMISSIBILITY

76. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or 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."

77. More specifically, Article 50 para 1 of the FIFA Statutes provides as follows:

"Appeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question."

78. The Sole Arbitrator notes that the FIFA DRC rendered the Appealed Decision on 6 June 2024 and that the grounds of the Appealed Decision were notified to the parties on 5 August 2024. Considering that the Appellant filed his Statement of Appeal on 20 August 2024 (i.e. within the deadline of 21 days set out in the FIFA Statutes), and that the Statement of Appeal further complied with the requirements of Article R48 of the Code, the Sole Arbitrator is satisfied that the present appeal was filed in time and is admissible.

VII. APPLICABLE LAW

79. Article R58 of the Code provides as follows:

"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."

80. Article 49 para 2 of the FIFA Statutes provides as follows:

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

81. The Sole Arbitrator therefore rules that the present dispute shall be decided principally according to the FIFA Regulations on the Status and Transfer of Players, with Swiss law applying subsidiarily.

VIII. MERITS

82. The Sole Arbitrator considers that the main issue in dispute is whether the parties entered into a valid and binding employment contract.

83. If it is found that they did, then it would then be necessary to consider the circumstances under which such contract had been terminated and the consequences of the same.

84. If it is found that they did not, then the appeal must be dismissed and the Appealed Decision upheld.

A. Factual considerations

85. The Sole Arbitrator considers that there are certain factual matters in dispute between the parties that have a significant bearing on the present case, namely:

- Does the Disputed Contract exist in written form (as a draft or otherwise)?

- Was Mr. Zeid a representative of the Respondent?

86. On the first question, it is clear that the Appellant considers that the Disputed Contract did exist in written form. Indeed, he believes that he signed the Disputed Contract, claims that he was photographed with the Disputed Contract (in the Disputed Photograph) and states that he requested a copy of the Disputed Contract on multiple occasions, but to no avail.

87. A request for production of the document was made by the Appellant in the context of the CAS proceedings. In response, the Respondent indicated that it could not comply with the request as the document does not exist.

88. There is, however, reason to question the Respondent's position. For example, as pointed out by the Appellant, in the summary of Mr. Zeid's witness testimony it is stated that *"an unsigned and uncompleted draft version of the potential future employment contract of the player with Ismaily"* features in the Disputed Photograph. The Appellant also highlights various other references to a *"draft"* in the Answer.

89. The Respondent claims that the language of the Answer is just imprecise and maintains that there is no supporting document in existence.

90. There is no doubt that the situation is complicated by the existence of the TMS Entry instruction which is itself marked as a draft and which was not completed. Indeed, on a close reading of the Answer it does appear that the references to *"draft"* are primarily in the context of the TMS Entry – notably, *"the draft of the discussed contract into the TMS system"*, *"submission of the draft in the TMS system"*, *"draft submitted by the Club in the FIFA TMS"* and *"uploaded a draft of the contract into the FIFA TMS system"*.

91. It is therefore necessary to draw a distinction between the draft TMS Entry and a potential written draft of the Disputed Contract. Given the functionality of TMS, references to the draft in this context appear to relate to the details that were inputted by the Respondent on the TMS Entry form. The existence of a Disputed Contract document, however, appears to centre on Mr. Zeid since it is he who seemingly discussed the existence of a contract on several occasions with the Appellant.

92. This leads to the second of the key questions, was Mr. Zeid a representative of the Respondent?

93. It is noted that the Appellant considers that Mr. Zeid is an employee of the Respondent. Details of the various interactions between the Appellant (and the Appellant's agent) and Mr. Zeid are provided, along with audio and video evidence (and English

translations). The Appellant also provides evidence of Mr. Zeid seemingly holding himself out as working in *"Contracts and Marketing Management"* at the Respondent since 4 January 2023 on his personal social media channel.

94. The Respondent, however, states that Mr. Zeid was merely an intermediary and not an employee. Mr. Elkereem and Mr. Elyassky were both dismissive of the suggestion that Mr. Zeid was a contract manager at the Respondent.

95. Mr. Zeid himself testified that he acted in a voluntary, unpaid capacity and was not a contract manager, despite the reference on his social media channel. He explained that he did not have the authority to negotiate or sign contracts. He further claimed that the Disputed Photograph was not an official photograph, and that he only agreed to it after the Appellant asked for it and to diffuse a tense situation. He denies that there was any copy of a contract in the folder shown in the image and claims that it was empty. When the inconsistencies in his statements about the existence of the contract were pointed out under cross examination, Mr. Zeid claimed that he had just panicked at the meeting of 27 February 2023 and would have said anything to calm the Appellant down.

96. That Mr. Zeid engaged with the Appellant and was involved in discussions with him is not in doubt, but it does not necessarily follow that he was a representative of the Respondent and, crucially, that he was capable of binding the Respondent in contractual matters.

97. As troubling as Mr. Zeid's inconsistent statements are, the Sole Arbitrator was not comfortably satisfied that Mr. Zeid had the capacity to act on behalf of the Respondent in negotiating contracts and concluding player transfers. Based on his conduct, his function appears to have been to act as a liaison between the Respondent and the Appellant, and to obtain information that was then shared with the appropriate persons at the Respondent (in particular, for background checking and TMS purposes).

98. Accordingly, the Sole Arbitrator was not comfortably satisfied that Mr. Zeid could be considered to be a representative of the Respondent in this legal context.

99. The question of the existence a written version of the Disputed Contract (as a draft or otherwise) should therefore be considered in light of this.

100. There is insufficient evidence on file to prove that:

- the Disputed Contract exists in written form (as a draft or otherwise);

- any draft written copy of the Disputed Contract was discussed and negotiated by the Appellant with any person at the Respondent who was actually empowered to be involved in transfer and contract matters (for example, Mr. Elkereem and Mr. Elyassky); and

- any such persons were at any time in possession of a draft written copy of the Disputed Contract.

101. Accordingly, the Sole Arbitrator was not comfortably satisfied that the Disputed Contract exists in written form (as a draft or otherwise). Nothing appears to have been discussed with the actual representatives of the Respondent, produced by them, sent to them or executed by them. If any document noting any contract terms or details did exist, it would seemingly have been discussed by and be in the possession of Mr. Zeid and Mr. Zeid was not a representative of the Respondent.

B. Intent of the parties

102. In order for a contract to be concluded, a mutual expression of intent by the parties is required.

103. In this regard, the Sole Arbitrator underlines that it is not necessary to show a draft of the Disputed Contract in order for this requirement to be met. This analysis requires a review of the conduct and behaviour of the parties in totality.

104. There were clear early signs that the Respondent presumably had some interest in signing the Appellant – the Appellant was taken on trial with the Club on 16 January 2023 and participated in training sessions, friendly matches and social activities of the Respondent thereafter.

105. However, the Respondent claims that it lost interest in contracting with the Appellant once it became aware of his alleged deception regarding his amateur status (on 18 February 2023), because of his alleged poor sporting performance and due to the registration window being closed in Egypt (i.e. at the end of January 2023).

106. For his part, the Appellant claims that the Respondent's alleged conduct in continuing to deal with him (after, for example, becoming aware of his amateur status) is inconsistent with its claim that it had no interest in signing him.

107. Overall, the Respondent's motivation(s) for losing interest are perhaps not entirely clear. The argument regarding the closure of the registration window makes a degree of sense but appears at odds with the Respondent's continued dealing with the Appellant in February 2023 weeks after the deadline. However, the matter of amateur status and the associated lack of trust in the Appellant would objectively have been an issue for the Respondent, given the potential financial and sporting implications, and the potential impact on any relationship between club and player. Matters of sporting performance are subjective and fall within the discretion of the Respondent.

108. In this context, the TMS Entry is an important piece of evidence. On the one hand, the preparation of this draft at the Respondent's discretion shows a certain level of preparation for a possible registration. It could be argued that the TMS Entry reflects the Respondent's intent to be legally and contractually bound, even if there was no draft Disputed Contract. On the other hand, it is a fact that the instruction was never initiated/progressed beyond draft stage which supports the position that there was an apparent cooling of interest from the Respondent in the Appellant following 18 February 2023. The dealings with Mr. Zeid and the discovery of the Appellant's amateur status corroborate this.

109. In fact, the main reason behind the meeting of 27 February 2023 was seemingly the Appellant's continued frustration at the lack of engagement from the Respondent. It having been concluded that Mr. Zeid was not a representative of the Club, it follows that there was no official representative of the Respondent at the meeting. Accordingly, the Disputed Photograph, discussions with Mr. Zeid, etc. that occurred at the meeting cannot be reasonably considered as a continuance of the Respondent's interest in signing and intent to contract with the Appellant, since nobody who was able to bind the Respondent was present at the meeting.

110. It having been concluded that the Respondent was not aware of and did not have any copy of the Disputed Contract (if one even existed), it would have fell to the appropriate persons at the Respondent to look to carry out certain formalities if they had wanted to sign the Appellant, none of which appear to have been initiated. The Appellant is unable to point to any offer, written correspondence, etc. on this which might have constituted a legitimate expectation of an agreement and his agent appears to have had no involvement at all in the latter part of his time in Egypt (or thereafter).

111. In conclusion, the Sole Arbitrator considers that the Respondent's conduct indicates that the parties did not share a mutual intent to conclude a contract.

C. Essentialia Negotii

112. In order for an employment contract to be concluded, the parties have to agree on the *essentialia negotii* – that is, the minimum content that a contract must have in order for it to be legally valid and enforceable.

113. According to CAS jurisprudence (for example CAS 2015/A/3953 & 3954, para. 44), the *essentialia negotii* of an employment contract are the date, the parties' names, the subject of the contract, the duration of the relationship, the player's remuneration, both parties' signatures and the obligation of the parties to each other.

114. The Appellant claims (by reference to the Disputed Contract) that his agreement with the Respondent had a start date of 8 February 2024 and a term running until the end of July 2024. He also states that the remuneration under this agreement was USD 200,000. It is noted that the Appellant has maintained its position regarding the aforementioned contract terms in these CAS proceedings, as it did before the FIFA DRC.

115. The TMS Entry prepared by the Respondent, however, states a start date of 17 February 2023, an end date of 1 August 2024 and total remuneration of EGP 2,750,000 (which appears to be equal to approximately USD 90,000 based on exchange rates at the time). It is notable that the TMS Entry was prepared by Mr. Elkereem on 16 February 2023 which is after the date on which the Appellant claims it reached agreement with the Respondent (i.e. 8 February 2023). The draft instruction was prepared using information provided by Mr. Zeid, who was liaising with the Appellant and his agent. Mr Elkereem claims that Mr. Zeid did not give him any details of duration and remuneration, and so he had to make assumptions for the purposes of creating a draft TMS instruction whilst background checks were ongoing.

116. Even if the TMS Entry is taken as being a reflection of the terms on which the Respondent was prepared to contract with the Appellant (something which is denied by the Respondent), it is clear that there are differences between the two positions on the key matters of start date, duration and – most strikingly – remuneration (in terms of amount and currency). This undermines the certainty of the terms of any potential contract. It therefore cannot be concluded that the *essentialia negotii* are present in such circumstances.

117. The position is even more uncertain if the TMS Entry is taken to be based on mere assumptions and not reflective of any agreed terms. Since no written copy of the Disputed Contract exists and with Mr. Zeid seemingly not conveying any details of any alleged agreement to Mr. Elkereem (since such alleged details are not reflected in the TMS Entry), it would be purely speculative to conclude that the *essentialia negotii* are present in this case.

118. The various media reports, images, etc. submitted by the Appellant in support of its claim that an agreement had been reached with the Respondent may well, as mentioned above, indicate that the Respondent intended to reach an agreement at the early stages of its interaction with the Appellant, however, they do not point to agreement on any specific terms. Further, the audio and video evidence provided does not contain a concrete link to any recognised representative of the Respondent to the extent that it could support the existence of the contract terms claimed by the Appellant.

119. Overall, there is no basis on which to conclude with any degree of certainty that the *essentialia negotii* were present.

D. Conclusions

120. For the reasons set out above, the Sole Arbitrator finds that there was no valid and binding employment agreement between the Respondent and the Appellant.

IX. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Saado Abdelsalam Fouflias on 20 August 2024 is dismissed.

2. The decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 6 June 2024 is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 20 May 2025

THE COURT OF ARBITRATION FOR SPORT

Andrew Mercer
Sole Arbitrator