

**CAS 2023/A/9434 Al Raed Sport Club v. Christian Atsu Twasam**

**ARBITRAL AWARD**

**delivered by the**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

Sole Arbitrator: Mr Stephen Sampson, Solicitor, London, United Kingdom

**in the arbitration between**

**Al Raed Sport Club**, Buraidah, Kingdom of Saudi Arabia

Represented by Mr Pedro Macieirinha, Attorney-at-Law, in Vila Real, Portugal

**Appellant**

**and**

**Christian Atsu Twasam**

Represented by Mr David Casserly and Mr Anton Sotir, Attorneys-at-Law in Lausanne, Switzerland

**Respondent**

## **I. PARTIES**

1. Al-Raed Saudi Football Club (“**Appellant**” or the “**Club**”) is a professional football club based in Buraidah, Kingdom of Saudi Arabia. Al-Raed SFC is a member of the Saudi Arabian Football Federation (the “**SAFF**”), which is the governing body of football at domestic level in the Kingdom of Saudi Arabia. The SAFF is affiliated with the Asian Football Confederation (“**AFC**”) and the Fédération Internationale de Football Association (“**FIFA**”).
2. Mr Christian Atsu Twasam (“**Respondent**” or the “**Player**”) was a Ghanaian professional football player who was born on 10 January 1992 and died on or around 6 February 2023. A reference to the Respondent or the Player therefore includes a reference to the Estate of the late Mr Atsu Twasam where the context so requires.
3. The Club and the Player are collectively referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the main relevant facts and allegations, as submitted by the Parties in their written submissions, pleadings and evidence. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, 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.

### **A. Background Facts**

5. On 4 May 2021, the Club and the Player entered an employment contract for a period of two years, from 1 July 2021 to 30 June 2023.
6. On 24 June 2021, the SAFF adopted new Regulations on the Status and Transfer of Players (the “**SAFF Regulations**”), which provided for, *inter alia*, a standard player contract for non-Saudi professional players. According to the SAFF Regulations, a club was required to use the template standard player contract to register a non-Saudi player with the SAFF.
7. As a result, on 16 August 2021, the Club sent the Player a copy of the employment contract reformatted to the SAFF standard player contract format. On 17 August 2021, the Player and the Club signed the employment contract with the new standardised format (the “**Employment Contract**”).
8. Article 11.1 of the Employment Contract provided that it superseded the previous agreement and stated:

*“This Contract and the documents referred to herein constitute the entire agreement between the Club and the Player and supersede any and all preceding agreements between the Club and the Player.”*

9. Pursuant to Article 4.1, the term of the Employment Contract remained for the period 1 July 2021 to 30 June 2023.
10. Pursuant to Article 5 the Club was obliged to pay the Player a monthly salary of [...] on the first of each month and two signing on bonuses in the amount of [...] each (to be paid on 1 July 2021 and 1 January 2022). All amounts were to be paid net of any taxes, bank fees and foreign exchange charges.
11. Article 6 set out the Club's obligations, which included at Articles 6.9 and 6.16 that the Club shall:
  - “9. take out insurance to cover the Player against any accident, injury and medical treatment which he may require during the Term. The Club shall further ensure that such insurance coverage shall include insured events whose effects extend after the end of the Term;*
  - [...]*
  - 16. cover all costs of the Player's medical treatment and rehabilitation for the duration of the Term, provided that such costs result from illness or injury and were incurred pursuant to a referral by the Club doctor”.*
12. Article 7 set out the Player's obligations, which included at Article 7.7 that the Player shall:
  - “Apply his best efforts, with punctuality and without reservation, to the maximum of his capabilities, in performing the activities and obligations provided for in this Contract, unless his health prevents him from doing so”.*
13. Article 10 provided a jurisdiction clause, which stated:
  - “1. In the event of any dispute concerning the terms and conditions of this Contract, the Parties shall use all reasonable efforts to resolve the dispute amicably.*
  - 2. Disputes shall be subject to the jurisdiction of the FIFA DRC, as the competent first-instance body with regard to disputes of an international dimension, pursuant to the relevant provisions of the FIFA Regulations on the Status and Transfer of Players.*
  - 3. Decisions passed by the FIFA DRC may be appealed to the Court of Arbitration for Sport (CAS). The Parties recognise the ultimate authority of the CAS with regard to disputes of an international dimension.”*
14. Article 12 concerned termination and stated, *inter alia*:
  - “2. If either Party terminates the Contract with just cause, following amount will have to be paid: (.....). If there is no agreement on the amount, compensation for breach of contract is payable in accordance with Art. 17 of the FIFA Regulations.*

*3. The Club shall not terminate the contract due to the Player sustaining an injury during play or training.*

*[...]*

*5. The Club shall not suspend, interrupt or delay the Player's remuneration due to the Player sustaining an injury during play or training."*

15. On 4 August 2021, the Player suffered an injury to his left hamstring. Following treatment, the Player resumed training after three weeks.
16. On 15 September 2021, the Player suffered an injury to his left knee. Following treatment, the Player resumed training after a few days.
17. On 19 September 2021, during a friendly match the Player suffered an injury to his right hamstring. Following treatment, the Player resumed training after three weeks.
18. On 17 October 2021, the Player felt pain in the right hamstring. Following treatment, the Player resumed training in a few weeks.
19. On 7 November 2021, the Player again felt pain in the right hamstring. Following treatment, the Player resumed training in a few weeks.
20. On 29 March 2022, the Player suffered an injury to his left ankle. This required treatment over several weeks.
21. On 23 June 2022, the Player was in the Club's match day squad for the match versus Al-Ahli FC but did not participate.
22. On 27 June 2022, the Player was in the Club's match day squad for the match versus Abha FC but did not participate.
23. During the term of the Employment Contract, the Club made three payments in respect of the Player's monthly salary on the following dates: 6 September 2021 ([...]), 4 March 2022 ([...]) and 6 April 2022 ([...]).
24. On 12 July 2022, Al-Raed SFC informed the Player by letter that it was the Club's intention to terminate the Employment Contract. That letter recited the Player's record of injuries:

*"13 - The first injury of the player occurred when we were at the team's preparation camp in Spain on 04/08/2021 (Exhibit 2).*

*14 - The player felt pain in the left hamstring, after the MRI examination, it was found that the player has a muscle elongation in the level of the left ischiojambier of grade 1 (Exhibit 2).*

*15 - The player benefited from the rehabilitation sessions for three weeks (Exhibit 2).*

16 - *That player resumed training without complications (Exhibit 2).*

17 - *The second injury occurred on 15/09/2021 (Exhibit 2).*

18 - *It is a contusion at the level of the outer ribs of the left knee (Exhibit 2).*

19 - *The player benefited from physiotherapy sessions and treatment of an anti-inflammatory for four days, after he joined the group without any complications (Exhibit 2).*

20 - *The third injury occurred on 18/09/2021, during a friendly match and after twenty minutes of playing, the player felt pain in the right hamstring and he came straight out of the match (Exhibit 2).*

21 - *The next day 19/09/2021, we did the MRI (Exhibit 2).*

22 - *The radiographic report showed that no muscle damage (Exhibit 2).*

23 - *Even the MRI was innovated (Exhibit 2).*

24 - *The player received care for three weeks from physiotherapy and muscle building sessions with gradual return to training (Exhibit 2).*

25 - *Fourth injury occurred on 17/10/2021, during training (Exhibit 2).*

26 - *The player felt pain in the right hamstring (Exhibit 2).*

27 - *After the MRI examination, it showed a stretching from first degree of right hamstring muscle (Exhibit2).*

28 - *After that the player decided to go and treat his injury in Portugal (Exhibit 2).*

29 - *Fifth injury occurred on 07/11/2021, during the training session in Portugal (Exhibit 2).*

30 - *The player felt pain in the same zone of right hamstring muscle (Exhibit 2).*

31 - *After MRI examination, it showed that he had a muscle lesion in the right hamstring muscle in the same place (Exhibit 2).*

32 - *After his return from Portugal, the player benefited from rehabilitation sessions for three weeks (Exhibit2).*

33 - *After the player joined the group without any complications (Exhibit 2).*

34 - *Sixth injury occurred on 29/03/2022 (Exhibit 2).*

35 - *The player suffered a trauma in his left ankle during the training session (Exhibit 2).*

36 -The medical staff stopped the player from training, and he benefited anti-inflammatory treatment and physiotherapy sessions (Exhibit 2).

37 - On 11/04/2022, MRI was done which showed anterior tibio fibular ligament involvement and flexor tenosynovitis of hallux of the left ankle (Exhibit 2).

38 - With improvement of clinical signs (Exhibit 2).

39 – The Club did sessions of proprioception and strengthening of the joint left ankle (Exhibit 2).

40 - The player was treated by the Club gradually (Exhibit 2).

41 - Firstly, it was in the gym (Exhibit 2).

42 - After the improvement of the clinical signs on the training ground, which was simple exercises (Exhibit2).

43 - Each end of session, the Club asked him if he was doing well and he stated that he was right every time (Exhibit 2).

44 - In the third week, the player joined training with the group (Exhibit 2).

45 - He trained for a week (Exhibit 2).

46 - In a day 21/04/2022, the Club asked him if he would participate in the following friendly match with El Batin team, he replayed that he was interested by that proposition (Exhibit 2).

47 - But he did not play, because the coach did not include him (Exhibit 2).

48 - In the beginning of the following week, the player declared that he was not ready to join the group, because of discomfort in his left ankle (Exhibit 2).

49 - So, the Club decided to stop him from training and continuing the treatment (Exhibit 2).

50 - Another MRI was done on 28/04/2022, which showed in comparison with the MRI of 11/04/2022 (Exhibit 2).

51 - There was a regression of inflammation and the injury was well ennovated (Exhibit 2).

52 - Till the date of writing of this report in 17/05/2022, the Player's physical condition does not allow him to train and play in his group (Exhibit 2).

**53 - The player is unable to provide regular attendances in training and in competition, due to frequent injuries that affect his fitness to drive each stop (Exhibit 2).**

**54 – According to Dr. Djamel Belmokhtar, doctor of the AL Raed team (Exhibit 2).**

*55 – To sum up, the player was injured several times, and the Club notices that he was treated greatly by its professional medical staff, and they always made their efforts towards him to retrieve him well.*

*56 - However, the player refused all times to be treated by them and he insisted to be treated outside Saudi Arabia.*

*57 - So, he went out to England and Portugal to benefit medical treatments there.*

*58 - In all, when he came back, he was relapsed.”*

25. That letter stated:

*“To conclude, Christian Atsu played just for three hundred seventy five minutes during sports season in 2021/2022.*

*65 - During what was explained above, the player benefited from high salaries from the club, in which he did not really deserve it, because he played just for few minutes during matches of that sports season in Raed Club paid exorbitant costs.*

*(...)*

*“The Club is entitled to terminate the contract with the player with just cause, based on the fact that the player’s medical status is so essential to the employment relationship that it cannot be expected from the employer to execute the contract.*

***In view of the aforementioned, the Club informs the Player about its intention to terminate the contract with just cause based in the fact that the player’s medical status is so essential to the employment relationship that it cannot be expected from the employer to execute the contract.”***

26. On 20 July 2022, the Player, via his legal representative, replied to the Club. His letter stated, *inter alia*:

*“On 12 July 2022, to the Player’s great surprise, particularly as no such intention was ever communicated during recent meetings, Al-Raed FC (the “Club”) sent a letter to the Player which concluded as follows:*

*“In view of the aforementioned, the Club informs the Player about its intention to terminate the contract with just cause based in the fact that the player’s medical status is so essential to the employment relationship that it cannot be expected from the employer to execute the contract.”*

*With due respect, the meaning of this letter, in particular the above-quoted conclusion, is not clear. Therefore, the most pressing matter is for the Club to confirm if it has terminated the Player’s Employment Contract, or if this letter is rather a communication of the Club’s intention to do so in the future.<sup>1</sup>*

*In light of the seriousness of this matter, the grave consequences that such action would have for the Player, and the short period before pre-season training, the Club is requested to confirm, **within 24 hours of receipt of this letter**, if it has, through its letter of 12 July, terminated the Player's Employment Contract.*

*It should be noted that the Player is hugely disappointed by this development, as his sincere wish is to continue to play for the Club, to continue to give his best, and hopefully be given the opportunity to have maximum involvement for the upcoming 2022/23 season.*

*(...)*

### **Outstanding salaries**

*As of today, and since 1 July 2021, the Player has only received three monthly salary payments (i.e. a total of [...]).*

*The following amounts therefore remain outstanding:*

- a. Ten monthly salaries, each in the amount of [...], for a total outstanding salary amount of [...] (outstanding salaries from July, August, October, November, December 2021, and January, February, May, June, July 2022);*
- b. The payment of [...] that fell due upon signature of the Employment Contract;*
- c. The payment of [...] that fell due six months after the signature of the Employment Contract.*

*The Player therefore requests the immediate payment of the outstanding amount of [...] to be made to the following bank account:*

*(...)*

*The Player requests payment of this amount within 24 hours of receipt of this letter, in order that the Player's contractual situation can be resolved in time to attend pre-season training. Without prejudice to the Player's right to draw such a conclusion at an earlier date, based on inter alia the Club's actions and communications upon receipt of this letter, I hereby confirm that if the outstanding amount has not been paid within 10 days, the Player will conclude that the Club has terminated the Employment Contract, and will take appropriate action.*

### **Pre-Season Training**

*As the Player's wish is to continue to play for the Club, and as he is fit and available to do so, the player evidently wishes to fully participate in all team activities of the Club, including the meeting in Holiday Inn Al Qasr Riyadh Hotel at 9:30pm on 22 July, and the upcoming training camp in Turkey, which we understand will take place on 24 July, as well as any other team activities scheduled before or after, be they in Saudi Arabia, Turkey or elsewhere.*



*It is our understanding from your recent conversations with Mr Nana Sechere, the Player's agent, that you proposed to allow the Player to attend the training camp, but only in order to "give him a chance" to prove himself, in order to obtain a contract for next season.*

*Given that your position appears to arise from a misunderstanding of the legal situation, I respectfully take this opportunity to ensure that the current situation is understood by both Parties:*

- 1. If the Player's Employment Contract has not been terminated by the Club, there is no basis for the Club to put the Player 'on trial' for the opportunity to be paid a salary for next season that is already contractually owed to him.*
- 2. If the Player's Employment Contract has been terminated by the Club, he must immediately concentrate on seeking alternative employment, and will not in the meantime be risking injury or other misfortune by participating in sporting activities for a Club that has terminated his Employment Contract.*

*Therefore please immediately (1) confirm that the Club has not terminated the Employment Contract, (2) pay the outstanding remuneration to the Player, and (3) send an email to the undersigned (david.casserly@kellerhals-carrard.ch) confirming that both of these steps have been taken and proposing travel arrangements for the Player to join the Club for pre-season activities at the earliest possible opportunity, and in any case in time for the Player to participate fully in pre-season training."*

*If the Club contends that it is unable to carry out all three of the steps mentioned in the previous paragraph within 24 hours of receipt of this letter, please send a formal proposal for an alternative date for the Player to join the Club's team activities, on a date after the Club has completed steps (1) and (2). I look forward to hearing from you."*

27. On 21 July 2022, the Player sent a second letter to the Club, which stated:

*"I refer to my correspondence of yesterday whereby we requested Al-Raed FC (the "Club") to confirm by 19:20 today if you had terminated Mr Christian Atsu's Employment Contract through your letter of 12 July 2022.*

*In that regard, we have not received any response from the Club, other than the automated Outlook notifications confirming that our e-mail was (i) received by you yesterday and (ii) read by you this morning.*

*As you have not taken the opportunity to clarify the situation, as any reasonable party would if it wished to continue the employment relationship, unfortunately we must assume for the time being that the Club has indeed terminated the Player's Employment Contract.*

*We sincerely hope that this is not the case, as the Player is extremely disappointed with these recent developments, and dearly wishes to continue to play for the Club.*

*Having booked a flight to attend the first pre-season meeting of the Club, the Player is scheduled to arrive in Riyadh, Saudi Arabia at 18:35 (local time) tomorrow. However, based on the assumption that his Employment Contract has been terminated, the Player will cancel that flight tomorrow morning if we have not heard from the Club to the contrary in the meantime.*

*We urge the Club to resolve this matter immediately by confirming the ongoing validity of the Employment Contract and the payment of the Player's outstanding remuneration. If this can be done in short order, but not in time to fly in tomorrow, we also request that you propose a solution for the Player to join pre-season training without any further delay, at a time and date most suitable for the Club. We are informed that other players will be joining the group directly at the training camp in Turkey and I confirm that the Player is willing and available to do so on a date indicated by the Club."*

28. On 22 July 2022, the Player sent a third letter to the Club which stated that, in the absence of a response, the Player had cancelled his scheduled flight to Riyadh. This letter also extended the deadline for a response from the Club until 5 August 2022, and stated:

*"If you have not resolved the situation by that date, by paying all of the Player's outstanding remuneration and confirming that you have not terminated his Employment Contract, the Player will definitively consider what already appears to certainly be the case –that you terminated the Player's Employment Contract on 12 July 2022."*

29. On 23 July 2022, the Club sent a letter to the Player. It recited again the Player's medical history in the manner set out in the letter of 12 July 2022 and stated, in relevant part:

*"24 - Thus Mr. CHRISTIAN ATSU TWASAM played just four hundred and four minutes during sports season in 2021/2022.*

*25- In the default letter sent by AL RAED SPORT CLUB KSA on 12 July 2022, it was intended to provide to Mr. CHRISTIAN ATSU TWASAM the deadline of 15 days (i.e until 27 July 2022) to provide his comments regarding the intention on terminating the contract with just cause.*

*26- Since the Club is entitled to terminate the contract with the player with just cause, based in the fact that the player's medical status is so essential to the employment relationship that it cannot be expected from the employer to execute the contract.*

*(...)*

*29- The fact is that according to the abovementioned factual backgrounds, the player has not provided his services towards the club.*

*30- The player has only played 26% of the matches of AL RAED SPORT CLUB KSA during the sporting season of 2020/2021.*

*31- In a total of minutes that not even reach 5 games, at the matches played in the season of 2020/2021.*

*32- The player wasn't even under the scope of AL RAED SPORT CLUB KSA for a several time during his rehab.*

*32 -In view of the abovementioned facts, the Club informs the Player that intends to carry out a decision after 27 July 2022, when finished the deadline for Mr. CHRISTIAN ATSU TWASAM to pronounces himself about this matter, if will terminate the contract with just cause based in the fact that the player's medical status is so essential to the employment relationship that it cannot be expected from the employer to execute the contract."*

30. On 24 July the Player was removed from the Club's WhatsApp player's group.
31. On 28 July 2022, the Club sent a letter to the Player (the "**Termination Letter**"). The Termination Letter stated, in relevant part:

*"1 - AL RAED SPORT CLUB KSA is a professional football club from Kingdom of Saudi Arabia, affiliated to the Saudi Arabia Football Federation, which in turn is affiliated to the Fédération Internationale de Football Association (FIFA).*

*2 – Mr. CHRISTIAN ATSU TWASAM is a professional football player from "Ghana".*

*3 – On 4/05/2021, the parties signed in writing a Contract for Football Professional Player (Exhibit 1).*

*4 – The Club, as First party, signed with the Player, as second party, as a football professional player according to the conditions of the contract and regulations; and whereas the second party agreed to play for the first party as a football professional player according to the conditions of this contract and regulations; and after declaring their capacity for only this contract the parties have agreed on the following – Preface (Exhibit 1).*

*5 – The contract is (permanently) and is valid for two years, starting from 01/07/2021 AD and ending 30/06/2023 AD – Item 2 (Exhibit 1).*

*6 – The two parties shall comply with and implement the laws, circulars and regulations issued by SAFF, FIFA, the Confederation and Saudi professional league – Item 3 (Exhibit 1).*

*7 – The First Party's obligations were settled in Item 4, as follows (Exhibit 1)*

*(...)*

*8 – The Second Party's obligations were settled in Item 6, as follows (Exhibit 1):*

*(...)*

*11 – The Club has always complied with its contractual obligations towards the Player.*

*12 – However, the Player as a massive Medical Report of Injuries that prevent him to comply with his contractual obligations towards the Club (Exhibit 2).*

*(...)*

*65 - During what was explained above, the player benefited from high salaries from the club, in which he did not really deserve it, because he played just for few minutes during matches of that sports season in Raed Club payed exorbitant costs.*

*66 – On 12 July 2022, the Club sent a Default Letter Letter/Notice to the Player, in writing, informing the following (Exhibit 4):*

*“In view of the aforementioned, the Club informs the Player about its intention to terminate the contract with just cause based in the fact that the player’s medical status is so essential to the employment relationship that it cannot be expected from the employer to execute the contract.”*

*(...)*

*68 – On 22 July 2022, the Club answered to the Player, in writing, informing (Exhibit 6):*

*“(...) the Club informs the Player that intends to carry out a decision after 27 July 2022, when finished the deadline for Mr. CHRISTIAN ATSU TWASAM to pronounces himself about this matter, if will terminate the contract with just cause based in the fact that the player’s medical status is so essential to the employment relationship that it cannot be expected from the employer to execute the contract.”*

*69 - In this Default Letter it was considered the time limit of 15 days to the Player comply with his contractual obligations initiated with the Default Letter dated 12 July 2022 and ending on 27 July 2022.*

*70 – However, the Player didn’t comply with his contractual obligations within the time limit granted by the Club.*

***Law:***

*71 – Article 14 of RSTP of FIFA defines the Termination of a contract with just cause, saying:*

*1. A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.*

*2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause.*

*72 - The Commentary on the RSTP of FIFA clarifies that Article 14 illustrates another key element on the maintenance of contractual stability between professional players and clubs.*

*73 - It is based on the principle of reciprocity: the same behaviour (or misbehaviour) shall, mutatis mutandis, lead to the same consequences, regardless of the party (player or club) responsible for it.*

*74 - Article 14 states that a contract may be terminated by either party (club or player) without legal consequences of any kind, provided there is a just cause for the termination.*

*(...)*

*91 – Pursuant Arbitration CAS 2013/A/3261 FC Aris Limassol v. Jiří Mašek, award of 27 August 2014 (Exhibit 3):*

*“3. The unsuccessful medical test can legitimate the employer to rescind from the contract if the player’s medical status is so essential to the employment relationship that it cannot be expected from the employer to execute the contract and is clear that if it had known about it before signing the employment agreement it would have never signed it.”*

*92 – The Club is entitled to terminate the contract with the player with just cause, based in the fact that the player’s medical status is so essential to the employment relationship that it cannot be expected from the employer to execute the contract.*

*In view of the aforementioned, the Club informs the Player that terminates the contract with just cause based in the fact that the player’s medical status is so essential to the employment relationship that it cannot be expected from the employer to execute the contract, with immediate effects upon receipt of this termination letter.”*

32. On 21 August 2022, the Club made two payments to the Player totalling [...].
33. On 7 September 2022, the Player entered into an employment contract with Hatayspor Kulübü, in Turkey. Under this contract, the Player was to be paid a salary of [...] net for season 2022/23.

## **B. Proceedings before FIFA**

34. On 12 August 2022 the Player filed a claim against the Club before the FIFA Dispute Resolution Chamber (“**FIFA DRC**”) in case ref. FPSD-7052. The Player alleged that the Employment Contract was terminated by Al-Raed SFC without just cause and claimed outstanding remuneration and compensation for the breach of the Employment Contract in the total amount of [...] plus 5% interest. The Player also requested payment of its procedural costs, to the extent that any were payable.

35. On 9 September 2022, the Club filed its response and a counterclaim against the Player. The Club alleged that it had just cause to terminate the Employment Contract and claimed [...] as compensation for breach of the Employment Contract by the Player.
36. On 22 September 2022, the Player submitted a response to the Club's counterclaim. The Player also informed FIFA that he had received the payment of [...].
37. On 8 December 2022, the FIFA DRC rendered its decision (the "**Challenged Decision**"). partially accepting the Player's claim, with the following operative part:

*"1. The claim of the player, Christian Atsu Twasam, is partially accepted.*

*2. The club, Al Raed, has to pay to the player, the following amounts:*

- *[...] net as outstanding remuneration plus interest p.a. as follows:*
    - *5% interest p.a. over the amount [...] of as from 1 August 2021 until the date of effective payment;*
    - *5% interest p.a. over the amount [...] of as from 1 September 2021 until the date of effective payment;*
    - *5% interest p.a. over the amount [...] of as from 1 October 2021 until the date of effective payment;*
    - *5% interest p.a. over the amount [...] of as from 1 November 2021 until the date of effective payment;*
    - *5% interest p.a. over the amount [...] of as from 1 December 2021 until the date of effective payment;*
    - *5% interest p.a. over the amount [...] of as from 1 January 2022 until the date of effective payment;*
    - *5% interest p.a. over the amount [...] of as from 1 May 2022 until the date of effective payment;*
    - *5% interest p.a. over the amount [...] of as from 1 June 2022 until the date of effective payment;*
    - *5% interest p.a. over the amount [...] of as from 1 July 2022 until the date of effective payment;*
    - *5% interest p.a. over the amount [...] of as from 2 July 2021 until the date of effective payment;*
    - *5% interest p.a. over the amount [...] of as from 2 January 2022 until the date of effective payment;*
  - *[...] net as compensation for breach of contract without just cause plus 5% interest p.a. as from 12 August 2022 until the date of effective payment.*
- 3. Any further claims of the player are rejected.*
- 4. The counterclaim of Al Raed is rejected.*
- 5. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.*

*6. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:*

*1. Al Raed shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.*

*2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*

*7. The consequences shall only be enforced at the request of the player in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*

*8. This decision is rendered without costs.”*

38. On 11 January 2023 the grounds of the Challenged Decision were communicated to the Parties, determining, inter alia, the following:

- The FIFA DRC had jurisdiction over the dispute, which must be analysed on the basis of the FIFA RSTP October 2022 Edition as to the substance, and the usual rules on the burden of proof.
- The Club had terminated the Employment Contract on 28 July 2022, although it had already sent a letter to the Player on 12 July 2022 stating its intention to terminate the contract due to the Player's injuries.
- The assertion by the Club in the Termination Letter that the Player refused at all times to be treated by the Club and he insisted to be treated outside Saudi Arabia contradicted the contents of the letter of 12 July 2022. Nonetheless, the Club did not prove that the Player was not allowed to continue with his treatment abroad.
- The Club expressed what can be understood as abusive behaviour towards the Player in stating that he did not deserve his salary.
- As per Article 18(4) of the RSTP, a club cannot terminate a contract due to a player's injury. This provision was repeated in the Employment Contract at Article 12.4. Thereby, by unilaterally terminating the contract on 28 July 2022 fundamentally due to the Player's injury, the Club did not only breach the Employment Contract, but also the mandatory provisions of Article 18 (4) RSTP. As such, the Player is entitled to compensation.
- The Player is entitled to his outstanding remuneration up until the date of termination of the contract. The Club did not provide any evidence of partial payment.

- The outstanding remuneration at the time of termination was the outstanding salaries in the amount of [...] each for the months of July, August, September, November, December 2021, and January, April, May, June 2022, as well as the two signing on bonuses of [...] each, totalling [...], net of any taxes, with interest from the due dates until the date of effective payment.
- Compensation was to be assessed further to Article 17(1) RSTP. As there was no compensation clause in the Employment Contract, it was to be assessed by applying the other parameters set out. It calculated the sum payable to the Player under the terms of the contract from the date of its termination until its end date, as [...], net of any taxes (i.e. salaries from July 2022 until 30 June 2023 = [...]). This was reduced by the Player's mitigation of his damage, calculated in the sum of [...], being the amount the Player was entitled to from 7 September 2022 until 31 May 2023 under his new contract of employment with Hatayspor Kulübü.
- Consequently, the Player was entitled to compensation of [...], net of any taxes, with interest at the rate of 5% p.a. from 12 August 2022 until the date of effective payment.

### **III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

39. The Club filed its Statement of Appeal dated 28 January 2023 challenging the Challenged Decision before the Court of Arbitration for Sport (“CAS”) in accordance with Articles R47 and R48 of the Code of Sport-related Arbitration (2023 Edition) (the “CAS Code”). In its Statement of Appeal, the Club requested a Sole Arbitrator and an extension of the time limit to submit the Appeal Brief of 10 days.
40. On 10 February 2023, the CAS granted the Club's request for an extension by 10 days of the time limit to file the Appeal Brief in accordance with Article R31 of the CAS Code.
41. On 15 February 2023, the Club filed its Appeal Brief in accordance with Article R51 of the CAS Code.
42. On 20 February 2023, FIFA renounced its right to request its possible intervention in the proceedings.
43. On 20 February 2023, the Club stated that they did not wish to submit the matter to CAS mediation.
44. On 20 February 2023, the Player's representative requested suspension of the deadlines in the proceedings due to the Player's death.
45. On 21 February 2023, the CAS confirmed that the proceedings were suspended until further notice from the Player's legal representative.
46. On 15 December 2023, Counsel for the Player confirmed having been engaged by the estate of the latter.



47. On 28 February 2024, the Player filed its Answer in accordance with Article R55 of the CAS Code.
48. On 5 March 2024, in receipt of the letter from the Player filing its Answer, the CAS lifted the suspension of the procedure.
49. On 6 March 2024, the Club requested that the Player provide proof of the legal representation of the estate of the Player, and that the CAS suspend the deadline to state whether the Parties consider a hearing necessary.
50. On 7 March 2024, the CAS rejected the Club's request for a suspension "*since there is no apparent link between the request for clarification about the power of representation and such time limit*" and invited the Respondent to comment on the Appellant's query regarding the power of representation of the Estate.
51. On 11 March 2024, the Player stated that its preference in the proceedings was for the appointment of a Sole Arbitrator, and that it did not deem a hearing or a case management conference necessary. In relation to the request of the Club, the Player submitted two documents:
  - “
    - *A Letter of Administration issued by the High Court of Ghana identifying Mr Isaac Taye Twasam (brother of the late Mr Christian Atsu) and Ms Marie-Claire Rupio (former partner and mother of the children of Mr Christian Atsu) as the rightful legal representatives of the estate of the late Mr Christian Atsu; and*
    - *A power of attorney in favour of Mr David Casserly SC signed by the above-mentioned Mr Twasam and Ms Rupio, and by Mr Nana Sechere.*

*These documents confirm that the undersigned are duly authorised to represent the estate of the late Mr Christian Atsu and, accordingly, that there is no reason to further delay the above-referenced proceedings.*”
52. On 12 March 2024, the Club confirmed that its preference was for a hearing to be held by videoconference.
53. On 15 April 2024, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division and in accordance with Article R54 of the CAS Code, informed the Parties that the Tribunal appointed to decide the above-referenced case is constituted as follows:

Sole Arbitrator: Mr Stephen Sampson, Solicitor in London, United Kingdom
54. On 30 May 2024, the Sole Arbitrator informed the Parties that he considered himself sufficiently well informed and that the dispute will be decided without a hearing.
55. On 5 June 2024, the Player's representative signed the Order of Procedure. On 11 July 2024, the Club signed the Order of Procedure, maintaining the position that a hearing should have been held.

#### IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

##### A. The Club

56. In its Statement of Appeal, the Club requested the following relief:

*“a) Accept the present appeal against the decision issued by Livia SILVA KAGI (Brazil), Acting Deputy Chairperson Jose Luis ANDRADE (Portugal), member Michele COLUCCI (Italy), member, with the Reference FPSD-7052;*

*b) Set aside the [Challenged] Decision in full.*

*c) To carry out an award as follows:*

- *The [Club] shall not be liable to pay the [Player] the amounts of [...] NET plus interests p.a., nor [...] net as compensation for breach of contract without just cause plus 5% interests p.a. from 12 August 2022 until the date of effective payment.*
- *The [Player] shall be liable and condemned to pay compensation to the [Club] in the amount of [...] net as compensation for breach of contract without just cause plus 5% interests p.a. from 28 July 2022 until effective payment for the termination of the contract with just cause by the Club, for the residual value of the contract.*

*d) Condemn the Player to pay the whole CAS administration and the Arbitrators fee.”*

57. In its Appeal Brief, the Club repeated its prayer for relief and added:

*“e) Grant to the Club a contribution towards its legal fees and other expenses incurred in connection with the proceedings, taking in account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”*

58. In support of its requests for relief, the Club submitted, *inter alia*, the following:

- During the negotiation of the Employment Contract the Club was sceptical about the Player's last season at his previous club, Newcastle United FC, and so asked the Player why he was absent from the squad so often. The Player stated it was due to a technical decision from the staff and not due to his physical condition.
- The Player had a *“massive medical report of injuries that prevented him [from] complying with his contractual obligations to the Club.”* The Player continued to benefit from high salaries which he did not deserve because he only played a few minutes for the Club.
- The Club served a default notice on 12 July 2022 giving him 15 days to comply with his contractual obligations, which he did not do.

- Article 14 RSTP permits termination for just cause, to be assessed in all the specific circumstances of the case. Just cause exists when the fundamental terms are no longer respected by one of the parties.
- As per *CAS 2013/A/3261 FC Aris Limassol v. Jiff Mack*, “3. *The unsuccessful medical test can legitimate the employer to rescind from the contract if the player's medical status is so essential to the employment relationship that it cannot be expected from the employer to execute the contract and is clear that if it had known about it before signing the employment agreement it would have never signed it.*”
- The Player did not provide to the Club the footballing activity for which he was hired to under the Employment Contract. There are objective circumstances that would render it unreasonable to expect the employment relationship between the parties to continue. The Club terminated the contract with just cause because “*the player's medical status is so essential to the employment relationship*” and, given his injury history, the Club could not be expected to perform the contract.
- In view of the aforementioned, the Club should not be liable to pay the Player any amount in relation to breach of contract without just cause. There was no outstanding remuneration at the time of termination of the Employment Contract. In any event, the Club paid [...] to the Player on 21 August 2022 regarding the salaries agreed in the Employment Contract.
- The Player should pay the Club compensation due to the Player's breach of contract. That amount should be the residual value of the Employment Contract, being [...] plus interest at 5% from 28 July 2022.

## **B. The Player**

59. In his Answer to the Appeal, the Player requested the following relief:

- “(1) *To dismiss the appeal filed by Al-Raed Sport Club on 28 January 2023 in its entirety.*
- (2) *To confirm the decision of the FIFA Dispute Resolution Chamber dated 8 December 2022.*
- (3) *To order Al-Raed Sport Club to bear the full CAS arbitration costs.*
- (4) *To order Al-Raed Sport Club to make a significant contribution to the legal and other costs of the Estate of the late Mr Christian Atsu Twasam in connection with these proceedings.*”

60. In support of its request for relief, the Player submitted, *inter alia*, the following:

- The Club terminated the Employment Contract without just cause as it was terminated because of the Player's recent injuries. The Club's contention that it was entitled to terminate due to injury is based on its misinterpretation of a paraphrased summary of an academic article made in a CAS award. The Club repeatedly quoted, and directly relied upon, this misinterpretation as the sole legal basis to terminate the Employment Contract throughout the process of termination.
- The Club relies upon a partial quote of a sentence in *CAS 2013/A/3261 FC Aris Limassol v. Jiří Mašek*. This was not the initial source of the quote, with the panel in the case citing a paragraph in another CAS award *CAS 2008/A/1589 MKE Ankaragücü Spor Kulübü v. J.* which, in turn, contains a paraphrased "*in a nutshell*" summary by the panel of an academic article which the Club was citing. The author of that article expressly states that a club is not entitled to terminate an employment contract based solely on the player's medical condition and goes on to consider a scenario where, during a medical examination, a player "*deliberately concealed serious injury that results, for example, in the player not being able to be used at all*" and suggests that such concealment may in some exceptional circumstances give such club an ability to rely on a "*contract error*". Such article does not deal with the situation where a player does not conceal a condition or injury and sustains an injury or falls ill after he has joined a club. The scenario is therefore not comparable to the present matter. The Club's reference to the Award is therefore irrelevant and misleading. In both cases cited by the Club (*CAS 2013/A/3261* and *CAS 2008/A/1589*) the CAS panels dismissed appeals filed by the clubs and confirmed that they terminated the contracts without just cause. The Club's sole legal basis to terminate the Employment Contract, being the Player's injuries, is therefore invalid.
- The Employment Contract prevented termination due to injury. Article 12.3 stated "*The Club shall not terminate the contract due to the Player sustaining an injury during play or training.*" Because the Club terminated the Employment Contract based on the Player's injuries, despite the Employment Contract expressly prohibiting it from doing so, the Employment Contract was terminated without just cause.
- There was no just cause under CAS and FIFA jurisprudence. Only material breaches of an employment contract by a player could possibly be considered as "*just cause*" for termination by a club. These would have to be of such magnitude that the club could not be reasonably expected to continue with the contractual relationship. The consistent jurisprudence of the FIFA DRC and CAS holds that a player's injury cannot constitute just cause for termination. See, for example, *CAS 2013/A/3436* and *CAS 2015/A/4327*. Even an extreme case, where due to severe injury or disease a player is physically incapable of continuing to play, does not constitute just cause. See *CAS 2015/A/3871*.
- The Player did not have an injury or other condition that prevented him from playing football. During the 2021/22 season, in which the Club played 31 matches, the Player was selected for 13 match day squads, was available for selection for 7 other matches and was unavailable due to injury for 11 matches. In his letter of 20 July 2022, the Player expressly confirmed that he was fit to play and willing to continue the

employment relationship. In its Termination Letter, the Club recognised that the Player had previously recovered from his injuries.

- The premature termination of an employment contract can only be an *ultima ratio* measure. The Club never explored any other solution, or implemented any prior measure, to avoid the termination of the Employment Contract.
- There are therefore four separate bases, any one of which is sufficient, to establish that the termination was without just cause.
- In any case, when the Club terminated the Employment Contract it was in material breach, as the Club had an outstanding debt towards the Player in the amount of [...], comprising the outstanding salaries for the period from July 2021 until July 2022 and two signing on bonuses of [...] each. This can only be explained by the content of the Club's letters stating that the Player did not deserve his salary as he was injured. In this regard, Article 12.5 of the Employment Contract stated: "*The Club shall not suspend, interrupt or delay the Player's remuneration due to the Player sustaining an injury during play or training.*"
- In the Challenged Decision the FIFA DRC ordered the Club to pay the Player the total amount of [...] ([...] as outstanding remuneration and [...] as compensation for breach of contract) plus 5% interest. The amount awarded is [...] less than the initial claim made by the Player in his Statement of Claim dated 12 August 2022 (i.e. [...]), taking into account the value of the subsequent employment contract entered into by the Player.
- These amounts should be upheld as:
  - a. the Player is entitled to receive compensation for breach of the Employment Contract by the Club in accordance with Article 17(1) of the FIFA RSTP;
  - b. the Player is also entitled to receive outstanding salaries pursuant to the principle of *pacta sunt servanda*; and
  - c. according to Article 104 of the Swiss Code of Obligations, default interest for late payments is payable at a rate of 5% per annum.

## V. JURISDICTION

61. Pursuant to Article S20 of the CAS Code, the present arbitration has been assigned to the Appeals Arbitration Division of the CAS and shall therefore be dealt with according to Articles R47 *et seq.* of the CAS Code.
62. Article R47 of the CAS Code provides that "[a]n appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Club has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body."

63. Article 57, para. 1 of the FIFA Statutes (the “FIFA Statutes”) provides that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question”.
64. Neither Party contests the jurisdiction of the CAS and each has confirmed it in the Order of Procedure.
65. It follows that Sole Arbitrator has jurisdiction to decide the present dispute.

## **VI. ADMISSIBILITY**

66. 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.”*

67. Article 57 of the FIFA Statutes provides that appeals must be made within 21 days of receipt of the decision being appealed.
68. The Statement of Appeal was filed by the Club by email on 30 January 2023 and on 31 January by courier, i.e. 21 days after FIFA communicated the Appealed Decision to the Parties on 11 January 2023, hence within the deadline of 21 days.
69. The Club completed its appeal per the terms of Article R48 and R51 of the Code and within the deadline set by the CAS Court Office for it to do so. The appeal complied with all of the requirements of Article R47 et seq. of the Code, including the payment of the CAS Court Office fee.
70. None of the Parties objected to the admissibility of the appeal. It follows that the appeal is admissible.

## **VII. APPLICABLE LAW**

71. The Sole Arbitrator takes note that the Parties do not dispute the applicable law.
72. Article R58 of the CAS Code states as follows: *“The [Sole Arbitrator] shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the [Sole Arbitrator] deems appropriate. In the latter case, the [Sole Arbitrator] shall give reasons for [his] decision”.*

73. The Challenged Decision was rendered by the FIFA DRC in the application of the FIFA RSTP and the FIFA Procedural Rules Governing the Football Tribunal.
74. Pursuant to Article 56, para. 2 of the FIFA Statutes, “[t]he 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”.
75. The Employment Contract contained a choice of law clause that stated: *“This Contract shall be subject to the laws of the Kingdom of Saudi Arabia taking into account the specificity of sport”*.
76. The Employment Contract also contained a jurisdiction clause that stated:
- “2. Disputes shall be subject to the jurisdiction of the FIFA DRC, as the competent first-instance body with regard to disputes of an international dimension, pursuant to the relevant provisions of the FIFA Regulations on the Status and Transfer of Players.*
- 3. Decisions passed by the FIFA DRC may be appealed to the Court of Arbitration for Sport (CAS). The Parties recognise the ultimate authority of the CAS with regard to disputes of an international dimension.”*
77. Notwithstanding the choice of law clause in the Employment Contract, the Club did not assert that the laws of the Kingdom of Saudi Arabia was applicable and, instead, relied upon principles of Swiss law and the FIFA RSTP.
78. By reason of those provisions, and as undisputed by the Parties, the Sole Arbitrator must decide the present dispute in accordance with the statutes and regulations of FIFA, in particular the FIFA RSTP, and, subsidiarily, Swiss law.

## VIII. MERITS

79. The Sole Arbitrator notes that under Article R57 of the CAS Code, he has full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the Appealed Decision.
80. The Sole Arbitrator further notes that many of relevant facts are undisputed by the Parties. The following are undisputed:
- The Parties entered into the Employment Contract following the Club having the usual opportunity to undertake a medical examination of the Player.
  - Article 12.3 of the Employment Contract prohibited termination due to the Player suffering from injury.
  - The Player participated in training and matches for the Club during the 2021/22 season. He also suffered from injuries, which were usually treated by the Club’s medical staff.

- On 20 and 21 July the Player had declared that he was fit and ready to attend the Club's pre-season training camp.
  - The Employment Contract was terminated on 28 July 2022. The sole reason for the Club terminating the Employment Contract was due to the Player's medical status.
  - As at the date of termination, the residual value of the Employment Contract was [...].
  - On 29 August 2022, the Player received [...] from the Club.
  - On 9 September 2022 the Player entered into a new employment contract with Hatayspor Kulübü. Under his Contract with that Club he was to be paid [...] for the 2022/23 season.
81. However, the Parties disagree over whether the Contract was terminated with or without just cause, and, accordingly, the Parties also disagree over the financial consequences of the said termination.
82. Since the Challenged Decision was only appealed by the Club, the Sole Arbitrator's task in these proceedings is to decide:
- A) Did the Club have just cause to terminate the Employment Contract on 28 July 2022, and, in any case,
  - B) What are the financial consequences of the Club's termination of the Contract, if any?
- A) Did the Club have just cause to terminate the Employment Contract on 28 July 2022?**
83. The Club relies solely upon the Player's alleged medical status, i.e. his injuries. It alleges that the extent of the injuries the Player suffered was such that it cannot have been expected to maintain the employment relationship. The Player alleges that there are four separate reasons why the termination was without just cause, any one of which alone is sufficient, being: (i) the sole legal basis asserted was demonstrably wrong, (ii) termination for injury was prohibited by the Employment Contract, (iii) FIFA and CAS jurisprudence provides that a player's injury cannot amount to just cause, and (iv) the Club failed to take any action to avoid the termination, contrary to the principle that termination is the *ultima ratio*.
84. Article 13 of the FIFA RSTP defends the principle of contractual stability, stating as follows:
- “A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.”*
85. However, Articles 14 FIFA RSTP reads, as follows:



*“Article 14*

*1. A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.”*

86. Under Swiss law, good cause exists whenever the terminating party cannot be expected in good faith to continue the employment relationship (Article 337 para. 2 of the Swiss Code of Obligations “SCO”), and in accordance with CAS jurisprudence, only material breaches of a contract can possibly be considered just cause for the termination of an employment contract (CAS 2013/A/3091).
87. It is up to the Club to discharge the burden of proof to establish that it had just cause to terminate the employment relationship. The Sole Arbitrator adheres to the principle established by CAS jurisprudence that *“in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (...). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence”* (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46; and CAS 2009/A/1975, paras. 71ff).”

*The Sole Legal Basis was Demonstrably Wrong*

88. The Club alleges that CAS 2013/A/3621 is authority for the proposition that a player’s medical status entitles a club to terminate a contract for just cause. The Player alleges that this is not the case, as the proposition is in fact a misrepresentation of a quotation, taken out of context, from an article cited in another case CAS 2008/A/1589, such article does not deal with a situation comparable to the facts in these proceeding and, as such, the Award is both irrelevant and misleading.
89. The root for the Club’s alleged proposition is an article *“Football: Legal Issues in Player Transfers with a Special Look at Guarantees”* (Bernasconi, M. in: Rechtsfragen bei Spielertransfers mit einem besonderen Blick auf die Frage der Gewährleistung, Schutz & Verantwortung, St-Gallen 2007, p. 133 et seq.). The Article states that it is *“intended to address the question of the liability of the “selling” club vis-à-vis the “acquiring” club in the transfer of a seriously injured or suspended player”*. It states, *inter alia*,

*“[i]t is clear that the receiving [i.e. new] club will hardly have the right to terminate the employment contract due to a serious illness or injury of the player. This is probably true in most modern legal systems that protect the employee in such cases. The same is true under international association law, as Art. 18 para. 4 of the FIFA Regulations on the Status and Transfer of Players, version 2005, provides that ‘the validity of a contract may not be made subject to a positive medical examination and/or the granting of a work permit.*

(...)

*The prohibition of conditions stipulated in Art. 18 par. 4 of the FIFA Regulations on the status and transfer of players therefore does not mean that the receiving club cannot invoke error under any circumstances. Rather, the aforementioned provision limits the possibility for the contracting parties to contractually provide for a simple, automatic termination of the contract, which is linked to only one condition. Thus, on the one hand, negative medical examinations may not per se lead to the invalidity of the employment contract; on the other hand, a deliberately concealed serious injury, that results, for example, in the player not being able to be deployed at all, may well have an effect on the validity of the contract.*” (emphasis added)

90. CAS 2008/A/1589 concerned, inter alia, an allegation by a club that an employment agreement should be declared void *ab initio* “due to the wilful misconduct of the [player] and the lending club towards the Appellant during the negotiations which led to the signing of the Employment Agreement and of the loan agreement.” (at paragraph 10). In that context the CAS Panel held:

*“29. With respect to the second claim, the Panel holds that the Employment Agreement is valid. The Panel recalls its findings with regard to Article 18 above. The Panel accepts that, for a contract to be repudiated the employee’s attitude during the negotiations must have been in bad faith, meaning that he deliberately hid an important information on his health status to his future employer. One should expect from a football club to be cautious on the health status of a potential employee, hence the onus is quite high in this context. The doctrine supports this view (see notably BERNASCONI M. in: Rechtsfragen bei Spielertransfers mit einem besonderen Blick auf die Frage der Gewährleistung, Schutz & Verantwortung, St-Gallen 2007, p. 133 et seq.). In a nutshell, those authors consider that, under certain circumstances, the unsuccessful medical test can legitimate the employer to rescind from the contract if the Player’s medical status of the football player as it comes out from the results of the test is so essential to the employment relationship that it cannot be expected from the employer to execute the contract and that it is clear that if it had known about it before signing the employment agreement it would have never signed it. Such rescission would of course be subject to the establishment by the new club of all factual elements required by the applicable law.”* (emphasis added)

91. It is clear therefore, both from the article and from the CAS authority in which it was cited, that the proposition advanced by the author is as follows: if there is the deliberate concealment of an injury during the negotiation for the transfer and/or employment of a player, and such injury prevents a player participating for his new employer club at all, given the importance of the medical status of a player to his ability to provide his services to his new employer, such deliberate concealment *may* have an effect on the validity of an employment contract, or transfer or loan agreement. That is, of course, very different to the facts in these proceedings. First, although there is vague allegation from the Club, based upon alleged scepticism about the player’s absence from match day squads of his previous employer, that he may have been withholding

information from the Club at the time of his employment, that allegation is wholly unsupported by any evidence and so not proven. In any event, the Club entered into the Employment Contract in the knowledge that it was incumbent upon it to undertake such medical tests as it considered necessary before so doing. Second, this is a case about a player who, after he was employed, on a few occasions felt pain and required treatment and on others suffered injuries, all of which were treated and from all of which he returned to training and playing in matches prior to the termination of the contract. There is no submission or evidence that any of the incidents or injuries were the consequence of a pre-existing condition, whether or not identified by the Club when conducting its medical examination.

92. Lastly, CAS 2013/A/3621 was a case where a player entered into an employment agreement with a club shortly after surgery. Thereafter, the club undertook a medical examination and, according to the club, it would take more than three months for the player to be able to participate in training, whereupon it terminated his contract. The club alleged that (at paragraph 54) *“in view of the Player’s health conditions, it could not be expected, in good faith, to continue the employment relationship with him.”* In support of its finding that the termination by the Club was without just cause, the CAS Panel in that case, cited CAS 2008/A/1589, in particular paragraph 29.
93. The Award cited by the Club does neither therefore make the proposition on which it relies or support its appeal. It does not therefore justify the termination of the contract. The Sole Arbitrator does not however consider that finding alone is sufficient to establish that the termination was without just cause. The Club could have been wrong in its legal proposition but the underlying facts and circumstances that existed at the time and on which it relied could still have amounted to just cause to terminate the Employment Agreement.

*Termination due to the Player’s Injuries*

94. The facts and circumstances on which the Club relied to terminate the Employment Contract were, as set out at length in its letters of 12 and 23 July 2022 and in the Termination Letter, that during the course of the 2021/22 season the Player suffered pain and injuries which prevented him training or playing from time to time, including for a period of weeks. The complaint was that this prevented the Player from participating in matches to the extent that the Club wished him to. As stated by the Club, *“[t]o conclude, Christian Atsu played just for three hundred seventy five minutes during sports season in 2021/2022...the player benefited from high salaries from the club, in which he did not really deserve it, because he played just for few minutes during matches of that sports season in Raed Club paid exorbitant costs.”*
95. It is indisputably and categorically clear, and long and well established, that the inability of a player to provide his services to his employer club due to illness or injury (or both) is not of itself sufficient to amount to just cause to terminate a contract. (CAS 2009/A/1956, at paragraph 21 *“[i]f the player cannot provide the club with his working capacity due to illness or injury, this does not constitute a breach of duty and there is no “just cause” for unilateral termination of the contract.”* referring to HAAS U., Football Disputes between Players and Clubs before the CAS, in RIGOZZI/BERNASCONI (eds.),

Sports Governance, Football Disputes, Doping and CAS Arbitration, Berne 2009, p. 232 and authorities cited at footnote 93; CAS 2013/A/3436, at paragraph 101 “*Article 18 (4) RSTP does not directly address the situation of a player who is injured or unwell during the course of his employment. Nevertheless, the rationale underlying article 18 (4) RSTP is relevant throughout the employment relationship between the club and the player. Therefore, an employment contract cannot either terminate automatically or be terminated unilaterally with just cause on the basis that a player is found, after the contract of employment has been signed, permanently unable to continue his professional career.*” And paragraph 103, “*A club may not terminate an employment agreement prematurely with just cause due to the subsequent emergence of a medical condition or serious injury. This is irrespective of whether such condition was detectable prior to the conclusion of the agreement or arose only at a later stage. In such circumstances, the contract can, in accordance with article 13 RSTP, be terminated only upon expiry of the agreed term or by the mutual agreement of the parties.*”; CAS 2015/A/4327, at paragraph 135 “*Moreover, even if it was true that the Respondent was in bad physical condition, it is very likely that this circumstance was not deliberate but a consequence of the injury from which he had been recovering for more than two months. Therefore, in this context, pursuant to the constant CAS jurisprudence, this fact shall not constitute a breach of contract or a just cause for the early termination of a contract, because “if the player cannot provide the club with his working capacity due to illness or injury, this does not constitute a breach of contract (CAS 2009/A/1956)”*”; and CAS 2015/A/4003.

96. It is unsurprising that this principle was reflected in the Employment Contract required by the SAFF Regulations. Article 12(3) provided “[t]he Club shall not terminate the contract due to the Player sustaining an injury during play or training.”
  97. The termination of the Employment Contract was therefore both in breach of the Employment Contract and without just cause.
  98. Having established that the termination was without just cause, the Sole Arbitrator need consider at length the fourth basis that the Player alleged would evidence that the termination was without just cause, namely that the Club failed to take any action to avoid the termination, contrary to the principle that termination is the *ultima ratio*. The Sole Arbitrator observes that the Club’s letter of 12 July 2022 set out that it intended to terminate the Employment Contract based on events that had already occurred. There was no suggestion from the Club that any alternative outcome was possible; he was simply presented with a *fait accompli*. The Sole Arbitrator finds that the Club failed to consider any alternative solution.
- B) What are the financial consequences of the Club’s termination of the Employment Contract?**
99. The Sole Arbitrator has to decide (i) the Player’s claim for payment of the outstanding remuneration, and (ii) the Player’s claim for compensation for termination of the contract.

#### *Outstanding Remuneration*

100. With regard to the Player's claim for payment of the outstanding remuneration the Sole Arbitrator finds that the Club should have fulfilled its contractual obligations to the Player until the date of termination on 28 July 2022.
101. The Club asserts that "*there was no outstanding remuneration at the time of the termination.*" The Club did not adduce any evidence to support an assertion of payments to the Player prior to the termination. In fact, after the termination, on 22 August 2022 the Club made two payments to the Player totalling [...], which the Club submitted was paid "*regarding the salaries agreed in the contract...*". The Sole Arbitrator observes that the Club would not have made these payments if it did not consider that it was indebted to the Player as it has not paid him his salaries and signing on fees in full.
102. The Challenged Decision found that the outstanding remuneration owed to the Player was [...]. Before the FIFA DRC, the Player asserted that as at the date of termination he had outstanding to him (i) nine monthly salaries of [...] for the months of July, August, September, November and December 2021 and January, April, May and June 2022, each payable on the first of the month, totalling [...] net, (ii) [...] net being the outstanding salary due for the first 28 days of July 2022, and (iii) the two signing on fees of [...] each net due on 1 July 2021 and 1 January 2022, totalling a debt of [...] net.
103. Whilst the claim of the Player is recorded accurately initially in the Challenged Decision, the Sole Arbitrator disagrees with the finding on two points: (a) whilst the Challenged Decision recorded nine months' salary as outstanding it was not always the months claimed, and (b) the decision did not take account of the claim for 28 days' salary due for 1 to 28 July 2022. The Sole Arbitrator therefore finds as at the date of termination, the outstanding remuneration due to the Player was [...] net.
104. There are two additional factors for the Sole Arbitrator to take into account.
105. First, the FIFA DRC did not give the Club any credit for the two payments to the Player on 21 August 2022 (received by the Player on 22 August 2022) totalling [...], acknowledged as received by the Player. The payments were stated in these proceedings to have been made "*regarding the salaries*". They were made by the Club after the Player had filed his claim before the FIFA DRC but before the Club had filed its defence to the claim, in which it denied liability for breach of contract, and made a counterclaim against the Player. The remittance advices adduced by the Club in these proceedings do not give any indication for the reason for the payment, i.e. they do not state that they are payments in relation to any specific months' salaries or instalments of the signing on fees. In the circumstances where the Club had denied any liability for compensation and in fact sought it from the Player, the Sole Arbitrator therefore finds that such payments from the Club were intended in reduce its indebtedness to the Player in relation to the outstanding salaries and signing on fees as they fell due.
106. The Sole Arbitrator therefore finds that the payment of [...] was in respect of the full salary payments due on 1 July, August, September, November and December 2021 (totalling [...]), the two signing on fee instalments due on 1 July 2021 and 1 January 2022 (totalling [...]), and a part payment of the salary due for January 2022 in the amount of

[...]. As the Club had settled its liability for this amount it cannot amount to outstanding remuneration to the Player; thus he is not entitled to it.

107. The Sole Arbitrator therefore finds that the amount of the outstanding remuneration at the time of termination is [...]. That is calculated as follows:

<b>Month</b>	<b>Outstanding Salary (EUR)</b>	<b>Interest at 5%</b>
<b>January</b>	[...]	From 01/02/22
<b>April</b>	[...]	From 01/05/22
<b>May</b>	[...]	From 01/06/22
<b>June</b>	[...]	From 01/07/22
<b>July</b>	[...]	From 01/08/22
<b>Total</b>	[...]	

108. Second the Player did not file an appeal against the Challenged Decision. His claim for outstanding remuneration is therefore limited to the amount ordered by the FIFA DRC in the Challenged Decision being [...] net, plus interest at 5% until the date of payment. However, as the Sole Arbitrator has found that credit must be given for the payment received by the Player on 22 August 2022, the balance of the outstanding remuneration claimed is below the level of that ordered by the FIFA DRC.
109. The Sole Arbitrator therefore finds that the amount to be paid by the Club to the Player for outstanding remuneration is [...] net of any taxes, bank fees and foreign exchange charges and with interest at 5% from the date on which payment was due until the date of effective payment.

*Compensation under Article 17(1) RSTP*

110. With regard to the Player's claim for compensation for the termination of the contract, and since the Club is held liable for the early termination, the Sole Arbitrator finds that the Player is entitled to receive financial compensation in addition to the above-mentioned payments of outstanding remuneration. Such compensation is to be calculated in accordance with Article 17(1) RSTP.
111. Article 17 (1) of the RSTP states as follows:

*“The following provisions apply if a contract is terminated without just cause:*

- 1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include,*

*in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.*

*Bearing in mind the aforementioned principles, compensation due to a player shall be calculated as follows:*

*i. in case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated;*

*ii. in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the “Mitigated Compensation”). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the “Additional Compensation”). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract.*

*iii. Collective bargaining agreements validly negotiated by employers’ and employees’ representatives at domestic level in accordance with national law may deviate from the principles stipulated in the points i. and ii. above. The terms of such an agreement shall prevail.”*

112. The Employment Contract did not provide for the amount of compensation payable to the Player in the event of breach of contract.
113. The Sole Arbitrator notes that the Player is entitled to compensation for the damage suffered according to the principle of “*positive interest*”, under which compensation for breach must be aimed at reinstating the injured party to the position it would have been in had the contract been performed until its expiry (cf. CAS 2012/A/2698; CAS 2008/A/1447).
114. Moreover, the Sole Arbitrator notes that Article 337c (1) and (2) of the SCO provides the following: “(1) *Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration. (2) Such damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work.*”

115. In view of the above, the Sole Arbitrator notes that the compensation shall be determined under the provisions of Article 17 (1)(ii) RSTP with due consideration being given to the duty to mitigate damages according to Swiss law.
116. The Club asserted, in support of an inadmissible “*counterclaim*” alleged against the Player, the residual value of the Employment Contract was [...], comprising eleven months’ salary (August 2022 to June 2023;  $11 \times [...] = [...]$ ) and three days salary for July 2022 ([...]). Before the FIFA DRC the Player also asserted that the residual value was [...]. In these proceedings, the Player asks the Sole Arbitrator to uphold the decision of the FIFA DRC in its entirety.
117. In the Challenged Decision, the FIFA DRC calculated the residual value as [...], comprising twelve months’ salary. The Sole Arbitrator disagrees. As the Employment Contract was terminated on 28 July 2022, the residual term was a period of 11 months and three days. The residual value is therefore [...] net of any taxes, bank fees and foreign exchange charges.
118. On 9 September 2022, the Player entered into a new employment contract with Hatay Spor Kulübü, valid until 30 June 2023, with an option over an additional year, and under which the Player was entitled to receive the amount of [...] for the 2022/23 season. The Player therefore mitigated his loss to some extent and such remuneration in the amount of [...] must be taken into consideration when calculating the compensation due to the Player.
119. The compensation due to the Player under Article 17(1) is therefore [...] – [...], amounting to [...] net of any taxes, bank fees and foreign exchange charges..
120. With regard to any applicable interest, the Sole Arbitrator notes that the Player claimed, and was awarded in the Challenged Decision, interest at 5% p.a. from 29 July 2022 until the date of effective payment. The Sole Arbitrator therefore awards such interest.

## IX. COSTS

(...).



## ON THESE GROUNDS

### The Court of Arbitration for Sport rules:

1. The appeal filed on 28 January 2023 by Al Raed Sport Club against the decision rendered on 8 December 2022 by the Dispute Resolution Chamber of the FIFA Football Tribunal is partly upheld.
2. The decision rendered on 8 December 2022 by the Dispute Resolution Chamber of the FIFA Football Tribunal is confirmed, save that paragraph 2 is amended as follows:

*“2 The Club, Al Raed, has to pay to the Player, the following amounts:*

*[...] net of any taxes, bank fees and foreign exchange charges as outstanding remuneration plus interest at 5% per annum as follows:*

- *5% interest on the amount of [...] as from 1 February 2022 until the date of effective payment;*
- *5% interest on the amount of [...] as from 1 May 2022 until the date of effective payment;*
- *5% interest on the amount of [...] as from 1 June 2022 until the date of effective payment;*
- *5% interest on the amount of [...] as from 1 July 2022 until the date of effective payment; and*
- *5% interest on the amount of [...], as from 1 August 2022 until the date of effective payment.*

*[...] net of any taxes, bank fees and foreign exchange charges as compensation for the breach of contract without just cause plus 5% interest from 29 July 2022 until the date of effective payment.”*

3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 19 December 2024

## THE COURT OF ARBITRATION FOR SPORT

Stephen Sampson  
Sole Arbitrator