

CAS 2023/A/10150 Club Al Faisaly v. Ahmed Achraf Mohamed Feki & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr Marco Balmelli, Attorney-at-law in Basel, Switzerland

Arbitrators: Mr Jordi López Batet, Attorney-at-law in Barcelona, Spain
Mr Daniel Cravo Souza, Attorney-at-law in Porto Alegre, Brazil

in the arbitration between

Club Al Faisaly, Saudi Arabia

Represented by Mr Gorka Villar Bollaín, Spain

- Appellant -

and

Ahmed Achraf Mohamed Feki, Saudi Arabia

Represented by Mr Ali Abbes, Tunisia

- Respondent 1 -

and

Fédération Internationale de Football Association (FIFA), Switzerland

Represented by Cristina Pérez González, Senior Legal Counsel, FIFA Litigation Department

- Respondent 2 -

I. PARTIES

1. Club Al Faisaly (the “Club” or the “Appellant”) is a professional football club based in Harmah, Saudi Arabia, affiliated to the Saudi Arabia National Football Federation (“SAFF”) which is in turn affiliated to Fédération Internationale de Football Association.
2. Mr Ahmed Achraf Mohamed (the “Player” or the “Respondent 1”) is an Egyptian and Saudi Arabian professional football player.
3. Fédération Internationale de Football Association (“FIFA” or the “Respondent 2”) is the international governing body of football on a worldwide level. It is an association under Swiss law, has its registered office in Zurich, Switzerland and exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players, worldwide.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be referred to, where relevant, in connection with the later legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence available to him in the present proceedings, only the submissions and evidence necessary to explain the reasoning of the Award will be referred to in the following paragraphs.
5. After the Club terminated the employment contract (“Contract”) with the Player, a dispute arose regarding outstanding payments and the consequences of such termination.
6. On 28 July 2023, the Player initiated a proceeding before the FIFA Dispute Resolution Chamber (“FIFA DRC”).
7. On 30 October 2023, FIFA DRC issued the notification of the grounds of the following decision (“Appealed Decision”):
 1. *“The claim of the Claimant, Ahmed Achraf Mohamed Feki, is admissible.*
 2. *The claim of the Claimant is partially accepted.*
 3. *The Respondent, Al Faisaly, must pay to the Claimant the following amounts:*

- SAR 954,540 as outstanding remuneration plus interest p.a. as follows:
 - 5% interest p.a. over the amount of 34,091 SAR from 1 September 2021 until the date of effective payment.
 - 5% interest p.a. over the amount of 34,091 SAR from 1 October 2021 until the date of effective payment.
 - 5% interest p.a. over the amount of 34,091 SAR from 1 November 2021 until the date of effective payment.
 - 5% interest p.a. over the amount of 34,091 SAR from 1 December 2021 until the date of effective payment.
 - 5% interest p.a. over the amount of 68,181 SAR from 1 January 2022 until the date of effective payment.
 - 5% interest p.a. over the amount of 68,181 SAR from 1 February 2022 until the date of effective payment.
 - 5% interest p.a. over the amount of 68,181 SAR from 1 March 2022 until the date of effective payment.
 - 5% interest p.a. over the amount of 68,181 SAR from 1 April 2022 until the date of effective payment.
 - 5% interest p.a. over the amount of 136,363 SAR from 1 May 2022 until the date of effective payment.
 - 5% interest p.a. over the amount of 136,363 SAR from 1 June 2022 until the date of effective payment.
 - 5% interest p.a. over the amount of 136,363 SAR from 1 July 2022 until the date of effective payment.
 - 5% interest p.a. over the amount of 136,363 SAR from 1 August 2022 until the date of effective payment.
 - SAR 2,886,349 as compensation for breach of contract without just cause plus 5% interest p.a. as from 19 June 2023 until the date of effective payment.
4. Any further claims of the Claimant are rejected.
 5. Full payment (including all applicable interest) shall be made to the bank account indicated in the Bank Account Registration Form.
 6. Pursuant to art. 17 par. 4 of the Regulations, the Respondent is be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.
 7. 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 present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.
 8. The submission to the FIFA Disciplinary Committee shall be at the request of the Claimant only in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.
 9. This decision is rendered without costs.”

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

8. On 20 November 2023, the Appellant filed its Statement of Appeal against the Respondents with respect to the Appealed Decision in accordance with Articles R47 and R48 of the 2023 edition of the CAS Code of Sports-related Arbitration (“CAS Code”). The Appellant nominated Mr Jordi López Batet as arbitrator and, thereafter, Mr Daniel Cravo Souza was jointly nominated as arbitrator by the Respondents.
9. Upon the Appellant’s request, the deadline to submit the Appeal Brief was extended until 12 January 2024 because the Appellant and the Player had entered settlement negotiations regarding the monetary aspect of the Appealed Decision.
10. On 9 January 2024, pursuant to Article R54 of the Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division the CAS informed the Parties that the Panel appointed to hear the dispute was constituted as follows:

President: Dr Marco Balmelli, Attorney-at-law in Basel, Switzerland

Arbitrators: Mr Jordi López Batet, Attorney-at-law in Barcelona, Spain
Mr Daniel Cravo Souza, Attorney-at-law in Porto Alegre, Brazil
11. On 19 January 2024, the Appellant filed a settlement agreement between the Appellant and the Player dated 17 January 2024 (“Settlement Agreement”) and asked the Panel to issue a partial consent award (“Partial Consent Award”). Further, the Appellant requested to suspend the proceeding until the Partial Consent Award was issued.
12. On 19 January 2024, the CAS Court Office informed the Parties that the deadline for filing the Appeal Brief remained suspended until the Panel communicated further directions.
13. On 8 February 2024, the Panel invited the Parties to comment on the question whether the Player should be a party to the proceeding after the issuance of the Partial Consent Award.
14. On 12 February 2024, the Appellant clarified that the Player should not be excluded from the proceeding after the issuance of the Partial Consent Award.
15. The Settlement Agreement was ratified by the Panel with the Partial Consent Award dated 26 February 2024. The Panel further held that the Settlement Agreement solely concerned paragraph 3 of the Appealed Decision. Therefore, the CAS arbitration

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16. On 26 February 2024, the CAS Court Office invited the Appellant to submit the Appeal Brief within ten days from receipt of the letter. On 7 March 2024, the Appellant submitted the Appeal Brief.
17. On 8 March 2024, the CAS Court Office set the Respondents a time limit of 20 days to file their answer.
18. On 9 February 2024, the Player confirmed the receipt of the amount agreed and refrained from issuing a statement to the Appeal Brief.
19. On 22 March 2024, FIFA asked for an extension of the time limit. On 25 March 2024, the CAS Court Office extended the time limit for ten days. On 16 April 2024, FIFA filed the Answer to the Appeal Brief.
20. On 3 April 2024, the Parties were invited to inform the CAS Court Office whether (i) they requested a hearing to be held, (ii) if yes, whether they preferred a hearing in person or remote and (iii) if the Panel decided to hold a hearing, whether they would be available on 24 April 2024 (remote only) or 3 May 2024 (remote or in person). While FIFA did not request a hearing, the Appellant insisted on a hearing in a letter dated 18 April 2024. Due to the difficulties in finding a hearing date, the Appellant proposed that a brief second exchange of written submission could take place in lieu of the hearing. Further the Appellant proposed to file the second submission on 24 April 2024 and FIFA could be granted a similar timeline to file its second submission in the week of 26 April to 3 May 2024. On 19 April 2024, FIFA informed the CAS Court Office, that it did not object such proposal and timeline.
21. The Appellant filed its second submission on 24 April 2024 and FIFA filed its second submission on 2 May 2024.
22. On 3 May 2024, the CAS Court Office, on behalf of the President of the Panel, issued the Order of Procedure, which was duly signed by the Parties. By signing the Order of Procedure, the Parties confirmed: (i) the jurisdiction of CAS to hear this dispute, (ii) their agreement that the Panel decides the case based in their written submissions and (iii) the right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

23. The following summary of the Parties' positions is illustrative only and does not necessarily compromise each and every contention put forward by them. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in this section IV of the award.

A. Submissions of the Appellant

24. The key arguments of the Appellant in these arbitration proceedings can be summarised as follows:

A. No automatism in imposition of sanctions

25. The sanction in dispute was imposed based on Article 17(4) of the Regulations on the Status and Transfer of Players ("RSTP"). The Appellant argues that contrary to the wording of the aforementioned provision, FIFA is not obliged to impose the sanction in the sense of an automatism. Although the literal interpretation of the provision implies an automatism ("*shall impose sanctions on any club found to be in breach of contract*"), the imposition of the sanction is, in practice, at FIFA's discretion despite a proven breach of contract. The compensation and the sporting sanction of Article 17(4) RSTP are not interdependent and can be imposed separately. Whether a sanction must be imposed must be assessed on a case-by-case basis with regard to the specific circumstances.

B. Applicability of the Saudi Arabian Football Federation ("SAFF") Regulations

26. The Appellant argues that the Contract was terminated on the basis of Art. 37 of the SAFF Regulations. The provision stipulates: "*If a player is injured while playing or outside of play, or training for the club, or on a mission for the club, the club shall pay the player his full monthly wage for the first four months immediately after the injury, then 75% of his monthly wage for the following four months, then whatever a percentage of (50%) of his monthly wages for the following four months. If the injury continues, the club may take the appropriate decision that preserves the player's rights within the insurance, policies and the club's interest, provided that the committee is notified of its decision in writing.*"

27. The Appellant notes, that it always acted in full compliance with the SAFF Regulations and in good faith. The process prescribed by the provision was followed. The written notice of termination also refers to the provision. The Appellant is of the opinion that it was justified in relying on the applicability of the local provisions.

C. Local dispute

28. The Appellant relies on the argument that it was justified to assume a local matter, as the jurisdiction of the SAFF Dispute Resolution Chamber was agreed in Art. 9.3 of the Contract (“*Any disputes regarding the enforcement of the contract that emerge between the professional player and the club shall be referred to the Dispute Resolution Chamber in SAFF*”). The Appellant further argues that in addition, the Player is a Saudi Arabian citizen, which also meant that the Appellant could assume that the dispute had no international context. Egyptian citizenship was only mentioned in the Contract because the Saudi Arabian passport expired at the time the Contract was concluded. Therefore, local regulations are applicable. The competence of the FIFA DRC was not challenged because the Appellant realized that the SAFF DRC is not constituted in accordance with requirements of independence required by FIFA. The Appellant argues that this does not lead to an applicability of the RSTP to the facts of the case.

D. Jurisprudence

29. The Appellant refers to four FIFA DRC decisions (Exhibit 18 Appeal Brief) in which a club terminated the contract with the player solely because of an injury suffered by him in the protected period and no sanction has been imposed. The Appellant argues that the FIFA regulations were not intentionally violated and that the Appellant is not a repeat offender. The sanction can be justified in cases where a club has intentionally violated the RSTP, but not in cases where the actions of the club are justified by local regulations. The Club has acted in good faith and not without a legal basis. The fact that the Appellant terminated the Contract during the protected period cannot be considered as an aggravating factor as it already is a prerequisite for the applicability of the article itself. There are also no other aggravating circumstances that speak in favor of imposing the sanction.

E. Prayers for relief:

30. The Appellant makes the following prayers for relief:
- I. *To confirm that the present Appeal Brief is admissible, and CAS has jurisdiction to rule on the merits.*
 - II. *To confirm the Partial Consent Award issued on 26 February 2024.*
 - III. *To set aside the decision of the FIFA’s Dispute Resolution Chamber rendered on 26 October 2023 in the FIFA case reference FPSD-11112, annulling point 6 of its findings (the ban), as well as all other points that may be contrary to the rights of the Appellant.*

IV. *To establish that the costs of the Arbitration procedure should be borne: a. By the Appellant until the Partial consent award was made. b. By FIFA, until de (sic) Final Award, except if the Appellant's requests are accepted by FIFA in which case the costs would be shared between these two parties.*

V. *Require FIFA to make a contribution to the Appellant's legal costs of CHF 10,000.*

B. Submissions of FIFA

31. The key arguments of FIFA can be summarised as follows:

A. Applicable regulations and jurisdiction

32. FIFA is of the opinion that the FIFA Regulations are applicable as the Contract explicitly states that it is governed, interpreted, and explained in accordance with FIFA regulations. Therefore, the SAFF Regulations are not applicable. Further, FIFA notes that the Appellant has expressly indicated that it is only appealing the sanction which is why the questions of jurisdiction and applicability of the SAFF Regulations are no longer the subject of the appeal. FIFA further argues that the Appellant itself confirmed the applicability of the FIFA Regulations in its submissions.

33. FIFA argues that the nationality of the Player mentioned in the Contract is Egyptian and therefore he is not a domestic player. The Appellant has not submitted a Saudi Arabian passport of the Player. Further the Appellant does not challenge para. 1 of the Appealed decision which states the Player's claim is admissible, what implies the competence of the FIFA DRC.

B. Sanctions

34. FIFA is of the opinion that the sanctions were duly imposed as the conditions of a breach of contract during the protected period have been fulfilled. Although there is a wide discretion of the FIFA DRC when imposing a sanction and even in the absence of repeated offences, the sanction is appropriate in this case. FIFA refers to CAS jurisprudence that confirmed that "*whenever the wording of a provision is clear, one needs clear and strong arguments to deviate from it*" and a "*very compelling case must be presented for FIFA to be able to deviate from applying the very literal and strict wording of Article 17(4) RSTP.*"

C. Termination by Club

35. FIFA argues that its decision regarding the unjust termination of the Contract became final due to the withdrawal of the Appellant's appeal concerning this aspect. Further, in its statement, the Appellant held that obviously almost every termination due to an

injury of a player is considered unjust – the Appellant therefore seems to acknowledge that it terminated the Contract without just cause.

D. Repeat offender

36. FIFA is of the opinion that the Appellant not being a repeat offender is not relevant for imposing the sanction because it is an aggravating criterion and not a prerequisite of the provision. CAS confirmed in CAS 2022/A/8953 that already a single breach of contract in the protected period may suffice to justify a sanction, provided the breach is severe enough. Further CAS has also confirmed in CAS 2017/A/5056 that “*breaching the employment relationship within the protected period may legitimately lead the FIFA DRC to impose sporting sanctions on the Club, regardless of whether the Club can be classified as a repeated offender.*”

E. Aggravating factors

37. FIFA assesses the fact that the Appellant terminated the Contract due to an injury without warning during the protected period as an aggravating factor. In addition, the Appellant unlawfully reduced the salary of the Player before the termination.

F. FIFA’s discretion and proportionality

38. FIFA argues that the CAS shall only amend a disciplinary decision of a FIFA judicial body in cases where such body exceeded the margin of discretion accorded to it by the principle of its autonomy. Only if CAS deems a decision arbitrary, CAS may intervene. Since the decision of FIFA is neither disproportionate, let alone arbitrary, CAS may not intervene.

G. Prayers for relief

39. FIFA makes the following Prayers for relief:

(a) reject the requests for relief sought by the Appellant;

(b) confirm the Appealed Decision in its entirety; and

(c) order the Appellant to bear the full costs of these arbitration proceedings.

V. **JURISDICTION**

40. The Appellant relies on Article 57 and Article 58(1) of the FIFA statutes (edition 2021, “FIFA Statutes”) as conferring jurisdiction on the CAS. The jurisdiction of CAS, which is not disputed, derives from Article 58 para. 1 of the FIFA Statutes as it determines 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”.

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

VI. ADMISSIBILITY

42. The Panel notes that pursuant to Article 57(1) of the FIFA Statutes, the time limit to file an appeal is 21 days from receipt of the Appealed Decision.

43. The grounds of the Appealed Decision were communicated to the Parties on 30 October 2023. The Appellant filed the Statement of Appeal with CAS on 20 November 2023 and filed the Appeal Brief on 7 March 2024, i.e. within the granted extension of the time limit.

44. Therefore, the Statement of Appeal was timely and is admissible.

VII. APPLICABLE LAW

45. Article R58 of the CAS Code provides the following:

“The Panel 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

46. Article 56(2) of the FIFA Statutes states the following:

“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.”

47. The Contract states, *inter alia*, the following:

“Article 3: Compliance with Laws and Regulations:

The parties shall comply with and implement the laws, regulations, and circulars of the Saudi Arabian Football Federation (“SAFF”), the Fédération Internationale de Football Association (“FIFA”) as a priority, as well as those of the Continental Confederation and the Saudi Pro League.

Article 9: Dispute Resolution

2. *This agreement shall be governed by and construed and interpreted in accordance with the regulations of FIFA.*

Article 13: General Provisions:

1. *The parties acknowledge that they have reviewed the regulations and circulars of SAFF and FIFA before signing this contract and are committed to implementing them.”*

48. Based on the Contract, the Appellant argues that the SAFF Regulations are applicable to the facts of the case and therefore the termination of the Contract was justified according to Art. 37 SAFF Regulations. The Panel must determine which regulations are applicable in the present case.

49. The starting point for determining the applicable law to the merits in football-related disputes is firstly the *lex arbitri*, i.e. the arbitration law at the seat of arbitration in Switzerland.

50. Article 187(1) of the Federal Act on Private International Law (PILA) states:

“The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection.”

51. The Panel assesses that by submitting the dispute to the CAS, the parties have chosen to be subject to the relevant provisions of the CAS Code (CAS 2008/A/1705 para. 9 and references). Article R58 (“Law applicable to the merits”) states:

“The Panel 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 the Panel deems appropriate.”

52. To determine the “applicable regulations” according to Article R58 CAS Code above, the Panel considers the agreement between the parties. The Panel notes that Article 9(2) “*Dispute Resolution*” of the Contract refers to the regulations of FIFA as the applicable regulations in the event of a dispute. Article 56(2) of the FIFA Statutes states that Swiss law shall be applicable additionally. As addressed by Professor Haas “*the reference to Swiss law only serves the purpose of making the RSTP more specific. [...] Under Art. 66 (2) of the FIFA Statutes, however, issues that are not governed by the RSTP should not be subject to Swiss law*” HAAS U., CAS Bulletin, 2/2015, p. 15). Further, the Panel is of the opinion that Article 3 of the Contract stating that the “*parties shall comply with and implement the laws, regulations, and circulars of the Saudi Arabian Football*

Federation (“SAFF”), the Fédération Internationale de Football Association (“FIFA”) as a priority [...]” does not contain a choice of law in case of disputes.

53. In conclusion, the Panel finds that the applicable law is to be determined in line with Article R58 CAS Code and Article 56(2) FIFA Statutes and therefore, the “applicable regulations” are the FIFA Statutes and regulations, in particular the FIFA RSTP (May 2023 edition). Furthermore, the Panel will apply Swiss law as an interpretative tool should the need arise to interpret FIFA’s rules and regulations.

VIII. PRELIMINARY REMARKS

54. According to Article R57 CAS Code the “*Panel has full power to review the facts and the law*” and “*it may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.*” The Panel is empowered to deal with the matter de novo. FIFA’s argument, that the Panel shall amend a disciplinary decision of a FIFA judicial body only in cases in which it (i) finds that the relevant FIFA judicial body acted arbitrarily and (ii) considers the sanction as evidently and grossly disproportionate to the offence committed, as per the majority of the Panel, “*is only acceptable to the extent that it is not directly at odds with CAS’ power to hear the case de novo. Such a self-imposed restriction would otherwise contradict the clear language of R57 CAS Code and arguably weaken the curative power of CAS decisions in regard to any procedural inadequacies*” (CAS 2018/A/6072). The Panel therefore concludes to have full power to review the Appealed Decision, while its majority concludes that, based on this premise, it is not limited to amend the sanction exclusively in the situations sustained by FIFA.

IX. MERITS

A. Shall a sanction be imposed on the Appellant?

55. Taking into account the Settlement Agreement and in view of the appeal, which is directed against point 6 of the operative part of the Appealed Decision, the Panel must address the question of whether the imposition of the sanction according to Article 17(4) RSTP by FIFA DRC was legitimate and appropriate in the present case. For this purpose, it must be examined (1) what prerequisites Article 17(4) RSTP lines out, (2) whether the imposition of sanctions is mandatory and (3) how the specific circumstances of the present case are to be assessed.
56. The question of whether the Club had "just cause" to terminate the Contract is not the subject of the present appeal proceedings. However, the circumstances of the individual

case at hand and the prerequisites of Article 17(4) RSTP must be considered when determining whether the imposition of the sanction is correct and appropriate.

(1) The prerequisites for a sanction according to Article 17(4) RSTP

57. The relevant provision Article 17(4) RSTP determines what follows:

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

[...]

4. In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exceptions stipulated in article 6 paragraph 3 of these regulations in order to register players at an earlier stage.

58. The provision contains two prerequisites: i) a breach of contract ii) during the protected period.

59. The term ‘protected period’ is defined as follows in no. 7 of the definitions of the FIFA RSTP:

“Protected period: a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional”.

60. The Panel observes that it remained undisputed that the Club’s termination of the Contract took place within the protected period since the Contract was concluded on 24 October 2020 and terminated 19 July 2022.

61. According to Article 14 RSTP, *“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.”* The RSTP do not define when there is a “just cause” to terminate a contract. A termination of a contract without just cause is therefore a breach of contract.

62. The Club terminated the Contract due to the Player's injury as stated in the termination notice: "*Given that the injury has persisted for more than a year without specific return date, which has prevented you from rejoining the team and participating in training sessions and matches, rendering the execution of the contract between us impossible and undermining the purpose of the contract*" (Appeal Brief, Exhibit 15). The Club did not mention any other reason for termination but referred to Article 37(1) SAFF Regulations.
63. The Appellant argues that it acted in accordance with Article 37(1) SAFF Regulations and that its actions were therefore justified. The question of whether the Club acted in compliance with Article 37(1) SAFF Regulations can be left open because the SAFF Regulations do not apply *in casu* to the question of a termination without just cause within the meaning of the RSTP.
64. Considering the jurisprudence of CAS and the FIFA DRC in similar cases, the Panel concludes that an injury is not a just cause for a termination of a contract and therefore constitutes a breach of contract (CAS 2015/A/4327; DRC decision of 8 May 2020, Rakic; DRC decision of 9 April 2020, Akobeto; DRC decision of 31 January 2020, Betila).
65. As a conclusion the Panel states that the prerequisites of Article 17(4) RSTP have been fulfilled.
- (2) Is the sanction an automatism or is it imposed at the FIFA DRC's discretion?
66. After it has been established that the prerequisites of Article 17(4) RSTP have been fulfilled, the question arises as to whether the imposition of the sanction is at the discretion of the FIFA competent body or whether it is a mandatory consequence of the fulfilled prerequisites.
67. The Panel notes that a literal interpretation of Article 17(4) RSTP, in particular the wording "*sporting sanctions shall be imposed*" [emphasis added], inclines to conclude that FIFA is in principle obliged to do so.
68. The FIFA Commentary on the RSTP ("FIFA Commentary") however leaves a margin of discretion to the FIFA DRC whether to impose sporting sanctions since it states that "*sporting sanctions can be imposed on a club*" and "*in terminating the contract, it risks the imposition of sporting sanctions [...]*" [emphasis added]. In the same FIFA Commentary, it is expressly affirmed that "*Despite the wording of the Regulations, the DRC's consistent jurisprudence suggests it has a certain margin of discretion in applying sporting sanctions or not. It interprets the Regulations as granting it the power*

to impose sporting sanctions, rather than placing it under an obligation to do so. Indeed, the DRC has regularly decided not to impose sporting sanctions on both players and clubs, even where breaches of contract have occurred during the protected period.”. Further the FIFA Commentary states that *“the specific circumstances surrounding the behaviour of the party in breach (the club) must justify the sanction”* (page 211). This means that the sanction does not *ipso facto* have to be imposed if the conditions are met.

69. The next step will be to examine the case law of the FIFA DRC and the CAS on this issue.
70. In accordance with the repeatedly and consistently confirmed practice of FIFA DRC and CAS, which also applies to article 17.3 RSTP (sanctions against players), the wording in question is interpreted as granting the competent body the *power* to impose sanctions, rather than imposing an obligation to do so. This practice allows the competent body to be more flexible in applying the relevant provision on a case-by-case basis, considering particular and specific circumstances, without imposing sporting sanctions, even if the infringement was committed during the protection period. (DRC decision of 20 May 2020, Diaz; DRC decision of 25 February 2020, Meleg; CAS 2007/A/1358 and 1359, CAS 2014/A/3765).
71. Therefore, the Panel concludes that, according to this established and consistent practice, the competent body is not automatically obliged to impose a sanction if the conditions of Article 17(4) RSTP are met.
72. As to whether a sanction should be imposed in principle (and can only be lifted in the case of mitigating circumstances) or not (and can only be imposed in the case of aggravating circumstances), it is noted by the Panel that:
 - In a smaller number of CAS decisions, the above practice is confirmed with the addition that *“whenever the wording of a provision is clear, one needs clear and strong arguments to deviate from it. Therefore, only particular circumstances would justify refraining from the application of sporting sanctions under article 17 par. 4 RSTP.”* Furthermore, it was indicated that the sanctioned party would be required to provide clear and compelling arguments that would justify not imposing sanctions (CAS 2009/A/1880; CAS 2014/A/3754).
 - The majority of the CAS and FIFA DRC decisions align with the framework established in CAS 2014/A/3460, which states that *“the specific circumstances surrounding the behaviour of the party in breach must justify sporting sanctions”*.
73. The majority of the Panel therefore believes that in this case, the specific circumstances must be of sufficient severity in terms of aggravating factors to justify the proposed sanction. Accordingly, the specific circumstances must be assessed below.

(3) Specific circumstances of the case at hand

74. In light of the above, the Panel must address the question of whether the imposition of sanctions is appropriate in the present case, taking into account the specific circumstances and the previous jurisprudence. According to the prevailing practice of the CAS mentioned above, there need to be certain aggravating factors in order to tip the scale towards imposing sporting sanctions (CAS 2017/A/5056).

a. Repeat offender

75. The Panel has identified one crucial criterion to be considered according to the jurisprudence of the CAS. This is the fact of whether a club is a “repeat offender”.

76. The Appellant cites CAS 2017/A/5011 to argue that no sanction should be imposed for a single offence.

77. FIFA, however, contests this view, citing CAS 2017/A/5056. It argues that the fact that the club is not a repeat offender is irrelevant, as it is an aggravating criterion and not a prerequisite for the imposition of a sanction. The fact that an individual is a repeat offender may result in the imposition of sporting sanctions, but it is not a prerequisite for such sanctions.

78. The Panel notes that, according to CAS 2016/A/4550, clubs that are not considered "repeat offenders" shall not automatically be exempt from any sanction. In light of the specific circumstances of the case, the imposition of sanctions may be justified even in the case of a one-time offence (see FIFA Commentary to Article 17 with references). The CAS has also endorsed this line of jurisprudence, considering repeated offences to be a significant and aggravating factor (CAS 2014/A/3765; CAS 2015/A/4220; CAS 2017/A/5011).

79. The Panel notes that there is no evidence to suggest that the Appellant has a history of repeat offences. Consequently, the severity of the additional circumstances must be considered when determining whether a sanction should be imposed *in casu*.

b. Further circumstances

80. FIFA posits that there are several aggravating factors. These include the following: i) The Club breached the contract during the protected period; ii) the Club failed to fulfil its obligations regarding the Player’s injury, which persisted for more than a year; iii) the Club failed to provide advance notice of its actions; iv) the Club had been applying unilateral salary cuts prior to the breach of the contract.

81. The Appellant counters that the aforementioned circumstances cannot be considered aggravating circumstances. In general, the Appellant believes that the facts cannot be considered aggravating factors because they demonstrate the Club's strict compliance with Article 37(1) SAFF Regulations.
82. The Panel concludes that the argument of the Appellant that he acted in compliance with Article 37(1) SAFF Regulations and therefore the further circumstances (ii – iv above) could not be assessed as aggravating factors, cannot be followed. As stated above, the SAFF Regulations are not applicable to the case at hand.
83. Consequently, the Panel will assess whether the circumstances are sufficiently severe to justify the imposition of a sanction. Unlike Article 12bis (6) RSTP, Article 17(4) RSTP does not specify which circumstances can be considered as aggravating factors. Therefore, the assessment of the severity of the circumstances is at the discretion of the Panel.

i. The breach occurred during the protected period

84. While FIFA considers the fact that the breach took place during the protected period to be an aggravating factor, the Appellant states that this circumstance cannot be considered as an aggravating factor for the imposition of a sanction but as a condition without which it cannot be adopted. According to the Appellant, this aggravating factor has only been considered in FIFA and CAS case law for the purpose of calculating compensation, but not for the imposition of sanctions.
85. Considering the CAS jurisprudence (e.g. CAS 2017/A/5056 para. 133) and in relation to the question above, the Panel notes that the imposition of a sanction is not mandatory if the prerequisites are fulfilled. However, a breach of contract during the protected period does not necessarily lead to a sanction. Rather, it constitutes a prerequisite for the application of Article 17(4) RSTP. Without a breach during the protected period, Article 17(4) RSTP is not applicable. In light of the above, a prerequisite cannot be considered an aggravating circumstance. Consequently, the majority of the Panel concludes that this circumstance cannot be assessed as an aggravating factor in the case at hand.

ii. The termination was based on the injury of the Player

86. The termination of the Contract was based on the injury of the Player. The FIFA DRC stated in the Appealed Decision that *“terminating a player's contract solely based on their inability to recover from an injury sets an unacceptable and concerning precedent. This action not only disregards the player's rights but also undermines the very essence of fair and ethical contractual agreements, and it also constitutes a blatant disregard to*

the Regulations. It sends a message that clubs can exploit a player's injury, as an excuse to sever the employment relationship. As a result, the Chamber considered that it is necessary for the Respondent to face an exemplary sanction to deter other clubs from following this negative example.”

87. The Panel concurs that the termination of a contract due to an injury does not constitute reasonable conduct and is therefore considered a termination without just cause with respective financial consequences according to Article 17 RSTP. Notwithstanding the above, the majority of the Panel considered relevant to underline and weight that in other decisions of the FIFA DRC, no sanction was imposed despite the contract being terminated due to an injury (DRC decision of 8 May 2020, Rakic; DRC decision of 9 April 2020, Akobeto; DRC decision of 31 January 2020, Betila; DRC decision of 2 March 2023, Player A [anonymized decision]).
88. While the Panel acknowledges the moral implications of terminating a contract due to an injury, and agrees that financial consequences are appropriate, the majority of the Panel reposes that this case must be assessed consistently with previous case law. As previously stated, according to the dominant jurisprudence on the subject, the termination of a contract due to an injury does not automatically result in sanctions being imposed. Furthermore, the majority of the Panel believes that the reasoning behind the suggestion that the Club should face an exemplary sanction to deter other clubs from following this negative example is inadequate. The individual case must be sufficiently serious in itself and the circumstances must justify a sanction. The signal effect must not be considered.
89. In the case at hand, the Club terminated the Contract more than one year after the Player's injury. The majority of the Panel deems relevant to consider that, during this period, the Club provided support for the Player's convalescence. While the termination of the Contract was without just cause and the Club was therefore required to pay compensation, the fact that the termination occurred due to an injury, in the opinion of the majority of the Panel, does not constitute an aggravating factor in this case.

iii. Salary reduction

90. FIFA asserts that another aggravating factor to be considered is the salary reduction that occurred prior to the breach of the Contract.
91. The Appellant justifies the salary reduction with Article 37(1) of the SAFF Regulations. As previously stated, the SAFF Regulations are not applicable in this case. The Panel finds that the RSTP do not provide a legal basis for reducing a player's salary in the event of non-performance due to injury. The Panel explicitly states that the salary

reduction was unlawful and constitutes a violation of the RSTP. It was therefore correct to condemn the Appellant to pay the Player the full salary.

92. However, the question of the existence of a legal basis is distinct from the question of whether the salary reduction constitutes an aggravating factor. The latter requires a case-by-case assessment of the specific circumstances and is a matter of discretion of the Panel. Factors that can be used to assess the salary reduction include the point in time and extent of the reduction.
93. In the case at hand, the Club paid 100% of the salary for four months following the injury of the Player. Thereafter, the salary was reduced with effect from August 2021. Up to and including November 2021, 75% of the salary was paid, and thereafter 50% of the salary up to and including March 2022.
94. To assess the aforementioned procedure, according to the majority of the Panel, Swiss law can be used as a point of reference. Swiss law does not oblige an employer to continue paying salary until the end of the contract if an employee is unable to fulfil their contractual obligations due to illness or accident. In the employee's second year of service, continued payment of salary is owed for a maximum of two months (Art. 324 a Abs. 2 CO). As previously stated, the Club paid the salary in full for the duration of four months and then reduced it during eight months. There was no immediate cessation or reduction of salary payments following the Player's injury. Therefore, the salary paid was longer and higher than would be owed, for example, under Swiss law. While this does not justify the reduction performed by the Appellant, the majority of the Panel concludes that this is not an aggravating factor in isolation.

iv. No prior warning

95. Furthermore, FIFA asserts that the Club did not issue a warning prior to terminating the Contract, viewing this omission as an aggravating factor. The issue of terminating a contract without prior warning is frequently discussed in the context of whether the termination was justified or not. The majority of the Panel, however, concludes that the lack of a prior warning is already encompassed by the qualification of termination without just cause, and thus cannot be considered a separate aggravating circumstance.

c. Conclusion on the assessment of the specific circumstances

96. Lastly, the Panel notes that the Appealed Decision was passed on 26 October 2023. This means that the Club has already served half of the sanction (i.e. the ban for one registration period) at the time this decision was made.

97. The majority of the Panel concludes that the circumstances of the present case do not justify a sanction according to Article 17(4) RSTP.
98. The Panel notes that no general categorization of aggravating or exonerating factors is currently contemplated in the FIFA Regulations. Thus, each circumstance may have a different intensity and severity in each case. The entire constellation in the specific individual case is decisive.

B. Conclusion

99. The prerequisites set out in Article 17(4) RSTP have been met. It is worth noting that the imposition of a sanction under the aforementioned article is not mandatory, according to the consistent practice of the FIFA DRC and CAS. This is even the case if the prerequisites are met. Therefore, there is no automatism in the imposition of a sanction. Whether a sanction should be imposed or not must be assessed on a case-by-case basis considering the specific circumstances. After assessing the circumstances of the present case, taking into consideration the relevant jurisprudence, the majority of the Panel has concluded that a sanction is not appropriate.
100. Point 6 of the operative part of the Appealed Decision is set aside in its entirety and the appeal is therefore upheld in that regard.

X. COSTS

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club Al Faisaly on 20 November 2023 against the decision rendered on 26 October 2023 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially upheld.
2. The point 6 of the operative part of the decision rendered on 26 October 2023 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is set aside.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Operative part of the Award notified on 22 May 2024

Award with grounds: 26 February 2025

THE COURT OF ARBITRATION FOR SPORT

Marco Balmelli
President

Mr Jordi López Batet
Arbitrator

Mr Daniel Cravo Souza
Arbitrator