CAS 2024/A/10330 Nasouh Nakdahli v Al-Wahda Club and Syrian Football Association

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Anthony **Lo Surdo** SC, Barrister, Arbitrator, Mediator in Sydney, Australia

in the arbitration between

Nasouh Nakdahli, Syria

Represented by Mr Roy Vermeer, FIFPRO, Scorpius 161, 2132 LR Hoofddorp, The Netherlands

Appellant

and

Al-Wahda Club, Syrian Arab Republic

First Respondent

and

Syrian Football Association, Syrian Arab Republic

Represented by Dr Amjad Alkhalil Agha, Director of Legal Affairs, Syrian Football Association, Al Faihaa Sports Complex, Damascus, Syria

Second Respondent

I. INTRODUCTION

1. Mr Nasouh Nakdahli ("Appellant" or the "Player") is a professional footballer who has appealed the decision of the Syrian Football Association Dispute Resolution Chamber ("DRC") passed on 15 January 2024 and notified to the Player on 18 January 2024 ("Appealed Decision").

2. In the Appealed Decision, the DRC decided that the Player was entitled to terminate his employment contract with the First Respondent ("Club") due to the Club's late payment of two months' salary, that the Club should pay the Player the amount of 12,000,000 Syrian Pounds ("SP") which was the two months' outstanding salary that justified the termination of the employment contract and rejected the balance of the Player's claim.

II. THE PARTIES

3. The Appellant is a professional football player from the Syrian Arab Republic.

4. Al-Wahda Club (the "First Respondent") is a professional football club in the Syrian Arab Republic ("Club") affiliated with the Syrian Football Association (the "Second Respondent" or "SFA").

5. The SFA is the governing body of football in Syria and it is a member of FIFA.

III. FACTUAL BACKGROUND

Background Facts

6. Below is a summary of the relevant facts and allegations based on the factual part of the Appealed Decision, the parties' written submissions and the exhibits filed. Additional facts and allegations found in the parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows.

7. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, the Award only refers to the submissions and evidence the Sole Arbitrator considers necessary to explain his reasoning.

8. On 12 August 2023, the Player and the Club entered a written contract by which the Player was retained to play for the Club in the period 1 August 2023 to 1 June 2024 and pursuant to which the Player was to be paid an amount of SP 450,000,000 as follows SP 270,000,000 prior to the commencement of the 2023/2024 season; SP 6,000,000 as a monthly salary; SP 8,000,000 per month as a transportation allowance; and SP 40,000,000 as a lump sum payment ("Employment Contract").

9. The Player was paid SP 270,000,000 prior to the commencement of the 2023/2024 season as required by the Employment Contract.

10. The Club did not pay the Player his salary for October and November 2023.

11. Article 5.4 of the Employment Contract entitled the Player to request the "*competent committee according to what is stipulated in the regulations of player's status and transfer*" to terminate the contract if the Club is late in paying monthly salary for a period of two months.

Proceedings before the Syrian Football Association Dispute Resolution Chamber

12. On 11 December 2023, the Player lodged a claim pursuant to Article 15.5 of the Syrian Football Association Professionalism and Players' Status Regulations ("SFA PSR") with the "Professionalism and Players' Conditions Committee" which Committee includes an arbitral body known as the "Dispute Resolution Chamber" ("DRC"). The DRC includes a Players' Status Committee ("PSC"). Article 20.1 of the SFA PSR provides that the DRC is responsible for, amongst other things, making decisions and arbitrating contractual disputes between clubs and players.

13. In his complaint, the Player asserted that the Club had failed to pay his salary for two months and, in doing so, the Club had acted unilaterally and without reasonable cause. He requested that the Employment Contract be terminated, and the Club ordered to pay the residual value of the contract in the amount of SP 180,000,000 and additional amounts totalling SP 300,000,00 by way of compensation for "*material and moral loss*."

14. On 15 January 2024, the DRC passed a decision partially accepting the Player's claim, terminating the Contract, awarding the Player outstanding salaries for two months only in the amount of SP 12,000,000 and rejecting the Player's remaining requests ("Appealed Decision").

15. The Appealed Decision was notified to the Player on 18 January 2024. In that notification, there was a notation of the "*necessity to come to Syrian FA Players status committee to receive the contents and grounds of the decision*."

16. On 19 January 2024, a request was received by the SFA for the Player's ITC from the Kuwait Football Association (Al-Fahaheel Sports Club). That request was rejected by the SFA claiming that the Appealed Decision had not yet become final and binding.

17. On 27 January 2024, the Player submitted an objection to the SFA against its rejection of the ITC, which objection itself was rejected because the SFA claimed that local laws and applicable procedures required that the Appealed Decision be executed either after the appeal period had expired or if the parties had waived their rights regarding it, neither of which the Player had done.

18. Reasons for the Appealed Decision were prepared by DRC by no later than 25 January 2024 but were not seen by the Player until 13 June 2024 when they were provided during these proceedings.

19. The motivated decision is consistent with the decision passed and notified to the Player in January. The operative part of the decision is as follows:

> *"1. Termination of the player contract due to late payment of two months' salaries.*
> *2. The club should pay an amount of (12,000,000SP) which is the late two month's salaries.*
> *3. Reject the special claims by the player for the rest of payments and compensation because they are invalid."*

20. The grounds of the Appealed Decision are, in summary, that:

- the Player filed a complaint to terminate the Employment Contract because the Club failed to pay two months' salaries for which he also demanded compensation.

- the Club submitted that the Player had received the full advance payment required under the contract in addition to two payments totalling SP 25,200,000, which equates to more than four months' salaries and that it had suspended the Player until further notice due to a violation of the Club directions.

- the Club acknowledged it was late in paying salaries and that the delay in payment of salaries violated Article 5 paragraph 4 of the Employment Contract.

- the Player acknowledged that he had received the first payment of 270,000.000 SP and he demanded that the Club pays "*…the balance of the first payment contrary to the association circular…*" and compensation for harm and loss "*due to the Club's decision announced on the official web page, which is not considered an offense…*"

IV. SUMMARY OF THE PROCEEDINGS BEFORE THE CAS

21. On 8 February 2024, the Player filed his Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R48 of the Code of Sports-related Arbitration (2023 Edition) (the "Code") against the Appealed Decision.

22. The Player requested that this matter be submitted to a Sole Arbitrator and the SFA agreed to such request.

23. In his Statement of Appeal, the Player made a request in accordance with Articles R57 and R44.3 for the SFA to disclose certain documents which were not publicly available but indispensable for the appeal.

24. On 15 February 2024, the SFA outlined written reasons contending that the CAS did not have jurisdiction.

25. On 20 February 2024, the Player challenged the contentions of the SFA as to jurisdiction and submitted that the CAS had jurisdiction.

26. On 21 February 2024, CAS notified the parties that the issue of jurisdiction would be determined by the Arbitral Panel once appointed.

27. By letter of 31 May 2024, the parties were informed by the CAS Court Office that the Arbitral Panel had been constituted by Mr Anthony Lo Surdo SC, Barrister in Sydney as sole arbitrator ("Sole Arbitrator").

28. By letter dated 3 June 2024, the SFA was ordered by the Sole Arbitrator to produce the documents there specified by 17 June 2024. Those documents were produced to the CAS Court Office by the SFA on 13 June 2024.

29. On 14 June 2024, the CAS Court Office wrote to the parties acknowledging receipt of the documents provided by the SFA on 13 June 2024 and inviting the Player to file his Appeal Brief.

30. On 12 July 2024, the Player filed his Appeal Brief.

31. On 31 July 2024, the SFA filed its Answer.

32. On 2 August 2024, the CAS Court Office invited the parties to inform it as to whether they preferred a hearing to be held or for the Sole Arbitrator to issue an award based on the parties' written submissions.

33. On 5 August 2024, the Player informed the CAS Court Office that he did not consider a hearing necessary and that he preferred for an award to be issued by the Sole Arbitrator based on the parties' written submissions.

34. On 6 August 2024, the Club filed its Answer and the parties were requested by the CAS Court Office pursuant to Article R56 of the Code to comment on the Answer by 16 August 2024.

35. On 6 August 2024, the Player notified the CAS Court Office that the Club's Answer was required to be filed by no later than 1 August 2024 and, as it was filed out of time, it should be excluded.

36. On 7 August 2024, the SFA informed the CAS Court Office that it did not consider a hearing necessary and that it preferred for an award to be issued by the Sole Arbitrator based on the parties' written submissions.

37. On 9 August 2024, the CAS Court Office informed the parties that, pursuant to Article R57 of the Code, the Sole Arbitrator deemed himself sufficiently well-informed to decide the case based solely on the parties' written submissions, without the need to hold a hearing.

38. On 19 August 2024, the CAS Court Office notified the parties that as the Club filed its Answer five days after the expiration of the time prescribed by Article R55 of the Code, the Player objected to the admissibility of the Answer and no explanation had been given

by the Club for the late filing of its answer, the Sole Arbitrator determined that the Club's Answer was not to be admitted to the case file.

39. On 5 September 2024, the CAS Court Office, on behalf of the Sole Arbitrator, issued the Order for Procedure, which was duly signed by the parties. In that Order for Procedure the parties, *inter alia*, confirmed their agreement that the Sole Arbitrator decide this matter based upon their respective written submissions and that their right to be heard had been respected.

V. SUBMISSIONS OF THE PARTIES

40. What follows is a summary of the parties' written submissions. It does not necessarily encompass every contention put forward by the parties. To the extent that it omits any contentions, the Sole Arbitrator notes that he has carefully considered all the evidence and arguments submitted by the parties, even if there is no specific reference to those submissions in the summary.

The Player's Submissions and Request for Relief

41. Set out below is a summary of the Player's submissions on the merits of the appeal and his request for relief. The parties' respective submissions as to jurisdiction and other procedural matters are set out and considered in those sections of the award:

- the Player filed a claim with the SFA in December 2023 requesting the termination of the Employment Contract due to outstanding salaries and to be awarded compensation.

- the DRC agreed with the premature termination of the Employment Contract because the salaries for two months had not been paid, but then reduced the salaries to SP 6,000,000 per month, allegedly based on a circular which provides that the maximum value of a player's monthly salary is SP 6,000,000, except for foreign players.

- the conclusion of the DRC is wrong because:

  - a circular cannot be used to introduce substantial new rules in the SFA rules and regulations. "Circulars" "…*are not regulations in a strict legal sense*" (CAS 2003/O/527 at para. 17) and serve only to interpret and clarify existing rules. The SFA PSR contains no reference to professional players being limited as to what they can earn;

  - a salary cap unilaterally imposed by the SFA, which is an association whose members are predominantly professional clubs, would be an illegal restraint of competition;

  - there is unjustified discrimination and unequal treatment between Syrian players and foreign players which cannot be supported. There is no justified reason why

domestic players should be treated less beneficially than their foreign counterparts;

- even if there was a legitimately imposed salary cap on a justified basis, which would not be discriminatory, the Player should not be disadvantaged by the Club's failure to abide by the rules. Indeed, Article 9 para. 1 of the SFA PSR stipulates that amongst a club's obligations is to "*pay a monthly salary agreed upon in the contract signed between the club and the player*."

- the Player entered an employment contract in good faith with the Club (which contract was drafted by the Club) and should be awarded the salaries that they agreed on. If the Club failed to comply with the relevant rules, it should face disciplinary sanctions by the SFA but it should not be used by the SFA to renege on the payment obligations of the Club vis-à-vis the Player.

- the Player's entitlement was SP 14,000,000 consisting of a monthly payment of SP 6,000,000 and a "transportation allowance" of SP 8,000,000. The transportation allowance was not conditional upon any further requirements; it was just a monthly payment made to the Player irrespective of any actual transportation expenses. The monthly financial benefit to the Player was therefore SP 14,000,000.

- the Player was not paid his outstanding dues for October, November and December 2023 and half of January 2024. This results in an outstanding amount of SP 49,000,000 in respect of which he also requests interest at 5%.

- Article 15 para. 5 of the SFA PSR stipulates that "*without violating the terms of the contract, the committee has the right to estimate the appropriate compensation for terminating the contract due to an unfair reason, and to impose appropriate sporting penalties.*"

- the decision of the DRC provides no justification as to why compensation for breach of contract was not awarded. It merely stated that that request was "*invalid*". That conclusion is incorrect.

- having regard to the principle of contractual stability, which is recognised by Article 7 para. 1 of the SFA Statutes, compensation for breach of contract should have been awarded by the DRC and it was wrong not to do so.

- by analogy with FIFA and CAS case law, compensation must be awarded based on the residual value of the Employment Contract. Such compensation is consistent with Article 15 para. 5 of the SFA PSR and would be "*appropriate compensation*" that would give "*due consideration*" to the protection of contractual stability and would ensure, in this case, that the Club does not benefit from its own wrongdoing.

- as the Employment Contract was considered terminated in the middle of January 2024, the residual value of the Employment Contract is SP 103,000,000 comprising SP 63,000,000 (SP 14,000,000 x 4.5 months) and the lump sum payment of SP

40,000,000. The Player requests this residual value plus 5% interest from the date of termination until payment.

42. In this context, the Player submitted the following requests for relief:

"- *a) To amend the decision of the DRC of the Syrian Football Association.*

- *b) To order the Club to pay the Player the amount of Syrian Pound 49,000,000, as outstanding remuneration for October, November, December and half of January 2024 plus 5% interest as from the due date.*

- *c) To order the Club to pay the Player the amount of Syrian Pound 103,000,000 as compensation for breach of contract (salaries of half of January to May 2024 + fee of Syrian Pound 40,000,000) plus 5% interest as from 18 January 2024.*

- *d) To condemn the Respondents to pay the entire CAS administration costs and the arbitration fees and to reimburse the Player of any and all expenses he incurred in connection with this procedure.*

- *e) To rule that the Respondents have to pay the Player a contribution towards his costs."*

The SFA's Submissions and Request for Relief

43. The SFA's submissions on the merits of the appeal and its request for relief are summarised as follows:

- the Player has not provided any evidence to support the validity of his complaint; instead, he has submitted new claims in a manner different from what was included in his complaint.

- the DRC applied the principle of contractual stability in issuing its decision, especially since the Player did not notify the Club and did not grant it the legal grace period within which to fulfil its obligations.

- the essence of the Player's complaint, claiming that the Employment Contract was terminated, contradicts the provisions of Article 5 para. 4 of the Employment Contract. The Club's failure gives the Player the right to request the termination of the Employment Contract, not to consider that contract as automatically terminated.

- the DRC decision was based on the specificity of football and its practice in the Syrian Arab Republic due to exceptional circumstances attending accordance with the regulations in force within the SFA. The decision was in accordance with the objective standards in place, especially the circular issued by the SFA, which set the maximum limit for monthly wages at SP 6,000,000.

- under Articles 6 and 25 of the SFA PSR, the "circular" is considered a complementary part of the regulations and issued to ensure the protection of clubs and players, especially given the exceptional conditions of football in Syria. The maximum wage limit was established after several meetings with clubs and player representatives, culminating in the issuance of the circular under the name of collective agreements among the interested parties.

- the decision was not based on the Club's refusal to fulfil its obligations and breach of contract, but rather on the impossibility of continuing the contract because the Player ceased to fulfil his obligations under his contract.

- the Player's demand for compensation for the remaining duration of his contract is without any legal basis, despite the Player signing a new contract, which the SFA rejected when issuing its decision.

- the Player is acting in bad faith by claiming compensation for the entire duration of the Employment Contract despite having signed a new contract.

- the DRC decided to compensate the Player with an amount of SP 12,000,000 , making the total amount received and to be received by him SP 307,200,000. He has accordingly received what exceeds seven months of his entire contract duration. These total payments adequately compensate the Player for the damage sustained by him without resulting in additional benefits or gains.

44. The SFA accordingly submitted the following requests for relief:

"***A.*** *To dismiss the appeal on the grounds of its invalidity, especially since the decision issued by the SFA did not consider that the club had early terminated the contract and that the player had just cause for that*."

B. *To dismiss the appeal on the grounds of the player's failure to provide the necessary legal notice for the club to fulfil its obligations."*

C. *To dismiss the appeal on the grounds that the claim for compensation for the entire duration of the contract contradicts the existence of a new contract signed by the player."*

D. *To oblige of the player to pay all costs of the CAS and arbitration fees, and to compensate the SFA for any expenses incurred concerning the case."*

E. *To oblige the player to pay all fees related to lawyer's fees and to compensate the SFA."*

VI. JURISDICTION

The SGA's Submissions as to Jurisdiction

45. The SGA's submissions as to jurisdiction were, in summary, that:

- Article 15 paragraph 5 of the FIFA Procedural Rules Governing the Football Tribunal, which provides that, where procedural costs are ordered, a party has 10 calendar days from notification of the operative part of the decision to request the grounds of the decision and failure to comply with the time limit results in the decision becoming final and binding, and the party will be deemed to have waived its right to file an appeal; is consistent with the procedures applied locally, in particular, Article 20 para. 4 of the SFA PSR.

- the notification of the Appealed Decision sent to the Player on 18 January 2024 included the necessity for the Player to review and receive the grounds of decision. Since the deadline for receiving the decision is 10 days from the date of notification, failing to receive the ground of decision within that timeframe renders the decision final.

- the Player filed his Statement of Appeal on 8 February 2024, that is, 21 days from the notification of the Player regarding the findings of the decision and after 23 days from the grounds of decision.

- Article 48 of the Code requires that an appellant attach a copy of the appealed decision. Neither the Statement of Appeal nor the Appeal Brief contained a copy of the grounds of decision nor could they have done so as the SFA did not provide those grounds to the Player until 13 June 2024

- accordingly, the CAS does not have jurisdiction to consider the dispute as the decision has become final and the proceedings should be terminated.

The Player's Submissions as to Jurisdiction

46. The Player's submissions as to jurisdiction were, in summary, that:

- the SFA's contention that the Player cannot appeal the decision of the DRC because he did not attend the SFA Headquarters to receive a copy of the grounds of the decision and hence did not "…*come within the statutory time limit*" is "*clearly incorrect*".

- in its letter of 13 June 2024, the SFA provided the grounds of the decision, which were already prepared as of 25 January 2024. Therefore, even if there was a valid argument that the Player could only appeal to CAS if the grounds of decision were issued, this is no longer a matter of debate.

- no party requested the grounds of the decision; they were prepared by the SFA *ex officio.* Any contention of the SFA that the Player should have requested the grounds of the decision (which is not supported by the SFA regulations) is thus *"obsolete"*.

- even if the SFA regulations required the Player to have attended the SFA Headquarters to receive the grounds of the decision prior to being able to appeal to the CAS, which they do not, it would be *"excessive formalism"* in circumstances where there is no plausible reason or justification for such a requirement given that reasons for a decision can, as was the case here, be prepared and delivered without the necessity for a player to attend the SFA Headquarters for the purpose of receiving that decision.

- further, it is evident from the SFA's letter dated 29 January 2024, that the SFA was not indicating that the Player needed to request the grounds as a formal requirement to appeal but wanted the Player to "*accept the decision*" otherwise it would not issue the ITC to his new club in Kuwait. This is not a legitimate purpose and is akin to a form of blackmail.

- Article 15 para. 5 of the FIFA Procedural Rules Governing the Football Tribunal, which specifically states that if a party does not request the grounds of a decision, the decision will become final and binding, and a party will be deemed to have waived its rights of appeal, does not apply to proceedings of the decision-making bodies of the SFA. Further, the fact that a decision is not motivated, that is, without grounds, cannot in and by itself affect it being a decision capable of appeal (CAS 2004/A/748, CAS 2005/A/899 & CAS2008/A/1705).

Consideration

47. The SFA's contention that the CAS lacks jurisdiction gives rise to the following issues:

- Whether Article 15 para. 5 of the FIFA Procedural Rules Governing the Football Tribunal (**FIFA Tribunal Procedural Rules**) apply to proceedings before the DRC.

- If the FIFA Tribunal Procedural Rules do not apply, whether Article 20 para. 4 of the SFA PSR is consistent with those Rules?

- Whether a decision that is not motivated is nevertheless a decision capable of being the subject of an appeal to the CAS.

48. Self-evidently, the FIFA Tribunal Procedural Rules apply, as Article 1 of those rules make plain to *"…govern the organisation, composition and functions of the Football Tribunal."* (emphasis added) They accordingly do not directly apply to proceedings before the DRC.

49. Article 20 para. 4 of the SFA PSR is in the following terms:

"*The regulations are the main reference to resolve disputes which involve clubs, players, mediators technical and medical staff regarding their legal status, eligibility, registration, local and international transfers. The committee has the right to apply the laws of the Syrian Arab Republic and the general rules and regulations issued by the Asian Football Confederation and FIFA with regard to the dispute and the request of the parties. It also looks into contracts and the conditions and ways of contracting."*

50. Article 20 of which para 4 is a part, outlines the powers of the "Committee's Dispute Resolution Chamber." It establishes the primacy of the regulations as "*the main reference to resolve disputes*" including disputes involving players and clubs and contracts. Whilst it confers upon the DRC the "*right to apply*" inter alia, "*the general rules and regulations issued*…" by the AFC and FIFA, those "*rules and regulations*" do not, in the opinion of the Sole Arbitrator, extend to include the FIFA Tribunal Procedural rules which are not "general" in nature but apply very specifically to the organisation, composition and functions of the FIFA Football Tribunal.

51. Article 20 para. 4 does not, contrary to the submission of the SFA, incorporate expressly or impliedly Article 15 para. 5 of the FIFA Tribunal Procedural Rules. There are no other provisions in the SFA PSR consistent with Article 15 para. 5 of the FIFA Tribunal Procedural Rules.

52. Article 24 of the SFA PSR requires that the "…*decision of the Committee and the Chamber shall include its reasons and ground*s" but there is no pre-requisite, as is the case under the Article 15 para. 5 of the FIFA Tribunal Procedural Rules, for a request to first be made by a party for those grounds. The obligation in Article 24 of the SFA PSR for the provision of reasons is in absolute and unconditional terms. The SFA PSR was obliged to provide reasons regardless of any request from a party for reasons.

53. The DRC had an obligation under the SFA PSR to provide reasons regardless of any request from the Player; an obligation it appears to have implicitly understood because it, in fact, produced those reasons without any request from the Player. The date upon which those reasons were produced is not apparent, but they were translated on 25 January 2024. The reasons were not provided to the Player until 13 June 2024, that is, well after the commencement of these proceedings.

54. The reasons were presumably not provided to the Player at or about the time that they were prepared by the DRC because when notification of the Appealed Decision was sent to the Player on 18 January 2024 it included a statement by the SFA of the "necessity" for the Player to review and receive the original clause and the grounds of decision.

55. The SFA's assertion of the "necessity" for the Player to review and receive the grounds of the decision in person has, however, no foundation in the SFA PSR. Further, the SFA has adduced no documentary or other evidence establishing the existence of such a requirement and that it was published or otherwise well-known to persons in the position of the Player in January 2024.

56. On 18 January 2024, the SFA notified the Player of the decision of the SFA DRC in the following terms:

"*Terminating the player's contract with the club, obliging the club to pay an amount of 12,000,000 for two months of non-payment, and rejecting the player's remaining requests*."

57. The jurisdiction of the CAS in this procedure derives from Article R47 of the Code and Article 62 para. 1 of the Statutes of the SFA ("SFA Statutes").

58. According to Article R47 of the Code, "*[a]n appeal against the decision of a federation, association or sports-related body may be filed with 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 Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*"

59. Though not motivated, the Appealed Decision is a "decision" within the meaning of Article R47 of the Code because, consistent with well-regarded CAS jurisprudence, it is "…a *unilateral act, sent to one or more recipients and is intended to produce legal effects…"* or "…*contains a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties.*" (CAS 2004/A/748, CAS 2005/A/899 & CAS2008/A/1705).

60. The Appealed Decision formed part of the Statement of Appeal as required by Article R48 of the Code.

61. Article 62 para. 1 of the SFA Statutes, provides:

"*1. Disputes within SFA or disputes affecting Members of SFA, leagues, members of leagues, clubs, members of clubs, players and officials may only be referred in the last instance (i.e. after exhaustion of all internal channels within SFA) to CAS, which shall settle the dispute definitively to the exclusion of any ordinary court, unless expressly prohibited by the legislation in [name of the country in which the association has its headquarters]."*

62. The SFA DRC was established by the SFA pursuant to Article 20 of the SFA PSR to determine, *inter alia*, contractual disputes between clubs and players.

63. Article 20 para. 2 of the SFA PSR provides that the decisions of the SFA DRC "*are subject to appeal before the Appeals Committee*." There is no evidence as to whether such an "internal channel", assuming it exists, has been engaged. The Player relies on a letter from the SFA, dated 29 January 2024, which infers that an appeal from the Appealed Decision lies to the CAS. In its Answer, the SFA does not dispute jurisdiction on grounds that all internal channels have not been exhausted.

64. The Sole Arbitrator accordingly holds that he has jurisdiction to hear this appeal.

VII. ADMISSIBILITY

65. Article R49 of the Code relevantly provides:

"*In the absence of a time limit set in the statutes or regulations of the Federation, association or sports -related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against*."

66. Neither the SFA Statutes nor the SFA PSR specify any time limit for an appeal.

67. The Appealed Decision was passed on 15 January 2024 and notified to the Player on 18 January 2024.

68. On 8 February 2024, the Player filed the Statement of Appeal well within the time prescribed by Article R49 of the Code which included a copy of the Appealed Decision.

69. The Appeal is accordingly admissible.

VIII. APPLICABLE LAW

70. Article R58 of the Code provides:

"*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*."

71. Article 7 para. 1 of the SFA Statutes provides:

"*The status of players and the provisions for their registration and transfer shall be governed by specific regulations issued by the Executive Committee in accordance with the FIFA Regulations on the Status and Transfer of Players. Due consideration shall be given to the protection of contractual stability and the encouragement of player training and education by clubs."*

72. Article 51 para. 1 of the SFA Statutes relevantly provides:

"The Players' Status Committee shall set up and monitor compliance with transfer regulations in accordance with the FIFA Regulations on the Status and Transfer of Players and determine the status of players for the various competitions of SFA. The Executive Committee may approve special regulations governing the Players' Status Committees powers of jurisdiction…"

73. The Player contended that the dispute is to be determined in accordance with the SFA PSR as well as in accordance with the FIFA RSTP.

74. The SFA has not addressed the applicable law in its submissions.

75. The FIFA RSTP, relevantly for present purposes, sets out specific provisions that are required to be implemented at national level by FIFA member associations. Those provisions are intended to be replicated by those member associations in their respective RSTP.

76. The FIFA RSTP does not, at a national level, apply to the exclusion or in addition or in priority to the national RSTP but the latter must be in conformity with the former.

77. The Sole Arbitrator is accordingly not persuaded that the FIFA RSTP apply in this case. Whilst both Articles 7 and 51 of the SFA Statutes refer to the FIFA RSTP, it is in the limited context of requiring: in the case of Article 7, that the Executive Committee issue specific regulations governing players' registration and transfer in accordance with the FIFA RSTP; and for the purposes of Article 51, requiring the SFA PSC to set up and monitor compliance with transfer regulations in accordance with the FIFA RSTP. In neither case, on a proper construction of either Article, do they expressly or by necessary implication incorporate the FIFA RSTP.

78. The Employment Contract does not contain an express choice of law.

79. In the absence of an express choice of law by the parties, resort may be had to the conflict of law rules of the seat of the arbitration, in this case Switzerland, to determine the substantive law that may, in terms of Article R58 of the Code, apply subsidiarily to the Employment Contract.

80. Article 187 of the Federal Act on *Private International Law*, 1987 (Switzerland) ("PILA") provides that an "*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*."

81. In this case, the Employment Contract is between parties domiciled in the Syrian Arab Republic and involves the exercise of a professional or business activity in that state. Accordingly, and in the absence of a choice of law, the Sole Arbitrator determines that the laws of the Syrian Arab Republic apply subsidiarily to the Employment Contract.

82. Consequently, the Sole Arbitrator determines that the present dispute must be decided according to the SFA Statutes and the SFA PSR and subsidiarily in accordance with the laws of the Syrian Arab Republic. However, as neither party has submitted that there are any laws of the Syrian Arab Republic that apply to the Employment Contract, the Sole Arbitrator has decided the dispute according to the SFA Statutes and the SFA PSR.

IX. OTHER PROCEDURAL MATTERS – LATE PROVISION OF THE CLUB'S ANSWER

83. On 12 July 2024, the CAS Court Office wrote to the Club and the SFA notifying of their obligations pursuant to Article R55 of the Code to submit an Answer within 20 days of

the receipt of that letter by email. The Answer was accordingly required by no later than 1 August 2024. The SFA complied with its obligations. The Club did not.

84. On 6 August 2024, the Club filed its Answer with the CAS.

85. By letter dated 6 August 2024, the Player objected to the late filing of the Club's Answer and requested that, in accordance with Articles R55 and 56 of the Code, the CAS exclude the Answer.

86. The Club filed its Answer five days after the expiration of the time prescribed by Article R55 of the Code. No explanation was proffered for the late filing nor, relevantly, was any application made by the Club pursuant to Article R32 for an extension of time within which to file its Answer on justified grounds prior to the expiration of the time limit prescribed by Article R55 of the Code.

87. In the absence of agreement by the Player to permit the Club's reliance on its late-filed Answer and an application on justifiable grounds having been brought prior to the expiration of the time by which the Answer was to have been filed, the Club's Answer has not been admitted to the case file

X. MERITS

Overview – Issue for Determination

88. Having regard to the *de novo* nature of the appeal, the arguments advanced by the parties and the evidence upon which each relies, these proceedings essentially give rise to the sole question as to the appropriate measure of compensation for the early termination of the Employment Contract.

89. Before embarking upon a consideration of the merits of the appeal, it is necessary to address, briefly, the burden of proof.

The Burden of Proof

90. Both the SFA Statutes and the SFA PSR are silent on the burden of proof.

91. In addressing this issue, the Sole Arbitrator recalls that CAS jurisprudence regarding the burden of proof establishes that:

> "*[I]n 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 (see also article 8 of the Swiss Civil Code, ATF 123 III 60, ATF 130 III 417). 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" (CAS 2009/A/1810 & 1811, para 18; CAS 2020/A/6796, para 98 & CAS 2022/A/8763, para. 114).

Consideration

92. The Employment Contract contains the following relevant terms:

*"**Article 3: The First Party's Obligations**:*

1- Total contract value an amount of 450,000,000 S.P
Divided into:

- *An amount of: (270,000,000 S.P) , before the start of the football season 23-24*

- *An amount of: (6,000,000 S.P) as a Monthly salary to be paid at the end of every month*

2- …

3- Transportation allowances an amount of: 8,000,000 S.P - it is paid at the end of every month at the beginning of the football season until the end of the football season

…

***Article 5: General Rules**:*

…

4- In case the club is late in paying the monthly salary for a period of two months, the player has the right to request termination of the contract through the competent committee according to what is stipulated in the regulations of player's status and transfer.

5- The contract must not be terminated during the sports season unilaterally, both parties can agree to terminate the contract before its expiration by mutual consent."

93. Article 3 of the Syrian version of the Employment Contract also obliges the Club to "*payment of the amount of SP 40,000,000 between the first and second round in the 2023/2024 season*." This payment was due on 18 January 2024 being a date between the first and second rounds in the 2023/2024 season.

94. The SFA PSR contains the following relevant provisions:

"***9. Club obligations**:*

9.1. Pay monthly salary agreed upon in the contract signed between the club and the player.

…

The player has the right to ask the committee to terminate his contract with his club for a reasonable or sporting cause.

15. The expiration of the Player's contract

15.1 The contract expires at the end of its term or by agreement between the club and the player.

15.2 The contract may not be terminated unilaterally during the sports season.

15.3 with an exception to the previous article 15.2, the contract may be terminated by one party before the end of its term without incurring any consequences if there is a reasonable cause or a reasonable sport because determined by the committee.

15.4 …

15.5 Without violating the terms of the contract, the committee has the right to estimate the appropriate compensation for terminating the contract due to an unfair reason, and to impose appropriate sporting penalties.

…

25. The regulations and decisions issued by the association are considered an integral part of these regulations in matters not provided in a text, and that do not conflict with its provisions. The annual circular issued by the committee is considered an integral part of these regulations."

95. The DRC determined, consistent with the terms of the Employment Contract and the SFA PSR, that the Player was entitled to terminate the Employment Contract because the Club was late in paying two months' salary. Neither party has appealed that decision. The issue is the appropriate amount of compensation that should have been awarded for the Club's breach.

96. Article 15 para. 5 of the SFA PSR imposes on the DRC a broad discretion to "*estimate the appropriate compensation for terminating the contract due to an unfair reason*." Whilst the SFA PSR does not prescribe the manner in which that discretion should be exercised, relevant matters that would be appropriate for the DRC to consider, without being exhaustive, include the terms of the contract itself, the principle of contractual stability (enshrined in Article 7 of the SFA Statutes), whether a player has mitigated any loss by, for example, having secured an alternative contract, any contributory conduct by a party and any other facts and circumstances that may reasonably impact upon its determination.

97. The Player contends, in short, that having regard to the Article 5 para.4 of the Employment Contract and the principle of contractual stability, which is recognised by Article 7 para. 1 of the SFA Statutes, compensation for breach of contract should have been awarded by the DRC and, by analogy with FIFA and CAS case law, on the residual value of the Employment Contract. Such compensation is consistent with Article 15 para. 5 of the SFA PSR and would be "*appropriate compensation*" that would give "*due consideration*" to the protection of contractual stability and would ensure, in this case, that the Club did not benefit from its own wrongdoing.

98. The SFA claims that the DRC decision was based on "*the specificity of football and its practice in the Syrian Arab Republic*" due to "*exceptional circumstances*" and in accordance with the regulations in force within the SFA. It submitted that the decision was in accordance with the objective standards in place, especially a "circular" issued by the SFA, which set the maximum limit for monthly wages at SP 6,000,000.

99. The so called "*specificity of football and its practice in the Syrian Arab Republic*", "*exceptional circumstances*" and "*objective standards*" were not identified by the SFA.

100. It further submitted that under Articles 6 and 25 of the SFA PSR, the "circular" is considered a complementary part of the regulations and issued to ensure the protection of clubs and players, especially given the exceptional conditions of football in Syria. It claimed that the maximum wage limit was established after several meetings with clubs and player representatives, culminating in the issuance of the circular under the name of collective agreements among the interested parties. Again, the SFA has provided no objective evidence of any of these matters.

101. Apropos the "circular", the Player submitted that a circular cannot be used to introduce substantial new rules in the SFA rules and regulations. "Circulars" "…*are not regulations in a strict legal sense*" (CAS 2003/O/527 at para. 17) and serve only to interpret and clarify existing rules. The SFA PSR contains no reference to professional players being limited as to what they can earn and would be contrary to the requirements of Article 9 para. 1 of the SFA PSR which stipulates that amongst a club's obligations is to "*pay a monthly salary agreed upon in the contract signed between the club and the player*."

102. The terms of the Employment Contract are very plain. In short, the contract required the Club to pay a total contract sum of SP 450,000,000 which included an advance of SP 270,000,000 and, relevantly, SP 6,000,000 by way of a monthly salary and an additional SP 8,000,000 monthly transportation allowance.

103. The SFA refers to a "circular", the effect of which is to limit monthly wages to SP 6,000,000. The SFA has not produced a copy of the circular to which it refers. If the circular has the effect for which the SFA contends, the Employment Contract is consistent with it as it provides for a maximum monthly salary of SP 6,000,000. Having regard to this conclusion, and in the absence of a copy of the circular being adduced in evidence, the legal impact, if any, of the circular does not arise for consideration.

104. The Player claims that the "*transportation allowance*" of SP 8,000,000 was required to be paid monthly and that it was not conditional upon any further requirements, that is, it was just a monthly payment made to the Player irrespective of any actual transportation expenses.

105. A transportation allowance is, as the term suggests, an allowance to cover the reasonable cost of transport associated with the Player's employment. In the absence of any evidence to suggest that the parties intended to and in fact treated the transportation allowance as, in effect, a salary supplement, the Sole Arbitrator concludes that the Player's entitlement to that allowance ended upon the termination of his employment and is not an amount that is properly recoverable as compensation.

106. Both the Employment Contract and the SFA PSR are silent as to the compensation that is payable in circumstances such as the present where the DRC has determined that the contract had been terminated, in effect, "*due to an unfair reason*" (SFA PSR, Article 15 para 5). It is a matter which the DRC "*has the right to estimate*."

107. By analogy only with Article 17.1 of the FIFA RSTP, the Sole Arbitrator considers that in estimating compensation, regard should be had to "*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."*

108. The Sole Arbitrator notes that the SFA contended that the Player apparently signed a contract with the Al-Fahaheel Sports Club, Kuwait, in January 2024 as is evident by the Player's application for an ITC which the SFA rejected. Due to the SFA rejecting the Player's application for an ITC, the Player could not sign a contract with the Kuwait club nor could he therefore have mitigated his loss.

109. Having regard to Article 5 para. 4 of the Employment Contract and the principle of contractual stability, which is recognised by Article 7 para. 1 of the SFA Statutes, compensation for breach of contract should be based upon the residual value of the Employment Contract but not including the "transportation allowance" which is not payable once the contract is at an end plus a reasonable amount for interest on the amounts that have been outstanding. Again, by analogy only with the practice of the FIFA Football Tribunal, 5% is considered by the Sole Arbitrator as being a reasonable rate of interest.

110. The Player is accordingly entitled to his outstanding salary for October to December 2023 and for January 2024 to May 2024 in the amount of SP 48,000,000 plus 5% interest from the due dates and an additional sum in the amount of SP 40,000,000 that was due on 18 January 2024 plus 5% interest.

Determination

111. The Appeal is accordingly partially upheld.

XI. COSTS

(…).

* * * * * * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. It has jurisdiction to hear the appeal filed by Nasouh Nakdahli on 8 February 2024 against the decision of the Syrian Football Association Dispute Resolution Chamber passed on 15 January 2024.

2. The appeal filed by Nasouh Nakdahli on 8 February 2024 against the decision of the Syrian Football Association Dispute Resolution Chamber passed on 15 January 2024 is partially upheld.

3. The decision rendered by the Syrian Football Association Dispute Resolution Chamber passed on 15 January 2024 is confirmed, with the exception of point 2 of its operative part which is amended as follows:

   "*2. The Club, Alwahda SC, has to pay the Claimant, the following amounts as compensation for breach of contract:*

   - *outstanding salary for October to December 2023 and for January 2024 to May 2024 in the amount of SP 48,000,000 plus 5% interest from the due dates until the date of effective payment; and*

   - *the amount of SP 40,000,000 plus 5% interest as and from 18 January 2024 until the date of effective payment.*

   3. Reject all other claims and relief of the Claimant."

4. (…).

5. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 28 February 2025

THE COURT OF ARBITRATION FOR SPORT

Anthony Lo Surdo SC
Sole Arbitrator