CAS 2022/A/8600 Olympique de Marseille v. Watford Association Football Club Limited & FIFA
CAS 2022/A/8604 Pape Alassane Gueye v. Watford Association Football Club Limited &FIFA
CAS 2022/A/8633 Watford Association Football Club Limited v. Pape Alassane Gueye & Olympique de Marseille

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark
Arbitrators: Mr Andrew de Lotbinière McDougall KC, Solicitor Advocate, Paris, France
Mr Luigi Fumagalli, Professor, Attorney-at-Law, Milan, Italy

in the arbitration between

Olympique de Marseille, France

Represented by Mr Juan de Dios Crespo and Mr Alfonso León, Attorneys-at-Law of Ruiz-Huerta & Crespo in Valencia, Spain

- Appellant in CAS 2022/A/8600
- Respondent in CAS 2022/A/8604 and CAS 2022/A/8633

and

Watford Association Football Club Limited, England

Represented by Mr Alfredo Garzón, Mr Ignacio Triguero and Ms Patricia Galán, Attorneys-at-Law of Senn, Ferrero, Asociados in Madrid, Spain, and by Mr Jean Marguerat, Attorney-at-Law of MLL Meyerlustenberger Lachenal Froriep Ltd in Geneva, Switzerland

- Appellant in CAS 2022/A/8633
- Respondent in CAS 2022/A/8600 and CAS 2022/A/8604

and

Pape Alassane Gueye, Senegal

Represented by Mr Fabrice Robert-Tissot, Attorney-at-Law of Bonnard Lawson in Geneva, Switzerland.

- Appellant in CAS 2022/A/8604
- Respondent in CAS 2022/A/8600 and CAS 2022/A/8633

and

Fédération Internationale de Football Association (FIFA), Zürich, Switzerland
Represented by Mr Carlos Schneider Saladores, Director of Judicial Bodies, and Mr Miguel Liétard Fernández-Palacios, Director of Litigation

- Respondent in CAS 2022/A/8600 and CAS 2022/A/8604

I. THE PARTIES

1. Olympique de Marseille ("Olympique") is a professional French football club affiliated with the French Football Federation (the "FFF"), which in turn is affiliated with the Fédération Internationale de Football Association.

2. Watford Association Football Club ("Watford") is a professional English football club affiliated with the English Football Association (the "FA"), which in turn is affiliated with the Fédération Internationale de Football Association. Watford is currently competing in the Championship, which is the second tier of English football, but in 2020 the club was competing in the Premier League (the "Premier League" or the "PL"), which is the first division.

3. Mr Pape Alassane Gueye (the "Player") is a professional football player born on 24 January 1999 of French and Senegalese nationalities. The Player is currently registered with Olympique, but transferred on loan to the Spanish football club Sevilla FC.

4. The Fédération Internationale de Football Association ("FIFA") is the world governing body of football, whose headquarters are located in Zürich, Switzerland.

II. FACTUAL BACKGROUND

5. The facts set out below are a summary of the main relevant facts as established by the Panel on the basis of the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal (the "FIFA DRC") on 25 November 2021 (the "Appealed Decision") and based on the Parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

6. The Player and the French football club Le Havre had an employment relationship, which commenced in 2017 and was valid until 30 June 2020.

7. In June 2019, the Player was approached by the Italian football Club Udinese Calcio S.p.A. ("Udinese"), and the Player was invited to visit Udinese, where the Player and his advisers had meetings with Mr Cardillo, a football consultant who has rendered services to various professional clubs, including Udinese and Watford. According to the Player, his stay in Udine was organised and paid for by Udinese. According to the Player and Olympique, the said approach was (also) made on behalf of Watford. Both Udinese and Watford are owned by the same family.

8. During his visit to Udinese, the Player underwent a medical examination and by the end of his short stay, according to the Player, he signed an employment contract with Watford drafted in English (the "Alleged Contract"), which Watford denies ever happened. The Player submitted that he never received a copy of the Alleged Contract, despite requesting it.

9. In early January 2020, Watford became interested in a possible transfer of the Player and, on 13 January 2020, a meeting (the "London Meeting") was held in England between Mr Pozzo, who is the owner of Udinese and Watford, Mr Sanogo (the Player's then agent), Mr Baba Dramé, who is an intermediary acting in the interests of Watford, Mr Cardillo and Mr Rutman (Mr Sanogo's lawyer).

10. At this meeting, Mr Dramé signed a representation contract with Watford in this regard (the "Dramé Contract), which contract Watford eventually countersigned on 16 January 2020. The Dramé Contract stated, *inter alia*, as follows:

*"[...] **WHEREAS***

(1) The Club is a professional football club playing in the Premier League (the 'PL') and affiliated to The Football Association ('The FA').

(2) The Intermediary is an Intermediary registered with The FA in accordance with The FA Regulations on Working with Intermediaries in force at the date hereof (the 'Intermediaries Regulations').

(3) Pape Gueye (date of birth 24 January 1999) (the 'Player') is a national of France and is currently registered as a professional football player with AC Le Havre (under a contract expiring on 30 June 2020) (the 'Current Club'), a professional association football club playing in Ligue 2 and affiliated to the French Football Association (the 'FFF').

(4) The Club wishes to utilise the services of the Intermediary in procuring the Player's registration with the Club pursuant to a Standard PL Professional Contract with the Player commencing on 1 July 2020 and expiring on 30 June 2025 (the 'Contract').

(5) The Club and the Intermediary now set out herein the terms upon which they have agreed in respect of the Intermediary's appointment on the Club's behalf.

***IT IS HEREBY AGREED** as follows:*

APPOINTMENT

1. The Club has appointed the Intermediary to provide services on the following terms and the Intermediary has agreed to so act in this matter:

(a) identifying the Player as a player suitable to play for the Club;

(b) providing information about the Player to assist the Club with the recruitment of the Player, including information in respect of his registration, contractual status and availability; and

(c) assisting the Club in its communications with the Current Club to procure the transfer of the Player's registration to the Club on a permanent basis on terms acceptable to the Club and resulting in the Player being registered with the Club under the Contract by the PL and The FA.

(the 'Services').

TERM

2. *The term of this Representation Contract in respect of the provision of the Services shall, subject to clauses 16 to 19 below, be until the Player is registered with the Club under the Contract by the PL and The FA* ***PROVIDED HOWEVER*** *in the event that the Player shall not have become registered with the Club under the Contract by the PL and The FA by the closing of the UK "transfers period" of summer 2020, then this Representation Contact shall automatically be determined and of no effect and no payment or otherwise shall be due to the Intermediary hereunder.*

[...]

REMUNERATION

7. *In consideration for the provision of the Club Services, the Club shall pay to the Intermediary in accordance with the requirements of the Intermediaries Regulations and the terms of this Representation Contract the following sums:*

Invoice Date	***Amount (€)***
Payable within 14 days of acceptance by the FA & PL	*500,000*
30 July 2020	*350,000*
28 February 2021	*300,000*

[...]"

11. On 15 January 2020, a meeting (the "Signing Meeting") was held at the Player's home in Le Havre. The Player, Mr Sanogo, Mr Baba Dramé and Mr Cardillo were all present, while Mr Rutman attended the meeting remotely.

12. During the Signing Meeting, the Player and Watford entered into an employment contract, drafted in English, valid from 1 July 2020 until 30 June 2025 (the "Watford Contract").

13. The Watford Contract provided, *inter alia*, as follows:

WHEREAS

[...]

(D) The Player has signed but not dated four originals of a Standard PL Professional Playing Contract in the form attached at the Schedule hereto (the ***'First Watford Playing Contract'****) and has also agreed to sign but not date a further Standard PL Playing Contract in such updated form as will be issued by the PL prior to 1 July 2020 (the* ***'Second Watford Playing Contract'****) (the First Watford Playing Contract and Second Watford Playing Contract together being the* ***'Watford Playing Contract'****)*

(E) The Player has delivered the First Watford Playing Contract to Watford and will deliver the Second Watford Playing Contract and he has further agreed to authorise Watford to countersign the First or Second Watford Playing Contract (as the case may be) so as to give it legal force and effect, and thereafter, to register him with Watford in accordance with the terms of this Deed

IT IS AGREED AS FOLLOWS*:*

Agreement to enter into the Watford Playing Contract

1. *The Player:*

   a. *Has signed four undated originals of the first Watford Playing Contract (and*

delivered the same to Watford to be held by it in accordance with the terms of this Deed);

b. Hereby undertakes to sign and deliver to Watford (to be held by it in accordance with the terms of this Deed) four further copies of the Second Watford Playing Contract in such updated form as the PL shall issue prior to 1 July 2020;

c. Authorises Watford to countersign these original documents to give the Watford Playing Contract full legal force and effect and thereafter, to register him with Watford with effect from 1 July 2020. It is acknowledged and agreed that unless and until the relevant original Watford Playing Contract is countersigned by Watford such documents are not legally enforceable by the Player.

[…]

6. Following Watford countersigning the Watford Playing Contract to give it legal force and effect it shall register the same with The FA and PL and the parties shall also complete all such other documentation and regulatory forms as required to register the Player with Watford.

[…]

Costs of Watford

*8. In reliance upon the representations and warranties given by the Player hereunder Watford has entered into this Deed and as a result has incurred certain costs and expenses (the **'Watford Costs'**). The Player agrees to indemnify Watford on demand against all liabilities, costs, expenses, damages and losses (including but not Limited to any direct, indirect or consequential losses, loss of profit, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Watford arising out of or In connection with: (a) any breach of the representations and warranties given by the Player hereunder; and/or (b) any claim made against Watford in respect of the Player's registration with Watford*

9. In addition it is agreed that the Player shall be liable to pay to Watford on demand the following sums in the event that the Player does not become registered with Watford in accordance with the terms of this Deed as a result of any breach by the Player of this Deed:

a. a sum equal to the total amount of the Watford Costs; and

b. a sum to compensate Watford for its loss of the opportunity to acquire the Player's registration and/or the costs it shall incur procuring a substitute player and that such compensation shall be calculated by reference to the Player's true transfer market value as at the date of such breach. The Player acknowledges and agrees that for the purposes of this Deed, the Player's true transfer market value shall be calculated by taking into account a number of factors including, but without limitation, the value of any new employment contract with any club which the Player joins Instead of Watford, the Player's age, ability, field position, on-field performance related data, club and international appearance record, honours, and such other factors which Watford deems reasonably relevant to this calculation as at the date of such breach. As at the date of this Deed and based on the above, Watford anticipate that such sum would total £5,000,000 (five million pounds) and that this represents a reasonable and proportionate amount to protect Watford's legitimate interest in acquiring the Player's registration

[..]

Governing Law and Jurisdiction

17. This Deed and any dispute or claim arising out of or in connection with it or its subject

matter or formation shall be governed by and construed in accordance with the regulations of The FA and the PL and the laws of England and Wales.

18. Any and all disputes shall be handled by the competent body of The FA or the PL (as applicable). In the event that The FA or the PL shall have no jurisdiction to hear any dispute arising out of or in connection with this Deed, such dispute shalt be referred to the competent committee of FIFA, with a right of appeal (if so advised) to the Court of Arbitration for Sport ('CAS') in accordance with the Rules of the Code of Sports-related Arbitration of the CAS. The language of any proceedings shall be English."

14. Furthermore, Schedule 2 of the Watford Contract stated, *inter alia*, as follows:

"***8. Remuneration***

The Players remuneration shall be:

8.1. Basic Wage:

£6,950 per week *payable by monthly instalments in arrear from 1 July 2020 to 30 June 2021*

£6,100 *per week payable by monthly instalments in arrear from 1 July 2021 to 30 June 2025. […]*

[…]

10. Benefits (if any) to be provided by the Player during the currency of this contract.

10.1. The Club has agreed to make payments to the Player's Intermediary, Bakari Sanogo (IMSIMS002328), on the Players behalf as follows ("Player intermediary Fees") (as per clause 14.2 below such Player Intermediary Fees shall be deducted directly from the remuneration payable to the Player by the Club):

[…]

14. Any other provisions:

[…]

11.2.[sic] The Player hereby authorises the Club at any time during the term of the Contract, and In any event on termination howsoever arising, to deduct from the remuneration payable to him hereunder any sums due from him to the Club, including without limitation any overpayment, loans or advances made to him by the Club and the Player Intermediary Fees. For the avoidance of doubt, any fines or penalties imposed upon the Player by any football regulatory body by reason of the PIayer's conduct shall be the Piayer's personal responsibility and the Player hereby authorises the Club to deduct any such sums from his salary or any payments due to him from the Club in order to satisfy the same."

15. It is disputed whether the Player was ever informed about the content of the Watford Contract before signing it since the Player does not speak and read English. However, some days before that Signing Meeting, Mr Rutman or Mr Sanogo had received a copy of the draft Watford Contract agreed upon at the London Meeting. On Watford's initiative, the same draft was approved by the Premier League (the "Premier League" or the "PL") and the FA. On the other hand, it is undisputed that the Player did not undergo any medical examination before signing the Watford Contract.

16. Also at the Signing Meeting, the Player signed a tripartite Representation Contract (the "Tripartite Contract"), which had already been signed by Mr Sanogo in England on 13 January 2020 and subsequently by Watford on 16 January 2020. The Tripartite Contract stated, *inter alia*, as follows:

"***[…] WHEREAS***

(1) The Club is a professional football club playing the Premier League (the 'PL') and affiliated to The Football Association ('The FA').

(2) The Player is a national of France and is currently registered as a professional football player with AC Le Havre (under a contract expiring on 30 June 2020), a professional association football club playing in Ligue 2 and affiliated to the French Football Association (the 'FFF").

(3) The Intermediary is an Intermediary registered with the FA in accordance with the FA Regulations on Working with Intermediaries in force at the date hereof (the 'Intermediaries Regulations').

(4) In accordance with the Intermediaries Regulations, the Intermediary is party to a representation contract with the Player whereby the Intermediary represents the Player in the negotiation of his professional playing contracts (the 'Player Representation Contract'). The Intermediary has lodged a copy of the Player Representation Contract with the FA.

(5) The Club is interested in acquiring the Player's permanent registration under the terms of a Standard PL Professional Playing Contract commencing on 1 July 2020 and expiring on 30 June 2025 ('the Contract').

(6) In accordance with the Intermediaries Regulations, the Club wishes to utilise the services of the Intermediary in procuring the registration of the Player with the Club under the Contract.

(7) The Player has provided his full and informed consent to the Intermediary acting on behalf of both the Club and the Player in the registration of the Player with the Club under the Contract and to the Intermediary receiving a fee in connection therewith.

(8) The Club and the Intermediary now set out herein the terms upon which they have agreed in respect of the Intermediary's appointment on the Club's behalf. The Player has been afforded the opportunity to take independent legal advice or advice from the PFA with regard to the Intermediary's appointment on the Club's behalf on the terms set out herein and he has provided his full and informed consent in the form set out at Appendix 1 to this Representation Contract including but without limitation he has approved the fee to be paid to the Intermediary by the Club.

(9) The Intermediary and the Player have also agreed that the terms of the Player Representation Contract shall be amended to take account of the fact that the Intermediary is representing both the Player and the Club in respect of the transaction set out herein.

IT IS HEREBY AGREED *as follows:*

APPOINTMENT

1. The Club hereby appoints the Intermediary to provide services on the following terms and the Intermediary has agreed to so act in this matter:

(a) advising the Club on negotiation strategy with regard to the Contract;

(b) acting as an intermediary for the Club in any communications with the Player regarding the Contract, including the communication of the Club's proposed terms;

(c) assisting the Club in reaching an agreement with the Player to accept the Club's proposed contractual terms instead of pursuing any other options available to him;

(d) concluding the terms of the Contract so that the Player may be registered with the Club under the Contract by The FA and the PL and the Intermediary has agreed to so act in this matter; and

((a)-(e) above being the 'Club Services')

(e) the Club also wishes that the Intermediary works to encourage a future stable relationship between the Club and the Player during the term of the Contract for the benefit of the Club and the Player as further set out in clause 13 below (the 'Further Services').

It is acknowledged and agreed that the Intermediary shall also provide services to the Player under the Player Registration Contract in connection with the negotiation of the Contract with the Club (the 'Player Services').

(The Club Services, the Further Services and the Player Services shall together be known as the 'Services'.)

TERM

2. The term of this Representation Contract shall, subject always to clauses 19 to 19 below, be as follows:

(a) In respect of the provision of the Club Services only, the term of this Representation Contract shall be until the Player is registered with the Club under the Contract by the PL and The FA PROVIED HOWEVER in the event that the Player shall not become registered by the closing of the UK "transfer period" of summer 2020, then this Representation Contract shall automatically be determined and of no effect and no payment or otherwise shall be due to the Intermediary hereunder;

[…]

REMUNERATION

The Club Services

6. In consideration for the provision of the Club Services, the Club shall pay to the Intermediary in accordance with the requirements of the Intermediaries Regulations and the terms of this Representation Contract (including but without limitation clause 8 below) the following sums:

Invoice Date	***Amount (£)***
30 September 2020	*4,075.50*
28 February 2021	*4,075.50*
30 September 2021	*4,075.50*
28 February 2022	*4,075.50*
30 September 2022	*4,075.50*
28 February 2023	*4,075.50*
30 September 2023	*4,075.50*
28 February 2024	*4,075.50*
30 September 2024	*4,075.50*
28 February 2025	*4,075.50*

The Player Services

7. The Player and the Intermediary hereby agree that the existing remuneration clause in the Player Representation Contract shall not apply and in consideration for the provision of the Player Services by the Intermediary to the Player, the Intermediary shall be paid, in

accordance with the requirements of the Intermediaries Regulations and the terms of his Representation Contract (including but without limitation clause 8 below) the following sums:

Invoice Date	***Amount (£)***
30 September 2020	*4,075.50*
28 February 2021	*4,075.50*
30 September 2021	*4,075.50*
28 February 2022	*4,075.50*
30 September 2022	*4,075.50*
28 February 2023	*4,075.50*
30 September 2023	*4,075.50*
28 February 2024	*4,075.50*
30 September 2024	*4,075.50*
28 February 2025	*4,075.50*

The Player hereby authorises the Club at any time during the term of the Contract, to deduct from the remuneration payable to him under the Contract, the fees set out above for payment on to the Intermediary.

[…]

8. Any payments due to the Intermediary from the Club under clauses 6 and 7 above shall be conditional in all cases upon the Player remaining registered with and eligible to play for the Club under the Contract on each relevant due date for payment.

[…]

CONFLICTS OF INTEREST

17. The Intermediary undertakes and warrants to the Club and the Player that prior to performing the Services, and at all times whilst performing the Services, it has fully discharged, and shall at all times continue to discharge, all of its duties under the laws of England and Wales and the rules and regulations of The FA to the Player as required in the performance of the Player Services. […]"

17. On 16 January 2020, Watford lodged signed copies of the Watford Contract with the Premier League and the FA.

18. On 25 April 2020, and after the Player's receipt of a French translation of the Watford Contract, the Player's new lawyer, Mr Bovis, informed Watford about the Player's intention to renegotiate or terminate it. Mr Bovis took issue with the way in which the negotiations were carried out.

"I am the lawyer for Mr. Pape GUEYE, soccer player in Le HAVRE, AC. To my knowledge. You already met with Mr. Bakary SANOGO who represented Mr. GUEYE until last week. Despite the fact that Mr. SANOGO acted without any official mandate he made Mr. GUEYE sign a litigious employment contract with WATFORD the 15th January, 2020.
I am writing you Today to draw your attention on the lack of contractual information in the hands of Mr. GUEYE when he signed this disputed contract. Indeed, he only get an English version although he does not understand this language. Mr. SANOGO sent him a French version a week ago.
This is the reason why Mr. GUEYE asked me to help him as some elements appeared on a very different way from what people explained him at the time of signature…

Moreover, this contract was signed the 15th January, 2020. We can estimate that Mr. GUEYE was free to sign an employment contract at that time as his current contract with le Havre will be ending 30th June, 2020. However negotiations between Mr GUEYE and WATFORD apparently occurred during summer 2019 without Le HAVRE knowledge (according my sources). Besides, it seems that Mr. GUEYE would have performed some medical tests and that he would have signed a pre-contract at this period.
In any case, my client would like to renegotiate or to breach this litigious contract. At least, he no longer wishes to be bound with WATFORD at the conditions written in this agreement. I obviously tried several times to call Mr. SANOGO without any success to understand what it was happened.
For your information, Mr. GUEYE assigned me to bring this case before the federation/a court if we do not manage together to quickly change that situation."

19. On 28 April 2020, Watford informed the Player's agent in the following terms that the Watford Contract was legally binding as it had been signed by the Player following substantive negotiations:

"[…]As requested, I confirm that the Club's position is as follows:
1. The Agreement is not 'litigious'; indeed it was agreed and signed by the Player, following substantive negotiations, less than 4 months ago (when he was 20 years of age);
2. The player was enthusiastic to sign the Agreement and understood its terms. Indeed, he specifically warrants to the Club within the Agreement that: (i) he was given the opportunity to take legal advice concerning its contents (clause 7.5 (h)); and (ii) that he fully understood and was agreeable to its terms (clause 7.5 (i));
*3. The Club's dealings with Le Havre AC ("**Le Havre**") have no relevance to the enforceability of the Agreement but in any event, the Club is comfortable that we have acted entirely appropriately in relation to the same. Notwithstanding this we feel it is important to note that:*
*3.1 The Agreement was signed on 15 January 2020. This date falls within the last 6 months of the Player's current contract with Le Havre meaning that, as you point out in your email, both parties were free to do so in accordance with Article 18(3) of the FIFA Regulations on the Status and Transfer of Players (the "**RSTP**");*
3.2 We had, prior to the commencement of the six month period that is relevant for the purposes of the RSTP, entered into negotiations with Le Havre regarding the transfer of the Player, but had been unable to reach an agreement with them. There can therefore be no suggestion that they had no knowledge of the Club's contact with the Player;
*3.3 Furthermore the Agreement was, prior to signature and in accordance with their rules, approved by both The Football Association ("**The FA**") and the Premier League (the "**PL**") and following that approval, signed copies have been deposited with and accepted by, both bodies.*
In the light of the above and as previously stated, the Club is entirely satisfied that the Agreement is legally binding and in no way "litigious" (as you state within your email) moreover, it has, as above, been lodged with The FA and the PL and as such, the Player is a Watford player (and obliged to join the Club on 1 July 2020). That said, we are of course happy to meet you and the Player in person to discuss any elements of the Agreement and/or the wider project that the Player and the Club are about to embark on (including the Player's economic future over the course of that project)."

20. On 29 April 2020, Watford issued an official announcement that the Player had been signed and would become a Watford player as of 1 July 2020.

21. On 30 April 2020, Mr Bovis made a public statement on social media expressing doubt as to the validity of the Watford Contract, which public statement Watford commented on by letter of 2 May 2020 to Mr Bovis.

22. On 13 May 2020, Mr Bovis answered Watford, informing it, *inter alia*, that he had been mandated by the Player as the Player no longer wished to be bound to Watford and would like to stay in France.

23. By letter of 18 May 2020 (the "Termination Letter"), the Player allegedly terminated or rescinded the Watford Contract. However, according to Watford, at least at that time, the alleged termination was never valid and the Watford Contract continued to be in force. The Termination Letter, drafted in French, stated as follows (free translation):

> "*OBJECT: PLAIN AND SIMPLE TERMINATION WITH IMMEDIATE EFFECT OF THE AGREEMENT SIGNED ON 15 JANUARY 2020*
>
> *l hereby thank you for taking into consideration the* ***termination of the agreement*** *signed with the club WATFORD FC on January 15, 2020which copy is attached to this mail.*
>
> *As a matter of fact, I do not wish to come to England and in accordance with articles 14 et seq. of the Regulations on the Status and Transfer of Players, thank you for considering the termination of the said agreement* <u>*with immediate effect*</u>.
>
> *In addition, I was available since 1 January. My transfer from LE HAVRE AC to WATFORD FC would have been made for the sum of O euros. Moreover, I am under contract with the club LE HAVRE AC until 30 June 2020. As a result, the employment contract with WATFORD FC* ***has not taken effect to date****. Since no salary and bonus have been duly paid to me, it prevents the club from economic loss. This termination occurs sufficiently in advance to allow you to proceed to a new recruitment and not to penalize you on a sporting level.*
>
> *Ultimately, l would be grateful if you could take all the necessary adequate and compulsory steps with the Premier League as well as the Football Association to acknowledge my termination of the agreement signed on 15 January 2020 and to release me from any contractual obligation without limitation.*
>
> *l inform you that this letter has immediate and absolute effect, and as from today, I am looking for a new employer for the season to come."*

24. Also on 18 May 2020, the Player and the French football club SCO Angers ("Angers") signed a pre-agreement (the "Pre-Contract") to sign an employment contract by the end of the Player's then current contract with Le Havre.

25. On 20 May 2020, Watford contested the Player's termination of the Watford Contract and urged the Player to fulfil his contractual obligations. As a result, in the following days several letters were exchanged between Watford and the Player.

26. By letter of 2 June 2020, in reaction to press articles mentioning Olympique's supposed interest in the Player and an attempt by the club to recruit him, Watford wrote to Olympique, informing the latter about the Watford Contract. Olympique never replied to this letter.

27. Also on 2 June 2020, Watford informed Angers and the English club Arsenal FC ("Arsenal") about its contractual relationship with the Player.

28. On 3 June 2020, Watford sent a new letter to the Player informing him, *inter alia*, that the Watford Contract was still in force.

29. On 9 June 2020, Watford requested information from the Player relating to his flight to England.

30. On 14 June 2020, the Player made a public statement to a French sports newspaper, stating that he was no longer contractually bound to Watford.

31. By letter of 16 June 2020, Watford again informed Olympique of its view on the situation and informed Olympique, *inter alia*, as follows:

   "*[…] In the circumstances, WFC hereby informs Olympique de Marseille of the following:*
   1. *The Player is legally bound to WFC in accordance with the terms of the Agreement (freely and legally agreed between the Player and the Club) and the applicable laws and regulations.*
   2. *Therefore, WFC will initiate legal actions against any third club and any other person acting in a manner designed to induce a breach of contract between the Player and WFC.*
   3. *In addition, please note that in such a scenario WFC will claim:*
      - *(i) Damages and loss of profit arising from the inducement of breach of contract and/or from the breach of contract itself, plus any other cost in which WFC might have incurred.*
      - *(ii) The imposition of sporting sanctions on the Player and any club found to be inducing a breach of contract.*
      - *(iii) Any other remedies to which WFC may be legally entitled.*
   4. *This I communicated with absolute clarity to Olympique de Marseille for appropriate legal purposes[…].*"

32. Furthermore, on 16 and 24 June 2020, Watford again contacted the Player, requesting him to confirm whether he would be in a position to go to England on 1 July 2020, based on which the Player replied, *inter alia*, as follows:

   "*Hi, please send me a copy of my Premier League-registered employment contract, I never got a copy of that contract and you never sent it to me*."

33. Also on 16 June 2020, Watford requested the FIFA TMS to "*validate the FIFA TMS instruction for the transfer of [the Player] with effect from 1 July 2020*".

34. On 17 June 2020, FIFA TMS Helpdesk informed Watford as follows:
   "*Thank you for your email.*
   Given the information provided, it seems that the matter presented is not within the competence of TMS.

Any potential claim for breach of contract would be of competence of the DRC. Therefore, and in case you deem it appropriate, we kindly invite you to lodge a claim before said body."

35. It is undisputed that the Player was never duly registered with Watford in the FIFA TMS or as a Player for Watford with the English Premier League (the "Premier League" or "PL") or the English Football Association (the "FA").

36. Also on 17 June 2020, Mr Mialhe, the then Secretary General of Olympique, contacted Mr Bovis. According to Olympique and the Player, that was the first time a representative of Olympique ever contacted the Player's side.

37. On 19 June 2020, a meeting between Olympique and Mr Bovis took place at the club's headquarters, during which meeting, according to Olympique, it was informed that the Player was a free agent.

38. On 29 June 2020, the Player and Angers annulled their Pre-Contract signed on 18 May 2020.

39. On 30 June 2020, an offer was forwarded from Olympique to the Player. Later the same day, the Player and Olympique signed an employment contract valid from 1 July 2020 until 30 June 2024 (the "Olympique Contract").

40. Annex 2-VI of Olympique Contract sets out, *inter alia*, the Player's remuneration as follows:

    (a) Monthly salary for the season 2020/2021= EUR 50,000 gross;

    (b) Monthly salary for the season 2021/2022= EUR 50,000 gross;

    (c) Monthly salary for the season 2022/2023= EUR 60,000 gross;

    (d) Monthly salary for the season 2023/2024= EUR 60,000 gross;

    (e) Monthly accommodation costs: EUR 2,500 gross.

41. On 1 July 2020, Watford submitted the Watford Contract for registration to the Premier League, which replied *inter alia*, that "*Registration of the Player with the Club is now subject to receipt of the relevant international transfer certificate.*"

42. Also on 1 July 2020, Watford wrote to the Player confirming, *inter alia*, that the Watford Contract had been registered and requested him to provide the information required by Watford to complete the administrative process to enable the FA to request the release of the Player's ITC from the FFF.

43. By letter of 14 July 2020, Watford wrote to Olympique, *inter alia*, as follows:

"We hereby write to you for and on behalf of our client, the English football club WATFORD FOOTBALL CLUB (hereinafter, "WFC" or the "Client", indistinctively) following our Client's last correspondence dated 2 and 16 June 2020 concerning WFC's employee, the player Mr. Pape

Gueye (hereinafter, "Mr. Gueye" or the "Player", indistinctively). For ease of reference, we will adopt the same definitions used in the previous letters sent by our Client to Olympique de Marseille.

I.- As has been consistently sustained by our Client, Mr. Gueye and WFC concluded a valid and legally binding Agreement whereby, in essence, the Player agreed and accepted to be registered with WFC and WFC agreed and accepted to acquire the Player's registration on a permanent basis, upon the expiry of Mr. Gueye's contract with Le Have (i.e. not later than 30 June 2020). In such consideration, the Player and WFC freely agreed to the terms and conditions of their employment relationship which would come into full effect on 1 July 2020, as has certainly occurred.

Accordingly, as of 1 July 2020, it is undisputable that Mr. Gueye is contractually bound to and employed as a professional football player by WFC for the subsequent five (5) seasons (2020/21, 2021/22, 2022/23, 2023/24 and 2024/25).

II.- Notwithstanding the above and despite the clarity and unequivocal content of our Client's formal correspondence, it appears that Olympique de Marseille would have also concluded an employment contract with the Player, presumably covering the same period.

In this context, considering that: (a) the Player is still legally bound to WFC by virtue of a freely and valid employment contract agreed in accordance with the applicable laws and regulations; and (b) that such employment relationship arises from a contract that <u>precedes</u> and prevails over any contractual arrangement with Olympique de Marseille, <u>we hereby formally request Olympique de Marseille</u> to respect the contractual agreements between Mr. Gueye and WFC and therefore immediately and without delay cease any relationship with the Player (if any).

Should Olympique de Marseille <u>not</u> comply with the foregoing formal instruction on or before 16 July 2020 at 12:00 h CEST and/or confirms its position regarding the Player:

1. This will <u>confirm the contractual relationship</u> between Olympique de Marseille and Mr. Gueye; and

2. <u>WFC will only then accept the Player's breach of contract,</u> and therefore will have no other option than to initiate legal actions against Mr. Gueye and Olympique de Marseille.

III.- In such scenario, whilst (a) the Player would be responsible for the unilateral and without just cause termination of his employment relationship with WFC; and (b) Olympique de Marseille would be jointly and severally liable and equally responsible for inducing Mr. Gueye to such termination, <u>we hereby warn you that WFC will not hesitate to claim:</u>

1. The payment of a compensation for breach of contract in accordance with Article 17 of the FIFA Regulations on the Status and Transfer of Players (the "RSTP"), for which Olympique de Marseille shall be jointly and severally liable;

2. Damages, consequential loss and loss of profit resulting from the breach of contract plus any other costs in which our Client might have incurred;

3. The imposition of sporting sanctions on the Player (minimum 4-month restriction on playing in official matches) and Olympique de Marseille (ban on registration for 2 entire and consecutive registration periods); and

4. Any other remedies to which WFC may be legally entitled (i.e. loss in sporting image).

<u>This is, once again, communicated with absolute clarity to Olympique de Marseille for appropriate legal purposes. […]</u>"

44. On 16 July 2020, the Player replied to Watford, *inter alia*, confirming that he "*signed a valid employment contract with [Olympique]* "

45. By letter of 17 July 2020, Olympique replied to Watford, stating, *inter alia*, that "*Mr Pape Gueye has informed us that he is not validly linked to Watford Football Club in particular due to the circumstances surrounding the conclusion of the [Watford Contract]*".

46. By letters of 21 August 2020, Watford communicated to the Player and Olympique that following the Player's confirmation in his letter dated 16 July 2020 of the commencement of his contractual relationship with Olympique, the employment relationship had been unlawfully terminated on that date. As a result, the Player and Olympique were formally requested to disclose a copy of their employment contract.

47. On 28 August 2020, Olympique informed Watford that since they had committed no violation, Olympique had no reason to disclose any contract concluded with the Player.

III. Proceedings before the FIFA Dispute Resolution Chamber

48. On 7 January 2021, Watford lodged a claim before FIFA against the Player and Olympique for compensation, alleging unilateral and premature termination of the Watford Contract without just cause by the Player and inducement of the said termination by Olympique.

49. On 25 November 2021, the FIFA DRC rendered the Appealed Decision and decided that:

"*1. The claim of [Watford] is admissible.*
2. The claim of [Watford] is partially accepted.
3. [The Player] has to pay to [Watford], within 30 days as from the date of notification of this decision compensation for breach of contract without just cause in the amount of GBP 2,307,875 plus 5% interestp.a.as from 7 January 2021 until the date of effective payment.
4. [Olympique] is jointly and severally liable for the payment of the aforementioned compensation.
5. Any further claims of [Watford] are rejected.
6. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.
7. [The Player] and [Olympique] shall provide evidence of payment of the due amount in accordance with point 3. to FIFA to the email address psdfifa@fifa.org, duly translated into one of the official FIFA languages (English, French, German, Spanish).
8. If the aforementioned sum plus interest is not paid within the above-mentioned time limit, the present matter shall be submitted, upon request, to FIFA Disciplinary Committee for its consideration and a formal decision.
9. A restriction of four months on his eligibility to play in official matches is imposed on [the Player]. This sanction applies with immediate effect as of the date of

notification of the present decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs.

10. *[Olympique] shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.*
11. *This decision is rendered without costs.*"

50. On 13 January 2022, the grounds of the Appealed Decision were notified to the Parties.

51. The FIFA DRC initially analysed whether it was competent to deal with the case and found that the October 2021 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules") was applicable.

52. The FIFA DRC further observed that, in accordance with Article 23 (1), as read with Article 22 (1)(b), of the FIFA RSTP (August 2021 edition), it was in principle competent to deal with the matter at stake, which concerned an employment-related dispute of an international dimension.

53. However, the FIFA DRC acknowledged that both Olympique and the Player contested the competence of FIFA's deciding bodies on the basis of Clause 18 of the Watford Contract.

54. In that regard, the FIFA DRC emphasised that in accordance with Article 22 (b) of the FIFA RSTP, it is competent to deal with a matter such as the one at hand unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the Association and/or collective bargaining agreement.

55. The FIFA DRC then recalled that in order for an arbitral body at national level to have jurisdiction, a specific and exclusive arbitration clause in favour of a specific National Dispute Resolution Chamber (NDRC) must be provided for in the contract.

56. The FIFA DRC then stressed that the arbitration clause adopted in the Watford Contract does not specify which arbitral body is competent in this specific case, but rather only refers to the *"competent body of the FA or the PL"*. Therefore, the arbitration clause does meet the requirements as stipulated in Article 22 (b) of the FIFA RSTP.

57. In view of the above, the FIFA DRC established that the objections to the competence of FIFA to deal with the matter at hand had to be rejected and that the FIFA DRC, on the basis of Article 22 (b) of the FIFA RSTP, was competent to consider the matter as to substance.

58. Having established its competence to deal with the matter, the FIFA DRC concluded that

since the claim was filed on 7 January 2021, the October 2020 edition of the FIFA RSTP is applicable to the matter at hand.

59. Moreover, and with reference to the Procedural Rules, the FIFA DRC recalled the basic principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact carries the respective burden of proof.

60. The FIFA DRC then recalled the facts of the case and took into account that the Player and Olympique maintained, *inter alia*, that the Watford Contract was not binding on the Player since it was, *inter alia*, signed by fraud and in error due to the inducement of Mr Sanogo, which, *inter alia*, assured the Player that the financial conditions of the Watford Contract were identical to those allegedly negotiated previously in the summer of 2019 when he allegedly signed a first employment contract with Watford.

61. However, the FIFA DRC decided that both the Player and Olympique failed to provide sufficient proof that the Player and Watford entered into a first employment contract (or pre-contract) in the summer of 2019 or that the Watford Contract was concluded in fundamental error or by fraud.

62. In light of the above, the FIFA DRC held that the Watford Contract was a binding employment contract fully valid and enforceable. Hence, the FIFA DRC decided that the Player terminated the Watford Contract on 18 May 2020 without just cause.

63. With regard to the consequences of such termination, the FIFA DRC took into consideration Article 17 (1) of the FIFA RSTP since the Player was liable to pay compensation to Watford for breach of contract, and with regard to the calculation of the amount of compensation for breach of contract, the FIFA DRC summed up that, in accordance with the said article, the amount of compensation must be calculated, in particular and unless otherwise provided for in the contract a issue, with due consideration for the law of the country concerned, the specificity of sport and any other objective criteria, including, in particular, the remuneration and other benefits due to the player under the existing and/or new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within a protected period.

64. In that regard, the FIFA DRC noted that Clause 9 of the Watford Contract stated, *inter alia*, as follows: *"(...) Watford anticipate that [its damages in case of the Player would breach the Watford Contract] would total £ 5,000,000 (five million pounds) and that this represents a reasonable and proportionate amount to protect Watford's legitimate interest in acquiring the Player's registration"*.

65. After analysing the content of the aforementioned clause, the FIFA DRC concluded that it did not fulfil the criteria of reciprocity, proportionality and balance under the given circumstances and irrespective of the legal nature of Clause 9, and the FIFA DRC decided, accordingly, that the amount of compensation provided therein was disproportionate.

66. In addition, the FIFA DRC decided to reject the claim of Watford related to the scouting and monitoring of the Player and the intermediary costs.

67. The FIFA DRC then proceeded to determine the proportionate amount of compensation payable to Watford in accordance with Article 17 (1) of the FIFA RSTP emphasising that the relevant compensation should be calculated based on the average fixed remuneration agreed by the Player with his former club and his new club while considering the period of time remaining on the contract signed between the Player and the former club.

68. As a result, the FIFA DRC found that in accordance with Article 17 (1) of the FIFA RSTP, the Player is liable to pay compensation to Watford in the amount of GBP 2,307,875 (i.e. GBP 1,637,150 + GBP 2,978,600 / 2), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter. The FIFA DRC further found that Olympique is jointly and severally liable for payment of compensation, which is independent of the question of whether the new club has induced the contractual breach or not.

69. Also, and taking into consideration Watford's request as well as its constant practice, the FIFA DRC decided to award Watford interest at the rate of 5% p.a. on the said compensation as from the date of the claim (i.e. 7 January 2021) until the date of effective payment.

70. The FIFA DRC then proceeded to determine if sporting sanctions should be imposed on the Player in accordance with Article 17 (3) of the FIFA RSTP, which stipulates that sporting sanctions must be imposed on any player found to be in breach of contract during the protected period.

71. In this regard, the FIFA DRC noted that an employment contract is binding on the parties as of its signature even if the start of its execution would be at a later stage, i.e. irrespective of whether the breach occurred before or after its start of execution. Hence, the FIFA DRC concluded that the Player's termination of the Watford Contract had occurred within the protected period.

72. The FIFA DRC then recalled that the imposition of sporting sanctions is, despite the wording of Article 17 (3) of the FIFA RSTP, not an obligation, but a serious and sensitive matter subject to the FIFA DRC's discretion based on a careful examination of all the circumstances and facts of the matter.

73. In this regard, the FIFA DRC emphasised that parties who simply refuse to honour a contract purposely and without a valid reason need to be held accountable, regardless of whether the Player was following advice from his representatives or not.

74. Consequently, the FIFA DRC decided to impose sporting sanctions on the Player comprising a restriction of four months on his eligibility to participate in official matches.

75. Moreover, the FIFA DRC analysed whether the new club, Olympique, could be considered to have induced the Player to unilaterally terminate the contract with Watford without just cause during the protected period and, therefore, should be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods in accordance with Article 17 (4) of the FIFA RSTP.

76. The FIFA DRC recalled that it must be presumed, unless established to the contrary, that any club signing a professional player who has terminated his previous contract without just cause has induced that professional to commit a breach.

77. Taking into consideration the evidence submitted by Olympique in order to reverse the presumption contained in Article 17 (4) of the FIFA RSTP, the FIFA DRC decided that Olympique was not able to reverse the presumption and thus should be deemed to have induced the Player to terminate the Watford Contract and banned Olympique from registering any new players, either nationally or internationally, for two entire and consecutive registration periods following the Appealed Decision.

IV. THE ARBITRAL PROCEEDINGS BEFORE THE CAS

78. On 14 January 2022, the Player filed with CAS an urgent application for the stay of the execution of the disciplinary sanction imposed on the Player as per the Appealed Decision in accordance with Article R37 of the Code of Sports-related Arbitration (the "CAS Code").

79. On 17 January 2022, an Order on Request for Provisional Measures was issued by the Deputy President of the Appeals Arbitration Division of the CAS (the "First Order") as follows:

"*1. The application for a stay filed by Mr Pape Alassane Gueye on 14 January 2022 in the matter CAS 2022/A/8604 Pape Alassane Gueye v. Watford Association Football Club Limited and FIFA is granted.*

2. The suspension of 4 months on Mr Pape Alassane Gueye's eligibility to play in official matches imposed by FIFA is stayed.

3. The costs deriving from the present Order will be determined in the final award or in any other final disposition of this arbitration."

80. On 2 February and 3 February 2022, Olympique, Watford and the Player filed their respective Statements of Appeal in accordance with Articles R47 and R48 of the CAS Code against the Appealed Decision, and subsequently the three parties filed their respective Appeal Briefs.

81. By letter of 11 February 2022 from the CAS Court Office and in light of the Parties' agreement, the Parties were informed that the three procedures were consolidated.

82. On 22 March 2022, and in accordance with Article R54 of the CAS Code, the Parties

were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark (President of the Panel); Mr Andrew de Lotbinière McDougall KC, Solicitor Advocate, Paris, France; and Mr Luigi Fumagalli, Professor, Attorney-at-Law, Milan, Italy.

83. By letter of 21 April 2022 to the CAS Court Office, Olympique wrote, *inter alia*, as follows:

"*Reference is made to the above captioned consolidated arbitrations and Olympique de Marseille's ("OM") request for the bifurcation of the proceedings on the transfer ban imposed on it in the Decision under Appeal, so that the Panel can decide this issue by partial award in accordance with Article 188 of the Swiss Private International Law Act.*

In light of the extensions granted to the Parties to file their respective Answers until Monday 16 May 2022, and given the extremely low probability to have a hearing and a final award on the merits before the start of the next transfer window, i.e. 1 July 2022, OM respectfully reiterates its request to bifurcate the proceedings on the issue of its transfer ban and that the latter be decided by partial award before 1 July 2022.

As presented in OM's Appeal Brief, the issue of OM's transfer ban only concerns OM and FIFA.

[…]

In the event the Panel would not wish or is not in a position to hold a hearing and issue a partial award on the transfer ban in June 2022, OM would have to file a request for provisional measures requesting the stay on the transfer ban pending the resolution of the dispute. Given the recently agreed extensions, such request could be filed within a brief time limit, so that FIFA could respond in its answer on the merits."

84. On 25 April 2022, Watford objected to Olympique's request for bifurcation and requested the Panel, *inter alia*, to reject such a request, while the Player stated that he had no objection to the request.

85. By letter of 27 April 2022, Olympique replied to Watford's objection and maintained its request.

86. On the same date, the Parties were informed that the Panel had rejected the request to bifurcate these proceedings and that the reason for this decision would be included in the present award. Moreover, the Parties were informed that the Panel considered it necessary to hold a hearing in this case.

87. The Panel in this regard found it was not possible to decide on the matter of the transfer ban without deciding on the issue of the alleged breach of contract by the Player. For example, should the Panel have found that Olympique should be considered as having induced the Player to terminate/rescind his contract with Watford, a transfer ban would only have to be imposed on Olympique if such termination/rescission happened without just cause and within the protected period. As such, the Panel would still have to deal with the issue of the employment relationship between Watford and the Club.

88. On 15 May 2022, Olympique filed a Request for Provisional Measures requesting the stay of point 10 of the operative part of the Appealed Decision to ensure that the transfer

ban ordered against Olympique in the Appealed Decision be stayed.

89. By letter of 16 May 2022 from the CAS Court Office, Watford, the Player and FIFA were invited to file their positions on Olympique's application.

90. By letter of 23 May 2022, FIFA stated, *inter alia*, as follows:

"*Without accepting the arguments put forth by Olympique de Marseille in its Request, FIFA does not object to it, based on the following considerations:*
- *It is undisputed that Olympique de Marseille's sanction is dependent on the finding that Mr Gueye has breached his contract with Watford FC without just cause. However, the issue of the termination of the contract will only be dealt with at a later stage of the proceedings, and even a prima face assessment at this stage could prejudge the matter.*
- *The suspension imposed on the player in the Appealed Decision has also been stayed without objection from FIFA, and granting such effect to Olympique de Marseille's sanction would be the more consistent approach ensuring the equal treatment of both Olympique de Marseille and Mr Gueye.*
- *Olympique de Marseille has indisputably and from the very beginning of this arbitration attempted to obtain a decision on the sporting sanction prior to the summer transfer window, and FIFA has done its best to allow this. However, this has simply not been possible.*

Finally, and for the sake of completeness, the fact that FIFA does not object to Olympique de Marseille's Request shall not be construed as an acceptance of Olympique de Marseille's position in either its Request or its Appeal Brief. FIFA remains fully convinced that the Appealed Decision was rightfully taken and shall be confirmed, as will be set out in detail in our Answer."

91. Moreover, the Player and Watford also informed the CAS Court Office that they did not object to the request filed by Olympique.

92. On 30 May 2022, another Order on Request for Provisional Measures, this time issued by the Panel (the "Second Order"), ruled as follows:

"1. The Request for Provisional Measures filed by Olympique de Marseille on 15 May 2022 regarding point 10 of the operative part of the Appealed Decision is granted.
2. The ban on Olympique de Marseille from registering any new players, either nationally or internationally, for the next two entire and consecutive registration periods imposed by FIFA is stayed.
3. The costs of the present Order shall be determined in the final award or in any other final disposition of this arbitration."

93. On 3 June, 10 June and 20 June 2020, Olympique, FIFA, the Player and Watford filed their respective Answers, which included various procedural issues and requests.

94. As a result, on 24 August 2022, the CAS Court Office, writing on behalf of the Panel, informed the Parties, *inter alia*, of the following:

1. <u>Requests for documents:</u>

In its Appeal Brief (para 274) and in its Answer (para 132), Olympique de MarseilIe ("OM") requested the Panel to order Watford and/or FIFA to produce the following:

1) The original Watford Contract.

2) A copy of the results of the medical tests conducted by Watford on the Player in Udine in June 2019.

3) A copy of the results of the medical tests conducted by Watford on the Player in January 2020.

In his Appeal Brief (para 266), Mr Pape Alassane Gueye (the "Player") requested the Panel to order Watford to produce the following:

4) A copy of the employment contract and/or of any other agreement and/or deed entered into between Watford and the Player in June 2019.

5) A copy of the results of the medical tests conducted by Watford on the Player in Udine in June 2019 (the same as in point 2 above).

Finally, in its Appeal Brief (para 213), Watford requested the Panel to order OM and/or the Player to produce the following:

6) Employment agreement and any other private contract or precontract entered by and between the Player and OM.

7) Copy of the contracts entered by OM with any intermediaries promoting or intervening in the hiring of the Player.

8) Copy of the Player's registration with the FFF as OM's Player.

With regard to point 1, above, the Panel notes that it seems that a copy of the requested original Watford Contract is now on file as FIFA exhibit 2. In that sense, OM is invited to confirm, ***by 31 August 2022****, that the document presented by FIFA as exhibit 2 satisfies its request for production of the original Watford Contract.*

With regard to points 2, 3 and 5, above, Watford submits, in para 168 of its Answer, that neither of the requested documents are in its possession "because none exists".

However, the Panel notes that, apparently, some tests were in fact conducted in Udine in June 2019, even if they were conducted by or on behalf of Udinese.

In that sense, the Panel invites Watford to confirm its allegation, mentioned above, by ***31 August 2022****.*

With regard to point 4, above, the Panel notes that Watford submits, in para 102.7 of its Answer that "The so-called First Contract never existed".

In that sense, the Panel invites Watford to confirm its allegation, mentioned above, by 31 ***August 2022.***

With regard to points 6, 7 and 8, above, the Player and OM are invited to provide their comments to Watford's request for production of documents by ***31 August 2022****.*

2. Watford's Request to have new evidence declared inadmissible:

In its Answer (para 170), Watford submits that "any and all new evidence adduced by OM shall be declared inadmissible and excluded, as such evidence was available to OM in the first instance proceedings"

On behalf of the Panel, OM is invited to provide its comments to Watford's request transcribed above by ***31 August 2022.*** *[...]"*

95. By letters of 5 September 2022, the Player and Watford, respectively, replied, *inter alia*, as follows:

<u>The Player</u>

"*As regards WFC's request for production of documents, the Player's comments are as follows:*

1. 6) Employment agreement and any other private contract or precontract entered by and between the Player and OM

The Player reminds that the employment contract concluded between the Player and OM was produced by the latter as Exhibit A-2 in its Appeal Brief dated 21 March 2022.

There is no "other private contract or precontract" that would have been entered into by the Player and OM.

2. 7) Copy of the contracts entered by OM with any intermediaries promoting or intervening in the hiring of the Player

The Player is not aware of and therefore not in possession of any such documents requested.

3. 8) Copy of the Player's registration with the FFF as OM's Player

The Player's registration with the FFF was made by OM. Therefore, such document is not in the Player's possession."

Watford

"***Preliminary: Requests to WFC***

1. Upon request of OM and the Player of the production of the following evidence:

1.1 the results of the medical tests conducted by WFC on the Player in Udine in June 2019; and

1.2 the results of the medical tests conducted by WFC on the Player in January 2020;

the Panel has requested WFC to confirm by the Deadline, the allegation submitted at 168 of WFC Answer. Hereinafter, ***"Request#1".***

2. Further, upon request of the Player of;

2.1 a copy of the employment contract and/or any other agreement and/or deed entered into between Watford and the Player in June 2019.

the Panel has requested WFC to confirm by the Deadline, the allegation submitted at 102.7 of WFC Answer. Hereinafter, ***"Request #2".***

3. To this effect, WFC proceeds as follow

Answer to Request #1, regarding the medical tests conducted on the Player.

4. At ¶ 168, WFC submitted as follows:

"Apart from the original version of the WFC Contract, WFC does not have in its possession, because none exists, any other document required by OM and/or the Player"

5. <u>WFC hereby confirms and ratifies its allegation</u>, and further expands as follows:

5.1. WFC does not have in its possession the documents that OM and the Player have requested.

5.2. Regarding the "medical tests conducted <u>by WFC</u> in Udine", we must, once again, be adamant: WFC did not carry out any medical examination of the Player.

5.3. As proven by the evidence provided within the present proceedings, the Player with his express consent was subjected to a regular medical examination in Udine in June 2019. However, this medical examination is unrelated to WFC, as it was carried out by another club, Udinese Calcio, S.p.A., in the context of the negotiations for the transfer of the Player from HAC to Udinese.

5,4. Regarding the "medical tests conducted by WFC m January 2020", WFC did not carry out any medical tests on the Player. He was coming as a free agent and WFC planned to conduct the medical examination in July 2020, after the expiry of his contract with HAC and in the framework of the pre-season alongside his incorporation into the discipline of WFC.

5.5. Notwithstanding the above, this issue bears no relevance for the purpose of determining whether and when the Player terminated the WFC Contract with or without just cause.

Answer to Request #2, regarding the so-called First Contract.

6. At ¶ 102.7, WFC provided as follows:

"Identity with an alleged 'First Contract. It is simply implausible that WFC and the Player signed a first contract in June 2019: had WFC signed a first contract with the Player, it would obviously bring it into the proceedings because it would give more weight and force to the pacta sunt servanda principle (especially considering that any alleged violation of Article 18(3) RSTP would have no contractual! consequences, only disciplinary). The so-called First Contract never existed."

7. WFC hereby confirms and ratifies its allegation, and further elaborates on the following:

7.1. The so-called First Contract simply never existed,

7.2. At the risk of repetition, if WFC had truly signed a "First Contract" with the Player, it would clearly have provided it to the proceedings.

7.3. By the same token, the Player has not provided it, because he never signed a contract with WFC in 2019. Moreover, his claim turns out to be absurd, at a time when he alleges not having understood what he signed in January 2020 and having been under pressure to sign/ although supposedly, that was the second time he had signed a contract with WFC.

7.4. This issue has also no relevance for the purpose of determining whether and when the Player terminated the WFC Contract with or without just cause.

Watford's request to have new evidence declared inadmissible

8. By way of clarification, WFC has not requested that the new evidence provided by OM be declared inadmissible, essentially because such evidence favours WFC's interests. WFC simply sought to make it clear that in accordance with CAS Article R57(3), this was a decision that the Panel had to make in its sole discretion. […]"

96. On the same date, Olympique stated the following with regard to the requests for documents and further submitted that "*none of the Exhibits produced by Olympique] in these proceedings can be declared inadmissible under Article R57(3) of the CAS Code or otherwise.*"

*"**1. Requests for documents***

*With respect to OM's request listed as item no. 1 in your letter of 24 August 2022, i.e. "[t]he original Watford Contract" (i.e. the employment contract allegedly concluded between Mr. Gueye (the **"Player"**) and Watford on 15 January 2020, the **"Watford Contract"),** the document produced by FIFA as exhibit 2 does not satisfy our request for the following reasons:*

- *FIFA's exhibit 2 is not an original document but merely a copy.*
- *FIFA's exhibit 2 seems to be (and most likely is) the same document that was produced by Watford in these proceedings and the FIFA DRC proceedings. As explained in OM's*

Appeal Brief, the layout of this document is confusing to say the least and the fact that Watford (and/or FIFA)has/have not been able to remedy this in over a year is very concerning. Watford (and/or FIFA) have yet to come up with a reasonable explanation as to the troubling sequence of the pages of FIFA's exhibit 2.

In such circumstances, OM can only maintain its position that the authenticity of the Watford Contract has not been established in these proceedings and that, if this is not remedied, the Panel cannot consider the Watford Contract validly concluded.

OM further notes Watford's submission that "[t]he original version of the WFC Contract remains in custody with FIFA" and that "if the Panel deems it appropriate, WFC consents to the CAS ordering FIFA to submit the original version of the WFC Contract."

In light of the foregoing, OM maintains its request for the production of the original Watford Contract and reserves its right to comment on it in the event it is produced.

With respect to Watford's requests listed as items no. 6-8 in your letter of 24 August 2022, OM has the following comments:

- *"Employment agreement and any other private contract or precontract entered by and between the Player and OM": the employment contract between OM and the Player has been produced as OM's ExhibitA-2 (the "**OM Contract**") and has even been part of the record file in the FIFA DRC proceedings. Watford's request is thus moot. Further, there is no "other private contract or precontract entered by and between the Player and OM", as mentioned by OM in the FIFA DRC proceedings.*
- *"Copy of the contracts entered by OM with any intermediaries promoting or intervening) in the hiring of the Player": there are no such documents, as mentioned by OM in the FIFA DRC proceedings.*
- *"Copy of the Player's registration with the FFF as OM's Player": as mentioned by OM in the FIFA DRC proceedings, this document is completely irrelevant to the Parties' dispute. This is confirmed by Watford's own submission in its Appeal Brief: Indeed, when expanding on the relevance of the documents it requested, Watford stated that "the requested documents are relevant to the case at stake, insofar as it will be possible to ascertain, inter alia: (a) the actual date on which OM, the Player and Mr. Bovis and/or other intermediaries entered into negotiations in breach of the employment contract between WFC and the Player; and (b) the real value of the OM Contract." The Player's registration with the FFF as an OM player would not be of any help to determine any of these aspects. That said, OM informs the Panel that it has absolutely no problem to produce the requested document, should the Panel nevertheless want to see it. […]*

97. In a letter of 9 September 2022 from the CAS Court Office, the Parties were informed as follows:

"***2) Production of documents***

- *With regard to **"the Original Watford Contract"**, the Panel notes that OM maintains its request for the original contract from FIFA. Therefore, FIFA is invited to send such original contract to the CAS Court Office, if it indeed is in FIFA's possession, or in the alternative, to comment on the request by **16 September 2022.***
- *With regard to the **"result of the medical test conducted by Watford on the Player in Udine in June 2019"**, the Panel notes that Watford states, that it does not have in its possession such documents from any tests conducted in 2019, which, according to Watford was not conducted on behalf of the club (on behalf of Udine). The Panel has duly noted*

Watford's comments and considers this request moot.

The Panel shall note, however, that in the event a document is said not to exist, and in the future, e.g. at the hearing, it becomes apparent that one party has wrongly asserted the non-existence of the document, then the other Party may ask the Panel to draw adverse inferences and take such conduct into account for the purposes of the assessment of costs.

- *With regard to the **"result of the medical test conducted by Watford on the Player in January 2020",** the Panel notes that Watford states, that it did not carry out such tests. The Panel has duly noted Watford's comments and, on these grounds, it considers this request moot.*

  The Panel shall note, however, that in the event a document is said not to exist, and in the future, e.g. at the hearing, it becomes apparent that one party has wrongly asserted the non-existence of the document, then the other Party may ask the Panel to draw adverse inferences and take such conduct into account for the purposes of the assessment of costs.

- *With regard to **"the employment contract and/or of any other agreement and/or deed entered into between Watford and the Player in June 2019",** The Panel notes that Watford confirms that such alleged contract does not exist. The Panel has duly noted Watford's comments and, on these grounds, it considers this request moot.*

  The Panel shall note, however, that in the event a document is said not to exist, and in the future, e.g. at the hearing, it becomes apparent that one party has wrongly asserted the non-existence of the document, then the other Party may ask the Panel to draw adverse inferences and take such conduct into account for the purposes of the assessment of costs.

- *With regard to the **"Employment agreement and any other private contract or precontract entered by and between the Player and OM",** the Panel notes that the requested employment agreement is produced as OM's Exhibit A-2 and that both OM and the Player submit that no other private contracts or precontracts entered by and between the Player exist. The Panel has duly noted the comments of OM and the Player and, on these grounds, it considers this request moot.*

  The Panel shall note, however, that in the event a document is said not to exist, and in the future, e.g. at the hearing, it becomes apparent that one party has wrongly asserted the non-existence of the document, then the other Party may ask the Panel to draw adverse inferences and take such conduct into account for the purposes of the assessment of costs.

- *With regard to "**the contracts entered by OM with any intermediaries promoting or intervening in the hiring of the Player",** the Panel notes that OM submits that there are no such documents. The Panel has duly noted the comments of OM and, on these grounds, it considers this request moot.*

  The Panel shall note, however, that in the event a document is said not to exist, and in the future, e.g. at the hearing, it becomes apparent that one party has wrongly asserted the non-existence of the document, then the other Party may ask the Panel to draw adverse inferences and take such conduct into account for the purposes of the assessment of costs.

- *With regard to the **"Player's registration with the FFF as OM's Player",** the Panel notes that even if OM maintains that such document is of no relevance, the latter "has absolutely no problem to produce" it, if the Panel wishes to have such document on the file.*

  *OM is invited to produce the **"Player's registration with the FFF as OM's Player"** by **16 September 2022.***

Finally, and with regard to what the Panel understood to be a request to have new evidence declared inadmissible, Watford has no[t] confirmed that such request was never made. As such, and since no objections as to the admissibility of the evidence on file then seems to exist, the Panel

finds no reason to deal with this issue."

98. On 16 September 2022, Olympique forwarded the "*Player's registration with the FFF as Olympique's player*", as requested, and the CAS Court Office also received the original version of the Watford Contract. Finally, on 17 October 2022, and following a request from Olympique, a "*high-resolution scanned copy*" of said contract was forwarded to the Parties.

99. All Parties signed and returned the Order of Procedure issued by the CAS Court Office on behalf on the President of the Panel on 20 September 2022.

100. On 8 and 9 March 2023, a hearing was held at the CAS Court Office in Lausanne, Switzerland. At the outset of the hearing, the Parties confirmed that they did not have any objections to the constitution of the Panel. In addition to the Panel and to Mr Antonio De Quesada, Head of Arbitration at CAS, the following people attended the hearing:

For Olympique:
Mr Juan de Dios Crespo, Counsel
Mr Alfonso León, Counsel
Mr Gytis Rackaukas, Counsel
Mr Michael Oppliger, Counsel
Mr Alexandre Antonini, Party representative
Mr Jacques-Henri Eyraud – Witness – via video

For Watford:
Mr Alfredo Garzón – Counsel
Mr Jean Marguerat – Counsel
Mr Ignacio Triguero – Counsel
Ms Patricia Galán – Counsel
Mr Prof. Thomas Probst – Legal Expert
Dr Raffaele Poli – Expert – via video
Mr Salvador Carmona – Expert – via video
Mr Gino Pozzo – Witness (Non-Executive Vice-Chairman) – via video
Mr Arnaud Bayat – Witness (Intermediary) – via video
Mr Vincenzo Cardillo – Witness (Scout) – via video
Mr Baba Dramé – Witness (Intermediary) – via video
Mr Bakar Sanogo (player's former agent) - via video
Mr Alexis Rutman (lawyer of Mr Sanogo) - via video

For the Player:
Mr Pape Alassane Gueye
Mr Fabrice Robert-Tissot – Counsel
Mr Patrick Pithon – Counsel
Ms Su Min – Counsel
Mr Pierre-Henri Bovis – Witness (Attorney-at-Law for the Player)
Mr John Mehrzad KC – Expert

Prof. Sylvain Marchand – Expert

For FIFA
Mr Carlos Schneider Saladores, Director of Judicial Bodies
Mr Miguel Liétard Fernández-Palacios, Director of Litigation

Ms Elodie Flachaire – Interpreter
Ms Roopa Sukthankar – Interpreter

101. The Panel heard the evidence of Mr Jacques-Henri Eyraud, Prof. Thomas Probst, Dr Raffaele Poli, Mr Salvador Carmona, Mr Gino Pozzo, Mr Arnaud Bayat, Mr Vincenzo Cardillo, Mr Baba Dramé, Mr Bakar Sanogo, Mr Alexis Rutman, Mr Pierre-Henri Bovis, Mr John Mehrzad KC and Prof. Sylvain Marchand, witnesses and experts called by the Parties and of the Player, who were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. The Parties and the Panel had the opportunity to examine and cross-examine the witnesses and the Parties.

102. The Parties were afforded the opportunity to present their case, submit their arguments and answer the questions posed by the Panel. After the Parties' final submissions, the Panel closed the hearing and reserved its final Award. The Panel took into account in its subsequent deliberation all the evidence and arguments presented by the Parties although they may have not been expressly summarised in the present Award. Upon closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally in these arbitration proceedings.

V. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

103. The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel has, however, carefully considered all the submissions and evidence filed by the Parties with CAS, even if there is no specific reference to those submissions or evidence in the following summary.

Olympique

104. In its Appeal Brief of 21 March 2022, Olympique requested the CAS to:

"*a. Declare the present Appeal admissible;*
b. Set aside the Decision under Appeal in its entirety;
c. Render a new decision:
   i. Stating that the FIFA DRC does not have jurisdiction over the claim for compensation brought by Watford against OM in the FIFA DRC proceedings with reference no. FPSD-627/2l-ooo86, in the alternative rejecting Watford's claim for compensation, in the further alternative reducing the amount of compensation due to Watford;
   ii. Stating that the Player did not terminale his employment contract with Watford without

just cause;

iii. *Stating that no sporting sanctions shall be imposed on the Player in relation to his rescission of his employment contract with Watford;*

iv. *Stating that [Olympique] did not induce the Player to any termination without just cause of his employment contract with Watford;*

v. *Stating that no sporting sanctions shall be imposed on [Olympique] in relation to the rescission or termination by the Player of his employment contract with Watford, in the alternative reducing the sporting sanction imposed on [Olympique] in the [Appealed Decision];*

vi. *Rejecting any other claims brought by Watford against [Olympique] in the FIFA DRC proceedings with reference no. FPSD-627/21-00086;*

vii. *Ordering any other remedy that the Panel deems appropriate;*

viii. *Ordering that FIFA and Watford jointly bear all arbitration costs incurred with the present proceedings, if any, and cover all legal expenses of [Olympique] related to the present proceedings.*"

105. Furthermore, in its Answer dated 3 June 2022, Olympique requested the CAS to:

"*a. Dismiss Watford's Appeal and all of its prayers for relief as formulated in its Appeal Brief dated 21 March 2022;*

b. Order Watford to bear all arbitration costs incurred with its Appeal, if any, and cover all legal expenses of Olympique] related to such appeal."

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

<u>FIFA jurisdiction</u>

- The FIFA DRC decided wrongly to assert jurisdiction over Watford's claim for compensation based on Article 22 (b) of the FIFA RSTP, even accepting that the FIFA DRC might have jurisdiction to decide on the matter of any sporting sanctions imposed on Olympique.
- To the extent necessary, the FIFA RSTP should be interpreted under Swiss law as it concerns the jurisdiction of a FIFA body.
- However, the question of whether the parties did in fact agree to the jurisdiction of a national arbitral tribunal is, of course, a matter of the relevant national law and in this case English law, notably the Arbitration Act of 1996.
- The CAS has the power to review *de novo* whether the Watford and the Player validly agreed that a national arbitration tribunal should have jurisdiction over their disputes, which is the case.
- Clause 18 of the Watford Contract contains an arbitration clause in favour of an existing body, i.e. "*the competent body of the FA or the PL (as applicable).*"
- Both the FA and the PL provide for the possibility to have disputes between clubs and players decided by arbitration; the FA provides for the so-called "Rule K Arbitration" while the PL Rules provide for (i) first instance proceedings before the PL Board and the

PL Judicial Bodies, and (ii) an appeal before the Premier League Appeals Committee (the "PLAC").

- Furthermore, said bodies have jurisdiction over the dispute at hand, and neither of the bodies ever declined such jurisdiction.
- As the Player qualifies as a Player under Article T.31 of the PL Rules, and as Watford was a PL club when it filed its claim for compensation, and in light of Clause 18 of the Watford Contract, the dispute should have been brought before the PL Board in the first instance. The PLAC would then have jurisdiction to hear the case only on appeal pursuant to Article T.36 of the PL Rules.
- Both judicial bodies set out above "*respect the principle of equal representation of players and clubs and can be considered an independent arbitration tribunal that guarantees fair proceedings*" within the meaning of Article 22 (b) of the FIFA RSTP.
- Furthermore, Clause 18 of the Watford Contract is "*explicit, exclusive and in writing*".
- The apparently only reason for the FIFA DRC to disregard the agreed jurisdiction is that the arbitration clause was not considered "*exclusive*", which decision is wrong.
- The parties to the Watford Contract agreed that the FA/PL competent bodies would have primary jurisdiction to decide the matter and that FIFA judicial bodies can only assert jurisdiction "*in the event that the FA or the PL shall have no jurisdiction*." Thus, there is a clear order of precedence in terms of jurisdiction between the judicial bodies of the FA/PL and FIFA, thus establishing the required exclusivity.
- The requirement for exclusivity must be understood as exclusivity between the "chosen resolution mechanism" on the one hand and the other available dispute resolution mechanism (here the FIFA DRC), on the other hand.
- Even if Clause 18 mentions two alternative arbitration mechanisms, the clause is still exclusive, not least since the two relevant bodies have different jurisdictional scopes, based on whether the club is playing in the PL or not at the relevant time, but in any case under the scope of English football.
- As a result, the FIFA DRC did not have jurisdiction over Watford's claim for compensation, which is why the Appealed Decision must be set aside.

<u>The Watford Contract</u>

- As neither the FIFA RSTP nor any other FIFA regulations contain any rule governing the (in)validity of employment contracts other than the requirement of a written contract and the termination for just cause and for sporting just cause, the issues of whether the Watford Contract was ever valid and/or whether the Player validly rescinded it are governed by English law.
- Under English law, the remedies for misrepresentation are rescission and/or damages whether the representor acted fraudulently or not, and these remedies are available provided that the statement made induced the addressee of the representation to enter into the contract and it was false.

- For the sake of good order, the result in a comparable situation pursuant to Swiss law would be very similar, since a contract concluded under a fraudulent misrepresentation or fundamental error under Swiss law is voidable.
- The FIFA DRC failed to recognise Watford's abusive conduct during the negotiation and conclusion of the Watford Contract, and to consider the Player's situation as a whole, including the fact that the Player was prevented from learning the content of the Watford Contract before signing it.
- Moreover, the Player was not represented by a lawyer during the negotiations and the signing of the Watford Contract, since Mr Rutman was the lawyer of the Player's agent and not of the Player.
- Furthermore, in case of dual agency, an agreement is voidable (by way of rescission) as a matter of English law.
- In this case, Watford used the services of unregistered agents, in particular Mr Sanogo, to convince the Player to sign the Watford Contract, even being aware of the conflict of interest for the agent, which should have prevented him from representing both parties at the same time.
- Pursuant to FIFA rules, any waiver of the said conflict of interest must be obtained before entering into negotiations and must be transmitted to the relevant national federation, which did not happen in this case. On the contrary, the Tripartite Contract was only signed after the Player had signed the Watford Contract.
- Based on that, the Watford Contract must be considered invalid and the Player's rescission valid and effective.

<u>Termination of the Watford Contract</u>

- In any case, the Player rescinded/terminated the Watford Contract on 18 May 2020, as confirmed in the Appealed Decision, and thus did not become a Watford player on 1 July 2020 as originally submitted by Watford.

<u>Financial consequences</u>

- In general, Watford's violation of the FIFA regulations and of general principle of good faith, should be sanctioned and not protected.
- First of all, the said club made the Player sign the Alleged Contract without informing the Player's then club, thus violating Article 18 (3) of the FIFA RSTP.
- The mere fact that Watford invited the Player to Udine for negotiations and medical test constitutes such a violation, even if (*quod non*) the Alleged Contract is considered not to exist.
- Even if such a violation does not make the Watford Contract invalid, it does not mean that Watford should be entitled to seek compensation based on such a contract, which was concluded in breach of the FIFA RSTP.

- As compensation is governed by Article 17 of the FIFA RSTP, the abusive nature of a claim for compensation is to be assessed according to Swiss law, under which (Article 2 of the Swiss Civil Code: the "SCC"), *inter alia,* "*the manifest abuse of a right is not protected by law."*
- Watford totally disregarded the FIFA RSTP and specifically the core principle of contractual stability, which conduct should not be protected, let alone rewarded.
- Based on the above, Watford is not entitled to any form of compensation since the Watford Contract was invalid and the Player validly rescinded it on 18 May 2020.
- In any case, Olympique should not be held jointly and severally liable.
- The joint and several liability set out in Article 17 (2) of the FIFA RSTP, albeit automatic (i.e. strict liability), is not absolute.
- Olympique never induced the Player to breach the Watford Contract and is not at fault, and the circumstances in which the contract came to an end are truly exceptional.
- According to CAS jurisprudence, the approach to determine the amount of compensation a club would be entitled to for termination without just cause by one of its players is two-pronged:
    - Firstly, and if the contract contains a contractual compensation clause, it must be determined whether this is enforceable. And if so, it must be applied according to its wording – potentially with some adjustments depending on the applicable law. In particular, a penalty/liquidated damages clause is invalid and unenforceable if it is deemed to be disproportionate.
    - Secondly, if such a clause does not exist or is not enforceable, the Panel must determine the amount of compensation based on the other criteria of Article 17 (1) of the FIFA RSTP. Such compensation is to be based on the principle of "*positive interest*". As such, the allegedly aggrieved party (here Watford) must prove the amount of loss incurred and must also comply with its duty to mitigate the loss.
- Clause 9 of the Watford Contract contains a contractual compensation clause, but the FIFA DRC rightly declared it unenforceable for the following main reasons: (i) it established a compensation in favour of the club in case of contractual breach, but failed to establish a compensation for the Player for the same; (ii) the clause provided for an amount substantially higher than the Player's total remuneration for the entire contractual period; and (iii) Watford was given ample opportunity to look for a replacement and to seek to mitigate its damages. Based on that, under the given circumstances and irrespective of the legal nature of Clause 9, the amount of compensation therein was considered disproportionate.
- Clause 9 of the Watford Contract is governed by English law, since the FIFA regulations do not deal with the validity and enforceability of penalty/liquidated damages clauses.
- The contractual compensation clause is to be qualified as a penalty clause in view of its punitive nature and since it does not include a genuine pre-estimate (when judged at the time of contracting) of the loss that could be caused by the breach of the relevant primary obligations.

- English law recognises as an unenforceable penalty a sum which is out of all proportion to the innocent party's legitimate interest in enforcing the primary obligations, as set out in the submitted legal opinion of Mr Mehrzad KC, who also concludes that Clauses 8 and 9 of the Watford Contract are unenforceable penalties under English law and, therefore, cannot be enforced by Watford, since they potentially allow the latter to be better off financially than the mere recouping of the Player's market value and its costs.
- Even if the Panel disagrees on the application of English law, the same result is reached by applying the principles of CAS jurisprudence on Article 17 of the FFIA RSTP, i.e. that Clause 9 of the Watford Contract is unenforceable.
- CAS jurisprudence (e.g. CAS 2016/A/4605) provides that a penalty/liquidated damages clause is unenforceable if it is deemed to be disproportionate, based on the general principles of contractual stability.
- Clause 9 of the Watford Contract is disproportionate, especially considering, as rightfully noted by the FIFA DRC, that it only establishes compensation in favour of Watford as the employer and that it provides for an amount substantially higher than the Player's total remuneration for 5 years.
- Finally, the said clause is also unenforceable under Swiss law, or, in the alternative, it is excessive and must be reduced.
- Article 27 par. 2 of the SCC protects parties against excessive undertakings, which means, according to the Swiss Federal Tribunal ("SFT") (4A_668/2016), that a contractual clause is contrary to the said article and thus unenforceable if it limits one of the parties' economic freedom to the point that a party is at the mercy of the other party's arbitrary conduct, or that its economic freedom is limited to the point of being endangered, which is the case with regard to the Player based on the excessiveness of the amounts of Clauses 8 and 9 and the significant imbalance between the two parties.
- Clause 9 is furthermore unenforceable under Swiss labour law pursuant to SFT case law (SFT judgment ATF 144 III 327).
- Alternatively, and if the Panel should find that Clause 9 of the Watford Contract is not unenforceable, it is in any case excessive and must be reduced under Article 163 par. 3 of the Swiss Code of Obligations ("SCO") (either directly applicable under Swiss law or as the expression of a general principle of law consistently applied by the CAS).
- Even if Article 163 par. 3 of the SCO is generally applicable to penalty clauses, it is also applicable by analogy to liquidated damages clauses, which must be reduced when the amount of the actual loss suffered is noticeably lower that the amount of the clause (SFT judgment 4A_601/2015).
- Based on that, any amount of compensation must be determined according to Article 17 (1) of the FIFA RSTP.
- However, the FIFA DRC erred in assessing the amount of compensation based on Watford's alleged actual damage in accordance with Article 17 (1) of the FIFA RSTP since it failed to assess it in accordance with the principle of *positive interest,* which governs the determination of the amount of compensation due.

- Essentially, and in line with leading CAS jurisprudence, Watford must be put in the position it would have had, if the Watford Contract had been performed properly.
- Watford never sufficiently substantiated the amounts of compensation claimed and it is therefore not entitled to any compensation for the Player's alleged breach of contract.
- With regard to the alleged "*Watford Costs*", such costs remain completely unsubstantiated by Watford. The FIFA DRC was correct in noting that is has never been established that they were incurred and/or were in any way related to the acquisition of the Player by Watford. Thus, such a claim can be summarily rejected.
- With regard to the claim for the difference in value between the Watford Contract and the Olympique Contract, such a claim is based on seriously flawed calculations.
- While starting by correctly comparing the value of the two contracts, Watford erred in its assessment of the value of the Olympique Contract, which is EUR 2,760,000 over four seasons. And even if one is to follow the disputed argument of the FIFA DRC, that said amount should be increased by 1 year, such a fictitious value would amount to EUR 3,450,000, which is the absolute maximum that one could consider for the value of that contract.
- In any case, there is no contractual, legal or even logical basis for applying the percentage of alleged increase to the amount of the liquidated damages/penalty clause as set out in Clause 9 of the Watford Contract, i.e. GBP 5,000,000, as this was the amount agreed with the Player.
- As such, the claim for the difference in value between the Watford Contract and the Olympique Contract must be dismissed.
- Furthermore, Watford's claim based on the alleged transfer value, as recorded in the reports produced in these proceedings, is highly speculative, in the absence of any real offer for the transfer of the Player. As such, this claim can be summarily dismissed.
- Finally, Watford's claim for the costs allegedly sustained to replace the Player is based on a key factual misrepresentation and is thus meritless and must be dismissed.
- This is the first time Watford is claiming to have incurred replacement costs. In addition, the player allegedly intended to replace the Player was transferred to Watford more than a year after the Player rescinded/terminated the Watford Contract, and it was never substantiated why this new player, at that time, could be qualified as a replacement for the Player.
- In any case, should the Panel find that Watford is entitled to some compensation, the amount set out in the Appealed Decision should be reduced significantly.
- In fact, the compensation granted to Watford in the Appealed Decision is based on a mechanical application of the "normal" calculation principles, despite the lack of any substantiation, and despite the fact that each request for compensation for contractual breach has to be assessed on a case-by-case basis, taking into account all specific matters. The FIFA DRC consequently reaches an incorrect result.
- According to the principles set out in the *Matuzalem* case (CAS 2008/A/1519), the correct way to determine any amount of compensation payable to Watford is to start from the

value of the Olympique Contract and deduct from it the remaining value of the Watford Contract, which would result in the amount of GBP 725,021 = GBP 2,362,171 (equivalent to EUR 2,760,000) – GBP 1,637,150.

- As Watford did not pay any transfer fee when signing the Player and did not substantiate any alleged replacement costs or the relevance/existence of the "*Watford Costs*", such amounts cannot be added to the amount of allegedly owed compensation.
- Furthermore, it must be noted that Watford has not demonstrated in these proceedings that it complied with its obligations to mitigate its loss, i.e. in finding a replacement within a reasonable time, for which reason the amount of GBP 725,021 must be reduced appropriately by one third in line with the principles set out in the *Matuzalem* case, which results in a maximum amount of GBP 483,347.

Sporting sanctions

- Since the Player did not breach the Watford Contract, he cannot be sanctioned under Article 17 (3) of the FIFA RSTP.
- Even if he was considered to have breached the Watford Contract, the requirements for the application of said provision are not met, since such alleged breach did not occur within the protected period as defined in the FIFA RSTP.
- Pursuant to the applicable definition, the protected period only covers the period "*following the entry into force of a contract*".
- The Watford Contract never came into force since Watford never executed the so-called "*Watford Playing Contracts*" pursuant to the Watford Contract before 18 May 2020.
- Moreover, the definition of the protected period is clear and cannot be interpreted as starting on the date of signing of the relevant employment contract, not even if so considered in an isolated CAS award.
- In any case, and considering the way Watford treated the Player from June 2019 to May 2020, it would be fair not to sanction the Player.
- With regard to Olympique, first of all, Article 17(4) of the FIFA RSTP is not applicable, since (i) the Player did not terminate his contract without just cause, and (ii) in any case, such termination occurred outside the protected period.
- Moreover, the rule of presumption in the said article is at the precipice of illegality and cannot be applied in the present matter.
- Since Olympique would have to prove a negative fact, which is a notorious evidentiary hurdle, and taking into consideration the severity of the automatic sanction provided for, the presumption is most likely excessive in nature and thus not justifiable under both Swiss personality rights and European competition law.
- In any case, the applicable standard of proof to rebut such a presumption should be a reduced standard of proof, i.e. the standard of "balance of probabilities", similar to the CAS practice in doping matters.
- The FIFA DRC erred in finding that Olympique induced the Player to terminate the

Watford Contract and the only relevant point in the dispute between Olympique and FIFA with respect to such inducement is the date when the club contacted the Player for the first time, i.e. whether it was before or after the date of the Player's rescission or termination of the Watford Contract, which was 18 May 2020.

- Olympique has proven, *inter alia*, by providing witness statements, that the first contact with the Player took place on 17 June 2020, which is why no inducement by the club can have occurred. Thus, contrary to the allegations of Watford, Olympique did not have any premature contact with the Player before the Player rescinded/terminated the Watford Contract.
- The fact that Olympique did not respond to the letters from Watford dated 2 and 16 June 2020 does not have any relevance to the question of inducement, and the incorrect information in the press and the internet regarding Olympique's alleged interest in the Player has similarly no evidentiary value whatsoever, which has been proven by an expert statement.
- Furthermore, it is in fact uncontested that the Player was in contact and signed the Pre-Contract with Angers at the relevant time in May 2020, thus having negotiated with the Player before 18 May 2020.
- In the very unlikely event that the Panel should agree with the FIFA DRC regarding the alleged inducement within the protected period, Olympique should in any case not be sanctioned with a two-period transfer ban, as it would be grossly disproportionate in the present case based on the specific circumstances, and not least since Olympique does not have any prior violations of Article 17 (4).
- Any sanction imposed on an individual or a club must be proportionate to the violation committed by the player or club.
- The principle of proportionality is also a core principle of Swiss constitutional law pursuant to Article 36 par. 3 of the Swiss Constitution ("SC").
- Based on that, the sanction should in any case be set aside or at the very least (exceptionally) reduced to a one-period transfer ban.

The Player

107. In his Appeal Brief of 21 March 2022, the Player requested the following from the CAS:

> *"1. The appeal before [the CAS] is admissible.*
> *2. The [Appealed Decision] is set aside.*
> *3. FIFA DRC has no jurisdiction over the claim for compensation brought by [Watford] against Mr Pape Gueye in the FIFA DRC proceedings with reference No FPSD-627/21-00086.*
> *4. Mr Pape Gueye did not terminate his employment contract with [Watford] without just cause.*
> *5. [Watford's] claim for compensation shall be rejected or, in the alternative, shall be reduced.*
> *6. No sporting sanctions shall be imposed upon Mr Pape Gueye in relation to the rescission*

and/or termination of his employment contract with [Watford].

7. *Any other claims brought by [Watford] against Mr Pape Gueye in the FIFA DRC proceedings with reference No FPSD-627/21-00086 and/or in the present CAS proceedings CAS 2022/A/8600 & 8604 & 8633 shall be rejected.*
8. *Order any other remedy that the Panel deems appropriate.*
9. *Mr Pape Gueye is granted an award for his legal costs and other expenses pertaining to these appeal proceedings before [the CAS] to be paid to Mr Pape Gue), individually or jointly, by [Watford] and FIFA.*
10. *[Watford] and FIFA shall bear the costs of these appeal proceedings before [the CAS] and reimburse the CAS court office fee of CHF 1,000 pald by Mr Pape Gueye in the arbitration CAS 2022/A/8604."*

108. Furthermore, in his Answer of 20 June 2022, the Player submitted the following requests for relief:

"(i) The Appealed Decision shall be set aside;

(ii) FIFA DRC had no jurisdiction over the claim for compensation brought by [Watford] against the Player in the FIFA DRC proceedings with reference No FPSD-627/21-00086;

(iii) [Watford's] claim for financial compensation shall be rejected;

(iv) The sporting sanctions imposed upon the Player in relation to the rescission and/or termination of his employment contract with [Watford] shall be cancelled.

Secondly, in the alternative:

(i) The compensation for breach of contract set forth in the Appealed Decision shall be reduced to an amount of zero (o) EUR or be mitigated to another reasonable amount; and

(ii) The sporting sanctions imposed on the Player shall be set aside.

The Player rejects [Watford's] request for relief to the extent that the Player shall bear the costs of the arbitration.

The Player rejects [Watford's] request for relief to the extent that the Player shall individually or jointly with [Olympique], pay a contribution towards [Watford's] legal fees and other costs incurred in connection with the present proceedings."

109. In support of his requests for relief, the Player submitted, *inter alia*, as follows:

<u>FIFA jurisdiction</u>

- The FIFA DRC did not have jurisdiction to adjudicate Watford's claim against the Player.
- Clause 18 contains a valid arbitration clause in favour of the jurisdiction of the judicial bodies of English football.
- In view of the clear wording of said clause, and as per Article 22 (b) of the FIFA RSTP, the FA and the PL must have primary jurisdiction over the present dispute, and the competence of the FIFA DRC is only secondary "*[...] in the event that the FA or the PL shall have no jurisdiction to hear any dispute arising out of or in connection with [the Watford Contract].*"
- Watford failed to establish that the primary jurisdiction of the FA or the PL was not given

in this dispute, thus not establishing on which grounds the FIFA DRC allegedly had jurisdiction.

- Clause 18 constitutes a valid arbitration clause pursuant to English law and is indeed "*explicit, exclusive and in writing*" and referring jurisdiction to an independent arbitration tribunal that guarantees fair proceedings.
- Moreover, there are no provisions whatsoever in The FA Handbook 2020/21 (the "FA Handbook") and/or in the Premier League Handbook Season 2020/21 (the "PL Handbook"), providing that the ITC of the Player must have been issued in order for the FA and/or the PL to have jurisdiction over such a dispute.
- In other words, it is not a requirement for the jurisdiction of both national bodies that the Player be registered with the FA and/or the PL.

<u>The Watford Contract</u>

- Regardless of whether the Player willingly signed it, the Watford Contract is invalid and unenforceable.
- First of all, Mr Sanogo had a clear conflict of interest and made false representations to the Player during the negotiation and conclusion of the Watford Contract.
- Fully aware of the fact that Mr Sanogo was the Player's agent, Watford hired him as an agent for the very same transaction, without obtaining a valid waiver prior to the start of the negotiations, thus violating Article 8 of the FIFA Regulations on Working with Intermediaries (the "FIFA RWI")
- The Tripartite Contract was only signed by the Player after the conclusion of the Watford Contract and was in any case drafted in English, i.e. in a language that the Player does not understand.
- Such a violation of the FIFA regulations leads to sanction in accordance with the FIFA Disciplinary Code.
- Moreover, in the absence of a valid waiver of the said conflict of interest, the Watford Contract is null and void, both under English law, which governs it, and, alternatively, under Swiss law.
- Secondly, the Player was manipulated by Mr Sanogo and Watford and misled as to the exact terms of the Watford Contract, because he was informed that the content was, in essence, identical with that of the Alleged Contract, including the signing bonus.
- However, the financial terms of the Watford Contract were significantly different, to the disadvantage of the Player, as his salary was reduced and his signing bonus was removed.
- The Player relied on his agent, who was an old friend of the family, but Mr Sanogo failed to inform the Player about the amendments and falsely represented the content of the Watford Contract to the Player, due to his interests in acting on behalf of Watford.
- As the Player's will was clearly vitiated when he signed the Watford Contract, he was duly entitled to rescind it, both under English law and, alternatively, under Swiss law.

- Under English law, the Watford Contract is invalid for fraudulent misrepresentation, as there is a causal nexus between the fraudulent statement or omission and the Player's decision to sign it.
- Accordingly, the Player validly rescinded the Watford Contract because of the fraudulent misrepresentation made to him by Watford and their "shared" agent.
- Under English law, recission for fraud is effective *ab initio* and therefore *prima facie* has retrospective effect, and furthermore, the recission is at the election of the representee.
- Under Swiss law, and as confirmed by the CAS, contracts may be terminated (invalidated) in case of "*defect in consent*", such as deceit and mistake/error, thus becoming null and void in accordance the provisions of the SCO, provided that such defect is important from both subjective and objective standpoints.
- Based on the circumstances, the Player was thus entitled to terminate/invalidate the Watford Contract based on Swiss law as well. As a result, the Watford Contract became null and void.

Termination of the Watford Contract

- The Player validly rescinded the Watford Contract on 18 May 2020, and, accordingly, the said contract has no force under both English and Swiss law.

Financial consequences

- First of all, the Player never breached the Watford Contract, and the primary requirement for applying Article 17 of the FIFA RSTP is therefore not fulfilled.
- In the Appealed Decision, the FIFA DRC, wrongfully and based on an ill-founded assessment, granted compensation to Watford pursuant to Article 17 of the FIFA RSTP and on the following criteria: "*average fixed remuneration, i.e. excluding any conditional or performance related payment, agreed by the player with his former club and his new club, as well as considering the period of time remaining in the contract signed between the player and former club.*"
- As such, the FIFA DRC, in addition to erring in its decision regarding the alleged breach by the Player, failed to apply the applicable two-prong test in order to establish whether a club is entitled to receive compensation for termination without just cause: i.e. to examine whether (i) is there a valid "contractual compensation clause" in the employment contract, and this is not the case or such a clause is not enforceable, whether (ii) the club is entitled to damages (in the form of "positive interest") pursuant to Article 17(1) of the FIFA RSTP.
- First of all, it must be stressed that the penalty clause to the disadvantage of the Player in Clause 9 of the Watford Contract, and supplemented by Clause 8 of the same contract, is invalid, as such a clause must fulfil the test of reciprocity and proportionality and be balanced.
- None of these requirements are fulfilled in the case at hand, and the application of the

"liquidated damages" clause should be excluded, because (i) such a clause is not reciprocal in accordance with CAS jurisprudence, and (ii) the amount of compensation to be paid by the Player in case of termination of contract without just cause is disproportionate.

- Moreover, said clause is invalid and unenforceable, both under English law and, in the alternative, under Swiss law.
- Under English law, penalty clauses are invalid and unenforceable, and parties may only agree on liquidated damages, which must correspond to a genuine pre-estimate (when judged at the time of contracting) of the loss that could be caused by breach of the relevant primary obligations. Otherwise, such a clause must be held unenforceable, i.e. there is no room for reduction of the penalty.
- Clause 9 of the Watford Contract must be characterised as an unenforceable penalty clause for the mere reason that the payments set out in it must be paid "in addition" to the "*Watford Costs*" as set out in Clause 8 of the same contract, thus potentially seeking from the Player all the costs and expenses involved in hiring the Player, his market value, and also its liability/costs in hiring a new player in connection with the Player's breach.
- English law recognises as an unenforceable penalty clause a sum which is out of all proportion to the innocent party's legitimate interest in enforcing the primary obligation.
- Therefore, Clause 9 is to be considered invalid and unenforceable under English law.
- The same is the situation under Swiss law.
- First of all, and also pursuant to Swiss law, Clause 9 of the Watford Contract qualifies as a penalty clause, as: (i) it does not serve the interests of both parties; (ii) it provides for a liability, complemented with Article 8 of the same contract, which is excessive, allowing the club to be better off financially after indemnification than before the breach, thus serving a punitive purpose; (iii) it becomes due once there is breach of contract, regardless of the existence of any damage to the club; and (iv) it does not contain a fixed amount of compensation in case of breach, but rather allows the club to claim various costs in addition to the predetermined sum of GBP 5,000,000.
- As confirmed by the CAS, in order to be valid and enforceable, contractual obligations must be determined or, at least, determinable on the pain of violating the mandatory provisions of Swiss law on excessive commitments.
- In other words, a person cannot validly accept an offer to undertake an obligation the content of which is not yet determinable at the time of consent, but will be determined (unilaterally) by the offeror at some point in the future.
- In the present case, Clauses 8 and 9 of the Watford Contract have been drafted in an unpredictable and ambiguous manner, lacking clarity on the limit of the liability of the Player, based on which Clause 9 is invalid and unenforceable.
- Moreover, it must be stressed that Watford's allegation that the non-application of Clause 9 of the Watford Contract would violate the principle of *pacta sunt servanda* is groundless, as the parties' autonomy cannot go beyond the mandatory provisions of Swiss law.

- Furthermore, and in any case, penalty clauses must be reduced by the court if excessive, pursuant to the mandatory rules set out in Article 163 par. 3 of the SCO.
- As confirmed by the SFT, this rule is also applicable to liquidated damages clauses. As Watford has not suffered any loss, the penalty clause should also be reduced to zero.
- Finally, penalty clauses (and liquidated damages clauses) included in employment contracts are valid and enforceable against the employee, provided that the penalty is limited to a maximum of one year's salary, which is certainly not the case in these circumstances.
- As the Watford Contract was never validly entered into between the Player and Watford, the Player cannot be deemed to have breached it, which is why no compensation is due to Watford pursuant to Article 17 (1) of the FIFA RSTP.
- Moreover, any compensation based on Article 17 (1) of the FIFA RSTP is based on the principle of "*positive interest*", and any alleged loss must be proven by the party claiming the compensation.
- Watford failed to prove the existence of any damages/loss caused by the Player's alleged termination without just cause.
- Watford never paid any transfer fee in order to sign the Player, and never paid any salary to him.
- Furthermore, the compensation claimed is based on the hypothetical performance of the Player, and, as such, is speculative.
- Watford is asking to be compensated for the (hypothetical) loss of opportunity to obtain a transfer compensation for a future transfer of the Player within the original contractual period.
- As a matter of Swiss law, the SFT has confirmed that such compensation for "*loss of chance*" cannot be compensated because it is too speculative (ATF 133 III 462, 471, para. 4.4 and 4.4.1). To be compensated, the loss occurred must fulfil a certain degree of certainty.
- Moreover, the claimed intermediary costs included in the "*Watford Costs*" were not even due under the contracts between Watford and the intermediaries since the Player was never registered with Watford.
- In addition, the claim based on the alleged current value of the Player is totally speculative and based on the hypothetical sporting performance of the Player.
- With regard to the alleged replacement costs, the new player cannot be considered as a replacement, and there is no evidence to substantiate that the two players should have similar market values.
- Furthermore, Watford appears to be mixing up "*positive interest*" and "*negative interest*", as the alleged "*Watford Costs*" and the alleged replacement costs appear to fall within the definition of "negative interest" and, thus, cannot be compensated pursuant to Article 17 (1) of the FIFA RSTP.
- Moreover, Watford's claim is denominated in Euro, while Clause 9 of the Watford

Contract provides for a minimum amount of compensation in British Pounds, i.e. GBP 5,000,000, and therefore must be dismissed on those grounds also.

- In any event, pursuant to Article 17 (1) of the FIFA RSTP, the amount of compensation should be calculated considering, *inter alia*, the *specificity of sport* and "*any other objective criteria*".
- In this regard, it must be noted that the purpose of Article 17 of the FIFA RSTP is the preservation of contractual stability, which is why no club can seek compensation under the said article if it did not act in good faith.
- As such, the specificity of sport, and in particular contractual stability, coupled with the principle of good faith precludes Watford from seeking compensation from the Player given the circumstances of this case.
- Furthermore, the amount of compensation granted to Watford in the Appealed Decision is grossly disproportionate and violates the Player's personality rights (Articles 27 and 28 of the SCC), based on the financial situation of the Player. In case of non-payment, the Player would potentially be subject to severe disciplinary sanctions, including a ban on any football-related activity, which would be a violation of his personality rights.
- As such, no compensation can be granted to Watford.

Sporting sanctions

- As the Watford Contract was never validly entered into by the Player, the Player never breached it.
- As such, no sporting sanctions can be imposed upon him pursuant to Article 17 (3) of the FIFA RSTP.
- In any event, the imposition of sporting sanctions is not mandatory and must be applied on a case-by-case basis, and the specific circumstances of this case do not justify the imposition of any sporting sanctions on the Player.
- Therefore, the decision to impose sporting sanctions on the Player must be set aside.

Watford

110. In its Appeal Brief of 21 March 2022, Watford requested the CAS:

1. *To deem admissible and uphold in its entirety the Appeal filed by WATFORD FC; and*
2. *To partially set aside the Appealed Decision;*
3. *To issue a new decision which replaces point IV./3 of the Appealed Decision, upholding in its entirety Watford's Claim against the Player and OM and, therefore, to order as follows:*

   3.1 *To condemn the PLAYER and OLYMPIQUE DE MARSEILLE (jointly and severally) to pay WATFORD FC the sum of GBP 44,696.14 plus EUR 1,150,000 plus EUR 15,301,111, plus a 5% interest per annum, as compensation for the overall damages caused by the breach and consequent unilateral induced termination of the WFC Contract without just cause as follows:*

   i. *FIFTEEN MILLION THREE HUNDRED ONE THOUSAND ONE*

HUNDRED ELEVEN EUROS (EUR 15,301,111 = GBP 12,845,000) as stipulated in Clause 9(b) of the WFC Contract corresponding to the true transfer market value of the Player as at the time of the breach calculated based on the increase of the market value of the Player reflected in the difference between the sums due to the Player under the WFC Contract and the value of the OM Contract on the basis of the OM Offer; and

ii. FORTY-FOUR THOUSAND SIX HUNDRED NINETY-SIX POUNDS STERLING AND FOURTEEN CENTS (GBP 44,696.14) plus ONE MILLION ONE HUNDRED FIFTY THOUSAND EUROS (EUR 1,150,000) for the Watford Costs delineated as per Clause 8 (as stipulated in Clause 9(a) of the WFC Contract).

Or in an alternative and subsidiary basis to 3.1 above:

3.2 To condemn the PLAYER and OLYMPIQUE DE MARSEILLE (Jointly and severally) to pay WATFORD FC the sum of GBP 44,696.14 plus EUR 1,150,000 plus EUR 10,900,000 plus a 5% interest per annum, as compensation for the overall damages caused by the breach and consequent unilateral induced termination of the WFC Contract without just cause as follows:

iii. TEN MILLION NINE HUNDRED EUROS (EUR 10,900,000) as stipulated in Clause 9(b) of the WFC Contract corresponding to the true transfer market value of the Player as at the time of the breach based on the valuation provided by the Driblab Expert Valuation Reports; and

iv. FORTY-FOUR THOUSAND SIX HUNDRED NINETY-SIX POUNDS STERUNG AND FOURTEEN CENTS (GBP 44,696.14) plus ONE MILLION ONE HUNDRED FIFTY THOUSAND EUROS (EUR 1,150/000) for the Watford Costs delineated as per Clause 8 (as stipulated in Clause 9(a) of the WFC Contract).

Or in an alternative and subsidiary basis to 3.1 and 3.2 above:

3.3. To condemn the PLAYER and OLYMPIQUE DE MARSEILLE (jointly and severally) to pay WATFORD FC the sum of GBP 44,696.14 plus EUR 1,150,000 plus EUR 10,088,155 plus a 5% interest per annum, as compensation for the overall damages caused by the breach and consequent unilateral induced termination of the WFC Contract without just cause as follows:

v. TEN MILLION EIGHTY-EIGHT THOUSAND ONE HUNDRED FIFTY-FIVE (EUR 10,088,155) as stipulated in Clause 9(b) of the WFC Contract corresponding to the replacement costs for the Player; and

vi. FORTY-FOUR THOUSAND SIX HUNDRED NINETY-SIX POUNDS STERLING AND FOURTEEN CENTS (GBP 44,696.14) plus ONE MILLION ONE HUNDRED FIFTY THOUSAND EUROS (EUR 1,150,000) for the Watford Costs delineated as per Clause 8 (as stipulated in Clause 9(a) of the WFC Contract)

Or in an alternative and subsidiary basis to 3.1, 3.2 and 3.3 above:

3.4. To condemn the PLAYER and OLYMPIQUE DE MARSEILLE (jointly and severally) to pay WATFORD FC the sum of FIFTEEN MILLION THREE HUNDRED ONE THOUSAND ONE HUNDRED ELEVEN EUROS (EUR 15,301/111 = GBP 12,845,000) plus a 5% interest per annum, as compensation for the overall damages caused by the breach and consequent unilateral induced termination of the WFC Contract without just cause corresponding to the economic value attributed to the services of the Player correctly calculated in application of the criteria set out in

Article 17(1) of the RSTP, based on the increase of the market value of the Player reflected in the difference between the sums due to the Player under the WFC Contract and the value of the OM Contract on the basis of the OM Offer.

Or in an alternative and subsidiary basis to 3.1. 3.2. 3.3 and 3.4 above:

3.5. *To condemn the PLAYER and OIYMPIQUE DE MARSEILLE (jointly and severally) to pay WATFORD FC the sum of ELEVEN MILLION FIVE HUNDRED EIGHTY-ONE THOUSAND THREE HUNDRED NINETY-EIGHT (EUR 11,581,398 = GBP 9,722,362) with a 5% interest per annum, as compensation for the overall damages caused by the breach and consequent unilateral induced termination of the WFC Contract without just cause corresponding to the economic value attributed to the services of the Player correctly calculated in application of the criteria set out in Article 17(1) of the RSTP, based on the replacement costs and the concept of specificity of sport, as correcting factor.*

Or in an alternative and subsidiary basis to 3.1, 3.2, 3.3. 3.4 and 3.5 above:

3.6. *To condemn the PLAYER and OLYMPIQUE DE MARSEILLE (jointly and severally) to pay WATFORD FC the sum of TEN MILLION NINE HUNDRED EUROS (EUR 10,900,000), with a 5% interest per annum, as compensation for the overall damages caused by the breach and consequent unilateral induced termination of the WFC Contract without just cause corresponding to the economic value attributed to the services of the Player correctly calculated in application of the criteria set out in Article 17(1) of the RSTP, based on the valuation provided by the Driblab Expert Valuation Reports.*

4. *To confirm all other points of the Appealed Decision.*
5. *To condemn the PLAYER and OLYMPIQUE DE MARSEILLE:*
   5.1. *To bear all the arbitration and administrative costs pertaining to these appeal proceedings before the CAS; and*
   5.2. *To pay WATFORD FC a significant contribution towards its legal fees and other expenses incurred in connection with these proceedings in an amount to be determined at the discretion of the Panel in accordance with Article R65(3) of the CAS Code."*

111. Furthermore, in its Answer of 20 June 2022, Watford requested the CAS to rule as follows:

"1. To reject the reliefs sought by the Player and [Olympique] in their Appeal briefs.
2. To confirm the Decision in its entirety save for point IV./3 which shall be replayed as prayed for in Watford's Appeal Brief to which we refer and ratify in full.
3. To condemn the Player and [Olympique]:
   3.1. To bear all the arbitration and administrative costs pertaining to these appeal proceedings before the CAS; and
   3.2 To pay [Watford] a significant contribution towards its legal fees and other expenses incurred in connection with these proceedings in an amount to be determined at the discretion of the Panel in accordance with Article R65(3) of the CAS Code."

112. In support of it requests for relief, Watford submitted, *inter alia*, as follows:

FIFA jurisdiction

- The FIFA DRC had jurisdiction to adjudicate this dispute, which is an employment-related dispute between a club and a player of an international dimension.
- The starting point to determine such jurisdiction is Article 22(b) of the FIFA RSTP, which sets out certain exceptions to the jurisdiction contemplated by said article.
- As such, as a specific exception for a deviation from the general rule of the Article 22 (b) of the FIFA RSTP, the Player and Watford must have explicitly submitted to the alternative independent national arbitration body in compliance with FIFA Circular No. 1010 which is the competent body of the FA or the PL, as applicable.
- In other words, said article requires the Watford Contract to contain a specific and exclusive arbitration clause in favour of a specific National Dispute Resolution Chamber ("NDRC").
- Notwithstanding the fact that Watford is of the view that the PLAC meets the criteria under Article 22(b) of the FIFA RSTP and of Circular No. 1010, it does not have jurisdiction to consider the case, and Watford and the Player did not in any case explicitly agree that it would.
- The threshold of Article 22 (b) of the FIFA RSTP has not been met as Clause 18 of the Watford Contract does not specify which arbitral body is to decide on the case.
- Further, the FIFA DRC is competent to hear any claim against Olympique as the Players' new club.
- In addition, and despite Clause 18 of the Watford Contract, the following reasoning leads to FIFA being the appropriate jurisdictional forum to adjudicate the present dispute:
  - The dispute is of an international dimension.
  - Clause 18 does not exclude, but recognises FIFA jurisdiction.
  - Clause 18 does not provide for the jurisdiction of either of a specific body at national level, but rather only refers to the "*competent body of the FA or the PL*", without providing, however, which of these would be competent in a specific case.
  - FIFA TMS referred Watford to the FIFA DRC as the competent body to deal with a potential claim for breach of contract and invited the club to lodge a claim before the said body.
  - Olympique, in its letter of 17 July 2020, expressly recognised the competence of FIFA in relation to this dispute.
  - The alleged "*competent body of the FA or the PL*" lacks, in any case, jurisdiction since the Player, due to his own actions, was never registered with the PL and an ìITC was never issued.
- Thus, based on Clause 18 *in fine* of the Watford Contract, which foresees the jurisdiction of FIFA as a subsidiary forum, plus Article 22(b) of the FIFA RSTP and all the special circumstances surrounding the dispute at stake, FIFA must be considered the appropriate jurisdictional forum to adjudicate the dispute.

The Watford Contract

- As already confirmed in the Appealed Decision, the Watford Contract is fully valid and enforceable and is therefore a binding employment contract between Watford and the Player. In this regard, it contains all *essentialia negotii* of an employment contract.
- In this regard, it must be stressed that a party to a contract is bound by its signature, as it is fundamental to be able to rely on the principle that a signature on a contract binds the signature to the terms of the contract. See e.g. CAS 2019/A/6533 & 6539.
- The fact that the Player accepted to sign a contract drafted in a language which he allegedly did not understand does not preclude the enforcement of the contract (CAS 2012/A/2818), and the Player even confirmed with his signature that he did understand the content.
- The alleged "misunderstanding" of the numbers is hard to believe, since the numbers in English and French are identical.
- Furthermore, the Alleged Contract never existed, and the alleged differences are therefore of no relevance.
- In addition, there is no evidence whatsoever to show that the Player had been manipulated by his then agent to sign the contract.
- Moreover, there is no violation of the prohibition of dual representation, and such violation would in any case have no relevance to the validity of the Watford Contract.
- The transaction was executed in full compliance with the applicable FIFA and FA Intermediary Regulations and with the Player's full and informed consent, and the Player signed the Tripartite Contract confirming, inter alia, his waiver of any conflicts of interest.
- Furthermore, both Mr Sanogo and Mr Dramé were duly registered with the FA in accordance with the applicable regulations, and even if they were not registered with the FFF, this would have no impact on the validity of the Watford Contract.
- With regard to the alleged violation of Article 18(3) of the FIFA RSTP, Watford never breached it, and it must also be stressed that any such alleged violation would in any case have no relevance on the validity of the Watford Contract.

Termination of the Watford Contract

- The FIFA DRC correctly found that the Player terminated the Watford Contract without just cause and must therefore "*bear the financial and sporting consequences of his unjustified termination of the [Watford Contract].*"
- Watford's appeal is essentially limited to the financial consequences thereof.

Financial consequences

- The financial consequences of the Player's termination of the contract without just cause must be assessed with Article 17(1) of the FIFA RSTP as the guiding principle, whereas

recourse must be made to Swiss law if questions of interpretation arise over the application of the same.

- Pursuant to that article, in all cases, the party in breach must pay compensation for the damages caused to the injured party. However, the criteria set out in Article 17 (1) of the FIFA RSTP will only apply "*unless otherwise provided for in the contract*". In other words, the primary role is played by the autonomy of the contractual parties.
- With regard to the nature of Clause 9 of the Watford Contract, it must be noted that the principle of the parties' autonomy pursuant to Swiss contract law means that the content of a contract may, within the limits of the law, be established at the discretion of the parties. The limits to the discretion of the parties are the *ordre public* principles and provisions (Article 19 I + II of the Swiss SCO).
- As such, and based on Article 17(1) and (2) of the FIFA RSTP, it is possible for a club and a player to agree on a liquidated damages clause, which the CAS has defined as "[*a] mtual agreed upon contractual clause that allows the partis to establish in advance in their contract the amount to be paid by either party in the event of unilateral premature termination without just cause.*" (in particular CAS 2008/A/1519 & 1520).
- Liquidated damages are admissible and enforceable under Swiss law, subject to the limits set out in Article 19 II of the SCO, and the purpose of a liquidated damages clause is not to penalise, but rather to compensate for an anticipated damage. It may be a useful tool to avoid practical difficulties in assessing the concrete damage suffered by the creditor in certain circumstances.
- Clause 9 of the Watford Contract is such a liquidated damages clause as confirmed by Professor Probst in his expert opinion, and thus not a penalty clause: the Player and Watford thereby effectively agreed on the specific method of calculation of the compensation due by the Player to Watford in case of a breach or premature termination of their contract.
- In this regard, the two parties also agreed to establish "*the player's true transfer market value as at the date of the breach*", thus facilitating the calculation in such an event, which is in accordance with the guidelines set out by FIFA in its Commentary on the FIFA RSTP.
- As Clause 9 of the Watford Contract is a clear liquidated damages clause consistent with FIFA rules and additionally Swiss law, it cannot be declared invalid (null or void), nor disregarded by the Panel.
- There are no legal requirements for such clauses to be reciprocal in order to be valid pursuant to Swiss law.
- Similarly, there are no legal requirements for such clauses to be proportionate in order to be valid pursuant to Swiss law, and disproportionality does not render a contract (clause) void.
- As such, Clause 9 takes prevalence over the other criteria set forth in Article 17 (1) of the FIFA RSTP and must be enforced in accordance with the legal principle of *pacta sunt servanda*, which principle constitutes the cornerstone of the RSTP and lies at the basis of the football system. The same principle is dominant in Swiss contract law.

- However, it is not only the contractual parties who are bound by that principle. This also goes for the judge or arbitrator in a contractual dispute between such parties. The opposite approach amounts to an infringement of *pacta sunt servanda*, and thus to a violation of Swiss (substantive) public order.
- The FIFA DRC did in fact commit such a violation by refusing to apply Clause 9 of the Watford Contract in accordance with the principle of the autonomy of the parties, while at the same time admitting that it was legally binding on the two parties.
- Watford's claim included a claim for payment of the "*Watford Costs*" as set out in Clause 8 of the Watford Contract and a claim based on "*the Player's true transfer market value as at the date of such breach*".
- The "*Watford Costs*" consist of the following amounts:
    - o GBP 3,941.14 – related to scouting and monitoring the player in live matches
    - o GBP 40,755 – intermediary remuneration of Mr Sanogo
    - o EUR 1,150,000 – intermediary remuneration of Mr Dramé.
- With regard to the Player's true transfer market value as at the date of such breach, this has to be assessed without a concrete offer from another club.
- If such a value is calculated based on the increase of the value of the Player's new contract with Olympique, the increase is 156.9%, which, when applied on the agreed base value of GBP 5,000,000 as set out in the Watford Contract, results in a market value of GBP 12,845,000, equal to EUR 15,301,111.
- Alternatively, the true market value of the Player at the date of termination on 18 May 2020, as calculated on the basis of objective criteria by two different experts hired by Watford in connection with these proceedings, was set at between EUR 11,125 and EUR 10,590,00 and 10,900,000, respectively, resulting in an appropriate market value on 18 May 2020 in an amount equivalent to EUR 10,900,000.
- In the further alternative, the replacement costs incurred by Watford in securing the services of a new player, as also stipulated under Clause 9, amounts to EUR 10,088,155.
- Subsidiarily, it is noted that the FIFA DRC erred in its calculation of the compensation according to Article 17(1) of the FIF RSTP, as it only took into consideration the average fixed remuneration between the Watford Contract and the Olympique Contract, and even calculated this wrongly and without including the sign-on fee of EUR 1,500,000, which is a part of the Player's salary pursuant to the Olympique Contract.
- The FIFA DRC failed, *inter alia*, to take into consideration the true market value of the Player, the interests of several other clubs, the non-amortised acquisition costs, the replacement costs and the concept of the specificity of sport as a correcting factor.
- A correct calculation of the amount of compensation applying the criteria of Article 17(1) of the FIFA RSTP could be set out as follows:
    - o EUR 15,301,111 – economic value attributed to the services of the Player based on both contracts, or
    - o GBP 9,722,362 – economic value attributed to the services of the Player based on the replacement costs and the concept of specificity of sport, or

  - o EUR 10,900,00 – economic value attributed to the services of the Player based on the valuation provided by the expert during these proceedings, replacement costs and the concept of specificity of sport.

- Based on the above, Watford is entitled to compensation for breach of contract in the amounts set out in its requests for relief.
- The compensation claimed by Watford under Clause 9 is proportionate, as its calculation is based on "objective criteria", and leads to a fair, objective and equitable (predeterminable) amount, which depended on the date on which the breach actually occurred.
- Also, it must be mentioned that these criteria also constituted a significant risk to Watford in case the Player was seriously injured, e.g. tested positive on an antidoping control, or simply did not perform to expectations, as the value of the Player would then decrease.
- Moreover, and in accordance with CAS jurisprudence, the proportionality of a liquidated damages clause must be assessed individually within the context of all the specific circumstances of the case at hand.
- In the present case, on the grounds of the gravity and seriousness of the unlawful breach by the Player alone, this is sufficient to deem that the amount of the club's claim is proportionate and reasonable.
- Moreover, the conduct of Olympique and the Player only confirms this, as both parties manifestly and knowingly transgressed the legitimate expectations of Watford, thus violating the principle of good faith.
- In addition, the fact that Olympique is jointly and severally liable to pay the compensation only substantiates the proportionality of the claim. Furthermore, the value of the other players of Olympique shows that the said club is ready to pay that kind of amount in order to acquire new players for its team.
- The joint and several liability of Olympique as the Player's new club is set out in Article 17(2). As confirmed by the CAS, the new club will be liable for the payment of any compensation together with the Player, regardless of any involvement or inducement to breach the contract and without considering its good or bad faith (CAS 2020/A/6796).
- The purpose of Article 17 (2) is, *inter alia*, (i) to provide the suffering party with an additional guarantee for payment of compensation; (ii) to relieve or alleviate the financial burden placed on the player; (iii) to work as a deterrent to any club that might be tempted to hire a player who is already under contract; (iv) to ensure contractual stability in combination with avoiding unjust enrichment; and (v) to avoid evidentiary difficulties in establishing the joint liability.
- The legality of this mechanism of joint and several liability has been endorsed by the SFT (4A_32/2016), even in situations where the new club bears no fault, as it serves a legitimate purpose.
- As such, Olympique shall be joint and severally liable for payment of compensation to Watford.
- In this regard, the "new club" is the club with which the Player is registered for the first

time after the Player's contractual breach.

- Article 163 III of the SCO provides for the possibility for a judge to reduce excessive penalty clauses, however, such a mechanism cannot be applied by analogy to liquidated damages.
- In any case, and as it limits the autonomy of the parties, such an exception must be applied with a certain degree of restraint.
- Based on the above, the compensation provided for in Clause 9 cannot be reduced.
- Finally, Watford had no obligation to mitigate its damages since the two parties predetermined the way to calculate the compensation as liquidated damages and, thereby, validly derogated from the general principle of mitigation of loss.

Sporting sanctions

- The FIFA DRC was correct in imposing sporting sanctions on the Player pursuant to Article 17(3) of the FIFA RSTP as the breach of contract occurred within the protected period.
- Even based on a case-by-case assessment, such a sanction was warranted by the Player's conduct and the non-existence of mitigating factors.
- The sanction imposed was the minimum sanction under the said article, and, in any case, the Panel has no discretion to reduce it.
- The FIFA DRC was also correct in imposing sporting sanctions on Olympique pursuant to Article 17(4) of the FIFA RSTP.
- Olympique has failed to rebut the presumption of inducement with its selective and highly irrelevant alleged evidence.
- On the contrary, the evidence indicates that the club was in fact in contact with the Player before the termination of the Watford Contract, thus inducing the Player to the breach, and it is obvious that the club played a decisive role in the occurrence of the breach of contract during the protected period.

FIFA

113. In its Answer of 10 June 2022, FIFA requested the CAS to issue an award on the merits:

(a) Rejecting the relief sought by the Appellants;
(b) Conforming the Appealed Decision;
(c) Ordering the Appellants to bear the full costs of these arbitration proceedings; and
(d) Ordering the Appellants to make a contribution to FIFA's legal costs.

114. In support of it requests for relief, FIFA submitted, *inter alia*, as follows:

FIFA jurisdiction

- The FIFA DRC forms part of a private dispute resolution system of a Swiss association.
- In accordance with Article 22(b) and Article 24(1) of the FIFA RSTP, the FIFA DRC is, as a general rule, competent to deal with employment-related disputes between a club and a player of an international dimension. The international dismission in this case is not contested.
- There are only two exceptions to this standard rule, i.e. when the parties opt to explicitly refer their dispute to (i) a civil court for employment-related disputes or (ii) an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs at national level within the framework of the association and/or a collective bargaining agreement.
- Such a possible jurisdiction clause must be clear, specific and exclusive in determining the allegedly competent arbitration tribunal as set out, *inter alia*, in the FIFA Commentary on the FIFA RSTP.
- Clause 18 of the Watford Contract does not fulfil such requirements as it lacks the required clarity.
- The wording of the said clause only refers to "*the competent body of the FA or the PL*" without further explanation, and it requires a considerable amount of creativity, research and interpretation of the regulations of the FA and the PL to understand that the PL Board was allegedly the body agreed by the Player and Watford to hear the dispute.
- As such, Clause 18 does not contain the *essentialia negotii* of a valid jurisdiction clause, as it does not unequivocally mention a specific body competent to entertain claims arising out of the said contract.
- Moreover, it fails to set out one, and only one, exclusive competent body to be competent, to the exclusion of the competence of all other bodies.
- Moreover, Clause 18 does not exclude "the competent committee of FIFA", on the contrary.
- The Player and Olympique hold the view that the PL Board should have jurisdiction on the basis of Article T.31 of the Premier League Handbook 2020/2021, however, the Player was never formally registered with Watford and, accordingly, does not qualify as a Player under Article T.31 of the said rules, nor as "formerly employed" by the same club.
- Based on that, the FIFA DRC was competent to adjudicate the present dispute.

<u>The Watford Contract</u>

- The Watford Contract, which undisputedly was duly signed by the Player, contains all the essential elements of an employment contract as contemplated in FIFA Circular No. 1171, Article 2 of Annexe II of the FIFA RSTP and in accordance with CAS jurisprudence, and thus the contractual *essentialia negotii*.
- In order for such a contract to be not binding based on error and fraud during negotiations,

it is required, as determined by the SFT, that (ii) the error is material and (ii) the invocation of the error is not contrary to good faith.

- These requirements are not met in the present circumstances for the mere reason that it has not been proven that the Player was induced to commit an error, neither by the alleged existence of the Alleged Contract, nor by any misrepresentation allegedly given by his agent and/or the lawyer when signing the Watford Contract.
- On the contrary, it has been proven that the Player, when signing the Watford Contract, was duly advised by his agent and a lawyer, who explained the content to him, after which the Player willingly signed it.
- In any case, there is no legal requirement of having a lawyer representing a football player when the latter signs an employment contract. And there is no evidence on file to support the allegations that Mr Rutman deceived the Player in any manner.
- The same can be said for Mr Sanogo, who was a long-time friend of the Player's family, nor is there any evidence on file regarding the alleged interests of the Player's representatives to side with Watford in order to obtain future financial gains.
- The Tripartite Contract had a reasonable purpose, i.e. to avoid an early termination of the Watford Contract. Even if such a contract was signed in violation of the FIFA RWI, this would not lead to declaring either the Tripartite Contract or the Watford Contract invalid. Moreover, the Player also signed the Tripartite Contract.
- Besides, the Player never mentioned the alleged missing bonus before raising the matter with the FIFA DRC as an excuse, but again without presenting any single proof.
- The fact that the Player signed the Watford Contract drafted in a language he allegedly did not understand does not preclude the enforcement of the contract, as confirmed by CAS jurisprudence.
- Moreover, it is the Player's own responsibility as a responsible adult to understand the content of a contract that he signs.
- Furthermore, the Player's signature was not obtained by mistake or misrepresentation, fraud, duress or undue influence, nor is the Watford Contract vitiated by illegality. The Player has not produced any convincing argument or evidence to such an effect.
- Moreover, the alleged intimidation by Watford, both before and after the signing of the Watford Contract, is also unfounded.
- In addition, there is no evidence on file of the existence of the Alleged Contract and, thus, no evidence relating to the alleged difference, i.e. the alleged signing fee, between the Watford Contract and the Alleged Contract.
- Even if such a contract was in fact signed by Watford, and even if that was done in breach of Article 18 (3) of the FIFA RSTP, such a breach would not make the Watford Contract invalid.
- As such, the Watford Contract constitutes a valid and binding employment agreement between the Player and Watford.

Termination of the Watford Contract

- The principle of contractual stability between professional players and clubs, as established in Article 13 of the FIFA RSTP, is one of the pillars underpinning the FIFA RSTP, which, together with other generally accepted principles of contract and employment law, provides a framework for ensuring contractual stability between professional players and clubs.
- In order to assess whether a valid reason exists for a unilateral contract termination, the following principles should be applied, with due regard to the specific circumstances of each individual matter:
  - Only a sufficiently serious breach of contractual obligations by one party qualifies as just cause for the other party to terminate the contract.
  - In principle, a breach is considered sufficiently serious when there are objective circumstances that would render it unreasonable to expect the employment relationship to continue.
  - In addition, termination of a contract should always be an a action of last resort.
- The Player did not have a valid reason to terminate the Watford Contract and terminated it without just cause.
- It appears that the Player, pursuant to his own explanation to Watford in his letter of 22 May 2020, had mainly three reasons for terminating the Watford Contract: (i) he was misled to believe that no French club would sign him; (ii) the French translation of the Watford Contract was different from what he thought; and (iii) Watford was not protecting its players against Covid-19.
- As already set out above, the Player had not demonstrated that he signed the contract in error, e.g. by mistake or misrepresentation, fraud, duress, undue influence, or that the contract was vitiated by illegality.
- Moreover, a wish to stay in France to play does not constitute a valid reason for terminating a validly signed employment contract with an English team.
- Finally, the same can be said with regard to the unfounded allegations regarding Watford's Covid-19 precautions.
- The Player terminated the Watford Contract without just cause within the protected period, as defined in the FIFA RSTP, even if he terminated it before it entered into force.
- As confirmed by CAS jurisprudence, the protected period already starts from the day a player signs and agrees to the terms of a contract with a Club, which is perfectly in line with the rationale of the concept and the principle of contractual stability.

Sporting sanctions

- According to Article 17 (4) of the RSTP, sporting sanctions must be imposed on any club found to be inducing a breach of contract during the protected period, and it must be presumed, unless established to contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a

breach.

- The protected period already started from the day the Player signed the Watford Contract.
- As such, it is up to the new club to demonstrate the contrary.
- However, Olympique did not rebut such assumptions, and the submitted alleged evidence of having a first contact with the Player only after his termination of the Watford Contract is irrelevant and not strong enough.
- The circumstances of this case show that the Player was influenced in his decision by Olympique.
- According to media reports, Olympique and Angers had approached the Player, which is why Watford contacted Olympique and warned the latter not to conclude any contract with the Player. However, Olympique never replied to Watford in this regard, now stating that it did not have any obligations to reply, which still does not explain the absence of any reaction.
- Even if the Player did in fact sign the Pre-Contract with Angers on the day he terminated the Watford Contract, Olympique is considered the Player's new club, because it was the first club with which he was duly registered.
- As such, Olympique has failed to rebut the regulatory assumption that it induced the Player to breach the Watford Contract.
- With regard to the sanction, the Panel must amend a disciplinary decision of a FIFA judicial body only in cases in which it finds that the relevant body exceeded the margin of discretion accorded to it by the principle of association autonomy, i.e. only in cases in which the FIFA judicial body concerned must be held to have acted arbitrarily. This is, however, not the case if the Panel merely disagrees with a specific sanction.
- Moreover, decisions of private associations can be challenged if such decisions violate the laws or the statutes or other regulations of such associations.
- The sporting sanctions imposed on the Player and on Olympique are by no means disproportionate and are in fact the minimum sanctions possible for a case of this kind, pursuant to Articles 17 (3) and 17 (4) of the FIFA RSTP.
- In all circumstances, in the present case, there are no arguments at all which would justify not imposing the sanctions set out in the above-mentioned provisions on the Player and Olympique. On the contrary, the sanction imposed on the Player might even be too lenient considering the circumstances of the matter.

VI. JURISDICTION

115. Article R47 of the CAS Code states as follows:

"An 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".

116. With respect to the Decision, the jurisdiction of CAS derives from Article 58 par. 1 of the FIFA Statutes, which reads as follows:

"*Appeals 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.*"

117. None of the Parties objected to the jurisdiction of CAS, which was confirmed by the Parties signing the Order of Procedure.

118. It follows that CAS has jurisdiction to decide on the appeals brought against the Appealed Decision.

VII. ADMISSIBILITY

119. The grounds of the Appealed Decision were notified to Olympique, Watford and the Player on 13 January 2022.

120. On 2 February and 3 February 2022, Olympique, Watford and the Player filed their respective Statements of Appeal, i.e. within the statutory time limit set forth by the FIFA Statutes, which is not disputed.

121. Furthermore, the three Statements of Appeal complied with all the requirements of Article R48 of the CAS Code.

122. It follows that that the Appeals are admissible.

VIII. APPLICABLE LAW

123. Article 187 par. 1 of the Swiss Private International Law Act ("PILA") provides, *inter alia*, that

"*the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected*".

124. Such a choice of law made by the parties can be tacit and/or indirect by reference to the rule of an arbitral institution. As a matter of principle, in agreeing to arbitrate a dispute according to the CAS Code, the Parties submit to the conflict-of-law rules contained therein, in particular to Article 58 of the CAS Code (see CAS 2018/A/5624).

125. Article R58 of the CAS Code states as follows:

"*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.*"

126. The Panel further notes that Article 56 par. 2 of the FIFA Statutes (May 2021 edition) reads as follows:

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

127. Finally, Clauses 17 and 18 of the Watford Contract read as follows:

"*Governing Law and Jurisdiction*

17. This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the regulations of The FA and the PL and the laws of England and Wales.

18. Any and all disputes shall be handled by the competent body of The FA or the PL (as applicable). In the event that The FA or the PL shall have no jurisdiction to hear any dispute arising out of or in connection with this Deed, such dispute shall be referred to the competent committee of FIFA, with a right of appeal (if so advised) to the Court of Arbitration for Sport ('CAS') in accordance with the Rules of the Code of Sports-related Arbitration of the CAS. The language of any proceedings shall be English."

128. In their submissions, the Parties essentially and initially agree that based on the long-standing case law of the CAS and based on Article 58 of the CAS Code and Article 56 of the FIFA Statutes, appeal proceedings against decisions rendered by FIFA are adjudicated primarily on the basis of FIFA regulations (and in particular the October 2020 edition of the FIFA RSTP), with Swiss law applying on a subsidiary basis in order to interpret and complement the FIFA regulations, where applicable.

129. FIFA and Watford on one side submit that the laws of England and Wales are of no relevance to the dispute at hand, in which regard FIFA submits, *inter alia*, that "*the main objective of the FIFA regulations are to create a standard set of rules to which all the actors within the football community are subject to and can rely on. This objective would not be achievable if the DRC would have to apply the national law of a specific party on every dispute brought to it. Particular, it is in the interest of football that the termination of contract is based on uniform criteria rather than on provisions of national law that may vary considerable from country to country. Therefore, FIFA concurs with the [Appealed Decision] that it is not appropriate to apply the principles of a particular national law to the termination of the contract rather the [FIFA RSTP], general principles of law and, where existing, the DRC's well-established jurisprudence.*"

130. However, on the other side the Player and Olympique submit that the laws of England and Wales are applicable to all aspects not covered by the relevant FIFA regulations in

accordance with the agreement between Watford and the Player.

131. The Panel initially notes that the Parties agree on the application of the FIFA regulations, which implies, according to Article 56 par. 2 of the FIFA Statutes, that *"CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*"

132. And in a situation like this, where the applicable regulations contain a reference to a national law (Swiss law), the scope of application of the national law relied on must be delineated from any other law (also) chosen by the parties to the dispute, in which connection the Panel notes that Olympique is not a party to the Watford Contract.

133. As such, Swiss law does not prevail over the choice of law made by the relevant parties. Rather, this gives rise to a co-existence of the applicable regulations, Swiss law and the law chosen by the Parties, i.e. the laws of England and Wales. The application of Swiss law is confined to ensuring uniform application of the FIFA regulations, and Article 56 par. 2 of the FIFA Statutes merely clarifies that the FIFA regulations are based on a normative preconception, which is borrowed from Swiss law.

134. Therefore, if a question of interpretation is raised over the application of the applicable FIFA regulations, in particular the FIFA RSTP, for which FIFA has set uniform standards for the football industry, recourse must consequently be made to Swiss law in this regard. However, and accordingly, any other issues not addressed in such regulations, i.e. for which FIFA has not set uniform standards of the football industry, are subject to the law the Parties may have chosen (see Ulrich Haas, CAS Bulletin 2015/2, p. 7 ff.).

135. The Panel notes that, although Watford and FIFA submitted that the laws of England and Wales are of no relevance to the dispute at hand, the same parties did not dispute the fact that Watford and the Player agreed in Clause 17 of the Watford Contract that "*This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the regulations of The FA and the PL and the laws of England and Wales."*

136. Based on the above, the Panel is satisfied to accept the application of the regulations of FIFA and, additionally, Swiss law, insofar as the application relates to the normative application and interpretation of such regulations. However, to the extent that the Panel has to decide on matters not addressed in the FIFA regulations, the Panel will take into consideration with respect to the Watford Contract the relevant provisions of the laws of England and Wales.

IX. MERITS

137. Initially, the Panel notes that it is undisputed that in June 2019, the Player was invited to Udine, where the Player and his representatives had meetings with Mr Cardillo, who, as a football consultant, has close contacts with several professional football clubs, including Udinese and Watford. Udinese and Watford are both controlled by the same owner,

represented by Mr Pozzo. During his visit, the Player underwent medical examinations, which together with his costs in connection with the visit, were paid by Udinese.

138. After this visit, the Player returned to his then club, Le Havre, where he was under contract until the summer of 2020.

139. It is further undisputed that, by early January 2020, negotiations were initiated between the Player's side and Watford, in which connection the London Meeting was held, where the participants apparently agreed on the terms for the Watford Contract.

140. A few days later, the Signing Meeting was held in the Player's apartment, during which meeting the Player signed the Watford Contract and the Tripartite Contract.

141. Finally, it is undisputed that on 18 May 2020, and following further correspondence between Mr Bovis, acting on behalf of the Player, and Watford, the Termination Letter was sent to Watford, just as the Player signed the Pre-Contract with Angers on the same date. The Pre-Contract was subsequently annulled by mutual agreement between Angers and the Player.

142. During the hearing in these proceedings, the Parties agreed that 18 May 2020 is to be qualified as the date of the disputed termination/rescission of the Watford Contract.

143. Finally, it is not disputed that, on 30 June 2020, the Player and Olympique signed the Olympique Contract valid from 1 July 2020 until 30 June 2024. In the same way, the financial terms of this contract are not in dispute.

144. However, the Parties are in dispute, *inter alia*, with regard to whether or not the Player signed the Alleged Contract in June 2019. Also, the factual circumstances of the Signing Meeting on 15 January 2020 and the Player's signing of the Watford Contract are disputed. Moreover, the Parties are in dispute regarding the role of Olympique in connection with the Player's decision not to respect the Watford Contract and his subsequent decision to sign the Olympique Contract.

145. In this regard, the Player, on his side, submits, *inter alia*, that he was manipulated into signing the Watford Contract and the Tripartite Contract, the content of which he could not read and understand and which was incorrectly explained to him before signing, if at all. Furthermore, and based, *inter alia*, on the circumstances of the events leading up to the signing of the Watford Contract, it is submitted that he was indeed entitled to rescind the Watford Contract. This is why he considers he was free to sign the contract with Olympique.

146. Watford, on its side, submits, that the Watford Contract was duly signed by the two parties, thus becoming a valid and binding employment contract, and that there are no circumstances, in connection with the events leading up to the signing, that could possibly justify the subsequent failure by the Player and Olympique to respect it, and the Player's termination of the contract.

147. In this regard, the Parties are in dispute regarding the possible financial and disciplinary consequences thereof, just as the Parties are not in agreement with regard to whether the FIFA DRC was in fact competent to adjudicate Watford's claim against the Player and Olympique.

148. With regard to the jurisdiction issue, the Panel notes that it is only competent to adjudicate on the merits of the dispute if the FIFA DRC was in fact correct in its finding that it was competent to hear and decide on Watford's claim against the Player and/or Olympique.

149. Thus, the main issues to be resolved by the Panel are:

   a) Did the FIFA DRC have jurisdiction to adjudicate on Watford's claim against the Player and/or against Olympique and render the Appealed Decision?

   and if a) is answered in the affirmative,

   b) Did the Watford Contract qualify as a valid employment agreement between the Player and Watford, and if so, did the Player have just cause for rescinding/terminating it on 18 May 2020?

   c) Depending on the answer to b), what are the financial consequences for Watford and/or the Player as a result thereof?

   d) Depending on the answer to b), are any disciplinary sanctions to be imposed on the Player and/or Olympique as a result thereof?

a. Did the FIFA DRC have jurisdiction to adjudicate on Watford's claim against the Player and/or against Olympique and render the Appealed Decision?

150. Clause 18 of the Watford Contract states as follows:

> "*18. Any and all disputes shall be handled by the competent body of The FA or the PL (as applicable). In the event that The FA or the PL shall have no jurisdiction to hear any dispute arising out of or in connection with this Deed, such dispute shall be referred to the competent committee of FIFA, with a right of appeal (if so advised) to the Court of Arbitration for Sport ('CAS') in accordance with the Rules of the Code of Sports-related Arbitration of the CAS. The language of any proceedings shall be English.*"

151. Before the FIFA DRC, the Player and Olympique contested the competence of FIFA based on Clause 18 of the Watford Contract, claiming that the FA or the PL would have primary jurisdiction over the dispute and that Watford had not proven that the relevant bodies had no power to exercise the said jurisdiction.

152. However, in the Appealed Decision, the FIFA DRC concluded that it was competent in the case at hand, stating, *inter alia*, "*[...] the approach of the FIFA DRC requires that [the Watford Contract] should contain a specific and exclusive arbitration clause in favour of a specific NDRC. Therefore, as Clause 18 of [the Watford Contract] does not*

specify which arbitral body is to the on this case the threshold as stipulated in art 22 lit. b) RSTP has not been met. Therefore, the Chamber concludes that FIFA is competent in this case." Furthermore, it was stated that "*even if Clause 18 would be in line with art. 22 lit. b RSTP, it is unclear whether another arbitral body at national level would have jurisdiction to adjudicate on the present matter.*"

153. Following the appeals of the Appealed Decision, the Panel now has to decide on the issue of FIFA jurisdiction.

154. The Panel initially notes that it is undisputed among the Parties that any possible jurisdiction of the FIFA to decide on the claim of the Appellant against both the Player and Olympique must originate from the regulations of FIFA, as Olympique is not a party to the Watford Contract.

155. Article 2 par. 1 of the Procedural Rules Governing the Football Tribunal states that "*The matters for which each chamber has jurisdiction are provided by specific FIFA regulations.*"

156. In that regard, Article 22 of the FIFA RSTP states, *inter alia*, as follows:

"*Competence of FIFA*

Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;

b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs; [...]"

157. In light of the foregoing, the Panel notes that in a case like the present, where one of the parties to the dispute refers it to the FIFA DRC, and the other parties contest the competence of the FIFA DRC, it is up to the FIFA DRC to examine, based on the evidence before it, whether the above-mentioned requirements for the jurisdiction of "*an independent arbitration tribunal that has been established at national level*" to arise have been fulfilled, and in the affirmative, to decline its own jurisdiction and refer the parties to the national decision-making body chosen by them. On the other hand, if the relevant requirements have not been met, the FIFA DRC will accept its own jurisdiction, as was the case with the Appealed Decision.

158. In order to decide on the issue of FIFA jurisdiction, the Panel initially finds, based on the facts of the case and the Parties' submissions, combined with the fact that the FIFA jurisdiction is considered as the default competence under Article 22(b), that it is up to the Player, with the possible support of Olympique, to discharge the burden of proof to establish that Watford and the Player, by means of a clear, specific and exclusive arbitration clause, have explicitly chosen to submit their dispute to an independent arbitration tribunal established at the national level within the framework of the association and/or a collective bargaining agreement and guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs.

159. In doing so, the Panel adheres to the principle of *actori incumbit probatio*, which is known in several jurisdictions, is foreseen in Article 8 of the Swiss Civil Code and has been consistently observed in CAS jurisprudence, according to which "*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue, In other words, the party which asserts facts to support its rights has the burden of establishing them (..) The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*" (e.g. *CAS 2003/A/506*, para 54; *CAS 2009/A/1810&1811*, para 46; and *CAS 2009/A/1975*, para 71 et seq.).

160. With regard to the present dispute, the Panel notes that it is undisputed among the Parties that the dispute between Watford and the Player is an employment-related dispute between a club and a player of an international dimension.

161. In accordance with the above, the Panel further notes that if an independent arbitration tribunal, established at the national level within the framework of the association and/or a collective bargaining agreement and guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, exists at the national level, the dispute between Watford and the Player may be referred to the said body, provided that the two parties have explicitly chosen to submit their dispute thereto by means of a clear, specific and exclusive arbitration clause. In fact, the Panel confirms that such an arbitration clause needs to be "*clear, specific and exclusive*" in order to pre-empt the exercise of jurisdiction of the FIFA DRC according to the FIFA RSTP.

162. The Panel further notes for the sake of good order that there seems to be no dispute between the Parties over whether the PL Board and the PLAC, respectively, qualifies as an independent arbitration tribunal, established at the national level within the framework of the association and/or a collective bargaining agreement and guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, based on which, and on its findings as set out below, the Panel will not deal with this issue during these proceedings.

163. The first sentence of Clause 18 of the Watford Contract reads as follows: "*Any and all disputes shall be handled by the competent body of The FA or the PL (as applicable).*"

164. Clause T.31 of the Premier League Handbook (season 20/21) states as follows:

> "*Disputes between Clubs and Player*
>
> *Any dispute or difference between a Club and a Player not otherwise expressly provided for in these Rules may be referred in writing by either party to the Board for consideration and adjudication in such manner as the Board may think fit. For the purpose of this Rule only, "Player" shall include one who was formerly employed by the Club with which the dispute or difference has arisen, whether or not he has been registered to play for another Club."*

165. Moreover, Clause T.36 states:

> "*Appeals*
>
> *Within 14 days of a decision of the Chairman of the Judicial Panel (or his appointee(s), as appropriate), given under the provisions of either Rule T.30 or Rule T.31 either party may by notice in writing appeal against such decision to the Premier League Appeals Committee whose decision shall be final.*"

166. According to the Player and Olympique, and since Watford was undisputedly participating in the Premier League at the time when Watford filed its claim with FIFA, the PL Board was the competent body to adjudicate the dispute based on the PL rules, regardless of the fact that the Player was never duly registered with Watford.

167. FIFA and Watford, on the other hand, are of the opinion, *inter alia*, that since it is not sufficiently clear that this was the case, Clause 18 did not validly deprive FIFA of its (default) jurisdiction as set out in Article 22 (b) of the FIFA RSTP.

168. In this regard, the Panel initially notes that, apparently, and as submitted by the Player and Olympique, there is no explicit legal requirement set out in a specific provision of the Premier League Handbook for a player's registration with a Premier League club in order for T.31 to be applicable to that player.

169. However, at the same time, the Panel notes the wording of the following definitions set out in the same handbook:

> *"A.1.30. "Club" means an association football club in membership of the League, […]*
>
> *[…]*
>
> *A. 1.46. "Contract Player" means any player (other than an Academy Player) who has entered into a written contract of employment with a Club.*
>
> *[…]*
>
> *A.1.105. "League" means The Football Association Premier League Limited.*
>
> *[…]*
>
> *A.1.140. "Player" means any Contract Player, Out of Contract Player, Amateur Player or Academy Player who is registered to Play for a Club."*
>
> *[…]*

A. 1.132 "Out of Contract Player" means a Contract Player whose contract of employment with a Club has expired."

170. In the Panel's view, these definitions are relevant in order to decide on a case-by-case basis whether the PL Board would be competent to adjudicate a dispute between a player and a club pursuant to Clause T.31 based on the specific circumstances of each case.

171. In other words, it would have to be decided by the relevant body whether or not the club and the player in question were to be qualified as a Club and a Player, respectively, pursuant to the definitions set out in the Premier League Handbook.

172. In a dispute like the present one, and based on the above, the Panel expects that it would then, *inter alia*, be relevant to assess whether the facts that the Player (i) was never registered with Watford as a result of his own actions and (ii) terminated the Watford Contract prematurely before Watford ever had a chance to duly register him as a player for the Club would have any consequences.

173. In the Panel's view, these are no questions which can be easily and quickly answered.

174. In this regard, and for the sake of good order, the Panel notes that such assessments are not within the scope of the powers of the Panel in these proceedings.

175. On the contrary, the mission of the Panel regarding this specific issue is to decide whether Clause 18 of the Watford Contract can be considered to be sufficiently "*clear, specific and exclusive*" in order for it to validly deprive FIFA of its jurisdiction to adjudicate this dispute in accordance with Article 22 (b) of the FIFA RSTP.

176. In this regard, and based on the above, the Panel finds that Clause 18 does not sufficiently fulfil these requirements, not least since it is not clear to the Panel when the PL or the FA would be "applicable" as set out in the said clause.

177. Even if the Panel, for the sake of argument, was to be of the opinion that the PL Board would, *prima facie*, appear competent to adjudicate the present dispute, subject to the Player actually having been registered with Watford, this does not have as a consequence that the said clause, *per se*, can be considered to have fulfilled the above-mentioned requirements in a case where the events are as they are in the present dispute.

178. Moreover, the Panel notes that it does not appear clear to the Panel whether the FA would in any case be competent to adjudicate a dispute between a Premier League club and a player who does not qualify as a Player pursuant to the Premier League Handbook.

179. As such, the alleged well-defined "*order of precedence in terms of jurisdiction*" between the PL and the FA in relation to their internal "applicability" in the light of Clause 18 of the Watford Contract is not entirely clear to the Panel, which only supports the above-mentioned findings of the Panel.

180. Additionally, and for the sake of good order, the Panel underlines that the fact that the Watford Contract was drafted by Watford does not change the Panel's findings, not least in a situation where the events that led to the present dispute were, at least to some material extent, caused by the Player's conduct.

181. Finally, the Panel notes that it has been submitted that regardless of the above, the FA would be competent anyway pursuant to the so-called Rule K and the English Arbitration Act. However, the Panel dismisses this argument as any such alleged competence would not be sufficient to deprive FIFA of its jurisdiction under Article 22 (b) if the above-mentioned requirements are not fulfilled, which is not the case.

182. Based on the above, the Panel finds that the Player and Olympique failed to prove that the requirements set out in Article 22 (b) in order to deprive the FIFA of its jurisdiction have been fulfilled.

183. As such, the Panel agrees with the FIFA DRC that the FIFA DRC was competent, on the basis of Article 22 of the FIFA RSTP, to decide on the merits of the dispute.

b. Does the Watford Contract qualify as a valid employment agreement between the Player and Watford, and, if so, did the Player have just cause for rescinding/terminating it on 18 May 2020?

184. Given the Panel's finding that the FIFA DRC had jurisdiction to adjudicate Watford's claim, the Panel now has to decide on the merits of the dispute with regard to the Watford Contract.

185. Pursuant to Article 2 (2) of the FIFA RSTP

"A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs."

186. It is not in dispute that the Watford Contract was signed by the Player and by Watford, and it is further noted, with reference to CAS jurisprudence, *inter alia*, CAS 2015/A/3953 & 3954, that the said contract appears to include all *essentialia negotii* for an employment contract, i.e. i) a date, ii) the name of the parties, iii) the duration of the contract, iv) the amount of remuneration and, as already mentioned, v) the signatures of the parties.

187. In this regard, and for the sake of good order, the Panel notes that the submission regarding the Player not being able to read and understand English, and thus not understanding the content of the Watford Contract before signing it, must be dismissed, in accordance with CAS jurisprudence (e.g. CAS 2013/A/3375 & /3376), since "*a party signing a document of legal significance, as a general rules, does so on its own responsibilities and is liable to bear the possible legal consequences arising from the execution of the document.*". As such, it is the Player's own responsibility to understand the content of any documents that he is signing.

188. Based on that, the Panel is comfortably satisfied in finding, as a starting point, that the Watford Contract was a valid and binding employment contract entered into between the Player and Watford unless specific circumstances speak against this finding in a decisive manner.

189. In this regard, it is up to the Player, possibly assisted by Olympique, to discharge the burden of proof to establish that the Watford Contract is not valid and binding on the parties thereto, or that it is rescindable based on the given circumstances.

190. The Panel finds that the Player (together with Olympique) has not adequately discharged that burden.

191. To reach this decision, the Panel has conducted an in-depth analysis of the facts of the case, as well as of the information and evidence gathered during the proceedings, as discussed below.

The Alleged Contract

192. The Panel initially notes that the Player submits that he signed the Alleged Contract with Watford in 2019, which, according to the Player, included terms materially more favourable to him than the terms of the Watford Contract.

193. According to the Player, pursuant to the Alleged Contract, he would receive a sign-on fee/bonus in the amount of EUR 1,200,000, which amount, as it turned out upon receipt of a French version of the Watford Contract, was not included although the Player, before signing, had been informed that it would.

194. Watford, on the other hand, does not dispute that a meeting was held and medical tests were conducted in Udine in the summer of 2019. However, Watford alleges that it never signed the Alleged Contract nor any other contracts for that matter with the Player. In any case, Watford submits that such an alleged contract would not have any legal impact on the validity of the Watford Contract.

195. Based on the circumstances of the case, the Panel is not convinced that the Alleged Contract was ever signed by the Player and Watford, or at least that any document signed by the Player during his visit to Udinese was in fact an employment contract between him and Watford.

196. In this regard, the Panel, *inter alia*, notes that there is no copy of the Alleged Contract on file, that Watford stated during these proceeding that such a contract "*never existed*", combined with the fact that Mr Cardillo, who attended the meeting, testified that neither Watford nor Udinese signed any contract with the Player in June 2019. Also, Mr Sanogo and Mr Dramé testified that no contract was signed during the Player's visit in Udine in June 2019.

197. Furthermore, when asked directly by the Panel about the length and other terms of the Alleged Contract, the Player was not very consistent and clear in this regard, although he insisted that he signed something.

198. As a result, the Panel finds that the existence of the Alleged Contract has not been established. Therefore, no Alleged Contract can be invoked for any purpose in this arbitration.

199. The Panel finds that the same goes for the alleged breach of Article 18 of the FIFA RSTP, even if Watford is to be considered a party to such a meeting and even if the Player's then club was not duly informed/had accepted it. A potential breach of Article 18 of the FIFA RSTP does not make a subsequent employment contract between such breaching parties invalid or rescindable. At the most, any breach of the said article will be subject to sanctions imposed by FIFA.

Manipulation – Fraud

200. The Player further submits that he was manipulated to sign the Watford Contract by Mr Sanogo and Watford, who misled him as to the exact terms of the contract, falsely telling the Player that the content was the same as that of the Alleged Contract.

201. According to the Player, the content of the Watford Contract was never translated or explained to him, and he was only informed that the terms of the Watford Contract were similar to the terms of the Alleged Contract. In addition, according to the Player, Mr Sanogo had a conflict of interest, due to his interest in working together with Watford in the future. As a result, the Watford Contract must be considered invalid for fraudulent misrepresentation, since there is a casual nexus between the fraudulent statement or omission and the Player's decision to sign it. In any case, the Player was entitled to rescind it based on the circumstances affecting his signing.

202. Watford, on the other side, submits that the Watford Contract is valid and binding and that there is no evidence at all to show that the Player was allegedly manipulated into signing it, neither by Watford, nor by his own advisers.

203. The Panel initially notes that since the existence of the Alleged Contract has not been established, any term allegedly contained therein cannot be assumed as a point of reference to determine whether or not the Player was manipulated or defrauded into signing the Watford Contract.

204. The foregoing, however, does not, *per se*, exclude the possibility that the Player was in fact the victim of such behaviour. Nevertheless, the Panel does not find that the Player has discharged his burden of proving such serious allegations, including that such alleged behaviour was in fact decisive to his signing of the Watford Contract.

205. In this regard, and based on the testimonies of Mr Cardillo, Mr Sanogo, Mr Dramé and

Mr Rutman, all of whom participated in the Signing Meeting, either in person or remotely, the Panel is comfortably satisfied that the Player, at least to some extent, had the material and financial terms of the Watford Contract translated or explained to him by Mr Sanogo and Mr Rutman before signing.

206. The Panel does not find any proof in support of the allegations that such a translation or explanation was done in an incorrect, fraudulent or manipulating way.

207. Moreover, the Panel understands that the Player's side had received a draft of the contract after the London Meeting.

208. And even if the entire content of the Watford Contract was not translated or explained to the Player, this does not release the Player from his responsibility of signing a document if allegedly not knowing or understanding its content.

209. Finally, and for the sake of good order, the Panel notes that the fact that the Player was not represented by his own independent lawyer/legal adviser does not *per se* have as a consequence that the interests of the Player were not safeguarded, or that he was manipulated into signing the Watford Contract.

<u>The Tripartite Contract – Conflict of interest</u>

210. Based on the evidence on file and on the Player's testimony during the hearing, the Panel notes that it is undisputed that the Tripartite Contract between Mr Sanogo, the Player and Watford was signed by the respective parties. In fact, while the Tripartite Contract was signed by Mr Sanogo in London on 13 January 2020 and by the Club on 16 January 2020, the Player testified that he signed it during the Signing Meeting in connection with his signing of the Watford Contract.

211. According to the Player, Mr Sanogo presented the document to him during the meeting, explaining that it needed to be signed in order for Mr Sanogo to be able to represent the Player with regard to the Watford Contract, which is why the Player signed it. The Tripartite Contract was drafted in English, which the Player did not read and understand at that time.

212. In accordance with the Tripartite Contract, Mr Sanogo was then to represent both the Player and Watford in this regard, and Watford was to pay Mr Sanogo for both the so-called "Club Services" and the "Player Services", but at the same time being authorised to deduct any amount paid for "Player Services" from any remuneration payable to the Player.

213. The Player submits that Watford, fully aware of the fact that Mr Sanogo was already the agent of the Player and without obtaining a valid waiver prior to the start of the negotiations, hired Mr Sanogo as its agent, thus violating Article 8 of the FIFA RWI applicable at the time.

214. Based on that, it is submitted both by the Player and Olympique that the Watford Contract was to be considered invalid and voidable.

215. Watford, on the other hand, submits that there is no violation of the prohibition of dual representation and that the transaction was conducted in full compliance with the FIFA and FA intermediary regulations and with the full and informed consent of the Player. Furthermore, the Player did sign the Tripartite Contract on his own responsibility, and in any case, any alleged violation of the prohibition of dual violation would have no relevance to the validity of the Watford Contract.

216. The Panel initially notes that Articles 8 and Article 9 of the FIFA RWI state as follows:

> "*8. Conflicts of interest*
>
> *1. Prior to engaging the services of an intermediary, players and/or clubs shall use reasonable endeavours to ensure that no conflicts of interest exist or are likely to exist either for the players and/or clubs or for the intermediaries.*
>
> *2. No conflict of interest would be deemed to exist if the intermediary discloses in writing any actual or potential conflict of interest he might have with one of the other parties involved in the matter, in relation to a transaction, representation contract or shared interests, and if he obtains the express written consent of all the other parties involved prior to the start of the relevant negotiations.*
>
> *3. If a player and a club wish to engage the services of the same intermediary within the scope of the same transaction under the conditions established in paragraph 2 above, the player and the club concerned shall give their express written consent prior to the start of the relevant negotiations, and shall confirm in writing which party (player and/or club) will remunerate the intermediary. The parties shall inform the relevant association of any such agreement and accordingly submit all the aforementioned written documents within the registration process (cf. articles 3 and 4 above).*
>
> *9. Sanctions*
>
> *1. Associations are responsible for the imposition of sanctions on any party under their jurisdiction that violates the provisions of these Regulations, their statutes or regulations.*
>
> *2. Associations are obliged to publish accordingly and to inform FIFA of any disciplinary sanctions taken against any intermediary. The FIFA Disciplinary Committee will then decide on the extension of the sanction to have worldwide effect in accordance with the FIFA Disciplinary Code*."

217. Based on its analysis of the content of the Tripartite Contract, the Panel finds that it, in principle, fulfils the requirements for a waiver/written consent pursuant to par. 3 of Article 8 of the FIFA RWI, thus granting the Player and the Club the opportunity to be represented by the same agent in that transaction.

218. The Panel notes that the Player submits that he did not give his written consent to such dual representation "*prior to the start of the relevant negotiations*", and, furthermore, that he was never explained the real content of the contract, based on which it is submitted that he never validly waived the potential conflict of interest. However, the Tripartite Contract, *inter alia*, indicated that "*The Player has provided his full and informed content*

to the Intermediary acting on behalf of both the Club and the Player in the registration of the Player with the Club under the Contract and to the Intermediary receiving a fee in connection therewith." In addition, in their testimonies before the Panel, both Mr Sanogo and Mr Rutman testified that the Player had been duly informed by them about the content and implication of the Tripartite Contract during the Signing Meeting, based on which the Player signed it.

219. Given the circumstances of the case, the Panel once again notes that "*a party signing a document of legal significance, as a general rule, does so on its own responsibilities and is liable to bear the possible legal consequences arising from the execution of the document.*"

220. The Panel further notes that it does not find any evidence on file proving, or even suggesting, that Mr Sanogo, based on his alleged conflict of interest, acted in any way against the interests of the Player.

221. Besides, the fact that Mr Sanogo, subsequently, has apparently been involved in several other transfers connected to Watford does not change the Panel's view, which is also the case regarding Mr Sanogo's alleged failure to register as an intermediary with the FFF.

222. Furthermore, the Panel notes that even if the Tripartite Contract could not be considered signed "*prior to the start of the relevant negotiations",* it follows directly from the FIFA RWI that the only consequences of a breach of their Article 8 are that the parties in question would potentially be subject to sanctions.

223. In view of the foregoing, the Panel also finds that the submission regarding the Watford Contract allegedly being invalid and/or rescindable based on the alleged violation of the prohibition of dual representation must be dismissed.

<u>Termination of the Watford Contract</u>

224. Based on the above, the Panel is thus satisfied that the Watford Contract qualified as a valid, and not rescindable, employment contract between the Player and Watford, according to which the Player was to join the club on 1 July 2020.

225. However, the Player unilaterally terminated the employment relationship by forwarding the Termination Letter to the club on 18 May 2020.

226. In this regard, the Panel initially notes that Article 13 of the FIFA RSTP defends the principle of contractual stability, stating as follows:

"*A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.*"

227. However, Article 14 of the same regulations sets out that:

"*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.*"

228. Under Swiss law, such just cause exists whenever the terminating party cannot be expected in good faith to continue the employment relationship (Article 337 par. 2 of the Swiss Code of Obligations). In accordance with CAS jurisprudence, only material breaches of a contract can possibly be considered just cause for the termination of an employment contract (CAS 2013/A/3091). Furthermore, termination of a contract should always be an action of last resort, an "*ultima ratio*" action.

229. Moreover, and in general, the breaching party must have been warned by the other party that the conduct is not in accordance with the contractual obligations agreed and informed about the possible consequences of any continuous breach thereof.

230. The Panel does not find that the Player has adequately discharged his burden of proof to show that his termination of the Watford Contract was for just cause.

231. Based on the evidence on file, it appears that the Player was simply more interested in staying in France playing for a French club than going to Watford in England.

232. Furthermore, it appears that due to the excellent performance of the Player in the first half of 2020, interest in the Player was growing, thus potentially allowing him to expect better financial terms under a potential new contract than those offered under the Watford Contract.

233. In any case, during these proceedings and before the FIFA DRC, the Player has failed to provide and substantiate any justifiable reason for him not to be able to respect the terms of the Watford Contract and join the said club by early July 2020.

234. Based on the above, the Panel agrees with the FIFA DRC that the Player terminated the Watford Contract without just cause. The question whether such termination took place within the so-called protected period will be dealt with in section d) which follows.

c. What are the financial consequences of the Player's termination of the Watford Contract, if any?

235. Since the Player terminated the Watford Contract without just cause, the Panel has to address Watford's claim against the Player and Olympique.

236. It follows from Article 17 (1) of the FIFA RSTP, *inter alia*, that:

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

existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period."

237. Furthermore, it follows, *inter alia*, from Article 17 (2) of the FIFA RSTP that:

"*[…] If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.*"

238. The Panel further notes that Clauses 8 and 9 of the Watford Contract have the following wording:

"*Costs of Watford*

*8. In reliance upon the representations and warranties given by the Player hereunder Watford has entered into this Deed and as a result has incurred certain costs and expenses (the **'Watford Costs'**). The Player agrees to indemnify Watford on demand against all liabilities, costs, expenses, damages and losses (including but not Limited to any direct, indirect or consequential losses, loss of profit, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Watford arising out of or In connection with: (a) any breach of the representations and warranties given by the Player hereunder; and/or (b) any claim made against Watford in respect of the Player's registration with Watford*

9. In addition it is agreed that the Player shall be liable to pay to Watford on demand the following sums in the event that the Player does not become registered with Watford in accordance with the terms of this Deed as a result of any breach by the Player of this Deed:

a. a sum equal to the total amount of the Watford Costs; and

b. a sum to compensate Watford for its loss of the opportunity to acquire the Player's registration and/or the costs it shall incur procuring a substitute player and that such compensation shall be calculated by reference to the Player's true transfer market value as at the date of such breach. The Player acknowledges and agrees that for the purposes of this Deed, the Player's true transfer market value shall be calculated by taking into account a number of factors including, but without limitation, the value of any new employment contract with any club which the Player joins Instead of Watford, the Player's age, ability, field position, on-field performance related data, club and international appearance record, honours, and such other factors which Watford deems reasonably relevant to this calculation as at the date of such breach. As at the date of this Deed and based on the above, Watford anticipate that such sum would total £5,000,000 (five million pounds) and that this represents a reasonable and proportionate amount to protect Watford's legitimate interest in acquiring the Player's registration.

239. However, in the Appealed Decision, the said Clause 9 was disregarded by the FIFA DRC, as the amount of compensation therein provided was considered disproportionate. Furthermore, the claim related to the so-called "*Watford Costs*" was dismissed as unsubstantiated. As such, the FIFA DRC, in order to reach a proportionate amount of compensation to Watford, relied on the parameters set out in Article 17 (1) of the FIFA

RSTP and specifically the financial terms of the Watford Contract and the Olympique Contract.

240. Based on that, the FIFA DRC found that the amount of GBPP 2,307,875 (GBP 1,637,150 + GBP 2,978,600 / 2) was to be considered a reasonable and justified amount of compensation for the Player's breach of contract.

241. In their respective appeals, Watford requests, *inter alia*, to be awarded compensation for breach of contract in accordance with Clause 9 of the Watford Contract, while the Player and Olympique request, *inter alia*, that Watford's claim for compensation is rejected or at least reduced.

242. The Panel initially notes that, in accordance with the principles set out in Article 17(1) of the FIFA RSTP and in accordance with Swiss law, the freedom of parties to a contract is to be given the utmost importance, thus allowing them, within certain limits, to agree on the amount to be paid to the other party in case of breach of contract. This is not contested by the Parties.

243. As such a possibility is explicitly set out in Article 17 (1) of the FIFA RSTP regarding the calculation of the potential amount of compensation payable by a breaching party to a contract, the Panel finds by majority that Swiss law is applicable to the question of whether such an agreed amount is to be considered excessive.

244. The relevant provisions regarding such clauses are set out in Article 160 et seq. of the SCO, stating as follows:

"*Art. 160*

1. Where a penalty is promised for non-performance or defective performance of a contract, unless otherwise agreed, the creditor may only compel performance or claim the penalty.

2. Where the penalty is promised for failure to comply with the stipulated time or place of performance, the creditor may claim the penalty in addition to performance provided he has not expressly waived such right or accepted performance without reservation.

Art. 161

1. The penalty is payable even if the creditor has not suffered any damage.

2. Where the damage suffered exceeds the penalty amount, the creditor may claim further compensation only if he can prove that the debtor was at fault.

[…]

Art. 163

1. The parties are free to determine the amount of the contractual penalty.

2. The penalty may not be claimed where its purpose is to reinforce an unlawful or immoral undertaking or, unless otherwise agreed, where performance has been prevented by circumstances beyond the debtor's control.

3. At its discretion, the court may reduce penalties that it considers excessive."

245. With regard to the principles for such a possible reduction, the Panel further notes the

following, stated in CAS 2015/A/4139 (para 50-54):

"[…] *Article 163(3) CO provides that the judge may reduce penalties which he finds excessive. However, the reduction of the penalty is reserved for exceptional cases only, when the penalty is considered as grossly unfair. This follows from Article 163 par. 1 of the SCO, which expressly provides that a penalty can be set at any amount by the parties. As a rule, the parties are therefore bound by their agreement, and the principle of freedom of contract commands that the tribunal abides by the parties' agreement. Since the possibility of a reduction affects the contractual freedom of the parties, it may only be applied with reservation (Decision of the Swiss Federal Tribunal, 11.03.2003, 4C.5/2003).*

According to the Swiss Federal Tribunal, a penalty is excessive when the stipulated amount is unreasonable and flagrantly exceeds the amount admissible with regard to the sense of justice and equity (ATF 133 III 43, para. 3.3.1). The doctrine prescribes that it is not sufficient that the penalty should be too important to be reduced: the penalty must flagrantly exceed any amount admissible with regard to the sense of justice and equity. The excess must exceed what is reasonable. The quantum of the penalty must not be justifiable (COUCHEPIN G., La clause pénale – Etude générale de l'institution et de quelques applications pratiques en droit de la construction, 2008, para. A.2.1. p. 169).

When deciding whether a reduction of the penalty fee is admissible and, if so, to what extent, the Panel should take into account all the circumstances of the case, in particular a series of criteria, such as (i) the creditor's interest in the other's party compliance with the undertaking; (ii) the severity of the default or breach; (iii) the intentional failure to breach the main obligation; (iv) the business experience of the parties; and (v) the financial situation of the debtor (Decision of the Swiss Federal Tribunal, 16.01.2002, 4C.249/2001)."

246. The Panel further notes that the SFT held that Article 163 par. 3 of the SCO, generally applicable to penalty clauses, is also applicable by analogy to liquidated damages clauses, which must be reduced when the amount of the actual loss suffered is noticeably lower than the amount set out in the clause (SFT judgment 4A_601/2015 of 19 April 2016).

247. Having this in mind, the Panel will consider in sequence the two "components" of the Watford's claim for compensation, as stipulated in Clauses 8 and 9 of the Watford Contract, starting from the request of indemnification of the "*Watford Costs*" sustained. The Panel will then consider the request for compensation of the "*true … market value*" of the Player, as defined at Clause 9(b) of the Watford Contract, with respect to the elements for its quantification as therein indicated, and their contractual "*provisional*" determination in GBP 5,000,000.

248. In that context, the fact that the claim is in part denominated in EUR, even if the Player was to be paid in GBP pursuant to the Watford Contract, has no impact.

"*Watford Costs*"

249. As to the "*Watford Costs*" as set out in Clause 8 and included in Clause 9 of the Watford Contract, the Panel notes that Watford claims payment of (i) GBP 3,941.14 as "*costs related to the scouting and monitoring the Player in live matches*", (ii) GBP 40,755 as remuneration paid to Mr Sanogo pursuant to the Tripartite Contract, and (iii) EUR

1,150,000 paid to Mr Dramé pursuant to the Dramé Contract.

250. Without going further into whether such amounts constitute compensation as "*negative interest*" or "*positive interest*", the Panel notes that it finds that Watford has failed to sufficiently prove that the alleged "*costs related to scouting and monitoring the Player in live matches*" were actually incurred in connection with the Player entering into the Watford Contract, as set out in Clause 8, and is therefore not sufficiently satisfied that the claimed amounts qualifies as Watford Cost.

251. With regard to the claim based on the payments to Mr Sanogo and Mr Dramé, the Panel initially notes that the actual payment of these amounts does not seem to be disputed, and it likewise seems undisputed that these payments were based on the Tripartite Contract and the Dramé Contract, respectively.

252. However, and as rightly set out by the FIFA DRC, the Panel notes that pursuant to both the Tripartite Contract and the Dramé Contract, any payments to Mr Sanogo and Mr Dramé only fell due upon the Player becoming registered with Watford, which the Parties agree never happened.

253. As such, the payment obligations towards Mr Sanogo and Mr Dramé never fell due, and Watford decided to make these payments after all, thus incurring what appears to be unnecessary costs, which the club was not legally bound to incur.

254. Naturally, the Panel appreciated that Watford is free to make such a decision on its own and make the payments, but in that case, the Panel finds that such payments do not qualify as "*Watford Costs*" pursuant to Clause 8 of the Watford Contract, which subsequently can be claimed from the Player based on the circumstances.

255. Based on the above, the Panel finds no grounds for taking the alleged "*Watford Costs*" into consideration when assessing Watford's claim in the light of Clause 9 of the Watford Contract.

"*<u>The Player's true transfer market value as at the date of such breach</u>.*"

256. Clause 9(b) of the Watford Contract provides that in case the Player was not registered with Watford, the Player would be liable to pay on demand "*a sum to compensate Watford for its loss of the opportunity to acquire the Player's registration and/or the costs it shall incur procuring a substitute player and that such compensation shall be calculated by reference to the Player's true transfer market value as at the date of such breach.*

257. Based on this Clause, and on the fact that no offer was actually made for the Player, Watford is now claiming one of the following alternative amounts:

    (i) EUR 15,301,111 as the Player's true market value based on the increase of the value reflected in the difference between the sums due to the Player under the Watford Contract and the Olympique Contract (the "*Increase of value Claim*");

(ii) EUR 10,900,000 as the Player's true market value provided for in the Driblab Expert Valuation Reports (the "*Valuation Claim*");

(iii) EUR 10,088,155 as the Player's true market value based on the alleged replacement costs (the "*Replacement Claim*");

(iv) EUR 15,301,111, calculated by application of the criteria set out in Article 17 (1) of the FIFA RSTP and based on the increase of the value reflected in the difference between the sums due to the Player under the Watford Contract and the Olympique Contract (the "*Alternative Increase value Claim*");

(v) EUR 11,581,398, calculated by application of the criteria set out in Article 17 (1) of the FIFA RSTP and based on the replacement costs and the concept of specificity of sport as a correcting factor (the "*Alternative Replacement Claim*"), or

(vi) EUR 10,900,000 calculated by application of the criteria set out in Article 17 (1) of the FIFA RSTP and based on the Player's true market value provided for in the Driblab Expert Valuation Reports (the "*Alternative Valuation Claim*").

258. With regard to the "*Increase of value Claim",* the Panel initially notes that it is undisputed that the remuneration payable to the Player pursuant to the Olympique Contract is substantially higher than the remuneration payable pursuant to the Watford Contract.

259. However, based on Clause 9 and the circumstances of the dispute, the Panel finds no sufficient legal basis for recognising that such an increase in percent applied to the "default" value of the Player in the amount of GBP 5,000,000, as set out in the Watford Contract, reflects the Player's true market value pursuant to Clause 9.

260. With regard to the "*Valuation Claim",* the Panel has taken due note of the content of the Driblab Expert Valuation Reports, which has allegedly been elaborated by relying on objective criteria such as, *inter alia*, the Player's age, overall experience and technical achievements. The Panel further notes that there appears to be only a minimal difference in the valuation in the different reports submitted by Watford during these proceedings.

261. However, and even if such reports might be a helpful tool within the world of football for some, the Panel finds the result a bit speculative and also finds that there is no sufficient (legal) basis for recognizing that the value set out in the report reflects the true market value of the Player.

262. With regard to the "*Replacement Claim"*, the Panel appreciates that CAS panels in the past have taken into account costs related to signing a new player as a replacement when applying Article 17 (1) of the FIFA RSTP, but only in cases involving a logical nexus between the occurrence of such costs and the breach.

263. In this dispute, Watford submits that the costs occurred in connection with procuring the player Imran Louza as the preferred replacement for the Player should form the basis for the claim against the Player in accordance with the wording of Clause 9.

264. However, the Panel notes that Mr Louza was only transferred to Watford more than one year after the Player terminated the Watford Contract, and the Panel further finds that Watford failed to substantiate why this particular player is to be considered as the replacement of the Player, not least since he was only signed a long time after the termination, which could indicate that the club was in fact not that much in need of a substitute following the Player's termination of his contract. As such, *inter alia*, the Panel finds that the alleged replacement costs do not with sufficient certainty qualify as replacement costs pursuant to Clause 9 of the Watford Contract.

265. The Panel will deal with a possible claim calculated by application of Article 17(1) of the FIFA RSTP below, but with regard to the *Alternative Increase value Claim,* the *Alternative Replacement Claim* and the *Alternative Valuation Claim*, the Panel notes already at this point, based on its consideration above and in view of the similarity in the bases for the claims, that it finds no sufficient basis for these three clams either in their requested amounts.

266. Based on the above, and taking into account that, due to the conduct of the Player, no offer for his transfer was received, the Panel appreciates that it is difficult for Watford to discharge the burden of proof to substantiate a claim based on his "*true transfer market value as the date of such breach*".

267. In this regard, the Panel notes that pursuant to Clause 9, the Player did not object to Watford's explicit anticipation "*that such sum would total GBP 5,000,000 and that this represents a reasonable and proportionate amount to protect Watford's legitimate interest in acquiring the Player's registration*", which is why, and based on the circumstances of the case, it finds that such an allegedly agreed amount has the sufficient legal basis for substantiating a claim for compensation from Watford against the Player, although without having yet dealt with whether such a claim should be upheld.

268. As already mentioned above, pursuant to Article 163 SCO, and in line with CAS 2015/A/4139 (para 50-54), an amount set out in or calculated in accordance with a penalty clause or a liquidated damages clause is in principle open to reduction. However, such a possible reduction is reserved for exceptional cases, when the amount is considered grossly unfair since the possibility of a reduction affects the contractual freedom of the parties, and it may therefore only be applied with reservation.

269. Taking into consideration the above, the Panel considers such an amount excessive for the purposes (and within the limits) of Article 163 par. 3 of the SCO.

270. In this regard, it is noted that the agreed amount of GBP 5,000,000 exceeds the Player's yearly remuneration pursuant to the Olympique Contract by more than 8 times and his yearly remuneration pursuant to the Watford Contract by more than 15 times, thus also taking into account the supposed financial situation of the Player.

271. Even if the Panel appreciates Watford's interest in the Player's compliance with his

contractual obligations towards it, and in avoiding losses, the Panel finds that the set amount is to be considered excessive, also taking into account the age and experience of the Player.

272. Based on the above and the other circumstances of this particular case, not least the fact that Clause 9 was drafted by Watford and appears to be solely in the interests of the club, the Panel finds it proper that any amount possibly to be paid by the Player pursuant to Clause 9 of the Watford Contract, in view of the foregoing, would be reduced to GBP 2,307,875, which equals the average remuneration between the Watford Contract and the Olympique Contract for 5 years, which amount the Panel still considered to be a high amount in the case at hand.

273. Such amount corresponds to the compensation that would have to be paid pursuant to Article 17(1) of the FIFA RSTP. The Panel sees no reason to depart from that quantification.

274. In fact, if it were to assess Watford's claim against the Player by direct application of Article 17(1) of the FIFA RSTP, and without directly applying Clause 9 of the Watford Contract, the Panel would note that consistent with the well-established CAS jurisprudence, the injured party is entitled to a whole reparation of the damage suffered according to the principle of "*positive interest*", which implies that compensation for breach of contract must be aimed at reinstating the injured party to the position it would have been in had the contract been performed until its expiry (CAS 2012/A/2698 and others).

275. The Panel further notes that, according to CAS jurisprudence, it is for it to carefully assess, on a case-by-case basis, all the factors and determine how much weight, if any, each of them should carry in calculating compensation under the said article, and any of them may be decisive on the facts of the particular case. Furthermore, and while the Panel has a "*wide margin of appreciation*" or a "*considerable scope of discretion*", it must not set the amount of compensation in a fully arbitrary way, but rather in a fair and comprehensible manner. At the same time, the CAS panel has no duty to analyse and give weight to any specific factor listed in Article 17 (1) of the FIFA RSTP or set out in CAS jurisprudence if the parties do not actively substantiate their allegations with evidence and arguments based on such factors (CAS 201/A/7815 para 128 for references).

276. In the Appealed Decision, in order to estimate the amount of compensation due to Watford, the FIFA DRC first turned its attention to the financial terms of the Watford Contract and the Olympique Contract, the value of which constitutes an essential criterion in its calculation of the amount of compensation in accordance with Article 17 (1) of the FIFA RSTP.

277. The FIFA DRC then emphasised that the relevant compensation should be calculated on the basis of the average fixed remuneration, i.e. excluding any conditional or performance-related payment, as well as considering the period of time remaining on the contract signed with Watford.

278. It appears undisputed during these proceedings that pursuant to the five-year Watford Contract, the Player would be entitled to such remuneration in the amount of GBP 1,637,150, while the FIFA DRC set the similar amount pursuant to the Olympique Contract (prolonged for one year in the amount of EUR 720,000 (remuneration) + EUR 30,000 (accommodation costs)) at an amount of EUR 3,510,000, equivalent to GBP 2,978,600, with which calculation the Panel agrees.

279. Based on that, the compensation due was set at GBP 2,307,875, being the average between these two amounts.

280. Given the circumstances of the case, the Panel appreciates the findings of the FIFA DRC and considers this amount to be in line with the criteria set out in Article 17 (1) of the FIFA RSTP.

281. In the regard, the Panel notes that, even if not directly applicable before the FIFA DRC, Clause 9 of the Watford Contract sets out, *inter alia*, as criteria to be applied "*the Player's true market value as at the date of such breach*" and "*the value of any new employment with any clubs which the Player joins instead*".

282. The Panel finds that the application of these criteria, in addition to other criteria as set out in Article 17 (1) of the FIFA RSTP, justifies the amount of compensation as determined by the FIFA DRC, reflecting the value of the Player which Watford lost and thus meeting the principle of positive interest, and with which the Panel agrees, without at the same time deciding on the possible application of the FIFA DRC.

283. As confirmed by CAS jurisprudence (i.e., CAS 2018/A/5607), the concept of specificity of sport only serves the purpose of verifying the solution reached otherwise prior to assessing the final amount of compensation, and can lead to both an increase and decrease of compensation otherwise to be awarded to a party.

284. However, based on the circumstances of the case, the Panel does not find any reason why FIFA, or possibly subsequently the Panel, should have applied/applies this concept to the amount of compensation set out in the Appealed Decision.

285. Furthermore, and for the sake of good order, the Panel notes that it does not find it proven that Watford failed to comply with its general obligation to mitigate its loss.

286. Moreover, if the Panel was to find that that Clause 9 was not to be considered valid, applicable and enforceable pursuant to either Swiss law or the laws of England and Wales (whichever applicable), for whatever reason, the Panel would then have to apply Article 17(1) of the FIFA DRC directly (e.g. CAS 2016/A/4605), which would then result in the same amount of compensation.

287. Based on the fact that the Panel finds that both paths would eventually lead to the same result, the Panel confirms the finding of the FIFA DRC with regard to the amount of

compensation payable to Watford for breach of contract.

288. In this regard, and for the sake of good order, the Panel notes that such payment obligation does not breach the Player's personality rights.

289. The joint and several liability of Olympique as the Player's new club is set out in Article 17 (2) of the FIFA RSTP, regardless of any involvement or inducement of the said club (CAS 2020/A/6796).

290. In this regard, the Panel notes that the mechanism of joint and several liability has been endorsed by the SFT (4A_32/2016), even in cases where the new club bears no fault.

291. The Panel does not find any basis for not applying this mechanism of joint and several liability with regard to the Club in this dispute and further notes that Olympique, during the hearing, eventually confirmed that it does not dispute such liability in case any amount of compensation was to be awarded to Watford.

292. Based on that, the Panel confirms that Olympique is jointly and severally liable for payment of the compensation payable to Watford as set out above.

d. Are any disciplinary sanctions to be imposed on the Player and/or Olympique as a result thereof

293. Based on the findings of the Panel that the Player terminated the Watford Contract without just cause, the Panel turns its attention to the questions of whether any disciplinary sanctions should be imposed on the Player and on Olympique pursuant to the FIFA RSTP.

294. The Panel initially notes that it follows from Article 17(3) of the FIFA RSTP that:

"*In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period. This sanction shall be a four-month restriction on playing in official matches. In the case of aggravating circumstances, the restriction shall last six months. These sporting sanctions shall take effect immediately once the player has been notified of the relevant decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs. This suspension of the sporting sanctions shall, however, not be applicable if the player is an established member of the representative team of the association he is eligible to represent, and the association concerned is participating in the final competition of an international tournament in the period between the last match and the first match of the next season. Unilateral breach without just cause or sporting just cause after the protected period shall not result in sporting sanctions. Disciplinary measures may, however, be imposed outside the protected period for failure to give notice of termination within 15 days of the last official match of the season (including national cups) of the club with which the player is registered. The protected period starts again when, while renewing the contract, the duration of the previous contract is extended.*"

295. Furthermore, it follows from Article 17(4) of the FIFA RSTP that:

"*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 exception and the provisional measures stipulated in article 6 paragraph 1 of these regulations in order to register players at an earlier stage.*"

296. In this regard, it is important to analyse whether the Player's termination of the Watford Contract occurred within the protected period, which period is defined as follows in 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.*"

297. While Olympique contends that Watford failed to execute the Watford Contract before it was terminated by the Player and that the protected period cannot be interpreted as starting on the day of signing, FIFA submits, *inter alia*, that the protected period started from the day the parties signed and agreed to the terms of the Watford Contract.

298. The Panel agrees with FIFA that the option to apply sporting sanctions in case of a termination of a contract without just cause within the protected period strengthens the relationship between professional players and their clubs and serves as an additional deterrent for clubs and players who may be considering terminating a contract unilaterally or deliberately failing to comply with their contractual obligations.

299. The Panel further notes that it does not consider a termination of contract without just cause occurring after the signing but before the contractual period has started less serious than a termination of contract without just cause after the contractual period has begun.

300. In line with this, in CAS 2019/A/1909, it was found that *"[...] the breach of [the Contract], to the extend it was committed after the signature of [the contract] but before the entry into force, occurred in the Protected Period.*"

301. Furthermore, in the FIFA Commentary on the FIFA RSTP it is stated (at p. 177) that "[*t*]*he protected period starts with the execution of the contract.*"

302. Based on the above, and on the ratio behind Article 22 (3) and (4) of the FIFA RSTP, the Panel is satisfied that the protected period starts with the execution of the contract, even

if the contractual period has not yet begun.

303. It is not disputed that on 16 January 2020, Watford countersigned the Watford Contract and lodged signed copies thereof to the Premier League and the FA, thus executing the contract.

304. And as the Player terminated the same contract on 18 May 2020, the Panel finds it has been proven that the termination occurred within the protected period pursuant to Article 22 (3) and (4) of the FIFA RSTP.

305. Based on the above, and since the formal prerequisites for the application of Article 17(3) and (4) have thus been met, the Panel will examine the circumstances of the Player and Olympique separately below.

<u>The sanction imposed on the Player pursuant to Article 17(3) of the FIFA RSTP</u>

306. With regard to the disciplinary sanction imposed on the Player in the Appealed Decision, i.e. the restriction of four months on his eligibility to play in official matches starting with immediate effect, the Player submitted that such measure is not mandatory and must be applied on a case-by-case basis: the specific circumstances of this case does not justify the imposition of any sporting sanctions on the Player.

307. Olympique submitted, *inter alia*, that it would not be fair to sanction the Player, taking into consideration the way he had been treated by Watford.

308. The Panel agrees with the Player that, before any sanction is imposed on a player for breach of contract, the situation must be assessed on a case-by-case basis.

309. However, the Panel does not find grounds for setting aside the sanction imposed on the Player in the Appealed Decision.

310. In this regard, the Panel notes that it was in fact the Player who terminated the Watford Contract without just cause and even without any good explanation, except perhaps a preference for staying in France and obtaining better financial conditions, which the Panel finds are not sufficient reasons to cancel the imposed sanction or even reduce it.

311. Furthermore, and for the sake of good order, the Panel notes that the legal basis for the sanction imposed is very clear and that it corresponds to the minimum measure under the applicable rules.

312. Based on that, the Panel is comfortably satisfied to confirm the sanction imposed on the Player in the Appealed Decision.

<u>The sanction imposed on Olympique pursuant to Article 17(4) of the FIFA RSTP.</u>

313. The Panel notes that, pursuant to Article 17(4) of the FIFA RSTP in addition to the joint

and several liability to pay compensation, sporting sanctions must be imposed on any club which, *inter alia*, has been found to have induced a breach of contract during the protected period.

314. Furthermore, it follows from the said provision that it must 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.

315. It is undisputed that Olympique signed the Player on 30 June 2020 and that it was the first club that registered the Player after his termination of the Watford Contract.

316. The Panel does not find, *per se*, that the fact that the Player undisputedly signed the Pre-Contract with Angers on 18 May 2020 automatically released Olympique from the risk of being sanctioned pursuant to the said article, since Olympique was "*the first and only club with whom the Player's transfer was fully implemented and executed*" (FIFA Commentary on the FIFA RSTP, p. 183, with CAS jurisprudence).

317. Olympique submits that it never induced the Player to breach the Watford Contract, in which regard Olympique stresses, *inter alia*, that the first contact with the Player was established on 17 June 2020, when the then General Secretary of the club reached out to Mr Bovis.

318. The regulatory presumption set out in Article 17(4) of the FIFA RSTP leads to the reversal of the burden of proof, and the onus is on Olympique to provide evidence that, despite having signed and registered the Player, it did not induce the latter to the breach of contract.

319. The Panel notes that FIFA, when questioned by the Panel, stated that the presumption of inducement on Olympique was rebuttable on the basis of proof to the comfortable satisfaction of the Panel that the club had not induced the Player's breach of contract.

320. Based on the circumstances of the case, and without discussing with which evidentiary weight the presumption should be rebutted, the Panel does find that Olympique has in fact rebutted such presumption to its comfortable satisfaction.

321. In this regard, the Panel puts weight on the undisputed fact that, on 18 May 2020, the Player signed the Pre-Contract with Angers in order to sign a final agreement subsequently.

322. This Pre-Contract does not make much sense to the Panel if, in fact, Olympique had induced the Player to breach the Watford Contract, since it must be presumed that such inducement would only have been made in the interest of Olympique itself signing the Player.

323. The Panel also finds support in the additional evidence and in the testimonies submitted by Olympique, which confirm that there had not been any contact between the two parties

before the date of termination of the Watford Contract. First, Olympique produced the forensic reports of Mr Arnaud Roll, court bailiff (‘*huissier de justice*’), who, with the help of an IT expert, provided a comprehensive analysis of the text messages and emails exchanged between Mr Bovis and Olympique’s representatives. Mr Roll notes that the first WhatsApp messages date back to 17 June 2020, whereas the emails started on 18 June 2020. Second, Olympique relies on the testimonies of the Player, of Mr Bovis and, in particular, of Mr Eyraud as the then CEO of Olympique, all of whom assert that the contact between the two parties occurred well after the date of termination of the Watford Contract.

324. The fact that Olympique did not reply to the letters from Watford dated 2 and 16 June 2020 cannot lead to a different result for the sole reason that such letters were only forwarded after the Player’s termination of the Watford Contract.

325. Also, the Panel finds that the press articles mentioning Olympique’s supposed interested in signing the Player and contacts with him are not reliable evidence. In this regard, the Panel agrees with Olympique’s expert, Mr Bouhafsi, that rumours regarding the transfer of football players are sometimes spread by journalists and medias “*without any valid justification*” and “*simply to generate interest*” (para. 6). In fact, in line with the lack of reliability of the press articles produced by Watford, it seems apparent that Mr. Bovis was attempting to increase the clubs’ interest in the Player. In addition, these press articles are not in itself sufficient to substantiate the presumption in light of the other circumstances. As the Player explained, being a successful young player, it was not surprising that several clubs appeared to be interested in signing him. This possible interest does not *per se* qualify as inducement, if it was never communicated directly to the Player before his termination of contract, which the Panel is comfortably satisfied was not the case.

326. Based on the foregoing and the circumstances of the case, the Panel is satisfied to set aside the sanction imposed on Olympique in the Appealed Decision.

X. SUMMARY

327. Based on the foregoing and after taking into consideration all the evidence produced and all arguments made, the Panel finds that the Player terminated the Watford Contract without just cause and that the Player must pay to Watford the amount of GBP 2,307,875 as compensation for breach of contract.

328. Furthermore, the Panel finds that Olympique, in its capacity as the Player’s new club, is jointly and severally liable for the payment of the above-mentioned compensation to Watford.

329. The disciplinary sanction imposed on the Player in the Appealed Decision is confirmed.

330. The disciplinary sanction imposed on Olympique in the Appealed Decision is annulled.

XI. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 2 February 2022 by Olympique de Marseille against the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 25 November 2021 is partly upheld.

2. The appeal filed on 3 February 2022 by Mr Pape Alassane Gueye against the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 25 November 2021 is dismissed.

3. The appeal filed on 3 February 2022 by Watford Association Football Club Limited against the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 25 November 2021 is dismissed.

4. The decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 25 November 2021 is confirmed, with the exception of point 10 of its operative part (Section IV), which is set aside.

5. (…).

6. (…).

7. (…).

8. (…).

9. All further and other requests for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 21 July 2023

THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger
President of the Panel

Andrew de Lotbinière McDougall KC
Arbitrator

Luigi Fumagalli
Arbitrator