

CAS 2023/A/9697 Al Nassr Saudi v. Atlanta United

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Manfred Nan, Attorney-at-Law, Amsterdam, the Netherlands

in the arbitration between

Al Nassr Saudi Club, Riyadh, Kingdom of Saudi Arabia

Represented by Mr Daniel Muñoz and Mr Siddharth Gosain, Attorneys-at-Law,
Muñoz & Arias Sports Law, Valencia, Spain

Appellant

and

Atlanta United FC, Atlanta, United States of America

Represented by Mr Philip Bonner and Ms Alice Skupski, Solicitors, Centrefield LLP,
Manchester, United Kingdom

Respondent

*** * * * ***

I. PARTIES

1. Al Nassr Saudi Club (the “Appellant” or “Al Nassr”) is a professional football club with its registered office in Riyadh, Kingdom of Saudi Arabia. The Club is registered with the Saudi Arabian Football Federation (the “SAFF”), which in turn is affiliated to the *Fédération Internationale de Football Association* (the “FIFA”).
2. Atlanta United FC (the “Respondent” or “Atlanta”) is a professional football club with its registered office in Atlanta, Georgia, United States of America. Atlanta is a member club of Major League Soccer L.L.C. (the “MLS”) and is registered with the United States Soccer Federation (the “USSF”), which in turn is affiliated to FIFA.
3. Al Nassr and Atlanta are hereinafter jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

A. Background Facts

5. On 4 September 2020, Al Nassr and the MLS concluded an agreement for the transfer of the football player X. (the “Player”) from Atlanta to Al Nassr (the “Transfer Agreement”).
6. The Transfer Agreement provides, in its relevant parts, as follows:

“This [Transfer Agreement] is made in Riyadh, Saudi Arabia and New York, USA on 4 September 2020 (‘Effective Date’), by and between: (i) [MLS], affiliated to the [USSF] [...]; and (ii) [Al Nassr];

MLS and AL NASSR collectively referred to as ‘PARTIES’ and individually as ‘PARTY’); with the acknowledgement and acceptance of [the Player].

PREAMBLE

WHEREAS MLS and the PLAYER signed an employment contract which has been duly registered by the USSF (‘MLS Player Contract’);

WHEREAS 100% (one hundred per cent) of the economic and federative rights arising out of the MLS Player Contract are owned by MLS and the PLAYER is currently playing for [Atlanta];

WHEREAS MLS received and accepted an offer from AL NASSR in respect of a permanent transfer of the federative and economic rights of the PLAYER;

WHEREAS MLS and the PLAYER have agreed to bring the MLS Player Contract to an early termination and immediately following the execution of this Transfer Agreement, a new player contract will be entered into by AL NASSR and the PLAYER (‘New Player Contract’);

WHEREAS The PLAYER and AL NASSR have already discussed and agreed the terms and conditions of the New Player Contract; and

WHEREAS The PLAYER, therefore, hereby acknowledges and accepts the terms of his permanent transfer to AL NASSR.

THE PARTIES HEREBY AGREE TO ENTER INTO THIS TRANSFER AGREEMENT, SUBJECT TO THE FOLLOWING:

CLAUSES

[...]

2. Transfer Fee

2.1. TRANSFER FEE

- (i) *AL NASSR shall pay to MLS the total amount of USD [...] in consideration of the permanent transfer of the PLAYER (the ‘Transfer Fee’).*

[...]

2.2. The Transfer Fee shall be paid as follows:

- (i) *[...] (after applying the deduction of 2.5% as agreed in clause 2.1 (ii) above) within ten (10) calendar days from the Effective Date;*
- (ii) *[...] (after applying the deduction of 2.5% as agreed in clause 2.1 (ii) above) on or before 1 October 2021; and*
- (iii) *[...] (after applying the deduction of 2.5% as agreed in clause 2.1 (ii) above) on or before 1 October 2022.*

2.3. MLS shall send to AL NASSR a duly documented invoice covering each of the payments above, which shall be paid to the following bank account of MLS [...]

[...]

2.6. DEFAULT

In the event that AL NASSR (i) fails to make any payment due to MLS under this Agreement by the due date for payment or (ii) fails to make any required notification to MLS under this Transfer Agreement by the date specified herein, then with respect to (i) and (ii), interest shall accrue on any overdue amount(s) at the rate of five per cent (5%) per annum. Such interest shall accrue on a daily basis from (x) the date of default until the actual date of payment of the overdue amount(s) with respect to (i) and (y) the last date by which AL NASSR was required to provide notification until the actual date of payment of the overdue amount(s) with respect to (ii). AL NASSR shall pay the interest together with the overdue amount(s);

[...]

8. MISCELLANEOUS

[...]

8.5. *The rights and obligations of the PARTIES hereto shall not be assignable, provided that MLS shall have the right to assign any or all of its rights and obligations hereunder to any affiliate of MLS, which affiliate may be formed under U.S. or foreign law; provided further that in any such case, such assignment shall not relieve MLS of its obligations hereunder. It is further acknowledged and agreed by AL NASSR that in addition to MLS, the MLS Team shall have the right and standing to enforce the terms of this Transfer Agreement for and on behalf of MLS and itself, including, but without limitation, enforcing the terms of this Transfer Agreement against AL NASSR in any proceedings commenced before any competent body, including FIFA and the CAS.*

[...]”

7. Al Nassr paid the first instalment of the Transfer Fee in the amount of USD [...] in accordance with Clause 2.2(i) of the Transfer Agreement.
8. The second instalment of the Transfer Fee remained outstanding.
9. On 3 March 2022, the Single Judge of the Players’ Status Chamber of the FIFA Football Tribunal decided a contractual dispute between the Parties concerning the second instalment and awarded Atlanta the amount of USD [...] (the “FIFA Second Instalment Decision”).
10. On 6 September 2022, the MLS sent an invoice to Al Nassr requesting payment of the third instalment of the Transfer Fee in the amount of USD [...].
11. On 20 January 2023, Atlanta and the MLS jointly put Al Nassr in default, requesting payment of the amounts which had become overdue, including the second and third instalment, both in the amount of USD [...], granting a 10-day deadline to

comply with such payment (the “Default Notice”). In this Default Notice, Atlanta and the MLS indicated, *inter alia*, the following:

“We refer to the transfer agreement, entered into between [MLS] and [Al Nassr] on September 4, 2020, in respect of the permanent transfer of the Player’s registration from the MLS member team, [Atlanta] (the “MLS Team”), to [Al Nassr].

[...]

MLS / the MLS Team demands immediate payment of the amounts set forth in the Transfer Agreement which have become previously due and payable but remain outstanding, i.e., the total sum of [...] (the “Outstanding Fee”).

[...]

In the event that such notification is not received from [Al Nassr] and/or the payment of the Outstanding Fee is not made within 10 days upon receipt of this letter, MLS / the MLS Team reserve the right to immediately commence proceedings pursuant to Article 12bis of the FIFA RSTP without further notice, on the basis that, pursuant to Section 2 of the Transfer Agreement, [Al Nassr] has already been in default of its payment obligations for “more than 30 days without a prima facie contractual basis” for the purposes of Article 12 bis par. 2 of the FIFA RSTP.

This letter has therefore been sent in accordance with Article 12bis par. 3 of the FIFA RSTP and should be regarded as MLS / the MLS Team putting the Club “in default in writing”. For the avoidance of doubt, should it prove necessary for the MLS Team to commence proceedings pursuant to Article 12bis of the FIFA RSTP, it will seek the following relief: [...]”

12. On 1 February 2023, the Court of Arbitration for Sport (the “CAS”) issued an arbitral award (CAS 2022/A/8837), dismissing Al Nassr’s appeal and confirming the decision of the Single Judge regarding the second instalment of the Transfer Agreement, awarding Atlanta the amount of USD [...] (the “CAS Second Instalment Award”).

B. Proceedings before the Single Judge of the Players’ Status Chamber of the FIFA Football Tribunal

13. On 14 February 2023, Atlanta filed a claim against Al Nassr before the FIFA Players’ Status Chamber of the FIFA Football Tribunal (the “FIFA PSC”), claiming to be entitled to a payment in the amount of USD [...], corresponding to the third instalment of the Transfer Fee, plus 5% interest *per annum*.
14. Al Nassr partially rejected Atlanta’s claim, arguing that it could not be held liable to pay the third instalment while the important question with respect to the standing to sue regarding the second instalment was not yet decided in a final and binding (CAS) decision. Therefore, interest regarding the third instalment should only start to accrue

as of 1 February 2023 (date of the CAS Second Instalment Award) and Article 12bis of the FIFA Regulations on the Status and Transfer of Players (the “FIFA RSTP”) shall not be applied at all, considering the ongoing CAS proceedings at the time of the due date.

15. On 11 April 2023, the Single Judge of the FIFA PSC (the “FIFA PSC Single Judge”) rendered his decision (the “Appealed Decision”), with the following operative part:

- “1. *The claim of [Atlanta] is partially accepted.*
2. *[Al Nassr], must pay to [Atlanta], the following amount(s):*
 - *USD [...] plus 5% interest p.a. as from 2 October 2022 until the date of effective payment.*
3. *Any further claims of [Atlanta] are rejected.*
4. *Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.*
5. *Pursuant to art. 24 of the Regulations on the Status and Transfer of Players), if full payment (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:*
 1. *[Al Nassr] shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.*
 2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*
6. *The consequences shall only be enforced at the request of [Atlanta] in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*
7. *The final costs of the proceedings in the amount of USD 22,000 are to be paid by [Al Nassr] to FIFA. FIFA will reimburse to [Atlanta] the advance of costs paid at the start of the present proceedings (cf. note relating to the payment of the procedural costs below).” (emphasis omitted)*

16. On 15 May 2023, the grounds of the Appealed Decision were communicated to the Parties, determining, *inter alia*, as follows:

- “[T]he Single Judge acknowledged that his task was to determine whether [Atlanta] has standing to sue and if so, if the claimed amounts had in fact remained unpaid by [Al Nassr] and in the affirmative, whether the latter had a valid justification for not having complied with its financial obligations.
- First of all, the Single Judge addressed the issue about the standing to sue of Atlanta. In this context, he was confident that, having found that the MLS acted as an agent of Atlanta, with the corresponding consequence that Atlanta was to be deemed as a contractual party, it became evident that Atlanta had standing to sue.
- In addition to the above, the Single Judge also found it important to outline the contents of clause 8.5 of the transfer agreement: ‘It is further acknowledged and agreed by Al Nassr that in addition to MLS, the MLS Team [Atlanta] shall have the right and standing to enforce the terms of this Transfer Agreement for and on behalf of MLS and itself, including, but without limitation, enforcing the terms of this Transfer Agreement against Al Nassr in any proceedings commenced before any competent body, including FIFA and the CAS’.
- Such contractual clause is clear, in the Single Judge’s opinion: Atlanta is empowered to enforce the transfer agreement on its own, moreover due the assessment that the contract is entered into by the initiative of Atlanta and not the MLS itself.
- Based on the foregoing, the Single Judge confirmed that Atlanta has standing to sue.
- As to the substance, the Single Judge took notice that it remained undisputed that [Al Nassr] failed to remit the claimed third instalment of the transfer fee.
- The Single Judge rejected [Al Nassr’s] argument that in light of the ongoing CAS proceeding shall be rejected as to the principal amount as well as the interest.
- As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that [Al Nassr] is liable to pay to [Atlanta] the amounts which were outstanding under the transfer agreement, i.e. USD [...].
- Lastly, taking into consideration [Atlanta’s] request as well as the constant practice of the Chamber in this regard, the latter decided to award [Atlanta] interest on said amount at the rate of 5% p.a. as of 2 October 2022 until the date of effective payment.

- *Finally, taking into account the applicable Regulations, the Single Judge referred to art. 24 par. 1 and 2 of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.*
- *In this regard, the Single Judge highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.*
- *Therefore, bearing in mind the above, the Single Judge decided that [Al Nassr] must pay the full amount due (including all applicable interest) to [Atlanta] within 45 days of notification of the decision, failing which, at the request of [Atlanta], a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on [Al Nassr] in accordance with art. 24 par. 2, 4, and 7 of the Regulations.*
- *[...] The Single Judge recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24 par. 8 of the Regulations. [...]*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 1 June 2023, Al Nassr filed a Statement of Appeal with the CAS, challenging the Appealed Decision, in accordance with Articles R47 and R48 of the 2023 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). In this submission, Al Nassr requested that the case be submitted to a sole arbitrator.
18. On 7 June 2023, Atlanta informed the CAS Court Office that it agreed with the appointment of a sole arbitrator.
19. On 16 June 2023, FIFA renounced its right to request its possible intervention in the present arbitration proceedings.
20. On 29 June 2023, Al Nassr filed its Appeal Brief in accordance with Article R51 of the CAS Code.
21. On 13 July 2023, Atlanta filed its Answer in accordance with Article R55 of the CAS Code.
22. On 17 and 20 July 2023 respectively, further to a letter from the CAS Court Office inviting the Parties to express their position in this respect, Atlanta informed the

CAS Court Office that it did not request for a case management conference to be held and that it considered that the dispute could be resolved on the basis of the Parties' written submissions without a hearing, whereas Al Nassr indicated that it did not request for a case management conference to be held, but preferred holding a hearing.

23. On 3 August 2023, the CAS Court Office informed the Parties that, pursuant to Article R54 CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Arbitral Tribunal appointed to hear the appeal was constituted as follows:

Sole Arbitrator: Mr Manfred Nan, Attorney-at-Law, Amsterdam, the Netherlands.

24. On 4 August 2023, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to render an award based solely on the Parties' submissions, granting the Parties a second round of written submissions *in lieu of* a hearing.
25. On 18 August 2023, Al Nassr filed its Reply.
26. On 29 August 2023, Atlanta filed its Rejoinder.
27. On 31 August 2023, the CAS Court Office informed the Parties that the Sole Arbitrator deemed himself to be sufficiently well informed to decide the case on the basis of the Parties' written submissions without holding a hearing in accordance with Article 57(2) of the CAS Code.
28. On 31 August 2023 and 4 September 2023 respectively, Atlanta and Al Nassr returned duly signed copies of the Order of Procedure provided to them by the CAS Court Office on 31 August 2023, in which they, *inter alia*, confirmed that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

29. The Sole Arbitrator confirms that he carefully considered and took into account in his decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

A. The Appellant

30. Al Nassr's submissions, in essence, may be summarised as follows:
- In the proceedings at CAS regarding the second instalment, Al Nassr contested Atlanta's standing to sue and Atlanta's right to claim any amount based on the Transfer Agreement.
 - On 1 October 2022, the date the third instalment became due, the CAS proceedings regarding the second instalment were pending and therefore Al Nassr was completely uncertain as to (i) whether Atlanta had the standing to

sue under the Transfer Agreement; (ii) whether Atlanta was entitled to receive any amount from Al Nassr; (iii) whether a payment to Atlanta would lead to a violation of Articles 18bis and 18ter of the FIFA RSTP; and (iv) whether Atlanta could receive more than 95% of the overdue Transfer Fee. Therefore, Al Nassr refrained from making any payment to Atlanta until CAS had decided on Al Nassr's arguments regarding the second instalment.

- In spite of the abovementioned circumstances which justify the delay of the payment of the third instalment until Al Nassr had the legal certainty regarding the exact party to whom the payment was to be made since the matter was *lis pendens* at the time of payment of the third instalment, FIFA erroneously applied 5% default interest on Al Nassr as from the original date of default (i.e. as from 2 October 2022) until the effective payment, without clarifying the reasons upon which it based its conclusion that the application of such interest shall start as from the original due date.
- With reference to CAS 2020/A/6920, the absence of any *ratio-decidendi* violates Al Nassr's procedural rights including its right to be heard and access to justice.
- FIFA decided to apply interest concerning the third instalment of the transfer fee to a time when Al Nassr did not know the amount due to be paid (i.e. 95% of the pending amount?), if the payment could be lawfully made to Atlanta (or if it should rather be made to MLS?), or if such payment would trigger consequences on Al Nassr for breaching Articles 18bis and 18ter of the FIFA RSTP.
- The obligation to pay the third instalment was suspended pending a decision from CAS regarding the second instalment because the matter was *sub-judice*. Given the status of the appeal regarding the second instalment, it was impossible to remit the payment of the third instalment. Obliging Al Nassr to pay the default interest from 1 October 2022 would defeat the *raison d'être* of Al Nassr's appeal against the second instalment before CAS. Consequently, Al Nassr had legitimate reasons to delay the payment of the third instalment.
- FIFA disregarded the application of Article 12bis of the FIFA RSTP as requested by Atlanta in the default notice and deemed that the prerequisites for the application of Article 12bis of the FIFA RSTP were not met, which is a clear indication that the FIFA PSC also considered that by the date of notification, Al Nassr did not have the necessary legal certainty to effect any payment.
- The above circumstances constitute valid reasons to deviate from Article 102(2) of the Swiss Code of Obligations ("SCO"), hence the original date of the third instalment was altered.
- Therefore, application of the default interest shall be as from the date of notification of the CAS Second Instalment Award on 1 February 2023 (and not as from 2 October 2022), in line with the principles of justice and fairness.

31. On this basis, Al Nassr submits the following prayers for relief in its Appeal Brief¹:

- “1. *Accept the present appeal against the decision passed by the Players’ Status Chamber of FIFA on 11 April 2023, the grounds of which were notified to [Al Nassr] on 15 May 2023, in the dispute between [Atlanta] and [Al Nassr] registered in FIFA with reference number FPSD 9269.*
2. *Decide that the Appealed Decision shall be modified and determine that the default interest at the rate of 5% that [Al Nassr] is liable to [Atlanta] over the third instalment shall commence as from 1 February 2023.*
3. *Fix a minimum fee of sum of CHF 10,000 (Ten Thousand Swiss Francs) to be paid by [Atlanta] as a contribution to the legal fees and costs of [Al Nassr].*
4. *To order [Atlanta] to pay all the procedural costs.”* (emphasis omitted)

B. The Respondent

32. Atlanta’s submissions, in essence, may be summarised as follows:

- Based on the CAS Second Instalment Award, there is no sensible or legitimate basis for Al Nassr to contend that the Appealed Decision should be amended, so that the default interest on the third instalment should only run from 1 February 2023. Rather, an amendment to the Appealed Decision on the terms sought by Al Nassr would (i) fail to uphold the bargain struck between the Parties in September 2020, as recorded in the Transfer Agreement, and thus be contrary to the principle of *pacta sunt servanda*; and (ii) allow Al Nassr to unjustly and inappropriately benefit from its unmeritorious first CAS appeal.
- Any amendment to a crucial term of the Transfer Agreement would plainly have to be agreed upon by the parties to it, as opposed to the Transfer Agreement being unilaterally amended by Al Nassr’s decision to commence (unsuccessful) appeal proceedings before the CAS.
- The FIFA PSC Single Judge did not disregard the application of Article 12bis of the FIFA RSTP, as argued by Al Nassr, but explicitly rejected Al Nassr’s arguments. The FIFA PSC Single Judge concluded that it remained undisputed that the third instalment of the Transfer Fee was outstanding and that the ongoing proceedings before CAS concerning the second instalment did not change the fact that the third instalment was due.

¹ In its Reply Al Nassr slightly changed the wording of its prayers for relief in point 2 of its requests for relief as follows: “*Set aside the Appealed Decision and decide that the default interest at the rate of 5% that [Al Nassr] is liable to [Atlanta] over the third instalment shall commence as from 1 February 2023.*”

- The basis on which the Appealed Decision was made is plain and clear and therefore Al Nassr cannot seriously suggest that its procedural rights have been violated or that its access to justice has been impeded in any way.
- It was clearly not impossible for Al Nassr to make a timely payment of the third instalment and there is no reason to amend the Appealed Decision, in view of (i) the agreement reached by the Parties in the Transfer Agreement as to when payment of the third instalment would be made and the consequences for failing to do so as defined in Clause 2.6 of the Transfer Agreement; and (ii) Article 102(2) of the SCO, which makes it clear that Al Nassr is automatically in default on expiry of the deadline.

33. On this basis, Atlanta submits the following prayers for relief in its Answer:

- I. This Answer is admissible and well-founded;*
- II. Al Nassr’s appeal is dismissed in its entirety and the Appealed Decision is upheld in full;*
- III. Al Nassr must pay the costs of these appeal proceedings in full; and*
- IV. Al Nassr must pay in full, or, in the alternative a contribution towards, the legal costs and expenses of Atlanta in the sum of CHF 10,000, pertaining to these appeal proceedings before the CAS pursuant to Article R64.5 of the CAS Code.”*

V. JURISDICTION

34. Article R47 para. 1 of the CAS Code provides as follows:

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

35. The jurisdiction of CAS, which is not disputed, derives from Article 57(1) of the FIFA Statutes (2022 edition), as it determines that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question”, and Article R47 of the CAS Code. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by the Parties.

36. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

37. Article R49 of the Code provides, in its pertinent parts, as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document.”

38. The appeal was filed within the deadline of 21 days set by Article 57(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

39. It follows that the appeal is admissible.

VII. APPLICABLE LAW

40. Article R58 of the CAS Code provides 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

41. Article 56(2) of the FIFA Statutes provides the following:

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

42. Al Nassr submits that, in accordance with Article R58 of the CAS Code, and Article 56(2) of the FIFA Statutes, *“the FIFA Regulations and Swiss Law are applicable to the merits of the present dispute”*.

43. Atlanta contends that, in accordance with Article R58 of the CAS Code, Article 56(2) of the FIFA Statutes, and Clause 5.1 of the Transfer Agreement, *“the CAS shall primarily apply the FIFA Regulations and, additionally, Swiss law”*.

44. The Sole Arbitrator notes that Clause 5.1 of the Transfer Agreement (entitled *“Governing Law, Jurisdiction and Dispute Resolution”*) provides as follows:

“This Transfer Agreement shall be governed by and construed in accordance with the FIFA Regulations.”

45. In light of the above-mentioned provisions, and in view of the express choice made by the Parties in Clause 5.1 of the Transfer Agreement in relation to the law governing the Transfer Agreement, the Sole Arbitrator is satisfied that the various regulations of FIFA are applicable in the present dispute and that Swiss law shall be applied additionally.

VIII. MERITS

A. The Main Issues

46. According to Article R57(1) of the CAS Code, the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, the Sole Arbitrator may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.
47. The main issues to be resolved by the Sole Arbitrator are the following:
- i. Did the FIFA PSC Single Judge violate Al Nassr's procedural rights?
 - ii. What was the commencement date of default interest to be paid over the third instalment of the Transfer Fee?

i. Did the FIFA PSC Single Judge violate Al Nassr's procedural rights?

48. The first point of contention in these proceedings is whether the FIFA PSC Single Judge violated Al Nassr's procedural rights including its right to be heard and its access to justice. Whereas Al Nassr argues that the Appealed Decision is to be set aside due to the fact that the FIFA PSC Single Judge did not provide any reasoning (*ratio-decidendi*) regarding the imposition of default interest as from 2 October 2023, Atlanta submits that the Single Judge perfectly summed up its reasoning by recording Al Nassr's obligation to pay the third instalment by 1 October 2022 and the agreement incorporated in Clause 2.6 of the Transfer Agreement to pay default interest at a rate of 5% *per annum* should it fail to timely pay the third instalment of the Transfer Fee to Atlanta.
49. The Sole Arbitrator first observes that Al Nassr filed submissions in the proceedings before the FIFA PSC Single Judge and was fully able to use all rights it had during these proceedings. There is no indication whatsoever that Al Nassr's procedural rights, including its right to be heard and its access to justice, have been limited in any way. The Sole Arbitrator concurs with Atlanta that Al Nassr was afforded an equal opportunity to put its case to the FIFA PSC Single Judge.
50. As to the specific argument of Al Nassr that the FIFA PSC Single Judge failed to adequately substantiate his decision with respect to the commencement date (the *dies a quo*) of the interest to be paid over the third instalment of the Transfer Fee, the Sole Arbitrator notes that the Swiss Federal Tribunal holds that "*the right to be heard within the meaning of Art. 190 para. 2 lit. d [of Switzerland's Private International Law Act – the "PILA"] does not give rise to a right to a statement of reasons for the award.*" (SFT 4A_162/2011, consid. 2.1.2., with references)

51. However, it is true that the Appealed Decision is not an arbitral award in the sense of Article 190(2) of the PILA and that Article 15 of the applicable version of the FIFA Procedural Rules Governing the Football Tribunal (i.e. the October 2022 edition) provides for a right to receive the grounds of a decision, if requested and (if applicable) the procedural costs are paid, which preconditions were apparently satisfied in the matter at hand.

52. Setting forth the reasoning for a decision serves multiple purposes, including the following:

“The grounds allow the parties (and possibly other stakeholders) to review the decision internally, to assess the chances of success of a potential appeal, and to make an informed decision accordingly. On this basis, the latter may renounce to file an appeal (ATF 134 I 83, para 4.1; SFT 129 I 232, para. 3.2; Naef F., op. cit. para 6 and the multiple doctrinal references mentioned; Martenev/Dubey, Commentaire romand, Constitution fédérale, Helbing & Lichtenhahn, 2021, ad Article 29, p. 867, para. 171; Bohnet F., Code de procédure civile commenté, Helbing & Lichtenhahn, 2011, ad Article 239, p. 927-8, para. 15).”
(CAS 2021/A/8308, para. 66)

53. On this basis, the Sole Arbitrator finds that the grounds underlying decisions of the FIFA PSC Single Judge need to contain a certain substantiation. This does not mean that the reasoning needs to be very elaborate, but it is to be expected that at least the main arguments raised are addressed.

54. The Sole Arbitrator observes that the FIFA PSC Single Judge reasoned as follows with respect to the commencement date of interest over the third instalment of the Transfer Fee in the Appealed Decision:

“The Single Judge rejected [Al Nassr’s] argument that in light of the ongoing CAS proceeding shall be rejected as to the principal amount as well as the interest.

As a consequence, and in accordance with the general legal principle of pacta sunt servanda, the Single Judge decided that [Al Nassr] is liable to pay to [Atlanta] the amounts which were outstanding under the transfer agreement, i.e. USD [...].

Lastly, taking into consideration [Atlanta’s] request as well as the constant practice of the Chamber in this regard, the latter decided to award [Atlanta] interest on said amount at the rate of 5% p.a. as of 2 October 2022 until the date of effective payment.”

55. Although the FIFA PSC Single Judge did not address the issue of the commencement date of the interest in a very detailed fashion and the relevant paragraph contains a typo, the FIFA PSC Single Judge clearly considered the argument of Al Nassr, because it was explicitly dismissed. The FIFA PSC Single Judge refers to the relevant provisions in the Transfer Agreement regarding the payment date of the third instalment and the consequences thereof in relation to the interest due, the undisputed fact that Al Nassr failed to remit the third instalment, that in accordance with the general legal principle

of *pacta sunt servanda* Al Nassr is liable to pay Atlanta the third instalment, that the ongoing CAS proceedings concerning the second instalment of the Transfer Fee are irrelevant for the determination of the *dies a quo* of the interest, and that, in accordance with the constant practice of the FIFA PSC, the requested interest was due as from 2 October 2022 until the date of effective payment.

56. The Sole Arbitrator finds that the FIFA PSC Single Judge was not required to set forth in more detail why exactly he was of the view that the ongoing CAS proceedings concerning the second instalment of the Transfer Fee were irrelevant for the determination of the *dies a quo* of interest over the third instalment. Indeed, for the reasons set forth below, the Sole Arbitrator also finds that the legal proceedings concerning the second instalment did not have any impact on the *dies a quo* of interest over the third instalment.
57. Accordingly, the Sole Arbitrator finds that the reasoning of the FIFA PSC Single Judge in the Appealed Decision was satisfactory.
58. Even if one were to assume that Al Nassr's right to be heard would have been violated – *quod non* – the Sole Arbitrator sees no reason to set aside the Appealed Decision. The Sole Arbitrator notes that according to well-established CAS jurisprudence, violations of the right to be heard and/or access to justice at a previous instance are cured by a *de novo* hearing before CAS. Procedural violations that occurred in the first instance fade to the periphery in *de novo* appeals proceedings, i.e., they are cured and need no longer be addressed before the CAS (see CAS 2022/A/9078 para.122 of the abstract as published on the CAS website, with reference to other CAS case law). Al Nassr did not request the proceedings to be referred back to the FIFA PSC Single Judge for a new decision and no arguments are advanced as to why it would be improper for CAS to rule on this dispute *de novo* on appeal.
59. Since this appeal arbitration procedure before CAS is *de novo*, it follows from the above that Al Nassr's objection is in any event to be dismissed.
60. Consequently, the Sole Arbitrator finds that Al Nassr's procedural rights are not violated by the FIFA PSC Single Judge.

ii. What was the commencement date of default interest to be paid over the third instalment of the Transfer Fee?

61. The Sole Arbitrator reiterates that it is not in dispute that (i) the third instalment of the Transfer Fee in the amount of USD [...] remained unpaid by Al Nassr; and that (ii) Al Nassr is obliged to pay Atlanta this amount plus 5% interest *per annum*.
62. Al Nassr argues that the payment obligation regarding the third instalment was suspended pending a decision of CAS in the proceedings related to the payment obligation regarding the second instalment. Al Nassr submits that application of the 5% interest *per annum* over the third instalment as from the original date of default is unjustifiable. Therefore, Al Nassr claims that a deviation from Article 102(2) of the SCO is justified, and that the application of the default interest shall be as from the date of notification of the CAS Second Instalment

Award on 1 February 2023 (and not as from 2 October 2022), in line with the principles of justice and fairness.

63. Atlanta refers to the content of the Transfer Agreement and to Article 102(2) of the SCO, arguing that Al Nassr is automatically in default on expiry of the deadline, and submits that Al Nassr cannot unilaterally amend the Transfer Agreement by starting proceedings at CAS regarding the second instalment. Therefore, the application of the default interest shall be as from 2 October 2022 as what rightly is determined by the FIFA PSC Single Judge.
64. Clause 2.2 of the Transfer Agreement provides as follows – as relevant:
- “The Transfer Fee shall be paid as follows:*
- [...]
- (iii) *USD [...] on or before 1 October 2022.”*
65. Clause 2.6 of the Transfer Agreement provides as follows – as relevant:
- “In the event that AL NASSR (i) fails to make any payment due to MLS under this Agreement by the due date for payment [...], interest shall accrue on any overdue amount(s) at the rate of five per cent (5%) per annum. Such interest shall accrue on a daily basis from (x) the date of default until the actual date of payment of the overdue amount(s) [...].”*
66. Article 102(2) of the SCO provides as follows:
- “Where a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the obligor is automatically in default on expiry of the deadline.”*
67. The Sole Arbitrator observes that on 20 January 2023, Atlanta and the MLS jointly issued the Default Notice, whereby they requested Al Nassr to proceed with its duty to pay the overdue amounts, including the third instalment of the Transfer Fee, granting Al Nassr a 10-day deadline to comply with such payment obligation, failing which it would seek payment of interest on the outstanding amount, at the contractually agreed interest rate of 5% *per annum* pursuant to Clause 2.6 of the Transfer Agreement.
68. Al Nassr did not pay the amount of USD [...] to Atlanta or the MLS within the 10-day deadline granted, nor did it respond to the Default Notice.
69. The Sole Arbitrator notes that the Transfer Agreement foresees a specific date on which Al Nassr had to pay the third instalment, i.e., on 1 October 2022. Clause 2.6 of the Transfer Agreement specifically provides that default interest is to be paid as from such due date, which contractual provision fully aligns with Article 102(2) of the SCO.
70. On this basis, the Sole Arbitrator has no hesitation in concluding that Al Nassr was contractually committed to pay Atlanta or the MLS the third instalment in the amount of USD [...] on 1 October 2022 at the latest, failing which Al Nassr was, in principle, obliged

to pay default interest over such amount of 5% *per annum* as from 2 October 2022 until the date of effective payment. The question to be addressed by the Sole Arbitrator is whether an exception should be made on the basis of the reasons advanced by Al Nassr.

71. The Sole Arbitrator finds that the mere fact that proceedings were pending concerning the second instalment of the Transfer Fee is irrelevant for the due date of the third instalment or the *dies a quo* of interest over such third instalment. At no point in time did the Parties reach an agreement on the postponement of the due date for the third instalment, nor did Al Nassr file any such request with Atlanta or the MLS. Indeed, Al Nassr did not even respond to the Default Notice.
72. In order for the legal concept of *lis pendens* to apply, the so-called triple identity test is applicable, i.e., the other procedure must cumulatively concern i) the same parties; ii) the same subject matter; and iii) the same cause of action. In the matter at hand, the subject matter is different (i.e., the necessity to pay the second instalment vs. the *dies a quo* of interest over the third instalment), as a consequence of which the triple identity test is not satisfied and the concept of *lis pendens* is not applicable. The CAS proceedings concerning the second instalment did not automatically suspend the payment obligation of Al Nassr to pay the third instalment or made it impossible for Al Nassr to do so.
73. Furthermore, the Club does not rely on any specific legal basis in applying for an exception to Article 102(2) of the SCO or Clause 2.6 of the Transfer Agreement, but it relies generally on principles of justice and fairness and that this was justified for “*obvious logical, legal, and procedural reasons*”. The Sole Arbitrator finds that justice or fairness do not warrant an exception in the matter at hand. Indeed, Atlanta was entitled to receive the amount of USD [...] by 1 October 2022. Because Atlanta did not receive such amount by the due date, it could not use this amount for other purposes which could have generated additional income and the amount due became less valuable due to inflation. The proceedings commenced by Al Nassr concerning the second instalment of the Transfer Fee were also decided against Al Nassr. Accordingly, the alleged concerns of Al Nassr concerning, *inter alia*, the standing to sue of Atlanta and whether or not Atlanta could receive the Transfer Fee were unjustified.
74. The Sole Arbitrator finds that fairness and justice required Al Nassr to comply with its contractual obligations, i.e., the payment of the third instalment by the agreed due date, and that the filing of unfounded proceedings before FIFA and CAS concerning the second instalment of the Transfer Fee do not justify an exception.
75. Against this background, it may have been Al Nassr’s preference to delay payment of the third instalment of the Transfer Fee pending litigation concerning the second instalment, but such delay comes at a price, namely the payment of default interest. Contrary to Al Nassr’s position, the Sole Arbitrator considers this to be fair and justified.
76. Finally, the mere fact that the FIFA PSC Single Judge did not impose any sanctions on Al Nassr on the basis of Article 12bis of the FIFA RSTP does not mean that the third instalment of the Transfer Fee had not fallen due. Article 12bis(2) of the FIFA RSTP provides as follows:

“Any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned in accordance with paragraph 4 below.”

77. The Sole Arbitrator finds that it derives from the word “*may*” that the FIFA PSC Single Judge was afforded discretion to impose a sanction, it was not an obligation. Accordingly, no consequences are to be derived from the fact that no sanctions were imposed on Al Nassr.
78. In view of all the above, the Sole Arbitrator does not see any reason to deviate from Article 102(2) of the SCO or Clause 2.6 of the Transfer Agreement.
79. Consequently, the Sole Arbitrator finds that Al Nassr is obliged to pay Atlanta the third instalment of the Transfer Fee in the amount of USD [...], with interest on said amount at a rate of 5% *per annum* as of 2 October 2022 until the date of effective payment.

B. Conclusion

80. Based on the foregoing, the Sole Arbitrator holds that:
 - i) Al Nassr’s procedural rights are not violated;
 - ii) Al Nassr is obliged to pay Atlanta USD [...] with interest at a rate of 5% *per annum* as of 2 October 2022 until the date of effective payment.
81. Consequently, Al Nassr’s appeal is dismissed and the Appealed Decision is confirmed in full.
82. All other and further motions or prayers for relief are dismissed.

IX. COSTS

(...).

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 1 June 2023 by Al Nassr Saudi Club against the decision issued on 11 April 2023 by the Single Judge of the Players' Status Chamber of the Football Tribunal of the *Fédération Internationale de Football Association* is dismissed.
2. The decision issued on 11 April 2023 by the Single Judge of the Players' Status Chamber of the Football Tribunal of the *Fédération Internationale de Football Association* is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 14 November 2023

THE COURT OF ARBITRATION FOR SPORT

Manfred Nan
Sole Arbitrator