CAS 2024/A/10666 Vedran Naglić v. Al Shabab Football Club

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Patrick Grandjean, Attorney-at-law, Belmont-sur-Lausanne, Switzerland

in the arbitration between

Vedran Naglić, Croatia

Represented by Mr Tomislav Kasalo and Mr Hrvoje Raić, Attorneys-at-law, Split, Croatia

- Appellant -

and

Al Shabab Football Club, Riyadh, Saudi Arabia

Represented by Mr Gustavo Koch Pinheiro and Mr Ahmed Al-Shikhy, Attorneys-at-law, Porto Alegre, Brazil

- Respondent –

* * * * *

I. PARTIES

1. Mr Vedran Naglić is a professional football coach of Croatian nationality (the "Coach" or the "Appellant").

2. Al Shabab Football Club is a football club with its registered office in Riyadh, Saudi Arabia (hereinafter "the Club" or the "Respondent")). It is a member of the Saudi Arabian Football Federation ("SAFF"), itself affiliated with the *Fédération Internationale de Football Association* ("FIFA").

3. The Coach and the Club are jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and evidence adduced in these proceedings. References to additional facts and allegations found in the Parties' written submissions and evidence will be made, where relevant, in connection with the legal analysis that follows. 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 deems necessary to explain his reasoning.

A. The contractual relationship between the Parties

5. On 15 October 2023, the Parties entered into an employment contract valid as from the date of signature until 30 June 2026 (the "Employment Contract"). The relevant clauses of this document read as follows (bold in original):

> "*Whereby the Club is a major football club and competing in the Saudi Premier League and in official tournaments organised by the* [SAFF] *and tournaments organised by the Asian Football Confederation (AFC) or other tournaments.*
>
> […]
>
> *The Second Party is hired exclusively as* ***Assistant Coach***. […]
>
> *Whereby it is agreed as follows:*
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> […]
>
> *4. The Second Party agrees to assist the head coach of the first team to the best of his ability in all football matches and tournaments to which the club has entered and to attend at any reasonable place for the purpose of training in accordance with instructions given by concern party of the Club.* […]
>
> *28. The remuneration of the Second Party shall be set out in a Schedule attached to this agreement and signed by the parties (Annex 1). The Schedule shall include all remuneration to which the Coach is entitled.*

In the event of any dispute, the remuneration set out in the Schedule shall be conclusively deemed to be the full entitlement of the Second Party. […]

29. *In case the **Assistant Coach** has failed to return in time from his agreed leave without a lawful excuse acceptable to the Club, the Club shall deduct the first fifteen (15) days of absence. If the absence is more than fifteen days then the Club shall be entitled to terminate the contract without any financial obligations and the **Assistant Coach** shall be obliged to pay to Club a compensation for the breach equal to the total fixed remuneration agreed in the labour agreement.*

30. *If the Second Party failed to assume his duties in accordance to all items in this contract without any lawful excuse within one month from the date of his signing this contract, the Club may cancel this contract and consider the contract as null and void and without any penalty.*

31. ***The present contract is governed by FIFA Regulations and Swiss Law.** Reference is also made to the Rules and Regulations of the SAFF, FIFA, the Club and any other body shall be treated as a reference to those Rules and Regulations as from time to time amended.* […]

33. *This Contract is based, construed and interpreted in light of the FIFA Regulations and Swiss Law, with reference to the Club's bylaws, SAFF and FIFA laws and regulations. However, in case of any conflict or dispute arising out of it, the FIFA Regulations and Swiss Law shall prevail.* […]

35. *The present contract is governed by SAFF and FIFA Regulations. The Parties expressly and irrevocably agree that any dispute or controversy arising out of or in connection with this Contract shall be exclusively settled by the FIFA Players' Status Committee in accordance with FIFA RSTP. Any appeal to a ruling of the FIFA Players' Status Committee shall be addressed to the Court of Arbitration for Sports ("CAS") based in Lausanne, Switzerland, and resolved definitively in accordance with the Code of sports-related arbitration. The language to be used in any arbitral proceedings shall be English".*

6. Annexe 1 to the Employment Contract reads as follows ("Annexe 1"):

"[…]

1.- SALARIES

1.1 The club shall pay to the second party during the contract monthly salary the amount of Euro (17,500.00) Seventeen Thousand Five Hundred Euro

2.- BONUSES (If the Assistant Coach still have valid contract with the club)

2.1 Match Bonuses: The club shall pay to the Assistant Coach bonus for each winning matches of the First Football Team, as the club regulation;

2.2 Champions bonuses as agreed between the head coach and assistant coach.

3. ACCOMMODATION:

The club shall provide the Assistant Coach Five stars hotel room free of charge including three meals per day, any extra will pay paid by the Second party.

4. TRANSPORTATION:

- *The club shall provide to the second party during the period of the contract, a suitable vehicle for transportation, including the full insurance cover and the proper maintenance, as needed, ordinary running costs to be paid by the second party.*

5. TICKETS:

- *The club shall provide the second party and his family round trip economy class air tickets one time per season.* […]

7. TERMINATION THE CONTRACT:

7.1 Notwithstanding anything to the contrary, the parties hereby expressly and irrevocably agree that in the event that the Assistant Coach terminates the Contract without just cause (in accordance with the regulations of FIFA governing this matter), the Assistant Coach shall promptly pay to the club the three monthly salaries as compensation for the breach ("Breach Compensation").

7.2 Notwithstanding anything to the contrary, the Parties hereby expressly and irrevocably agree that, in the event that the club terminates the contract unilaterally without just cause, the club shall promptly and immediately pay to the Assistant Coach, all the overdue salaries and bonuses, plus the three monthly salaries (as compensation for the breach)".

7. Hereafter, Article 7 of Annexe 1 to the Employment Contract is referred to as the "Compensation Clause".

8. In an Annexe 2 to the Employment Contract, the Parties agreed that "*the club shall pay to the* [Coach] *advance payment the amount of Euro (35,000.00) to be paid on or before 15.11.2023.* […] *This advance payment will deducted in eight equal installments from the Head Coach (sic) monthly salaries, starting from 15.10.2023 until 30.06.2024*".

9. The Coach was hired at the same time as Mr Igor Biscan, who was appointed as the head coach of the Club's first team. Mr Biscan's contract was valid until 30 June 2026 and contained the same Compensation Clause. The coaching staff consisted of the head coach and five assistants.

10. On 25 December 2023, alleging "*a string of poor performance and results*", the Club terminated the Employment Contract with immediate effect (the "Notice of Termination"). In accordance with the Compensation Clause, it acknowledged its duty to pay to the Coach "*three monthly salaries as a penalty for terminating the contract*".

11. Apparently, and as evidenced by the submissions filed by the Club in these arbitration proceedings, the entire coaching team was dismissed simultaneously.

12. On 25 December 2023 and according to the Coach, the Club had paid the latter a total of EUR 17,500, whereas EUR 62,520.15 was due under the terms of the Employment Contract. This sum breaks down as follows:

-	Advance payment		EUR 35,000.00
-	Salary for the month of October (16 days)		EUR 9,032.25
-	Deduction of the advance payment for October	./.	EUR 4,375.00
-	Salary for the month of November		EUR 17,500.00
-	Deduction of the advance payment for November	./.	EUR 4,375.00
-	Salary for the month of December (25 days)		EUR 14,112.90
-	Deduction of the advance payment for December	./.	EUR 4,375.00
	Total		**EUR 62,520.15**

13. On 18 January 2024, the Club requested from the Coach his international banking details to transfer pending payments.

14. On 21 January 2024, the Club paid to the Coach a sum of 39,827.005 Saudi Arabian Riyals, equivalent to EUR 9,866.686.

15. On 22 January 2024, the Coach's legal representative sent a letter to the Club, asserting that the Notice of Termination constituted a unilateral termination of the Employment Contract without just cause. He contested any breach of the Employment Contract by the Coach and claimed that the Compensation Clause relied upon by the Club was invalid under FIFA regulations. Consequently, the Coach claimed full compensation equal to the residual value of the Employment Contract, in accordance with Article 6 of Annexe 2 of the applicable FIFA Regulations on the Status and Transfer of Players ("RSTP"). A 15-day deadline was set by the Coach's legal representative for the Club to settle the full claim. The Club was further informed that non-compliance would lead to the initiation of formal proceedings before FIFA, where the Coach would pursue outstanding payments, compensation for breach of the Employment Contract without just cause, and applicable sporting sanctions.

16. The Club did not respond to this letter.

17. On 18 August 2024, the Coach signed an employment contract with the Qatari professional football club, Al-Ahli Sport Club, valid for a year "*starting from the date on which* [the Coach] *commences work for the* [Al-Ahli Sport Club] *and shall be automatically renewed from year to year unless either party notifies the other in writing his/her intention to terminate the contract at least thirty (30) days prior to the date of*

such termination". The agreed salary was "*a monthly basic salary of (6,000) QR and a gross salary of (14,600) QR (Qatari Rials Only), payable at the end of every calendar month effective from the date of commencement of work"*.

B. The proceedings before the FIFA Players' Status Chamber

18. On 21 January 2024, the Coach filed a claim against the Club before the FIFA Players' Status Chamber (the "PSC") filing the following request for relief:

> *"I. to ascertain that the* [Club] *terminated the Employment contract signed with the* [Coach] *without just cause; and*
>
> *II. to condemn the* [Club] *to pay in favor of the* [Coach] *outstanding remuneration of net EUR 35,153.47* […]*, which matured on 15/11/2023, all within 45 days as from the date of notification of the decision in the matter of the reference to the* [Club]*; and*
>
> *III. to condemn the* [Club] *to pay in favor of the* [Coach] *compensation for breach of the Employment contract without just cause of net EUR 506,512.00 (five hundred six thousand, five hundred and twelve euros), which matured on 26/12/2023, within 45 days as from the date of notification of the decision in the matter of the reference to the* [Club]*; and*
>
> *IV. to condemn the* [Club] *to pay all relevant taxes, state contributions and surcharges, on top of the above-mentioned net amounts, within 45 days as from the date of notification of the decision in the matter of the reference to the* [Club] *or alternatively*
>
> *to condemn the* [Club] *to provide the* [Coach] *with the corresponding tax certificates concerning the payment of all the above specified net amounts alongside all the net amounts already paid to the* [Coach] *during the term of the Employment contract, within 45 days as from the date of notification of the decision in the matter of the reference to the* [Club]*; and*
>
> *V. to condemn the* [Club] *to pay in favor of the* [Coach] *default interest of 5% per year on the aforementioned amounts starting from the respective date of maturity until the effective date of the payment, within 45 days as from the date of notification of the decision in the matter of the reference to the* [Club]*; and*
>
> *VI. to impose sporting sanctions against the* [Club]*, all in the light of FIFA RSTP"*.

19. Before the PSC, the Coach claimed that the Club's unilateral termination of the Employment Contract lacked just cause. He maintained that the Club's accusation of poor performance and bad results was subjective and not valid grounds to put an end to an employment relationship under FIFA and CAS jurisprudence. Regarding the Compensation Clause, the Coach argued that it was invalid because it allowed the Club to terminate the contract at any time with minimal compensation, violating the principle of contractual stability under the RSTP. Therefore, the Coach claimed he was entitled to full compensation for the remaining value of the Employment Contract. According to the

Coach, he had received from the Club a total amount of EUR 27,366.68, comprising EUR 17,500 paid on 17 December 2023 and EUR 9,866.68 paid on 21 January 2024.

20. In its response filed before the PSC, the Club stated that the Coach incorrectly treated the advance payment as a sign-on fee. "*The club contends that the advance payment was simply an upfront payment related to the salaries for the performance of the Coach's duties*". The Club acknowledged that the Coach was entitled to outstanding salaries of EUR 13,466.65 for the period worked before 25 December 2023, which correspond to "*the difference between the total amount due for the period worked (EUR 40,833.33) and the payments already made by the Club (EUR 17,500 in December 2023 and EUR 9,866.68 in January 2024*". With respect to the Compensation Clause, the Club asserted that it was a valid clause, which reflected the true intent of both Parties and should govern the compensation owed to the Coach following the termination of the Employment Contract without just cause. The Club contested that the Compensation Clause was unfair or created a disproportionate advantage to any party, emphasizing it granted both Parties equal rights to terminate the Employment Contract with a predetermined compensation amount, "*in line with relevant laws and legal precedents*". "*Furthermore, the club highlights that the compensation due to the Coach is carefully determined to discourage arbitrary use while ensuring a fair resolution.* [The Club stresses] *that the high amount of compensation offers stability to the contractual relationship while also affording the Coach the flexibility to explore potential opportunities with other clubs or national teams should he receive higher offers. The club asserts that this clause serves the interests of both parties effectively*". The Club also invoked the principle of *venire contra factum proprium*, claiming that the Coach was precluded from challenging the validity of the Compensation Clause since he had accepted it during contract negotiations. "[The Club emphasizes] *that even the coach himself did not claim the clause to be invalid after the termination took place, and via WhatsApp messages exchanged with his agent, the coach clearly limited the compensation to a three-monthly salary and nothing more, suggesting the clause was a true and accurate reflection of the intention of the parties before changing his course of action. Therefore, the club argues that the principle of venire contra factum proprium supports their position and should be considered in the case*".

21. In a decision dated 23 April 2024, the PSC confirmed that the Club terminated the Employment Contract without just cause, and therefore focused on the two following main issues: (1) the outstanding remuneration owed to the Coach up to the termination date, and (2) the validity of the Compensation Clause, when determining the compensation due to the Coach as a result of the termination of the Employment Contract without just cause.

22. Regarding the outstanding remuneration, the PSC clarified that the advance payment of EUR 35,000 was not a sign-on fee. It held that "*the parties agreed that the coach would receive this amount and then a lower salary for a period of 8 months*". However "[given] *that the club was the one terminating the contract, the PSC ruled that it cannot benefit from its own tort and argue that these amounts should be deducted because the coach ceased to render services: accepting this argument means that the coach would be*

reimbursing the club for services already rendered, while the club in fact prevented the coach from continuing to provide services as it terminated the contract without just cause. […] *Therefore, the Chamber decided that no deductions apply over the advance payment, which fell due on 15 November 2023.* […] *It follows that by the date of termination, the coach should have been paid EUR 62,237.90:*

a. *Pro rata (half) of the salary of October for EUR 8,750, minus EUR 4,375 as deduction, for a total of EUR 4,375.*
b. *EUR 35,000 as advance payment due on 15 November 2023.*
c. *Full salary of November for EUR 17,500, minus EUR 4,375 as deduction, for a total of EUR 13,125.*
d. *Pro rata (25/31 days) of the salary of December for EUR 14,112.90, minus EUR 4,375 as deduction, for a total of EUR 9,737.90".*

23. Consequently, the PSC ruled that, by the termination date, the Coach was entitled to EUR 62,237.90 in total. The Club had paid EUR 27,366.68, leaving an outstanding balance, on which 5% annual interest would apply from the due dates until full payment.

24. With respect to the Compensation Clause, the PSC confirmed that pre-established compensation clauses were permissible under FIFA and CAS jurisprudence if they were reciprocal and proportionate. Upon analysis, the PSC found that the Compensation Clause met both criteria and was therefore applicable to the case. It further noted that the Employment Contract "*provides for a substantial remuneration and a lengthy relationship especially in the case of a coach, which denotes that there is a more balanced bargaining power of the parties. Additionally, the Chamber deemed that the fact that the amounts due to the coach are substantial denotes that he is not put at the mercy of the club in case of an early termination for he would receive a significant sum of money. In the PSC's view, this line of reasoning contradicts the argumentation of the coach and the CAS precedent cited by him, because the compensation established in the contract is not symbolic*". As a result, the PSC awarded the Coach compensation for the unjust termination of the Employment Contract amounting to three monthly salaries of EUR 13,125 each (= EUR 17,500 – EUR 4,375), for a total of EUR 39,375. Additionally, interest at 5% per annum was granted as of the date of the termination of the Employment Contract. "*For the sake of completeness, the PSC remarked that the contract does state that the amounts due to the coach are net of taxes in Saudi Arabia and shall be awarded accordingly. However, there is no specific obligation to provide him with the tax certificates inserted therein. Therefore, the PSC decided that this part of the claim was rejected".*

25. As a result, on 23 April 2024, the PSC issued the following decision:

"*1. The claim of the Claimant, Vedran Naglic, is partially accepted.*

2. The Respondent, Al Shabab, must pay to the Claimant the following amount(s):

a. EUR 135.02 net of taxes in Saudi Arabia as interest on late payment of outstanding remuneration.

b. EUR 12,184.54 net of taxes in Saudi Arabia as outstanding remuneration plus 5% interest p.a. as from 22 January 2024 until the date of effective payment.

c. EUR 13,125.00 net of taxes in Saudi Arabia as outstanding remuneration plus 5% interest p.a. as from 1 December 2023. until the date of effective payment

d. EUR 9,737.90 net of taxes in Saudi Arabia as outstanding remuneration plus 5% interest p.a. as from 25 December 2023 until the date of effective payment.

e. EUR 39,375.00 net of taxes in Saudi Arabia as compensation for breach of contract without just cause plus 5% interest p.a. as from 25 December 2023 until the date of effective payment.

3. Any further claims of the Claimant 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. 8 of Annexe 2 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. The Respondent 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 the Claimant in accordance with art. 8 par. 7 and 8 of Annexe 2 and art. 25 of the Regulations on the Status and Transfer of Players.

7. This decision is rendered without costs".

26. On 29 May 2024, the Parties were notified of the decision issued by the PSC (the "Appealed Decision").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 12 June 2024, the Coach lodged its Statement of Appeal with the CAS against the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (2023 edition) (the "Code").

28. On 17 June 2024, the CAS Court Office acknowledged receipt of the Statement of Appeal of the Coach and of his payment of the CAS Court Office fee. It took note that the Coach had opted for English as the language of arbitration and, in this respect, informed the Club that, unless it objected within three days, the procedure would be conducted in

English. The CAS Court Office granted the Club a) seven days to comment on the Coach's request to refer the present matter to a sole arbitrator and b) three days to confirm whether it agreed with the Coach to suspend the arbitration proceedings in light of the ongoing settlement discussions.

29. On 20 June 2024, the Club notified the CAS Court Office that it did not consent to the appointment of a sole arbitrator instead of a panel composed of three arbitrators but agreed to use English as the procedural language and to suspend the arbitration proceedings.

30. On 21 June 2024 and in view of its request to refer the matter to a panel of three arbitrators, the CAS Court Office granted the Club three days to state whether it would pay its share of the advance of costs. It also confirmed that the arbitration proceedings were suspended until further notice from the Parties.

31. On 27 June 2024, FIFA informed the CAS Court Office that it renounced "*to its right to request its possible intervention on the present arbitration proceedings*".

32. On 30 September 2024, the Coach notified the CAS Court Office that the Parties had been unable to reach a settlement agreement. He requested that the suspension of the arbitration proceedings be lifted which was granted and sought an extension of the deadline to file his Appeal Brief until 28 October 2024.

33. On 7 October 2024, the Club expressly consented to the requested extension and simultaneously indicated that it would not cover its share of the advance on costs.

34. On 23 October 2024, the Coach filed his Appeal Brief in accordance with Article R51 of the Code.

35. On 25 October 2024, the CAS Court Office acknowledged receipt of the Appeal Brief filed by the Coach and invited the Club to submit its Answer within twenty days.

36. On 11 November 2024, the Club requested the time limit to file its Answer to be fixed once the advance of costs had been fully paid by the Coach. The Club's request was granted the following day.

37. On 2 May 2025, the CAS Court Office informed the Club that "*the Athlete's Commission of the International Council of Arbitration for Sport (ICAS) has granted the* [Coach] *the Legal Aid with respect to the CAS administrative costs. This means that the* [Coach] *will not be requested to pay his share of the advance of costs*". Accordingly, the CAS Court Office invited the Club to submit its Answer within twenty days.

38. On 12 May 2025, the Club requested a ten-day extension of the deadline to file its Answer, which was granted pursuant to Article R32 (2) of the Code.

39. On 2 June 2025, the Club filed its Answer in accordance with Article R55 of the Code. In this document, the Club requested that the Coach be ordered to provide a copy of all employment contracts he concluded following the Notice of Termination.

40. On 3 June 2025, the CAS Court Office invited the Parties to state by 10 June 2025 whether their preference was for a hearing to be held in the present matter and whether they requested a case management conference.

41. On 9 June 2025, the Coach informed the CAS Court Office of his preference for a hearing, while on 10 June 2025, the Club confirmed that it was in favour of the matter being decided solely on the basis of the Parties' written submissions.

42. On 20 June 2025, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had appointed Mr Patrick Grandjean, Attorney-at-law, Belmont-sur-Lausanne, Switzerland as Sole Arbitrator.

43. On 24 June 2025, the CAS Court Office invited the Coach to provide his comments on the Club's request for document production included in its Answer as well as the reasons for seeking a hearing.

44. On 1 July 2025, within the prescribed deadline, the Coach provided a copy of his current employment contract with the Qatari professional football club, Al-Ahli Sport Club. On the same occasion, the Coach explained that "*he considers the hearing to be necessary in order to be able to verbalize his arguments and efficiently rebut the inaccurate stipulations contained in the Respondent's Answer to the Appeal Brief*".

45. On 2 July 2025, the CAS Court Office informed the Parties that the Sole Arbitrator decided to hold a second round of written submissions and therefore invited the Coach to submit his Reply within ten days, after which the Club would have the same period to submit its Rejoinder.

46. On 8 July 2025, the Coach requested an extension to the deadline for filing his Reply until 22 July 2025, which was granted pursuant to Article R32 (2) of the Code.

47. On 22 July 2025, the CAS Court Office acknowledged receipt of the Coach's Reply filed on the previous day in accordance with Article R56 of the Code and invited the Club to file its Rejoinder.

48. On 11 August 2025, the Club filed its rejoinder in accordance with Article R56 of the Code.

49. On 13 August 2025, the CAS Court office informed the Parties that the Sole Arbitrator deemed himself sufficiently well informed to issue his decision solely on the basis of the written submissions.

50. On 14 August 2025, the CAS Court Office sent to the Parties the Order of Procedure, which was returned duly signed by the Club on the same day and by the Coach on 20

August 2025. By signing the Order of Procedure, the Parties confirmed their agreement that the Sole Arbitrator decide the matter based solely on their written submissions and that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

51. In his Appeal Brief, the Coach submitted the following requests for relief:

> "[…] *the* [Coach] *respectfully requests the CAS to rule as follows:*
>
> *I.* *to uphold the present appeal;*
>
> *II.* *in doing so, to issue a new decision (award) replacing (modifying) exclusively paragraph e. of the point 2. of the findings of the FIFA PSC decision, ref. nr. FPSD-13818, in a way that the* [Club] *is condemned to pay to the* [Coach]*, in addition and on top of the sum of EUR 39,375.00 net of taxes in Saudi Arabia as compensation for breach of contract without just cause plus 5% interest p.a. as from 25 December 2023 until the date of effective payment which was awarded in the FIFA PSC decision ref. nr. FPSD-13818, also the sum of EUR 467,137.00 net of taxes in Saudi Arabia as compensation for breach of contract without just cause plus 5% interest p.a. as from 25 December 2023 until the date of effective payment i.e. to condemn the* [Club] *to pay to the* [Coach] *the sum of EUR 506,512.00 net of taxes in Saudi Arabia as full amount of compensation for breach of the Employment contract without just cause plus 5% interest p.a. as from 25 December 2023 until the date of effective payment; and*
>
> *III.* *to order the* [Club] *to bear all the procedural costs of the present procedure; and*
>
> *IV.* *to order the* [Club] *to reimburse the* [Coach] *with all legal and other costs incurred in connection with this arbitration, with an amount to be determined at the discretion of the CAS Sole Arbitrator/Sole Arbitrator of at least CHF 8,000.00".*

52. The submissions of the Coach, in essence, may be summarized as follows:

- The Employment Contract was prematurely terminated without just cause. The termination took place without any prior warning or complaint regarding the Coach's professional conduct or performance.

- The Coach fulfilled his part of the Employment Contract exactly as agreed and flawlessly.

- "[As] *a general rule, only a breach or misconduct which is of a certain severity justifies the termination of a contract without notice, or to put it differently, only when there are objective criteria which do not reasonably permit to expect a*

continuation of the employment relationship between the parties, a contract may be terminated prematurely, which is not the case herein". As confirmed by FIFA and CAS jurisprudence, a club cannot terminate a coach's employment contract solely on the ground of poor performance or bad results, since such evaluations are based on the club's subjective views.

- Due to the absence of just cause for the termination of the Employment Contract, the Coach is entitled to be compensated by the Club. However, this entitlement cannot be based on the Compensation Clause, as it conflicts with the key principles of *pacta sunt servanda*, contract stability and prohibition of termination without just cause, which are set out in the applicable RSTP. The RSTP also seeks to deter unilateral breaches by imposing effective consequences. The Compensation Clause undermines these objectives.

- It is correct that "*Annexe 2 Article 6 para. 2. of FIFA RSTP grants the contractual parties a possibility to agree on the criteria to be applicable to calculate compensation in case of termination of a contract without just cause and such a provision will be considered as liquidated damages clause.* […]. *However, this right cannot be absolute and should be exercised in light of the FIFA RSTP which, in turn, has to be interpreted and applied in accordance with the Swiss law which is also reinforced by the parties in the provisions of the article 33. of the Employment contract*".

- The Club cannot claim that contractual freedom allows the Parties to agree on any clauses they wish. Contractual freedom is not unlimited and cannot prevail over mandatory legal provisions.

- In this case, the Compensation Clause violates several provisions of mandatory Swiss law and therefore cannot be taken into account when calculating the compensation to which the Coach is entitled. In this regard, the Coach endorses the position expressed in CAS 2020/A/6961, where the panel found that "[*Article 337c para. 1 of the* Swiss Code of Obligations "SCO"] *is mandatory and binding on the contractual parties and no derogation from this provision to the detriment of the employee is allowed as stated in Article 362 para. 1 of the SCO. According to Article 362 para. 2 of the SCO, "Any agreement or clause of a standard employment contract or collective employment contract that derogates from the aforementioned provisions to the detriment of the employee is void". Article 337c para. 1 of the SCO therefore forms the legal boundary within which the Parties have to stay when deviating from Article 17 para. 1 of the FIFA RSTP. Accordingly, a clause in the employment contract that sets the compensation due to a player in case of termination by the club to less than what the player would have received for the rest of the contractual period is void, as it breaches the mandatory and binding Article 337c para. 1 of the SCO".* In accordance with Article 337c SCO, in case of premature termination without just cause, the Coach is entitled to full compensation equivalent to the residual value of the Employment Contract. By contrast, the Compensation Clause provides for only three months' salary and is

therefore incompatible with mandatory Swiss law and should consequently be set aside.

- "*Notwithstanding the aforementioned and even if honorable Sole Arbitrator would somehow reach a wrong conclusion that Compensation Clause was not null and void (as it contravened mandatory and binding articles of SCO), the Coach would like to point out that in accordance with well established FIFA FT and CAS jurisprudence, even if there are reciprocal obligations with regards to liquidated damages set forth in a pertinent clauses of the contract which actually disproportionately favor one of the parties and give it an undue control over the other party, such clauses are incompatible with the general principles of contractual stability and are therefore null and void".*

- In the Appealed Decision, the PSC considered the Compensation Clause to be reciprocal and proportionate. However, this contradicts its own established jurisprudence, which has held that a clause awarding only two months' salary in a one-year contract with eight months remaining was disproportionate and unenforceable. "*In casu, on the day of issuance of the Notice of Termination, the employment of the Coach was still to run for more than 2 and a half years and Coach was entitled to receive more than 30 full salaries i.e. amount of net EUR 506,512.00, while according to Compensation Clause, the Coach was entitled to compensation of only 3 monthly salaries i.e. amount of EUR 52,500.00, which is approx. 10 % of the full residual value of the contract in the event of unilateral termination of his employment contract without just cause, meaning that when interpreting the content of Compensation Clause in combination with the term of the Employment contract, this leads to the conclusion that the Compensation Clause is so called "potestative clause-condition", a condition whose fulfilment was completely within the power of obliged party, resulting in a situation where the Employment contract could basically be terminated almost in any point of time without justification and for an amount of compensation that is significantly lower than the residual total amount of salaries, which clause obviously undermines the principle of contractual stability which is protected by Annexe 2 Art. 3 of the applicable FIFA RSTP and thus such a clause is invalid, null and void".*

- The amount of compensation payable by the Club to the Coach must be assessed in accordance with the parameters set out in Article 6 (2) of Annexe 2 of the RSTP.

- The Club cannot accuse the Coach of being inconsistent for questioning the validity of the Compensation Clause that he supposedly accepted. In fact, the Coach did not have the opportunity to negotiate the terms of this Clause, as the Club simply presented him with a pre-signed version of the Employment Contract and declared that it would not accept any other version.

- "*But even if we were to wrongly disregard all above mentioned arguments of the Coach and sustain the wrong conclusion of FIFA FT that the Compensation Clause was somehow valid, the Coach would like to emphasize for the sake of completeness that FIFA FT erroneously calculated the amount of compensation for*

breach of contract in any event. […]. *Namely, FIFA FT awarded to the Coach only a net amount of EUR 39,375.00 as compensation for breach of contract instead of net amount of EUR 52,500.00 which corresponds to sum of three monthly salaries of net EUR 17,500.00 (which was in force at the moment of termination of contract) and which amount was even acknowledged by the Club within the scope of proceedings before FIFA FT*".

B. The Respondent

53. In its Answer, the Club submitted the following requests for relief:

> "*The* [Club] *hereby respectfully requests the Court of Arbitration for Sport:*
>
> *a) Reject the Club's appeal (sic) against the decision passed by the FIFA Football Tribunal, Players' Status Chamber, dated 23 April 2024, in the case with reference number Ref No. FPSD-13818.*
>
> *b) Subsidiary, should accept the appeal to calculate the compensation based on the remaining value of the contract, the maximum amount should be limited to € 501,375 and all the value of the new contracts signed by the* [Coach] *in the overlapping period should be deducted in line with the duty of mitigation.*
>
> *c) Order the* [Coach] *to pay for all costs of the present appeal procedure and the whole CAS administration and the Arbitrators fees.*
>
> *d) Fix a minimum fee of CHF 10,000 (ten thousand Swiss Francs) to be paid by the* [Coach] *to contribute to the legal fees and costs of the* [Club]*".*

54. The Club's submissions, in essence, may be summarized as follows:

- As provided by the Employment Contract and by FIFA Statutes, the dispute must be assessed according to FIFA Regulations and, subsidiarily, Swiss law. More precisely, the Employment Contract is to be interpreted under the RSTP rules and Swiss law is applicable only if those rules do not address a specific issue.

- Article 6 (2) of Annexe 2 of the RSTP specifically addresses the termination of employment contracts without just cause and provides that in such a situation, the victim of the unjust termination is entitled to the residual value of the contract unless otherwise provided by the contract. In the present case, the termination of the Employment Contract without just cause is exhaustively governed by the Compensation Clause. "*In this sense, Swiss Law is not to be applied in lieu of FIFA regulations. Swiss Law must not be considered in this specific subject, once the substance of the matter is entirely regulated by the FIFA RSTP. Thus, the validity of the compensation clause should not be interpreted in view of Swiss Law, especially arts. 341, 362 and 337,c SCO".*

- "*Even if Swiss law were subsidiarily applicable, Articles 341, 362 and 337c of the SCO are not absolutely mandatory in cases where the parties have established reciprocal concessions.* […] *CAS and Swiss Federal Tribunal jurisprudence (CAS*

2018/A/5896 and 4A_13_2018) establish that Article 341(1) of the SCO does not prevent agreements on the termination of the employment relationship, provided there is an appropriate equivalence of reciprocal concessions".

- Under the principle of contractual freedom, the Parties are free to determine the amount of the contractual penalty in the event of the termination of the Employment Contract without just cause. The Compensation Clause reflects the true intent of the Parties and is therefore valid.

- The Compensation Clause is perfectly in line with the RSTP and Swiss law, as well as numerous FIFA and CAS cases. It is fair and does not create a disproportionate advantage for any party. "*In terms of contractual freedom, it is a well-established jurisprudence that the parties are at liberty to agree on a liquidated damages clause (even if there is a disparity or imbalance in such a clause), let alone when the clause is perfectly reciprocal and proportional, like the case at hand".* The three-month salary compensation applies equally to both Parties. It allowed the Coach to leave the Club at any time, for any reason, provided that he paid the agreed amount.

- The Coach challenges the validity of the Compensation Clause despite having freely agreed to it. He only questioned its validity after the Club invoked it, which constitutes inconsistent conduct barred by the principle of *venire contra factum proprium*.

- "*The argument that* [the Compensation Clause] *is potestative must be dismissed. A potestative clause can be described as one that is dependent on an event which can only be triggered by one of the contractual parties and upon its wish, limiting the rights of the contractual counterparty in an excessive manner and leading to an unjustified disadvantage. That is not the case here. The parties agreed upon a reciprocal and fair clause, granting both parties the right to unilaterally terminate the contract with a predetermined compensation amount.* […]. *Although a handful of FIFA and CAS decisions understand that the liquidated damages clause must be considerable to grant contractual stability (because if the amount is too low, the termination is inexpensive and will not be a deterrent), that concept cannot be applied on the case at hand. In this case we cannot say that € 52.500 is inexpensive. Especially if we add that terminating the head coach and all his five assistants adds to the costs of termination by more than € 1,000.000*".

- "*Another essential point to consider while balancing the proportion and fairness of the termination clause is the fact that a coach, unlike a football player, can be engaged by any club in the world instantly, without the restrictions of transfer periods".*

- If the compensation due to the Coach is calculated based on the residual value of the Employment Contract rather than on the agreed Compensation Clause, it should be reduced by the salary paid by Al-Ahli Sport Club.

V. JURISDICTION

55. Article R47 (1) of the Code provides 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".*

56. According to Article 57 (1) of the applicable FIFA Statutes, "*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*".

57. The Parties rely on the above provisions as well as on Article 35 of the Employment Contract in conferring jurisdiction to CAS, which is further confirmed by the Order of Procedure duly signed by them.

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

VI. ADMISSIBILITY

59. The appeal was filed within the deadline of 21 days set by Article 57 (1) of the applicable FIFA Statutes. It complied with all other requirements of Articles R48 and R49 of the Code, including the payment of the CAS Court Office fee.

60. It follows that the appeal is admissible.

VII. APPLICABLE LAW

61. Article R58 of the 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".*

62. Article 56 (2) of the FIFA Statutes provides 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".*

63. It can be observed that the contractual provisions regarding the applicable law in the Employment Contract are inconsistent:

- Clause 31 provides that (in bold in the original) *"***[t]*he present contract is governed by FIFA Regulations and Swiss Law***"*, expressly naming both as governing norms, without indication of hierarchy or subsidiary application.

- Clause 33 reiterates that the contract is to be *"construed and interpreted in light of the FIFA Regulations and Swiss Law"* and further states that, in case of conflict or dispute, *"the FIFA Regulations and Swiss Law shall prevail"*. The use of the conjunctive "*and*" suggests joint and equal application, without prioritisation.

- Clause 35, however, departs from this structure by stating that the contract is *"governed by SAFF and FIFA Regulations"*, omitting any reference to Swiss law.

64. Given these inconsistencies, and the absence of an explicit provision establishing a hierarchy, it must be assumed that the Employment Contract does not subordinate Swiss law to FIFA Regulations. Rather, where Swiss law is mentioned, it is presented as having equal normative weight, coexisting with FIFA Regulations as part of the applicable legal framework. The omission of Swiss law in Clause 35 is best interpreted as a drafting inconsistency rather than an implicit derogation. This is all the more true as Clause 31 places Swiss law on an equal footing with the UEFA Regulations, in bold in the original.

65. However, on the basis of the clear wording of Article R58 of the Code and Article 56 (2) FIFA Statutes, the present dispute shall be resolved primarily according to the various regulations of FIFA and, additionally, Swiss law. The Parties agree with this finding.

66. On 21 January 2024, the Coach lodged his claim before FIFA against the Club. This happened after 31 May 2022 and 21 May 2023, which are the dates when the FIFA Statutes, edition May 2022, and the RSTP, edition May 2023, came into force. These are the editions of the rules and regulations, which the Sole Arbitrator will rely on to adjudicate this case.

VIII. THE MERITS

67. In its Appealed Decision, the PSC confirmed that the Club had terminated the Employment Contract without just cause, noting that there was no disagreement between the Parties on this point. It therefore addressed the following two key issues: the outstanding remuneration owed to the Coach at the time of the Notice of Termination, *i.e.* on 25 December 2023 and the validity of the Compensation Clause in determining the compensation to be paid by the Club.

68. Throughout these arbitration proceedings, neither Party has contested the finding of the PSC that the Employment Contract had been terminated by the Club without just cause, nor its calculation of the Coach's outstanding remuneration up to 25 December 2023.

69. The only point of contention between the Parties concerns the calculation of the compensation due to the Coach following the Club's termination of the Employment Contract. On this issue, the Coach argues that compensation should be determined in accordance with Article 6 (2) of Annexe 2 of the RSTP, rather than with the Compensation Clause. He maintains that the latter Clause is invalid as it contravenes mandatory provisions of Swiss law. In contrast, the Club contends that the Compensation Clause accurately reflects the mutual intent of the Parties and is legally binding. According to the Club, this clause exclusively governs the Parties' rights and obligations in the event of a termination without just cause, taking effect over Swiss law.

70. In this context, the issues to be decided by the Sole Arbitrator are:

A. Does the Compensation Clause govern the calculation of the financial consequences arising from the termination of the Employment Contract by the Club without just cause?

B. What is the amount of compensation to be awarded to the Coach for the termination of the Employment Contract without just cause?

A. Does the Compensation Clause govern the calculation of the financial consequences arising from the termination of the Employment Contract by the Club without just cause?

1.- CAS case law

71. Given that it is undisputed that the Club has unilaterally and prematurely terminated the Employment Contract without just cause, the Sole Arbitrator must determine the resulting compensation owed to the Coach.

72. Article 6 of Annexe 2 of the RSTP is entitled "*Consequences of terminating a contract without just cause*" and reads as follows, where relevant:

"*1. In all cases, the party in breach shall pay compensation.*

2. Unless otherwise provided for in the contract, compensation for the breach shall be calculated as follows:

Compensation due to a coach

a) In case the coach did not sign any new contract following the termination of their previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.

b) In case the coach signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the

> *contract being due to overdue payables, in addition to the Mitigated Compensation, the coach shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the residual value of the prematurely terminated contract.* […]".

73. This provision is worded in a manner comparable to Article 17 RSTP, which regulates the consequences of terminating a contract without just cause between a club and a player. Under these circumstances, it seems reasonable to accept that, by analogy, the case law under Article 17 RSTP applies when a club unjustifiably puts an end to an employment contract with a coach.

74. The purpose of Article 17 RSTP and of Article 6 of Annexe 2 of the RSTP is to reinforce contractual stability, *i.e.* to strengthen the legal principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club, by a player or by a coach (CAS 2023/A/9701 para. 85 *et seq.*; CAS 2021/A/8471 para. 128 and references; CAS 2020/A/6961 para. 60 and references; CAS 2008/A/1519-1520, para. 80; CAS 2007/A/1358, para. 90; CAS 2007/A/1359, para. 92; CAS 2008/A/1568, para. 6.37).

75. As per the wording of these provisions, they govern compensation owed in cases of unjustified termination, "*unless otherwise provided for in the contract*". In other words, it leaves the parties the possibility to agree on the financial consequences resulting from an early and unilateral termination of the employment contract without just cause. CAS Panels refer to such an agreement as a "*liquidated damage clause*" (CAS 2016/A/4605 para. 7.6; CAS 2022/A/9165 para. 193; CAS 2020/A/6961 para. 59) or "*buyout clause*" (CAS 2020/A/6961; CAS 2019/A/6514). The wording of such a clause should leave no room for interpretation and must clearly reflect the true intention of the parties (CAS 2016/A/4605 para. 7.6 and references; CAS 2014/A/3707).

76. However, some CAS Panels have clarified that the principle of contractual freedom is not absolute. According to them, the enforceability of a liquidated damages clause depends on three cumulative criteria: clarity of drafting, absence of coercion, and proportionality of obligations so as to avoid undue control by either party. Departure from the parties' agreed terms should be exceptional and justified only where the clause is so disproportionate that it grants one party an unfair advantage (CAS 2022/A/9165; CAS 2019/A/6514 and references). According to some CAS Panels, reciprocal obligations under a liquidated damages clause that are patently disproportionate and in direct contravention of the principles of contractual stability are null and void:

- A system in which the club's termination obligation is limited to the remaining value of the current season, while the player's termination obligation extends to the entire contract value, creates a disproportionate and unjust advantage for the club (CAS 2014/A/3707; CAS 2016/A/4605).

- "*A contractually agreed liquidated damages clause does not necessarily have to be reciprocal in order to be valid. The validity is dependent on certain criteria. The appropriate test should be whether there has been any excessive commitment from any of the contractual parties in respect of the conclusion of the applicable clause. There is an excessive commitment from the player and a clause excessively favourable towards the club if in case of breach of the club, the player would only be entitled to two months of salary, whereas in case of breach by the player, the club would be entitled to the "total amount of the contract". A liquidated damages clause that puts the player entirely at the mercy of the club, because in practice it entitles the club to terminate the employment contract at any moment in time without any valid reasons having to be invoked for the relatively low amount of two monthly salaries cannot be condoned, because the relevant clause is practically in violation of what is determined in Article 14 of the FIFA Regulations on the Status and Transfer of Players (RSTP) and the concept of contractual stability*" (CAS 2018/A/5771 & CAS 2018/A/5772). Another CAS Panel came to the same conclusion in a case involving a liquidated damages clause requiring the club to pay only three months' salary when terminating without just cause, while enabling the club to claim the full contract amount if the player wrongfully ended the contract (CAS 2022/A/9165).

- A contractual provision under which either party may terminate the employment contract without just cause, providing only one month's salary in compensation, is inconsistent with Article 13 RSTP and its embodiment of the principle *pacta sunt servanda*, since it allows termination at any time without justification for a minimal compensation (CAS 2021/A/8471 para. 126).

- A Sole Arbitrator found a liquidated damages clause to be null and void as it *"limits the damages to be paid by the Club for its termination of the contract without just cause to compensation "of two months' worth of salary". Had it not been terminated, the Employment Contract would, however, still continue for a period of roughly eight months, until 30 November 2019. This means that in applying* [liquidated damages clause]*, the Player would lose around six months' salary*" (CAS 2020/A/6961 para. 62).

- The liquidated damages clause contravenes the general principles of proportionality and equal treatment, by providing the club with a higher amount of compensation and no equivalent right in favour of the coach. "*In the present case, by application of the terms of the* [liquidated damages clause] *the compensation due to the Coach would result merely in a figure of USD 233,334, while the residual value of his salaries under the Employment Contract amounted to USD 1,125,000. It is therefore evident, that the amount of compensation payable under the* [liquidated damages clause] *falls a long way short of the amount of compensation according to the criteria set out* [in mandatory Swiss law] *to the detriment of the Coach* […]. *In view of the above, the majority of the Panel finds that the relevant provision of the* [liquidated damages clause]*, which effectively restricts the compensation entitlements of the Coach to two monthly salaries for*

the first year and a fraction of his remuneration for the second year, entails a renouncement of his claims [in a way incompatible with Swiss mandatory law]. *Therefore, the majority of the Panel concludes that the respective provision of the* [liquidated damages clause] *is null and void and cannot be applied to determine the appropriate measure of compensation in the present case*" (CAS 2017/A/5125 para. 72 *et seq.*).

- A Sole Arbitrator found a liquidated damages clause to be invalid because it set compensation at EUR 100,000 for a coach instead of the residual value of EUR 359,996, "*which is the minimum mandatory compensation provided for by Article 6.2 of Annexe 2 of the FIFA RSTP in accordance with Swiss Law*" (CAS 2023/A/9701 para. 103).

77. Some CAS Panels take the view that FIFA Regulations and Swiss law place great importance on contractual autonomy, which would allow non-reciprocal penalty or liquidated damages clauses provided they reflect the genuine will of the parties. In other words, a liquidated damages clause designed to compensate for the termination of a contract without just cause cannot be declared invalid solely because it results in different amounts of compensation for each party. "*This is all the more true, considering that the FIFA RSTP neither establish a principle of reciprocity nor a prohibition of disparity, but instead simply refer to the autonomy of the parties.*[…] *Thus, any substantive review undertaken by a CAS panel cannot be limited to comparing the penalty or liquidated damages clauses only, but instead must look at the overall contract in order to determine whether there is disparity*" (CAS 2020/A/6994)(CAS 2016/A/4826). "[It] *might well be that a disparity with respect to the liquidated damages clause is compensated by other more favourable provisions in the employment contract to the benefit of the player, such as a particularly high remuneration*" (CAS 2016/A/4826):

- In CAS 2016/A/4826, the CAS Panel upheld the following clause as valid, considering that it reflected the genuine intent of the parties.:

  "*If the [Club] terminated the contract unilaterally, the [Player] is entitled to receive salary of Two months* [i.e. 2x 150,000].

  In case the player terminated the contract from his side only, he has to pay a disciplinary act as per the following:

  First year termination: The [Player] shall pay for the [Club] an amount of Euro 1,672,73 […].

  Second year termination: The [Player] shall pay for the [Club] an amount of Euro 3,300,00 […].

  Third year termination: The [Player] shall pay for the [Club] an amount of Euro 3,400,000".

  In substance, the Panel considered that any possible imbalance in the liquidated damages clause could be offset by other beneficial terms in the contract, such as generous pay. As such, the review must cover the whole contract, not only the

liquidated damages clause. In the matter at stake, the evidence showed no overall disparity and no sign that either party's freedom to contract was affected by unequal bargaining power or undue pressure.

- In CAS 2020/A/6994, the CAS Panel also recognized the following clause as valid:

  "*In the event the Coach unilaterally terminates the Contract without legal grounds, the Coach will indemnify the Club with a net sum of Euro […] and the Club has the right to stop making any payment to the Coach immediately.*

  In the event the Club unilaterally terminates the Contract without legal grounds, the Club will pay a severance corresponding to the outstanding NET fixed cash remuneration of the Coach from the moment of its dismissal until the end of the season".

  The Panel noted that both the Club and the Coach were represented by qualified lawyers throughout the pre-contractual negotiations. Based on the legal principle *pacta sunt servanda* and given that the liquidated damages clause provided for a clear, measurable and identifiable penalty, including the conditions that triggered payment, the CAS Panel found that the provision in question accurately reflected the intent of the contracting parties. It held that "*the mere existence of different compensation amounts depending on which party breaches the contract does not imply the nullity of the compensation clause per se (see CAS 2016/A/4606)*".

78. The above CAS case law reveals a clear tension between two lines of reasoning adopted by CAS Panels when assessing the validity of non-reciprocal liquidated damages clauses. The divergence lies in where CAS Panels draw the line between impermissible disproportionality and permissible contractual freedom.

79. On the one hand, some CAS Panels apply a strict proportionality and reciprocity test. They focus on whether the liquidated damages clause a) grants the club/a party a clear advantage, b) allows termination at will for minimal compensation, inconsistent with the principle *pacta sunt servanda* and Article 13 RSTP and/or c) provides the employee with significantly reduced compensation compared to the residual value under Swiss law and the RSTP.

80. On the other hand, some CAS Panels adopt a more deferential approach to the parties' contractual freedom, holding that Swiss law and FIFA regulations permit non-reciprocal clauses provided they reflect the genuine will of the parties. Under this reasoning, the disparity in the amounts payable under the liquidated damages clause is not, in itself, a ground for invalidity. The clause must be assessed in the context of the overall contractual balance, considering other potentially favourable terms (e.g., high remuneration) that could offset the disparity in termination consequences.

81. In any case, there is a consensus that a liquidated damages clause can be declared null and void. As FIFA Regulations provide neither a specific threshold nor a framework to address such invalidity, one must turn to Swiss law, which – it is worth recalling - the Parties agreed was coexisting with FIFA Regulations as part of the applicable legal

framework governing their employment relationship (Clauses 31 and 33 of the Employment Contract).

2.- Swiss law

82. A fixed-term contract ends without notice (Article 334 (1) SCO). The fixed term of the contract is determined by law, the nature of the contract or the agreement between the parties. The parties may specify either a fixed term, a period of time or an objectively determinable period. The beginning and the end of the employment relationship must be ascertainable for both parties. Therefore, the end of the contract cannot depend on the will of one party (Decisions of the Swiss Federal Tribunal ("SFT") 145 V 188 para. 5.1.2; 4A_270/2014 of 18 September 2014, para. 4.4; Jean-Philippe Dunand, la fin du contrat de travail (causes d'extinction et protection contre les congés), in La fin des rapports de travail, Editions Schulthess, 2021, p. 4; Marianne Favre Moreillon, Les différents types de licenciements en droit du travail, Helbing Lichtenhahn, 2019, p. 74).

83. The primary characteristic of a fixed-term contract is that the contracting parties cannot terminate it before the agreed term, unless the party seeking early termination can invoke a valid reason for immediate termination (Decisions of the SFT 4A_270/2014 of 18 September 2014, para. 4.4; 4A_89/2007 of 29 June 2007 para. 3.2).

84. Regarding the end of such a contract, a distinction must be made between a mutual decision to terminate the employment relationship and the settlement addressing the consequences arising from its termination. These two agreements differ in that the termination agreement aims to prevent new claims from arising, while the settlement (governing the terms and conditions of the termination of employment relationship) involves the waiver of existing claims and therefore presupposes compliance with the requirements of Article 341 (1) SCO (Decision of the SFT 4A_13/2018, 4A_17/2018 of 23 October 2018, para. 4.1.3).

a.- The mutual agreement to terminate the employment contract

85. Article 13 RSTP provides that "[a] *contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement"*. In other words, the parties are free to end the employment contract by mutual agreement at any time (Decisions of the SFT 4C.61/2006 of 24 May 2005, para. 3.1; 4C.397/2004 of 15 March 2005, para. 2.1).

86. Under Article 341 (1) SCO, for the period of the employment relationship and for one month after its end, an employee may not waive claims arising from mandatory provisions of law or a collective agreement. This provision only prohibits the unilateral waiver by the employee (Decision of the SFT 4A_13/2018, 4A_17/2018 of 23 October 2018, para. 4.1).

87. However, Article 341 (1) SCO does not prohibit the parties from terminating the employment contract by mutual agreement at any time, thereby preventing the emergence of new claims (Decision of the SFT 4A_13/2018, 4A_17/2018, para. 4.1.1 and numerous

references). Such termination is possible only if the parties do not seek to circumvent a mandatory provision of the law (Decisions of the SFT 4C.61/2006 of 24 May 2006 para. 3.1; 118 II 58 para. 2a and references; Jean-Philippe Dunand, op. cit., p. 6).

88. It follows that, subject to this reservation, the parties remain free to terminate a fixed-term employment contract by mutual agreement before its expiry. This contractual termination is not subject to any particular form (Decisions of the SFT 4A_364/2016 of 31 October 2016 para. 3.1; 4C.397/2004 of 15 March 2005, para. 2.1; Wyler/Heinzer, Droit du travail, Stämpfli Editions, 2019, p. 648 and numerous references; Aurélien Witzig, Droit du Travail, Editions Schulthess 2018, N. 918, p. 318 and numerous references).

89. The employee's acceptance of a termination proposed by the employer does not, in itself, allow to conclude that there is a mutual termination agreement and, consequently, an implicit intention on the part of the employee to waive the protection afforded by labour law (Decisions of the SFT 4A_376/2010 of 30 September 2010, para. 3; 4A_474/2008 of 13 February 2009, para. 3.2; 4C_127/2005 of 2 November 2005, para. 4.1). Such an agreement must be interpreted restrictively; it can only constitute a mutual termination in exceptional circumstances, in particular when it is established without ambiguity that both parties intended to terminate the contract (Decisions of the SFT 4C_397/2004 of 15 March 2005, para. 2.1; 4A_362/2015 of 1 December 2015, para. 3.2; 4C_127/2005 of 2 November 2005, para. 4; 4A_376/2010 of 30 September 2010, para. 3; 4C_27/2002 of 19 April 2002, para. 2).

90. As a matter of fact, there are safeguards regarding the possibility for the parties to terminate the employment contract by mutual agreement, in order to take into account, the consequences of such an agreement for the employee. By consenting to an agreed termination, the employee a) waives the legal protection against unfair dismissal and dismissal at an inopportune time, b) limits his entitlement to future unemployment benefits, and c) forfeits part of his salary where the agreed termination takes effect prior to the normal expiry of the contract. (Decisions of the SFT 4C.27/2002 of 19 April 2002, para. 2; 4A_563/2011 para. 4.1 and references; 4C.49/1999 of 23 April 1999, para. 2; Wyler/Heinzer, ibidem; Aurélien Witzig, op. cit. N. 927, p. 320). Hence, if the parties' agreement entails the employee waiving (existing) claims under mandatory law, such an agreement is only valid in the form of a genuine settlement, including concessions of comparable importance on the part of each party (Decision of the SFT 4A_13/2018, 4A_17/2018 of 23 October 2018, para. 4.1.1 and numerous references). The termination agreement must therefore appear justified from the employee's point of view and the reciprocal claims waived must be of approximately equal value (Decisions of the SFT 4A_673/2016 of 3 July 2017, para. 4.1; 4A_563/2011 of 19 January 2012, para. 4.1).

91. In practice, for employees' claims that are easily calculable (e.g. wages owed, wage supplements, holiday pay), the concessions made by the employer must be of at least equal value to the claims waived by the employees (Decisions of the SFT 4A_96/2017 of 14 December 2017, para. 4; Giuseppe Donatiello, In Commentaire Romand, Codes des Obligations I, Art. 253-529 CO, 3rd edition, 2021, ad art. 341 CO, N. 14, p. 2695).

92. Since Article 341 (1) SCO protects only the employee, it constitutes a relatively mandatory provision within the meaning of Article 362 SCO. It cannot be derogated from to the employee's detriment. However, the parties may, for example, agree on a longer protection period (Giuseppe Donatiello, op. cit., N. 20, p. 2696).

93. A waiver by the employee that contravenes Article 341 SCO is absolutely null and has no effect. It is not necessary for the employee to invalidate his waiver declaration (Wyler/Heinzer, op. cit. p. 347 and references). If a termination agreement is ineffective, the parties must be restored to the position they would have been in had it not been concluded (Giuseppe Donatiello, op. cit., N. 17, p. 2695).

94. The employee does not commit an abuse of rights by invoking Article 341 (1) SCO. The fact that the employee only raised his/her claims at the end of the employment relationship cannot, by itself, constitute a manifest abuse of rights, otherwise Article 341 (1) SCO would be rendered meaningless for the employees it is intended to protect (Decisions of the SFT 131 III 439, para. 5.1; 129 III 618, para. 5.2 and references; (Wyler/Heinzer, op. cit. p. 189 and references).

b.- The settlement addressing the consequences arising from the termination of the Employment Contract

95. Article 341 (1) SCO does not preclude a settlement on the terms of termination of the employment relationship, provided that there is an appropriate equivalence of reciprocal concessions, *i.e*. that the claims waived by each party are of comparable value. The employee cannot freely dispose of claims arising from mandatory provisions of the law or a collective agreement and, in particular, cannot waive them without corresponding consideration (Decision of the SFT 4A_13/2018, 4A_17/2018 of 23 October 2018, para. 4.1.2 and numerous references). As the settlement only concerns the terms of the termination of the employment relationship (and not the termination of the contractual relationship itself), the legal provisions relating to protection against dismissal (Article 336 *et seq.* SCO) are not affected and the parties remain subject to them. Thus, when the employer unilaterally terminates the contract and simultaneously or subsequently enters into an agreement governing the terms of the termination of the contract, the employee's acceptance of the termination alone is insufficient to establish that he/she has (implicitly) waived the protection afforded to him/her by Article 336 *et seq* SCO (Decision of the SFT 4A_13/2018, 4A_17/2018 of 23 October 2018, para. 4.1.2 and numerous references).

3.- The case at hand

96. It is undisputed that the Club terminated the Employment Contract prematurely and without just cause. At no moment, the Coach agreed to such a termination, which constitutes a clear breach of Article 13 RSTP. As emphasized in the FIFA Commentary on the Regulations on the Status and Transfer of Players, edition 2023, p. 125, this provision "*reflects the fundamental principle of contractual stability and contract law: that contracts must be respected (pacta sunt servanda")".*

97. While the Club concedes that compensation is due to the Coach, it insists that such compensation must be determined strictly in accordance with the Compensation Clause, which it describes as an expression of the Parties' genuine will. The Coach firmly rejects this position, asserting that the Clause is null and void as it contravenes mandatory provisions of Swiss law and therefore cannot be enforced.

98. As a preliminary remark, the Sole Arbitrator finds it rather paradoxical that the Club, after unilaterally terminating the Employment Contract without just cause, now purports to rely on the principle of *pacta sunt servanda* in order to enforce a specific provision of that very same contract - namely, the Compensation Clause that happens to operate in its favor. Such a stance reveals a selective application of contractual principles, whereby the Club disregards the binding force of the agreement in respect of its own obligations, yet invokes it to demand compliance with a clause advantageous mainly to itself.

99. As regard the Employment Contract, its fixed-term nature could be called into question. By definition, such a contract should subsist until the stipulated expiry date and not be subject to premature termination at the will of the parties. The Compensation Clause permitting either party to end the employment relationship at any moment upon payment of three months' salary as compensation contradicts this principle, rendering the duration uncertain and casting doubt on whether the agreement can properly be regarded as fixed-term. Without the Compensation Clause, the Employment Contract would clearly retain its fixed-term character binding the Parties until the agreed expiry date. Which would then only be consistent with the principle of contractual certainty and with the principle of *pacta sunt servanda.*

100. The question that arises now is whether, by accepting the Compensation Clause, the Coach agreed in advance to the termination of the Employment Contract. Since such a contractual termination is not subject to any particular form, one might be tempted to argue that the Coach consented, *ab initio*, to the possibility that the contractual relationship could be ended by reliance on this provision.

101. This interpretation, however, is odd and difficult to reconcile with the consistent jurisprudence of the SFT, according to which agreements to mutually terminate an employment relationship must be interpreted restrictively. As exposed above, the SFT has repeatedly held that such agreements can only be admitted in exceptional circumstances and when it is established beyond doubt that both parties unambiguously intended to terminate the contract (see decisions of the SFT 4C_397/2004 of 15 March 2005, para. 2.1; 4A_362/2015 of 1 December 2015, para. 3.2; 4C_127/2005 of 2 November 2005, para. 4; 4A_376/2010 of 30 September 2010, para. 3; 4C_27/2002 of 19 April 2002, para. 2). In the present case, the Coach did not agree to the termination of the Employment Contract and nothing in the wording of the Compensation Clause suggests such a clear and unequivocal intention. On the contrary, the clause merely stipulates the financial consequences "*in the event that the club terminates the contract unilaterally without just cause*", fixing in advance the compensation payable to the other party.

102. It follows that the Compensation Clause must be construed as an agreement regulating the financial consequences of the wrongful termination of the Employment Contract and not the termination of the contractual relationship itself. Article 341 SCO therefore applies and the Coach cannot waive his claims set out in a mandatory provision such as Article 337 c (1) SCO, which states that "*Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration*". An exception is admitted only where the Parties have agreed upon a settlement regulating the consequences of the unjust termination. Such settlement is valid solely if each party's concessions are of equivalent weight and value.

103. The Sole Arbitrator observes the following:

- It is doubtful that the Coach genuinely consented to the Compensation Clause. This provision is identical to the one included in the head coach's contract, and both the head coach and his staff, including the Coach, were dismissed simultaneously. This circumstance strongly suggests that the clause was not the result of a freely negotiated agreement but rather a standard term imposed by the Club. It is more plausible that the Club inserted such a clause with the objective of being able to dismiss the entire coaching team at will, at a minimal cost limited to the payment of three months' salary. The Compensation Clause does not appear to be the result of a balanced arrangement between the Parties but more of a unilateral mechanism designed by the Club granting it maximum flexibility in the organisation of its coaching staff.

- Despite the fact that both the Coach and the Club may, in appearance, unilaterally put an end to the Employment Contract under the same conditions — namely, by paying compensation equivalent to three months' salary — the concessions cannot be regarded as reciprocal and equivalent. From the Coach's perspective, the waiver is far more substantial: he renounces the damages corresponding to the remuneration he would have earned, had the employment relationship run until the agreed expiry date. From 25 December 2023 (the date of the Notice of Termination) until 30 June 2026 (the end of the contractually agreed term of the Employment Contract), more than 30 months elapsed. This entitled the Coach to more than EUR 525,000 (30 x EUR 17,500), which is ten times more than the three-monthly salary provided for in the Compensation Clause. Nothing in the Employment Contract suggests that this disparity is compensated by other more favourable provisions to the benefit of the Coach (see CAS 2020/A/6994; CAS 2016/A/4826). The imbalance is even greater in that, if the Coach is absent from the Club for more than 15 days, the latter may terminate the Employment Contract, with the result that the Club is entitled to "*a compensation for the breach equal to the total fixed remuneration agreed in the labour agreement*", which exceeds by far the three months' salary that the club must pay in the event of early termination of the contract without just cause (see Clause 29 of the Employment Contract).

- This imbalance is reinforced by the structural inequality inherent in the employment relationship. Labour law recognises the employee as the weaker party, deserving of particular protection against disproportionate contractual arrangements. The employee in this case, as an assistant coach, is in an even more vulnerable position, as his professional fate is inseparably linked to that of the head coach. When the latter is dismissed, the assistant coach is exposed to an almost automatic loss of employment.

- The Club's argument that "*another essential point to consider while balancing the proportion and fairness of the termination clause is the fact that a coach, unlike a football player, can be engaged by any club in the world instantly, without the restrictions of transfer periods*" is wholly unpersuasive. As an integral part of a coaching team, the Coach cannot leave the Club at any moment by paying three months' wages. The practical and operational realities of a coaching team mean that the mobility of an individual assistant coach is inherently limited, undermining the Club's comparison with the transfer freedom of a player.

104. In light of the foregoing, the Sole Arbitrator finds that the Compensation Clause, together with Clause 29 of the Employment Contract, creates a substantive imbalance between the Parties and fails to satisfy the requirement of reciprocal and equivalent concessions. It follows that the Compensation Clause cannot be upheld as a valid settlement provision. It is therefore null and void and the Parties must be placed in the position they would have been in had the Compensation Clause not been concluded.

B. What is the amount of compensation to be awarded to the Coach for the termination of the Employment Contract without just cause?

105. For the reasons set out above, it must be concluded that the Employment Contract does not contain a specific provision setting out the terms for calculating the financial compensation due in the event of early termination of the employment relationship without just cause by either Party.

106. The situation is governed by Article 6 of Annex 2 of the RSTP, which reads as follows:

> "*Compensation due to a coach*
>
> *a) In case the coach did not sign any new contract following the termination of their previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.*
>
> *b) In case the coach signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the*

> *"Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the coach shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the residual value of the prematurely terminated contract".*

107. Under this provision, the Coach is entitled to compensation corresponding to the total amount he would have received during the remaining term of the Employment Contract. The Employment Contract should have expired on 30 June 2026 but was terminated without just cause by the Club with effect from 25 December 2023, *i.e.* 30 months and 6 days before the contractual term.

108. With regard to the exact determination of the compensation due, the Sole Arbitrator finds the following:

- Under the Employment Contract, the Coach was entitled to a monthly salary of EUR 17,500.

- For the month of December 2023, the Coach is entitled to EUR 3,387,10 (= EUR 17,500: 31 x 6).

- For the period running from 1 January 2024 until 30 June 2026, the Coach is entitled to EUR 525,000 (= EUR 17,500 x 30).

- The salary received by the Coach from Al-Ahli Sport Club must be deducted from the compensation owed by the Club.

- The employment contract with Al-Ahli Sport Club is a fixed-term contract, the duration of which is "*for one calendar year, starting from the date on which the* [Coach] *commences work for* [Al-Ahli Sport Club] *and shall be automatically renewed, from year to year, unless either party notifies the other in writing of his/her intention to terminate the contract at least thirty (30) days prior to the date of such termination*". In his submissions filed in these arbitration proceedings, the Coach did not indicate the precise date on which he began working for Al-Ahli Sport Club, nor did he assert that his contract with that club had been terminated. Accordingly, it must be concluded that the Coach's employment contract commenced on the date of signature (*i.e.* 18 August 2024) and has been extended until August 2026.

- According to the contract with Al-Ahli Sport Club, the Coach is entitled to "*a monthly basic salary of (6,000) QR and a gross salary of (14,600) QR (Qatari Rials Only), payable at the end of every calendar month effective from the date*

of commencement of work". In the absence of any contrary information provided by the Coach, it must be assumed that the whole salary paid by the Club (QR 20,600) is, in fact, net.

- According to the Club the applicable exchange rate is the following: QR 20,600 = EUR 4,842. The Club relied on the website https:// www.qcb.gov.qa/en/pages/exchangerates.aspx, which the Coach did not challenge or offer another rate. The Sole Arbitrator sees no reason to depart from it.

- It must be assumed that in August 2024, Al-Ahli Sport Club paid to the Coach EUR 2,186.70 (= EUR 4,842: 31 days of August x 14 days; *i.e*. the number of days running from the date of signature until the end of the month).

- It must be assumed that Al-Ahli Sport Club paid to the Coach EUR 53,262 for the first year of the employment relationship minus the month of August 2024 already taken into account hereabove (= EUR 4,842 x 11).

- It must be assumed that Al-Ahli Sport Club will pay the Coach EUR 53,262 between August 2025 until the end of June 2026 which is the contractually agreed term of the Employment Contract (EUR 4,842 x 11 = EUR 53,262).

109. To summarise, the Coach is entitled to the following compensation:

- Compensation for December 2023		EUR	3,387.10
- Compensation for the period running from 1 January 2024 until 30 June 2026		EUR	525,000.00
- Deduction of the salaries received in August 2024	-	EUR	2,186.70
- Deduction of the salaries received for season 2024-2025	-	EUR	53,262.00
- Deduction of the salaries received during season 2025/2026	-	EUR	53,262.00
Total		**EUR**	**419,676.40**

110. With respect to the payment of default interest, the question is not governed by the FIFA Regulations and must therefore be assessed according to Swiss law. The pertinent provisions are:

Article 73 SCO

"[1] Where an obligation involves the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5% per annum.

[2] Public law provisions governing abusive interest charges are not affected".

Article 104 SCO

> *"[1] A debtor in default on payment of a pecuniary debt must pay default interest of 5% per annum even where a lower rate of interest was stipulated by contract.*
>
> *[2] Where the contract envisages a rate of interest higher than 5%, whether directly or by agreement of a periodic bank commission, such higher rate of interest may also be applied while the debtor remains in default".*

111. Regarding the *dies a quo*, where an obligation is due, the obligor is in default as soon as he receives a formal notice from the creditor. Where a deadline for performance of the obligation has been set by agreement, a notice is not necessary (see Article 102 SCO; Luc Thévenoz; in Thévenoz/Werro (eds.), Commentaire romand, Code des obligations I, Art. 1 – 252 CO, 3rd edition, 2021, ad art. 102 CO, N. 26, p. 918).

112. In the present case, the Employment Contract came to an end on 25 December 2023, *i.e.* the date of the Termination Notice. Accordingly, that date shall be considered as *the starting date* for the calculation of the default interest based on the above provisions. In its Appealed Decision, the PSC came to the same conclusion and the Parties raised no objections.

C. Conclusion

113. It follows from the foregoing that the Club terminated the Employment Contract unilaterally, without just cause. In addition to the outstanding remuneration, determined in the Appealed Decision and not disputed by the Parties, the Club shall pay to the Coach compensation in the amount of EUR 419,676.40, plus interest at 5% per annum from 25 December 2023.

114. All other claims and further conclusions of the Parties are dismissed.

IX. COSTS

(…)

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 12 June 2024 by Mr Vedran Naglić against the decision rendered on 23 April 2024 by the FIFA Players' Status Chamber is partially upheld.

2. The decision issued by the FIFA Players' Status Chamber on 23 April 2024 is confirmed, save for Item 2.e of its operative part which is amended as follows:

   e. EUR 419,676.40 net of taxes in Saudi Arabia as compensation for breach of contract without just cause plus 5% interest p.a. as from 25 December 2023 until the date of effective payment.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 22 December 2025

THE COURT OF ARBITRATION FOR SPORT

Patrick Grandjean
Sole Arbitrator