CAS 2020/A/7253 Al Faisaly Sports Club v. Doukoure Abdoulaye

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Jose Juan Pintó Sala, Attorney-at-law, Barcelona, Spain.

Ad Hoc Clerk: Mr. Alberto Donado-Mazarrón Cebrian, Attorney-at-law, Barcelona, Spain

in the proceedings between:

Al Faisaly Sports Club
Represented by Mr. Jirayr Habibian, Attorney-at-law, Dubai, United Arab Emirates

Appellant

and

Doukoure Abdoulaye
Represented by Mr Anthony Mottais, Attorney-at-law, Caen, France

Respondent

I. THE PARTIES

1. Club Al Faisaly Sports Club ("the **Appellant**" or "the **Club**"), is a professional football club, which is domiciled in Amman, Jordan. It is a member of the Jordan Football Association ("**JFA**"), which in turn is affiliated to the *Fédération Internationale de Football Association* ("**FIFA**").

2. Doukoure Abdoulaye ("the **Respondent**" or **"**the **Player"**) is a professional football player from Ivory Coast.

II. FACTUAL BACKGROUND

3. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties' written submissions and the evidence filed within these submissions. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Sole Arbitrator refers in its Award only to the submissions and evidence he considers necessary to explain its reasoning. The Sole Arbitrator, however, has considered all the factual allegations, legal arguments and evidence submitted by the parties in the present proceedings.

4. On 9 February 2019, the Club and the Player entered into an Employment Contract (the "**Employment Contract**"), valid as from 9 February 2019 until *"the end of the football season 2022."* In its most relevant parts, the Employment Contract reads as follows:

"1.- This Contract shall commence on 9/2/2019 and shall expire at the end of the football season 2022, in the event that there is a participation for the Club in any continental or regional championship, this Contract shall be extended to expire on the first day of the first registration period that follows the end of the season.

[…]

4.- The Player shall be obliged to participate, exert his best endeavors and capabilities in all matches and training sessions in which the Club asks him to participate at the time and place so determined by the Club unless his state of health would not so permit by virtue of medical reports issued by an approved entity.

[…]

16.- The first party pays the second party a monthly salary of USD 800 until the end of the football season 2019.

17.- The first party pays the second party a monthly salary of USD 1.500 dollars until the end of the football season 2020.

18.- The first party pays the second party a monthly salary of USD 1.500 dollars until the end of the football season 2021.

19.- The first party pays the second party a monthly salary of USD 1.500 dollars until the end of the football season 2022.

20.- In case the first party wishes to sell a player to any club, the first party pays $15% of the contract value to Mr. Fayer Oumar.

21.- In case the first party wishes to terminate the player's contract, the first party pays the second party dues until the date of termination of the contract.

[…]

24.- This Contract may be terminated at any time by the mutual agreement of the Parties hereof (the Club and the Player) provided that the Player's Status Committee at the Association so consents and also either Party shall be entitled to request the termination of the Contract by the Players' Status Committee at the Association if there is a justified cause.

25.- In the event that the Club or the Player violates any of the Contract's Clauses or its regulations and the professionalism regulations, both Parties shall be entitled to lodge a complaint to the Association to decide the matter and take whatever procedures it deems appropriate if the foreign Party so accepts. Both of them shall be entitled to lodge a complaint before FIFA in accordance with the procedures provided for under the Regulations on the Players' Status issued by FIFA.

[…]

28.- Both Parties acknowledge the jurisdiction and competence of Jordan Football Association Arbitral Tribunal (if it exists, failure of which the committees or commissions assigned to hear sporting disputes) and the Court of Arbitration for Sports (CAS) at Lausanne as an agreed upon arbitrator to hear any sporting difference or dispute that I may be a party to. I undertake to refrain from bringing any sporting dispute or difference instructions, regulations and laws of FIFA, AFC or Jordan Football Association. Furthermore, both Parties shall be obliged to comply with the decisions made by Jordan Football Association Arbitral Tribunal – its Omar exist, or any committee or commission acting therefor, if it does not exist – and made by the Court of Arbitration for Sports (CAS) at Lausanne."

5. According to the terms of the Employment Contract the Player was entitled to receive a monthly salary of:

- USD 800 as monthly salary "until the end of the football season 2019"
- USD 1,500 as monthly salary "until the end of the football season 2020"
- USD 2,500 as monthly salary "until the end of the football season 2021"
- USD 3,500 as monthly salary "until the end of the football season 2022"

6. According to the information contained in the FIFA Transfer Match System (TMS), the football season in Jordan runs as follows:

- 2018/2019: from 17 August 2018 until 25 October 2019;
- 2020: from 30 January 2020 until 5 November 2020;

- 2021: from 30 January 2021 until 5 November 2021;
- 2022: from 4 February 2022 until 28 October 2022.

7. Also in February 2019, the Club, with the consent of the Player, decided to enter into a loan agreement with Al Mansheyat Bin Hassan Club ("**Al Mansheyat**") and the Respondent was transferred on a loan basis from 11 February 2019 until the end of the 2018/2019 Jordan football season. This loan agreement, in the pertinent part, reads as follows:

"The AL FAISALY Club, represented in this Agreement by RAMZI ABU AL SOUNDS in his capacity as GS hereinafter referred to as the First Party has agreed with the MANSHIT BANI HASSAN Club, represented in this Agreement by ODAI SHDIFAT in his capacity as GS hereinafter referred to as the Second Party and Player DOUKOURE ABDOULAYE hereinafter referred to as the Third Party, that the First Party shall accept to loan the Third Party whose Contract commences on 9/2/2019 and expires at the end of the football season 2022 to the Second Party for the period from 11/2/2019 and which shall expire at the end of the football season 2018/2019 for FREE"

8. On 29 April 2019, once the league championship in Jordan had ended, the Player and Al Mansheyat signed a settlement agreement where the Player recognized having received all his salaries and waiving any further right in connection with his loan to such club. The settlement agreement, in the pertinent part, reads as follows:

"The Parties agree that this settlement shall be a final discharge for the rights of the Second Party (the Player) with the First Party notwithstanding with any decisions, regulations or instructions, and this Agreement shall have the intent and meaning given to settlement by the Jordan Football Association"

9. It is worth mentioning that, on 1 June 2018, the JFA had taken a decision to align the Jordan football season with the AFC (Asian Football Confederation) sporting calendar year. Therefore, by the end of the 2018/2019 season, the forthcoming seasons would start on the same date in which the AFC competition resumes, that is to say, 30 January.

10. Furthermore, the registration periods for the 2018/2019 football season in Jordan were as follows:

a) First Window period from 26/06/2018 until 19/08/2018

b) Second Window period from 13/01/2019 until 12/02/2019

11. In this regard, an Affidavit from the JFA dated 13 July 2020 stated that "*there was no registration period for: new players, renewed player and players on loan between 13/2/2019 and 4/12/2019".*

12. Once the 2018/2019 football season in Jordan had ended, the Player left Jordan and returned to Ivory Coast.

13. On 26 September 2019, the JFA received via the TMS system a request from Al-Taawon Football Club ("**Al Taawon**") via the United Arab Emirates Football Association ("**UAE FA**") to issue the International Transfer Certificate (ITC) of the Player.

14. The request of Al Taawon was based on the assumption that the Player was free from any agreement with other clubs given that his contract with the former club was supposedly been mutually terminated as it was stated in the FIFA TMS instruction by the UAE club. The JFA rejected the request to issue the ITC asserting that the Respondent's contract with the Appellant, as registered with the JFA, was still valid until the end of the 2022 season.

15. On 21 October 2019, the Respondent sent a default notice to the Appellant requesting the payment of outstanding remuneration of USD 5,300, corresponding to the salaries of February, July, August and September 2019 within 15 days and the provision of an employment VISA. The most relevant parts of the default notice read as follows:

"[…] As the contract provides for a monthly salary in order of 800 USD for the season ending 30/06/2019 and 1.500 USD for the 2020 season.

As the club has not paid the salaries for the months of February 2019 800 USD, July 2019 1.500 USD, August 2019 1.500 USD, September 2019 1.500 USD.

I hereby request you to pay within 15 days to the player Doukoure Abdoulaye the sum of 5.300 USD relating to the above-mentioned salaries to the following account by sending me a copy of the swift: […]

Furthermore, I invite you to take the necessary steps to allow the Player to obtain a visa to enter Jordan within 5 days from receipt of this email, in case of refusal I would be obliged to consider this as abusive behaviour that would force the player terminate his contract."

16. On 6 November 2019, the Player re-sent to the Appellant and to the JFA the same notice of default previously sent on 21 October 2019.

17. On 28 November 2019, the Player terminated the Employment Contract with the Club due to the non-payment of the outstanding remuneration as well as the failure of the club to provide an employment VISA. The most relevant parts of the termination letter read as follows:

"The player hereby gives the notice of termination of the contract between him/her and your club for just cause for which the club is responsible for the following reasons:

The player has signed a professional player's contract with the club from 09/02/2019 to the end of the 2022 season.

The player is entitled to:

A monthly salary of 800 USD until the end of the 2019 season.

A monthly salary of 1.500 USD until the end of the 2020 season.

During this period the player did not receive the following injuries:

February 2019 800 USD

July 2019 1.500 USD

August 2019 1.500 USD

September 2019 1.500 USD

October 2019 1.500 USD

The player returned to his country for a holiday and the club never again sent back either the return ticket or the Visa to get him back to work.

Despite a first formal notice sent on 21/10/2019 to the club which remained unanswered.

In this formal notice the player asked for payment of his wages by giving the club a 15-day deadline and asked for his visa to be prepared to resume his work within 5 days.

The player sent a second reminder on 21 October 2019 but this reminder was sent to the club and the Jordanian Football Association, which also failed to reply.

Consequently, the player reserved the right to refer the matter to the competent authorities of FIFA."

18. On 28 November 2019, the Player lodged a claim before the FIFA Dispute Resolution Chamber in relation to the termination of the contract.

19. On 4 January 2020, the Player signed a contract with the Emirati club Al Taawon until 30 April 2020 including a total salary of approximately USD 7,460.

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

20. On 28 November 2019, the Player lodged a Claim in front of the Dispute Resolution Chamber of FIFA ("**FIFA DRC**") against the Club for outstanding remuneration and compensation for breach of contract requesting the total amount of USD 93,800, as follows:

- USD 8,300 as outstanding remuneration corresponding to the salaries of February 2019 to November 2019;
- USD 82,500 as compensation for breach of contract corresponding to the residual value of the contract (December 2019 to June 2022);
- USD 3,000 as additional compensation corresponding to 2 monthly salaries of USD 1,500 each;
- Sporting sanctions to be imposed on the Respondent.

21. In its reply to the claim, the Club argued that the player was on loan with the Jordan club Al Mansheyat as from 11 February 2019 *"until the end of the class 1 football league"*. It also deemed that due to the postponement of the football season, the club was not able to re-register the player until January 2020. In addition, the club stated that it requested the player to join the club for "club exercise" but he did not attend, despite having been "issued an entry visa to the player on 20/10/2019 and sent a ticket to him to enter into Jordan on 16 December 2019.

22. On 15 April 2020, the FIFA DRC issued its decision in the above dispute (the "**Appealed Decision**") in the following terms:

"(...)

1. The claim of the Claimant, Doukoure Abdoulaye, is partially accepted.

2. The Respondent, Al Faisaly, has to pay to the Claimant, within 45 days as from the date of notification of this decision, compensation for breach of contract in the amount of USD 76,540.

3. Any further claim lodged by the Claimant is rejected.

4. The Claimant is directed to inform the Respondent, immediately and directly, preferably to the email address as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent must pay the amounts plus interest mentioned under point 2. above.

5. The Respondent shall provide evidence of payment of the due amount in accordance with point 2. above to FIFA to the e-mail address psdfifa@fifa.org, duly translated into one of the official FIFA languages (English, French, German, Spanish)."

6. In the event that the amount due in accordance with point 2. Above is not paid by the Respondent within 45 days as from the notification by the Claimant of the relevant bank detail to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

7. The ban mentioned in point 6. Above will be lifted immediately and prior to its complete serving, once the due amount is paid.

8. In the event that the amount due in accordance with point 2. Above is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

23. On 19 June 2020, the FIFA DRC Single Judge notified the grounds of the Appealed Decision. The relevant part of these grounds reads as follows:

- It is undisputed that the Parties entered into an Employment Contract valid as from 9 February 2019 until the end of the 2022 football season. In accordance

with the provisions included in the contract, the Player was entitled to receive from the Respondent, inter alia, a monthly salary of USD 800 during the 2019 season, USD 1,500 during the 2020 season, USD 2,500 during the 2021 season and the USD 3,500 during the 2022 season.

- The Parties and the Jordan club Al Mansheyat entered into a Loan Agreement by virtue of which the Player was indeed transferred on loan basis to Al Mansheyat as from 11 February 2019 until 25 October 2019 and therefore, Al Mansheyat, was obliged to pay the Player's salary during said period. Consequently, the DRC judge rejected the Player's claim regarding outstanding remuneration for that period.

- Regarding the allegation that the Player was not "re-registered" after completing the above-mentioned loan, it is noted that the Respondent admitted not having registered the Player once the Loan Agreement had ended.

- Among a player's fundamental rights under an employment contract, one can find not only the right to a timely payment of his remuneration, but also the right to access training and to be given the possibility to compete in official football matches. By refusing to register the Player, the Club is effectively barring, in an absolute manner, the potential access of the Player to competition and, as such, is violating one of his fundamental rights as a football player. Therefore, considering the failure to register the Player and to apply for a work permit, it shall be concluded that this is a clear breach of contract. Consequently, the Club is to be held liable for the early termination of the employment contract with just cause by the Player.

- Due to the early termination of the contract, it shall also be considered that the Player is entitled to receive from the Club an amount of money as compensation for breach of contract in addition to any outstanding payments on the basis of the relevant contract.

- In light of the fact that the contract did not include any provision whatsoever by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract, the amount of compensation has to be assessed in application of the other parameters set out in art. 17 (1) of the Regulations. Said provision provides for a non-exhaustive enumeration of criteria to be taken into account when calculating the payable amount.

- The basis for the calculation of the abovementioned payable amounts shall be the monies payable to the Player under the terms of the Employment Contract until October 2022, this is to say USD 84,000.

- In light of the above, it had to be verified if the Player had signed an employment contract with another club during the relevant period of time, by means of which it would have been able to reduce the loss of income. In this regard it has to be noted that the Claimant had signed an employment contract with the Emirati Club

Al Tawoun, valid as from 4 January 2020 until 30 April 2020, including a total salary of AED 27,000 (approx. USD 7,460).

- Consequently, on account of all the above-mentioned considerations and the specificities of the case at hand, it shall be concluded that the Club must pay the amount of USD 76.540 as mitigated compensation to the Player, which was considered a reasonable and proportionate as compensation for breach of contract in the case at hand.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 10 July 2020, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the "**CAS Code**"), the Club filed its Statement of Appeal before the Court of Arbitration for Sport (the "CAS") against the Appealed Decision. The appeal is directed against the Player and the Appellant requested the present case to be submitted to a Sole Arbitrator and suggested Mr Michele Bernasconi, Attorney-at-Law in Zurich, Switzerland as the Sole Arbitrator. The Appellant applied for the stay of the challenged decision as a provisional measure. It also chose English as the language of the present arbitration proceedings and submitted the following request for relief:

"(...)

1- To accept the current Appeal filed and to reject the outcome of the decision of the FIFA's DRC Judge.

2- To take a decision, ex-camera to stay the execution of the FIFA DRC decision, subject to the current appeal, namely the provision related to the imposing of a registration ban.

3- The Appellant would like to request CAS to declare that the act of termination of the Employment Contract by the Respondent as a termination without just cause, and to apply the legal consequences thereof.

4- The Appellant would reserve its rights to further substantiate its claim in the appeal brief, against the Respondent, for the relevant compensation for breach of the Employment Contract without Just Cause.

5- To condemn the Respondent to the payment of all the procedural cost, fees before both the Court of Arbitration (CAS) in addition to Lawyers' fees."

25. On 14 July 2020, the CAS Court Office invited FIFA to participate in the present arbitration.

26. On 15 July 2020, the Appellant withdrew its request for a stay of execution.

27. On 16 July 2020, the Respondent informed CAS that he agreed to submit the present matter to a Sole Arbitrator but rejected the appointment of Mr Michele Bernasconi and requested the President of the CAS Appeals Arbitration Division to appoint the Sole Arbitrator. The Respondent also opposed to the Appellant's choice to proceed in English and requested French to be established as the language of the procedure or, in the alternative, that a bilingual (English-French) procedure be implemented. Finally, it also

requested the deadline for filling the response be fixed after the payment by the Appellant of its share of the advanced of costs.

28. On 21 July 2020, the Appellant insisted on its request to nominate Mr Michele Bernasconi as Sole Arbitrator and on conducting the procedure in English.

29. On 22 July 2020, the CAS Court Office, given the Parties' conflicting positions with respect to the language of the procedure, informed that the matter would be submitted to the Division President, or her Deputy, for a decision and an Order on Language would be issued in due course.

30. On 24 July 2020, FIFA informed the CAS Court Office that it renounced to its right to request its possible intervention in the present arbitration proceedings.

31. On 4 August 2020, the Deputy President of the CAS Appeals Arbitration Division issued an Order on Language and established English as the sole language of the procedure pursuant to Article R29 of the Code.

32. On 10 August 2020, the Respondent requested to submit his Answer after the payment by the Appellant of its share of the advance of costs.

33. On 14th August 2020, pursuant to Article R51 of the CAS Code, the Club submitted its Appeal Brief, with the following request for relief:

"(...)

1. *The Appeal filed by the Appellant to be upheld and to reject the decision of the FIFA's Single Judge.*

2. *To determine that the Appellant have not breached its obligation hence did not terminate the Employment Contract with the Respondent.*

3. *In all cases to declare that the Employment Contract was terminated by the Respondent without Just Cause and therefore applies the legal consequences set forth on art. 17 of FIFA RSTP and declare the Respondent liable jointly and severally with Taawon Club.*

4. *To compensate the Appellant for the losses suffered as a result of the unilateral termination without just cause by the Respondent and pay the Appellant an amount of USD 84,000 being the residual amount of the Employment Contract and to apply 5% interest on this amount as of the date of the transfer of the Player till the date of the payment.*

5. *To condemn the Respondent to the payment of all the procedural cost, fees before both the Court of Arbitration (CAS) in addition to Lawyers' fees."*

34. On 17 August 2020, the Respondent informed the CAS Court Office that he had no intention to pay his share of the advance of costs.

35. On 14 November 2020, the Player filed his Answer to the Appeal Brief, in accordance with Article R55 of the CAS Code, submitting the following requests for relief:

1. *"**Reject the appeal of the club in its entirety.***

2. ***Confirm** the DRC's decision of 15 April 2020 in so far as it held that the contract had been breached by the club, and as to the deadlines and terms of payment of the sentences handed down.*

3. ***Overturn** the CRL decision as to the quantum of the convictions handed down, i.e., by including all outstanding salaries.*

4. ***Condemn** AL FAISALY SPORTS CLUB to pay:*

   - *57.14 USD as outstanding salaries for the period from 9 February 2019 to 11 February 2019 plus 5% interest p.a. from the due date of each of the wages.*

   - *9.100 USD as outstanding salaries for the period from May to November 2019 plus 5% interest p.a. from the due date of each of the wages.*

   - *USD 82.5000 as compensation for the termination of the employment contract plus 5% interest p.a. as of 27 November 2019.*

5. ***Order** AL FAISALY SPORTS CLUB to pay the full arbitration costs as well as to reimburse all the expenses of the appellant incurred in the present proceeding.*

6. ***Order** AL FAISALY SPORTS CLUB to pay Mr. Abdoulaye DOUKOURE the sum of 5.000 euros to cover the legal costs and expenses incurred in connection with the present proceeding"*

36. On 16 November 2020, pursuant to Article R54 of the CAS Code, the CAS Court Office informed the parties that Mr Jose Juan Pintó Sala, Attorney-at-law in Barcelona, Spain, had been appointed as Sole Arbitrator to decide on the present dispute. In that same letter, CAS also acknowledged receipt of the Appellant's payment of the totality of the advance of costs for the procedure.

37. On 16 November 2020, the CAS Court Office invited the parties to inform CAS whether they preferred a hearing to be held in this matter or if they preferred the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

38. On 18 November 2020, the Respondent informed that he preferred the Sole Arbitrator to issue an award based solely on the Parties' written submissions, without holding a hearing.

39. On 19 November 2020, the CAS Court Office informed the parties that Mr. Alberto Donado-Mazarrón, Attorney-at-law in Barcelona, Spain, had been appointed as *ad hoc* Clerk in order to assist the Panel in these proceedings.

40. On 26 November 2020, the Appellant informed that he also preferred the Sole Arbitrator to issue an award based solely on the Parties' written submissions, without holding a hearing.

41. On 30 November 2020, the CAS Court Office informed the parties, that, given their positions, the Sole Arbitrator would issue an award based solely on the Parties' written submissions, without holding a hearing.

42. On 2 December 2020, the CAS Court Office, on behalf of the Sole Arbitrator, issued an order of procedure (hereinafter referred to as the "Order of Procedure"), which was accepted and countersigned by the Parties.

V. SUMMARY OF THE PARTIES' SUBMISSIONS

43. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Sole Arbitrator, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

A. THE APPELLANT

44. The Single Judge of the FIFA DRC, in its Decision dated 15 April 2020, considered that the Appellant *"admitted not having registered the player"* (ref to para. 13 page 5 of the Decision). The above consideration was done without a proper analysis of whether or not there has been any admission by the Club. The Appellant in the answer submitted to FIFA DRC on 12 January 2020 never admitted having refused to register the Player. In fact, the Club was unable to register the Player as the Jordan League was postponed until January 2020 and therefore there was no transfer window opened to register the player after he decided to settle its relationship with Al Mansheyat and it was legally impossible for the Club to re-register the Player.

45. Furthermore, the Club also informed FIFA that it had agreed with the Player on the issuance of the Visa and sent the corresponding document and the flight tickets to the Player so that he could join the team by the end of October 2019 as the Club would resume its activities by November.

46. The Single Judge did not take into consideration this impossibility to register players in Jordan and accused the Club of having deliberately refused to make that registration without even analysing the arguments and exhibits filed by the Club.

47. In light of the above, the conclusion reached by the FIFA DRC Judge was baseless, since there was neither intention nor an action from the Club towards not registering the Respondent and the lack of registration was only due to the legal impossibility of registering players on loan from 13 February 2019 to 4 December 2019.

48. Following this consideration, it should also be taken into account that no actions were made to impede the execution of the Player's employment contract and thereafter consider that the Appellant terminated the Employment Contract without just cause. For this reason, the basic right of the Player to access training and to be given the possibility

to compete with the team in official matches was not breached by any fault under the control of the Club.

49. It should also be noted that there was a phone call held between the Player, the Club and the Coach, after the Player's departure from Jordan in April 2019, that clearly shows the intention of the Club to keep the Player within the team. During the referred call, the Player was informed that the Club would resume trainings in November due to the postponement of the League until January 2020 and the Player's Visa to enter in Jordan would be issued at the end of October. Therefore, the Club did everything it could for retaining the Player as it sent him the employment Visa in due time and the flight tickets and if the Player had not been registered it was not due to any misleading intention by the Club but only because there was a material impossibility of registering the Player as the transfer window was closed.

50. The Club did not breach any of its contractual obligations with the Respondent for the latter to consider the Employment Contract terminated without just cause. When the Player's Loan Agreement was terminated, there was not a registration window available, hence the registration was legally, technically and realistically impossible and therefore it cannot be held liable for it.

51. On the other hand, the Appellant considers that the Player is the one who effectively terminated unilaterally the Employment Contract without just cause as (i) the Player left Jordan without consulting the Club, (ii) he did not comply with the oral agreement reached during the phone conversation between the Club, the Player and the Coach by virtue of which the Player had to return to the Club before November 2019, (iii) the Player started negotiations to join a UAE club whilst he was still under contract with the Appellant, (iv) the Player misled the UAE club by informing them that he was a free agent and that his Loan Agreement was terminated without informing them about the existence of the Employment Contract that it had with the Club, (v) did everything to terminate the Employment Agreement.

52. The Player was the one who terminated the Employment Contract and therefore violated the principle of *pacta sunt servanda*, according to which the obligations deriving from contracts which are valid must be executed.

53. Article 14 of the RSTP provides for the possibility of terminating a contract with just cause and the concept of just cause has extensively been analysed by CAS and the Swiss Federal Tribunal.

54. The conduct and behavior of the Club cannot be defined as *"a violation that persist over a long time"* or *"violations cumulated over a certain period of time"* that render *"most probable that the breach of contract has reached a level that the party suffering the breach is entitled to terminate the contract unilaterally".* Therefore, none of the elements to assess the presence of just cause contained in the commentary of the RSTP are met and therefore the Player's termination of the contract has been done without just cause and it also implies that the Club did not breach its obligations under the Employment Contract.

55. According to CAS jurisprudence, only material breaches of contracts can be considered as "just cause" for the termination of the latter and in the present dispute no breaches have occurred in relation to the behavior of the Club.

56. The FIFA DRC Single Judge correctly established the remaining value of the Employment Contract in an amount of USD 84,000 and therefore such amount shall be reimbursed to the Appellant as a compensation for the Players' breach of the Agreement without just cause.

B. THE RESPONDENT

I. Preliminary issues:

57. The Respondent, as a preliminary issue, considers that the Club's request seeking to order the Player to pay a compensation for breach of the employment contract without just cause must be automatically rejected.

58. Indeed, although Art. R57 of the Code allows the Panel to rule *de novo* on the subject of the Appealed Decision, this power is not absolute and is subject to certain limits. Likewise, and in light of what has been established by CAS jurisprudence (CAS 2016/A/4569 and CAS 2010/A/2874), the Club's counterclaim by means of which the Club requests that the Panel orders the Player to pay a total amount of USD 84,000 has been made for the first time in the present appeals proceedings. The Club did not raise this pleading in the first instance before the DRC and was therefore not contested and not analysed in the Appealed Decision. In light of the above, the Sole Arbitrator shall not consider this new request which must therefore be dismissed as inadmissible.

II. Regarding the outstanding salaries due to the Player

59. The Employment Contract was signed and entered into force on 9 February 2019. On 11 February 2019, the Player was transferred on a loan basis to a third club. Therefore, the Respondent considers that from 9 February to 11 February the Club should have ensured the payment of the Player's salary and therefore the Player is entitled to receive USD 57.14 (800/28 days).

60. The Loan Agreement ended on 29 April 2019 and therefore, at that time the Player was once again bound by the Employment Contract signed with the Club. The Appellant does not dispute this fact and, moreover, confirms it in its Appeal Brief.

61. In light of the above, once the Loan Agreement was settled, the Club was obliged to continue with the payment of the monthly salaries of the Player. The Employment Contract does not make any difference between competition periods and holiday periods with regards to the payment of the salaries. In addition, the Club also had the responsibility of providing football training sessions or matches for the players. The Club refrained from organizing any training session as the 2020 Jordan Football Season was postponed until January 2020 and this is the reason why the Player decided to move to Ivory Coast as it had to be more than 6 months without any training session with the Appellant.

62. From May 2019, the Club was bound by the Employment Contract and therefore was obliged to pay the monthly salaries of the Player, that is to say USD 9,100 corresponding from May to November of 2019 plus 5% interest from the due date of each of the salaries.

III. Termination of the Employment Contract

63. For the sake of completeness, it must be noted that the absences of registration have no effect on the validity of the Employment Contract. The Club was aware that the Loan Agreement was to be terminated at the end of the 2018/2019 Jordan Football season. Whether the Club was unable to register the Player was therefore outside the Player's control and could not validly result in a suspension of the Employment Contract and in particular of the Club's essential obligation regarding the Player's remuneration.

64. In light of the fact that from the end of the Loan Agreement, the Appellant did not pay any of the monthly salaries, of the Player through his agent, sent a formal default notice to the Club requesting the payment of USD 5,300, corresponding to the salaries of 3 days of February 2019 and the months of July, August and September 2019. Given that the Club gave no answer to the default notice, the Player re-sent it again to the Club before terminating the Employment Contract with just cause.

65. Taking into account all of the above, on the basis of article 14 RTSP, which states that the non-payment of two monthly salaries will entitle the Player to terminate his contract with just cause, it should be concluded that it is sufficient, in view of the non-fulfilment of the obligations by the Club, to terminate the contract with just cause and on that basis the Panel should decide to uphold the DRC decision.

66. In order to reinforce the above arguments, it should also be taken into account the failure of the Club to fulfil its obligations since the end of the Loan Agreement. The Club did not provide the Player with any work program and showed no interest at all in doing so. Proof of this unconcern is the fact that the Club did not contact the Player until 16 December 2019, i.e. more than 7 months of silence, despite the Player having even sent several default notices.

67. The Player, due to the fact that the Club did not organize any training program, decided to leave to his home country for a couple of months with the Club's permission. This acceptance can be demonstrated by the fact that the Player received no formal query whatsoever to return to Jordan or faced any kind of sanction for leaving the country. The reality is that the Club did not contact the Player for 7 months and did not even sent in due time the employment Visa or even the plane tickets to enable him to join the Club and resume training with his teammates ahead of the upcoming season.

68. The Club tries to prove that it effectively sent the Visa and the plane tickets to the Player and that therefore it was the Player who decided not to fly back to Jordan, but the Club deliberately refrains from producing the date on which the message was sent. Indeed, it turns out that the Club sent this plane ticket and the Visa to the Player on 16 December 2019, that is to say, the same day the plane took off and the Visa expired 3 days later. The Club's slackness shows that it had not intention to be concerned about the Player's situation and therefore it was strictly impossible for the Player to fly back to Jordan.

69. Despite all the above, this situation occurred almost two months after the formal default notice sent by the Player, nineteen days after the termination of the employment contract and eighteen days after the issuance of the claim to the FIFA Dispute Resolution Chamber. The sudden reaction of the Club was nothing else than an opportunistic behaviour and desperate move to escape its responsibilities for the breach of contract.

70. It is therefore evident from all the documentation on file that the Club had no interest in the services of the Player anymore, which is best evidenced by the blatant lack of any communication towards the Player for over seven months.

71. As regard to the Player's registration with the Jordan Football Association, the registration is only an administrative formality allowing the Player to participate in official competitions and therefore, the absence of said registration, which is only the result of the Club's actions taken, can never be a reason for the Club to refrain from paying the Player's salary and providing him with work.

72. In conclusion, the Employment Contract was terminated by the Player with just cause in light of what is stated in Article 17 RSTP as it has not been contested by the Club that it refrained from paying more than two monthly salaries of the Player.

73. In application of article 17 (1) of the FIFA Status and Transfer of Players' Regulations, the contracting party shall be entitled to compensation of the residual value of the Employments Agreement signed by the Parties that amounts to USD 82,500 plus 5% interest.

74. For incurring in extraordinary expenses, the Club shall be obliged to pay the sum of USD 7,000 to cover the costs and fees incurred in the present proceedings.

VI. JURISDICTION

75. The CAS jurisdiction derives from Article R47 of the CAS Code, that 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.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned."

76. In connection with the above-mentioned Article R47 of the CAS Code, the jurisdiction of the CAS, which has not been disputed by the parties, arises out of Articles R57 and R58 of the FIFA Statutes which in the pertinent part reads as follows:

"*R57: 1. FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents…"*

"R58: 1. 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 notification of the decision in question."

77. The Sole Arbitrator notes that the Appealed Decision has been issued by a FIFA legal body, that the FIFA Statutes provide for the recourse to the CAS and that all the prior legal remedies available to the Appellant have been exhausted, so the general conditions for the CAS to have jurisdiction in accordance with Article R47 of the CAS Code are met.

78. In addition, all the parties accepted that the CAS has jurisdiction to resolve this dispute and, moreover, confirmed it by signing the Order of Procedure.

79. Therefore, the Sole Arbitrator holds that the prerequisites of Article R47 of the CAS Code are met in this case and CAS is competent to rule on it.

VII. ADMISSIBILITY

80. Pursuant to Article 58 (1) of the FIFA Statutes, in connection with Article R49 of the CAS Code, the Appellant had 21 days from the notification of the Appealed Decision to file its Statement of Appeal before the CAS.

81. The grounds of the Appealed Decision were communicated to the Appellant by facsimile on 19 June 2020. Its Statement of Appeal was filed on 10 July 2020, i.e. within the time limit established by the FIFA Statutes and Article R49 of the CAS Code.

82. Consequently, the present appeal is admissible.

VIII. APPLICABLE LAW

83. Article R58 of the CAS Code reads as follows:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarity, 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."

84. Article 57 (2) of the FIFA Statutes states the following:

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

85. In accordance with these provisions, the Sole Arbitrator considers that the present dispute shall be resolved on the basis of the applicable FIFA Regulations and supplemented by Swiss law, if necessary.

IX. MERITS

A. The Main Issues

86. The present proceedings arise out of the Appealed Decision issued on 15 April 2020 by the FIFA DRC, which partially accepted the Player's Claim and imposed the Club the obligation to pay the amount of USD 76,540 plus 5% interest p.a. due to the termination with just cause by the Player of the Employment Contract signed by the parties.

87. Prior to addressing the merits of the Claim, the Sole Arbitration shall preliminarily stress that (i) only the Club and not the Player appealed the referred decision, so the claims made by the Player under sections 3 and 4 of the request for relief (payment of outstanding remunerations not granted in the Appealed Decision and the increase in the compensation granted) in his answer to the appeal are inadmissible, as these would be considered as a "counterclaim", which is not admitted in CAS appeals proceedings, and (ii) part of the claims made by the Appellant are addressed against a third party (Al Taawon), which has not been sued herein and could not exercise its right to defense, and thus, for obvious reasons, no pleading against this third party can be entertained herein.

88. Having clarified this, the Sole Arbitrator considers undisputed that both Parties signed an employment contract on 9 February 2019 that was valid as from 9 February 2019 until the end of the football season 2022, and that the Club entered into a loan agreement with the Jordan club Al Mansheyat by virtue of which the Respondent was transferred on a loan basis from 11 February 2019 until the end of the 2018/2019 Jordan football season to said club.

89. It is also undisputed that on 29 April 2019, Al Mansheyat and the Player signed a settlement agreement where the Player recognized having received all his salaries and waiving any further right in connection to the Loan Agreement.

90. In this regard, the Sole Arbitrator wishes to contextualize the situation by referring to the fact that on 1 June 2018, the JFA had taken a decision to align the Jordan Football Season with the AFC (Asian Football Confederation) sporting calendar year. Therefore, by the end of the 2018/2019 season, the forthcoming seasons would start on the same date in which the AFC competition resumes, that is to say, in January. That decision implied that the forthcoming football season 2020 would start, in accordance with the information provided by the FIFA TMS, on 30 January 2020 and that therefore a period of 8 months would elapse from the last official football game of the 2018/2019 season (which took place by the end of April 2019) and the first official match of the 2020 Jordanian Pro League. During that period there was no official competition organized by the JFA.

91. The Sole Arbitrator notes that once the abovementioned settlement agreement was signed, the Player decided to travel and stay in his home country, Ivory Coast, which is

not found illogical taking into account that the forthcoming Jordan Pro League would not commence until January 2020. It has also been proven that on 21 October 2019, the Respondent sent a default notice to the Appellant requesting the payment of outstanding remuneration of USD 5,300, corresponding to the salaries of 3 days of February 2019, and the entire months of July, August and September 2019 within 15 days and to provide him with an employment Visa, and that the Club did not answer such communication, as well as that the Player decided to re-send to the Appellant and to the JFA on 6 November 2019 the same notice of default previously sent on 21 October 2019, which also remained unanswered by the Club.

92. The Sole Arbitrator also deems it proven that the Player, on 28 November 2019, terminated his contract with the Club by means of a termination letter due the non-payment of the outstanding remuneration and the failure to issue an employment visa by the Appellant in due time.

93. On account of the above, the Sole Arbitrator considers that the central issue in the matter at stake is to determine as to whether the contract was terminated by the Player with or without just cause and to decide on the consequence thereof taking into account the specific circumstances surrounding the present matter, the parties' arguments as well as the documentation on file.

a) <u>What constitutes just cause under FIFA Regulations, Swiss Law and the well-established jurisprudence of CAS and the Swiss Federal Tribunal:</u>

94. The Sole Arbitrator first reminds that according to Article 13 of the FIFA RSTP, *"A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement"*, while Article 14 of the same regulations provides that *"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause"*.

95. The Sole Arbitrator notes that, although the FIFA RSTP does not contain a precise definition of what constitutes just cause for the purpose of a termination of contract, the commentary of the RSTP provides the following explanation:

"The definition of just cause and whether the just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally."

96. From the above it shall be concluded, on one hand, that the analysis of whether just cause to terminate an employment contract exists or not has to be done taking into account the particularities and merits of each case and, on the other hand, that even if the behaviour of one of the parties could constitute a breach of contract, it does not automatically imply that a just cause to terminate the contract exists.

97. In light of the above, in accordance with the well-established CAS jurisprudence which has constantly referred to the principles of Swiss law, a "valid reason" or "just cause" for termination of an employment contract exists when the relevant breach by the other party (or other impeding circumstances) is of such nature, or has reached such a level of seriousness, that the essential conditions under which the contract was concluded are no longer present and the injured party cannot in good faith be expected to continue the employment relationship, to be established on a case-by-case basis as it has already been stated above (CAS 2018/A/6029).

98. The severity of the breach can be established if there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties can continue.

99. Furthermore, according to CAS jurisprudence, for a party to be allowed to validly terminate an employment contract with immediate effect, it must have warned the other party, in order for the latter to have the chance, if it deemed the complaint legitimate, to comply with its obligations (CAS 2016/4/4884, ATF 121 III 467, consid. 4D).

100. The Sole Arbitrator also wishes to observe that according to Swiss law (Article 334 (1) SCO), fixed-term contracts terminate without requiring notice upon the expiry of the agreed period. Fixed-term contracts cannot come to an end before the expiration of the agreed period unless the contract has been terminated by mutual agreement or there is a just cause for termination of the employment relationship or if the employer becomes insolvent (ATF 110 II 167; WYLER R., Droit du travail, 2nd ed., Berne, 2008).

101. Pursuant to Article 337 (1) SCO, the employer or the employee may at any time terminate with immediate effect the contract for just cause. Article 337 (2) SCO further explains that just cause exists whenever the terminating party can in good faith not be expected to continue the employment relationship. The definition of *"just cause"*, as well as the question whether just cause in fact existed, shall be established in accordance with the merits of each particular case (ATF 127 III 153 consid. 1 a). The Swiss Federal Court has also considered several times that an early termination for valid reasons of an employment contract must, however, be restrictively admitted as the termination shall be an *ultima ratio.*

102. As it is an exceptional measure, the immediate termination of a contract for just cause must be accepted only under a narrow set of circumstances. Only a particularly severe breach of a labour contract will result in the immediate dismissal of the employee, or, conversely, in the immediate abandonment of the employment position by the latter. In the presence of a less serious infringement, an immediate termination is possible only if the party at fault persisted in its breach after being warned (CAS 2014/A/3643, ATF 129 III 380 consid. 2.2, p. 382).

103. It shall also be taken into account that by virtue of what is established in Article 337 (3) CO it will be the judging body the one determining at its discretion whether there is just cause.

104. In light of the above elements, the Sole Arbitrator has to establish whether in the present case and taking into account the evident particularities that are involved in the present matter, a valid reason or just cause to terminate the Contract existed and if the Club was warned by the Player of said situation.

b) The grounds alleged by the Player to sustain the existence of a just cause to terminate the agreement in the letter of termination:

105. The Sole Arbitrator acknowledges that the Player essentially grounded the termination of the Employment Agreement on the fact that the Club owed him the salaries corresponding to several months and that it also failed to provide him the relevant working visa.

106. Regarding the outstanding remuneration, the Sole Arbitrator considers it necessary to remind the wording of the Loan Agreement signed by the Parties. In said agreement, it is clearly stated the following: "*the First Party shall accept to loan the Third Party whose Contract commences on 9/2/2019 and expires at the end of the football season 2022 to the Second Party for the period from 11/2/2019 and which shall expire at the end of the football season 2018/2019"*.

107. In light of the transcribed wording, the Sole Arbitrator has to conclude that the expiry date of said agreement was clearly stated to be the "*end of the football season 2018/2019*". Regarding the information contained in the Transfer Matching System (TMS), the 2018/2019 football season in Jordan ran from 17 August 2018 until 25 October 2019 as it was established by the FIFA DRC Judge in the Appealed Decision and has not been contested by the Parties. The parties singing the Loan Agreement were (or at least should have been) well aware of this, as well as of the fact that the JFA Decision adjourning the commencement of the 2020 football season to 30 January 2020 was adopted many months ago, i.e. on 1 June 2018, that is to say well before the Loan Agreement was signed.

108. In light of the above, the Sole Arbitrator shares the FIFA DRC's opinion that the Appellant was not the party obliged to pay the Player's salary during the 2018/2019 football season, that is to say from 11 February 2019 until the end of the football season (25 October 2019), as in this period of time, the Player was transferred on loan and that the Loan Agreement expired *"at the end of the football season 2018/2019"*. The Player is thus not entitled to claim any outstanding salary regarding the period from February 2019 until October 2019 to the Appellant as the Club had no economic obligation with the Respondent during the 2018/2019 full football season. Therefore, the Sole Arbitrator concurs with the Appealed Decision on this point, considers that no remuneration was due by the Club to the Player and, thus, that the alleged payment default cannot be considered as a valid cause to terminate the Employment Agreement.

109. Regarding the failure to provide the employment visa, although the Employment Contract contains no provision regarding the visa and work permit renewals, the Club, as the employer, had an implied duty to facilitate the renewal of the Player's working documents. As it has already been stated by CAS jurisprudence before, it is generally the employer's duty to take the necessary measures to obtain a work permit or a visa for an

employee to enter and perform his professional activity in a particular country (CAS 2009/A/1838, par 25).

110. The Sole Arbitrator notes that the Player sent two default notices requesting, apart from the payment of several alleged outstanding salaries, the club to submit a working permit for him, and that both default notices remained unanswered by the Club.

111. It is a fact the Club had the duty to obtain the corresponding working permit for the Player. However, it is not less true that at the time the Respondent decided to unilaterally resolve the Employment Contract (November 2019), the pre-season of the 2020 football season had not even started. In this regard it is also worth noting that taking into account the information provided by FIFA to the proceedings, even the transfer window of the forthcoming season was not opened yet when the Player terminated the Contract.

112. In light of the above, the Sole Arbitrator considers that, although the Club did not send the working Visa to the Player upon his request, in the present case, taking into account the very special circumstances surrounding it, this failure is not of such nature, or has not reached such a level of seriousness enough to justify the termination of the Agreement. The Sole Arbitrator considers that the termination of the Contract by the Player shall be considered somewhat premature as the pre-season had not even started at the time the Player requested the Employment Visa and, therefore, the Player was not deprived of any employment right as the Sole Arbitrator has no confirmation regarding the resumption of the Club's football team when the Player terminated the contract.

113. In light of the foregoing, the Sole Arbitrator is not comfortably satisfied that the Player had just cause to terminate the Employment Contract on account of the Club having failed to facilitate his visa and work permit renewals, given the particularities of this case.

c) <u>The just cause in accordance with the Appealed Decision</u>

114. Firstly, the Sole Arbitrator wishes to note that when a club chooses not to register a Player in an organized competition, the player's fundamental rights may be considered breached what would entitle the Player to terminate the employment contract with just cause.

115. In light of the above, as it is established by the well-established CAS jurisprudence "*among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow team mates in the team's official matches. By not registering the Player, even if it had the legal options to do so, the Club effectively barred in an absolute manner the potential access of the Player to competition" (CAS 2016/A/4560).*

116. The failure to register the Player is therefore a serious breach of contract as it is established in CAS jurisprudence, *(CAS 2013/A/3091, 3092 & 3093, para. 228)* which entitles the Player to terminate the Employment Contract with just cause. The Swiss Federal Tribunal has also confirmed that "*it is obvious that a professional football player playing in the premier division must, in order to retain his value on the market, not only*

train regularly with players of his level but <u>also compete in matches with teams of the highest possible level</u>" (SFT 4A_53/2001).

117. Despite the consistent CAS and SFT jurisprudence in this regard, taking into account the particularities of the present case, the Sole Arbitrator considers that, due to the fact that the subsequent season was to start in January 2020, that is to say, 9 months after the last official game played on April 2019 regarding the 2018/2019 Jordanian football season, it has been proven by FIFA in the Appealed Decision that the registration period was not foreseen to be opened until 30 January 2020, and therefore the Appellant was unable to re-register the Player once the 2018/2019 football season ended as the registration period was closed.

118. The Sole Arbitrator has analyzed the reasoning raised by the Appealed Decision in this regard and shall firstly state that it is undisputed that the Player, once it signed the settlement agreement with Al Mansheyat (end of April 2019), decided to leave the country and travel back to his home country, i.e. Ivory Coast, with no party complaining about this.

119. It also shall be stressed that it is not proven that during his holiday period, the Player tried to contact in a proactive way the Appellant in order to schedule an efficient training program or even requesting information about how the pre-season of the forthcoming football season would be conducted.

120. The Sole Arbitrator shall refer to the principle of *venire contra factum propium.* This principle provides that when a conduct of one party has led to raise legitimate expectations on the second party, the first party is barred from changing its course of action to the detriment of the second party as it has been widely confirmed by the jurisprudence of the CAS (CAS 2206/A/1189, CAS 2006/A/1086, CAS 98/200 among others).

121. Due to the fact that in no occasion the Player had manifested the Club his disconformity with the situation or with the fact that he was not obliged to travel back to Jordan before the commencement of the 2020 football season, the Appellant had the legitimate expectations of considering that the Player agreed with the situation and accepted that due to an external decision form the JFA that had nothing to do with the Appellant's duty of care, it could not compete until the starting date of the football season 2020.

122. At the moment when the Player left Jordan and returned back to Ivory Coast, he did not contact the Club for any reason until the default notice for overdue monthly salaries was sent to the Club on 21 October 2021, that is to say 6 months after its departure to his home country. It also must be noted from his default letters that the Respondent never informed the Appellant that he was willing to follow any type of training program or that he considered that his working rights were being deprived by the Club. Far from this, what the Sole Arbitrator also notes from the evidence brought to the file is that the Player made some movements to join another club, Al Taawon, even before sending the default letters, which is quite illustrative about his behaviour.

123. The aforementioned lack of contact with the Appellant is additionally not strange for the Sole Arbitrator, as we shall not forget that the Player was transferred on loan to a third club different from the Appellant until the end of the season.

124. Therefore, the Sole Arbitrator differs from the Appealed Decision's reasoning on the violation of the Players' working rights by the Appellant and does not consider that the grounds given in this decision constitute a just cause for termination, and consequently resolves that the termination of the Contract by the Player be done without just cause.

d) Consequences of this breach without just cause by the Player

125. The Sole Arbitrator is well aware of the content of article 17 of the FIFA RSTP and of article 337 of the SCO, which would be the provisions that one would normally invoke to determine the consequences of the breach of a football-related employment agreement, which may include compensations and sporting sanctions.

126. However, in this case the Sole Arbitrator considers that no compensation is to be given to the Club in spite of the termination without just cause executed by the Player, for two reasons: (i) the claim for compensation was not brought by the Appellant in the first instance proceedings by way of counterclaim, was thus not resolved by the FIFA DRC and the Sole Arbitrator cannot deal with this petition brought anew in this second instance (see inter alia CAS 2016/A/4569 and CAS 2010/A/2874), and (ii) even if it could, the Sole Arbitrator considers that no compensation shall be awarded to the Club because it has not proven having suffered any damage as regards of the termination.

127. On the contrary, what the Sole Arbitrators deems proven is that the interest shown by the Club in the professional services of the Player until the end of the Contract was rather scarce. It should be noted that the Club seems to have permitted the Player to travel back to Ivory Coast for a long period of time, did not require the Player to return at any time (or at least it has not been proven in the present procedure), and the Player had been lent to another club. Moreover, it shall also be taken into account that the Player sent a couple of payment default notices before terminating the Contract that remained unanswered by the Club, and that no movement was made by the Club to obtain the Player's visa before the termination letter, which are clear indications, in the Sole Arbitrator's view, that the Appellant was not that worried about the Player leaving the Club. The Appellant simply alleges, but does not sustain or prove having had any damage, and the mere allegation is not enough to ground a request for damages (see inter alia, CAS 2004/A/662). In this regard, the Sole Arbitrator notes that for one party to be entitled to receive compensation for damages, the existence of a breach by the counterparty is not enough, as it is also necessary: (i) proof of such non-compliance, (ii) proof of the existence of a damage and its quantification, and (iii) proof of the causal link between the non-compliance of one party and the damage caused to the other party. The prejudicated party is the one that has to proof the three above-mentioned criterion and if any of the three referred elements is not proven, the compensation for damages is not admissible (art. 97 of the Swiss Code of Obligations, art. 8 of the Swiss Civil Code, Judgment of the Swiss Federal Court, 127 III 543).

128. In light of the above, the Sole Arbitrator considers that, although the Player terminated the Employment Contract without just cause and taking into account the specific circumstances of the present case, no compensation shall be payable to the Club by the Player.

129. Consequently, the Sole Arbitrator decides to partially uphold the appeal, set aside the Appealed Decision, and to replace it by this award, in which it is resolved that the Player terminated the Employment Agreement without just cause, but no compensation shall be paid by him to the Appellant.

X. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Al Faisaly Sports Club against the decision rendered by the Dispute Resolution Chamber Judge of the Fédération Internationale de Football Association on 15 April 2020 is partially upheld.

2. The decision rendered by the Dispute Resolution Chamber Judge of the Fédération Internationale de Football Association on 15 April 2020 is set aside.

3. Doukoure Abdoulaye terminated his employment agreement with Al Faisaly Sports Club without just cause, in spite of which no compensation shall be payable to Al Faisaly as regards of such termination.

4. The counterclaim filed by Mr Doukoure Abdoulaye on 14 November 2020 is dismissed.

5. (…).

6. (…).

7. All other further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 20 October 2021

THE COURT OF ARBITRATION FOR SPORT

José Juan Pintó Sala
Sole Arbitrator

Alberto Donado-Mazarrón Cebrian
Ad hoc Clerk