

CAS 2023/A/9756 Al Fayha Club v. Panagiotis Tachtsidis & Club Khorfakkan FC

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal

in the arbitration between

Al Fayha Club, Saudi Arabia

Represented by Mr. Ali Abbes and Mr. Mohamed Rokbani, Attorneys-at-Law, Monastir, Tunisia.

-Appellant-

and

Mr. Panagiotis Tachtsidis, Greece

Represented by Ms Penny Konitsioti, Attorney-at-Law, Athens, Greece.

-First Respondent-

and

Club Khorfakkan FC, United Arab Emirates

Represented by Mr Abdulla Ali Aljneibi and Mr Abdulla Ali Al Junaibi, Attorneys-at-Law, Abu Dhabi, United Arab Emirates.

-Second Respondent-

I. PARTIES

1. Al Fayha Club (the “Appellant”, “Al Fayha” or the “Club”) is a Saudi Arabian professional football club with its registered head office in Al Majma’ah, affiliated to the Saudi Arabian Football Federation (the “SAFF”), which is a member association of the Fédération Internationale de Football Association (“FIFA”), the international governing body of football.
2. Mr Panagiotis Tachtsidis (the “First Respondent” or the “Player”) is a Greek professional football player, born in Athens on 15 February 1991 who is currently playing for the professional football club CFR Cluj, in Romania.
3. Club Khorfakkan FC (the “Second Respondent”, “Khorfakkan” or the “New Club”) is an Emirati professional football club with its registered head office in Khor Fakkan, affiliated to the United Arab Emirates Football Association (“UAEFA”), which is a member association of the FIFA.
4. The Appellant and the First Respondent are jointly referred to as the “Contractual Parties”.
5. The First Respondent and the Second Respondent are jointly referred to as the “Respondents”.
6. The Appellant, the First Respondent and the Second Respondent are collectively referred to as the “Parties”.

II. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts and allegations based on the Parties’ submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. This factual background information is given for the sole purpose of providing a synopsis of the matter in dispute. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in this award (the “Award”) only to the submissions and evidence it considers necessary to explain its reasoning.

(A) Introduction

8. This appeal case (the “Appeal”) before the Court of Arbitration for Sport (the “CAS”) is related to the challenging of the decision adopted by the FIFA Football Tribunal’s Dispute Resolution Chamber (the “FIFA DRC”) on 4 May 2023 (case ref. FPSD-7309), with grounds communicated to the Parties on 12 June 2023, which ordered Al Fayha to pay the Player the total amount of USD 646,259, plus applicable interest, due to outstanding salaries and bonuses, as well as compensation for breach of contract (the “Appealed Decision”).
9. It concerns, in essence, a dispute related to the unilateral termination of the contractual relationship between the Appellant and the Player by the latter, which argued that he had just

cause to terminate the employment contract after his outstanding remuneration remained unpaid following his default notice. On the other hand, the Appellant is arguing that the Player did not have just cause to terminate the employment contract since his default notice was invalid and in any case the amounts claimed were incorrect, as some of them had already been paid.

(B) The Employment Agreement between the Player and the Club

10. On 15 July 2021, the Contractual Parties entered into an employment contract valid from 15 July 2021 to 14 July 2023 (the "Employment Contract"). The Employment Contract stipulated monthly salaries, a "signing-on fee", additional fixed payments, and bonuses based on team performance.

11. In accordance with Clause 5 of the Employment Contract, the Club undertook to pay the Player the following amounts:

- USD 60,000 as monthly salary between 15 July 2021 and 14 July 2022;
- USD 67,500 as monthly salary between 15 July 2022 and 14 July 2023;
- USD 180,000 as "signing-on fee" due on 1 August 2021;
- USD 190,000 as "additional fixed payment(s)" on 1 August 2022;
- USD 30,000 as a bonus "in the event that the team safe the category for first season";
and
- USD 30,000 as a bonus "in case of the winning king cup and the player has participated in 50% of the competition matches".

12. Furthermore, Clause 12 of the Employment Contract (the "Penalty Clause") provided terms for contract termination, including penalty clauses for unjust termination and conditions for just termination due to unpaid salaries:

"1. In the case of the club unlawfully failing to pay the player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate this contract, provided that he has put the club in default in writing and has granted a deadline of at least 15 days for the club to fully comply with its financial obligation(s).

2. If either party terminates the contract with just cause, following amount will have to be paid USD 135,000 as penalty clause equivalent to two months salaries: This clause is applicable only for the second year only starting from 10/06/2022. And if either party terminates the contract without just cause, following amount will have to be paid USD 135,000 as penalty clause equivalent to two months salaries: This clause is applicable only for the second year only starting from 10/06/2022."

13. The Club's main professional football team (which was the squad that the Player was a part of), throughout the 2022/2023 season, finished the league in a place that allowed it to remain in the First Division of Saudi Arabia and won the "King's Cup" competition, beating the football club Al-Hilal in the final held on 19 May 2023 (1-2 final time).

14. On 4 August 2022, the Club instructed its bank to make a transfer to the Player of USD 60,000 (corresponding to the salary of June 2022). However, the date upon which this amount was received by the Player is disputed. The Player states that this amount was only received on 10 August 2022.
15. On 5 August 2022, the Player's counsel sent a notice via email to the Club (the "Default Notice"). In the Default Notice, the Player requested the payment of USD 377,500 within 15 days, which corresponded to the following sums:
- USD 60,000 as salary of June 2022;
 - USD 67,500 as salary of July 2022;
 - USD 190,000 as "additional fixed payment" due on 1 August 2022;
 - USD 30,000 as a "bonus for remaining in the First Division of Saudi Arabia"; and
 - USD 30,000 as a "bonus of winning the King Cup".
16. The Default Notice read as follows:

"Dear Sirs/Madams,

This letter serves as a notice in connection to the dated 15/07/2021 Employment Contract for professional football player (...) Panagiotis Tachtsidis.

A) According to the player's Employment Contract (Article 5. Remuneration) your football club undertakes to pay the following:

- *Monthly Salary from 15/07/2021 to 14/07/2022 is 60.000,00 American Dollars.*
- *Monthly Salary from 15/07/2022 to 14/07/2023 is 60.000,00 American Dollars.*
- *Signing-on Fee of 180.000,00 American Dollars on 01/08/2021.*
- *Additional fixed payment of 190.000,00 American Dollars on 01/08/2022.*
- *Bonus of 30.000,00 American Dollars in the event that the club finishes the league in top 6 and the player has participated in 50% of competition match.*
- *Bonus 30.000,00 American Dollars in the event that the team safes the category for first season.*
- *Bonus 30.000,00 American Dollars in case of the winning king cup and the player has participated in 50% of the competition matches.*

(...) there are outstanding amounts by the Club as follows:

- *Monthly salary of June 2022: 60.000,00 American Dollars*
- *Monthly salary of July 2022: 67.500,00 American Dollars.*
- *Additional fixed payment of 190.000,00 American Dollars on 01/08/2022*
- *Bonus of staying at the category for the first season: 30.000,00 American Dollars.*
- *Bonus of winning the king cup: 30.000,00 American Dollars.*

So, the overall outstanding fees is of 377.500,00 American Dollars.

You are reminded that apart from the contractual clauses according to FIFA Regulations on the Status and Transfers of the Players (Article 12bis Overdue Payables):

“1. Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements. 2. Any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned in accordance with paragraph 4 below. 3. In order for a club to be considered to have overdue payables in the sense of the present article, the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s)”

Consequently, you are kindly asked to proceed to payment of the afore outstanding amounts as described within 15 days by the date of herein.

In absence of any payment within the afore time frame, will be obliged to proceed to any legal actions against the club according to the contractual provisions, FIFA Statutes as wells as any civil proceedings applicable against the Club.

Additionally, you are requested to officially clarify within 24 hours in written, what are the football club's future plans for my ongoing employment contract and staying to your club by respecting also the signed agreement and clauses between us.”

17. On 1 September 2022, the Player sent another notice to the Club by which he terminated the Employment Contract (the “Termination Notice”). This communication read as follows:

“On 05/08/2022 my Lawyer (...) sent you by e-mail a legal notice for extraordinary payments and fees of Overall amount 377.500,00 American Dollars.

Despite all the above, until today the September 01 2022 you paid only the monthly salary corresponding to June 2022, of 60.000,00 American Dollars, while there are now still pending the following outstanding payments by your Club:

- Monthly salary of July 2022: 67.500,00 American Dollars.*
- Monthly salary of August 2022: 67.500,00 American Dollars.*
- Additional fixed payment of 190.000,00 American Dollars on 01/08/2022*
- Bonus of staying at the category for the first season: 30.000,00 American Dollars.*
- Bonus of winning the king cup: 30.000,00 American Dollars.*

So today 's Overall outstanding amount of 385.000,00 American Dollars, still payable by your side.

Therefore I hereby announce on Terminating the Agreement for Just Cause.

Please note that I will take all legal steps and measures available in applicable law by FIFA Regulations and will demand a compensation for breaching the afore Employment Agreement and any financial and sporting costs your actions caused against me.

This letter is delivered without any prejudice to all my legal rights and have immediate effect.”

18. On the same date, the Club answered the Player’s communication and informed him that it did not consider the termination to be “valid”, since it failed to comply with the applicable FIFA Regulations, namely the FIFA Regulations on the Status and Transfer of Players (the “RSTP”). This communication read as follows:

“Dear Sir,

We are very surprised by the letter that we received from you regarding the termination of the contract.

We inform you that you did not respect the regulation set by article 14bis of FIFA RSTP and the club did never receive any default notice signed from your side or from your lawyer on the date that you alleged that you sent it (i.e. 05/08/2022).

From the above, we consider your termination of the contract is considered as illegal. In addition, to preserve the labour relationship between the two parties and to prove for you the good faith of the club and its intention to pay your arrears, we ask you to send us a formal and legal notice and the club will proceed for payment after reviewing with the financial department the correct amount of your dues.

Otherwise, we will consider this action as a without just cause termination from your side and will proceed the case before FIFA.”

19. On the same date, the Player, through his lawyer, answered and reminded the Club that he had put it in default on 5 August 2022 (see para. 16 above):

“Dear Sir/Madame,

Following your last email you are reminded that you received said letter on 5/8/2022 and you were informed by myself as a lawyer of Mr. Tachtsidis and you were “put as the debtor club in default in writing as well as were granted a deadline of at least 15 days as the debtor club to fully comply with your financial obligation(s)” according to article 14bis of FIFA RSTP.

Hence the dated 01/09/2022 Termination Letter of Mr. Tachtsidis already provided is in force.”

20. On 25 September 2022, the New Club sent an offer to the Player and engaged in negotiations with him to try and sign him for its professional football team.

21. On 27 September 2022, the Player signed an employment contract with the New Club which was to be valid from 27 September 2022 until 30 June 2023 (the “Second Employment

Contract”). As per the Second Employment Contract, the Player was entitled to receive a total remuneration of USD 650,000.

(C) Proceedings before the FIFA Dispute Resolution Chamber

22. On 1 September 2022, the Player filed a claim with the FIFA DRC against the Club requesting the payment of the following amounts:

- i) USD 385,000 as outstanding remuneration plus 5% interest *p.a.* as of 5 August 2022, which is composed of the following sums:
 - USD 67,500 as salary for July 2022;
 - USD 67,500 as salary for August 2022;
 - USD 190,000 as a payment due on 1 August 2022;
 - USD 30,000 as a bonus due to the Club managing to stay in the First Division;
 - USD 30,000 as a bonus for winning the King's Cup;
- ii) USD 810,000 as compensation for breach of contract, corresponding to the residual value of the contract, plus 5% interest *p.a.* as of the date of claim; and
- iii) USD 135,000 as compensation based on Clause 12.2 of the Employment Contract, plus 5% interest *p.a.* as of the date of claim.

23. The Player argued that he had just cause to terminate the contract on 1 September 2022, due to the Club’s failure to pay outstanding remuneration after the Default Notice.

24. The Club rejected the Player’s claim and lodged a counterclaim for USD 135,000 as compensation for the Player’s breach of the Employment Contract. The Club argued the Player had no just cause to terminate the Employment Contract since the Default Notice was invalid. It was invalid because it was sent by an “unknown person” and “without power of attorney”, “in word format”, and landed in the Club's email spam box.

25. The Club also highlighted that the Default Notice was sent on 5 August 2022 and the power of attorney dated 31 August 2022. So, the lawyer who sent the Default Notice did not have the power to do so. In addition, the Default Notice was based on Article 12bis of the FIFA Regulations on the Status and Transfer of Players (the “RSTP”), instead of Article 14bis RSTP, which is the provision related to the termination with just cause of contracts.

26. Furthermore, the Club also argued that it had already remitted payments and, as such, the amount claimed in the Default Notice was incorrect, as the Player was only entitled to a residual USD 20,000 related to bonuses.

27. Based on the above, the Club held that the Employment Contract was terminated without just cause; consequently, it was entitled to the amount defined in the Penalty Clause, which

it considered to be a liquidated damages clause, corresponding to USD 135,000 (see above para. 12).

28. The New Club endorsed the position of the Player and rejected the counterclaim.

29. On 4 May 2023, the FIFA DRC passed the Appealed Decision:

“(…)

1. *The claim of the Claimant / Counter-Respondent [Player], PANAGIOTIS TACHTSIDIS, is partially accepted.*

2. *The Respondent / Counter-Claimant [Appellant], Al Fayha Club, must pay to the Claimant / Counter-Respondent [Player] the following amount(s):*

- *USD 317,500 as outstanding remuneration plus 5% interest p.a. as from 5 August 2022 until the date of effective payment;*

- *USD 67,500 as outstanding remuneration plus 5% interest p.a. as from 1 September 2022 until the date of effective payment;*

- *USD 261,250 as compensation for breach of contract plus 5% interest p.a. as from 1 September 2022 until the date of effective payment.*

3. *Any further claims of the Claimant / Counter-Respondent [Player] are rejected.*

4. *The counterclaim of the Respondent / Counter-Claimant [Appellant] is rejected.*

(…)

8. *This decision is rendered without costs.”*

30. On 12 June 2022, the grounds of the Appealed Decision were notified to the Parties. In essence, the Appealed Decision’s grounds can be summarised as follows:

- a. The Player provided written evidence of having put the Club in default on 5 August 2022, *i.e.* at least 15 days before unilaterally terminating the Employment Contract on 1 September 2022.
- b. The Club’s arguments regarding the irregularities of the Default Notice have to be rejected, since it acknowledged its receipt (in the “spam folder”).
- c. The Club did not demonstrate that it had complied with the financial terms of the Employment Contract. The Club only provided proof that it had paid the salary of June 2022 (which was not claimed by the Player) and an alleged payment of USD 40,000, presumably corresponding to parts of due bonuses.
- d. The Player had just cause to unilaterally terminate the Employment Contract on 1 September 2022 and the Club should be held liable for the consequences of the termination. Therefore, the Club’s counterclaim was rejected.
- e. At the time of the termination, the following amounts were owed to the Player:
 - USD 67,500 as salary of July 2022;
 - USD 67,500 as salary of August 2022;
 - USD 190,000 as payment due on 1 August 2022;
 - USD 30,000 as a bonus for “staying in the category”; and
 - USD 30,000 as a bonus for winning the “King’s Cup” competition.

- f. Considering that the Player did not acknowledge receipt of the alleged payment of a bonus of USD 40,000, and since the proof of payment provided by the Appellant appeared to refer to a different bonus, the FIFA DRC decided not to deduct this amount.
- g. The FIFA DRC decided that the Appellant is liable for the amounts which were outstanding under the Employment Contract at the moment of the termination, i.e. USD 385,000 plus interest at the rate of 5% p.a. from the respective due dates until the date of effective payment;
- h. The FIFA DRC turned its attention to the calculation of the amount of compensation payable to the Player in light of Article 17 (1) RSTP and started by clarifying that the Penalty Clause did not fulfil the criteria of reciprocity and proportionality established by longstanding FIFA DRC's jurisprudence. As a result, the amount foreseen in the Penalty Clause could not be considered for establishing the amount of compensation payable to the Player;
- i. The amount of compensation must be determined under Article 17 RSTP. The basis for this calculation is the amount of USD 708,750 (monies payable to the Player since the date of unilateral termination until the Employment Contract's end date, i.e. September 2022 until 14 July 2023; 10.5 months x USD 67,500). The Player found new employment, valid from 27 September 2022 until 30 June 2023 and managed to mitigate his damages in the total amount of USD 650,000.
- j. The Player is also entitled to additional compensation in an amount corresponding to three monthly salaries since the termination was due to overdue payables (Article 17 (1) (ii) RSTP), this corresponding to USD 202,500 (three times the monthly remuneration of the Player); and
- k. All in all, the Club must pay the amount of USD 261,250 to the Player (*i.e.* USD 708,750 minus USD 650,000 plus USD 202,500), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter. Moreover, interest at the rate of 5% on the amount of compensation as of 1 September 2022 until the date of effective payment shall be awarded to the Player.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 31. On 26 June 2023, in accordance with Article R47 of the Code of Sports-related Arbitration (the "CAS Code"), the Appellant filed its statement of appeal (the "Statement of Appeal") with the CAS challenging the Appealed Decision. In its Statement of Appeal, the Appellant requested an extension of 30 days to file its Appeal Brief and the submission of the present procedure to a sole arbitrator under Article R40.1 of the CAS Code.
- 32. On 29 June 2023, the CAS Court Office invited the Respondents to state whether they consented to the aforementioned extension of the Appellant's deadline to file its Appeal Brief and advised that their silence would be deemed as acceptance of the Appellant's request.
- 33. On 3 July 2023, the Second Respondent informed the CAS Court Office that (i) it agreed to the appointment of a sole arbitrator, (ii) that it was not going to proceed with any payment related to the advance of costs and (iii) requested that the time limit to file its answer to the Appeal Brief to be fixed after the full payment of the advance of costs by the Appellant. The

Second Respondent also informed it was available to submit the present matter to CAS Mediation.

34. On the same date, the CAS Court Office invited the Appellant and First Respondent to inform if they wished to submit the present matter to CAS Mediation.
35. On the same date, the First Respondent informed the CAS Court Office that (i) it agreed to the appointment of a sole arbitrator, (ii) that it was not going to proceed with any payment related to the advance of costs and (iii) requested that the time limit to file its answer to the Appeal Brief to be fixed after the full payment of the advance of costs by the Appellant. The First Respondent also informed it was available to submit the present matter to CAS Mediation.
36. On 4 July 2023, the CAS Court Office granted the Appellant's request for the extension of its time limit to file the Appeal Brief by thirty days, since the Respondents did not object to it.
37. On 7 July 2023, FIFA informed the CAS Court Office that it renounced its right to request its intervention in the present proceedings and provided it with a clean copy of the Appealed Decision.
38. On 11 July 2023, the CAS Court Office informed the Parties that no mediation would be implemented and that the present dispute would be submitted to the rules applicable to Arbitration Procedures (Article R47 *et seq* of the CAS Code), given the Appellant's failure to provide its position regarding this matter within the given deadline.
39. On 14 August 2023, the Appellant submitted its Appeal Brief pursuant to Article R51 of the CAS Code.
40. On 15 August 2023, the CAS Court Office acknowledged the payment by the Appellant of the totality of the advance of costs and invited the Respondents to file their answers (the "Answers") within the twenty-day time limit prescribed in Article R55 of the CAS Code.
41. On 18 September 2023, within the extended time limit, the First Respondent filed its answer (the "First Respondent Answer") in accordance with Article R55 of the CAS Code.
42. On 19 September 2023, within the extended time limit, the Second Respondent filed its answer (the "Second Respondent Answer") in accordance with Article R55 of the CAS Code.
43. On 20 September 2023, the CAS Court Office informed the Parties regarding the appointment of the Sole Arbitrator by the President of the CAS Appeals Arbitration Division:

Sole Arbitrator: Mr Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal

The CAS Court Office also invited the Parties to inform whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties'

written submissions. After consultation with the Parties, the Sole Arbitrator decided to hold a hearing by videoconference. The hearing was scheduled for 6 December 2022, at 9 am CET.

44. On 21 November 2023, the CAS Court Office issued the Order of Procedure, which was duly signed by the Parties.
45. On 6 December 2023, a hearing was held by videoconference. The following persons attended the hearing in addition to the Sole Arbitrator and Mr Fabien Cagneux, as CAS Managing Counsel:
 1. For the Appellant
 - Mr Mohamed Rokbani – Legal Counsel
 2. For the First Respondent
 - Ms Penny Knotsioti – Legal Counsel
 - Mr Lefteris Sidiropoulos – Witness
 3. For the Second Respondent
 - Mr Mandepanda Somaiah Jaya – Legal Counsel
 - Mr Jincy Jaime Stephen Alexander – Legal Counsel
46. As a preliminary remark, the Parties were requested to confirm not having any objection to the appointment of the Sole Arbitrator, and they so confirmed.
47. The Parties were given the opportunity to present their case and make their submissions and arguments. Mr. Lefteris Sidiropoulos also gave testimony after having been warned by the Sole Arbitrator to tell the truth subject to sanctions under the Swiss laws on perjury.
48. Mr. Sidiropoulos confirmed that he was the agent of the Player at the time he terminated the Employment Contract. In fact, the witness confirmed his written statement summarized as follows:
 - i) The Player and the Club had discussed the possibility of a new employment contract being signed, given the good performance during the season, and the Player was under the impression that this would indeed happen;
 - ii) The Club stopped paying the amounts due to the Player as of June 2022 and offered new contractual conditions to the Player which were not satisfactory;
 - iii) Mr. Sidiropoulos, on the Player's behalf, offered to pay the amount stated in the Penalty Clause to the Club in order to free the Player from the Employment Contract, but ultimately it was decided that termination of the Employment Contract due to unpaid wages was the correct way to proceed, even if both considered that it would not be easy for the Player to find a new employment at that time; and

iv) In October 2022, the Player found employment with the New Club.

49. After the Parties' closing submissions, the hearing was closed, and the Sole Arbitrator reserved its decision to the Award.
50. Before the hearing concluded, the Parties expressly stated that they had no objection to the way that these proceedings have been conducted and that the equal treatment of the Parties and their right to be heard had been respected.

IV. THE PARTIES' SUBMISSIONS

51. The following summary of the Parties' positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

(A) The Appellant's Submissions

52. In its Appeal Brief the Appellant submits the following prayers and requests to the CAS:

"A) To fully accept the present appeal against the Decision of the FIFA Dispute Resolution Chamber dated 09 May 2022.

B) to adopt an award annulling said decision and declaring that the first respondent terminated the contract without just cause and condemn him to pay a compensation for the breach of the contract of 135.000 USD representing the amount of the liquidated damage clause.

C) Declare the second respondent jointly and severally liable for the payment of the compensation awarded.

OR, IN THE ALTERNATIVE

If, alternatively, the Honourable Sole Arbitrator will consider that contract was terminated with just cause, it shall be noted that the player's fault and negligence with bad faith were the cause of termination of the contract and therefore he shall not be entitled to receive any compensation or at the latest he shall bear 50 percent of the responsibility according to article 44 of the Swiss Code of Obligations

A) Declare the liquidated damage clause inserted in article 12 of the contract as a valid and applicable.

B) Declare that the amount of overdue payables is 277.500 USD instead of 315.000 USD.

OR, IN THE ALTERNATIVE:

C) In the unlikely event that the Panel decides that the Appellant was in breach of contract, to consider that the liquidated damage clause inserted in article 12.2 of the contract as a valid and applicable instead of article 17 of FIFA RSTP and that the player is entitled to receive 135.000 USD as a compensation.

In all cases:

A). To fix a sum of 20,000 CHF to be paid by the Respondent 1 and Respondent 2 to the Appellant, to help the payment of its legal fees and costs.”

53. The Appellant advanced the following grounds in support of the Appeal:

- i) On 1 September 2022, the Appellant was surprised with the Termination Notice signed by the Player’s alleged attorney, since it never received any default notice from the Player. As such, the Appellant rejected the validity of the termination on the basis of Article 14 RSTP.
- ii) Upon checking its emails, the Appellant found an unrecognized email in the spam box sent by the Player’s attorney, which contained a communication referencing Article 12bis RSTP (related to overdue payables) and not Article 14bis RSTP (related to contract termination).
- iii) The Appellant demonstrated its good faith and intention to maintain the contractual relationship and resolve the matter. The Appellant requested the Player to send a formal and legal notice for outstanding sums, which they would then review and pay accordingly.
- iv) The requirements stated in Article 14bis RSTP are clear and provide that a player must notify the club in writing of default and provide at least a 15-day deadline for the club to fulfil its financial obligations. This procedure is crucial for legal clarity and establishing a specific termination date for a contract, however, the Player failed to comply with these requirements, since the Default Notice was sent from an unknown sender, with no power of attorney, in “Word” format, and was not even signed by the Player or his representative. The power of attorney presented was signed on 31 August 2022, which implies the Player’s representative was not yet authorized to act on his behalf on 5 August 2022 (the date of the Default Notice).
- v) The Player also refrained from mentioning in the Default Notice that he would terminate the Employment Contract in case the Appellant failed to pay him the amounts claimed. Consequently, the Player’s Default Notice is not valid, as the communication sent allowed the Player only to claim the amounts allegedly in arrears.
- vi) In addition, the amounts claimed in the Default Notice are incorrect since the Appellant paid the Player’s salary of June 2022 on 4 August 2022 and USD 40,000 since 8 June 2022 related to bonuses. The Player failed to mention he had received these amounts and continued pursuing termination, proving his bad-faith behavior. In this instance, it is important to mention the Player wished to leave the Appellant since the pre-season started, in accordance with his agent’s communications with the Appellant’s director.
- vii) The Player terminated the Employment Contract without just cause and, as such, he is liable to pay the amount of USD 135,000 foreseen in the Penalty Clause as compensation for the breach of the Employment Contract.

- viii) In case the Sole Arbitrator considers differently, then it should be stated that the Player contributed decisively to the termination with his bad-faith behavior. As such, and in line with applicable Swiss legislation and CAS jurisprudence, the Player is also responsible for the termination, meaning no party shall be entitled to compensation or, at the latest, that the Player shall bear an important part of the responsibility.
- ix) Finally, the compensation for the breach of the Employment Contract shall never exceed USD 135,000 considering what is foreseen in the Penalty Clause, since this clause is balanced, reciprocal and this is the applicable remedy under Article 17 (1) RSTP and longstanding CAS jurisprudence.

(B) The First Respondent's Submissions

54. In the First Respondent's Answer, it submitted the following prayers and requests to the CAS:

" - The (...) Appeal filed (...) to be fully rejected.

- To accept the (...) Claim dated 01/09/2022 before FIFA DRC in total.

- To recognize that the Appellant owes (...):

for outstanding salaries the amount of three hundred eighty five thousand (385.000,00 American Dollars), plus 5% interest p.a. from the date of the first dated 05/08/2022 (...).

Also for outstanding remuneration corresponding to (...) salaries due for the entire season 2022-2023 and until the end of my Employment Agreement 2022-2023 (i.e. 14/07/2023), the total amount of eight hundred and ten thousand (810.000,00 American Dollars) plus 5% interest p.a. from the date of claim.

Also for compensation for breach of contract the amount of one hundred thirty five thousand (135.000,00 American Dollars) plus 5% interest p.a. from the date of claim.

and to oblige the Appellant to pay me the overall due amounts.

- Alternatively, to accept the findings and grounds of the Appealed Decision passed by FIFA Dispute Resolution Chamber (DRC) on 04 May 2023, with a case reference number REF FPSD-7309 as binding.

- In addition, to impose upon the Appellant any legal fees and costs arising from the preparation of this Statement of Defense Response Brief, apart from the Arbitrators fees and the CAS administration fees payable by him.

55. The First Respondent advanced the following grounds:

- i) The Employment Contract entered into force on 15 July 2021 and the Player fully complied with its contractual obligations.

- ii) The Appellant did not comply with its financial obligations, and for this reason, it was sent the Default Notice.
- iii) The Appellant paid the monthly salary of June 2022 (USD 60,000) on 10 August 2022 but failed to pay the salaries of July and August 2022. As a result, he was forced to terminate the Employment Contract with just cause. Additionally, the Player lodged a claim before the FIFA DRC requesting the following amounts:
 - a. Monthly salaries for July and August 2022: USD 67,500 each;
 - b. Fixed payment due on 1 August 2022: USD 190,000;
 - c. Bonus due to the Club avoiding relegation: USD 30,000;
 - d. Bonus due to the Club winning the “King Cup”: USD 30,000;
 - e. Outstanding monthly remuneration corresponding to the salaries due from the date of termination until the end of the Employment Contract: USD 810,000;
 - f. Compensation considering the breach of contract, according to Article 17 (1) RSTP; and
 - g. Additionally, the penalty Clause amount: USD 135,000.
- iv) The Default Notice was sent by the Player’s duly authorized lawyer and the Appellant never answered it. Moreover, the only prerequisite foreseen in Article 14bis RSTP pertains to putting the club in default in writing and granting it a deadline of at least 15 days to remedy the breach – this is precisely what happened. The Appellant’s arguments regarding the “irregularities” of the Default Notice are an unacceptable justification.
- v) The Player had just cause to terminate the Employment Contract following Article 14bis RSTP and should not bear any compensation whatsoever to the Appellant. Moreover, the correspondence between the Appellant’s technical director and the Player’s agent is incomplete and if anything, it reveals the Appellant had no intention of continuing with the Player in its squad and under its employment.

(C) The Second Respondent’s Submissions

56. In the Second Respondent’s Answer, it seeks the following reliefs from the CAS:

“FIRST – To dismiss in full the appeal lodged by the Appellant and confirm in full the terms and conditions of the Appealed Decision previously rendered by the FIFA DRC;

SECOND – To order the Appellant to bear all costs resulting from the present arbitration;

THIRD – To order the Appellant to pay to the Second Respondent any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in the amount of CHF 10,000 (ten thousand Swiss Francs).

ALTERNATIVELY, and only in the event that the request mentioned herein above is rejected:

Assuming but not admitting that the Contract was terminated without just cause, the latter shall be ordered:

FOURTH – Any compensation payable to Appellant should be paid by the Player and that Second Respondent is not liable for any such payment.”

57. The Second Respondent advanced the following grounds in support of its defence:
- (i) The Player was entitled, under Clause 6.5 of the Employment Contract, to be remunerated “*in accordance with the terms, conditions, and deadlines of Clause 5*” (principle of *pacta sunt servanda*, recognised numerous times by the CAS).
 - (ii) The Player requested the payment of the outstanding amounts from the Appellant without any positive action from the Appellant.
 - (iii) The financial obligations towards a Player are an essential condition under employment agreements and the violation of this obligation justified the Player’s termination of the Employment Contract – Article 14 and 14bis RSTP, Article 337 of the Swiss Code of Obligations (the “SCO”) and longstanding CAS jurisprudence (CAS 2016/A/4846; CAS 2013/A/3237; CAS 2013/A/3331).
 - (iv) The FIFA DRC was right in deciding that the Default Notice was valid. This is in line with the procedure foreseen in Article 14bis, RSTP and the CAS jurisprudence on the matter, namely CAS 2014/A/3460, in which the importance of default notices was highlighted.
 - (v) The Appellant is liable to pay compensation to the Player (Article 17 (1) RSTP, which constitutes merely a reinforcement of the principle of contractual stability).
 - (vi) The Appellant shall pay compensation for the damages incurred by the Player as a consequence of the early termination (CAS 2009/A/1956; CAS 2012/A/1359; CAS 2013/A/3123; CAS 2019/A/6209).
 - (vii) The FIFA DRC was right in awarding the Player compensation as it did in the Appealed Decision.
 - (viii) The wording of Article 17 (4) RSTP expressly allows a club to prove it did not induce an athlete to breach an employment agreement, to avoid the imposition of sporting sanctions. This has been confirmed numerous times by CAS jurisprudence (CAS 2008/A/1568; CAS 2017/A/4935).
 - (ix) In the present case, it was the Appellant’s negligence that led to the termination of the Employment Contract with just cause and the Player become a “free agent”.

- (x) The Player was free to engage in an employment contract with the Second Respondent since he was not associated with any club at that time. It would also be for the Appellant to demonstrate the contrary since it bears the burden of proof in this matter (Article 13.5 of the FIFA Procedural Rules and Article 8 of the Swiss Civil Code, the “SCC”).
- (xi) The FIFA DRC was right in concluding that the Player had not breached the Employment Contract with the Appellant nor had the Second Respondent induced the former thereto – therefore, the Second Respondent shall not be held jointly liable to pay any compensation.

V. JURISDICTION

58. Article R47 of the CAS Code states the following:

*“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.
(...)”*

59. In addition, Articles 56 (1), and 57 (1) of the FIFA Statutes (May 2022 edition) provide as follows:

Article 56 (1): - “1. FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, members associations, confederations, leagues, clubs, players, officials, football agents and match agents.”

Article 57 (1): “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 receipt of the decision in question.”

60. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the CAS Code and Articles 56 (1) and 57 (1) of the FIFA Statutes. Furthermore, the jurisdiction of the CAS is confirmed by the Order of Procedure duly signed by all Parties.

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

62. According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case and can decide the dispute *de novo*. The Panel may issue a new decision which replaces the decision challenged, may annul the decision, or refer the case back to the previous instance.

VI. ADMISSIBILITY

63. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.”

64. The grounds of the Appealed Decision were notified to the Appellant on 12 June 2023 and the Statement of Appeal was filed on 26 June 2023. Therefore, the Appeal was filed within the deadline of 21 days set by Article 57 (1) of the FIFA Statutes. The Appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

65. The Panel also notes that the admissibility of the Appeal is not contested by the Parties.

66. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

67. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in absence of such 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”.

68. In addition, Article 56 (2) of the FIFA Statutes (May 2022 edition) provides the following:

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

69. Relevance is given to Clause 10.2 of the Employment Contract, on which the Parties have agreed to the following:

“Disputes shall be subject to the jurisdiction of the FIFA DRC, as the competent first-instance body with regard to disputes of an international dimension, pursuant to the relevant provision of the FIFA Regulations on the Status and Transfer of Players.”

70. Considering the above, the Sole Arbitrator is satisfied that the various regulations of FIFA – in particular, the RSTP – constitute the applicable law to the matter in dispute and that, subsidiarily, Swiss law shall be applied should the need arise to fill a possible gap or *lacuna*

in the various regulations of FIFA. The Parties also concur on this matter and did not dispute this conclusion.

71. In accordance with Article 26 (1) and (2) of the RSTP currently in force (March 2023 edition) and considering that the claim before FIFA was initiated on 1 September 2022, the July 2022 edition of the RSTP applies to the matter at hand as to the substance of the dispute.

VIII. MERITS

(A) Preliminary Remarks

(A.1) The extent of the powers of the CAS

72. Under Article R57 (1) of the Code, the Sole Arbitrator has “*full power to review the facts and the law*”. As repeatedly stated in the CAS jurisprudence (e.g. CAS 2007/A/1394), by reference to this provision the CAS appeals arbitration procedure entails a *de novo* review of the merits of the case and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Sole Arbitrator to make an independent determination as to merits.

(A.2) What is this case about?

73. Before assessing the legal issues at stake, the Sole Arbitrator deems it useful to clarify the scope of the Appeal – what is this case about?
74. The issue at the centre of the Appeal is whether the FIFA DRC correctly concluded in the Appealed Decision that the Player had just cause to terminate the Employment Contract and, if so, whether the FIFA DRC correctly asserted the amount of compensation to be paid to the Player.
75. Based on the facts and the circumstances of the case, the Sole Arbitrator observes that the main issues to be resolved are the following:
- a) Did the Player have just cause to terminate the Employment Contract?
 - b) If so, did the Player comply with the applicable rules to terminate the Employment Contract? And if not, what are the consequences?
 - c) If the termination of the Employment Contract is deemed valid and with just cause, what amount of compensation should the Player be entitled to?

(A.3) The Applicable Burden and Standard of Proof

76. The concept of burden of proof has been considered in many CAS decisions and is well-established CAS jurisprudence. It was set out in CAS 2007/A/1380, para. 25 as follows:

“According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. [...] It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. [...] The two requisites included in the concept of “burden of proof” are (i) the “burden of persuasion” and (ii) the “burden of production of the proof”. In order to fulfil its burden of proof, the Club must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the Club. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party” (see also CAS 2005/A/968 and CAS 2004/A/730).

77. In addition, the Sole Arbitrator recalls the decision CAS 2003/A/506, in which it was held:

“[In] CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue... Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence.”

78. This position is further supported by the wording of Article 13.5 of the Procedural Rules Governing the Football Tribunal (March 2023 edition) which states:

“A party that asserts a fact has the burden of proving it.”

79. It follows therefore that each party must fulfil its burden of proof to the required standard by providing and referring to evidence in order to convince the Panel that the facts it pleads are established. Nonetheless, it is important to note that it is for the Club to demonstrate that it has complied with its financial obligations towards the Player, since the latter cannot be asked to prove that it failed to receive a payment (a “negative fact”).

80. Regarding the standard of proof, it should be noted that the applicable FIFA Regulations, as well as Swiss Law and the Code, are silent, or in other words, the applicable law has not codified it. Moreover, the legal doctrine admits the possibility that parties to CAS arbitration proceedings enter into a separate agreement on the evidential procedures to be followed, provided that these do not depart from mandatory procedural requirements of the Code (See the chapter entitled “*Evidentiary Issues Before CAS*” by Rigozzi/Quinn which is contained in “*International Sports Law and Jurisprudence of the CAS - 4th Conference CAS & SAV/FSA Lausanne 2012, Editions Weblaw 2014*” edited by Bernasconi M. (“Rigozzi/Quinn”). In this case, the Parties have not agreed to any standard of proof.

81. Where no applicable standard of proof is specified in the applicable regulations, CAS jurisprudence confirms that the panel has the discretion to determine the appropriate standard, although as indicated in CAS 2010/A/2172, the panel should at least consider consistent CAS jurisprudence in similar fields when exercising this discretion. The Sole Arbitrator notes that previous CAS panels have generally applied the “comfortable satisfaction” standard when considering cases involving the FIFA RSTP. See, for example, CAS 2012/A/2908, CAS 2019/A/6187 and CAS 2020/A/7605. As explained by the panel in CAS 2011/A/2426, para. 88, that standard is considered to be “*higher than the civil standard of “balance of probability” but lower than the criminal standard of “proof beyond a reasonable doubt”*”.
82. The *standard of proof* plays an essential role as it ensures an objective evaluation of claims and defenses. Above all, it ensures a minimum level of proof required by the parties, appropriate to the specifics of each case. Pursuant to the previous paragraph, the Sole Arbitrator notes that the doctrine and the long-standing CAS jurisprudence have developed the understanding that the applicable standard of proof, considering the nature of this dispute (contractual dispute between a club and a player), is “*comfortable satisfaction*” or “*balance of probabilities*” which, in practical terms, means “*free evaluation of evidence*”. This standard requires that there is greater evidence in favor of a particular claim, as opposed to the evidence adduced by the counterparty(ies).
83. In light of the above observations, the Sole Arbitrator considers it most appropriate to apply the standard of comfortable satisfaction.

(B) Did the Player have just cause to unilaterally terminate the Employment Contract?

84. The first matter to be decided by the Sole Arbitrator is determining whether the Player had or not just cause to terminate the Employment Contract in light of the applicable law, as well as the provisions of said contract.
85. The Sole Arbitrator first recalls that, pursuant to the legal maxim “*pacta sunt servanda*”, contracts must be performed in good faith (Swiss Federal Tribunal, ATF 135 III 1, c. 2.4). Article 14 RSTP still provides for the possibility of unilaterally terminating a contract, assuming the party terminating the contract has just cause to this effect:
- “*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*”.
86. Article 337 (2) of the SCO contains a similar concept:
- “*In particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice*”.
87. According to the Commentary to the Regulations on the Status and Transfer of Players (the “Commentary”), p. 129, the concept of just cause may be understood as follows:

“The [FIFA] Regulations do not provide a definition, nor a defined list of what would generally be considered a just cause. It is impossible to capture all potential conduct that might be considered just cause for the premature and unilateral termination of a contract.

However, over the years, jurisprudence has established several criteria that define, in abstract terms, which combinations of circumstances should be considered just causes. A contract may only be terminated prior to the expiry of the agreed term where there is a valid reason to do so. In several awards, CAS has drawn a parallel between the concept of “just cause” as defined in article 14, Regulations and the concept of “good cause” in article 337 paragraph 2 of the Swiss Code of Obligations (SCO). Good cause (and thus just cause) to lawfully terminate an employment contract exists when the fundamental terms and conditions which formed the basis of the contractual arrangement are no longer respected by one of the parties.”

88. When considering the existence of a “just cause” or “good cause”, respectively, the CAS has often followed the jurisprudence of the Swiss Federal Tribunal, according to which “good cause” exists (and, consequently, an employment contract may be lawfully terminated) when the fundamental terms and conditions (either general/objective or specific/personal), which formed the basis of the contractual arrangement are no longer respected (ATF 101 IA 545). Lack of respect for auxiliary terms and conditions, conversely, could not be relied on as a “good cause” or “just cause” for lawfully terminating a contract.
89. The Swiss Federal Tribunal has repeatedly held that, in the presence of good cause, the party terminating the employment relationship cannot be reasonably required to continue performing its obligations (ATF 101 Ia 545; Judgment 4C.240/2000 of 2 February 2001; Judgment 4C.67/2003 of 5 May 2003; WYLER R., *Droit du travail*, Berne 2002, p. 364; TERCIER P., *Les contrats spéciaux*, Zurich 2003, N 3402, p. 496). In this jurisprudence, the contractual infringement by the counterparty allowing for such release from obligations must be serious (Judgment 4C.240/2000 of 2 February 2001). CAS Jurisprudence echoes the case law of the Swiss Federal Tribunal, since only material breaches of a contract can be considered as “just cause” (CAS 2006/A/1062; CAS 2006/A/1180; CAS 2007/A/1210; CAS 2006/A/1100).
90. At this stage, it is important to note that the reason for the termination under scrutiny in the present case was the alleged outstanding salaries and payments due to the Player. The RSTP specifically foresees these cases in Article 14bis:
- “1. In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.*
- 2. For any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered. Delayed payment of an amount which is*

equal to at least two months shall also be deemed a just cause for the player to terminate his contract, subject to him complying with the notice of termination as per paragraph 1 above.

3. Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in paragraphs 1 and 2 above. The terms of such an agreement shall prevail."

91. In essence, Article 14bis RSTP clarifies that if a club unlawfully fails to pay a player two monthly salary payments, the player will be deemed to have just cause to terminate their contract provided certain formal conditions are met. Despite this, it is important to recall that *"Article 14bis does not imply that the circumstances surrounding the termination of a contract can be viewed in black-and-white terms. According to this provision, for there to be just cause to terminate a contract, the club's failure to pay a player at least two monthly salary payments on time must be "unlawful". This means that the club can still rebut the general presumption in the Regulations (according to which the player is deemed to have just cause) by providing convincing evidence that there was a valid reason for the non-payment."* (Commentary, p. 154)
92. Turning on the analysis of the case at hand, the Club argues, in essence, that it paid the following amounts before the termination of the Employment Contract on 1 September 2022:
 - a) Salary of June 2022 – 60,000 USD; and
 - b) Bonus payment – 40,000 USD
93. The Respondents, on the other hand, point out that the following amounts were outstanding on that date:
 - a) Salary of July 2022: USD 67,500;
 - b) Salary of August 2022: USD 67,500;
 - c) Fixed payment due on 1 August 2022: USD 190,000;
 - d) Bonus due to the Club avoiding relegation: USD 30,000; and
 - e) Bonus due to the Club winning the "King Cup": USD 30,000;
94. According to Clause 5 of the Employment Contract (see above para. 11) the obligation of the Club to remit the specified amounts is unequivocally established. Notably, the bonuses were due because the Club won the Saudi Arabian "King Cup" Competition and avoided relegation for the 2021/2022 season, which was the "first season" during the period of the Employment Contract.
95. The Club, while not disputing its liability for these payments, contended that the bonus associated with the "King Cup" victory had been settled, submitting evidence of a USD 40,000 transaction labeled as "Win Bonus Al Hilal". The Player did not contest having received this amount but claims that this bonus was a prize by the Club that was not contractually provided for. The Sole Arbitrator is of the opinion that this payment cannot be taken into account in the present case because the Club failed to demonstrate that it

corresponded to any of the contractually agreed bonuses due to the Player (see above para. 93, paras. d) and e)). This determination stems from the following considerations:

- i) The amount in question (USD 40,000) does not match any of the Player's claimed bonuses as stipulated in the Employment Contract, which were both agreed in the amount of USD 30,000;
- ii) The submitted proof of payment lacks any reference to the Club's triumph in the "King Cup" competition or any other evidence indicating its association with the relevant contractual bonus; and
- iii) The Club has also not alleged or proved that this payment was made to the bonus in question.

96. Therefore, while it is evident that the USD 40,000 payment pertains to the outcome of the season's final match between Al-Fayha and Al Hilal, the Club has failed to prove its correlation to any contractually agreed bonus with the Player as specified in the Employment Contract. The Sole Arbitrator notes that it is a customary practice for football clubs to award their squads match-winning bonuses for significant or challenging matches, even when not contractually obligated. This context, coupled with the Club's inability to provide contrary evidence, suggests that this payment is unrelated to any bonuses delineated in the Employment Contract and was likely a bonus payment awarded to most or all of the Club's players.

97. Consequently, the Sole Arbitrator is firmly convinced that all amounts claimed by the Player as outstanding remuneration were overdue as of the contract termination date (1 September 2022) and remain unpaid to date.

98. From the examination of the documentary evidence produced, it is clear that while the Player initially requested the Club to pay his salary of June 2022, on the date of termination this amount had been paid and the salary of August 2022 had fallen due in the meantime. It is also worth noting that the Appealed Decision does not concern the salary of June 2022 – the Player refrained from asking for the payment of that salary to the FIFA DRC, therefore acknowledging its receipt.

99. Therefore, on the date of termination, the Club owed to the Player a total remuneration of USD 385,000. To evaluate if this could be considered as just cause, the Sole Arbitrator turned to Clause 12 of the Employment Agreement, which stated that:

“1. In the case of the club unlawfully failing to pay the player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate this contract, provided that he has put the club in default in writing and has granted a deadline of at least 15 days for the club to fully comply with its financial obligation(s)”

100. The aforementioned clause is identical to Article 14bis (1) RSTP, which concerns the premature termination of Employment Contracts based on outstanding salaries (see above para. 90)

101. The Sole Arbitrator notes that the fact that the salaries of July 2022 and August 2022 of the Player were not duly and timely paid is undisputed. It is also undisputed that the fixed payment due on 1 August 2022 was not duly paid.

102. Since the Player was entitled to several payments that were not due on a monthly basis, the *pro-rata* value corresponding to two months has to be considered (Article 14bis (2) RSTP). As such, the total value of the Employment Contract is determined as follows:

- a) Monthly salaries due to the Player from 15 July 2021 to 14 July 2022 – USD 60,000 x 12 (USD 720,000)
- b) Monthly salaries due to the Player from 15 July 2022 to 14 July 2023 – USD 67,500 x 12 (USD 810,000)
- c) Signing Fee – USD 180,000
- d) Additional fixed payment(s) – USD 190,000

Total value of the Employment Contract: 720,000 + 810,000 + 180,000 + 190,000 = USD 1,900,000

Monthly Pro-rata value of the Employment Contract: 1,900,000 : 24 = USD 79,166

103. Since the Employment Contract was valid between 15 July 2021 through 14 July 2023, i.e. 24 months, the two months salaries *pro rata* value corresponded to USD 158,332 (USD 79,166 x 2) – therefore, there is no doubt that the outstanding amount of USD 385,000 greatly surpassed the threshold mentioned in Article 14bis (2) RSTP.

104. In light of the foregoing, the Sole Arbitrator considers that the Player had indeed just cause to terminate the Employment Contract on 1 September 2022 due to the Club's failure to pay him the amount corresponding to at least two monthly salaries based on the total value of the Employment Contract. Despite this, it is necessary to determine whether the Player complied or not with all the legal formalities required to terminate his contract.

(C) Did the Player comply with the applicable rules to terminate the Employment Contract? And if not, what are the consequences?

105. As per the conclusions reached above, the Sole Arbitrator now turns its attention to the issue of determining whether the Player complied or not with the legal formalities required to terminate the Employment Contract under Article 14bis RSTP.

106. According to the Commentary, p. 150, "*Article 14bis makes clear that if a club unlawfully fails to pay a player two monthly salary payments, the player will be deemed to have just cause to terminate their contract provided certain formal conditions are met*".

107. In light of Article 14bis RSTP, when a club unlawfully fails to pay at least two monthly salaries, a player is required to (i) notify the club in writing that it is in default and (ii) grant it a deadline of at least 15 days to comply with its financial obligations under the respective employment contract before it can lawfully and unilaterally terminate the contract.

108. Moreover, the Sole Arbitrator highlights that “(...) *CAS jurisprudence and Swiss Law (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446) 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/A/4884; CAS 2015/A/4327; CAS 2013/A/3091, 3092 & 3093; CAS 2013/A/3398; ATF 121 III 467, consid. 4d).*” (see CAS 2018/A/6029, p. 17).
109. As such, to assert that the Player had just cause to terminate the Employment Contract it is also necessary to analyse if the Club was duly served with a valid default notice.
110. The Club argues that the Default Notice was sent from an “unknown email address” and landed on its email spam folder. In addition, the email received by the Club contained only a letter which did not bear any signature, neither from the Player nor from his lawyer, did not contain a Power of Attorney and also mentioned Article 12bis RSTP instead of Article 14bis RSTP.
111. On the other hand, the Player considered the Club’s arguments to be a way of justifying the unjustifiable and deemed them completely irrelevant in the face of the facts since it complied in full with Article 14bis RSTP by sending the Default Notice via his lawyer email. The Second Respondent presented similar arguments, adding that the Club had been duly notified of the Default Notice and that it embodied the Player’s wish to terminate the Employment Contract.
112. After carefully assessing the evidence on file, the Sole Arbitrator deems it useful to note the following:
- a) The Default Notice was sent via email by the Player’s lawyer and from her address;
 - b) The email was sent to three different email addresses from the Club, namely <info@alfiha.com>, <f.team@alfiha.com>, <pro.legal@alfiha.com>;
 - c) Under Clause 1 of the Employment Agreement, the Club’s official email address was “pro.legal@alfiha.com” – the Default Notice was indeed sent to this email;
 - d) The Default Notice was sent with the following message “*Please see attached letter of complaint for pending extraordinary fees and payments according to the dated 15/07/2021 Employment Contract for professional football player (Non-Saudi Nationality) with the football player and office's client, Panagiotis Tachtsidis (d.o.b 15/12/2991)*”; and
 - e) The email contained the identification and all contacts of the Player’s lawyer.
113. It is clear that Article 14bis RSTP does not foresee the method of proving the notice, however, it is important to consider para. 1 of the Penalty Clause:

“1. In the case of the club unlawfully failing to pay the player at least two monthly salaries

*on their due dates, the player will be deemed to have a just cause to terminate this contract, provided that he has put the club in default **in writing** and has **granted a deadline of at least 15 days for the club to fully comply with its financial obligation(s).**”*

(Emphasis added by the Sole Arbitrator)

114. In the Sole Arbitrator’s opinion, it is clear that the Contractual Parties have established the termination of the Employment Contract based on the failure to pay at least two monthly salaries would only be valid if the Player put the Club in default in writing, not specifying if this had to be done via letter, email or via another means – this is a solution similar to Article 14bis RSTP.
115. Since the Employment Contract specifically identifies the Club’s contacts, it is reasonable for the Player to communicate with the Club using that written method and, as such, an email notification, which is not prevented by the Employment Contract nor the applicable law. Email is a legitimate method of written communication and is widely used nowadays to send and receive important communications since it allows the parties to have proof of the messages/contents sent to one another.
116. In the case at hand, and on 5 August 2022, the Player sent the Default Notice to the Club’s official email address as per the Employment Contract and granted it a deadline of 15 days to make the payment of the outstanding remuneration. The Player was diligent and even sent the Default Notice to other 2 different emails associated with the Club, in order to guarantee that it would be received in a timely manner.
117. Regarding the fact that the email had been sent from an unknown sender and landed in the “spam folder”, the Sole Arbitrator notes that the Club failed to demonstrate that it had not received the email, but rather argued that it had not been read in time. The address from which the Default Notice was sent is irrelevant since the email clearly stated and identified the sender as the lawyer and representative of the Player. It should be noted that the lack of signature of the Default Notice does not diminish its validity, seeing as the email had been duly “electronically signed” by the lawyer – in fact, an email sent by someone should be presumed to have been signed by said person.
118. It is true that the email did not contain a power of attorney in favour of the Player’s lawyer. However, Swiss Law does not foresee a specific form for a mandate contract such as the one established between a lawyer and his client. As per Article 11 (1) of the SCO:

“The validity of a contract is not subject to compliance with any particular form unless a particular form is prescribed by law.”

(Free translation by the Sole Arbitrator)

119. The relationship between a lawyer and his client does not begin with the signing of a power of attorney and nothing prevents the lawyer from starting the representation of his client before the public authorities and third parties immediately since the attorney’s powers should

be presumed. The Club failed to give the necessary attention to the communication received, whether by its negligence or fault, and the fact that the Club was aware that some of the Player's salaries had not yet been paid at that time (a fact which it could not ignore) should have prompted it to be more diligent and answer the email received, contact the Player or his lawyer, as it had all the reasons to believe that it had been indeed sent by the Player's representative.

120. Finally, regarding the fact that the Player incorrectly invoked Article 12bis RSTP in the Default Notice, this reference is irrelevant to the case at hand, since the Player complied in full with the requirements foreseen in Article 14bis RSTP by informing the Club of the overdue payables and putting it in default in writing, as well as granting it a deadline of 15 days to pay said amounts – the Player did not have to mention Article 14bis RSTP for the Default Notice to be valid. The reference to Article 12bis RSTP served merely to remind the Club that, should it fail to pay the outstanding amounts and comply with its financial obligations, disciplinary sanctions could be imposed on it.
121. In conclusion, it is clear that the Player correctly and validly put the Club in default by means of a written notice and had just cause to terminate the Employment Agreement due to the Club's failure to pay him the amount corresponding to at least two monthly salaries based on the total value of the Employment Contract (see above paras. 102-104). As such, the Sole Arbitrator shall now turn its attention to the consequences of this termination.

(D) What amount of compensation should the Player be entitled to?

122. Having determined that the Player terminated the Employment Contract with just cause, it is necessary to assess the amount of compensation to which he is entitled based on the applicable regulations.
123. The Club argues that the Contractual Parties have established a penalty clause (with the nature of a "liquidated damages clause") which should be primarily taken into consideration by the CAS since it believes Article 17 (1) RSTP would only apply in case of absence or invalidity of the liquidated damages clause, according to established CAS jurisprudence (CAS 2014/A/3555 and CAS 2020/A/7187). Moreover, the Penalty Clause was fair and reciprocal since it provided the Contractual Parties with the same rights, having been freely negotiated and acknowledged by the Player, which could use it to terminate the Employment Contract if he so wished. As a result, there was no reason for the FIFA DRC to consider the clause invalid.
124. Regarding the Penalty Clause, the Player argued that it was one of the main points of discussion with the Club, since he was unhappy with his contractual conditions at the time of the facts and considered terminating the Employment Contract by paying the amount stipulated in the Penalty Clause. In fact, the Player stated in his Answer that "(...) *through my Agent I offered to pay to the club [Al-Fayha] the amount of 135.000,00 dollars in order to terminate our contract [Employment Contract] asap (...)*". It should also be noted that in its Answer the Player requested the CAS to additionally award it the payment of USD 135,000 corresponding to the Penalty Clause.

125. The Second Respondent did not specifically comment on this issue but reinforced its understanding that the FIFA DRC correctly assessed the amount of compensation to be paid to the Player due to the termination with just cause of the Employment Contract.

126. Considering that the RSTP are the set of rules applicable to the case at hand, the Sole Arbitrator notes that the provision which deals with the matter of the compensation to be awarded to the Player is Article 17 (1) RSTP and the relevant part of which reads as follows:

*“In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, **and unless otherwise provided for in the contract**, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period”*

(Emphasis added by the Sole Arbitrator)

127. According to the Commentary, p. 177:

“If the parties have not incorporated any specific provision regarding the compensation due in the event of the premature termination of the contract, compensation for the breach of contract will be calculated based on article 17, Regulations. The same principle will apply where the DRC considers the compensation clause inapplicable (on the grounds that it is not reciprocal or is disproportionate or abusive) and deems it invalid.”

128. In this instance, CAS 2016/A/4826 clarifies that:

*“Pursuant to art. 17 of the FIFA Regulations on the Status and Transfer of Players (RSTP), **parties to a contract are free to stipulate a liquidated damages clause as a basis to calculate the compensation to be paid for breach of contract. Any such clause shall take precedence over the application of the other criteria set forth in said article.** Let alone the point that it is not required that said clauses be reciprocal, they may validly set forth a disparity between the amounts stipulated therein, for the damage suffered by one club in case of a termination of contract without just cause by one player is different, and generally higher, than the damage suffered by one player in case of a termination of contract without just cause by one club.”*

(Emphasis added by the Sole Arbitrator)

129. This understanding was reinforced by the Panel of the case CAS 2017/A/5056: “(...) Article 17(1) of the FIFA RSTP is clear in the sense that it allows contractual parties to deviate from the application of Article 17(1) of the FIFA RSTP by determining so in their employment

contract. The Panel notes that Article 17(1) of the FIFA RSTP does not determine that such contractual deviation is subject to certain requirements” (CAS 2017/A/5056, para. 93).

130. It is clear then that the contractual parties are allowed to deviate from the application of the criteria set forth on Article 17 (1) RSTP as a basis to calculate the compensation to be paid for breach of contract if they stipulate a valid liquidated damages clause, which takes precedence over the calculation methods established in the RSTP.
131. In the case at hand, the Contractual Parties have established a penalty clause in the Employment Contract (see above para. 12) and, for this reason, the Sole Arbitrator must start by assessing if the Penalty Clause is applicable. Only if the Penalty Clause is rendered inapplicable – as the FIFA DRC decided – will it be necessary to calculate the compensation following the suppletive criteria set forth in Article 17 (1) RSTP.

(D.1) Is the Penalty Clause valid?

132. The following is stated in the Appealed Decision about the Penalty Clause:

*“After analysing the content of the aforementioned clause, **the Chamber concluded that it did not fulfil the criteria of reciprocity and proportionality**, in line with the Chamber’s longstanding jurisprudence, and therefore could not be taken into account for establishing the amount of compensation payable to the player. In particular, **the Chamber noted that even though the clause in question refers to second season only, the amount payable according to the contract corresponds to two monthly salaries, whereby the residual value of the contract (including a fixed payment defined in the contract) amounts to approx. 15 monthly salaries. Therefore, the members of the Chamber concluded that the clause is disproportionate.**”*

(Emphasis added by the Sole Arbitrator)

133. It stems from the previous paragraph that the FIFA DRC considered the Penalty Clause to be:
- i) Disproportionate, because the amount payable by the party which gave rise to the termination would be very low when compared to the residual value of the Employment Contract; and
 - ii) Nonreciprocal, although the FIFA DRC did not provide an explanation as to why nor how it reached this conclusion.

134. At this point, it is important to recall the wording of the Penalty Clause:

“2. If either party terminates the contract with just cause, following amount will have to be paid USD 135,000 as penalty clause equivalent to two months salaries: This clause is applicable only for the second year only starting from 10/06/2022.

And if either party terminates the contract without just cause, following amount will have to be paid USD 135,000 as penalty clause equivalent to two months salaries: This clause is applicable only for the second year only starting from 10/06/2022.”

135. The Sole Arbitrator wishes to clarify that the CAS has already found, in previous cases, that “(...) *Swiss law does not require “penalty clauses” to be “reciprocal” in order to be valid. Therefore, the DRC was not entitled to disregard it, only because it would not apply to a breach committed by Al Nasr*” (CAS 2013/A/3411, para. 95).
136. Nonetheless, the Sole Arbitrator notes that the Penalty Clause is “reciprocal”, as its wording does not limit its application to just one of the parties. This means that, if the case under assessment were the opposite (Club terminating the Employment Contract with just cause), the claim for damages would also have to be assessed bearing in mind this clause. This conclusion is reinforced by the fact that both the Club and the Player requested the CAS to award them the payment of the Penalty Clause in light of the alleged unlawful behaviour of the counterparty. Moreover, the testimony of Mr. Lefteris Sidiropoulos (produced by the Player’s defense) given during the hearing, confirmed this understanding. This witness, which was the agent of the Player, mentioned that he had tried to contact the Club and offered to pay the amount of the Penalty Clause to unilaterally terminate the Employment Contract.
137. It is clear that both Contractual Parties understood this clause as a mechanism to compensate one party in case the other gave rise to the termination with just cause of said contract due to its failure to comply with the Employment Contract. Additionally, the Penalty Clause was also perceived by the Player was a “buy-out” clause for the eventuality of one of the Contractual Parties terminating the Employment Contract without just cause.
138. It must be said that, provided they did not infringe any legal provision, the Contractual Parties were free to negotiate and insert a penalty clause in the Employment Contract pursuant to the principle of contractual autonomy which bears a significant importance across Swiss Law. Following this exact line of thought, the RSTP also admits this possibility in its Article 17.
139. In the present case, the Sole Arbitrator concludes that there are no circumstances, *de facto* or *de jure*, capable of rendering the agreement of the Contractual Parties regarding the Penalty Clause unlawful (e.g. due to error, simulation or coercion). In fact, neither the Player nor the Club argue that the Penalty Clause was invalid or unlawful. As such, the Penalty Clause is to be deemed valid under Swiss Law.
140. This means that the methods of calculating compensation due to the Player foreseen on Article 17 RSTP are not *prima facie* applicable. This conclusion might be prejudiced if the assessment of the Penalty Clause’s proportionality reveals that it is excessive (Article 163 (3) SCO) or “unfair” in the context of the specificity of sport, considering the jurisprudence of CAS 2018/A/5607, p. 146: “(...) *The specific circumstances of a sports case might therefore lead a panel to either increase or decrease the amount of awarded compensation because of the specificity of sport (CAS 2008/A/1519-1520, at para. 156; CAS 2008/A/1644, at para. 139)*” (CAS 2009/A/1880 & 1881, at paras. 109 to 111; see also CAS 2013/A/3411,

at para. 118). In such a case, the Penalty Clause would be considered inapplicable, and Article 17 RSTP would apply.

(D.2) Is the Penalty Clause disproportionate considering the Employment Agreement?

141. Turning its attention to the Appealed Decision, the Sole Arbitrator notes that the rationale from the Appealed Decision to consider the Penalty Clause as “disproportionate” appears to be exclusively related to the comparison of the residual value of the Employment Contract with the Penalty Clause.
142. In the Sole Arbitrator's opinion, this reasoning cannot be done in isolation without considering the specific case, namely by assessing the positions of the parties to the contract in question, their bargaining power, their degree of knowledge of the penalty clause and its effects, as well as the balance of the clause. The facts of the case do not reveal any imbalance between the solution established by the Parties for the eventuality of early termination of the Employment Contract, nor any unfair bargaining power of the Club over the Player, or vice-versa. Furthermore, and in the present case it should also be pointed out that the Penalty Clause was validly entered into and negotiated by the Contractual Parties and its reciprocal nature afforded advantages and disadvantages to both, which they also demonstrated to be of their complete knowledge.
143. The Club was in a position whereby it knew and understood that the Player could terminate the Employment Contract without just cause and only pay the amount of the Penalty Clause; on the opposite side, the Player was also aware that the Club had the same rights.
144. The reciprocity of the Penalty Clause, as well as the fact that the Contractual Parties were fully aware of its contents and effects, suggests that it was indeed proportionate and fair despite the fact that it might be considered “low” when compared to the residual value of the Employment Contract. This conclusion is reinforced by the fact that the Player was a talented athlete that managed to swiftly find employment with another club (the New Club), therefore the Penalty Clause also worked in his favour and was not exclusively beneficial for the Club.
145. Additionally, the Sole Arbitrator would also like to note that when comparing the Penalty Clause with the actual compensation that the Player stood to be awarded from the application of Article 17 (1) RSTP's method of calculation, and taking into account the mitigation of the damages in light of the Player's employment at the New Club, would be around double the amount of the Penalty Clause (USD 202,500 and USD 135,000 respectively), which does not seem like a “beyond reasonable” difference.
146. Even if none of the Parties claimed that the Penalty Clause is excessive, it should be noted that “(...) *the Swiss Federal Tribunal stated in its decision SFT 133 III 201, c. 5.2 that Article 163 para. 3 CO is part of the public policy and as a consequence, the judge (and Sole Arbitrator) must apply this norm even if the debtor (Appellant) did not expressly request a reduction (...)*” (CAS 2017/A/5242, para. 85). Only a significant disproportion or excessiveness can justify the reduction of a penalty clause under Article 163 (1) SCO and “(...) *SFT 133 III 201 states in this relation that to judge the excessive character of the*

contractual penalty, one must not decide abstractly, but, on the contrary, take into consideration all the circumstance of the case at hand. However, as the parties are free to fix the amount of the penalty in accordance to Article 163 para. 1 CO, the judge must make use of his discretion.” (CAS 2017/A/5242, para. 85)

147. Considering the remuneration earned by the Player, it seems evident, from the view of a third party, that the Penalty Clause is not excessive. So much so that the Club has never made any consideration or request in this regard. As such, the Sole Arbitrator concludes that the Penalty Clause does not violate any rule of public law, nor have any of the Parties or even the FIFA DRC raised any grounds in this regard.
148. The Sole Arbitrator also wishes to recall that, in light of Article 163 (1) SCO, “[t]he penalty is payable even if the creditor has not suffered any damage” – *mutatis mutandis*, this also entails that the Penalty Clause will be payable even if the damages suffered are lower than it.
149. As a result, based on the applicable principles of law, notably the specificity of sport, contractual autonomy and *pacta sunt servanda*, the Sole Arbitrator does not see any reason to render the Penalty Clause “disproportionate”. As a result, the criteria set forth in Article 17 RSTP to calculate the compensation due to the Player in light of the termination with just cause of the Employment Contract are not applicable.

(D.3) Calculation of the compensation and amounts due to the Player.

(D.3.1) Outstanding amounts foreseen in the Employment Contract

150. At the time of the termination, the following amounts were outstanding (see above paras. 93 and 95):
- a) Salary of July 2022: USD 67,500;
 - b) Salary of August 2022: USD 67,500;
 - c) Fixed payment due on 1 August 2022: USD 190,000;
 - d) Bonus due to the Club avoiding relegation: USD 30,000; and
 - e) Bonus due to the Club winning the “King Cup”: USD 30,000;
151. The aforementioned amounts were never paid by the Appellant (see above paras. 95-97) and, as a result, they are overdue and still outstanding.
152. As a result, the amounts mentioned above are due to the Player with interest of 5% p.a. as follows:
- a) USD 67,500 with 5% interest p.a. since 5 August 2022, until date of effective payment.
 - b) USD 67,500 with 5% interest p.a since 1 September 2022, until date of effective payment.
 - c) USD 190,000 with 5% interest p.a since 5 August 2022, until date of effective payment.

- d) USD 30,000 with 5% interest p.a since 5 August 2022, until date of effective payment.
- e) USD 30,000 with 5% interest p.a since 5 August 2022, until date of effective payment.

153. Although some of the aforementioned outstanding amounts were due from an earlier date, the Sole Arbitrator cannot decide *ultra petita* and must adhere to the request of the Player, which requested them since the “*first dated 05/08/2022 letter of complaint provided to the Respondent (...)*”, which corresponds to the date when the Default Notice was sent. The only exception is the salary for August 2023, which according to the Employment Contract was only due on 31 August 2022 and, as such, interest shall accrue since 1 September 2022.
154. It follows, in accordance with the Employment Contract, that the Player is also entitled to the full amount of the Penalty Clause since it terminated the Employment Contract with just cause. As a result, the Player shall also be awarded the amount of USD 135,000 plus interest *p.a.* since 1 September 2022, i.e. the date on which the Player terminated the Employment Contract with just cause and lodged the claim before the FIFA DRC.

(D.3.2) Is the Player entitled to additional compensation as per the Appealed Decision?

155. The Appealed Decision awarded the Player and additional compensation equal to three monthly salaries based on Article 17 (1) (ii) RSTP, as follows:

“Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the contract termination took place due to said reason i.e. overdue payables by the club, and therefore decided that the player shall receive additional compensation.”

156. As per the explanation above (see paras. 125-129), the existence of a valid and binding liquidated damages clause in the Employment Agreement is a lawful deviation from the criteria set forth in Article 17 (1) RSTP for the calculation of the compensation due to the Player – this includes lit. ii of the aforementioned provision, which establishes an “additional compensation” mechanism when the termination with just cause is due to overdue payables.
157. This interpretation is reinforced by the Commentary, p. 199, which states that compensation for breach of contract will be calculated based on Article 17 RSTP only if the parties have not incorporated a provision regarding compensation due in the event of the premature termination of the contract or if the DRC considers such a clause inapplicable:

“As stated above, compensation due to a player from a club that breaches a contract is now specifically regulated by an amendment to article 17 paragraph 1 that came into force on 1 June 2018. (...) This lex specialis for calculating compensation due to a player commences by stating that compensation due to a player should be calculated “bearing in mind the

aforementioned principles". This is a direct reference to those criteria in the first subparagraph of article 17 paragraph 1.

1. The parties may agree a liquidated damages clause in advance in the contract. Particular attention should be paid to the fact that, in the event of a dispute, clauses of this nature may be declared invalid (e.g. due to issues of reciprocity, proportionality and unbalanced terms, as mentioned earlier).

2. If no such agreement is entered into, or where the relevant clause is declared inapplicable, compensation will be calculated based on the objective criteria included in article 17 paragraph 1. In the event the player is entitled to compensation, the lex specialis will be applied.

(...)

The purpose of the lex specialis is to increase legal security and ensure consistency. It codifies existing DRC jurisprudence while introducing a genuinely new and significant element in the shape of "additional compensation" due to a player under certain conditions."

158. Moreover, the Commentary, p. 200, also explains the reasoning behind the "additional compensation" foreseen in Article 17 (1) (ii) RSTP:

"The alternate position is where a player succeeds in finding new employment following the breach and premature termination of their previous contract.

(...)

The compensation due to the player should be calculated based on the residual value of the contract that was terminated early, minus the value of any new contract for the period during which the terminated contract would have been in force had it been allowed to run its full term. Compensation paid according to this procedure is known as "mitigated compensation". This is regularly applied by the DRC

The new element of the lex specialis follows. It states that the mitigated compensation will be increased by at least three (monthly) salary payments (known as "additional compensation"). However, the "additional compensation" will only be granted if the premature termination of the contract was due to overdue payables

(...)

In its last sentence, the lex specialis specifies that the total compensation will in any case be limited to the residual value of the prematurely terminated contract.³⁶² This is in line with the principle of equal treatment, in the sense that players that do not find new employment contracts and players that do find new employment contracts are both able to receive the maximum amount of compensation corresponding to the residual value of the relevant

contract. It also avoids a player being over-compensated compared to the amounts that would be due to them under the prematurely terminated contract.”

159. Even if the Commentary is not absolutely clear, the interpretation of Article 17 RSTP leads the Sole Arbitrator to conclude that this additional compensation is only awardable when that *lex specialis* for the calculation of the compensation applies, which is not the case here, since the Contractual Parties agreed on a valid, binding and proportionate liquidated damages clause (the Penalty Clause) and did not establish in the Employment Contract any additional compensation.
160. It should also be noted that, in similar cases, CAS jurisprudence has consistently stated that the existence of liquidated damages clauses consists in a lawful deviation from Article 17 (1) RSTP’s criteria for calculating compensation and that the parties’ contractual autonomy in this regard shall be respected, provided that the clause at stake is deemed lawful and fair (see above paras. 123, 128 and 129). Consequently, whenever liquidated damages clauses are deemed valid and proportionate, compensation is calculated in accordance with their wording and does not follow the criteria set in Article 17 (1) RSTP (see, among others, CAS 2014/A/3746, CAS 2016/A/4826 and CAS 2017/A/5242).
161. Considering the above, the Sole Arbitrator concluded that the additional compensation granted by the FIFA DRC to the Player under Article 17 (1) (ii) RSTP is not applicable to the case at hand.

(D.3.3) Final calculation of the amounts due to the Player

162. In light of the above, the Club shall pay to the Player the following amounts:
- i) USD 317,500 plus 5% interest *p.a.* since 5 August 2022, until date of effective payment – this amount corresponds to the salary of July 2022, the fixed payment and the bonus which were due to the Player under the Employment Contract.
 - ii) USD 67,500 plus 5% interest *p.a.* since 1 September 2022, until date of effective payment - this amount corresponds to the salary of August 2022 due to the Player under the Employment Contract.
 - iii) USD 135,000 plus 5% interest *p.a.* since 1 September 2022, until date of effective payment - this amount corresponds to the Penalty Clause due to the Player under the Employment Contract considering the termination with just cause of said contract.

X. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 26 June 2023 by Al Fayha Club against the decision rendered by the FIFA Dispute Resolution Chamber on 4 May 2023 is partially upheld.
2. The decision rendered by the FIFA Dispute Resolution Chamber on 4 May 2023 is confirmed, with the exception of Item 2 of its operative part, which is modified as follows:

Al Fayha Club is ordered to pay to Mr. Panagiotis Tachtsidis the following amounts:

- i) USD 317,500 plus 5% interest *p.a.* since 5 August 2022 until date of effective payment.
 - ii) USD 67,500 plus 5% interest *p.a.* since 1 September 2022 until date of effective payment.
 - iii) USD 135,000 plus 5% interest *p.a.* since 1 September 2022 until 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 April 2024

THE COURT OF ARBITRATION FOR SPORT

Rui Botica Santos
Sole Arbitrator