



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2024/A/10289 Hajer FC v. Rodion Gačanin

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Jordi López Batet, Attorney-at-Law, Barcelona, Spain

in the arbitration between

Hajer FC, Al-Ahsa, Saudi Arabia

Represented by Mr Ali Abbes and Mr Mohamed Rokbani, Monastir, Tunisia

-Appellant-

and

Mr Rodion Gačanin, Rijeka, Croatia

Represented by Mr Ivan Smokrović, Rijeka, Croatia

-Respondent-

I. THE PARTIES

1. Hajer Club (the “Club”, the “Appellant” or “Hajer FC”) is a football club with its registered office in Al-Ahsa, Saudi Arabia, registered with the Saudi Arabian Football Federation (the “SAFF”), which in turn is registered with the *Fédération Internationale de Football Association* (“FIFA”).
2. Mr Rodion Gačanin (the “Respondent” or the “Coach”) is a professional football coach of Croatian nationality.
3. The Appellant and the Respondent are hereinafter jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the main relevant facts, as established on the basis of the Parties’ written submissions, and the evidence taken in the course of the present appeal arbitration proceedings. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. On 18 June 2023, Hajer FC and the Coach entered into an employment agreement whereby the Coach was appointed as head coach of the Club (the “Agreement”). The duration of the Agreement was from 1 July 2023 until 31 May 2024.
6. According to the Agreement, Hajer FC undertook to pay the Coach the following amounts:
 - USD 10,000 as a “*contract provider payment*” on 1 October 2023.
 - USD 12,000 as a monthly salary, payable at the end of each month.
7. Clause 7 of the Agreement reads as follows:

“If either party terminates the contract with just cause or without just cause an agreed compensation of 24000 USD must be paid to the injury party. This liquidated damage clause is fair and proportionate and agreed between both parties after long negotiation”.
8. Clause 8 of the Agreement reads, in its pertinent part, as follows:

“The second party (football coach) shall comply with all conditions and circulars contained in the list of penalties for coaches and administrators approved by the Saudi Ministry of Sports and the Saudi Football Federation and its committees, pledging to abide by them. In the event of a dispute concerning the interpretation of this, the FIFA Football Tribunal or the Saudi Arab Football Union and the Saudi sport Arbitration shall be responsible for resolving the dispute or dispute if the parties fail to resolve it amicably. [...]”.

9. On 29 September 2023, Hajer FC terminated the Agreement with the Coach due to the results not meeting expectations. The Club stated that the outstanding remuneration and the compensation in accordance with Clause 7 of the Agreement would be remitted to the Coach “*as soon as possible*”.

B. Proceedings before the Player Status Chamber of FIFA

10. On 13 October 2023, the Coach filed a claim against Hajer FC before FIFA, requesting the Club be held liable for the payment of outstanding remunerations and compensation for breach of contract, in accordance with the following breakdown:

- USD 24,000 as outstanding remuneration (salaries of August and September 2023);
- USD 10,000 corresponding to the “*contract provider payment*” due on 1 October 2023;
- USD 96,000 as compensation (salaries October 2023 to May 2024, 8 times USD 12,000);
- USD 3,000 as “*return air tickets*” Croatia-Saudi Arabia;
- USD 72,000 as additional compensation.

11. Hajer FC objected to the claim by stating that the termination of the Agreement was made with the mutual consent of both Parties. The Club argued that the Parties negotiated a termination agreement, which was verbally agreed upon. However, the Coach subsequently refused to sign it. Therefore, Hajer FC had no choice but to terminate the Agreement unilaterally due to the Club’s sporting results at the time.

12. On 5 December 2023, the FIFA Player Status Chamber (the “FIFA PSC”) issued a decision resolving the dispute between the Parties, the operative part of which reads as follows:

“1. *The claim of the Claimant, Rodion Gacancin, is partially accepted.*

2. *The Respondent, Hajer Club, must pay to the Claimant the following amount(s):*

- ***USD 12,000 as outstanding remuneration plus 5% interest p.a. as from 1 September 2023 until the date of effective payment;***
- ***USD 12,000 as outstanding remuneration plus 5% interest p.a. as from 1 October 2023 until the date of effective payment;***
- ***USD 106,700 as compensation for breach of contract without just cause plus 5% interest p.a. as from 1 October 2023 until the date of effective payment.***

3. *Any further claims of the Claimant are rejected.*

4. *Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.*

5. Pursuant to art. 8 of Annexe 2 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:

1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.
2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.

6. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 8 par. 7 and 8 of Annexe 2 and art. 25 of the Regulations on the Status and Transfer of Players.

7. This decision is rendered without costs”.

13. On 22 December 2023, the grounds of such decision were notified to the Parties. Said grounds can be briefly summarised as follows:

- While Hajer FC argued that the Coach verbally agreed to the mutual termination before refusing to sign the termination agreement, there was no mutual termination on file. The Club terminated the Agreement on 29 September 2023 due to poor results, which do not justify a contractual termination with just cause and shall be held liable for the breach.
- The parties agreed on a liquidated damages clause (Clause 7 of the Agreement) which does not meet the necessary criteria of reciprocity and proportionality. A compensation equivalent to 2 months of salary in a contract with a duration of one season is not proportional and therefore shall not be applied.
- The compensation for breach shall be thus assessed and determined in accordance with other parameters set out in the FIFA Regulations on the Status and Transfer of Players (the “FIFA RSTP”).
- The compensation for breach of contract payable to the Coach *in casu* shall be of USD 106,700 (salaries until the end of the Agreement, plus USD 10,000 as “contract provider payment”, plus USD 700 for the Coach’s flight ticket back to Croatia), plus 5% *p.a.* interest.
- The Club shall be also ordered to pay USD 24,000 (USD 12,000 per month) to the Coach as outstanding remuneration for the months of August and September 2023, plus interest from the respective due dates.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 8 January 2024, Hajer FC filed its Statement of Appeal before the Court of Arbitration for Sport (the “CAS”) against the Coach with respect to the decision rendered by the FIFA PSC on 5 December 2023 (the “Appealed Decision”), with the following request for relief:

“The appellant respectfully asks the honourable arbitrator to:

- *Admit the appeal against the decision rendered on 05 December 2023.*
- *Annul the decision rendered by DRC.*
- *All legal expenses and CAS costs will be supported by the respondent”.*

15. In the Statement of Appeal, the Appellant requested the dispute be resolved by a Sole Arbitrator, that English be the language of the dispute and that the deadline to file the Appeal Brief be extended until 16 March 2024.
16. On 17 January 2024, the CAS Court Office notified FIFA of the present appeal and asked if it intended to participate as a party in the proceedings, which FIFA declined to do.
17. On the same day, the CAS Court Office notified the Statement of Appeal to the Respondent, invited him to comment on the language of the proceedings, the number of arbitrators to decide the dispute, the extension of the time limit to file the Appeal Brief requested by the Appellant and the possibility to submit the dispute to mediation.
18. On 19 January 2024, the Respondent agreed to English being the language of the proceedings and to submitting the dispute to a Sole Arbitrator, but objected to the deadline extension requested by the Appellant to file its Appeal Brief.
19. On 19 January 2024, the CAS Court Office informed the Parties, *inter alia*, that the issue of the deadline extension would be submitted to the decision of the President of the CAS Appeals Arbitration Division, who on 23 January 2024 partially upheld the Appellant’s request for deadline extension and granted an additional 15-day term to such purpose.
20. On 25 January 2024, the Appellant filed its Appeal Brief, with the following requests for relief:

“The appellant respectfully asks the honourable arbitrator to:

- *Admit the appeal against the decision of FIFA PSC dated 05 December 2023*
- *Decide that the coach is entitled receive only 24000 USD as compensation according to article 7 of the employment contract.*
- *Alternatively, reduce the compensation by applying the mitigation with the contractual value of the new coach’s contract.*
- *Condemn the respondent to pay 5000 CHF as attorney’s fee and costs.*

- *The respondent shall bear all CAS costs*” [sic].

In the Appeal Brief, the Appellant requested the CAS to order the Coach to provide with a signed copy of his new employment contract.

21. On 30 January 2024, the Respondent was invited by the CAS Court Office to file the Answer to the Appeal Brief.
22. On 16 February 2024, the Respondent filed his Answer with the following request for relief:

“To reject the appeal in its entirety and to confirm FIFA PSC Decision, reference no. FPSD-12204 in entirety”.
23. Also on 16 February 2024, the CAS Court Office invited the Parties to confirm (i) whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award solely based on the Parties’ written submissions and (ii) whether they requested a case management conference.
24. On 21 February 2024, the Appellant indicated that it did not require a hearing to be held in this matter and reiterated its request for production of documents.
25. On 5 May 2024, the Appellant requested that an award recently rendered by the CAS (CAS 2023/A/9756) be included in the file.
26. On 10 May 2024, the CAS Court Office informed the Respondent that the Appellant had timely paid the advance of costs for this matter and invited the Respondent to provide its position on the award produced by Appellant with its letter of 5 May 2024.
27. On 15 May 2024, the Respondent filed his comments on the mentioned award, basically stating that it is not applicable to the case at hand and insisting on the disproportionate nature of the contractual liquidated damages clause (Clause 7 of the Agreement).
28. On 24 May 2024, pursuant to Article R54 CAS Code of Sports-related Arbitration (2023 edition) (the “CAS Code”), and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the arbitration tribunal appointed to decide the present matter was constituted as follows:

Sole Arbitrator: Mr Jordi López Batet, Attorney-at-Law, Barcelona, Spain

29. On 27 May 2024, the CAS Court Office informed the Parties that (i) the Sole Arbitrator deemed himself sufficiently well-informed to decide this case based solely on the Parties’ written submissions, without the need to hold a hearing, (ii) the Respondent was ordered to provide a copy of any new employment agreement he may had entered into, (iii) the award rendered in CAS 2023/A/9756 produced by the Appellant with its letter of 5 May 2024 was admissible and (iv) reasons for these decisions would be given in the award.

30. On 5 June 2024, the CAS Court Office informed the Parties that the Appeal Brief lacked the exhibits referenced therein and requested the Appellant to provide them by 7 June 2024. In the same correspondence, the CAS Court Office also reminded the Respondent to produce any new employment contract entered into since the termination of the Agreement or to explicitly state that none exists.
31. Also on 5 June 2024, the Appellant provided exhibits E-3 to E-6 to its Appeal Brief and the Respondent confirmed that he had not been employed since the Agreement was terminated.
32. On 17 July 2024, the Appellant and the Respondent signed the Order of Procedure of this case.

V. THE PARTIES' POSITIONS

A. The Appellant

33. Hajer FC's submissions, in essence, may be summarised as follows:
 - The termination of the Agreement was verbally agreed upon by the President of Hajer FC and the Coach in light of the Club's poor sporting results. The Club and the Respondent reached an agreement whereby the Coach would receive the outstanding salaries along with a liquidated damages payment of USD 24,000. Unexpectedly, the Coach changed his position and requested payment of a contractual bonus, which would normally be due on 1 October 2023, and faced with the refusal of the Club to pay that bonus, which was not yet due, the Respondent submitted a claim before the FIFA PSC. Consequently, the contractual termination was not unilateral but conventionally agreed between the Parties.
 - In any event and if it were not considered that the contractual termination was agreed between the Parties, Clause 7 of the Agreement represents the only parameter to determine any compensation arising from the termination of the contract without just cause. This article emerged from negotiations and mutual consent between the Parties. The liquidated damages clause of Clause 7 is balanced, reciprocal and equitable, offering equal compensation to each party in the event of premature termination or breach of the Agreement. It is puzzling that the FIFA PSC regarded the clause as not reciprocal and disproportionate, considering it grants the same rights to both Parties.
 - According to the consistent practice of the FIFA PSC, if a proportional and balanced liquidated damages clause has been agreed between two contractual parties, it should be applied, unlike the FIFA PSC did.

B. The Respondent

34. The Coach's submissions, in essence, may be summarised as follows:

- The Appellant unilaterally terminated the Agreement without just cause and did so at a critical time, two days before the signing fee of USD 10,000 was due, without having fulfilled any prior financial obligations under the Agreement. The Respondent was “driven out onto the street” and even had to pay the costs of his flight back to Croatia.
- The liquidated damages clause in Clause 7 is null and void due to its disproportionate favour towards the Appellant, disrupting the contractual balance and nullifying its intended legal effects.
- The compensation of USD 24,000 stipulated in Clause 7 of the Agreement is, in reality, only of USD 14,000, considering the unpaid signing fee. This creates a significant imbalance and is highly disproportionate.
- From the commencement of the Agreement to its premature termination by the Appellant, the latter failed to meet any financial obligations, while the Respondent fulfilled all his contractual duties.

VI. JURISDICTION

35. The jurisdiction of CAS, which is not disputed, derives from Articles 57(1) FIFA Statutes (2022) as it determines that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question” and Article R47 of the CAS Code.
36. Neither of the Parties has contested the jurisdiction of the CAS in these proceedings.
37. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.
38. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VII. ADMISSIBILITY

39. The grounds of the Appealed Decision were notified to the Appellant on 22 December 2023 and the Appellant’s Statement of Appeal was lodged on 8 January 2023, *i.e.* within the statutory time limit of 21 days, set forth in Article 57(1) of the FIFA Statutes, which is not disputed.
40. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.
41. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

42. Article R58 of the CAS Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

43. Article 56(2) of the FIFA Statutes stipulates as follows:

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

44. The Parties have referred in their submissions to the FIFA regulations and Swiss law to ground their case.

45. Based on the foregoing, the Panel finds that the various regulations of FIFA are primarily applicable, and additionally Swiss law on a subsidiary basis.

IX. PRELIMINARY MATTERS

46. As mentioned above, on 27 May 2024, the CAS Court Office informed the Parties *inter alia* that (i) the Respondent was ordered to provide a copy of any new employment agreement he may have entered into and (ii) the award rendered in CAS 2023/A/9756 produced by the Appellant with its letter of 5 May 2024 was admissible, and that reasons for these decisions would be given in the award.

47. The reason for ordering the production of any new employment agreement signed by the Respondent was to assess the potential impact of these agreements on the quantification of the compensation (in the sense of potentially mitigating it).

48. With regard to the admission of the referenced CAS award, the Sole Arbitrator considered that it is dated the 22 April 2024 (that is to say, after the filing of the Appeal Brief in this case), may be relevant to the case and the Respondent did not expressly object to its admission (even if he does not share the inferences the Appellant wants to bring from such award and asked the Sole Arbitrator to disregard it when issuing this award).

X. MERITS

49. The Sole Arbitrator notes that in the Appealed Decision, the FIFA PSC resolved in essence that (i) the Agreement was terminated without just cause by the Club and (ii) the Club shall pay to the Coach certain outstanding remunerations and a compensation for

breach of contract, to be calculated on the basis of parameters that are different from those established in Clause 7 of the Agreement, which is not applicable due to lack of reciprocity and proportionality.

50. The Club challenges the Appealed Decision by essentially arguing that (i) the termination of the Agreement was not unilateral but conventionally agreed between the Parties and (ii) in the event that the Sole Arbitrator considered that the contractual termination was not mutually agreed between the Parties, the compensation to be paid to the Coach shall be the one established in Clause 7 the Agreement, which is reciprocal and proportionate and shall thus be applicable.
51. As to the outstanding remunerations, the Sole Arbitrator shall point out that the Appellant neither proved nor attempted to prove in these proceedings (i) having paid the outstanding remunerations set out in point 2 of the Appealed Decision's operative part (USD 24,000 corresponding to the monthly salaries of August and September 2023) or (ii) having paid the sum of USD 10,000 stipulated in Clause 2 of the Agreement as "*Contract provider payment*". Therefore, these amounts are deemed to be due to the Coach by the Club.
52. With regard to the termination of the Agreement, the Sole Arbitrator is tasked with resolving the following key issues in the present dispute: (i) whether Hajer FC terminated the Agreement with or without just cause and (ii) in case it is found that the contractual termination lacked just cause, which is the compensation payable to the Coach.
53. The Appealed Decision bases its reasoning to dismiss the Club's contention that the Agreement was terminated with just cause on two grounds: (i) no mutual termination agreement is on file and (ii) poor performance does not constitute a reason to terminate the Agreement.
54. The Sole Arbitrator, after having analysed the Parties' allegations and the evidence brought to the CAS proceedings, supports the FIFA PSC's understanding in this respect. The Club failed to substantiate and accredit the existence of a mutual agreement between the Parties to terminate their relationship. In such scenario, the poor performance or the poor results of a team cannot justify a termination with just cause in this case. The latter is so clear that the Appellant acknowledged this in its Appeal Brief ("*We are aware of the FIFA and CAS jurisprudence regarding the poor results as a just cause to terminate the contract and we are conscious that it is not considered as a just cause to terminate the contract*").
55. In light of the foregoing and for the sake of brevity, the Sole Arbitrator shall refer to the considerations made in section III, lit. c, subsection ii of the Appealed Decision, which the Sole Arbitration shares in their entirety.
56. As to the financial consequences of the Agreement's termination without just cause, it is the Club's position that the FIFA PSC wrongly concluded that Clause 7 of the Agreement cannot be applied to determine the compensation because it does not fulfil the criteria of reciprocity and proportionality. Hajer FC contends that this clause represents the sole element for determining compensation following the termination of the Agreement with or without just cause, being such clause proportional and reciprocal.

57. The Sole Arbitrator shall start its analysis on this matter by pointing out that Article 17.1, para. 1 of the FIFA RSTP reads as follows (emphasis added):

“The following provisions apply if a contract is terminated without just cause:

*1. 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.[...]”.*

58. In accordance with such provision, the first element to be considered is whether a contractual clause establishing a compensation in case of termination exists in the Agreement. This has been confirmed by the CAS jurisprudence, *inter alia* in CAS 2016/A/4826, which clearly states that (emphasis added):

*“Pursuant to this provision, parties may deviate from the application of Article 17(1) FIFA RSTP as a basis to calculate the compensation to be paid for breach of contract and that **any such clause shall take precedence over the application of Article 17(1) FIFA RSTP**”.*

59. *In casu*, the Parties agreed the following in Clause 7 of the Agreement:

“If either party terminates the contract with just cause or without just cause an agreed compensation of 24000 USD must be paid to the injury party. This liquidated damage clause is fair and proportionate and agreed between both parties after long negotiation”.

60. This being said, the Sole Arbitrator is aware that in accordance with some FIFA and CAS precedents, it is possible to render a liquidated damages clause agreed by the parties invalid or non-applicable in case it is not reciprocal or proportionate (among others, CAS 2016/A/4605 or CAS 2020/A/7011).

61. It is precisely based on this that the FIFA PSC decided not to apply Clause 7 of the Agreement in the determination of the compensation in the case at hand, and calculated it essentially based on the remaining contractual value criterion established in Article 17.1 FIFA RSTP. In particular, the FIFA PSC affirms in the Appealed Decision that the clause *“did not fulfil the criteria of reciprocity and proportionality”* and calculates the compensation as follows:

- Salaries from October 2023 to May 2024: USD 96,000
- Contract provider payment: USD 10,000
- Flight ticket from Saudi Arabia to Croatia: USD 700

62. The Sole Arbitrator shall stress that with regard to the reciprocity of the clause, the FIFA PSC fails to specifically explain why Clause 7 of the Agreement embodies a non-reciprocal liquidated damages clause, and as to the issue of the proportionality of the

clause, the FIFA PSC simply comes to conclude that a compensation of two monthly salaries for a contract with a duration of one season falls too short.

63. The Sole Arbitrator respectfully disagrees with the FIFA PSC's approach on this matter.
64. Concerning the alleged lack of reciprocity of Clause 7 of the Agreement, it is the Sole Arbitrator's view that such contractual provision clearly contains a reciprocal liquidated damages clause. The agreed compensation is payable "*if either party terminates the contract*", and the amount payable (USD 24,000) is the same in case it is the Coach or the Club the one terminating the Agreement. Therefore, the Sole Arbitrator sees no reason to consider that the liquidated damages clause contained in Clause 7 of the Agreement is not reciprocal.
65. With regard to the proportionality of the clause, as stated in the FIFA Commentary to the FIFA RSTP (page 174), it "*must be assessed on a case-by-case basis*", which means that all the relevant circumstances of the case shall be borne in mind.
66. The Sole Arbitrator shares the view, expressed in the award CAS 2023/A/9756, that the potential disproportion shall not be assessed only by comparing the amount of the liquidated damages clauses agreed between the parties with the residual value of the employment agreement (as the Appealed Decision did), but also by considering other factors such as the positions of the parties to the contract in question, their bargaining power, their degree of knowledge of the clause and its effects or the balance of the clause.
67. In the present case, the Sole Arbitrator shall note that in Clause 7 of the Agreement, the Parties expressly mentioned that the USD 24,000 compensation is "*fair and proportionate and agreed between both parties after long negotiation*". This is a very relevant element: the Parties (i) freely agreed on the compensation, (ii) expressly convened on its fairness and proportionality and (iii) and did so after lengthy negotiations as they affirmed in the Agreement.
68. It is pertinent to stress that the Coach failed to establish (he did not even raise it) that he signed the Agreement under error, coercion or other defect that could have influenced his willingness to enter into the Agreement, which by the way is a 3-page agreement drafted in very simple and understandable terms. In particular, Clause 7 is a 3-line clause very easily identifiable and comprehensible by the Coach.
69. In the same vein, the facts of the case and the evidence taken do not reveal that a specific imbalance in the Parties' bargaining power ever existed, especially considering that the Respondent is an experienced coach. In his letter of 15 May 2024, the Respondent submitted that his bargaining power in the Agreement was "*extremely weak*" but did not substantiate and less prove such statement neither in such letter nor elsewhere in these proceedings.
70. The amount of the compensation agreed by the Parties in case of termination (which is equivalent to 2 months of salary) may not be huge, but in the Sole Arbitrator's view, this circumstance shall not automatically entail that it is not proportionate in a scenario in which (i) the Coach was in a position to terminate the Agreement and leave the Club by

paying the same amount to the Club, (ii) the Parties convened on the clause “*after long negotiation*”, (iii) both Parties, at the time of executing the Agreement, found and unequivocally wrote in the agreement that the amount of USD 24,000 was “*fair and proportionate*” and (iv) the Agreement has a relatively short duration (10 months). Bearing this in mind, in order to deviate from the Parties’ written consensus unequivocally expressed in the Agreement in use of their contractual autonomy, a higher threshold is needed in the Sole Arbitrator’s opinion. In this respect, both the Appealed Decision and the Respondent failed to provide convincing arguments and evidence to hold the non-application of Clause 7 of the Agreement to this case.

71. Therefore, the Sole Arbitrator considers that Clause 7 is to be deemed valid and applicable to the case at hand. Therefore, the compensation for breach of contract shall not be fixed in the amount of USD 106,700 as in the Appealed Decision, but in the sum of USD 24,000, which is the amount that the Parties specifically agreed upon, after a long negotiation, as a fair and proportionate sum of liquidated damages in case of contractual termination.
72. For the sake of clarity and in line with para. 51 above, the Sole Arbitrator considers that the sum of USD 10,000 stipulated in Clause 2 of the Agreement as “*Contract provider payment*” (which the FIFA PSC treated as part of the compensation for breach of contract) is actually a remuneration entitlement triggered by the signature of the Agreement and, therefore, should be considered as outstanding remuneration and not as part of the compensation for breach of contract.
73. Interest shall accrue on the amount of USD 24,000 at the rate of 5% *per annum* as from 30 September 2023 (the day after the premature termination of the Agreement) until the date of effective payment in accordance with Articles 102 and 104 of the Swiss Code of Obligations. In fact, the Appellant did not expressly contest this.
74. In conclusion, the appeal shall be partially upheld and the Club shall be ordered to pay the following amounts to the Coach:
 - USD 12,000 as outstanding remuneration (August 2023) plus 5% interest *per annum* as from 1 September 2023 until the date of effective payment.
 - USD 12,000 as outstanding remuneration (September 2023) plus 5% interest *per annum* as from 1 October 2023 until the date of effective payment.
 - USD 10,000 as outstanding remuneration (Contract provider payment) plus 5% interest *per annum* as from 2 October 2023 until the date of effective payment.
 - USD 24,000 as compensation for breach of contract without just cause, plus 5% interest *per annum* as from 30 September 2023 until the date of effective payment.

XI. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 8 January 2024 by Hajer FC against the decision issued on 5 December 2023 by the Players' Status Chamber of the *Fédération Internationale de Football Association* is partially upheld.
2. The decision issued on 5 December 2023 by the Players' Status Chamber of the *Fédération Internationale de Football Association* is confirmed, save for point 2 of the decision which is amended as follows:

“Hajer Club must pay to Mr Rodion Gačanin the following amounts:

- *USD 12,000 as outstanding remuneration plus interest at the rate of 5% p.a. from 1 September 2023 until the date of effective payment;*
- *USD 12,000 as outstanding remuneration plus interest at the rate of 5% p.a. from 1 October 2023 until the date of effective payment;*
- *USD 10,000 as outstanding remuneration plus interest at the rate of 5% p.a. from 2 October 2023 until the date of effective payment;*
- *USD 24,000 as compensation for breach of contract without just cause plus interest at the rate of 5% p.a. from 30 September 2023 until the date of effective payment;”*

3. (...).

4. (...).

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

Seat of arbitration: Lausanne, Switzerland

Date: 24 September 2024

COURT OF ARBITRATION FOR SPORT

Jordi López Batet
Sole Arbitrator