



**Arbitration CAS 2015/A/4112 Saudi FC Al-Ittihad Jeddah Club v. Eduardo Uram, award of 15 January 2016**

Panel: Mr Hendrik Willem Kesler (The Netherlands), President; Mr Michele Bernasconi (Switzerland); Mr Rui Botica Santos (Portugal)

*Football*

*Agency contract between a club and a players' agent*

*Right of a club to sanction a players' agent inducing a player to breach his contract*

*Determination of the remuneration of the agent*

1. If a players' agent has been proved to be inducing a player to breach his contract, provisions in the Regulations on the Status and Transfer of Players (RSTP) as well as in the applicable Players' Agents Regulations provide for the opening of a disciplinary procedure against the agent, who will possibly be subject to a sanction. These provisions do not confer to a club the right a) to sanction the agent in any manner or b) to withhold payment of the obligations contractually agreed to.
2. There is no cap in the applicable Players' Agents Regulations on the amount of the agent's remuneration when an agent has been contracted by a club. The new FIFA Regulations on Working with Intermediaries as per 1 April 2015 only recommend that the remuneration due to the intermediary be of 3% of the player's basic gross income. Under Swiss law, there is no mandatory cap on the amount of the agent's remuneration, when he has been contracted by a club. Therefore, when asked to reduce an allegedly excessive agent's fee in application of Article 417 of the Swiss Code of Obligations, the adjudicating body must observe a degree of deference as the parties are, to a certain extent, free to determine the amount of the commission and as the principle of freedom of contract commands that the judge abides by the parties' agreement. To determine if the remuneration is excessive, the adjudicating body must assess all the elements, which are objectively relevant and take into account the concrete circumstances of the matter before it. In a case where it is undisputed that the agent properly fulfilled his contractual obligations arising from the agency agreement, the principle of *pacta sunt servanda* must be respected and the terms and conditions, which the parties freely agreed on, must be fulfilled.

## I. PARTIES

1. Saudi FC Al-Ittihad Jeddah Club (the “Club”) is a football club with its registered office in Jeddah, Saudi Arabia. It is a member of the Saudi Arabian Football Federation, itself affiliated to the Fédération Internationale de Football Association (“FIFA”) since 1956.
2. Mr Eduardo Uram is a FIFA licensed players’ agent (the “Agent”), registered with the Brazilian Football Association (“*Confederação Brasileira de Futebol*”), which is affiliated to FIFA since 1923.

## II. FACTUAL BACKGROUND

### A. *Background facts*

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings, and evidence adduced. References to additional facts and allegations found in the Parties’ written submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its award only to the submissions and evidence it deems necessary to explain its reasoning.

### B. *The contract entered into by the Parties*

4. D., born on 17 June 1985, is a professional football player of Brazilian nationality (the “Player”).
5. On 21 July 2012, the Club signed an employment contract with the Player (the “Employment Contract”). Under this agreement, which was effective from 23 July 2012 until 30 June 2015, the Player was to receive a) a yearly salary of USD 2,500,000 for the first two seasons, b) USD 3,000,000 for the third season, c) bonuses provided for in the Club’s “*bonus and incentive scheme*” as well as d) various benefits in kind. For the first season, the Player’s wage was to be paid with an advance instalment of USD 1,000,000 due on or before 15 September 2012, the balance being payable in 12 equal instalments of USD 125,000. A similar payment schedule was agreed on for the following seasons.
6. On 21 July 2012, the Parties signed a contract (hereinafter the “Agency Agreement”), which reads as follows where pertinent:

“(…) WHEREAS:

- (i) the CLUB acquired the federative rights of football player D. (hereinafter “Player”) from Brazilian club C.R. Vasco da Gama and signed a labor contract with the Player for a period of 03 (three) years, with possibility of extension for another 01 (one) year (hereinafter “Labor Contract”);
- (ii) the AGENT participated in the negotiations for hiring the Player, and negotiated with the CLUB the payment of an agency fee for these services.

*Thus, the [Parties] hereby agree to enter into this AGENCY AGREEMENT, subject to the following terms and conditions:*

1. *The CLUB shall pay to the AGENT as remuneration for mediation services on the signature of the contract with the Player, the initial amount equivalent to US\$ 400.000,00 (four hundred thousand U.S. Dollars) in two installments, as follows:*
    - a) *one installment of US\$ 200.000,00 (...), to be paid no later than November 15<sup>th</sup> 2012;*
    - b) *one installment of US\$ 200.000,00 (...), to be paid no later than June 15<sup>th</sup> 2013;*

*(...)*
  3. *The payment of all the amounts reported in the previous items shall be done NET of Saudi taxes and without any discount by the CLUB to the company owned by the AGENT (...)*
  4. *In the case of the CLUB fail to make the payment of the first installment (described on item 1.a, hereinabove) on the deadline established thereon, the payment date of the second installment (item 1.b, hereinabove) will automatically be anticipated and the CLUB shall pay both installments immediately. If the CLUB do not pay both installments in up to 7 (seven) days, the CLUB shall pay a compensation fine of US\$ 20,000.00 (...), plus interest of 10% (...) per year, calculated pro rata die, until the effective payment, regardless of any notification or other formality. (...)*
  6. *No modification, amendment or waiver of the provisions of this Agreement shall be effective unless made in writing and signed by the parties hereto, which instrument shall be considered as part of the present agreement for all purposes. (...)*
  8. *The articles of this agreement shall be construed observing the rules and orientations established by FIFA and any dispute arising from it shall be submitted to FIFA Dispute Resolution Chamber, as first instance, and to CAS-TAS as second instance, been the arbitration held by three arbitrators, in English language, which decision shall be final and binding, renouncing the parties to any kind of appeal, in special the Swiss Court”.*
7. During the proceedings before FIFA as well as before the Court of Arbitration for Sport (the “CAS”), the Club filed an undated document, according to which the Parties agreed to terminate the Agency Agreement with immediate effect, “*releasing each other from all the rights and obligations established therein*” (the “Termination Agreement”). It is undisputed that the Agent has never signed the said document.
  8. On 23 July 2012, the Club’s honorary members elected a new President.
  9. On 16 October 2012, the Player formally complained to the Club about the fact that he had not yet received any of his salaries. He requested the Club to pay USD 1,375,000 on or before 22 October 2012, failing which he would end the Employment Contract.
  10. On 26 October 2012, the Player unilaterally and prematurely terminated the Employment Contract because of the non-payment of his remuneration by the Club.
  11. To date, the Club has never paid any amount to the Agent in relation with the Agency Agreement.

**C. The Proceedings before the FIFA Single Judge of the Players' Status Committee**

12. On 15 January 2013, the Agent initiated proceedings before the FIFA Single Judge of the Player's Status Committee (the "FIFA Single Judge") to order the Club to pay in his favour an amount of USD 420,000 plus 10% interest as from 15 November 2012. This amount corresponds to:
  - the commission to which the Agent was entitled (*i.e.* USD 400,000). In accordance with Articles 1 and 4 of the Agency Agreement, the two instalments had fallen due on 15 November 2015, because of the Club's failure to execute the timely payment of the first instalment.
  - the penalty fee (*i.e.* USD 20,000) as foreseen under Article 4 of the Agency Agreement because of the Club's non-performance of its contractual obligations.
13. In its various submissions filed before the FIFA Single Judge, the Club argued that the Agent was not entitled to any payment as the Parties had decided to release each other from all the rights and obligations deriving from the Agency Agreement by concluding the Termination Agreement. Alternatively, the Club found the Agent's commission to be excessive considering that the Player prematurely terminated the Employment Contract after three months. The Club maintained that the Agent's remuneration should be reduced in proportion to the actual time the Player had spent at the service of his employer.
14. In a decision dated 20 November 2014, the FIFA Single Judge observed that the Termination Agreement had not been signed by the Agent and that the Club had not provided any evidence indicating that the Agent had accepted to waive his rights arising from the Agency Agreement, which, therefore, remained binding upon the Parties.
15. With reference to the Club's allegation that the amount of the Agent's commission should be reduced in proportion to the actual time the Player had spent at its service, the FIFA Single Judge held that *"the contract concluded by the [Agent] and the [Club] did not include any condition for the payment of the commission to the [Agent]. In other words, according to the contract, the payment of the commission to the [Agent] by the [Club] was not subject to the permanence of the player at the [Club] or to any other condition whatsoever"*. In light of this and of the principle *pacta sunt servanda*, the FIFA Single Judge found that the Club had to pay USD 400,000 to the Agent.
16. Without further explanation, the FIFA Single Judge found that the Club had to pay the penalty of USD 20,000 and *"5% interest p.a. on the amount of USD 400,000 from 16 November 2012 until the date of effective payment, as established in the contract"*.
17. As a result, on 20 November 2014, the FIFA Single Judge decided the following:
  1. *The claim of [the Agent] is partially accepted.*
  2. *The [Club] has to pay to the [Agent] **within 30** days as from the date of notification of this decision, the amount of USD 420,000 as well as 5% p.a. on the amount of USD 400,000 from 16 November 2012 until the date of effective payment.*

3. *Any further claim lodged by the [Agent] is rejected.*
  4. *If the aforementioned amounts, plus interest as established above, are not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
  5. *The final costs of the proceedings in the amount of CHF 25,000 are to be paid by the [Club], **within 30 days** as from the date of notification of this decision, as follows:*
    - 5.1 *The amount of CHF 20,000 has to be paid to FIFA (...)*
    - 5.2 *The amount of CHF 5,000 has to be paid directly to the [Agent] (...).*
18. On 3 June 2015, the Parties were notified of the above decision (the "Appealed Decision").

### **III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

19. On 22 June 2015, the Club filed its statement of appeal with the CAS in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (hereinafter the "Code").
20. On 26 June 2015, the CAS Court Office acknowledged receipt of the Club's statement of appeal, of its payment of the CAS Court Office fee and took note of its nomination of Mr Michele A. R. Bernasconi as arbitrator. It drew the Parties' attention to the possibility of submitting the dispute to CAS mediation and noted that the Club chose English as the language of the arbitration. In this respect, it informed the Agent that unless he objected within three days, the procedure would be conducted in English. The CAS Court Office also invited the Agent to nominate an arbitrator from the list of CAS arbitrators within ten days, failing which the President of the CAS Appeals Arbitration Division, or her Deputy, would proceed with the appointment *in lieu* of the Agent.
21. On 6 July 2015, the Club filed its appeal brief in accordance with Article R51 of the Code.
22. On 8 July 2015, the Agent informed the CAS Court Office that he was appointing Mr Rui Botica Santos as arbitrator and confirmed that he did not accept to submit the dispute to CAS mediation.
23. On 9 July 2015, the CAS Court Office advised the Parties that no CAS Mediation would be initiated and that the proceeding would continue under the CAS Appeals Arbitration rules.
24. On 9 July 2015, FIFA confirmed to the CAS Court Office that it renounced its right to request its intervention in the present arbitration proceeding.
25. On 27 July 2015, the Agent filed his answer in accordance with Article R55 of the Code.
26. On 30 July 2015, the Parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held.

27. On 4 August 2015, the Club expressed its preference for a hearing to be held, whereas, on 6 August 2015, the Agent confirmed to the CAS Court Office that the matter should be decided solely on the basis of the Parties' written submissions.
28. On 7 August 2015, the Club insisted on the need for a hearing to be held.
29. On 17 September 2015, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Mr Hendrik Willem Kesler, President of the Panel, Mr Michele A. R. Bernasconi and Mr Rui Botica Santos, arbitrators.
30. On 22 September 2015 and on behalf of the Panel, the Club was invited to provide the CAS Court Office with justified grounds to hold a hearing.
31. On 30 September 2015, the Club confirmed that, in its view, a hearing had to be held as *"there are several factual and legal considerations disputed which makes [sic] necessary not just the celebration of the hearing, but also the physical presence of the [Agent] in said hearing. Additionally, the [Club] has had similar cases to this one where it is important to interrogate the Respondent with a chance of expressing its comments as to the Appellant's position"*. In addition, the Club argued that it was fundamental for it to express its view before the Panel and *"to be able to see and hear first-hand the [Agent's] statement, i.e. not via video-conference"*.
32. On 12 October 2015, the CAS Court Office informed the Parties that the Panel did not find sufficient ground to hold a hearing in this matter and announced that an award would be rendered based solely on their written submissions. However, and instead of an oral hearing, the CAS Court Office advised the Parties that they were granted a second round of submissions in accordance with Article R56 para. 1 of the Code.
33. On 27 October 2015 and within the granted deadline, the Club filed its reply.
34. On 16 November 2015 and within the granted deadline, the Agent filed his rejoinder.
35. On 2 December 2015 the CAS Administration received the Order of Procedure signed by the Parties.

#### **IV. SUBMISSIONS OF THE PARTIES**

##### ***(i) The Appeal***

36. In its reply dated 27 October 2015, the Club submitted the following requests for relief:

##### ***“REQUESTS***

*To the Court of Arbitration for Sport:*

- A. *To fully accept the present second written submission against the Decision of the Single Judge of the FIFA Players' Status Committee dated 20 November 2014.*
- B. *As consequence, to adopt an award annulling said decision and declaring that:*

- 1) *To set aside the appealed decision and adopt a new one declaring that all the claims of the [Agent] against Al Ittihad FC must be dismissed.*
  - 2) *Alternatively, to adopt an award annulling said decision and adopting a new one declaring that the amount claiming should be reduced to the limits in view of the meaning of the term “excessive” used in article 417 CO.*
- C. *To fix a sum of 20,000 CHF to be paid by the [Agent] to the [Club], to help the payment of its legal fees and costs.*
- D. *To condemn the [Agent] to the payment of the whole CAS administration costs and the Arbitrators fees”.*

37. The Club’s submissions, in essence, may be summarized as follows:

- The Club’s board of directors was changed shortly after the signature of the Employment Contract and the Agency Agreement. In an attempt to improve the Club’s delicate financial situation, the Club’s new management obtained from the Player and his teammates an amendment of the payment schedule established in their respective employment contract. Likewise, the Club’s new management negotiated with the Agent the terms and conditions of the Termination Agreement. The Agent accepted orally to be bound by this document and received a copy thereof, duly signed by the Club. The Agent was expected to countersign and return the Termination Agreement but changed his mind, when he realized a) that the Player was about to leave the Club, b) that he could negotiate the Player’s next transfer with his new employer and c) obtain therefrom an additional agent fee.
- Shortly after he unilaterally and prematurely terminated the Employment Contract, the Player found a new employer. This sequence of events strongly suggests that the Agent induced the Player’s departure from the Club. He *“played a fundamental role in interfering and prompting the early departure of the [Player] from Saudi Arabia to Brazil. There is a clear link between the two events, because the intentional and malicious conduct of the agent culminated with the breach of contract by the player, who has surprisingly been incorporated immediately (in a few days) to the Brazilian club Cruzeiro”*. Under these circumstances and in view of the short period of time between the signature of the Employment Contract, its termination and the new labour relationship entered into with the Player’s new employer, the Agent commits an abuse of right when he requires payment of a commission. *“[The] attitude of the [Agent] in the present matter is far from good faith”*.
- In view of the services actually provided by the Agent and the duration of the employment relationship with the Player, the commission of USD 400,000 is excessive and disproportionate. In view of Article 417 of the Swiss Code of Obligations (“CO”) and of CAS precedents, the Agent’s claim should be dismissed or, at least, reduced considerably. As a matter of fact, the Agent’s commission was determined by reference to the duration of the Player’s employment contract with the Club (*i.e.* three years) and to the Player’s global wages (*i.e.* USD 8,000,000). The Agent’s remuneration should be reduced in proportion to the actual time the Player had spent at the service of the Club.

As a consequence, the Agent is entitled to no more than USD 33,000 (= USD 400,000./36 months x 3 months).

- The Agency Agreement contains an unacceptable discrepancy between the Club's and the Agent's respective duties. This unbalanced deal must be remedied by reducing the commission. Any amount exceeding USD 33,000 would constitute unjust enrichment.

**(ii) The Answer**

38. In his rejoinder, the Agent submitted the following requests for relief:

*"In view of the above, the [Agent] renews his request that this Court dismisses entirely the [Club's] statement of Appeal and maintains the FIFA Players' Status Committee decision to order the [Club] to pay to the [Agent]:*

- *USD 400,000.00 (...) as remuneration for the services of the "Agency Agreement";*
- *5% (five per cent) of interest on the amount of USD 400,000.00 (...) starting from 16 November 2012;*
- *USD 20,000.00 (...) as contractual penalty; and*
- *the reimbursement of CHF 5,000.00 (...) paid in advance by the Agent as anticipation of costs".*

39. The Agent's submissions, in essence, may be summarized as follows:

- The Agent has never signed the Termination Agreement and has never agreed to release the Club from its contractual obligations arising from the Agency Agreement. The Club has not been able to prove otherwise.
- The Agent has not acted in bad faith and has not committed an abuse of right simply because he filed a claim before the authorized judicial bodies in order to seek payment of his contractually agreed fees.
- The Agent has never induced the Player to terminate the Employment Contract. The Club has not adduced any evidence to support such an assertion. However, *"even if those allegations are deemed true, if the [Agent] is considered guilty for inducing the Player to the breach his labor contract with the Appellant, there will be no effect on the [Club's] debt with the [Agent]"*. As a matter of fact, there is no link between the Agency Agreement and the Employment Contract.
- The Player decided on his own to leave the Club, when he realised that the latter would never perform its side of the Employment Contract, *i.e.* namely pay the agreed salary. The Club can only blame itself for the premature termination of the Employment Contract and the Agent does not have to bear the consequences arising from the Club's own failure to carry out its contractual obligations towards the Player.



- The Agent's commission of USD 400,000 is not disproportionate. Both Parties have accepted this amount freely, voluntarily and unreservedly, as both regarded it as reasonable. In addition, the Agency Agreement was signed after the Employment Contract. *"Therefore, when the parties executed the "Agency Agreement", they were fully aware of all their acts and knew exactly what the [Agent] had done in service of the [Club]. (...) So there is no excuse for the [Club] to refuse to pay what it is committed to".*
- The Club *"says that USD 400,000 is an excessive amount of remuneration (...), but there is no factual or legal ground to support that allegation. Why is that amount excessive? Under what terms of comparison? [The Club] does not tell".*
- The Club relies on CAS precedents, which are not pertinent as they have nothing in common with the matter at hand. As a matter of fact the CAS jurisprudence referred to by the Club concerns the case of an agent who just began the negotiations.

## V. APPLICABLE LAW

40. Article R58 of the 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

41. The case at hand was submitted to the FIFA Single Judge on 15 January 2013, *i.e.* after 25 July 2012 and 1 January 2008, which are the dates when the FIFA Statutes, edition July 2012 (the "applicable FIFA Statutes") and, respectively, the FIFA Players' Agents Regulations (the "applicable FIFA Players' Agents Regulations") came into force.
42. Pursuant to Article 66 para. 2 of the applicable FIFA Statutes, *"[t]he 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"*.
43. Article 8 of the Agency Agreement provides that *"The articles of this agreement shall be construed observing the rules and orientations established by FIFA and any dispute arising from it shall be submitted to FIFA Dispute Resolution Chamber, as first instance, and to CAS-TAS as second instance (...)".*
44. As a result and in light of the foregoing, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply complementarily.

## VI. JURISDICTION

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

*"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement*

*and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body”.*

46. The jurisdiction of CAS, which is not disputed, derives from Article 67 of the FIFA Statutes as well as from Article 8 of the Agency Agreement. It is further confirmed by the Order of Procedure duly signed by the Parties.
47. It follows that the CAS has jurisdiction to decide on the present dispute.
48. Under Article R57 of the Code, the Panel has the full power to review the facts and the law.

## **VII. ADMISSIBILITY**

49. The appeal is admissible as the Club submitted it within the deadline provided by Article R49 of the Code as well as by Article 67 para. 1 of the applicable FIFA Statutes. Further, it complies with all the other requirements set forth by Article R48 of the Code.

## **VIII. MERITS**

50. On the one hand, the Agent submits that he has carried out his contractual obligations exhaustively and is therefore entitled to the payment of the agreed fee.
51. On the other hand, the Club contends that a) the Agent accepted the Termination Agreement, b) the Agent is not entitled to any remuneration as, shortly after the signature of the Employment Contract, he induced the Player to leave the Club for another employer, triggering another agent fee, c) the Agent's remuneration is excessive and should be reduced.
52. Hence, the issues to be resolved by the Panel are the following:
  - Has the Agent accepted the Termination Agreement?
  - Can the Agent's fee under the Agency Agreement be impacted by the Player's premature termination of the Employment Contract, whether this termination was or not induced by the Agent?
  - Is the Agent's fee under the Agency Agreement excessive and should it be reduced?

**(i) *Has the Agent accepted the Termination Agreement?***

53. The following facts are undisputed:
- The Parties have signed the Agency Agreement.
  - The Player signed the Employment Contract and joined the Club's team.
  - The Agent has not signed the Termination Agreement.
54. The Club contends that the Agent orally accepted the terms of the Termination Agreement and, consequently, absolved the Club of its contractual obligations. The Agent categorically refutes this assertion.
55. Pursuant to Article 12 para. 3 of the applicable FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, *"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof"*. The same principle can be found under Swiss law, which provides that *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"* (Article 8 of the Swiss Civil Code).
56. Based on the foregoing and with regards to the burden of proof, it is the Club's duty to objectively demonstrate the existence of what it alleges (ATF 132 III 449 consid. 4; ATF 130 III 417 consid. 3.1). It is not sufficient for it to simply assert a state of fact for the Panel to accept it as true.
57. It can be observed that the Club has not produced a single evidence (documents and/or witnesses) to substantiate its allegation. Moreover, it did not give any indication as to why the Agent would have accepted to waive any of his rights arising from the Agency Agreement. The Club only submitted that its financial condition was put at risk by the excessive commitments undertaken by its previous management and that its new board of directors was trying to stabilize its situation by negotiating new deals with the Club's creditors. However, this explanation offers no answer regarding the reasons why the Agent would have simply accepted to release the Club from all its contractual duties, without any counterpart.
58. As a result, the Panel finds that the Club failed to establish that the Agent accepted the terms of the Termination Agreement, which is therefore of no relevance in the present case.

**(ii) *Can the Agent's fee under the Agency Agreement be impacted by the Player's premature termination of the Employment Contract, whether this termination was or not induced by the Agent?***

59. The Club contends that the Agent has induced the Player to prematurely terminate the Employment Contract in order to sign with a new employer. It claims that, based on Article 17 para. 5 of the applicable Regulations on the Status and Transfer of Players of FIFA (hereinafter the "RSTP") as well as on Article 22 para. 2 of the applicable FIFA Players' Agents Regulations, there is a presumption of induced breach of contract, when a player leaves his club without just cause and, shortly after, is hired by a new club. Under these circumstances and according to the

applicable regulations, the Club is of the opinion that it is the Agent's burden to rebut the presumption of inducement if he wants to escape any responsibility.

60. Article 17 para. 5 of the RSTP reads as follows:

*"Any person subject to the FIFA Statutes and regulations (club officials, players' agents, players, etc.) who acts in a manner designed to induce a breach of contract between a professional and a club in order to facilitate the transfer of the player shall be sanctioned".*

61. Article 22 para. 2 of the applicable FIFA Players' Agents Regulations states the following:

*"Players' agents are prohibited from approaching any player who is under contract to a club with the aim of persuading him to terminate his contract prematurely or to violate any obligations stipulated in the employment contract. It shall be presumed, unless established to the contrary, that any players' agent involved in a contractual breach committed by the player without just cause has induced such breach of contract".*

62. The Panel observes that the Club has not established - or at least credibly demonstrated - that the Player committed *"a contractual breach (...) without just cause"*. In his submissions, the Agent stated that the Player left the Club because the latter failed to pay any of his wages during the first months of the employment. If the Agent's assertion was incorrect, the Club could have easily filed compelling evidence to the contrary, by submitting for instance the Player's pay-slip, bank account information or an agreement by which the Player accepted to postpone the payment of his salary.
63. In any event, should the above provisions come into play, they would result in the opening of a disciplinary procedure against the Agent, who would possibly be subject to a sanction. With regard to a player's agent inducing a player to breach his contract, the FIFA Players' Agents Regulations provide for special provisions related to the competent body to impose sanctions, as well as to the possible sanctions (see Article 32 and 33 of the said regulations). The sanctions which can be imposed upon a players' agent are: a) a reprimand or a warning; b) a fine of at least CHF 5,000; c) a suspension of licence for up to 12 months; d) a licence withdrawal; e) a ban on taking part in any football-related activity. These sanctions may be imposed separately or in combination.
64. It appears that the above provisions do not confer to the Club the right a) to sanction the Agent in any manner or b) to withhold payment of the obligations contractually agreed to.
65. Based on the foregoing, the argument made by the Club in relation with the alleged inducement of the Player to breach the Employment Contract must be dismissed without further consideration. As a matter of fact, considering all the evidence submitted, the Panel is satisfied that there is no correlation between the consequences following the Agent's possible misconduct and his contractual claim against the Club.

**(iii) Is the Agent's fee under the Agency Agreement excessive and should it be reduced?**

66. The Club claims that the Agent's fee was determined by reference to the expected duration of the Player's employment contract with the Club (*i.e.* three years) and that it should be reduced in proportion to the actual time the Player had spent at the service of the Club. It also contends that the Agent's commission is in any manner excessive and should be reduced on the basis of Article 417 CO and of CAS precedents.
67. The Panel must resolve the following issues:
- a) The remuneration should be reduced in proportion to the time spent by the Player with the Club;
  - b) The Agent's remuneration is excessive;
  - c) The Agent's remuneration should be reduced on the basis of Article 417 CO and of CAS precedents.
- a) *The remuneration should be reduced in proportion to the time spent by the Player with the Club*
68. With reference to the fact that the Agent's remuneration should be reduced in proportion to the time spent by the Player at the service of the Club, the Panel endorses the position articulated by the FIFA Single Judge in the Appealed Decision, when he found that "*the contract concluded by the [Agent] and the [Club] did not include any condition for the payment of the commission to the [Agent]. In other words, according to the contract, the payment of the commission to the [Agent] by the [Club] was not subject to the permanence of the player at the [Club] or to any other condition whatsoever*". In other words, had the Parties agreed that the remuneration was directly linked with the duration of the Employment Contract, they should have inserted a relevant provision in the Agency Agreement. However, they did not.
- b) *The Remuneration is excessive*
69. According to the applicable FIFA Players' Agents Regulations, the agent's remuneration varies whether an agent was engaged to act on a player's behalf or has been contracted by a club:
- In the first place, Article 20 para. 4 of the applicable FIFA Players' Agents Regulations provides that "*If the players' agent and the player cannot reach agreement on the amount of remuneration to be paid or if the representation contract does not provide for such remuneration, the players' agent is entitled to payment of compensation amounting to three per cent of the [player's annual basic gross income, including any signing-on fee that the players' agent has negotiated for him in the employment contract], which the player is due to receive from the employment contract negotiated or renegotiated by the players' agent on his behalf*".
  - In the second place, there is no cap on the amount of the agent's remuneration. Article 20 para. 5 of the applicable FIFA Players' Agents Regulations only states that "*A players' agent*

*who has been contracted by a club shall be remunerated for his services by payment of a lump sum that has been agreed upon in advance”.*

70. With its Regulations on Working with Intermediaries as per 1 April 2015 (the “New Regulations”), FIFA has abandoned its licensing system and adopted minimum standards/requirements to be implemented by the national football associations, which are free to further regulate the players’ agents scene.
71. As regards the remuneration, Article 7 of the New Regulations provides the following:

“(…)

  2. *Clubs that engage the services of an intermediary shall remunerate him by payment of a lump sum agreed prior to the conclusion of the relevant transaction. If agreed, such a payment may be made in instalments.*
  3. *While taking into account the relevant national regulations and any mandatory provisions of national and international laws, and as a recommendation, players and clubs may adopt the following benchmarks:*

“(…)

    - b) *The total amount of remuneration per transaction due to intermediaries who have been engaged to act on a club’s behalf in order to conclude an employment contract with a player should not exceed three per cent (3%) of the player’s eventual basic gross income for the entire duration of the relevant employment contract”.*
72. As regards the agent’s fee, the New Regulations only recommend that the remuneration due to the intermediary be of 3% of the player’s basic gross income. It is thus still up to the parties to decide on a higher percentage. Obviously mandatory national provisions should be taken into consideration.
73. Under Swiss law, there is no mandatory cap on the amount of the agent’s remuneration, when he has been contracted by a club (See letter of 14 March 2014 of the Secrétariat d’Etat à l’économie SECO, du Département fédéral de l’économie DFE, entitled “*L’activité d’agent de joueurs de football; Conditions légales prévues par la loi fédérale sur le service de l’emploi et la location de services - LSE; RS 823.11*”).
74. In the present case, the Parties have agreed on a lump sum of USD 400,000, which represents 5% of the Player’s basic income for the entire duration of the Employment Contract (USD 8,000,000). Such a remuneration is compatible with the applicable FIFA Players’ Agents Regulations and with Swiss law. However, it exceeds the recommendations contained in the New Regulations, which a) by nature are not mandatory (*i.e.* as they are mere “recommendations”) and b) were not in force at the moment of the signature of the Agency Agreement.
75. *Per se*, the amount of USD 400,000 does not appear to be excessive. In this regard, it must be observed that the Club did not explain a) the excessive nature of the remuneration, b) what makes it abnormal in light of the circumstances, c) in what manner there is an imbalance between the Parties’ obligations, which must be considered as usurious.

c) *The Agent's remuneration should be reduced on the basis of Article 417 CO and of CAS precedents*

76. Article 417 CO reads as follows:

*"Where an excessive fee has been agreed for identifying an opportunity to enter into or facilitating the conclusion of an individual employment contract or a purchase of land or buildings, on application by the debtor the court may reduce the fee to an appropriate amount".*

77. Article 417 only applies to agency agreements concerning employment contracts or real estate purchase contracts (RAYROUX F., in THÉVENOZ/WERRO, *Commentaire Romand*, Bâle, 2012, ad. Article 417, n 2, p. 2499). When he applies this provision, the Judge must observe a degree of deference as the parties are, to a certain extent, free to determine the amount of the commission and as the principle of freedom of contract commands that the judge abides by the parties' agreement. The application of Article 417 CO is exceptional by nature (ATF 106 II 56, JdT 1980 I 279).

78. In view of the random nature of a brokerage contract, it must be assumed that the remuneration rewards the success achieved by the agent and not the activity he actually carried out (ATF 138 III 669, consid. 3.1). To determine if the remuneration is excessive, the Judge must assess all the elements, which are objectively relevant and take into account the concrete circumstances of the matter before him (Decision of the Swiss Federal Tribunal 4C.362/1999; dated 22 March 2000, consid. 4.b).

79. In the present case, it is undisputed that the Agent properly fulfilled his mandate as the Club signed the Employment Contract with the Player. The situation is quite different from the CAS precedent on which the Club essentially relies on to support its position (CAS 2011/A/2660), where the Agent was only asked to *"begin negotiations"*. This CAS precedent differs greatly from the matter at hand, where the Agent's intervention lead to the signature of the Employment Contract (see ATF 138 III 669, consid. 3.1).

80. Finally, the Club, which claims that the Agent's fee is excessive, did not offer any evidence that, in comparison with remunerations paid in similar circumstances, the Agent's fee of USD 400,000 is excessive.

#### **(iv) Conclusion**

81. The Agent has established that he had fulfilled his contractual obligations arising from the Agency Agreement. The Club has obviously accepted the Agent's performance as it entered into a labour relationship with the Player. The Panel finds that the principle of *pacta sunt servanda* must be respected and the terms and conditions, which the Parties freely agreed on, must be fulfilled.

82. The Club failed to bring any evidence or motive, which would support the elimination or the reduction of the remuneration contractually agreed by the Parties.

83. Based on the foregoing, the Panel finds that the requirements of Article 1 and 4 of the Agency Agreement are met and that the Agent is entitled to:

- the payment of the remuneration of USD 400,000;
  - the payment of the penalty fee of USD 20,000.
84. As regards the late interest, the Agency Agreement foresees the payment of an *“interest of 10% (...) per year, calculated pro rata die, until the effective payment, regardless of any notification or other formality. (...)”*. However, it must be observed that in his request for relief, the Agent asked the Panel to *“maintain the FIFA Player’s Status Committee decision”*. In other words, the Agent did not claim for the payment a) of a 10% interest on USD 400,000 or b) of any interest on the penalty fee. Under the *ultra petita* principle, the Panel must refrain from going beyond the Agent’s request for relief.
85. Regarding the *dies a quo* for the interest and pursuant to Articles 1 and 4 of the Agency Agreement, the Club is liable to pay to the Agent 5% interest as of 16 September 2012.
86. Based on the foregoing considerations, the Panel comes to the conclusion that the Appealed Decision must be confirmed and the appeal must be dismissed.
87. The above conclusion makes it unnecessary for the Panel to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed on 22 June 2015 by Saudi FC Al-Ittihad Jeddah Club against the decision issued on 20 November 2014 by the FIFA Single Judge of the Player’s Status Committee, is dismissed.
  2. The decision issued on 20 November 2014 by the FIFA Single Judge of the Player’s Status Committee is confirmed.
- (...)
5. All other of further claims are dismissed.