



**Arbitration CAS 2015/A/3975 Nassir Ali N. Alshamrani v. Asian Football Confederation (AFC), award of 31 August 2015 (operative part of 20 April 2015)**

Panel: Mr Sofoklis Pilavios (Greece), President; Mr João Nogueira Da Rocha (Portugal); Judge Rauf Soulio (Australia)

*Football*

*Disciplinary violations committed by a player during a match*

*Competence of a football organisation's disciplinary bodies to deal with a disciplinary incident*

*Standard of proof and evaluation of evidence regarding disciplinary violations*

*Violations of the applicable disciplinary regulations*

*Determination of the applicable sanctions*

1. The disciplinary bodies of a football organisation have the authority to deal with a disciplinary incident committed by a player during a match if the conditions indicated by the applicable disciplinary regulations are satisfied i.e. if an incident escaped the match official's attention.
2. In accordance with well-established CAS jurisprudence in disciplinary cases, a party must establish the facts underlying an alleged disciplinary violation to the "comfortable satisfaction" of a CAS panel. In this regard, a first disciplinary violation committed by a player during a match can be established on the basis of a video footage. A second disciplinary violation can be established on the basis of a match official's report. In this respect, absent sufficient evidence disproving its content, declarations made by match officials are presumed to be accurate according to the applicable regulations and to CAS jurisprudence.
3. There is no doubt that a head-butt directed at an opponent player during a match is to be treated as an offence under the applicable regulations and clearly constitutes a violation of the principles of fair play and an unsporting behaviour. Likewise the fact to spit at an opponent player is to be treated as an offence under the applicable regulations.
4. Pursuant to the applicable rules, a CAS panel has a faculty to impose a general sanction on a player responsible for two distinct violations or separate sanctions. The degree of the player's fault as well as the fact that he had a clean slate as he has not committed any other disciplinary offences prior to the events should be taken into consideration to establish appropriate sanctions.

## **I. PARTIES**

1. Mr Nassir Ali N. Alshamrani (hereinafter also referred to as “the Appellant” or “the Player”) is a Saudi Arabian professional football player who plays for Al Hilal Al Saudi Football Club, Saudi Arabia.
2. The Asian Football Confederation (hereinafter also referred to as “the Respondent” or “the AFC”) is the governing body of Asian football and has its registered headquarters in Kuala Lumpur, Malaysia. It exercises regulatory, supervisory and disciplinary functions over national federations, clubs, officials and players in Asia.

## **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 at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion 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 considers necessary to explain its reasoning.
4. On 1 November 2014, Al Hilal played against Western Sydney Wanderers in Riyadh, Saudi Arabia, in the second leg of the AFC Champions League final (hereinafter referred to as “the Match”), following a first leg 1-0 win by Western Sydney Wanderers in Sydney, Australia.
5. At the 95<sup>th</sup> minute of the Match there was an incident between the Appellant and Matthew Spiranovic, a player from the Australian team (hereinafter referred to as “the First Incident”). Mr Spiranovic fell to the ground but the referee did not stop the Match. The referee as well as the assistant referees and the fourth referee did not mention anything about this incident in their official reports.
6. The Match ended in a 0-0 draw and Western Sydney Wanderers won the AFC Champions League title.
7. After the final whistle the Appellant, while sitting on the ground, was engaged in another incident with Mr Spiranovic who was walking past him (hereinafter referred to as “the Second Incident”), which caused a confrontation to break out on the field between the Appellant, Mr Spiranovic and their respective teammates.
8. On the same day, 1 November 2014, the Match Commissioner reported on the Second Incident in the following terms:

*“After the final whistle: Al Hilal Player Jersey #15 Mr Nassir Alshamrani spat to the opponent, WSW Player Jersey #13 Mr Spiranovich [sic]. This disrespectful action provoked a confrontation on the field between the two clubs. Moreover, Mr Nassir Alshamrani tried to start a fight with Spiranovich [sic] after the spitting”.*

9. On 6 November 2014, the Director of the AFC Referees Department reported on the First Incident:

*“Min 90+5 – Al Hilal was making an attack from the left side of Western Sydney half. A ball was crossed high towards the goal area and it passes over the goalkeeper and both opposing teams. There was a tussle between player no. 13 of Western Sydney and no. 15 of Al Hilal in front of the Western’s Sydney goal area.*

*From the video clip and the replay, no. 15 of Al Hilal head butted player no. 13 of Western Sydney and it seems like the Al Hilal player’s head touched the left chin of the Western Sydney player. [...]”.*

10. On 7 November 2014, the referee of the Match confirmed via email that he did not witness the First Incident.

*B. Proceedings before the AFC bodies*

11. On 6 November 2014, the AFC Disciplinary Committee initiated disciplinary proceedings against the Appellant for having violated Article 57 of the AFC Disciplinary Code (hereinafter referred to as “the AFC DC”) and invited him to submit his explanation with regard to the First and the Second Incidents.
12. On 15 November 2014, the Appellant provided an explanation.
13. On 28 November 2014, the AFC Disciplinary Committee decided the following:
  - “1. Pursuant to Article 76 of the AFC Disciplinary Code (Code), Mr Nassir Ali N. Alshamrani (AFC/7000/KSA) is suspended for eight (8) matches for violating Article 57 of the Code.
  2. Mr Nassir Ali N. Alshamrani (AFC/7000/KSA) shall serve his eight (8) match suspension in a future AFC club competition.
  3. Mr Nassir Ali N. Alshamrani (AFC/7000/KSA) is informed that a repeat violation of this provision will be met with more severe punishment”.
14. On 2 December 2014, the decision of the AFC Disciplinary Committee was communicated to the Saudi Arabian Football Federation.
15. On 4 December 2014, the Appellant informed the AFC through the Secretary General of Al Hilal of his intention to lodge an appeal against the decision of the AFC Disciplinary Committee.
16. On 5 January 2015, the grounds of the decision of the AFC Disciplinary Committee were communicated to the Appellant.

17. On 27 January 2015, an appeal was filed by the Appellant against the decision of the AFC Disciplinary Committee rendered on 28 November 2014.
18. On 27 February 2015, the AFC Appeal Committee issued its decision on such appeal and decided the following:
  - “1. *The appeal filed by Mr Nassir Ali N. Alshamrani (AFC/7000/KSA) against the decision 20141128DC11 is dismissed in full.*
  2. *In accordance with Article 105 of the AFC Disciplinary Code Mr Nassir Ali N. Alshamrani (AFC/7000/KSA) is ordered to pay costs and expenses of the amount of USD 1,000/-.*
  3. *Mr Nassir Ali N. Alshamrani (AFC/7000/KSA) shall bear all of his own legal and other costs incurred in connection with the appeal”.*
19. On the same day the Appellant requested from the AFC Appeal Committee the grounds of the decision through his legal counsel.
20. On 10 March 2015, the grounds of the decision rendered by the AFC Appeal Committee on 27 February 2015 were communicated to the Appellant.

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

21. On 11 March 2015, the Appellant decided to appeal the abovementioned decision of the AFC Appeal Committee (hereinafter referred to as “the Appealed Decision”) before the CAS and filed his statement of appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter referred to as “the Code”).
22. With his statement of appeal, the Appellant also filed a request for a stay of the execution of the Appealed Decision and nominated Mr João Nogueira Da Rocha, Attorney-at-law in Lisbon, Portugal, as arbitrator.
23. On 16 March 2015, the Respondent filed its answer to the Appellant’s request for a stay of the execution of the Appealed Decision, requesting that such request be rejected, and additionally requested that this matter be expedited in accordance with Article R52 of the Code.
24. On the same day, the Appellant agreed to proceed in an expedited manner and on 17 March 2015 the CAS Court Office suggested an expedited procedural calendar to the parties. Such procedural calendar was accepted by the Appellant and by the Respondent on 17 and on 19 March 2015 respectively.
25. On 17 March 2015, the President of the CAS Appeals Arbitration Division partially granted the Appellant’s request for provisional measures and stayed the Appealed Decision for the games of the AFC Champions League of 17 March and 8 April 2015 exclusively.

26. On 20 March 2015, the Respondent nominated His Honour Judge Rauf Soulio, Judge in Adelaide, Australia, as arbitrator.
27. On the same day, the Appellant declared his wish for a hearing to take place in this matter.
28. On 23 March 2015, the Appellant filed a petition for challenge of the nomination of His Honour Judge Rauf Soulio pursuant to Article R34 of the Code, stating that he objects to his nomination due to the fact that the latter is President of the Football Federation of South Australia, which is one of the member associations of the Football Federation of Australia, which is a member of the Respondent. In particular, the Appellant asserted that “[t]he proceedings at the case at stake have the scope to Appeal a decision of the Disciplinary Committee of the Asian Football Confederation therefore the nomination of one of his [sic] members as arbitrator shall be considered, at the minimum, an unfair attempt of the Respondent to influence the Panel. In the hypothetical and improbable case that the above mentioned argument is not enough to justify the challenge of His Honour Judge Rauf Soulio as arbitrator, I kindly request the CAS to notice that he is also Australian, and the rivals of Al-Hilal at the Final of the AFC Champions League were the Sydney Wanderers, an Australian Club”.
29. On 26 and on 30 March 2015, the Respondent maintained his nomination of His Honour Judge Rauf Soulio as arbitrator and rejected the objections put forward by the Appellant in relation to such nomination.
30. On 27 March 2015, the Appellant filed his appeal brief requesting the CAS to:
  - “1. Accept this Appeal Brief
  2. Adopt an award to set aside the decision appealed.
  3. Uphold this Appeal and by virtue of the arguments presented, conclude that the Appellant shall not serve any suspension.
  4. In the hypothetical and improbable case that the Panel considers that the Player shall be suspended, to determine a more accurate sanction according to an appropriate interpretation of the facts in line with the arguments presented and suspend the Player for not more than 2 matches.
  5. Condemn the Respondent to the payment of the whole CAS administration costs and Panel fees.
  6. Fix a sum to be paid by the Respondent to the club in order to cover its defence fees and costs in the amount of CHF 15.000”.
31. On 30 March 2015, the Appellant was invited by the CAS Court Office to state whether he maintained his challenge against the nomination of His Honour Judge Rauf Soulio in view of the comments filed by the latter and by Mr João Nogueira Da Rocha in this respect.
32. On 31 March 2015, the Appellant withdrew his petition for challenge of the nomination of His Honour Judge Rauf Soulio as arbitrator by the Respondent.

33. On 8 April 2015, the CAS Court Office informed the parties about the constitution of the Panel as follows: Mr Sofoklis P. Pilavios, President, Mr João Nogueira Da Rocha and His Honour Judge Rauf Soulio, arbitrators.
34. On 10 April 2015, the Respondent filed its answer requesting that:
- “99.1. the appeal of the Appellant is rejected in full;*
- 99.2. the decision of the AFC Appeal Committee dated 27 February 2015 is confirmed in full;*
- 99.3. the costs and expenses related to this arbitration (including the request for provisional measures) be borne wholly by the Appellant; and*
- 99.4. the Appellant be ordered to pay the legal costs and expenses of the Respondent to the amount of USD 10,000”.*
35. On 9 April 2015, the CAS Court Office informed the parties that the Panel had decided to hold a hearing at the CAS Alternative Hearing Centre in Kuala Lumpur, Malaysia, on 16 April 2015 and that the operative part of the award would be notified to them on 20 April 2015 at the latest.
36. On 16 April 2015, a hearing took place at the CAS Alternative Hearing Centre in Kuala Lumpur, Malaysia.
37. The Panel sat in the following composition:
- President: Mr Sofoklis P. Pilavios, Attorney-at-law in Athens, Greece
- Arbitrators: Mr João Nogueira Da Rocha, Attorney-at-law in Lisbon, Portugal  
His Honour Judge Rauf Soulio, Judge in Adelaide, Australia
38. The following persons attended the hearing:
- Mr Nassir Ali N. Alshamrani in person, assisted by Mr Juan de Dios Crespo Pérez, counsel and by Mr Gassan Waked, interpreter;
  - the Asian Football Confederation, as represented by Mr Benoit Pasquier, Director of Legal Affairs and Mr James Kitching, legal counsel.
39. During the hearing, the parties made full oral submissions and at the conclusion of the hearing all the parties acknowledged that their right to be heard had been fully respected.

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

40. The following outline of the parties’ positions is illustrative only and does not necessarily comprise every submission advanced by the Appellant and the Respondent. The Panel has nonetheless carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.

41. The Appellant's submissions, in essence, may be summarized as follows:

- The AFC Appeal Committee evaluated incorrectly the facts with respect to both the First and the Second Incidents.
- In relation to the Second Incident, the video footage submitted by the Respondent provides no evidence that the Appellant's saliva did indeed strike Mr Spiranovic, which is the true meaning of the wording of Article 48(1) of the AFC DC (spitting "*at*" someone, as opposed to spitting "*to*" someone, which is used to denote merely a general direction).
- The Appellant spat on the ground regardless of Mr Spiranovic and he was looking at his direction because he was listening to what Mr Spiranovic was saying to him.
- The AFC Appeal Committee sanctioned the Appellant's action on the basis of Article 48 of the AFC DC and, therefore, Article 57 of the AFC DC is irrelevant and the Appeal Committee committed an error by applying Article 57 of the AFC DC to sanction the Appellant.
- The Appellant never admitted having spat to or at Mr Spiranovic; he merely expressed his apologies for his behaviour referring to the confrontation that broke out on the field after the final whistle.
- It was Mr Spiranovic addressing the Appellant in a provocative manner, which caused the Appellant to react in that way.
- In relation to the First Incident, the AFC Appeal Committee failed to meet the required standard of proof in demonstrating that the Appellant head-butted his opponent.
- The referee of the Match did not witness the First Incident even though he was approximately 10-15 meters away and, therefore, Article 77 of the AFC DC does not apply.
- The AFC Appeal Committee erred in imposing the appealed sanction upon the Appellant under Article 48 of the AFC DC.

42. In summary, the Respondent submits the following in response:

- The official video footage of the First Incident submitted by the Respondent clearly demonstrates that the Appellant head-butted Mr Spiranovic in the left part of his jaw. Such behaviour falls within the third limb of Article 57 of the AFC DC ("*behaviour that is unsporting in any other way*").
- The statements made by the referee of the Match and Mr Spiranovic confirm that the First Incident escaped the attention of the former. Had such misconduct come to the referee's attention, the Appellant would have been expelled.
- The Appellant's submissions fail to demonstrate that he did not violate Article 57 of the AFC DC.
- It is clear from the official video footage of the Second Incident that the Appellant spat at Mr Spiranovic. Such behaviour falls within the third limb of Article 57 of the AFC DC ("*behaviour that is unsporting in any other way*").
- The Appellant never contended before the AFC bodies that he did not spit.

- The AFC Appeal Committee used Article 48(1) of the AFC DC merely as guidance with respect to the severity of the sanction that was to be imposed upon the Appellant pursuant to Article 57 of the AFC DC for both the First and the Second Incidents.
- The following aggravating factors justify the sanction imposed upon the Appellant by the Appealed Decision: the Match was the second leg of the 2014 AFC Champions League final and was watched by millions of viewers globally; the Appellant was involved in two incidents of misconduct; the Appellant's apology was not genuine; the Appellant provided no apology for the First Incident; the Appellant is the reigning Asian Footballer of the Year and is therefore a role-model and should behave in a respectful way.

## V. JURISDICTION

43. The jurisdiction of the CAS to decide on the present case arises out of Article 65(1) of the AFC Statutes and Article R47 of the Code. Article R47 of the Code provides as follows:

*"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".*

44. In accordance with Article 65 par. 1 of the AFC Statutes, "[a]ny final decision made by an AFC body may be disputed exclusively before CAS in its capacity as an appeals arbitration body, to the exclusion of any ordinary court or any other court of arbitration".
45. In addition, the jurisdiction of the CAS has been expressly accepted by the parties by signing the order of procedure.
46. Therefore, the Panel considers that the CAS is competent to hear the present dispute.

## VI. ADMISSIBILITY

47. 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".*

48. The grounds of the Appealed Decision were communicated by the AFC Appeal Committee to the Appellant's national federation on 10 March 2015 and the Appellant filed his statement of appeal on 11 March 2015.



49. Accordingly, in accordance with Article 65 par. 2 of the AFC Statutes which provides for a 21-day deadline to lodge an appeal with CAS, the appeal is admissible.

## VII. APPLICABLE LAW

50. Article R58 of the Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

51. Article 61 of the AFC Statutes states:

*“2. The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings.*

*3. The CAS shall apply the various regulations of the AFC, and additionally where relevant, the laws of Malaysia”.*

52. As a result, the Panel rules that AFC rules and regulations and, subsidiarily, Malaysian law shall be applicable in the case at hand.

53. The relevant articles of the applicable AFC DC (edition 2014) are the following:

*“Article 10 – Sanctions common to natural and legal persons*

*Both natural and legal persons are punishable by the following sanctions:*

- a) warning;*
- b) reprimand;*
- c) fine;*
- d) return of awards;*
- e) confiscation (cf. Article 62 par. 4).*

*Article 11 – Sanctions applicable to natural persons*

*The following sanctions are applicable only to natural persons:*

- a) caution;*
- b) expulsion;*
- c) match suspension;*
- d) ban from dressing rooms and/or substitutes' bench;*
- e) ban from entering a stadium;*

f) *ban on taking part in any football-related activity.*

[...]

*Article 57 – Offensive behaviour and fair play*

*Anyone who insults someone in any way, especially by using offensive gestures or language, or who violates the principles of fair play or whose behaviour is unsporting in any other way may be subject to sanctions in accordance with art. 10 ff.*

[...]

*Article 76 – General jurisdiction*

*The AFC Disciplinary Committee is authorised to sanction any breach of AFC regulations which does not come under the jurisdiction of another body.*

*Article 77 – Specific jurisdiction*

*The Disciplinary Committee is responsible for:*

a) *sanctioning serious infringements which have escaped the match officials' attention;*

[...].”

## VIII. MERITS

54. According to Article R57 of the Code, the Panel has “*full power to review the facts and the law*”. As repeatedly stated in CAS jurisprudence, by reference to this provision, the CAS appellate 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 this Panel to make an independent determination as to merits (see CAS 2007/A/1394, para. 21).
55. In these proceedings the Appellant was charged with a breach of Article 57 of the AFC DC but in his submissions and hearing statements he contests any wrongdoing on his part.
56. In that context, the Panel has to make a decision on the following main issues:
  - A. whether the evidence relative to the First and the Second Incidents supports a finding of violation; and
  - B. if a finding of violation is established, the determination of the proper sanction for the Appellant.

*A. Evaluation of the evidence relative to the First and the Second Incident*

57. The first issue to be resolved by the Panel is whether the evidence submitted by the parties and adduced at the hearing are sufficient to hold that a violation of Article 57 of the AFC DC has been established.
  58. The Panel examined separately the two incidents, which according to the Appealed Decision fall into the types of conduct which are punishable under Article 57 of the AFC DC in order to establish whether or not the disputed offences took place.
  59. To determine whether the Appellant committed the disciplinary violations attributed to him, the Panel must examine whether the evidence provided by the Respondent establishes the alleged facts. To do so, the Panel endorses the position that the Respondent must establish the facts underlying the alleged disciplinary violations to the “comfortable satisfaction” of the Panel, in accordance with well-established CAS jurisprudence in disciplinary cases (CAS 2012/A/2699, (with further references)?
- a) The First Incident
60. The Appellant submits in his appeal brief that the referee of the Match must have witnessed the First Incident, as he was standing not more than 10-15 meters away from the two players and that he did not impose any sanction to the Appellant as he apparently considered that the latter’s actions did not violate any rules of conduct.
  61. The Appellant, by suggesting that there was no “*serious infringements which have escaped the match officials’ attention*” on the basis that the referee saw the actions of the Appellant, in essence argues that there was no basis for the AFC disciplinary bodies to sanction the First Incident as Article 77 lit. a of the AFC DC does not apply. At any rate, such was the argument put forward by the Appellant in his submission of 3 February 2015 before the AFC Appeal Committee.
  62. The Appellant further submits in his appeal brief that the AFC Director of Referees Department is “*clearly uncertain*” of what occurred and that his report contains no evidence of whether the Appellant did attempt to, or did actually head-butt Mr Spiranovic at the 95<sup>th</sup> minute of the Match.
  63. Moreover, at the hearing of 16 April 2015 the Appellant suggested that he and Mr Spiranovic were merely involved in a normal football tussle and that he came into contact with Mr Spiranovic only in his attempt to break free from him.
  64. The Appellant further submitted that he was being provoked and abused both verbally as well as physically by his adversary player throughout the duration of the Match.

65. The Panel notes that, contrary to the Appellant's submission, the referee of the Match confirms, with no room for doubt, that he did not see the incident between the Appellant and Mr Spiranovic at the 95<sup>th</sup> minute of the Match, and not that he simply did not see any reason to sanction the Appellant on the field. Such confirmation is included in an email the referee sent to the AFC on 7 November 2014 in reply to a request made by the AFC Referees Department, as to whether he had seen the head-butting incident between the two players.
66. As a result, the Panel finds that the conditions indicated by Article 77 lit. a of the AFC DC are satisfied and, therefore, the AFC disciplinary bodies had the authority to deal with the First Incident.
67. In addition, the Panel cannot accept the Appellant's interpretation of the report of the AFC Director of Referees Department, namely that he is "*clearly uncertain*" of what occurred between the two players at the 95<sup>th</sup> minute of the Match. The AFC Director of Referees Department in his report of 6 November 2014 confirms unequivocally that the video footage indicates that the Appellant head-butted Mr Spiranovic. The subsequent phrase of his report "*it seems like the Al Hilal player's head touched the left chin of the Western Sydney's player*", on which the Appellant relies upon, is merely an additional piece of information as to the point of contact between the two opposing players, which does not alter the AFC Director of Referees Department's previous clear statement that "*no. 15 of Al Hilal head butted player no 13 of Western Sydney*".
68. The Panel notes in this respect that even if the Appellant was indeed being provoked by the opposing player during the Match and/or particularly before the First Incident, such fact cannot be taken into consideration as a mitigating circumstance that would justify the Appellant's conduct.
69. Thus, and after watching the video footage of the First Incident from the TV coverage of the Match several times, the Panel is not convinced of the truth of the Appellant's submissions.
70. In light of the foregoing, and in particular having carefully reviewed the video footage, the Panel finds that the Respondent has established the facts underlying the disciplinary violation to the "comfortable satisfaction" of the Panel.
71. The Panel has no doubt that a head-butt is to be treated as an offence by the AFC DC, in the sense and for the purposes of Article 57 of the AFC DC. In particular, the Panel concludes that the action of the Appellant clearly constitutes a violation of the principles of fair play and an unsporting behaviour.
72. As a result, the Appellant is found guilty of violating Article 57 of the AFC DC and, therefore, he is to be sanctioned in accordance with said Article.

b) The Second Incident

73. The Appellant submits in his appeal brief that he never admitted having spat to or at Mr Spiranovic in his submissions before the AFC disciplinary bodies and that there is no evidence demonstrating that the Appellant's saliva did indeed strike Mr Spiranovic, which is the real meaning of the phrase "*spitting at an opponent*" for the purposes of Article 48(1) lit. e.
74. The Appellant also puts forward the argument that the Respondent wrongly sanctioned the alleged offence on the basis of Article 48 of the AFC DC.
75. At the hearing, the Appellant further submitted with regard to the Second Incident that after the end of the Match he was sitting on the field when he saw Mr Spiranovic walking towards him. The Appellant submitted that Mr Spiranovic deviated from the path that he had been taking deliberately walked towards the Appellant, and made a derogatory or insulting comment. The Appellant then spat in the air without targeting Mr Spiranovic, as a reaction to the provocation to which he was subjected during the Match and because he was disappointed about the defeat of his team.
76. The Panel notes, however, that the Appellant never expressly denied having spat at his opponent, before the AFC disciplinary bodies but, on the other hand, apologised for his action. In fact, in the Appellant's statement of 15 November 2014 before the AFC Disciplinary Committee, the Appellant stated: "*Because I was under the influence of pressure loss of the tournament [sic], I reacted in that way. I feel sorry for my reaction and I apologize for that*", which is inconsistent with the aforementioned statement of the Appellant.
77. Further, Mr Spiranovic was reported saying in the press after the end of the Match that the Appellant spat at him.
78. In addition, the Panel notes that the Appellant's explanation for the facts alleged against him is not consistent with the video footage of the Second Incident, which was provided by the Respondent. The Panel carefully watched said footage and remarks that the movement of the Appellant's head and the direction of spitting clearly contradict the aforementioned statement of the Appellant.
79. Moreover, as regards the scenario put forward by the Appellant, the Panel finds that it would make little sense, if any, for a direct confrontation to break out in the field between players of the opposing teams, as a result of the Appellant's action to simply spit in the air.
80. The Panel further notes that, pursuant to Article 98(1) of the AFC DC "*facts contained in match officials' reports are presumed to be accurate*". In this respect, the Commissioner of the Match, who is a match official under the definition of Article 5(7) of the AFC DC, confirmed on 1 November 2014 without hesitation or contradictions, that he had seen "*Al Hilal Player Jersey #15 Mr Nassir Alshamrani spat to the opponent, WSW Player Jersey #13 Mr Spiranovich [sic]. This disrespectful action*

*provoked a confrontation on the field between the two clubs. Moreover, Mr Nassir Alshamrani tried to start a fight with Spiranovich [sic] after the spitting”.*

81. Such declarations are, pursuant to Article 98(1) of the AFC DC and in line with the CAS consistent approach in similar cases (see for instance CAS 2014/A/3665, 3666 & 3667, para. 63), presumed to be accurate, and the Panel finds that the Appellant has not brought sufficient evidence to disprove their content.
82. Moreover, with regard to the Appellant’s argument that the Respondent wrongly sanctioned the alleged offence on the basis of Article 48 of the AFC DC, the Panel is of the opinion that the Appealed Decision did not apply the sanctions of Article 48(1) of the AFC DC to the Appellant, but rather such provision was merely used as guidance for the interpretation of the types of violations set out in Article 57 of the AFC DC.
83. In this context, the Panel notes that it makes no difference as to the commission of the disputed offence, whether the Appellant’s saliva struck or missed Mr Spiranovic. The wording of Article 48(1) lit. e (“*spitting at an opponent*”, emphasis added) does not make any distinction between the two events, as the verb “*to spit at*” should be understood as meaning in the English language “*to eject saliva on someone or in the direction of someone*”.
84. In light of the foregoing, while the Panel accepts that it is possible that the Appellant may have reacted in that way as a result of his disappointment, or any previous incidents that took place during the Match between him and the opposing player, or derogatory comments made by Mr Spiranovic after the matches the Panel is able to conclude to its comfortable satisfaction that the charges made against the Appellant with regard to the Second Incident are established.
85. Therefore, the Appellant is found guilty of violating Article 57 of the AFC DC and he is to be sanctioned in accordance with said Article for the Second Incident as well.

*B. Determination of the proper sanction for the Appellant*

86. In determining the proper sanction to be imposed on the Appellant for violating Article 57 of the AFC DC, the Panel takes account of the following matters:
  - Article 11 of the AFC DC provides for the following sanctions to be imposed to natural persons for violating Article 57 of the AFC DC: caution; expulsion; match suspension; ban from dressing rooms and/or substitutes’ bench; ban from entering a stadium; ban on taking part in any football-related activity.
  - The Appellant contends that the Appealed Decision did not take into account the remorse expressed by the Player.
  - The Appellant further submits that, in the event the Panel accepts that the Appellant’s intention was to spit at Mr Spiranovic, the sanction to be imposed must be reduced in view of the fact that such action must be considered as an attempt.

- The Respondent argues that Article 48(1) of the AFC DC, which regulates suspensions for players receiving a direct red card and provides for a suspension of at least two matches for assaulting an opponent and for a suspension of at least six matches for spitting at an opponent, may provide guidance in relation to the determination of the proper sanction in this arbitration.
  - The interest that the Respondent's sanctioning authority is seeking to enforce is the protection of the principles of fair play and the encouragement of a professional and respectful behaviour on the part of the persons involved in football.
87. Pursuant to Article 32 of the AFC DC, "[u]nless otherwise specified, the sanctions provided for in Chapter I (General Part) and Chapter II (Special Part) of this Code may be combined". In this respect, the Panel is of the opinion that as such it has the faculty to impose a general sanction on the Appellant for the First and Second Incidents or to sanction such incidents separately. The Panel decides to sanction the Appellant separately for each incident.
88. Furthermore, in accordance with Article 33 (2), (3) and (4) of the AFC DC:
- "2. Partial suspension is permissible only if the duration of the sanction does not exceed six matches or six months if the relevant circumstances allow it, in particular the previous record of the person sanctioned.*
- 3. The judicial body decides which part of the sanction may be suspended. In any case, half of the sanction is definite.*
- 4. By suspending implementation of the sanction, the body subjects the person sanctioned to a probationary period of anything from six months to two years".*
89. In light of the foregoing and taking expressly into consideration the degree of the Appellant's fault as well as the fact that he had a clean slate as he has not committed any other disciplinary offences prior to the events of this case, the Panel finds that the sanctions imposed on the Appellant by the Appealed Decision are excessive and should be amended as follows:
- The Appellant shall be suspended for two games for the violation of Article 57 of the AFC DC in relation to the First Incident;
  - The Appellant shall be suspended for six games for the violation of Article 57 of the AFC DC in relation to the Second Incident, two of which are partially suspended for a probationary period of two years.

## ON THESE GROUNDS

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

1. The appeal filed on 11 March 2015 by Mr Nassir Ali N. Alshamrani against the decision rendered by the Appeal Committee of the Asian Football Confederation on 27 February 2015 is partially upheld.
2. The decision rendered by the Appeal Committee of the Asian Football Confederation on 27 February 2015 is amended as follows:
  - a. Mr Nassir Ali N. Alshamrani is found guilty of violating Article 57 of the AFC Disciplinary Code when spitting at Mr Spiranovic. Mr Nassir Ali N. Alshamrani shall be suspended for six games for such violation, two of which are partially suspended for a probationary period of two years.
  - b. Mr Nassir Ali N. Alshamrani is found guilty of violating Article 57 of the AFC Disciplinary Code when head-butting Mr Spiranovic. Mr Nassir Ali N. Alshamrani shall be suspended for two games for such violation.
3. The two matches already served by Mr Nassir Ali N. Alshamrani on 25 February 2015 and 4 March 2015 shall be deducted from any of the above sanctions.
4. (...)
5. (...)
6. All other motions or prayers for relief are dismissed.