



Arbitration CAS 2014/A/3675 Talaea El Gaish Club v. Dodzi Dogbé, award of 27 February 2015

Panel: Mr Stuart McInnes (United Kingdom), Sole Arbitrator

Football

Compensation following unilateral termination of employment contract by club without just cause

Invalidity of unilateral and potestative clause in employment contract

Burden of proof in case of unilateral termination of employment contract

1. **A clause in an employment contract which – contrary to the FIFA regulations – is of unilateral and potestative nature and to the benefit of the employer (club) only in that it grants the employer the unilateral right to terminate the employment contract while at the same time excluding the player’s right to compensation for the otherwise remaining period of the contract cannot be validly invoked as a legal basis for a unilateral termination of an employment contract.**
2. **A club wishing to unilaterally terminate a player’s employment contract with just cause based on alleged unauthorized absences from his obligations (training, club events etc.) needs to adduce evidence for the alleged unauthorized absences.**

I. PARTIES

1. Talaea El Gaish Club (hereinafter the “Club” or the “Appellant”) is an Egyptian professional football club, with its registered office in Cairo, Egypt, which is affiliated to the Egyptian Football Association, which is in turn affiliated to the Fédération Internationale de Football Association (hereinafter “FIFA”).
2. Dodzi Dogbé (hereinafter the “Player” or the “Respondent”) is a French/Togolese professional football player, born in 1976.

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 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.

4. On 19 July 2008, the Club and the Player concluded their first employment contract valid from season 2008/2009 until season 2009/2010.
5. Notwithstanding the allegations made by the Appellant that the Player was repeatedly absent from Egypt without authority or permission of the Appellant on diverse dates between 2008 and 2010, on 15 May 2010, the Club and the Player concluded their second employment contract (hereinafter the "Contract") valid for four (4) seasons starting in the 2009/2010 season and ending after the 2012/2013 season. It was also alleged by the Appellant that in addition to the Contract, the Player signed a document in which he acknowledged that he *"will never travel without obtaining permission from the club"* and that he will *"accept any money punishment imposed against me [the Player] if I [the Player] travel without permission from the club"*. The Player denies signing this document.
6. In accordance with Article 3 of the Contract, the Player was entitled to receive a salary for a total amount of USD 691,000, distributed along the 4 seasons as follows:
 - Season 2009/2010: USD 1,000
 - Season 2010/2011: USD 210,000
 - Season 2011/2012: USD 230,000
 - Season 2012/2013: USD 250,000
7. The preliminary recitals to the Contract confirm that: *"The two parties declare their capacity to contract and they have read the regulation of player affairs which is valid during the signing of this contract and this regulation supersedes any other considered as part of this contract and complement for it"*.
8. Article 10 of the Contract provides the following: *"The club has the right to inform the player in writing to terminate the contract between them at the end of the season during its validity within fifteen days after last national official match for the club. In this case the player does not deserve any compensation for the rest of the period of the contract. The player will receive his financial dues up to the end of the contract"*.
9. During the 2010/2011 season, it is alleged by the Appellant, that again the Player repeatedly left Egypt without prior authorisation or permission from the Club and in consequence missed matches and training sessions thereby causing damage and loss to the Club.
10. By letter dated 12 July 2011, the Club informed the Player that it intended to terminate the Contract at the end of the 2010/2011 season. The letter reads as follows:

“A l'intention de del'équipe [sic] d'entraînement [sic] du club Talaa El Gaich de finir votre contrat [sic], le conseil general [sic] du club a décidé de vous informer que votre contrat résiliera fin de cette saison 2010-2011.

On vous remercie infiniment pour tous les efforts que vous avez déployés pendant votre séjour au club.

Et par conséquent [sic], on vous informe aussi que vous avez librement le choix de contracter une autre équipe sans [sic] aucune restriction”.

B. Proceedings before FIFA

11. On 26 September 2011, the Player lodged a claim against the Club before the FIFA Dispute Resolution Chamber (hereinafter the “FIFA DRC”), seeking compensation for the premature termination of the Contract by the Club, in the total sum of USD 800,000, representing USD 480,000 as the remaining sum due to the Player under the Contract, USD 300,000 as damages and USD 20,000 for legal expenses.
12. On 27 February 2014, the FIFA DRC issued a decision (hereinafter the “Appealed Decision”), *inter alia*, on the following grounds:
 - The reasons cited by the Club for termination of the Contract did not correlate to the Player’s alleged unauthorized absences which could not be considered as a just cause to terminate the Contract;
 - Article 10 of the Contract is potestative in nature and is to the unilateral benefit of the Respondent only. The members of the Chamber agreed that the decision to terminate was left fully to the discretion of the Club and that Article 10 of the Contract did not constitute a reason that can be validly invoked, nor a legal basis to unilaterally terminate the Contract and that accordingly the Club had terminated the Contract without just cause;
 - Taking into consideration Article 17 para. 1 of the FIFA Regulations on the Status and Transfer of Players, the Claimant is entitled to receive from the Respondent compensation for breach of contract. The Chamber confirmed that in accordance with the terms of Article 17 para.1, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the Player under the existing contract and/or new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
 - In the absence of any agreed liquidated damages clause in the Contract, the Chamber decided that the Respondent must pay the amount of USD 407,000 to the Claimant, being USD 480,000 due to the Player had the Contract been executed until its expiry date, mitigated with USD 73,000 as the remuneration of the Player under a new contract of

employment with the Thai club Than Hoa. The Chamber rejected the Player's claim for damages due 'to the lack of legal basis'.

On the basis of the foregoing, the FIFA DRC decided the following:

- "1. The claim of the Claimant, Dodzi Dogbé, is partially accepted.*
- 2. The Respondent, Talaea El Gaish, has to pay to the Claimant compensation for breach of contract in the amount of USD 407.000, within 30 days as from the date of notification of this decision.*
- 3. In the event that the above-mentioned amount is not paid by the Respondent within the stated time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
- 4. Any further claim lodged by the Claimant is rejected".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 24 July 2014, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter the "CAS"), against the Appealed Decision pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration ("the Code"). In its Statement of Appeal, the Appellant requested that a Sole Arbitrator determine the appeal matter and further sought a stay of the Appealed Decision.
14. On 30 July 2014, the CAS Court Office notified the Appellant that according to CAS jurisprudence, a decision of a financial nature issued by a private Swiss association is not enforceable while under appeal and that it may therefore not be stayed and that an application in that respect - being moot – would in principle be dismissed.
15. On 2 August 2014, the Appellant informed the CAS Court Office that it withdrew its application for a stay of the Appealed Decision.
16. On 4 August 2014, the Respondent informed the CAS Court Office that he had no objection to the nomination of a Sole Arbitrator and to English being the official language of the proceedings.
17. On 5 August 2014, the Appellant filed with the CAS Court Office its exhibits and confirmed that its Statement of Appeal and its complementary attachments were to be considered as the Appeal Brief.
18. On 11 August 2014, the CAS Court Office notified the Respondent that pursuant to Article R55 of the Code the Respondent should submit an answer within twenty days of receipt of its letter.

19. On the same day, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.
20. By letter dated 20 August 2014, the Respondent requested that the CAS Court Office fix the time limit for filing the Answer, after payment by the Appellant of the advance of costs according to Article R55 para. 3 of the Code.
21. On 21 August 2014, the CAS Court Office notified the Parties that the time limit for filing the Answer set out in its letter of 11 August 2014 was set aside and that a new time limit would be fixed upon the Appellant's payment of its share of the advance of costs.
22. By letter dated 29 August 2014, the CAS Court Office notified the Respondent that pursuant to Article R55 of the Code the Respondent should submit an answer within twenty days of receipt of its letter.
23. On 1 September 2014, the CAS Court Office served Notice of Formation of a Panel pursuant to Article R54 of the Code and informed the Parties on behalf of the President of the CAS Appeals Arbitration Division that Mr Stuart McInnes, Solicitor in London, United Kingdom, was appointed as Sole Arbitrator in this case.
24. On 17 September 2014, the Respondent filed his Answer with the CAS Court Office.
25. On 16 October 2014, the Parties were informed that a hearing would be held in the present dispute on 18 December 2014.
26. On 19 and 24 November 2014, the Respondent and the Appellant respectively signed the Order of Procedure.
27. On 18 December 2014, a hearing was held at the CAS Court Office in Lausanne, Switzerland (hereinafter referred to as the "Hearing").

IV. HEARING

28. The following persons attended the Hearing.

For the Appellant:

Mr Hisham Hassan Abdrabo, attorney-at-law
Mr AbdulRahman Magdy Tawfiq,

For the Respondent:

Mr Dodzi Dogbé
Mr Redouane Mahrach, attorney-at-law.

29. Mr Dodzi Dogbé was examined and cross-examined by both Parties' counsel and by the Sole Arbitrator.

30. The Parties were afforded the opportunity to present their cases, submit their arguments and to answer questions asked by the Sole Arbitrator.
31. At the end of the Hearing the Parties explicitly agreed that they had no objection to the constitution of the Panel and that their right to be heard and to be treated equally in the arbitration proceedings had been fully observed.

V. SUBMISSIONS OF THE PARTIES

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

A. The Appellant's submissions

33. The Appellant's submissions, in essence, may be summarised as follows:
 - i. The termination of the Contract correlated with the unauthorized absences of the Player. The last absence was made in May 2011 and the actual termination notice was made on 12 July 2011, *i.e.* the next day following the date of the last official match of the Club in the season on 11 July 2011. The FIFA DRC erred in finding that the Player's last absence was in December 2010.
 - ii. An identical version of Article 10 of the Contract was also included in the first employment contract between the Club and the Player. Both contracts were accepted and freely signed by the Player who did not express any objection to the drafting of the article in the first and/or the second employment contract. Thus the FIFA DRC erred in its finding that Article 10 of the Contract is for the unilateral benefit of the Club alone. It is a bilateral clause as both Parties accepted it in the Contract.
 - iii. Article 10 of the Contract was not drafted by the Club but by the Egyptian Football Association in its template employment contract distributed to all Egyptian clubs. The clause reflects the drafting of Article 6 of the Egyptian Football Association Regulations of Player's Affairs. The inclusion of this clause is mandatory and registration of the Player would not have been possible had the clause not been included in the Contract. Both Parties expressly agreed to the inclusion of the clause as is evidenced by the preliminary recital to the Contract which confirms that the regulations form part of the Contract and supersede its provisions.
 - iv. Through his unauthorized absences, the Player breached the following provisions:
 - i) Article 6 (2) of the Contract, which stipulates that the Player undertakes to "*attend all the practices and friendly and official matches of the Club*"; and

- ii) Article 6 (12) of the Contract, which stipulates that the Player undertakes to “*attend all the club’s events*”; and
- iii) his commitment to “*never travel without obtaining permission from the club*”.
- v. Such breaches of the Player’s contractual obligations had a deleterious effect on the Player’s physical fitness and an adverse impact on the overall performance of the team. The Player’s frequent unauthorized absences amounting to 183 days after signature of the Contract constituted just cause for the Club to implement the termination provisions of Article 10 of the Contract.
- vi. The Club applied Article 6 (14) of the Regulations of the Player’s Affairs of the Egyptian Football Association of November 2005, which are incorporated into the recitals to the Contract signed by the Player and the Club and which stipulates that:

“If a club terminates a contract concluded with one of its players during or after the season,

1) the player shall receive all his financial dues specified in the contract for the rest of the season, a termination.

2) a termination notice shall be sent to the player within 15 days following the date of the last official match of the club, otherwise, the player shall be entitled to receive 50% of the financial dues specified in the contract until the date of the next registration, or 50% of the advanced payment if the player transferred to another club before the date of the next registration”.

34. The Appellant submitted the following request for relief:

- *“To consider that the Player did breach his contractual obligations with the Club as he made many unauthorized travels and long absences and harmed the overall performance of the football team;*
- *To consider Article 10 of the employment contract bilateral;*
- *To consider that the Player does not deserve any compensation because the termination of the Contract was justified by the Player’s breach of his contractual obligations, article 10 of the Contract and article 6, para. 14 of the Regulations of Player’s Affairs of the Egyptian Football Association;*
- *To compensate the Club with USD 1.000 for every day of the Player’s absence during season 2010/2011 (Total of 183 days × USD 1000/day = USD 183.000), as stipulated and confirmed in the Player’s own acknowledgment;*
- *To instruct the Player to pay USD 20.000 for the legal expenses”.*

B. The Respondent’s submissions

35. The Respondent’s submissions, in essence, may be summarised as follows:

- i. According to Article 13 of the FIFA Regulations on the Status and Transfer of Players (RSTP), which stipulates that:

“A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement”; and

Article 14 RSTP, which stipulates that

“A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sportive sanctions) where there is just cause”; and

Article 337 of the Swiss Code of Obligations, which stipulates that

“The employer and the employee may terminate immediately the contract at any time for just cause; the party which terminates the contract must immediately justify the reasons of its decisions in writing if the other party asks for it”,

a termination notice cannot be given without just cause.

- ii. The letter dated 12 July 2011 by which the Appellant terminated the Respondent’s Contract provided as follows:

“The board of Talaea El Gaish club has decided to notify you of terminating your contract by the end of the season 2010/2011 upon request of the team training staff since there is no need for your presence with the team as of the end of the season 2010/2011.

We would like to thank you for the time you have spent with us”.

The Appellant did not cite any reason for terminating the Respondent’s Contract save that it was terminated at the request of the training staff, and did not take exception to the conduct or behaviour of the Respondent during his time with the Club.

- iii. The Appellant terminated the Contract by purporting to exercise Article 10 of the Contract, which is neither acceptable nor legally valid as determined in the Appealed Decision, which follows and upholds established FIFA jurisprudence (cf. DRC 07/05/2008, DRC 28/03/2008 and DRC 18/03/2010) and CAS jurisprudence (cf. CAS 2005/A/983 & 984 and CAS 2008/A/1517). The clause is contrary to the regulations of FIFA and is therefore illegal and void. The Appellant is not at liberty to unilaterally terminate the Contract at will and can only do so without consequence if there is just cause.
- iv. It was only *ex post facto* that the Appellant sought to justify the termination as with just cause, by virtue of unauthorized absences of the Player. The terms upon which a party to a contract is entitled to invoke valid early termination provisions are limited and restrictively defined. The established criteria presuppose that:
 - a) a breach must be of a certain severity before termination should be permitted; and

b) if there are alternative and more lenient measures which can be implemented to ensure compliance with contractual duties, such measures must be employed before terminating an employment contract (cf. DRC 13/10/2010).

It is a necessary application of the principle of good faith that a prior warning be given of the ultimate consequences of the Player's actions should they be repeated or continued.

- v. The schedule of the alleged unauthorized travel adduced in evidence before the CAS, by the Appellant, is firstly, illustrative of the Club's interference with the Player's free movement and violates the fundamental principles of freedom of movement and privacy and secondly, is materially different to that produced before the FIFA DRC and should not be relied upon. The Respondent maintained that he had not travelled to Italy since 2008, had never travelled to Germany or Austria and had only visited Switzerland after the Appellant had terminated the Contract.
 - vi. There is insufficient and/or no proof that the absences of the Player were unauthorized and/or not legitimate. Moreover, of the absences relied upon by the Appellant, seven of the cited absences took place before May 2010, *i.e.* before the date upon which the Appellant decided to enter into the second contract with the Player. The absences were either authorized or justified as they correspond to periods in which the Parties were in dispute or in which the Player was injured and subject to medical supervision in France. Prior to termination of the Contract the Player was not subject to sanction or punishment by the Club for unauthorized absence.
 - vii. The Player participated in seven matches for the Appellant after the alleged unauthorized absence between 26 May 2011 and 29 May 2011.
36. The Respondent submitted the following request for relief:
- *To confirm FIFA's previous decision in all its dispositions;*
 - *To dismiss the appeal of the Talaia Al Gaish;*
 - *To order the Appellant to pay to the Respondent, in addition with the USD 407.000 for breach of contract without just cause with interests of 5% from 9 August 2014, legal expenses exposed by the Respondent which represent EUR 35.332 and also procedural costs.*

VI. ADMISSIBILITY

37. 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".

38. The appeal by the Appellant was filed on 24 July 2014, *i.e.* within the deadline of 21 calendar days after the date of receipt of the reasoned decision as set by Article 67 para.1 of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.
39. It follows that the appeal is admissible.

VII. JURISDICTION

40. 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”.

41. The jurisdiction of CAS, which is not disputed by the Parties, derives from Article 67 para.1 of the FIFA Statutes and Article 24 para. 2 RSTP, as it determines that a decision of FIFA may be appealed to the Court of Arbitration for Sport in Lausanne (Switzerland) within 21 calendar days as of the day of receipt of the decision with grounds.
42. It follows that CAS has jurisdiction to decide on the appeal against the decision of the FIFA DRC dated 24 February 2014.

VIII. APPLICABLE LAW

43. 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”.

44. The Sole Arbitrator observes that Articles 5 (14) and 6 (17) of the Contract respectively obliges the Club and the Player to *“apply[ing] FIFA rules and regulations”*.
45. The Sole Arbitrator observes that both the Appellant and the Respondent refer to FIFA’s Regulations in their submissions.
46. Article 66 para. 2 of the FIFA Statutes provides 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”.

47. On the basis of the foregoing, the Sole Arbitrator is of the opinion that the various Regulations of FIFA and, subsidiarily, Swiss law shall be applied to determine this dispute. As the present matter was submitted to FIFA on 26 September 2011, the 2010 version of the FIFA Regulations on the Status and Transfer of Players are applicable. Those regulations shall apply primarily, together with the other applicable Rules of FIFA and Swiss law shall be applied subsidiarily.

IX. MERITS

48. The following sections refer to the substance of the Parties' allegations and arguments without listing them exhaustively. In considering the case and in his findings on the merits, the Sole Arbitrator has nevertheless examined and taken account of all the Parties' allegations, arguments and the evidence on record, whether or not expressly referred to in what follows.

A. The Panel's scope of review

49. Pursuant to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law on appeal.

B. Main issues

50. The main issues to be resolved by the Sole Arbitrator are:

- a) Was the Contract prematurely terminated by the Club with or without just cause?
- b) What amount of compensation, if any, is due?

a. Was the Contract prematurely terminated by the Club with or without just cause?

51. It is not in issue, that the Contract was unilaterally terminated by the Appellant by letter dated 12 July 2011.

52. In submissions at the Hearing, the Appellant asserted that:

- i. the termination of the Contract was justified by the Respondent's repeated unauthorized absence from Egypt, without permission of the Appellant, which resulted in his missing training sessions and from participating in matches. The number of absences pleaded in the Appeal Brief was 183 days but at the Hearing it was accepted, that on the Appellant's evidence the number of absences was 178 days and that the sum claimed from the Respondent should accordingly be reduced to USD 178,000.
- ii. it was, in any event, entitled to terminate the Contract at the end of a season before the Contract expired, by giving notice in writing within fifteen days after the last national official match pursuant to Article 10 of the Contract.

- iii. termination of the Contract pursuant to Article 10 entitled the Player to receive payment of his contractual entitlement only, to the end of the season in which the Contract was terminated.
 - iv. Article 10 of the Contract was bilateral rather than unilateral, as an identical clause had appeared in the first contract of employment between the Appellant and Respondent and the Player knowingly and willingly entered into the second contract of employment.
 - v. inclusion of a clause such as Article 10 is mandatory under the Egyptian Football Association Regulations of Player's Affairs.
 - vi. that Article 6 of the Regulations of Player's Affairs was incorporated into the Contract by agreement of the Parties and was a mandatory provision without which the Contract could not be registered with the Egyptian Football Association.
 - vii. the Appellant did not accept the Respondent's absences and the document entitled acknowledgment was signed contemporaneously with signature of the Contract and was in effect incorporated within it and which entitled the Appellant to recover EUR 1,000 for each day's unauthorized absence.
 - viii. the head coach of the Appellant did not wish to unilaterally terminate the Contract at the time of the last unauthorized absence as there were a number of matches remaining until the end of the season in which he wished to field the Respondent.
 - ix. the Respondent accepted that he was absent without authority of the Appellant and was not entitled to compensation and/or to bring the claim before the FIFA DRC.
 - x. if the Respondent denied signing the Contract then it is null and void and not binding on the Appellant and that the Respondent is not entitled to claim compensation.
53. In submissions and in evidence at the Hearing, the Respondent asserted that:
- i. the Contract was not signed by the Respondent as it was presented to the Respondent in the absence of his contractually retained agent.
 - ii. the Contract was written in English, in which the Respondent and the Respondent did not understand its terms.
 - iii. the Respondent had not seen and was not aware of the terms of Article 6 of the Egyptian Football Association Regulations of Player's Affairs.
 - iv. that although the signatures on the acknowledgment documents were similar to his own, he did not prepare or sign the documents.
 - v. any absence from the Club was verbally approved by the President of the Appellant and all his travel arrangements were made and paid for by the Appellant.

- vi. the schedule of travel adduced by the Appellant, supposedly justifying the Respondent's absences referred to destinations (Austria and Germany) which he had never visited and other countries which he had visited only after the Contract had been terminated by the Appellant.
 - vii. the real reason for termination of the Contract was that following the revolution which occurred in Egypt in spring 2011, the Egyptian Football Association cancelled all matches in the 2011/2012 season and did not wish to maintain payment of the Respondent's contractual entitlement. Three other players in the Appellant's squad likewise had their contract terminated.
 - viii. had the Appellant believed it was entitled to rely on the alleged absences it would have referred to them in the termination letter dated 12 July 2011, but that in any event there was no connection between the alleged absences and the termination.
 - ix. in any event the absence between 26 May and 29 May 2011 was insufficient justification to warrant termination of the Contract in circumstances when the Respondent was fielded by the Appellant in five other matches after that date.
54. Having considered the submissions and the evidence of the Respondent given at the Hearing, the Sole Arbitrator finds that the Contract was validly entered into between the Parties, but can make no finding whether or not it was signed by the Respondent. It is however clear to the Sole Arbitrator that the Parties performed under the terms of the Contract until it was terminated by the Appellant by letter dated 12 July 2011 and that both Parties considered the Contract to be validly executed.
55. There is a conflict of evidence between the Parties as to whether the Respondent was absent from Egypt with or without authority of the Appellant and for what periods. The documentary evidence adduced to the FIFA DRC by the Appellant apparently evidencing the alleged absences was at variance to that adduced to the CAS on appeal and no acceptable explanation was given by the Appellant for the difference. The Sole Arbitrator is mindful of the provisions of Article 8 of the Swiss Civil Code 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"*. The Sole Arbitrator believes that the Appellant has failed to discharge that burden and, in these circumstances, considers that no reliance can be placed upon it.
56. Further, the Sole Arbitrator observes that no evidence was adduced by the Appellant of exception being taken to the alleged absences, prior to the proceedings commenced by the Respondent before the FIFA DRC and notes also that the termination letter of 12 July 2011 makes no reference to the alleged absences being without authority. The Sole Arbitrator also notes that the Respondent's evidence that following the last alleged absence in May 2011, the Respondent was fielded in five matches by the Appellant was not challenged. The Sole Arbitrator accordingly finds that the evidence that any absence taken by the Respondent was made with authority of the Appellant is to be preferred. It follows that the Sole Arbitrator does not accept that the Appellant can rely on the alleged absences to terminate the Contract with just cause.

57. Having regard to the wording of Article 10 of the Contract, the Sole Arbitrator is mindful of the established jurisprudence of the CAS (c.f. CAS 2005/A/983& 984 and CAS 2008/A/1517) and fully accepts the finding of the FIFA DRC. The Sole Arbitrator considers the clause to be unilateral and potestative, for the benefit of the Appellant only and which cannot be arbitrarily or validly invoked as a legal basis for a unilateral termination of the Contract.
58. In view of the above and of the evidence presented by the Appellant, the Sole Arbitrator considers that the Appellant unilaterally terminated the Contract without just cause and that the Respondent is therefore entitled to a financial compensation in accordance with Article 17 para. 1 of the FIFA RSTP.

b. What amount of compensation, if any, is due?

59. As determined *supra*, the Sole Arbitrator finds that the Club terminated the Contract without just cause on 12 July 2011.
60. In the absence of any contractual provision stipulating the amount of compensation payable in the event of breach, the Sole Arbitrator observes that the financial consequences of a unilateral breach without just cause are set out in Article 17 para. 1 of the FIFA Regulations on the Status and Transfer of Players. This provision provides as follows:

“[...] 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 the protected period [...]”.

61. The Sole Arbitrator observes that the Contract would have expired at the end of the season 2012/2013, had the Appellant not terminated it prematurely.
62. As such, the Sole Arbitrator considers that the Player is entitled to compensation of USD 480,000 representing his contractual salary for the seasons 2011/2012 and 2012/2013, but that he must mitigate his loss to the extent that he obtained alternative employment with the Thai club, Than Hoa, for which he was paid USD 7,000 per month for the period 25 April 2012 until 30 August 2012 (USD 28,000) plus a signing on fee of USD 45,000, making a total of USD 73,000. The Sole Arbitrator thus finds that the Player is entitled to be paid the sum of USD 407,000, and would not have increased the compensation had he been in a position to do so.
63. Consequently the Sole Arbitrator finds that the Appealed Decision shall be confirmed in full.

C. Conclusion

64. Based on the foregoing and after taking into due consideration all the evidence and submissions made, the Sole Arbitrator finds that:
- a. On 12 July 2011, the Club unilaterally terminated the Contract.
 - b. The Club did not have just cause to unilaterally terminate the Contract.
 - c. The Player is entitled to the sum of USD 407,000 as compensation for breach of contract.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Talaea El Gaish Club on 24 July 2014 against the decision issued by the FIFA Dispute Resolution Chamber on 27 February 2014 is dismissed.
 2. The decision issued on 27 February 2014 by the FIFA Dispute Resolution Chamber is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.