Arbitration CAS 2014/A/3573 Damián Alejandro Manso v. Al Ittihad Club, award of 29 January 2015

Panel: Mr Jacopo Tognon (Italy), President; Mr Ricardo De Buen Rodríguez (Mexico); Mr Michele Bernasconi (Switzerland)

Football
Compensation for termination of employment contract without just cause
Contractual negotiations and right to terminate the employment contract
Article 17 FIFA Regulations on the Status and Transfer of Players

1. **Neither the fact that the parties to a contract (e.g. employment contract) – upon signing of a first version of the contract which contains all the *essentialia negotii* of an employment contract - continue negotiating amendments to the contract, nor the fact that in parallel to the negotiations, one of the parties to the contract is also in employment contract negotiations with a third party (which is not permitted in the country of the other party), entitles the other party to terminate the contract with just cause in the meaning of the FIFA Regulations on the Status and Transfer of Players (the "RSTP"). Indeed, it is to be considered quite normal that – in the absence of any particular reasons or contractual limitations – in the employment market, a person looking for employment evaluates more than one possible job offer at the same time. Even if in some countries and in some cultures, it may be considered particularly offensive or even outrageous if a person negotiates in parallel with more than one potential employer at the same time, such attitude is irrelevant when it comes to matters of international nature which have to be decided taking into account the FIFA Regulations and additionally, Swiss law.**

2. **The purpose of article 17 RSTP is to reinforce contractual stability i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as deterrent against unilateral contractual breaches and terminations committed either by a club or a player. This deterrent effect shall be achieved through the impending risk to have to pay compensation for damage caused by the breach or unjustified termination. In other words, both players and clubs are warned: if one does breach or terminate a contract without just cause, a financial compensation is due and is to be calculated in accordance with all elements of article 17 RSTP that are applicable in the matter at stake, including the *"specificity of sport"* and all the non-exclusive criteria listed in article 17 para. 1 RSTP. Two basic principles have been recognised by the jurisprudence of CAS and of the FIFA Dispute Resolution Chamber: (a) in case of a breach of contract, if there is no agreement between the parties with respect to the amount of compensation, the calculation of said compensation shall be made taking into account the criteria established by article 17 RSTP; (b) the calculation of the amount of compensation shall be made based on the principle of the so-called "positive interest",**

meaning the amount of compensation shall put the respective party in the position that same party would have been in if the contract had been performed properly.

I. THE PARTIES

1. Mr. Damián Alejandro Manso (the "Appellant" or the "Player") is a professional football player of Argentinean nationality.

2. Al Ittihad Club (the "Club" or the "Respondent") is a professional football club with its registered office in Jeddah, Kingdom of Saudi Arabia.

II. THE FACTS

3. A summary of the facts and background giving rise to the present dispute will be developed below based on the parties' submissions and the evidence examined in the course of these proceedings. Additional background may be also mentioned in the legal considerations of the present award. In any case, the Panel has considered all the factual allegations, legal arguments and evidence submitted by the parties in the present proceedings, but it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

4. At the end of December 2008, the Player was approached by the Club in order to finalize a possible transfer from his previous Club LDU Quito. On 25 December 2008, the Club sent a letter to the Agents of the Player (the "Agents") in which the offer of a contract was made in favour of the Player. On the same date, an official offer was sent also by the Club to the Ecuadorian Club, LDU Quito for the negotiation of the transfer fee.

5. Concurrently with the aforementioned, the Agents informed the Club by email of the acceptance of the offer by the Player and LDU Quito. On 27 December 2008, the Club sent a new, more detailed offer to Mr. Diego Cativa (one of the Player's Agents) and on the same date the Player sent to the Club the signed acceptance of said offer.

6. The Club offered a net salary of USD 1'300'000 for the period starting from 1 January 2009 until 30 June 2010, half of this amount to be paid upon the signing of the contract (and passing of the medical exams) and the remaining part in 18 monthly instalments. Moreover, the Club also offered the Player 12 business class plane tickets, a car and fully furnished apartment, together with the payment of 15% of the total amount of the transfer fee.

7. On 31 December 2008, the Club, after several discussions with the Agents, sent another contract containing new clauses and specific regulations related to the employment offer. However, this contract was never signed by the Player.

8. On the same date, the Club informed Mr. Cativa that visas for four persons had been issued in favour of the Player's representatives, so that they could attend the meeting with the Club's

representatives in Saudi Arabia scheduled on 6 January 2009. However, the Club decided to retract the offer because it became aware of parallel negotiations that were going on between the Player and another Saudi club (i.e. Al-Ahli). The Club justified its decision on a veto that was allegedly issued by the Saudi Arabian Football Federation (the "SAFF") which prohibited such practices (i.e. parallel negotiations). The Club considered that the Player was in serious violation of the general principle of good faith in negotiations and to be guilty of bringing football into disrepute.

9. By letter of 3 January 2009, the President of the SAFF informed the Club and Al-Ahli that – due to a violation of the local "Charter of Honour sports" – the SAFF had decided to ban the Player's registration during the winter transfer window.

III. THE PROCEEDINGS BEFORE THE DRC OF FIFA

10. On 25 November 2009, the Player filed a claim against the Club before the Dispute Resolution Chamber of FIFA (the "DRC") requesting a compensation of USD 1'480'000 plus interest.

11. The Respondent, in turn, rejected the Player's claim.

12. On 12 December 2013, the DRC rendered a decision partially upholding the Player's claim (the "Appealed Decision"). The decision with grounds was notified to the parties on 19 March 2014.

13. In summary, the DRC stated that:

- The first and most important problem to solve was whether the official offer signed between the parties on 27 December 2008 established a valid and binding employment contract. The DRC concluded that the offer contained the *essentialia negotii* of an employment contract (namely the parties and their role; the duration of the employment relationship; the remuneration and the signature of both parties) so that there existed an actual agreement. Therefore, the parties concluded a valid employment contract.
- The constant jurisprudence of the DRC has established that the validity of an employment contract cannot be made conditional upon the execution of administrative formalities.
- The Club did not have just cause to terminate the employment contract. Therefore, said contract was breached by the Respondent.
- Concerning the consequences of the contract's termination without just cause, and bearing in mind the wording of article 17.1 of the Regulations on the Status and Transfer of Players (the "RSTP"), the DRC emphasized that the Player had signed an employment contract with the Mexican club Pachuca for the seasons 2009/2010, 2010/2011 and 2011/2012 in exchange of USD 500'000 per season.
- The DRC stressed that the execution of the contract did not take place, *"an element which equally should be taken into consideration in the calculation of the amount of the compensation"* (see para. 23 of the Appealed Decision).

- Regarding the negotiations in parallel between the Player and Al-Ahli, the DRC considered that this element was important, taking into account that the Player had lodged a claim before FIFA against Al-Ahli Saudi FC regarding the same contractual period, a claim that had been withdrawn.
- The DRC decided that the Club had to pay the Player USD 150'000 as compensation for breach of contract, plus 5% interest accrued as of 12 December 2013.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 8 April 2014, the Appellant filed its Statement of Appeal in accordance with articles R47 *et seq.* of the Code of Sports-related Arbitration (the "Code") and nominated as arbitrator Mr. Ricardo De Buen Rodríguez, attorney-at-law in Mexico City, Mexico.

15. On 16 April 2014, the Appellant filed his appeal brief in accordance with article R51 of the Code.

16. On 26 May 2014, the Respondent filed its Answer in accordance with article R55 of the Code and nominated as arbitrator Mr. Michele A.R. Bernasconi, attorney-at-law in Zurich, Switzerland.

17. By letter of 16 June 2014, the CAS Court Office informed the parties that, pursuant to article R55 of the Code, the Panel responsible for handling the present appeal had been constituted as follows: Mr. Jacopo Tognon, professor and attorney-at-law in Padova, Italy, as President; Mr. Ricardo De Buen Rodríguez, attorney-at-law in Mexico City, Mexico, and Mr. Michele A.R. Bernasconi, attorney-at-law in Zurich, Switzerland, as arbitrators.

18. On 26 June 2014, the Panel requested FIFA to provide the Panel with a copy of its case file.

19. On 26 June 2014, the CAS Court Office, on behalf of the Panel, informed the parties that a hearing would be held, in accordance with article R57 of the Code.

20. On 3 July 2014, FIFA provided the CAS Court Office with a copy of the case file.

21. By letter of 15 July 2014, the Appellant introduced Mr. Emiliano Sebastiano as a new witness.

22. On 15 July 2014, the Respondent filed its objection against the hearing of the witness Mr. Sebastiano. After a clarification submitted by the Appellant by letter of 21 July 2014, the Panel decided to allow Mr. Sebastiano to file a written statement limited to answering the question *"whether the Appellant gave power of representation to any other attorney in order to initiate a different action"*.

23. On 4 and 7 August 2014, the Respondent and the Appellant signed and returned a copy of the Order of Procedure to the CAS Court Office.

24. By letter of 16 August 2014, the Appellant sent to the CAS Court Office the witness statement of Mr. Sebastiano.

25. The hearing took place in Lausanne, Switzerland, on 26 August 2014. The Panel was assisted by Mr. Antonio de Quesada, CAS Legal Counsel. Mr. Enrique Martorell, Mr. Ricardo Frega Navia (counsel for the Appellant) and Mr. Juan de Dios Crespo Pérez (counsel for the Respondent) attended the hearing.

26. At the end of the hearing, both parties declared that they had no objections with respect to the composition of the Panel and that their right to be heard had been fully respected.

V. THE PARTIES' POSITIONS

A. Appellant's Position and Requests for Relief

27. First, the Player underlined that the scope of his appeal is limited only to point n. 22 up to n. 25 of the Appealed Decision. The Player argued that the sum of USD 150'000 established by the DRC was too low, bearing in mind the clear principles established by article 17.1 of the RSTP.

28. Moreover, the Player alleged that there was no doubt that the agreement had been validly concluded, so that the only question which had to be decided by the Panel in these proceedings concerned the amount of the compensation.

29. Furthermore, the Player emphasized that the calculation had to be made taking into account the total value of the breached contract (i.e. USD 1'300'000) minus USD 500'000, which was the Player's net salary under his contract with the Mexican Club Pachuca. Therefore, this simple calculation justified an increase of the compensation established by the DRC from USD 150'000 to USD 800'000.

30. In any case, the Player argued that the reasons used by the DRC for reducing the amount of the compensation were unfounded. On the one hand, the short duration of the contract is not an element to be considered for reducing the amount of the compensation. On the other hand, the Player highlighted that he did not sign any other contract nor did he file a claim before FIFA against Al-Ahli.

31. The Player contended that he has never granted a power of attorney for filing a claim against Al-Ahli before FIFA; as a result, the Appealed Decision was totally wrong since it did not take into account the fact that he never gave a power of attorney to any lawyer for filing a claim on his behalf against Al-Ahli.

32. In any case, bearing in mind that the Respondent did not appeal the Appealed Decision, the only point in discussion in these proceedings was the amount of the compensation due to the Player by the Club.

33. Furthermore, the Appellant requested that the interest shall accrue as of January 2010 instead of 12 December 2013.

34. The Appellant requested the CAS to render an award in the following terms:

- *"to consider this appeal brief has been filed on a timely manner;*
- *to remit the appeal brief to the Arab club;*
- *to incorporate the file processed before FIFA as part of this appeal;*
- *that the involvement of a single arbitrator is set, and also that the case rest as a question of law and, therefore, the hearing is to be eliminated;*
- *and timely, issue a decision that sanctions the Al Ittihad Club to pay USD 800.000 (eight hundred thousand) dollars, plus interest accrued from January 2010, in favour of football player Mr. Damian Manso, plus the amount of arbitration costs and expenses (fees)".*

35. Finally, at the hearing before CAS, the Appellant corrected one of his prayers for relief and clarified that the interest shall accrue as of 25 November 2009, i.e. when the Appellant filed his claim before FIFA. The Respondent did not raise any objection in this regard.

B. Respondent's Submissions and Requests for Relief

36. The Respondent argued that the agreement was not legally binding because it was subject to the fulfilment of certain conditions that eventually never occurred. In fact, such conditions were included in the agreement upon the Player's request.

37. The Respondent contended that said conditions, which have never been met, were as follows: a) LDU Quito agrees on the Player's transfer and receives the transfer fee; b) that the Player's agent receives a commission deriving from the Player's transfer; c) that the money offered to the Player as sign-on-fee was cashed.

38. Furthermore, the Respondent submitted that the agreement was, in fact, a simple promise of contract. In this respect, clause 11 of the contract sent on 31 December 2008 reads as follows: *"this contract is valid and executed after being signed by both parties, passing the medical exam, arriving to Jeddah and concluding the contract with the players current club"*. However, none of the conditions established in this clause has ever been met.

39. In the unlikely alternative that the Panel deems that a valid agreement was concluded, the Respondent argued that in any case it had been acting under a material error pursuant to article 23 and 24 para. 1 lit. 4 of the Swiss Code of Obligations and, for that reason, it was able to terminate the contract with just cause.

40. The Respondent sustained that the pre-contractual agreement should be considered as null and void in accordance with article 119 of the Swiss Code of Obligations. In this respect, the Respondent stated that *"the obligations derived from the pre contractual agreement shall be deemed as extinguished because its performance was rendered impossible by circumstances not attributable to the obligor, i.e. to the Al Ittihad but shall be attributed to circumstances provoked by the player himself"* (see para. 23 of the Answer of the Respondent).

41. In *extrema ratio*, if the Club had no just cause to terminate the agreement, the compensation due would be less than USD 150'000 because the DRC made the following significant errors:

- First, the DRC failed to take into consideration the remuneration earned by the Player between January and July 2009, when he played for the club LDU Quito;
- Second, the DRC failed to apply the well-established Swiss doctrine of negative contractual interest, applicable in cases of *culpa in contrahendo* resulting from breaches during pre-contractual phases of negotiations;
- Finally, the DRC did not take into account the duty of the Player to mitigate his damages.

42. Moreover, the Respondent alleged that the legal interest, if any, shall accrue from the date in which the Appealed Decision was rendered.

43. In conclusion, the Respondent requested the CAS to render an award in the following terms:

- *"This answer is admissible and well-founded, and*
- *The player's appeal is dismissed and the decision is upheld, and*
- *The Appellant shall pay the full costs of these proceedings and shall pay in full, or in alternative, a contribution towards:*
    1) *The costs and expenses, including the Club's legal expenses, pertaining to these appeal proceedings before the CAS; and*
    2) *The costs and expenses, including the Club's legal expenses, pertaining to the first-instance proceedings held before the FIFA Judicial Bodies,*
- *To condemn the Appellant to the payment of the whole CAS administration costs and the Arbitrators fees.*
- *Awarding any such other relief as the Panel may deem necessary or appropriate".*

VI. ADMISSIBILITY

44. 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 in a previous agreement, the time limit for the appeal shall be twenty one days from the receipt of the decision appealed against […]".*

45. The Panel notes that the grounds of the Appealed Decision were notified on 19 March 2014 to the parties, and the Appellant filed his Statement of Appeal on 8 April 2014.

46. The Panel is satisfied that the Statement of Appeal was timely filed and is therefore admissible.

VII. JURISDICTION

47. 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".*

48. The jurisdiction of CAS derives from article R47 of the CAS Code and article 67 of the FIFA Statutes. In addition, both parties confirmed the jurisdiction of CAS by signing the Order of Procedure.

49. Therefore, the Panel is satisfied that CAS has jurisdiction to decide over this case.

VIII. 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. The Panel notes that the contract did not foresee any provision with respect to the choice of law in case of dispute between the parties. The Panel, however, notes that the Appellant and the Respondent agree that FIFA Regulations shall apply to the present dispute.

52. Furthermore, article 66 para. 2 of the FIFA Statutes provides that *"CAS shall apply the various regulations of FIFA and, additionally, Swiss law".*

53. The Panel considers that the present dispute shall be resolved in accordance with FIFA Regulations and, additionally, Swiss law.

IX. MERITS OF THE APPEAL

54. The present dispute is primarily governed by the RSTP, which provide that in cases of breach of a contract, financial compensation, as well as sporting sanctions, may be applicable.

55. More specifically, article 17 of the RSTP states that *"the following provisions apply if a contract is terminated without just cause: 1. In all cases, the party in breach shall pay compensation. Subject to the provisions of art. 20 and annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on*

the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".

56. The purpose of article 17 has been discussed and clarified in many CAS awards. For example, in CAS 2008/A/1519-1520, the Panel stated that: *"the purpose of art. 17 is basically nothing else than to reinforce contractual stability i.e. to strengthen the principle of pacta sunt servanda in the world of international football, by acting as deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player … this deterrent effect shall be achieved through the impending risk … to have to pay compensation for damage caused by the breach or unjustified termination"*.

57. In other words, *"both players and clubs are warned: if one does breach or terminate a contract without just cause, a financial compensation is due, and such compensation is to be calculated in accordance with all those elements of art. 17 of the FIFA regulations that are applicable in the matter at stake, including all the non-exclusive criteria listed in par. 1 of said article"* (CAS 2009/A/1856-1857, para. 186 *et seq.*).

58. The Panel concurs with the above considerations. In fact, as described above, two basic principles have been recognised by the well-established jurisprudence of CAS and of the DRC:

    i. In case of breach of contract, if there is no agreement between the parties with respect to the amount of compensation, the calculation of said compensation shall be made taking into account the criteria established by article 17 of the RSTP;

    ii. The calculation of the amount of compensation shall be made by the Tribunal based on the principle of the so called "positive interest", meaning *"it shall aim at determining an amount which shall put the respective party in the position that same party would have been in if the contract had been performed properly"* (BERNASCONI M., The unilateral breach – some remarks after Matuzalem in: BERNASCONI/RIGOZZI (editors), "Sport Governance, Football Disputes, Doping and CAS arbitration, Colloquium", 2009, p. 249).

59. Moreover, it is important to underline that other criteria could be considered in order to determine a fair compensation, such as the so-called *"specificity of sport"*.

60. CAS jurisprudence established that *"the authors of art. 17 of the FIFA Regulations, achieved a balanced system according to which the judging body has on the one side the duty to duly consider all the circumstances of the case and all the objective criteria available, and on the other side a considerable scope of discretion, so that any party should be well advised to respect an existing contract as the financial consequences of a breach or a termination without just cause would be, in their size and amount, rather unpredictable…"* (CAS 2009/A/1856-1857, para. 186).

61. In addition, *"sport, similarly to other aspects of social life, has an own specific character and nature and plays its own important role in our society. Similarly as for the criterion of the "law of the country concerned", the judging body has to take into due consideration the specific nature and needs of sport when assessing the circumstances of the dispute at stake, so to arrive to a solution which takes into reasonable account not only the interests of players and clubs, but more broadly those of the whole football community…. In other words, the judging body shall aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis*

of the specific nature of the sporting interest at stake, the sporting circumstances and the sporting issues inherent to the single case" (see ibid; CAS 2009/A/1880-1881, para. 233-240).

62. In sum, a panel may consider rather negatively if a party engages in a conduct which is in blatant bad faith or that terminates the contract for its own selfish interests. On the contrary, rather positively will be considered the case of a party that has displayed exemplary behaviour throughout the duration of a contract and possibly even at the occasion of its termination.

63. In view of the above, the main issues to be resolved by the Panel in these proceedings are as follows:

1) Who was in breach of the contract?; If yes

2) Is the injured party entitled to any compensation and in which amount?

1. Who was in breach of the contract?

64. First, the Panel has to decide whether the Club has terminated the contract with or without just cause.

65. The Panel is of the opinion that several factors clearly lead to the conclusion that the Club did not have just cause to terminate the contract.

66. Indeed, it is sufficient to stress that:

- As correctly stated by the DRC, the contractual offer of 27 December 2008, then accepted by the Player, is, to all effects and purposes, a binding and valid agreement, since it had all the elements necessary, all the *essentialia negotii*, for a *bona fide* employment contract.
- Furthermore, the arguments of the Respondent according to which the parties agreed that the validity of the contract was subject to the fulfilment of certain conditions are not shared by the Panel. Indeed, the Panel is satisfied that the validity of the first contract was not subject to any condition, and also the subsequent negotiations did not nullify nor set aside the agreement already reached between the parties.
- The parties may have attempted to negotiate and reach a more detailed contract but, in any case, this does not mean that the first contract would lose its binding effect.
- Therefore, it is not possible to speak that the validity of the agreement was subject to the fulfilment of certain conditions since the subsequent negotiations were, if anything, intended to regulate further details of the contractual relationship already existing between the parties.

67. Bearing in mind that a contract had been validly concluded, the Panel has now to decide if the Club breached said contract.

68. Based on all the circumstances of the case, the Panel is satisfied that the Club did not have valid grounds to terminate the contract.

69. Indeed, even if it seems to be true that the implementation of the transfer of the Player was prohibited by the SAFF (i.e. the Player's registration), the Panel is of the view that the reasons lying behind such prohibition do not justify an immediate termination of a valid contract. Even assuming that the Player had started negotiations in parallel with another club, such circumstance does not appear to the Panel to be sufficient to invoke just cause for an immediate termination of a contract.

70. In fact, the Club has not provided any satisfactory evidence to assume that the Player had acted in breach of the general obligation to act in good faith. Furthermore, the Club has not proved that the Player could have committed *culpa in contrahendo* nor that the Club was induced by the Player to conclude the contract. Rather, it is to be considered quite normal that – lacking any particular reasons or contractual limitations – in the employment market, an employee evaluates more than one possible job offer at the same time.

71. The Panel appreciates that in some countries and in some cultures it may be considered particularly offensive or even outrageous if an employee negotiates in parallel with more than one potential employer at the same time. It is obviously not for this Panel to criticize any such cultural or moral attitude. However, for the purposes of the present case, such attitude is irrelevant: the dispute between the Player and the Club is a matter of international nature which has to be decided taking into account the parties' submissions and in accordance with FIFA Regulations and additionally, Swiss law. Under such rules, and in view of the lack of any convincing evidence to the opposite, the Player did not commit any breach that would justify an immediate termination of the contract validly concluded with the Club.

72. Furthermore, the Panel considers that there is no "subsequent impossibility of performance" due to the Player's behaviour and that even admitting the alleged prohibition of the implementation of the transfer imposed by the SAFF, this circumstance does not, under the applicable rules, provide the Club with a reason to cancel or terminate the contract with the Player.

73. Therefore, the breach of contract was caused by the Club only.

74. Based on all the evidence and the arguments submitted, the Panel is satisfied that the Club terminated the contract without just cause. Accordingly, compensation is due to the Player under article 17 of the RSTP.

2. Is the injured party entitled to any compensation and in which amount?

75. At this stage, the Panel must now determine which amount shall be granted to the Player, applying the criteria established by article 17 of the RSTP and based on the evidence available.

76. The Panel makes reference to the calculation made by the DRC in the Appealed Decision and notes that on the basis of the circumstances of the present case, the calculation calls for a

correction. While it seems correct to deduct from the amount of USD 1'300'000 the sum of USD 500'000, it is also true that the sum earned by the Player during his contract with the club LDU Quito (i.e. USD 120'000) shall also be deducted, as rightly pointed out by the Respondent.

77. The Panel deems pertinent to consider that the contract between the Player and the Club was in effect for only one week (from 27 December 2008 to 3 January 2009). The Panel also notes that the Player never played for the Respondent's team (even if it was due to the Club's fault). In other words, the execution of the contract never took place.

78. Furthermore, it shall also be taken into consideration that only the offer made by the Club had been accepted by the Player and that the Appellant did not reach any agreement with the club Al-Ahli.

79. In this respect, the Panel is satisfied that the Player had not given any power of attorney to file a claim on his behalf before FIFA against Al-Ahli. This has been confirmed by the statements of Mr. Sebastiano and the Player (cf. the letter of 8 October 2012).

80. The Panel, therefore, does not share the rather severe evaluation by the DRC of the behaviour of the Player.

81. Taking into consideration that the negotiations between the parties on further details of their relationship have not affected the validity of the contract, the compensation granted to the Player by the DRC appears to this Panel to be too low. In particular, taking into account that (i) the Player has in fact filed only one claim before FIFA, and not two, and (ii) the short duration of the contract has been caused by the Respondent.

82. Therefore, taking into consideration all the circumstances of this case, the evidence filed by the parties and the criteria established by article 17 of the RSTP, the Panel is satisfied that the appropriate amount to be granted to the Player as compensation is USD 350'000. In view of the Panel, this amount is fair upon a due analysis of all the evidence and all the arguments put forward by the parties.

83. The last issue to be dealt with is the one concerning the interest. Also in this respect, the Panel does not share the position of the DRC.

84. In fact, the Panel does not find any valid reason to set the *dies a quo* for the late payment interests at the date of the decision at first instance.

85. According to article 102 para. 1 of the Swiss Code of Obligations, where an obligation is due, the debtor is in default as soon as he or she receives a formal reminder from the creditor. It is well recognised that the filing of a claim may be deemed to trigger the default of a debtor, similar to a reminder. Finally, a reminder is considered to trigger its effect with its receipt by the debtor.

86. In the present case, the Player filed his claim before FIFA on 25 November 2009. This has remained undisputed. Further, it is also undisputed that on 11 December 2009, FIFA forwarded a copy of the claim to SAFF. However, the Player was not able to produce any evidence as to the date on which SAFF has forwarded the letter of FIFA, and the claim of the Player to the

Respondent. The evidence available shows only that on 4 March 2010, the Club filed its answer to FIFA, indicating that the SAFF had "recently" provided the Club with a copy of the claim of the Player. Since the term "recently" does not provide satisfactory basis for the Panel to define a precise date, and taking in consideration that the burden of proof as to the *dies a quo* lies on the Player, the Panel is of the view that late payment interests shall accrue as from 4 March 2010, i.e. the earliest date for which evidence is given that the Club was aware of the claim and of the requests of the Player.

87. Finally, the interest rate of 5% applied by the DRC is to be confirmed, as being the one foreseen in article 104 of Swiss Code of Obligations.

88. In conclusion, on the basis of the rules applicable to the merits and for all the reasons set out above, the Panel holds that the appeal lodged by the Player shall be partially upheld in the *quantum debeatur*, the Appealed Decision shall be partially set aside and any other prayers or requests shall be rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Mr. Damián Alejandro Manso on 8 April 2014 is partially upheld.

2. The Decision issued by the Dispute Resolution Chamber of FIFA on 12 December 2013 is partially set aside.

3. Al Ittihad Club shall pay Mr. Damián Alejandro Manso an amount of USD 350'000 (three hundred and fifty thousand US dollars) plus interest of 5% from 4 March 2010.

(…)

6. All other prayers for relief are dismissed.