Arbitration CAS 2012/A/2906 Alain Geiger v. Egyptian Football Association (EFA) & Al Masry Club, award of 12 February 2013

Panel: Prof. Petros Mavroidis (Greece), Sole Arbitrator

Football
Contract of employment between a coach and a club
No application of the RSTP to the merits of a contractual dispute involving a coach
Standing to be sued
Burden of proof

1. **The Regulations on the Status and Transfer of Players (RSTP) are not applicable to the merits of a contractual dispute between a coach and a football club, since Article 1 RSTP (entitled "Scope") provides that these regulations concern players, not coaches, and since the provision equating players with coaches in Article 33§4 of the 2001 FIFA Statutes no longer appears in the 2008 and subsequent versions of the FIFA Statutes.**

2. **Standing to sue or to be sued in civil procedure relates to the substantial basis of the claim; it is the (active or passive) subject of the claimed right that must have standing, as its absence causes the dismissal, and not the inadmissibility, of the claim. Under Swiss law, the question of standing to sue or to be sued shall be reviewed *ex officio*.**

3. **Under a general principle of law, enshrined under Article 12 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, and under Article 8 of the Swiss Civil Code, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact. If a coach admits that he did not provide his services by not training the team during a certain period, the coach has also to establish that his non-performance was justified and, consequently, he should be paid the agreed salary anyway.**

I. PARTIES

1. Mr Alain Geiger (hereinafter referred to as "the Coach") is a Swiss citizen. He is a professional coach.

2. The Egyptian Football Association (hereinafter referred to as "the EFA") is the Egyptian Football Association, which has been affiliated to the Fédération Internationale de Football Association (hereinafter referred to as "FIFA") since 1923. FIFA is an association established in accordance with Article 60 of the Swiss Civil Code and has its seat in Zurich (Switzerland).

3. Al Masry Club (hereinafter referred to as "the Club") is an Egyptian professional football club currently playing in the Egyptian Premier League, which is the highest football league in Egypt. The Club is affiliated with the EFA.

II. BACKGROUND FACTS

4. The circumstances stated below are a summary of the relevant facts, as established by the Sole Arbitrator on the basis of the CAS file, and the hearing that took place on December 18, 2012. The parties to the dispute agree on the following facts.

5. The Coach and the Club concluded an employment contract – *"contrat d'engagement d'entraîneur"* – (hereinafter referred to as "the Contract") on 15 December 2010. The Contract was drawn up in French and with specified duration from 15 December 2010 to 15 June 2011.

6. In addition to various bonuses and benefits in kind (housing, car, flight tickets), the Club agreed to pay to the Coach an amount of USD 150'000 as follows:

   – USD 50'000 on 16 December 2010;
   – USD 20'000 on 30 January 2011;
   – USD 20'000 on 28 February 2011;
   – USD 20'000 on 30 March 2011;
   – USD 20'000 on 30 April 2011;
   – USD 20'000 on 30 May 2011.

7. Further to the suspension of all sporting activity because of events that are known as the *"Egyptian Revolution"* (Arab Spring, as is colloquially referred to) and that took place on 25 January 2011, the Coach flew back to Switzerland on 28 January 2011. The Contract was not suspended, as it was assumed that the Coach would return when the situation in Egypt returned to normality.

8. According to the produced airline tickets bills, the Coach returned to Egypt twice: on 5 February, when he stayed until 8 March 2011, and then again on 15 March 2011.

9. The Club paid the salaries of February and March 2011 to the Coach, but did not pay him any salary for April and May 2011. There is disagreement between the parties with respect to other relevant factual issues and we will be referring to them in what follows.

10. On 8 June 2011, the Coach lodged a claim with FIFA against the Club and requested the payment of these two outstanding salaries.

11. By decision of 11 May 2012 (hereinafter referred to as "the Decision"), the Single Judge of the FIFA Players' Status Committee (hereinafter referred to as "the Single Judge") rejected the

Coach's claim and stated that the costs of the FIFA proceedings, that amount to CHF 1'000.—, should be borne by the Coach.

12. The Single Judge considered that the Club did not establish that, in January 2011, the Coach left the team on his own will. He held nevertheless, that the Coach ceased to work for the Club as of 25 January 2011 and *"failed to demonstrate a genuine interest to go back to Egypt as soon as he could in order to fulfil his side of the contract"*. The Single Judge further held that it was the Coach's responsibility to contact the Club *"as soon as he could in order to find out when the situation would allow him to go back to Egypt"*, and that he did not submit any evidence to this effect. Consequently, the Single Judge considered that the Coach had failed to fulfil his obligation under the contract and, was thus in breach. As a consequence, the Single Judge dismissed the claim.

13. Upon request from the Coach, FIFA notified the grounds of the Decision on 27 July 2012.

III. SUMMARY OF THE CAS PROCEEDINGS

14. On 17 August 2012, the Coach appealed the Decision before the Court of Arbitration for Sport (hereinafter referred to as "CAS"). He directed his appeal against the EFA and the Club, and submitted a Statement of Appeal, written in French.

15. On 24 August 2012, the Coach submitted another Statement of Appeal, almost identical to the first one, and specified that this new submission should be considered to be his Appeal Brief.

16. When invited to provide the CAS Court Office with a complete address for the Club, the Coach completed his Statement of appeal by letter of 31 August 2012.

17. On the same day, the CAS Court Office initiated the present arbitration procedure, and invited the Respondents to file their answer, and to jointly appoint an arbitrator and, in view of the amount in dispute, suggested the appointment of a sole arbitrator in this case.

18. On 19 September 2012, the Club suggested that the present procedure be conducted in English and requested the constitution of a Panel composed of three arbitrators.

19. By letter of the same day, the CAS Court Office proposed that all parties as well as the Panel may express themselves in French or in English according to their preferences. All parties accepted, either expressly or tacitly, this suggestion, but disagreed on the number of arbitrators, since by letter of 20 September 2012, the Coach had requested the appointment of a sole arbitrator, whereas the Club's preference was to establish a Panel consisting of three arbitrators.

20. On 28 September 2012, the Deputy President of the CAS Appeals Arbitration Division (hereinafter referred to as "the Deputy President") decided that this case should be submitted to a sole arbitrator.

21. On 21 October 2012, the Club filed its answer within the extended deadline.

22. On 31 October 2012, Mr Petros C. Mavroidis, Professor, (…) was appointed as Sole Arbitrator by the Deputy President.

23. After having duly consulted with the parties, the Sole Arbitrator invited them, by letter of 20 November 2012, to a hearing in Lausanne on 18 December 2012.

24. By letter of 21 November 2012, the Sole Arbitrator submitted a list of questions to the parties and informed them that after a review of the file and of the applicable procedural rules, he has decided, on a *prima facie* basis, that Swiss law was applicable to the merits of the case. He referred them to a link leading to an English translation of the Swiss Obligations Code (hereinafter referred to as "CO"). He specified in his communication to the parties that the provisions relating to employment contract were Articles 319 ff. and Articles 324 ff. dealing with the obligation to pay a salary in the event that performance of work was not possible, and Articles 334 ff. dealing with the end of the employment relationship.

25. On 28 November 2012, the CAS Court Office issued, on behalf of the Sole Arbitrator, an Order of Procedure which confirmed that CAS had jurisdiction to rule on this matter, and that the applicable law would be determined in accordance with Article R58 of the Code of Sports-related Arbitration (hereinafter referred to as "the Code"). The Coach and the Club signed and returned the Order of Procedure to the CAS Court Office.

26. Further to a request filed by the Coach in his Statement of Appeal, the Sole Arbitrator requested FIFA to produce the full file of the dispute between the Club and the Coach, as well as of the dispute between the Club and F., who had been employed as physiotherapist of the Club, his employment at the Club overlapping with that of the Coach.

27. On 6 and 12 December 2012, the Coach submitted his answers to the Sole Arbitrator's questions (see §24, supra) together with exhibits relating to the dates of his arrival to and departure from Egypt (e.g., a copy of his passport, and a copy of his airfare bill).

28. By letter of 11 December 2012, the Club also submitted its answers to the Sole Arbitrator's questions. It further announced that the Club's Counsel, Mr Nasr El-Din Azzam, would attend the hearing in Lausanne together with A., an official of the Club employed as dressing room coaching staff, who would act as witness.

29. Further to an objection from the Coach to the hearing of A., who had not been announced as witness within the Club's answer brief, the Sole Arbitrator decided, on 14 December 2012, to accept his audition, but to limit it to the content of the statement that had been filed along with the Club's answer.

30. The Sole Arbitrator, responding to a subsequent request by the Club, authorized the Club's representative, Mr Nasr El-Din Azzam, and A. to attend the hearing via audio/video conference.

31. On 18 December 2012, a hearing was held at the CAS premises in Lausanne. The Coach attended the hearing together with his Counsel, Mr Riand. The Club's Counsel, Mr Nasr El din

Azzam, attended the hearing via audio conference. Similar procedure was followed with respect to A.

32. The EFA did not submit any answer and failed to appear at the hearing although it had been duly summoned. Pursuant to Article R55§2 and to Article R57§3 of the Code, the Sole Arbitrator decided to proceed with this arbitration and to deliver an award.

33. At the outset of the hearing, the Coach and the Club did not raise any objection with respect to the formation of the Panel or to the jurisdiction of the CAS to rule on this dispute. During the hearing the Coach and the Club made full oral submissions. They agreed that they had been offered ample opportunity during the proceedings to present their case, to submit their arguments and to answer the questions submitted to them by the Sole Arbitrator. At the end of the hearing, the Coach and the Club confirmed that the present procedure had been duly conducted and that their right to be heard has been fully respected. After their final arguments, the Sole Arbitrator closed the hearing and indicated that the final award would follow. The Sole Arbitrator heard carefully and took into account all the evidence and the arguments presented by the parties both in their written submissions and at the hearing, even if they have not all been summarized in the present award.

IV. SUMMARY OF THE PARTIES' SUBMISSIONS

34. The following summary reflects the claims of the parties of the dispute, but is only illustrative of their arguments and does not purport to include every contention put forward by the parties.

A. The Coach

35. The Coach challenges the Single Judge's decision, and his submissions may be summarized, in essence, as follows:

1. As to the facts

36. The Coach was in Egypt on 25 January 2011, but left the country on 28 January 2011 upon the Club's insistent request.

37. This departure was subsequent to the Egyptian Revolution: The EFF had thus decided to cease all sporting activities and shortly after the Coach's departure the hotel where he was staying was plundered.

38. It was clear that this was a temporary suspension of the Coach's employment but not of the contractual relationship. The Coach was hoping to come back quickly.

39. The Coach maintains that he returned to Egypt in February and March 2011 in order to pursue his contractual obligations and to prepare the remaining part of the sporting season.

40. Some important incidents that occurred on 2 April 2011 during the match opposing Zamalek to the Club Africain, which had to be interrupted, led to the provisional suspension of his duties yet again. The Club asked the coach to leave temporarily without however, altering their contractual relationship at all.

41. On 3 April 2011, the Coach and F. reported to the Club's training facilities in Port Said, as scheduled. After having resided in a hotel in Sharm el-Sheikh owned by the Club's president.

42. Upon their arrival, officials of the Club indeed explained to them that, in light of the incidents that occurred on 2 April 2011, the championship would be cancelled and that, as no further game would take place during that footballing season, the Club had booked airline tickets for them to leave the country on the day after.

43. The Coach immediately called the Club's President. The President confirmed that, in light of the imminent cancellation of the championship, the Coach and F.'s presence in Egypt was not useful anymore, and that airplane tickets had therefore been booked for them. He added that he would be in Switzerland for business during the next week, and, consequently, that he would contact the Coach to discuss about the future.

44. On 4 April 2011, the Coach and F. left Egypt using the airplane tickets that this time had been exceptionally booked and paid by the Club. The Coach mentioned that it was him who would usually book and pay for his tickets and he would eventually be reimbursed by the Club.

45. The Club's President never contacted the Coach again, in spite of the Coach's numerous unsuccessful attempts to reach him.

2. As to the law

46. Swiss law, especially Articles 319 ff. CO, is applicable to the merits of the case, since the party that supplies the characteristic performance is the Coach, and he resides in Switzerland.

47. The Coach submitted before the Single Judge, and then again in his statement of appeal and appeal brief, that he benefitted from an employment contract according to which, the Club had agreed to pay him USD 20'000 on 30 April 2011, and USD 20'000 on 30 May 2011.

48. The Club did not make these two payments, and the Coach submitted the following requests for relief:

    1. *L'appel formé par Alain Geiger contre la decision of the Single Judge of the Players Status Committeee rendue le 11 mai 2012, déclarée recevable, est admis.*

    2. *Par conséquent, la decision of the Single Judge of the Players Status Committee rendue le 11 mai 2012 est purement et simplement annulée.*

3. *Par conséquent, AL MASRY CLUB – PORT SAID est condamné à verser à Alain GEIGER la somme de 40'000.— USD avec intérêts moratoires à 5 % dès le 1er juin 2011.*
4. *Tous les frais encourus par devant la FIFA, y compris une juste et équitable indemnité pour dépens, sont mis à la charge d'AL MASRY CLUB – PORT SAID.*
5. *Les frais de procédure et de jugement par devant le Tribunal Arbitral du Sport, y compris une juste et équitable indemnité pour dépens sont mis exclusivement à la charge d'AL MASRY CLUB – PORT SAID.*
6. *Toutes autres et plus amples conclusions sont rejetées dans la mesure de leur recevabilité.*

49. In answer, to the Club's allegations and to the Sole Arbitrator's questions, he underlined that the Contract had never been terminated or suspended and that he always respected his contractual obligations since he trained the team in February and March 2011, and left Egypt in April 2011 upon the Club's insistent demand and was neither requested to return to work nor able to reach the Club in spite of several attempts.

B. The Club

50. The Club's submissions can be summarized as follows:

1. As to the facts

51. After the evens referred to as the Egyptian revolution that occurred on 25 January 2011, and to the ensuing suspension of all sporting activities, the Club objected neither to the Coach's desire to leave Egypt, nor to his request to have a flight ticket for Switzerland.

52. Before leaving Egypt, the Coach gave back all his sportswear to A. and requested the Club to transfer his last working month salary on a Swiss Bank account, which was done by the Club on 6 April 2011.

53. The Club complied with all its contractual obligations until 1 April 2011, and therefore paid the Coach's salaries even if the Coach never came back to the Club after his departure in January 2011 and if he had received a 50,000 USD signing fee paid for six working months. Contrary to his allegations, made for the first time before CAS and never before FIFA, the Coach never trained the team in February, or March 2011.

54. The Club acted that way because of its expectation that the Coach would pursue his contractual duties after the resumption of the championship. The Coach however, never contacted the Club to pursue training, whereas the Club tried to reach him after the League's decision to restart the championship in mid-April 2011. The Coach did not come back and since the team's results worsened because of his absence, the Club had to hire a new coach.

2. As to the law

55. Egyptian law is applicable since the Contract was signed in Egypt and had to be performed in Egypt.

56. The Club acted in good faith and even paid monthly salaries to the Coach after his departure. The Coach breached the Contract, since he never returned to Egypt, and never tried to contact the Club after his departure in order to pursue his contractual obligations. The Coach thus, left the Club in a precarious situation.

57. According to the applicable FIFA rules, the Coach had the burden to prove his allegations. He failed to bring forward any evidence, and exclusively relied on his own word and on F.'s word, who had also sued the Club before FIFA.

58. The Club therefore deems that the Coach breached his contractual obligations and it requested the Panel:

1. To reject all the claims and requests of the appellant and confirm the appealed decision of the single judge of the FIFA.

2. To fix a sum of 5,000 CHF to be paid by the Respondent to the Appellant [sic] to aid the Appellant to in the payment of its defence fees and costs.

3. To order the Appellant to cover all the costs incurred with the present procedure.

C. The EFA

59. The EFA chose not to actively take part in these arbitration proceedings, and, accordingly, did not send any response.

V. ADMISSIBILITY OF THE APPEAL

60. The appeal was filed within the deadline provided by Article 63§1 of the FIFA Statutes and it complied with all other requirements of Article R48 of the Code.

61. It follows that the appeal is admissible.

VI. JURISDICTION

62. The jurisdiction of CAS, which is not disputed, derives from Article 63 of the FIFA Statutes and Article R47 of the Code. It is furthermore confirmed by the Order of Procedure signed by the Coach and by the Club.

63. It follows that the CAS has jurisdiction to decide the present dispute.

64. Pursuant to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law applicable to the facts. Therefore, the Sole Arbitrator has the power and the duty to examine the whole case and to decide whether to uphold, reject, or modify the appealed decision.

VII. APPLICABLE LAW

65. Article R58 of the Code reads 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".

66. A similar approach is evidenced in Article 187 of the Swiss Private International Law Act of 1989, which – *inter alia* – provides that *"the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected".*

67. In the present matter, the parties have not agreed in the contract they have signed or during the proceedings before CAS on the application of a particular national law. The Coach has argued that Swiss law is applicable to the merits of the case, while the Club submitted that Egyptian law is applicable.

68. The Sole Arbitrator notes that Article 8 of the Contract provides as follows:

"Article 8: Règlement des litiges

Tout différend quant à l'interprétation ou l'exécution du présent contrat relève de la compétence des instances de la FIFA et conformément aux règlements de la FIFA".

[English translation: Article 8: Dispute Resolution: Any dispute relating to the interpretation or execution of the Contract shall be submitted to FIFA bodies and pursuant to FIFA regulations].

69. In view of the above, the statutes and regulations of FIFA are the "applicable regulations" in the present case under R58 of the Code.

70. As FIFA has its seat in Switzerland, Swiss law is applicable on a subsidiary basis; this is confirmed by Article 62§2 of the FIFA Statutes which provides the following:

"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".

71. The Sole Arbitrator notes here that the FIFA regulations do not explicitly deal with the defendant's standing. It is the Regulations on the Status and Transfer of Players (hereinafter

referred to as "RSTP") that deal with employment contracts, but these regulations are not applicable *in casu*.

72. The Sole Arbitrator concurs with recent decisions by CAS Panels where it was decided that the RSTP are not applicable to the merits of a contractual dispute between a coach and a football club, since Article 1 RSTP (entitled "Scope") provides that these regulations concern players, not coaches, and since the provision equating players with coaches in Article 33§4 of the 2001 FIFA Statutes no longer appears in the 2008 and subsequent versions of the FIFA Statutes (see CAS 2008/A/1464 & 1467, § 68; CAS 2009/A/1758, § 5.2.3 and 5.3.2; CAS 2011/A/2321, § 6.8 and CAS 2011/A/2462, § 70).

73. The Sole Arbitrator finds, consequently, that Swiss law is applicable in the present dispute.

VIII. MERITS

74. The main questions are the following:

a) Have both Respondents identified in the appeal *locus standi* as defendants (légitimation passive)?

b) How shall the burden of proof be allocated between the Coach and the Club?

c) Shall an amount of USD 40'000 be paid to the Coach?

d) In the affirmative, what is the interest due?

A. Have both Respondents identified in the appeal *locus standi* as defendants (légitimation passive)?

75. The Sole Arbitrator notes that none of the Coach's requests (see above §48) is directed against the EFA: they aim exclusively at the annulment of the Decision issued by a FIFA, and not EFA body, and to the payment of certain amount of money, charges or fees, by the Club.

76. None of the parties addressed the question of standing to be sued *in casu* but, since, under Swiss law, this question shall be reviewed *ex officio* (HOHL F., *Procédure civile, Tome I, Introduction et théorie générale*, Berne 2001, p. 99), the Sole Arbitrator had decided to raise the issue regarding the standing of EFA.

77. When requested to this effect, the Coach mentioned that he designated EFA as one of the Respondents, only because the national federation was a member of FIFA.

78. The Swiss Federal Tribunal (hereinafter referred to as "SFT") defined *"légitimation passive"* as follows (note that the CAS has adopted this line of thinking: see, for instance, TAS 2010/A/2288, §72, and the quoted references):

"la légitimation active ou passive dans un procès civil relève du fondement matériel de l'action; elle appartient au sujet (actif ou passif) du droit invoqué en justice et son absence entraîne, non pas l'irrecevabilité de la demande, mais son rejet " (Swiss Federal Decision of 29 April 2010, in the case X. c. Y. SA, 4A_79/2010, extract published *in* : *Semaine Judiciaire* SJ 2010 I p. 459).

[English translation: Standing to sue or to be sued in civil procedure relates to the substantial basis of the claim; it is the (active or passive) subject of the claimed right that must have standing, as its absence causes the dismissal, and not the inadmissibility, of the claim].

79. In view of (a) this case law; (b) of the Coach's requests for relief; and (c) of the fact that the Contract had been signed by the Club and the Coach, the Sole Arbitrator notes that the Club clearly has standing in this case. With respect to the EFA, which, by the way, was not a respondent before FIFA, the Sole Arbitrator observes that it has no standing to be sued *in casu* and that the appeal shall therefore be dismissed as far as it is directed against this association: the EFA did not issue the contested decision, nor is it the bearer of rights disputed in the present case.

B. How shall the burden of proof be allocated between the Coach and the Club?

80. Under a general principle of law, enshrined under Article 12 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, and under Article 8 of the Swiss Civil Code, *"the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*.

81. *In casu*, the Coach claims that he should be paid USD 40'000 on the basis of a contractual obligation to pay him this amount for employment corresponding to the last two months of his contractual relationship with the Club. The Club recognized the existence of a contract, but it alleged that the Coach had breached it, and that he was therefore not entitled to the requested amounts of money.

82. Since the Coach admits that he did not provide his services by not training the team in April and May 2011, the Coach has also to establish that his non-performance was justified and, consequently, he should be paid the agreed salary anyway (WYLER R., *Droit du travail*, Berne 2008, p. 205; decision of the Swiss Federal Tribunal 4C.155/2006; ATF 120 II 209, JT 1995 I 367; ATF 118 II 139, JT 1993 I 390).

C. Shall an amount of USD 40'000 be paid to the Coach?

83. The Coach based his claims on the existence of an employment contract that, *inter alia*, would provide for the payment of the requested amount.

84. The Sole Arbitrator recalls here that it is uncontested that on 15 December 2010, the Coach and the Club concluded an employment agreement which entered into force the day of the

signature and was valid until 15 June 2011; this contract *inter alia* provided for the payment by the Club to the Coach of USD 20'000 on 30 April 2011, and of USD 20'000 on 30 May 2011.

85. It is furthermore uncontested that the Club did not pay these salaries. Moreover, none of the parties to the dispute alleged that the Contract would have been suspended or formally terminated; the Club alleged that the Coach was in breach of his obligations since he left Egypt on 28 January 2011 and never returned to resume his contractual obligations, a fact however, that as mentioned above is heavily contested by the Coach.

86. The Club thus, has argued that these amounts would not be due since the Coach would have breached the Contract by leaving Egypt in January 2011.

87. The Coach denied any breach of his contractual obligations. He has argued that he returned to Egypt in spite of a very unstable political situation and trained the team in February and March 2011 before leaving Egypt in April upon the Club's insistent request, and in the expectation of a phone call from the Club's President to return and resume his duties (see above §§35 ff.).

88. The Sole Arbitrator notes here that in order to sustain its allegations, the Club did not bring any evidence except for the testimony of A., who stated that the Coach gave him back some of his sporting clothes before leaving Egypt in January 2011 and that he never came back to Egypt after that date, and, before the Single Judge, a letter attesting that the last paid salary was transferred on a Swiss bank account.

89. The Coach submitted several documents attesting that he was in Egypt in February and March 2011, and also filed a letter written by F. F. essentially confirmed the description of the events as they had been narrated by the Coach.

90. The Sole Arbitrator took note of the Club's comments according to which (a) F. also sued the Club before FIFA and (b) the Coach never alleged before FIFA that he worked for the Club in February and March 2011. With respect to the claim filed by F., the Sole Arbitrator notes that such claim was not entertained by FIFA for lack of jurisdiction on a dispute between a club and a physiotherapist; the Sole Arbitrator, therefore does not consider it a factor mitigating the weight of F.'s statement. With respect to the absence of any mention by the Coach of his work for the Club in February and March 2011 before FIFA, the Sole Arbitrator deems that it is irrelevant, since a reading of the FIFA file tends to indicate that it was probably due to a misunderstanding and since documents brought before CAS uncontestably established that the Coach was in Egypt during these two months. Anyway the Sole Arbitrator has the right to do a *de novo* review and it is in this context that the evidence submitted by the Coach and by the Club should be evaluated.

91. The Coach indeed supplied information to the effect that he travelled to Egypt twice and the last time was asked to leave Egypt because of the incidents that occurred during the football game discussed above: both his as well as F.'s deposition are identical in this respect. The only defense by the Club to this effect is that the Coach has disappeared as of 28 January 2011.

92. The Club's employee, A., stated that the Coach left with him his kit as sign of definitive departure from Egypt. This statement however, is at odds with the Club's actions that continued to pay the Coach's salary two months after his last appearance in Egypt. It is also at odds with the Club's attitude: the Club did not accuse the Coach there and then of breach of his contractual obligations: if the Coach had indeed left for good the club in January, and had never returned to Egypt, then the question legitimately arises why pay him two salaries before stopping payments to his benefit? Moreover, another question arises: why did not the Club inform the Coach, in writing or verbally even, of its decision to stop paying him as a result of his continued absence?

93. The Club finally also interprets the Coach's request to have his last salary paid on his Swiss bank account as sign of a definitive departure from Egypt. The Sole Arbitrator notes that in light of the political context such request is understandable and that it is not at odds with any of the Coach's allegations. Furthermore if formulated already in January 2011, this request would be at odds with the Club's attitude (see supra §92) while if formulated after 28 January 2011 it would be at odds with the Club's allegations according to which there were no contacts between the Club and the Coach after that date.

94. In view of the above, the Sole Arbitrator is convinced by the facts, as presented by the Coach. The Coach has assumed his burden of proof and therefore, he is entitled to the payment of an amount of USD 40'000.

D. What is the interest due?

95. The Coach has requested the payment of interest. In the absence of a specific contractual rate, the legal interest rate set forth in Article 104 CO (i.e. 5%) is applicable.

96. Since, according to the Contract, the payments were due on 30 April 2011 for 20'000 USD, and on 30 May for another USD 20'000, the Club is in default as of then, in accordance with Article 102§2 CO (*"where a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the obligor is automatically in default on expiry of the deadline"*).

97. Since the Coach has requested the payment of interest as of 1 June 2011, it is due from that date that it should be calculated and added to the sum of USD 40,000 already adjudicated to the Coach.

IX. CONCLUSION

98. Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Sole Arbitrator finds that the Club must pay the amount of USD 40'000 plus 5% interest since 1 June 2011.

99. The Decision of the Single Judge is set aside.

100. The Sole Arbitrator however notes that the Coach did not provide all the documents attesting his version of the facts before FIFA (such as the copies of his visa, air flights tickets bills and the letter of F.). Since these elements were of utmost importance for the resolution of this dispute, the Sole Arbitrator holds that the Coach has to bear the costs of the FIFA proceedings, amounting to CHF 1'000, as well as a part of the costs of the CAS proceedings.

101. The Appeal is dismissed as far as it is directed against the EFA and upheld as far as it is directed against the Club.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules:

1. The Appeal filed on 17 August 2012 by Mr Alain Geiger, against the decision By decision issued on 11 May 2012 by the Single Judge of the FIFA Players' Status Committee is partially upheld.

2. The decision issued on 11 May 2012 by the Single Judge of the FIFA Players' Status Committee is set aside.

3. The Club Al Masry is ordered to pay to Mr Alain Geiger the amount of USD 40'000.-- (fourty thousand), plus interest at 5% (five percent) as from 1 June 2011.

(…).

6. All other motions or prayers for relief are dismissed.