



Arbitration CAS 2011/A/2472 Al-Wehda Club v. Saudi Arabian Football Federation (SAFF), award of 12 August 2011

Panel: Mr Luigi Fumagalli (Italy), President; Mr Jirayr Habibian (United Arab Emirates); Mr Michele Bernasconi (Switzerland)

Football

CAS jurisdiction

Scope of FIFA Statutes regarding CAS jurisdiction

Conditions for a specific arbitration agreement

1. According to the Code of Sports-related Arbitration (the Code), in order for the CAS to have jurisdiction to hear an appeal, either the statutes or regulations of the sports federation from whose decision the appeal is being made expressly recognise the CAS as an arbitral body of appeal, or a specific arbitration agreement referring to CAS has been concluded between the parties. The Code, however, does not contain rules dealing with the formal and substantive validity of an arbitration agreement. Article 178 of the PIL in this connection therefore applies. As to form, the arbitration agreement shall be valid if it is made in writing, by telegram, telex, telecopier, or any other means of communication that establishes the terms of the agreement by a text. As to substance, the arbitration agreement shall be valid if it complies with the requirements of the law chosen by the parties or the law governing the object of the dispute and, in particular, the law applicable to the principal contract or with Swiss law. In this respect, the submission according to which the Statutes of a federation contain a “*printing mistake*”, and therefore that they allow an appeal to CAS against decisions rendered by the federation cannot be accepted.
2. FIFA Statutes do not by themselves grant jurisdiction to CAS with respect to decisions passed by confederations, members or leagues. The FIFA Statutes do not contain any mandatory provision that obliges a national federation or a league to allow a right of appeal from its decisions. If the FIFA Statutes did compel the national federation or the league to provide for a right of appeal from its decisions, no right of appeal to the CAS would exist until the national federation or the league had made provision for this right in its statutes or regulations. However, in light of Article 63 para. 5 and 6 of the current FIFA Statutes, an express reference made by a national federation’s statutes to FIFA Statutes allows a CAS Panel to claim jurisdiction with respect to a national federation’s decision on a doping matter.
3. Absent any evidence, the existence of a “*specific arbitration agreement*” providing for the CAS jurisdiction according to which on one side, the federation would have offered the club to give the CAS jurisdiction to hear an appeal against the decision and on the other side, the club would have accepted such offer cannot be accepted.

Al-Wehda Club (“Al-Wehda” or the “Appellant”) is a football club with headquarters in Mecca, Saudi Arabia. Al-Wehda is affiliated to the Saudi Arabian Football Federation (SAFF) and in the season 2010/2011 participated in Zain Saudi League, the main competition of professional football in the Kingdom of Saudi Arabia.

The Saudi Arabian Football Federation (SAFF) (“SAFF” or the “Respondent”) is the national federation governing the sport of football in Saudi Arabia.

On 20 May 2011, a football match (the “Match”) was played in Mecca, Saudi Arabia, between the teams of Al-Wehda and of Al-Taawon FC (“Al-Taawon”). The Match corresponded to the twenty sixth, and final, round of the Zain Saudi League (the “League”) and ended in a draw (0-0). The kick-off of the Match was scheduled to take place at 08:55 pm, as per the directions contained in a circular issued by the SAFF on 16 November 2010.

The report about the Match signed by the referee (the “Report”) contained inter alia the following statement:

“Reasons of delaying starting the match: The delaying of the team in coming down to the playground. Whereas Al Taawon came down at 8:58 PM and Alwehda team came at (9:01 PM). Furthermore, the players of Al-Taawon team delayed in the second half”.

On the same 20 May 2011 the commissioner of the Match issued a report that contained the following remarks:

- *“Delay of Al Wehda Club to march in for the first half for (6) minutes”;* and
- *“Delay of Al Taawon to march in for the first half for (3) minutes and delay to march in for the second half for (3) minutes as of the start of the second half”.*

On 21 May 2011 the referee of the Match submitted a “follow up report” addressed to the Chairman of the Refereeing Committee, indicating the following reasons for the late kick-off of the Match:

- “1. Prior to the start of the match, both teams delayed march in to the field, whereas players of Al Taawon Club entered first at 08:58pm and players of Al Wehda Club entered at 09:01pm although the official kick-off time is 08:55pm the match started at 09:07pm with a delay of 12 minutes.*
- 2. The second half of the match delayed for two minutes whereas players of Al Taawon delayed entering in to the field and the second half started at 10:10pm although it is assumed to start mostly at 10:08 pm”.*

A follow up report was issued on 21 May 2011 also by the referee observer as follows:

“After march in of the referees in the specified time, the two teams delayed entering the field especially Al Wehda Club team for a period more than (five minutes) although the referee blew his whistle to alert the teams to enter the field.

At the start of the second half, Al Taawon Club team delay entering into the field for more than (four minutes) although Al Wehda Club team was available as well as the match officials, therefore, the start of the second half was delayed accordingly”.

On the basis of the follow up reports so received, on 21 May 2011 the Chairman of the Refereeing Commission sent to the General Secretary of SAFF the following letter:

"I would like to inform you that based on the reports received from the observer and referees, it is obvious that there is an agreement between the two teams to delay march into the field of play, Al Wehda team march into the field of play for the first half after 6 minutes delay and Al Taawon Club march into the field of play for the second half after 5 minutes. Based on my real experience and experiment there is an agreement between the two teams to follow up the results of the other teams, whereas the tie result between the two teams will keep Al Wehda Club in Zain Professional League and qualify Al Taawon Club to Championship for Champions amongst the eight qualified clubs".

On 22 May 2011 the Technical Committee of the SAFF (the "Technical Committee") considered the report of the Match, *"whereas such report stated a delay of march into the field committed by Al Wehda Club and Al Taawon Club in the first half in addition to delay of march in to the field of Al Taawon for the second half"*, issued a decision (the "TC Decision") as follows:

"First: Issue a warning to Al Wehda Club and a fine an amount of SR10,000 (ten thousand Saudi Rials) as per article 33/4 of the Competition and Championship Regulations.

Second: Issue a warning to Al Taawon Club and a fine an amount of SR10,000 (ten thousand Saudi Rials) as per article 33/4 of the Competition and Championship Regulations.

Third: impose a fine on Al Taawon Club an amount of SR20,000 (twenty thousand Saudi Rials) for repeating the violation as per article 33/4 and 32/7 of Competition and Championship Regulations.

Fourth: the aforementioned fines shall be paid within a period of thirty days as of the date of notification to the respective clubs of the committee's decision as per article 32/2 of Competition and Championship Regulations, taking into consideration the provision of such article.

Fifth: this decision is subject to appeal in accordance with applicable regulations".

Following an exchange of letters between the SAFF Secretary General and the Chairman of the Legal Committee of SAFF, the matter was referred to the SAFF Disciplinary Committee (the "Disciplinary Committee").

On 22 May 2011 the Disciplinary Committee issued its decision No. 24 (the "DC Decision").

"First: sanction Al Wehda Club and Al Taawon Club based on article 15 and articles 8/1/3 and 8/1/6 of the sanctions regulations in the following order:

- a- To penalize Al Wehda Club and Al Taawon Club a fine an amount of SR 300,000 on each club.*
- b- Deduct three points from the results of Al Wehda in this competition (Zain Professional League).*
- c- Deduct three points from the results of Al Taawon in this competition (Zain Professional League).*

Second: the decision is subject to appeal as per appeal regulations of the Saudi Arabian Football Federation.

Third: this decision shall be passed in writing to the general secretariat of the Saudi Arabian Football Federation to initiate the required action".

The DC Decision was “based on the satisfaction of the committee that that the aforementioned case was intended to impact the results of the other matches of Al Faisaly Club and Al Qadisiyah Club, also to benefit from such results to stay in the professional league for Al Wehda and to participate in the King’s Club Championship for Champions for Al Taawon Club”.

Al Wehda filed an appeal against the DC Decision with the SAFF Appeal Committee (the “Appeal Committee”), which in its decision No. 6/2011, rendered on 25 May (the “AC Decision”), decided to:

- 1- *Reject the appeal of Al Wehda Club in view of its subject.*
- 2- *Support the decision of disciplinary committee reference number 24 dated 19/6/1432H.*
- 3- *Confiscate the appeal fees.*
- 4- *Provide copy of this decision to the general secretariat of the Saudi Arabian Football Federation, disciplinary committee, media and statistics committee and legal committee.*
- 5- *To pass this decision to Al Wehda Club.*
- 6- *Refer this decision to media and statistics committee to initiate the required action and to publish the decision through media.*
- 7- *This decision is final and requires implementation; also, it is not subject to appeal or objection”.*

In support of the AC Decision, the Appeal Committee remarked that:

- i. *“... the appellant mentioned in his request to cancel the decision referring to a mistake on the basis of the decision and the disciplinary committee didn’t submit any evident or proof to confirm and affirm absolute prior agreement between the two teams Al Wehda and Al Taawon to delay the ending of the match, also, that the committee issued its decision on conclusions and doubts which are not proved to be correct.*

... the disciplinary committee issued its decision based on the reports of the referee, referees assessor which confirm its compatibility and affirmed that Al Wehda Club intentionally delay march in to the field of play in the first half and the referee’s report is considered the valid evident in accordance with paragraph 12/4 of article 12 of the competitions regulations which states the following: “the referee’s decision concerning the result of the match and the players’ conduct and performance shall be considered absolute and final as per rules of the laws of the game”, the intended delay by Al Wehda Club although there was a circular issued by the general secretariat of the Saudi Arabian Football Federation to organize all matches in round 26 of the league in the same synchronized time at 08:55 pm.

The general secretariat of the Saudi Arabian Football Federation initiated the right decision to issue such circular taking into consideration the hazard and damage which may occur if such breach occurred by clubs and in order to avoid such infringements which may impact the results of the matches.

So, the appeal in this regard shall be rejected”.
- ii. *“... the appellant stated in the appeal file that the disciplinary committee committed a mistake for issuing the sanction and the procedures, the appellant stated that the decision was issued without any proof that Al Wehda club manipulated the result of the match without any confirmation if there was a*

delay by the team when march in to the field, also, it was not proved that there was a situation of force majeure or not.

... the disciplinary committee issued its decision based on the referee's report as well as the referees' assessor's report which both confirmed the intentional delay proved by the decision of the technical committee as per reference number 114/m dated 19/6/1432H.

So, the appeal in this regard shall be rejected".

- iii. *"As for the statement of the appellant concerning the prayer's call, the late prayer's call time is 08:24pm which means that the time left is thirty one minutes prior to the official kick-off time of the match, such time is well-known and enough to perform prayers prior to the match, also, the competitions committee took into account the prayers' time in order to avoid any interference with the matches' times. Such information is very well-known to All.*

So, the appeal in this regard shall be rejected".

- iv. *"The appellant stated in the appeal file that there is a double implementation of a sanction, whereas the technical committee issued its decision number 114/m dated 19/6/1432H to enforce sanction on the delay infringement. Whereas, the disciplinary committee issued its decision concerning the approved delay in the process of march in to the field of play in order to impact the results of the other matches as proved in the decision of the technical committee which was not objected by Al Taawon Club which means that it is considered a confession to confirm intention delay in march in time to impact the results of the other matches, such matter is different than what is issued in the decision of the technical committee. The committee practiced its specialties and objectives which includes emphasis on the sport spirit fundamentals and honest competitiveness, fair play, good ethics and conduct, all of which confirm the necessity to respect and comply with the principles and organizational regulations as well as the conducts of the football practitioners and football affiliates, in order to illustrate brighter view of the Saudi Arabian Sport in general specifically football.*

So, the appeal in this regard shall be rejected".

On 7 June 2011, the Appellant filed a statement of appeal with the CAS pursuant to Article R47 of the Code of Sports-related Arbitration (the "Code") against SAFF to challenge the AC Decision.

In filing their statement of appeal, the Appellant requested that the case be dealt with in an expedite matter. At the same time, the Appellant also applied for a stay of the AC Decision, pursuant to Article R37 of the Code.

Following a request from the CAS Court Office in a letter of 10 June 2011, on 11 June 2011 the Appellant filed an addendum, with 7 exhibits, to its statement of appeal regarding *"the provisions of the statutes of the Saudi Arabian Football Federation allowing an appeal before the CAS"*.

In a letter the CAS Court Office dated 20 June 2011 the Appellant *inter alia* indicated its availability, already expressed in a correspondence sent to SAFF, *"to relinquish its request for provisional measures should the Respondent agree to suspend the payment of the fine of 300,00 Saudi Rials until final award is issued in the present case"*. Such proposal was accepted by the Respondent in a letter dated 21 June 2011. Therefore, the CAS Court Office, on the same 21 June 2011, indicated that *"the Appellant's request for provisional measures is deemed withdrawn"*.

In a letter dated 21 June 2011 the Appellant confirmed to the CAS Court Office, for the purposes of Article R51 of the Code, that the statement of appeal would also serve as appeal brief. In the same letter, the Appellant filed some observations to support its claim that *“the Saudi Arabian Football Federation violates its own Regulations and Statutes”*.

On 11 July 2011, the Respondent filed its answer.

On 14 July 2011 the Appellant transmitted by email to the CAS Court Office a copy of a letter signed by the Secretary General of the SAFF on 13 July 2011 *“in which he declares that the Federation accepts the jurisdiction of the CAS in compliance with the Statutes of the Saudi Arabian Football Federation which recognize said jurisdiction”*. In a letter of the same day, the Respondent denied that the letter of the Secretary General of the SAFF could be interpreted as a confirmation of the acceptance of CAS’ jurisdiction.

On 15 July 2011, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure, which was accepted and countersigned by the parties. In the order of procedure, it was stated, with respect to CAS jurisdiction, the following: *“The Appellant considers that the CAS has jurisdiction to decide the present matter based on Articles 10, 13 and 64 of the Statutes of the Saudi Arabian Football Federation. The jurisdiction of the CAS is contested by the Respondent”*.

On 15 July 2011, a hearing was held in Lausanne.

At the hearing, the Panel acknowledged for the purposes of Article R56 of the Code, with the agreement of the parties, the filing of the submissions dated 21 June 2011 (above) and 14 July 2011 (above). During the hearing, the parties explored the possibility to agree on the CAS jurisdiction: having failed to reach an agreement, the parties insisted in their respective positions, making submissions in their support. Videos of the Match were also examined by the Panel and the parties in this connection.

At the conclusion of the hearing, the parties confirmed that the Panel had respected their right to be heard and to be treated equally in the arbitration proceedings.

LAW

Jurisdiction

1. The jurisdiction of the CAS to hear the appeal brought by the Appellant against the AC Decision is disputed by the Respondent. In fact, the Appellant, on one hand, alleges that the SAFF and FIFA Statutes, as well declarations rendered by SAFF officers, including its President, offer a sufficient basis for this Panel to find the CAS jurisdiction; the Respondent, on the other hand, maintains that this Panel does not have jurisdiction to hear an appeal against the AC Decision.
2. It is undisputed that this arbitration has its seat in Lausanne, Switzerland (Article R28 of the Code), and involves two non-Swiss (Saudi) entities. In the present case, therefore, the provisions of the Swiss Private International Law Act (the “PIL”) apply, pursuant to its Article 176 para. 1 (as *“the seat of the arbitral tribunal is in Switzerland and if at least one of the parties at the time the arbitration agreement was concluded was neither domiciled nor habitually resident in Switzerland”*).
3. In accordance with Article 186 of the PIL, this CAS Panel has the power to decide upon its own jurisdiction.
4. Article R47 of the Code states that *“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”*.
5. Therefore, in order for the CAS to have jurisdiction to hear an appeal, either the statutes or regulations of the sports federation from whose decision the appeal is being made expressly recognise the CAS as an arbitral body of appeal, or a specific arbitration agreement referring to CAS has been concluded between the parties.
6. The Code, however, does not contain rules dealing with the formal and substantive validity of an arbitration agreement. Article 178 of the PIL in this connection therefore applies. As to form, the arbitration agreement shall be valid if it is made in writing, by telegram, telex, telecopier, or any other means of communication that establishes the terms of the agreement by a text (Art. 178 para. 1 PIL). As to substance, the arbitration agreement shall be valid if it complies with the requirements of the law chosen by the parties or the law governing the object of the dispute and, in particular, the law applicable to the principal contract or with Swiss law (Art. 178 para. 2 PIL).
7. The provisions and/or texts that are relevant, or have been invoked, in these proceedings with regard to the CAS jurisdiction are the following:
 - i. Article 10 para. 2 of the SAFF Statutes, which provides that:

“The application [for SAFF membership] must be accompanied with the following mandatory articles:

(...)

- b. To undertake to abide at all times by the Statutes, Regulations and decisions of the Federation, of the Asian Federation (AFC) and of the International Federation (FIFA), and that members, club, officials and players undertake the same.*

(...)

- d. To undertake to recognize the dispute resolution chamber recognized by the Federation and to recognize the Court of Arbitration for Sport (CAS) in Lausanne ...”;*

- ii. Article 13 para. 1 of the SAFF Statutes, which provides that:

“The members of the Federation undertake the following:

- a. To abide at all times by the statutes by the statutes, regulations, instructions and decisions of the Federation, of the Asian Federation (AFC) and of the International Federation (FIFA), and to pledge that all its members abide by it.*

(...)

- f. The adoption of a clause in the statutes stipulating that any dispute that requires judicial resolution and to which the member or one of its members are a party, regarding the Statutes or the regulations or the instructions and decisions of the Federation or of the Asian Federation or of the International Federation or leagues, shall be examined exclusively by the relevant judicial bodies of the Federation, or the Asian Federation AFC or the International Federation FIFA, and it is forbidden under any circumstances to resort to ordinary courts”;*

- iii. Article 64 of the SAFF Statutes, under which:

“1. Pursuant to any relevant articles of the Statutes of the International Federation, any appeal against a final and binding decision issued by the International Federation shall be examined by the Court of Arbitration for sport (CAS), in Lausanne, Switzerland. However, the Court of Arbitration for sport does not examine appeals pertaining to the violations of the Laws of the Game, or to temporary suspensions of up to four matches, or to suspensions of up to three months, or to the decisions issued by an independent arbitration panel duly constituted by the Federation or a continental federation.

- 2. The Federation, as well as its members, the players, the officials, matches agents and players agents, undertake to abide by any final decision issued by the International Federation or the Court of Arbitration for sport (CAS)”;*

- iv. Article 63 of the FIFA Statutes, pursuant to which:

“1. Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.

- 2. Recourse may only be made to CAS after all other internal channels have been exhausted.*

- 3. CAS, however, does not deal with appeals arising from:*

(a) violations of the Laws of the Game;

- (b) *suspensions of up to four matches or up to three months (with the exception of doping decisions);*
 - (c) *decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.*
4. *The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect.*
 5. *FIFA is entitled to appeal to CAS against any internally final and binding doping-related decision passed by the Confederations, Members or Leagues under the terms of par. 1 and par. 2 above.*
 6. *The World Anti-Doping Agency (WADA) is entitled to appeal to CAS against any internally final and binding doping-related decision passed by FIFA, the Confederations, Members or Leagues under the terms of par. 1 and par. 2 above.*
 7. *Any internally final and binding doping-related decision passed by the Confederations, Members or Leagues shall be sent immediately to FIFA and WADA by the body passing that decision. The time allowed for FIFA or WADA to lodge an appeal begins upon receipt by FIFA or WADA, respectively, of the internally final and binding decision in an official FIFA language”;*
- v. the letter to Al Wehda and Al Taawon of 30 June 2011 No. 4564 signed by the Secretary General of SAFF, which, in its pertinent portions, reads as follows:
- a. in the translation provided by the Appellant:

“We inform you that the president of the Federation has issued instructions to the secretary general of the federation to facilitate the mission of the two clubs should they desire to communicate with the International Federation regarding the decision of the appeals committee number (7/2001) dated 22/6/1432 AH, 25/05//2011, the federation will help with the visas, tickets etc.

Please advise us of your intention in this respect”;
 - b. in the translation provided by the Respondent:

“I would like to inform you the instructions of His Royal Highness Prince Nawaf Bin Faisal Bin Fabad Bin Abdulaziz President of Saudi Arabian Football Federation addressed to the General Secretariat to facilitate the mission of both clubs in the event they are willing to approach international federation concerning the decision of the appeal committee number 7/2011 dated 22/6/1432, whereas, the federation will assist the representatives of both clubs to obtain their entry visas and airline tickets.

This is for your information and to provide us with your feedback of the willing of the club”;
- vi. the letter to Al Wehda of 13 July 2011 No. 5439 signed by the Deputy Secretary General of SAFF, which, in its pertinent portions, reads as follows:
- a. in the translation provided by the Appellant:

“With reference to our letter number (4564/10) dated 27/06/1432 based on the instructions of HRH Prince Nawaf Ben Faisal Ben Fabad the President of the Saudi Arabian Football Federation, and with reference to what has been published in the newspapers today that the Saudi Arabian Football Federation is not allowing Al Wehda Club to seek recourse before the CAS, which is contrary to the said instructions which allow the club to present its case before the CAS in accordance with the Statutes of the Saudi Arabian Football Federation”;
 - b. in the translation provided by the Respondent:

“We refer to our letter 4564/10 dated 27/6/1432H, which was based on the directives of His Royal Highness Prince Nawaf Bin Faisal Bin Fahd Bin Abdulaziz, President of Saudi Arabian Football Federation, with regard to the publication in the press today that the Saudi Arabian Football Federation is preventing Al Wehda club to refer to the Court of Arbitration for Sport in spite of the directives of His Royal Highness allowing the club to refer to the Court of Arbitration for Sport in accordance with the Statutes of Saudi Arabian Football Federation”.

8. In addition, reference was made to a TV declaration rendered by the President of SAFF on 29 May 2011, in which:
 - i. according to the Appellant, he said that

“in the absence of the Dispute Resolution Chamber in Saudi, to which this case should have been referred to, I have advised parties to refer to the Court of Arbitration for Sport in Lausanne (...) and I have given the relevant instructions to facilitate the tasks of the clubs wishing to have recourse”;
 - ii. such quotation is however disputed by the Respondent, as not accurately reflecting the actual declarations of the SAFF President. In the Respondent’s submission, in fact, the President’s declaration had the following content:

“I would have referred the claims which I received to the dispute resolution committee, but when I came to know the real situation and to guarantee complete neutrality and to ensure real efficiency of our committees to guarantee complete rights for all the parties and considering that the statutes of the Saudi Football Federation allow such matter, I proposed to both clubs Al Wehda and Al Taawon, if they are willing, to refer the case to FIFA and we welcome such possibility. Tomorrow I will travel to Zurich to attend FIFA general assembly and elections. If their travel procedures are facilitated and they wish to join us or they can travel after the assembly – perhaps it will be better for them since everybody is busy in the elections – if they are willing to travel after the meetings, the Saudi federation will be pleased to facilitate their travel in order to address their case with complete neutrality. I don’t think there will be another body other than FIFA, I can see that this is the best solution. (...) I would prefer that they send lawyers or people who can speak the English language and they have the capability to propose their case clearly to FIFA and through FIFA to the court of arbitration for sport; the Saudi federation will assist them in this case”.
9. The Appellant’s submissions are based on the abovementioned texts, and are developed in three directions in order to find a jurisdictional basis for this CAS Panel, within the meaning of Article R47 of the Code, to hear the appeal filed against the AC Decision: the first two are aimed at establishing the existence of a provision allowing an appeal to the CAS in the statutes or regulations of the federation (the SAFF) whose decision is challenged; the third is related to the identification of *“a specific arbitration agreement”* providing for the CAS jurisdiction on the disputed matter.
10. Under a first perspective, in fact, the Appellant submits that the SAFF rules in themselves provide for an arbitration clause allowing the clubs affiliated to the SAFF to challenge SAFF decisions before the CAS. For such purposes, the Appellant refers to Articles 10, 13 and 64 of the SAFF Statutes: on one hand, Article 10 and 13 provide, *inter alia*, for the obligation of the clubs (i) to recognize the CAS, (ii) to comply with all provisions contained in the Statutes and

regulations of SAFF, the continental confederation (AFC) and international federation (FIFA) and (iii) to accept the dispute resolution mechanisms (“*the relevant judicial bodies*”) of SAFF, AFC or FIFA; on the other hand, the Appellant submits, Article 64 provides for an appeal to CAS against the decisions rendered by the SAFF bodies. In that respect, the Appellant contends that the reference to the “*International Federation*” contained in Article 64 para. 1 of the SAFF Statutes is “*clearly a printing mistake*”, and that such provision should be read with a reference to the SAFF and not to FIFA (the International Federation). As a result of the above, “*it becomes clear that the Statutes of the Saudi Arabian Football Federation expressly recognize the jurisdiction and authority of the CAS and they impose on applicants and on club members to incorporate in their statutes mandatory clauses in which they undertake to recognize the Court of Arbitration for Sport and to submit to its jurisdiction disputes arising between its self and its members, and to abide by its decisions*”. That interpretation – as well as the general conclusion that SAFF rules contain a reference to CAS jurisdiction – is supported, in the Appellant’s opinion, by the letters sent by SAFF and by the declaration rendered by the SAFF President.

11. Under a second perspective, the Appellant refers to the combined effect of SAFF and FIFA rules. In other words, since the SAFF Statutes (Article 13 and Article 64) refer to the “*judicial bodies*” recognized by FIFA and CAS is recognized by FIFA (as per its Statutes), then the jurisdiction of CAS would be recognized by the SAFF Statutes: the reference to the FIFA Statutes contained in the SAFF Statutes leads, in the Appellant’s opinion, to the acceptance of CAS as final appeal body. Support also to this interpretation is found by the Appellant in the letters sent by SAFF and in the declaration rendered by the SAFF President.
12. The third perspective, finally, is directly based on the letters and declarations just mentioned. According to the Appellant, not only do they confirm the existence of CAS jurisdiction under SAFF rules (alone or combined with the FIFA provisions), but also they constitute an “*offer of arbitration*” before the CAS that Al Wehda has accepted.
13. The Panel is not convinced by the Appellant’s submissions: in the Panel’s opinion, the provisions, letters and declarations invoked by the Appellant are not sufficient to ground the CAS jurisdiction to hear the appeal brought by Al-Wehda, in light of the principles set by the CAS jurisprudence and by the Swiss Federal Tribunal (the “SFT”).
14. With respect to the first perspective, the Panel preliminarily underlines that it cannot accept the submission that the SAFF Statutes contain in Article 64 a “*printing mistake*”, and therefore that the rule therein established actually intended to allow an appeal to CAS against decisions rendered by SAFF. It is clearly not this Panel’s duty to rewrite the SAFF Statutes, and chiefly so in a case where SAFF itself denies the existence of a “*printing mistake*”, and the Appellant offers only logical arguments and not solid evidence to support its contention. Article 64 of the SAFF Statutes, as the Panel sees it, actually only confirms within the SAFF system a provision of the FIFA Statutes, directly indicating to the clubs affiliated to SAFF that the decisions rendered by FIFA can be challenged before the CAS. The Panel, then, notes that no other provision, in the articles of the SAFF Statutes invoked by the Appellant, provides for an obligation of the SAFF to submit to CAS jurisdiction for an appellate review of its decisions: Article 10 para. 2 (f) of the SAFF Statutes obliges the clubs to recognize the CAS, but does

not allow clubs to challenge SAFF decisions before the CAS; and Articles 13 and 64 do not mention the CAS at all. Therefore, the Panel concludes that no SAFF rule directly provides for an arbitration clause allowing the clubs affiliated to the SAFF to challenge SAFF decisions before the CAS. The letters sent by SAFF and the declaration rendered by the SAFF President (discussed below) do not contradict this conclusion, as they do not refer to the direct submission of the dispute to CAS.

15. The second perspective refers to the combined effects of SAFF and FIFA rules and takes the form of a sort of syllogism: SAFF recognizes FIFA, FIFA recognizes CAS for appeals against decisions passed by its Members (and SAFF is one of them), *ergo* SAFF recognizes CAS as body of appeal with respect to its decisions. In other words, the “*arbitration clause*” mentioned in Article R47 of the Code would be found in the FIFA Statutes and would bind SAFF as a result of the reference to FIFA contained in the SAFF Statutes.
16. The Panel notes that the possibility to find the CAS jurisdiction on the basis of the existence in the rules of a national football federation of an overall reference to the FIFA rules, which in turn recognize the CAS as body of appeal, has been widely discussed in the CAS case law, and considered also by the SFT.
17. A landmark decision has been rendered in this regard by a CAS Panel in CAS 2005/A/952. In CAS 2005/A/952, the Panel held that the FIFA Statutes do not contain any mandatory provision that obliges a national federation or a league to allow a right of appeal from its decisions: the pertinent articles of the FIFA Statutes cannot be interpreted as providing for such a mandatory right of appeal. Moreover, the Panel remarked that the CAS jurisprudence suggests that if the FIFA Statutes did compel the national federation or the league to provide for a right of appeal from its decisions, no right of appeal to the CAS would exist until the national federation or the league had made provision for this right in its statutes or regulations. In this respect, indeed, another CAS Panel (award of 15 December 2004, CAS 2004/A/676) had held that the FIFA rules that came into force on 1 January 2004 (which first recognized the CAS jurisdiction) do not constitute *per se* a basis for arbitration. Instead, they constitute an instruction to introduce a regulation providing for CAS arbitration.
18. It is to be underlined, however, that FIFA rules clearly distinguish between appeals to CAS in doping related matters and appeals in any other matter: with respect to the first situation, in fact, a right is expressly granted to FIFA (and WADA) (Article 63 para. 5 and 6) to file an appeal with CAS against decisions rendered, *inter alia*, by national federations. As a result, the SFT held, in its decision of 9 January 2009 (4A_460/2008), that “*a general reference to FIFA rules and thus to the appeal rights of FIFA and WADA contained in the FIFA Statutes is sufficient to establish jurisdiction of CAS pursuant to R47 the CAS Code*” in a case concerning an appeal brought by FIFA and WADA against a decision rendered by a national federation against a player bound by the FIFA rules through his membership of the national federation.
19. The line of reasoning so announced was followed in CAS case law: for instance, in CAS 2009/A/1910, the Panel on one hand underlined that, “*in accordance with consistent CAS jurisprudence on this issue, in the Panel’s view Article 63 para. 1 of the current FIFA Statutes does not by*

itself grant jurisdiction to CAS with respect to decisions passed by confederations, members or leagues (see e.g., CAS 2008/A/1656, CAS 2005/A/952, CAS 2004/A/676, CAS 2002/O/422). Indeed, the mere provision that FIFA ‘recognises’ the CAS is not sufficient in itself for a CAS panel to claim jurisdiction over decisions issued by organizations other than FIFA (such as, in particular, national federations)’; and at the same time confirmed that “in contrast, the clear provisions of paras. 5 and 6 of Article 63 of the FIFA Statutes, stating that FIFA and WADA, respectively, are ‘entitled to appeal to CAS against any internally final and binding doping-related decision passed by the Confederations, Members or Leagues’ allow a CAS Panel to claim jurisdiction with respect to a national federation’s decision on a doping matter through the express reference made by a national federation’s statutes to FIFA Statutes (see CAS 2007/A/1370 & 1376 ó, and the Swiss Federal Court’s judgment of 9 January 2009, 4A_460/2008, confirming the jurisdiction of CAS in such a case)”.

20. In summary:
 - i. Article 63 para. 1 of the current FIFA Statutes does not by itself grant jurisdiction to CAS with respect to decisions passed by confederations, members or leagues;
 - ii. the FIFA Statutes do not contain any mandatory provision that obliges a national federation or a league to allow a right of appeal from its decisions;
 - iii. if the FIFA Statutes did compel the national federation or the league to provide for a right of appeal from its decisions, no right of appeal to the CAS would exist until the national federation or the league had made provision for this right in its statutes or regulations; however
 - iv. in light of Article 63 para. 5 and 6 of the current FIFA Statutes, an express reference made by a national federation’s statutes to FIFA Statutes allows a CAS Panel to claim jurisdiction with respect to a national federation’s decision on a doping matter.

21. The Appellant’s contentions based on the combined effects of SAFF and FIFA rules, examined against this background, fail to satisfy this Panel with respect to the existence of CAS jurisdiction: Article 63 para. 1 is not sufficient to grant jurisdiction and does not oblige the SAFF to “appoint” the CAS as body of appeal for the SAFF decision; the SAFF rules do not provide for CAS as body of appeal; the dispute is not related to doping. As a result, the Panel concludes that no CAS jurisdiction can be found also in the second perspective submitted by the Appellant. The letters sent by SAFF and the declaration rendered by the SAFF President (discussed below) do not contradict this conclusion.

22. The third perspective advanced by the Appellant is referred to the existence of a “*specific arbitration agreement*” providing for the CAS jurisdiction: on one side, SAFF would have offered Al Wehda to give the CAS jurisdiction to hear an appeal against the AC Decision; on the other side, Al Wehda would have accepted such offer.

23. The issue in this respect is whether an arbitration agreement was ever concluded between SAFF and Al Wehda, complying with the requirements set by Article 178 PIL. The main question, indeed, refers to the letters of 30 June 2011 and 13 July 2011. It cannot be doubted, in fact, that the TV declarations rendered by the SAFF President, whatever their content,

cannot be held to satisfy the formal requirements set by 178 PIL: Swiss law does not allow verbal forms of arbitration agreements (LALIVE/POUDRET/REYMOND, *Le droit de l'arbitrage interne et international en Suisse*, Lausanne, 1989, 318; BERGER/KELLERHALS, *Internationale und interne Schiedsgerichtsbarkeit in der Schweiz*, Bern, 2006, 138).

24. In the evaluation of the “substantive” existence of an offer of arbitration this Panel is bound to follow, and agrees with, a decision rendered by the SFT on 3 May 2010 (4A_456/2009), which underlined that for there to be an arbitration agreement the party making the offer must have actually intended to submit a dispute to an arbitral tribunal.
25. Under this principle, the plain reading of the translated texts of the letters (and even in the translation offered by the Appellant) sent by SAFF confirms that they did not contain any offer to submit to arbitration (let alone a CAS arbitration) the dispute concerning the AC Decision:
 - i. in the letter No. 4564 of 30 June 2011, the SAFF confirmed to Al Wehda (and Al Taawon) the instructions of the SAFF President to assist the club in the event it wished to contact FIFA (and not the CAS). Indeed, in his TV declarations of 29 May 2011, the SAFF President did not propose to Al Wehda to have the dispute settled directly by the CAS: he only invited Al Wehda to refer the case to FIFA “*and through FIFA to the Court of Arbitration for Sport*” – as the CAS is the appeals body with respect to FIFA (not SAFF) decisions. In any case, in the letter No. 4564 of 30 June 2011, the SAFF confirmed to Al Wehda not a proposal to enter into an arbitration agreement, but only the SAFF’s availability to “*help with the visas, tickets etc.*”;
 - ii. in the letter No. 5439 of 13 July 2011, the SAFF only confirmed its position, as based on the statements of its President, notwithstanding the articles published in the Saudi press.
26. Contrary to such conclusion it is not possible to concur with the Appellant’s submission that in the ordinary language in Saudi Arabia no distinction is made between FIFA and CAS (and CAS is perceived to be part of FIFA). Such contention is untenable, and not only because it is unsupported by any evidence: CAS and FIFA are distinct entities, and it cannot be maintained that the SAFF President and the SAFF high officers, while making declarations and writing letters, make this sort of confusion. Well to the contrary, the very declaration of the SAFF President (who mentioned FIFA and CAS) contain a clear distinction between the two entities.
27. Therefore, the Panel concludes that no special agreement providing for the CAS jurisdiction was concluded between the Appellant and the Respondent.

Conclusion

28. In light of the foregoing, the Panel finds that it has no jurisdiction to hear the appeal brought by Al-Wehda against the AC Decision.

29. This award is rendered by a majority decision.

The Court of Arbitration for Sport rules:

1. The Court of Arbitration for Sport has no jurisdiction to decide upon the appeal filed on 7 June 2011 by Al-Wehda Club against the decision adopted on 25 May 2011 by the Appeals Committee of the Saudi Arabian Football Federation (SAFF).
2. (...)
3. All other prayers for relief are dismissed.