Arbitration CAS 2020/A/6985 Ismaily SC v. Lassaad Jaziri & Al Nahda Sport Club, award of 3 June 2022

Panel: Mr Edward Canty (United Kingdom), President; Mr Emin Özkurt (Turkey); Mr Pierre Muller (Switzerland)

Football
Termination of the employment contract with just cause by the player
Choice of substantive law
Standard of proof
Obligations of the club
Personality rights of the player
Quota for foreign players
Mitigation of damages
Gross or net amounts of damages

1. **Circumstances such as the place of arbitration, the place of residence or the nationality of the parties, or the choice of a procedural law, do not imply a choice of substantive law. Nor can a choice of law be derived from a so-called hypothetical intent of the parties, i.e. the intent that the parties would presumably have had – but in the event did not have – if they had thought about the question of applicable law. In order for a choice of law to exist in the sense envisaged by Article 187(1) para. 1 of the Private International Law Act, there must be an awareness and a willingness by the parties to adopt such a choice of law. Once the arbitral tribunal has established the actual intent of the parties, it must enforce their agreement, without examining the merits of the parties' choice or second-guessing whether this choice is legitimate or appropriate. In particular, the arbitral tribunal may not refuse to apply the chosen law because it is incomplete, surprising or unfair in the circumstances of the contractual relationship.**

2. **The standard of proof which applies to proceedings of the FIFA judicial bodies is that the members of FIFA's judicial bodies decide on the basis of their "personal conviction" and CAS jurisprudence has consistently equalled this standard to the standard of "comfortable satisfaction". It is a standard that is higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt".**

3. **The obligations of a club to a player extend beyond the requirement to make payments to the player on time and in accordance with the playing contract, to include the requirement to provide the player with suitable training facilities and the ability to play matches.**

4. **For athletes, personality rights encompass in particular the development and fulfilment**

of personality through sporting activity, professional freedom and economic freedom. Under this definition, personality rights protect the right of movement, which comprises in particular the right to practice a sports activity at a level that accords with the abilities of the athlete. When the sport is practised professionally, decisions relating to selection, qualification and suspension, as well as licensing refusals, or any other limitation on access to the sport, may impede the economic development and fulfilment of the athlete, the freedom of choosing his professional activity and the right to practice it without restriction. This freedom is particularly important in the area of sport since the period during which the athlete is able to build his professional career and earn his living through his sporting activity is short. Professional freedom, in particular for professional athletes, therefore includes a legitimate interest in being actually employed by their employer. Thus athletes have a right to actively practice their profession. Indeed, an athlete who is not actively participating in competitions depreciates on the market and reduces his future career opportunities. It is obvious that a professional football player playing in the premier division must, in order to retain his value on the market, not only train regularly with players of his level but also compete in matches with teams of the highest possible level.To the extent that Articles 28 et seq. of the Swiss Civil Code protect parties from negative actions and require offending parties to refrain therefrom, but do not grant rights to positive actions, such right to actively practice one's profession is resolved notably by labour law.

5. **A national federation regulation providing for a quota of foreign players cannot possibly allow clubs to remove foreign players from their first teams and order them to train with the reserve or youth teams, on account of them exceeding the relevant quota. To hire and to maintain the football player as a professional footballer is a basic obligation assumed by any football club that is party to a professional footballer's employment contract.**

6. **Given the general power conferred on CAS panels by Article R57 of the CAS Code, a panel is able to take into account in mitigation any new playing contracts entered into after the first instance decision.**

7. **In calculating damages for loss of earnings, the so-called gross-wage method is to be used, i.e. loss is calculated based on the injured party's loss of gross earnings. Any advantages obtained by the injured party on account of the damaging event – for example, by tax reduction – must be taken into account by way of corresponding reduction of the damages. The wrongdoer is entitled to raise as part of his/her defence any points which might reduce the damages in that way.**

I. PARTIES

1. Ismaily SC (the "Appellant" or the "Egyptian Club") is a football club with its registered office in Ismailia, Egypt. The Egyptian Club is registered with the Egyptian Football Association

("EFA"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA"), and is currently participating in the Egyptian Premier League.

2. Mr Lassaad Jaziri (the "First Respondent" or the "Player") is a professional football player of Tunisian nationality, now playing for Al Nahda Sport Club in Saudi Arabia.

3. Al Nahda Sport Club (the "Second Respondent" or the "Saudi Arabian Club") is a football club with its registered office in Al-Khobar, Dammam, Saudi Arabia. The Saudi Arabian Club is registered with the Saudi Arabian Football Federation ("SAFF"), which in turn is affiliated with FIFA, and is currently participating in the Prince Mohammad bin Salman League.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions and the evidence examined in the course of the present appeals arbitration proceedings[1]. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

A. Background Facts

5. On 12 July 2018, the Egyptian Club and the Player signed a playing contract valid for a period of three seasons from the season 2018/2019 until the end of the season 2020/2021 (the "Playing Contract").

6. The Playing Contract stated, *inter alia*, as follows:

"First : Duration of this contract

Duration of this contract : (Three seasons)

Begins from season (2018-2019)

And Ends at the end of the season (2020-2021)

[1] Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for the sake of efficiency and to facilitate the reading of this Award, not all of the misspellings have been identified with a [sic] or otherwise.

Second : value of the contract

The two parties agreed about the value of the contract for a total amount of (six hundred thousand US dollars (600000) $

First season 2018/2019 an amount of (One hundred and seventy-three thousand thirty-four US dollar) divided as follows :- (173334)$

The First installment an amount of : 43337 only Forty-three thousand and thirty-seven USD paid on 01/08/2018

The second installment an amount of : 8666 only Eight thousand and six hundred sixty-six USD paid on 01/09/2018

The third installment an amount of : 8666 only USD paid on 01/10/2018

The fourth installment an amount of : 8666 only USD paid on 01/11/2018

The fifth installment an amount of : 8666 only USD paid on 01/12/2018

The sixth installment an amount of : 8666 only USD paid on 01/01/2019

The seventh installment an amount of : 8666 only USD paid on 01/02/2019

The Eighth installment an amount of : 8666 only USD paid on 01/03/2019

The ninth installment an amount of : 8666 only USD paid on 01/04/2019

The tenth installment an amount of : 8666 only USD paid on 01/05/2019

The eleventh installment an amount of : 8666 only USD paid on 01/06/2019

The twelfth installment an amount of : 43337 only Forty-three thousand and thirty-seven USD paid on 01/07/2019

Second season 2019/2020 an amount of (Two hundred thousand US dollar) divided as follows :- (200000)$

The First installment an amount of : 50000 only Fifty thousand USD paid on 01/08/2019

The second installment an amount of : 10000 only Ten thousand USD paid on 01/09/2019

The third installment an amount of : 10000 only USD paid on 01/10/2019

The fourth installment an amount of : 10000 only USD paid on 01/11/2019

The fifth installment an amount of : 10000 only USD paid on 01/12/2019

The sixth installment an amount of : 10000 only USD paid on 01/01/2020

The seventh installment an amount of : 10000 only USD paid on 01/02/2020

The Eighth installment an amount of : 10000 only USD paid on 01/03/2020

The ninth installment an amount of : 10000 only USD paid on 01/04/2020

The tenth installment an amount of : 10000 only USD paid on 01/05/2020

The eleventh installment an amount of : 10000 only USD paid on 01/06/2020

The twelfth installment an amount of : 50000 only Fifty thousand USD paid on 01/07/2020

Third season 2020/2021 an amount of (Two hundred and twenty-six thousand and six hundred and sixty-six US dollar) divided as follows :- (226666)$

The First installment an amount of : 56668 only Fifty-six thousand USD paid on 01/08/2020

The second installment an amount of : 11333 only Eleven thousand three hundred and thirty-three USD paid on 01/09/2020

The third installment an amount of : 11333 only USD paid on 01/10/2020

The fourth installment an amount of : 11333 only USD paid on 01/11/2020

The fifth installment an amount of : 11333 only USD paid on 01/12/2020

The sixth installment an amount of : 11333 only USD paid on 01/01/2021

The seventh installment an amount of : 11333 only USD paid on 01/02/2021

The Eighth installment an amount of : 11333 only USD paid on 01/03/2021

The ninth installment an amount of : 11333 only USD paid on 01/04/2021

The tenth installment an amount of : 11333 only USD paid on 01/05/2021

The eleventh installment an amount of : 11333 only USD paid on 01/06/2021

The twelfth installment an amount of : 56668 only Fifty-six thousand and six hundred and sixty-eight USD paid on 01/07/2021

[…]*"*.

7. On 28 January 2019, the Player's representative wrote to the EFA by email, for the attention of the Egyptian Club (due to the lack of contact details in the Playing Contract) on his behalf as follows:

*"**To the legal representative of the Al-Ismaily club***

It is established that the player Lassaad Jaziri has signed a professional player contract with Club Al-Ismaily (club affiliated to the Egyptian Football Association) for 3 sports seasons ending on 06/30/2021.

Whereas the club has initiated abusive acts and excessive pressure on the player to force him to terminate his contract amicably without any compensation by threatening to put him on a waiting list not allowing the player to participate in the competitions and by qualifying in his place another foreign player.

From the above we ask you to refrain from using abusive maneuvers in order to push him to unilaterally terminate his contract.

In the event that the player is removed from the competitive group or placed on a waiting list, the player reserves the right to terminate the contract for just cause.

Any notification or correspondence with the player must be sent to the email address […]@gmail.com (any sending to another address will not be valid)" (emphasis in original).

8. This was followed on 13 February 2019 with a further letter, sent by email, from the Player's representative to the EFA, for the attention of the Egyptian Club, as follows:

"To the legal representative of the Al-Ismaily club

Via the Egyptian football association

[…]

Whereas the club has initiated abusive acts and excessive pressure on the player to force him to terminate his contract amicably without any compensation by threatening to put him on a waiting list not allowing the player to participate in the competitions and by qualifying in his place another foreign player.

Whereas a notice was sent to you on January 29, 2019 through the Egyptian Football Federation asking you to refrain your abusive maneuvers in order to push him to unilaterally terminate his contract.

Despite this notice; and with the sole intention of freeing up a foreigner's place for a new recruitment, you harassed the player on February 4, 2019 in order to force him to terminate his contract by threatening to place him on a waiting list which does not allow not [sic] *for the player to participate in competitions.*

Worse still, you have implemented your threats and you have qualified a new foreign player and introduced him into the quota of foreign players in place of Lassaad Jaziri without his agreement, which will result in the deprivation of the player from participating in the competitions in which the club participates.

In addition, you refrain from returning the player his passport without any right of retention despite the player's incessant requests.

As such, we inform you that the passport is a title the property of which rests solely with the player and any withholding of this title against the player's will is an act of intimidation contrary to the law and to all international conventions.

From the above

We call on you to regularize the situation of the player Lassaad Jaziri and this:

- *By reinstating the player in the quota of 4 foreign players qualified to participate in club competitions.*
- *immediately giving the player his passport.*

Failure to achieve the two aforementioned points within 48 hours will inevitably result in the termination of the contract for just cause and the notification of the withholding of the passport to the competent Egyptian and Tunisian services and to FIFPRO.

[…]*".*

9. The Player's representative then sent a further letter on 21 February 2019 to the EFA by email, for the attention of the Egyptian Club, as well as by secure post direct to the Egyptian Club, as follows:

"To the legal representative of the Al-Ismaily club

Via the Egyptian football association

We remind you that:

[…]

- *The club initiated acts of undue pressure on the player to force him to terminate his contract amicably without any compensation by threatening to put him on a waiting list not allowing the player to participate in competitive matches and by qualifying in his place another foreign player.*
- *The club finally put the player outside the quota of foreign players which will no longer allow him to participate in an official match.*
- *All the 4 foreign players of the club (besides the player) participated in official club matches after the end of the second registration period, which proves that our principal is out of the quota of foreign players (4) qualifying to participate in competitions with an Egyptian club.*
- *A first notice was sent to you on January 29, 2019 through the Egyptian Football Federation asking you to refrain from abusive maneuvers in order to push him to unilaterally terminate his contract.*
- *A second notice was sent to the club through the Egyptian Football Association on February 13, 2019 asking you to:*

1 – Immediately restore player Lassaad Jaziri to the list of players qualified to participate in the club's official competitions

2 – To return to the player his passport which you hold without any rights despite the incessant requests of the player.

Faced with the silence of the club and the situation which is still sportingly prejudicial to the player, we call on you one last time to restore the situation and this within a period not exceeding 7 days, by proceeding to:

- *Reinstate the player in the quota of foreigners qualified to participate in the official competitions of the club.*
- *Return the player's passport".*

10. On 4 March 2019, the Player's representative then sent further correspondence to the EFA by email, for the attention of the Egyptian Club, again with a copy sent directly to the Egyptian Club by secure post which served as the Player's termination of the Playing Contract, as follows:

*"**Notification of termination***

[…]

To the legal representative of the Al-Ismaily club

Via the Egyptian football association

It is established that:

- *The player Lassaad Jaziri signed a professional player contract with Club Al-Ismaily (club affiliated to the Egyptian football federation) for 3 sports seasons ending on 06/30/2021*
- *the club initiated acts of undue pressure on the player to force him to terminate his contract out of court without any compensation.*
- *The club finally put the player out of quota for foreign players, which no longer allows him to participate in an official match.*
- *A first notice was sent to you on January 29, 2019 through the Egyptian Football Federation asking you to refrain from abusive maneuvers in order to push him to unilaterally terminate his contract.*
- *A second notice was sent to the club through the Egyptian Football Association on February 13, 2019 asking you to:*

1 – Immediately restore player Lassaad Jaziri to the list of players qualified to participate in the club's official competitions

2 – To return to the player his passport which you hold without any rights despite the incessant requests of the player.

- *A third and final notice was sent on February 21, 2019 by email to the Egyptian Football Federation and by quick post to the club.*

  Whereas the club did not react positively by regularizing the player's situation and did not pay the arrears due despite the 15-day period granted by virtue of the notice, which inevitably implies the termination of the contract binding the applicant to the club for just cause in application of article 14 and article 14 Bis of the regulations of the statute and transfer of the players.

  From the above,

  1 – We notify you of the termination of the professional player contract concluded between the two parties for 3 seasons ending 30/06/2021 and this for just cause for which the responsibility lies with the club.

  2 – Our intention to seize the competent authorities to request compensation for the damage caused to the player" (emphasis in the original).

11. On 12 March 2019, the Egyptian Club responded to the Player's representative as follows:

"Further to your mail dated 16 Feb 2019, kindly note the followings:

1- Ismaily Sc first team player Lassaad Jaziri is absent since the 21st, of February 2019.

2- The player is receiving all its dues in due time, the last instalment of February 2019 was transferred to his bank account.

3- The player passport were not holded by the club, but the player was absent, so, he couldn't, receive it. And was delivered to the Tunisian Embassy.

4- The absence of the player is not acceptable as he is violating the employment contract concluded with our club.

5- The player is registered at our team list and approved by the EFA, his appearance is totally a technical issue.

6- Our club reserves his rights against any club or person whom will induce the player to terminate his contract with our club.

7- Our club reserves its rights towards the player as per his absence, due to the damages that the club had.

As we understand that you are the representative of the player, accordingly you are kindly requested to notify the player to return back and to join the team to fulfill his dues as per the employment contract".

12. On 17 July 2019, the Player signed an employment contract with the Saudi Arabian Club for the season 2019/20 (the "First Contract").

13. On 13 January 2020, the Player signed a second employment contract with the Saudi Arabian Club for the season 2020/21 (the "Second Contract").

B. Proceedings before the FIFA Dispute Resolution Chamber

14. On 18 March 2019, following the above, the Player lodged a claim against the Egyptian Club before the FIFA Dispute Resolution Chamber (the "FIFA DRC"), requesting that sporting sanctions be imposed on the Egyptian Club and that the Egyptian Club be ordered to pay him compensation for breach of contract in the amount of USD 539,338.

15. The Egyptian Club disputed the Player's claim, stating that the Player remained a registered player of the Egyptian Club and his exclusion from the player list for official matches was simply a technical issue and was not definitive as this could be altered from match to match.

16. On 17 January 2020, the FIFA DRC rendered its decision (the "FIFA DRC Decision" or the "Appealed Decision"), with the following operative part:

> *"1. The claim of* [the Player] *is partially accepted.*
>
> *2. The* [Egyptian Club] *has to pay to* [the Player] ***within 45 days*** *as from the date of notification of this decision, compensation for breach of contract in the amount of USD 456,001.*
>
> *3. Any further claim lodged by the* [Player] *is rejected.*
>
> *4. The* [Player] *is directed to inform the* [Egyptian Club]*, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision, of the relevant bank account to which the* [Egyptian Club] *must pay the amounts plus interest mentioned under point 2. above.*
>
> *5. The* [Egyptian Club] *shall provide evidence of payment of the due amount in accordance with point 2. above to FIFA to the e-mail address psdfifa@fifa.org, duly translated into one of the official FIFA languages (English, French, German, Spanish).*
>
> *6. In the event that the amount due in accordance with point 2. above is not paid by the* [Egyptian Club] ***within 45 days*** *as from the notification by the* [Player] *of the relevant bank details to the* [Egyptian Club]*, the* [Egyptian Club] *shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).*
>
> *7. The ban mentioned in point 6. above will be lifted immediately and prior to its complete serving, once the due amount is paid"* (emphasis in original).

17. On 25 March 2020, the grounds of the FIFA DRC Decision were communicated to the Player and the Egyptian Club. In summary, the FIFA DRC considered that the Egyptian Club's failure to respond to the Player's various letters provided the Player with just cause to terminate the Playing Contract, highlighting that the payment of salary was not the only

fundamental right under an employment contract, but also that such rights included access to training and to be given the opportunity to compete in official matches, and that by refusing to register the Player and effectively preventing him from competing in the remainder of the 2018/19 season, this provided the Player with just cause to terminate the Playing Contract. The FIFA DRC then calculated the compensation to be awarded to the Player in accordance with Article 17 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), based on the amount payable to the Player from the date of termination of the Playing Contract until its expiry date (USD 496,001) minus the value of the First Contract the Player entered into with his new club, i.e. the Saudi Arabian Club/Second Respondent (USD 40,000), resulting in USD 456,001 being awarded to the Player as compensation for breach of contract.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 15 April 2020, the Egyptian Club lodged an appeal with the Court of Arbitration for Sport (the "CAS") against the FIFA DRC Decision, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2019) (the "CAS Code"). In this Statement of Appeal, the Egyptian Club nominated as arbitrator Mr Emin Özkurt, Attorney-at-law in Istanbul, Turkey, but reserved its right to revert to a Sole Arbitrator in the event that the Respondents did not pay their share of the advance of costs.

19. On 27 April 2020, the CAS Court Office circulated the Player's letter of 22 April 2020, in which he stated he did not intend to pay the advance of costs and requested a bilingual procedure (English/French), and asked the Egyptian Club whether it wished to revert to a Sole Arbitrator, and also asked the Egyptian Club and the Second Respondent if they were agreeable to a bilingual procedure.

20. On 30 April 2020, the Egyptian Club confirmed it wished to maintain a Panel rather than transfer the procedure to a Sole Arbitrator but rejected the request for a bilingual procedure, apart from agreeing that exhibits in French that had previously been submitted before the FIFA DRC could remain in French rather than requiring translations.

21. On 30 April 2020, the Second Respondent indicated its agreement to the Egyptian Club's proposal regarding exhibits in French, confirmed it would not pay the advance of costs and asked that the deadline for its Answer to be fixed once the Egyptian Club had paid the advance of costs. Furthermore, it stated that it and the Player jointly nominated as arbitrator Mr Pierre Muller, Former Judge in Lausanne, Switzerland.

22. On 1 May 2020, the Player also agreed with the Egyptian Club's proposal in terms of the language of the procedure, asked that the deadline for his Answer be set once the advance of costs had been paid by the Egyptian Club and confirmed the joint nomination of Mr Pierre Muller as arbitrator.

23. On 4 May 2020, FIFA stated that it did not intend to request to intervene in this proceeding further to Article R41.3 of the CAS Code.

24. On 16 June 2020, after having been granted several extensions further to Article R32 of the CAS Code and the CAS COVID-19 Guidelines, the Appellant filed its Appeal Brief further to Article R51 of the CAS Code.

25. On 23 June 2020, the Player requested confirmation that the Appellant had paid the advance of costs and on 24 June 2020 the CAS Court Office requested the Appellant provide proof of payment.

26. On 2 July 2020, the CAS Court Office confirmed, in response to the Player's enquiry, that the Appellant had timely paid the advance of costs; additionally, the exhibits / annexes to the Appeal Brief were recirculated to the Parties, due to some technical difficulties experienced when first sent.

27. On 6 July 2020, the CAS Court Office informed the Parties that Mr Edward Canty, Solicitor in Manchester, United Kingdom, had been appointed as President of the Panel and transmitted to the Parties a disclosure made by Mr Canty further to Article R33 of the CAS Code, which none of the Parties subsequently challenged further to Article R34 of the CAS Code.

28. On 14 July 2020, in accordance with Articles R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to this case was constituted as follows:

President:	Mr Edward Canty, Solicitor in Manchester, United Kingdom
Arbitrators:	Mr Emin Özkurt, Attorney-at-law in Istanbul, Turkey
	Mr Pierre Muller, Former Judge in Lausanne, Switzerland

29. On 10 August 2020, the Player stated that the Appellant's Counsel had appointed Mr Özkurt as arbitrator in another CAS case involving another Egyptian club on a similar issue, raising this as a concern as to the independence and impartiality of the Arbitrator.

30. On 14 August 2020, the CAS Court Office circulated the Appellant's response of 13 August 2020 rejecting the Player's suggestion and the Player's correspondence of 13 August 2020 setting out its formal challenge to the appointment of Mr Özkurt. In light of the Appellant's 13 August 2020 response, the Player was asked to confirm if he maintained his challenge to Mr Özkurt's appointment.

31. On 18 August 2020, the Player filed his Answer, pursuant to Article R55 of the CAS Code, and on 19 August 2020, confirmed he maintained his challenge to the appointment of Mr Özkurt.

32. On 20 August 2020, the CAS Court Office confirmed it had not received the Second Respondent's Answer within the prescribed deadline but, pursuant to R55 of the CAS Code, the arbitration would proceed notwithstanding this.

33. On 21 August 2020, the CAS Court Office provided the Parties with a copy of the comments provided by Mr Özkurt to the Player's challenge to his appointment.

34. On 25 August 2020, the CAS Court Office confirmed that the Player had withdrawn his challenge based on Mr Özkurt's comments.

35. On 25 August 2020, the Appellant indicated it would prefer to have a hearing and that such hearing be in-person in Lausanne.

36. On 31 August 2020, the Player indicated he did not object to an in-person hearing.

37. On 14 September 2020, the Second Respondent confirmed that it did not wish to take part in any hearing, indicating that it was not appropriate for it to be made a Party to these proceedings having not been a party to the FIFA DRC proceedings.

38. On 22 September 2020, the CAS Court Office wrote to the Parties to confirm the Panel's decision pursuant to Articles R44.2 and R57 of the CAS Code to hold a hearing which would be either in-person or by video conference depending on the evolution of the COVID-19 pandemic at the time.

39. On 29 September 2020 and 11 October 2020, the Appellant repeated its preference for an in-person hearing.

40. On 1 October 2020, the Player indicated he would defer to the Panel to select the appropriate format for the hearing depending on the situation at the time.

41. On 9 October 2020, the Second Respondent indicated that its preference would be for the hearing to take place by video conference for all the Parties to ensure equal treatment.

42. On 12 October 2020, the Player made reference to certain travel restrictions in Tunisia which meant it preferred a hearing by video conference for all Parties.

43. On 13 October 2020, after consulting the Parties, the CAS Court Office fixed the date of the hearing as 27 November 2020, reserving the decision as to whether it would be held in-person or by video conference for a subsequent time.

44. On 2 November 2020, the CAS Court Office confirmed the Panel's decision to hold the hearing by video conference given the continued difficulties caused by the COVID-19 pandemic, further to Articles R44.2 and R57 of the CAS Code.

45. On 5 November 2020, the Appellant reiterated its preference for an in-person hearing and asked that the hearing be postponed to early 2021 to allow this to happen or, in the alternative, for it to take place by video conference at that time when the internet connectivity in Egypt would improve, namely until early 2021, citing current difficulties due to the fact that people working at home and studying online had put considerable pressure on the internet services such that it was concerned a video conference hearing in November 2020 may result in it having technical difficulties.

46. On 9 November 2020, both the Player and the Second Respondent indicated they wished to maintain the hearing scheduled for later that month.

47. On 23 November 2020, the CAS Court Office confirmed that the hearing date would be postponed until early 2021 given the current difficulties with the COVID-19 pandemic.

48. On 8 December 2020, 10 December 2020 and 4 December 2020 respectively, the Appellant, the Player and the Second Respondent returned duly signed copies of the Order of Procedure to the CAS Court Office.

49. On 3 February 2021, the Appellant provided extracts from certain Egyptian tax laws which it sent to the Parties and the CAS Court Office, as well as requested a copy of the Player's contract with the Second Respondent for the 2019/2020 and 2020/2021 seasons.

50. On 4 February 2021, a hearing was held by video conference. At the outset of the hearing, the Parties confirmed they did not have any objection to the constitution and composition of the arbitral tribunal.

51. In addition to the Panel and Ms Kendra Magraw, CAS Counsel, the following persons attended the hearing:

    a. For the Appellant:

        1) Mr Nasr Eldin Azzam, Counsel

        2) Mr Charles Felix, Counsel

    b. For the First Respondent:

        1) Mr Lassaad Jaziri, First Respondent

        2) Mr Ali Abbes, Counsel

        3) Mr Mohamed Rokbani, Counsel

    c. For the Second Respondent:

        1) Mr Lotfi Al Dossari, President of Al Nahda Sport Club

52. No witnesses or experts were heard. The Parties had full opportunity to present their case, submit their arguments and answer the questions posed by the members of the Panel.

53. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.

54. During the course of the hearing, the Player submitted a copy of the First Contract which was

the document intended to be supplied as Exhibit 24 to his Answer. Also during the course of the hearing, the Player objected to the documents submitted by the Appellant on 3 February 2021.

55. On 4 February 2021, the CAS Court Office invited the Appellant to comment in writing on the First Contract provided by the Player.

56. On 11 February 2021, the Appellant provided its submissions on the First Contract.

57. On 19 February 2021, the Player provided his submissions regarding the First Contract.

58. On 22 February 2021, the CAS Court Office confirmed to the Parties that the Second Respondent had not provided any submissions on the First Contract, despite having been invited to do so.

59. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

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

- On 12 July 2018, the Egyptian Club and the Player entered into the Playing Contract which was valid for a period of three seasons starting from the season 2018/2019 until the end of the season 2020/2021 for a total gross salary of USD 600,000 (net USD 450,000).

- The salary for the first season was USD 173,334 (net USD 130,000), payable as a first installment of USD 43,337 (net USD 32,502), ten monthly installments of USD 8,666 (net USD 6,500) and a final payment of USD 43,337 (net USD 32,502) conditional on the Player participating in 80% of the official matches of that season.

- The salary for the second season was USD 200,000 (net USD 150,000), payable as a first installment of USD 50,000 (net USD 37,500), ten monthly installments of USD 10,000 (net USD 7,500) and a final payment of USD 50,000 (net USD 37,500) conditional on the Player participating in 80% of the official matches of that season.

- The salary for the third season was USD 226,666 (net USD 170,000), payable as a first installment of USD 56,668 (net USD 42,500), ten monthly installments of USD 11,333 (net USD 8,500) and a final payment of USD 56,668 (net USD 42,500) conditional on the Player participating in 80% of the official matches of that season.

- The Egyptian Club deducted 25% from the gross amount to cover the tax payable which was confirmed in the Playing Contract as it stated that the Player would be responsible for any tax payable.

- The Egyptian Club's Financial Regulations confirmed that 25% of the salary for players would be payable in the event that they participate in 80% of the official matches and the Playing Contract confirms that the Financial Regulations are part of the Playing Contract.

- The Egyptian Club made all payments to the Player from the commencement of the Playing Contract to February 2019 in full and on time.

- Towards the end of 2018, the Player indicated to the Egyptian Club staff that he was not comfortable in Egypt away from his family and proposed a mutual termination of the Playing Contract. The Egyptian Club's coaching staff did not wish to agree to this for sporting reasons due to having insufficient cover in the Player's position.

- The Player was reprimanded for being absent from training on 6 and 7 January 2019 without permission and for making some comments to the media on 15 January 2019.

- The Player was selected to play in the Egyptian Club's match on 18 January 2019 which ended in defeat; the coaching staff decided that the Player, along with some others, would not be selected for the next match due to their poor performance.

- The Player approached the coaching staff and reiterated his wish to leave the Egyptian Club and return to Tunisia, and then made further media comments on 27 January 2019 in which he stated he wanted to leave.

- The Player then left the Egyptian Club on 1 February 2019 without permission and failed to attend the scheduled training sessions. The Egyptian Club was unable to contact the Player so wrote to the EFA to register its complaint regarding the Player's conduct and requesting the EFA's assistance in contacting the Player to ask him to return to the Egyptian Club.

- On 24 February 2019, the Egyptian Club received a letter from the Player's representatives (without any signed authorization), referring to earlier letters dated 29 January 2019 and 13 February 2019 which the Egyptian Club had not received, in which it was alleged the Player was not registered to play matches for the Egyptian Club and requesting the return of his passport. The Egyptian Club did not agree with this as the Player was registered with the Egyptian Club and his passport would be returned to him if he returned to the Egyptian Club.

- The Egyptian Club then received a termination letter dated 4 March 2019 from the Player's representatives due to unpaid salaries. This was the first time the Egyptian Club had been notified of an outstanding amount which was the February 2019 salary, which was only delayed due to the Player's absence at the time. In any event, the Egyptian Club made this payment on 12 March 2019.

- The Player did not return to the Egyptian Club and then filed a claim before the FIFA DRC on 18 March 2019. The Egyptian Club responded to the claim and attached a letter

from the EFA confirming the Player was registered with the Egyptian Club for the season 2018/2019.

- The Egyptian Club maintains that the Player had no just cause to terminate the Playing Contract because he remained a registered player with the Egyptian Club, confirmed by the EFA. Furthermore, whilst a maximum of four foreign players can be included in a match squad, the maximum number of foreign players who may be registered by a club according to the EFA is five out of a total of thirty players (also confirmed by the EFA). In addition, he was registered for and participated in the Confederation of African ("CAF") Champions League, with his final match on 18 January 2019. Finally, the other foreign players signed by the Egyptian Club did not affect the Player's registration and played in different positions.

- Therefore, the Egyptian Club maintains the Player did not have just cause to terminate the Playing Contract, noting the jurisprudence of the FIFA DRC that just cause cannot be established through violation of the terms of an employment contract but instead must have persisted for a considerable period of time and / or there would need to be many violations over a period of time to justify termination for just cause, which was not the case for the Player.

- The Egyptian Club also argues that the Player committed several breaches of the Playing Contract, including not training to the correct standard, making unauthorized public statements and being absent without permission. The Egyptian Club still made all payments to the Player on time notwithstanding these breaches.

- The Player claimed salaries for January and February 2019 were unpaid but this was not true as all outstanding payments were made. Furthermore, in the termination letter dated 4 March 2019 from the Player's representatives, the suggestion was made that the Egyptian Club had been given fifteen days to make payment of the outstanding salaries but the Egyptian Club disputes ever being afforded this time, although in any event, it disputes there being any salaries outstanding. Finally, the Player claimed he did not appear in the Transfermarkt list of players for the Egyptian Club, which was untrue. Accordingly, the Egyptian Club argues that the Player terminated the Playing Contract without just cause.

- The Egyptian Club also argues that the FIFA DRC failed to properly take into account the Egyptian Club's submissions, in particular the evidence supplied from the EFA confirming the Player's registration with the Egyptian Club, and also placed too much emphasis on the Egyptian Club's failure to reply to the letters from the Player's representatives because some were not received by the Egyptian Club plus they did not carry any formal authorization from the Player.

- It follows therefore that the Player should pay compensation to the Egyptian Club for his termination of the Playing Contract without just cause, and that sporting sanctions should be imposed on the Player and the Second Respondent because the breach occurred during the protected period, according to Article 17 of the FIFA RSTP.

- The Egyptian Club claims it is owed the residual value of the Playing Contract, specifically the fixed remuneration from February 2019 to the end of the 2018/2019 season, USD 112,500 for season 2019/2020 and USD 127,500 for season 2020/2021. The Egyptian Club also asked for an amount equivalent to six months' of the Player's salary to be awarded in addition, i.e. USD 45,000, in accordance with Article 17 of the FIFA RSTP.

- The Egyptian Club also asks that sporting sanctions of six months' suspension be imposed on the Player in accordance with Article 17, paragraph 3 of the FIFA RSTP, due to the aggravating circumstances of the Player's violation of the Playing Contract, and also on the Second Respondent.

- In the alternative, the Player's conduct should be taken into account and he should not be entitled to any compensation due to his actions being a contributory factor to the loss suffered.

- Further in the alternative, should it be determined that the Player is entitled to compensation, it should be reduced on the following basis:

    - to a net sum to take into account the tax payable;

    - the 25% final payment per season should be excluded because the Player did not play in 80% of the Egyptian Club's matches, or in the alternative, should be reduced on a pro rata basis reflecting the number of matches the Player did participate in during season 2018/2019 compared with the total available and apply the same pro rata basis across seasons 2019/2020 and 2020/2021;

    - a deduction of at least 40% of the residual value of the Playing Contract to reflect the conduct of the Player contributing to the losses incurred;

    - the value of any new playing contract entered into by the Player for season 2020/2021 should also be deducted; and

    - the impact of the COVID-19 pandemic on the Egyptian Club's finances and the force majeure situation it created would have resulted in the termination of the Playing Contract, which means that whichever of the following occurred earliest should be deducted from the compensation: (i) the residual value from March 2020; (ii) the date the force majeure situation occurred until the end of the Playing Contract; or (iii) the lifting of the suspension of football by the EFA.

61. Accordingly, the Appellant submitted the following requests for relief:

"REQUESTS

A) To fully accept the present appeal against the Decision of the FIFA Dispute Resolution Chamber dated 17 January 2020.

B) Consequently, to adopt an award annulling said decision and declaring that:

1) The appealed Decision passed on 17 January 2020 in Zurich, Switzerland, is fully set aside and

2.1) The Player terminated with no just cause the Employment Contract it had signed with Ismaily SC,

2.1.1) As consequence of the above to state that the Player shall not be entitled to receive any financial amount from the Appellant following to its termination of the Employment Contract.

2.1.2) As consequence of the above to order the Player and his new club to jointly pay to the Appellant a compensation in the amount of 260,000 USD.

2.1.3) To apply Sporting sanction on the Player suspension for 4 to 6 months.

2.1.4) To apply sporting sanction on the new Club for ban of registration for 2 transfer window.

OR, IN THE ALTERNATIVE

2.2) If the honourable see that the Appellant has committed any breach as well, to consider that the Player also breached the contract prior to his termination and therefore not award both parties any compensation.

2.3) In the unlikely event that the Panel decides that the Appellant was in breach of contract and the Player has just cause to terminate the contract, to mitigate the indemnification according to factors mentioned in the present Appeal Brief.

C) To fix a sum of 20,000 CHF to be paid by the Respondent to the Appellant, to help the payment of its legal fees and costs.

D) To condemn the Respondents to the payment of the whole CAS administration costs and the Arbitrators fees.

E) To order the Player to pay an additional 5% annual interest on the amounts due to the Appellant as from the date of the breach of the Employment Contract as from the date of the breach of the Employment Contract [sic] *with no just cause, i.e. 3 March 2019.*

F) The Appellant is requesting the attendance of Mr. Mohamed Al Kelaya, Mr. Mohamed Mohssen Abu Greisha and Mr. Mohamed Ismail as the main witnesses in the present proceeding and their expected witnesses are briefly included by virtue of the present appeal brief" (emphasis in original omitted).

62. The Player's submissions, in essence, may be summarized as follows:

- The Parties entered into the Playing Contract on 12 July 2018 for a period of three seasons, ending on 30 June 2021.

- The salary for the first season was USD 173,334, payable as a first installment of USD 43,337 (due 1 August 2018), ten monthly installments of USD 8,666 (due 1 September 2018 – 1 June 2019) and a final payment of USD 43,337 (due 1 July 2019).

- The salary for the second season was USD 200,000, payable as a first installment of USD 50,000 (due 1 August 2019), ten monthly installments of USD 10,000 (due 1 September 2019 – 1 June 2020) and a final payment of USD 50,000 (due 1 July 2020).

- The salary for the third season was USD 226,666, payable as a first installment of USD 56,668 (due 1 August 2020), ten monthly installments of USD 11,333 (due 1 September 2020 – 1 June 2021) and a final payment of USD 56,668 (due 1 July 2021).

- At the start of the 2018/2019 season, the Egyptian Club had four foreign players, including the Player, which was the full quota it was entitled to have in the squad. In January 2019, the Egyptian Club approached the Player to ask him to find a new club so they could recruit a new foreign player in his place. The Player did not agree and was threatened by the Egyptian Club's staff that he would be removed and placed on a waiting list, thereby freeing up one of the four places for foreign players in the squad. The waiting list is also called the investment list and players receive their salaries but are not able to participate in the matches.

- Due to the pressure brought upon him, the Player's representatives wrote on 28 January 2019 (for the attention of the Egyptian Club but sent by email via the EFA due to the lack of contact details in the Playing Contract) warning the Egyptian Club not to place the Player on the waiting list to free up a place and if they did so, the Player reserved his right to terminate the Playing Contract for just cause.

- Despite this, the Egyptian Club continued to try and force the Player to leave the Egyptian Club in the January 2019 transfer window, and faced with the Player's refusal, opted to place him on the waiting list on 31 January 2019, removing him from the four foreign players in the squad, to allow the Egyptian Club to integrate other new foreign players in his place, and also withheld his passport.

- Having had no response, the Player's representatives wrote again on 13 February 2019 (sent by email via the EFA) and on 21 February 2019 (again sent by email via the EFA and secure post to the Egyptian Club), requesting the Player be reinstated to the foreign player quota to allow him to play matches and return his passport, again reserving his position to terminate the Playing Contract for just cause should the Egyptian Club fail to resolve the situation.

- Having received no response, on 3 March 2019 the Player's representatives sent a notice of termination of the Playing Contract for just cause pursuant to Article 14 of the FIFA RSTP. The Egyptian Club continued to withhold the Player's passport and he made a public statement on 10 March 2019 asking for its return, which prompted the Egyptian Club to return it to the Tunisian embassy in Cairo, and also prompted the Egyptian Club

to make its own public statement that it had placed the Player on the waiting list due to his poor performance.

- The Egyptian Club responded on 12 March 2019 noting the Player's absence but confirming he had been paid all outstanding salaries, that his passport was with the Tunisian embassy and that he should return to the Egyptian Club as he was registered on the team list and the issue was simply a technical one.

- The Player lodged his claim with the FIFA DRC on 18 March 2019 citing termination for just cause and claiming compensation and sporting sanctions be imposed on the Egyptian Club.

- The Player states that the case distils as to whether he had just cause to terminate the Playing Contract due to the Egyptian Club moving him to the waiting list to free up a space for another foreign player, as well as the multiple default notices sent, which went unanswered and unresolved, which ultimately broke the trust the Player had with the Egyptian Club.

- Despite the Egyptian Club's arguments that it had not received the letters sent, the Egyptian Club's response dated 12 March 2019 enclosed a fax sent by the EFA to the Egyptian Club on 16 February 2019 in which the Egyptian Club was sent the Player's letter dated 13 February 2019 (including the Arabic translation from the EFA). The Player points to the delay in the Egyptian Club's reaction from its receipt of this letter on 16 February 2019, his third letter sent on 24 February 2019 and his notice of termination on 3 March 2019, but the Egyptian Club only responded on 12 March 2019 showing a lack of good faith and lack of desire to resolve the situation.

- The Player disputes the allegation that he missed any training sessions and, in fact, argues that some of the pressure exerted on him was that he was not permitted to train with the squad and was just asked to run around the pitch without any technical or tactical training. Indeed, when the squad went on a camp training session between 22 February 2019 and 1 March 2019, the Player was not included and was left on his own in Egypt with no training provided.

- The Player refers to a number of reports to demonstrate that four other foreign players participated in the matches and were listed on the team lists from the end of the January 2019 transfer window. Furthermore, the press release that the Egyptian Club issued on 10 March 2019 expressly stated that the Player had been placed on the waiting list and excluded from the qualifying list. Given the Player has the right to remain able to play in the matches, he requested confirmation from the Egyptian Club that he was registered as one of the eligible foreign players, but the Egyptian Club failed to respond and therefore did not provide this confirmation.

- The Player refers to the EFA Contract and Transfer Regulations, the EFA Annual Registration Instructions and Registration Procedures (issued by the EFA Player Status Committee) and the EFA Administrative Circular dated 4 July 2018, all of which he states

confirm that there is a maximum of four foreign players who can appear in the list of players qualified for competitions. The EFA Annual Registration Instructions and Registration Procedures also confirm the concept of a waiting list made up of contracted players not on the eligible list who can only train but not take part in matches. The Player disputes that he appeared on the eligible list because in the matches which immediately followed the closure of the January 2019 transfer window, four other foreign players took part in the matches, therefore confirming they must have occupied the four foreign player places on the Egyptian Club's list at that time, to the absence of the Player who was placed on the waiting list.

- The Player makes reference to the letter from the EFA dated 18 May 2020 that the Egyptian Club put forward which states that a club can register up to five non-Egyptian players in its squad. The Player states this does not clarify the entire position by making reference to the same EFA Annual Registration Instructions and Registration Procedures which state that each club can register four foreign players with another player of Syrian or Palestinian nationality who does not need to take one of the four places, accordingly meaning a maximum of five players, providing one is from Syria or Palestine.

- The Player also alleges that the Egyptian Club bears the burden to prove any facts it presents and has failed to adequately do so.

- It is established FIFA DRC and CAS jurisprudence that not only is the payment of salaries fundamental to the employment relationship between club and player, but also the provision of training and the opportunity to compete and play matches, the latter being withheld from the Player by the Egyptian Club, and which would be grounds to terminate with just cause. Furthermore, the Player sent a number of default notices in writing, which the Egyptian Club failed to respond to or act upon to resolve the issues.

- The Player disputes that he was absent from training as alleged by the Egyptian Club, noting that the Egyptian Club failed to address this at the time or take any disciplinary action, which the Player states is confirmation that the Appellant's allegations are not true. He also highlights the inconsistency in the Egyptian Club's letter of 12 March 2020, which states the Player was absent since 21 February 2019 whilst its submissions before the FIFA DRC claim he was absent since 1 February 2019. He also disputes he made any statement to the media, instead noting that the media reports referred to by the Egyptian Club did not come from the Player (nor are they prejudicial to the Egyptian Club in any event).

- In terms of the salary received by the Player, he states that on 4 March 2019, the date he terminated the Playing Contract, he was owed the February and March installments (2 x USD 8,666.337) and this is confirmed by the payment records supplied by the Egyptian Club which only cover 6 payments (August 2018 - January 2019).

- The Player states the FIFA DRC applied the correct mitigation in the Appealed Decision in terms of his new playing contract; he disputes that the compensation should be further reduced to take into account the tax that the Egyptian Club argues is payable. This is the

Player's responsibility and the Egyptian Club provided insufficient evidence that it made any tax payments for the Player. The Playing Contract does not provide for or allow the Egyptian Club to make deductions from the amounts payable. In addition, the Player disputes that he ever received a copy of the aforementioned Egyptian Club's Financial Regulations and does not accept it has any effect on the amounts set out in the Playing Contract (the requirement to appear in 80% of match squads to receive the final installment in each season).

- Finally, he disputes that the impact of the COVID-19 pandemic can have any effect on the compensation awarded.

63. Accordingly, the Player submitted the following requests for relief:

*"**REQUESTS:***

1. *To dismiss appeal filed by the Appellant, Ismaily SC, against the Decision taken by FIFA DRC dated 17 January 2020.*

2. *To confirm the decision issued by FIFA DRC dated 17 January 2020.*

3. *The arbitration costs to be carried out by the Appellant.*

4. *To oblige the Appellant, to reimburse the First Respondent, with the advocacy costs, amounting to CHF 10,000.00".*

64. The Second Respondent failed to file an Answer and accordingly to make any requests for relief.

V. JURISDICTION

65. The jurisdiction of CAS, which is not disputed, derives from Article R47 of the CAS Code which states *"[a]n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".*

66. Article 58(1) of the FIFA Statutes (2019 edition) then provides that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS […]".*

67. The Parties do not dispute the jurisdiction of the CAS and confirmed it by signing the Order of Procedure.

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

VI. ADMISSIBILITY

69. Article R49 of the CAS 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 appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document".*

70. According to Article 58(1) of the FIFA Statutes (2019 edition), appeals *"shall be lodged with CAS within 21 days of receipt of the decision in question".*

71. The appeal was filed within the deadline of 21 days set by Article 58(1) of the FIFA Statutes (2019 edition). The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

72. It follows that the appeal is admissible.

VII. APPLICABLE LAW

73. Article R58 of the CAS Code provides the following:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

74. Article 57(2) of the FIFA Statutes (2019 edition) stipulates 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".*

75. The Egyptian Club and the Player both accepted that the regulations of FIFA should apply with Swiss law in the alternative if required.

76. However, the Egyptian Club also stated that Egyptian law should apply based on the following provision in the Playing Contract:

> *"The player undertakes as follows :*
>
> […]
>
> *2 – to respect the rules and regulations of the club and the association and complies with the instructions of the management and maintains the properties of the club"* (emphasis in original).

77. The Panel has considered the position put forward by the Egyptian Club but determines that the clause referred to in the Playing Contract does not amount to a valid choice of law clause which can reasonably be relied upon as indicating an agreement was reached by the Egyptian Club and the Player as to the choice of Egyptian law. There is no reference to Egyptian law and the more likely interpretation of the intent of this clause is that it relates to the Player's compliance with the relevant rules and the direction of the Egyptian Club.

78. This position is supported by CAS 2006/A/1024 which states as follows:

"9. According to article 187(1) of the PILA, "The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected". Article 187(1) of the PILA constitutes in itself the entire private international law or conflict of laws system applicable to arbitral tribunals having their seat in Switzerland and its provisions confirm that the type of conflict of laws rules contained in the Swiss private international law are not applicable to the determination of the applicable substantive law in international arbitrations (KAUFMANN-KOHLER/STUCKI, International Arbitration in Switzerland, Zurich 2004, p. 116).

10. The Panel must therefore decide whether the parties in this case have made a choice regarding "the applicable regulations and the rules of law" described in article R58 of the Code and, if so, what regulations and rules of law the parties have chosen.

11. The parties' agreement regarding the choice of law is not required to take a particular form and can be concluded either expressly or tacitly. Such a tacit agreement can result from, for example, a common attitude adopted by the parties during the arbitration procedure, where both parties refer to the same law in their submissions to the Panel (LALIVE/POUDRET/REYMOND, Le droit de l'arbitrage interne et international en Suisse, Lausanne 1989, p. 390). However, circumstances such as the place of arbitration, the place of residence or the nationality of the parties, or the choice of a procedural law, do not imply a choice of substantive law. Nor can a choice of law be derived from a so-called hypothetical intent of the parties, i.e. the intent that the parties would presumably have had – but in the event did not have – if they had thought about the question of applicable law (BUCHER/TSCHANZ, International Arbitration in Switzerland, Basle 1989, p. 99).

12. In order for a choice of law to exist in the sense envisaged by 187(1) para. 1 of the PILA, there must be an awareness and a willingness by the parties to adopt such a choice of law (LALIVE/POUDRET/REYMOND, op. cit., p. 390). Once the arbitral tribunal has established the actual intent of the parties, it must enforce their agreement, without examining the merits of the parties' choice or second-guessing whether this choice is legitimate or appropriate. In particular, the arbitral tribunal may not refuse to apply the chosen law because it is incomplete, surprising or unfair in the circumstances of the contractual relationship (KAUFMANN-KOHLER/STUCKI, op. cit., p. 119)".

79. It follows, therefore, that the Panel is satisfied that primarily the various regulations of FIFA are applicable to the substance of the case, and additionally Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. PRELIMINARY ISSUES

80. The Panel was asked to determine the admissibility of certain documents filed immediately before and during the hearing, in particular:

a. A copy of the First Contract, i.e. the Player's contract with the Second Respondent for the season 2019/20, which had been submitted by the First Respondent during the hearing; and

b. Miscellaneous Egyptian laws relating to taxation, which were submitted by the Appellant the day before the hearing.

81. The Parties were given an opportunity to state whether they were prepared to accept the filing of the documents. The Egyptian Club objected to the inclusion of the First Contract. Despite requesting that the Player produce a copy of the Second Contract, i.e. the Player's contract with the Second Respondent for the season 2020/21, such had been included in the Player's Answer, seemingly in error as it was referenced as the First Contract. The Egyptian Club now sought to object to the inclusion of the First Contract on the basis that it should have been supplied on time and therefore the salary for the First Contract should be ignored, for mitigation purposes, and instead the increased salary in the Second Contract should apply for both seasons. In response, the Player argued that the First Contract had already been supplied in the FIFA DRC proceedings, given it was the only contract in existence at the time that the Appealed Decision was issued, and the salary had been taken into account in the Appealed Decision.

82. The Parties did not file written submissions as to the admissibility of the miscellaneous Egyptian laws. The First Respondent orally objected to the admissibility of such documents during the hearing held in this proceeding.

83. The Panel is satisfied that the First Contract should be admitted given that the Player had intended to include it in his submissions, it had already been before the FIFA DRC and the Egyptian Club had requested the Second Contract be produced, evidencing its desire to have full disclosure of all contracts in existence between the Player and the Second Respondent.

84. However, the Panel is not prepared to accept the late submission of the miscellaneous Egyptian laws on the basis that this material was available to the Egyptian Club at the time it filed its Appeal Brief and it gave no explanation or justification for its late submission. Accordingly, the Panel rules that this material is inadmissible in accordance with Article R56 of the CAS Code.

IX. MERITS

85. The main issues to be determined are:

(i) What is the burden of proof and the standard of proof applicable to the present matter?

(ii) Was the Player's termination of the Playing Contract with or without just cause?

(iii) What are the consequences that follow the termination of the Playing Contract?

A. What is the burden of proof and standard of proof applicable to the present matter?

86. Before assessing the main issues of the present dispute, the Panel deems it necessary to first establish the burden of proof and the standard of proof applicable to the present matter.

87. The concept of burden of proof has been considered in many CAS decisions and is well established CAS jurisprudence. It was set out in CAS 2007/A/1380 as follows:

"According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code "Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right" (free translation from the French original version – "Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu'elle allègue pour en déduire son droit"). It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites included in the concept of "burden of proof" are (i) the "burden of persuasion" and (ii) the "burden of production of the proof". In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party" (see also CAS 2005/A/968 and CAS 2004/A/730).

88. This concept was further explained in CAS 2011/A/2384 & 2386 as follows:

"Under Swiss law, the 'burden of proof' is regulated by Art. 8 of the Swiss Civil Code (the "CC"), which, by stipulating which party carries such burden, determines the consequences of the lack of evidence, i.e., the consequences of a relevant fact remaining unproven … Indeed, Art. 8 CC stipulates that, unless the law provides otherwise, each party must prove the facts upon which it is relying to invoke a right, thereby implying that the case must be decided against the party that fails to adduce such evidence. Furthermore, the burden of proof not only allocates the risk among the parties of a given fact not being ascertained but also allocates the duty to submit the relevant facts before the court/tribunal. It is the obligation of the party that bears the burden of proof in relation to certain facts to also submit them to the court/tribunal".

89. In CAS 2003/A/506, it was held:

"[In] CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (see also article 8 of the Swiss Civil Code, ATF 123 III 60, ATF 130 III 417). The

Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence".

90. This position is further supported by the provisions of Article 12 para. 3 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber which states:

"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof. During the proceedings, the parties shall submit all relevant facts and evidence of which they are aware at that time, or of which they should have been aware if they had exercised due care".

91. It follows therefore that each party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the Panel that the facts it pleads are established.

92. The standard of proof which applies to proceedings of the FIFA judicial bodies is that the members of FIFA's judicial bodies decide on the basis of their "personal conviction" and CAS jurisprudence has consistently equalled this standard to the standard of "comfortable satisfaction". It is a standard that is higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt" (see CAS 2010/A/2172; CAS 2009/A/1920).

93. This is supported by and consistent with the Swiss Civil Code as set out in CAS 2014/A/3562:

"The Panel observes that according to Swiss Civil procedure law the standard of proof to be applied is in line with such jurisdiction (see STAEHELIN/STAEHELIN/GROLIMUND, Zivilprozessrecht, § 18, N 38) and fully adheres to the above-mentioned reasoning in CAS 2011/A/2426 and will therefore also give such meaning to the applicable standard of "personal conviction"/"comfortable satisfaction"".

94. Based on the foregoing, the Panel is content to adopt the standard of comfortable satisfaction, commonly adopted in CAS jurisprudence, as the standard of proof to apply in this case.

95. Finally, in accordance with Article R57 of the CAS Code, *"[t]he Panel has full power to review the facts and the law"*, which means that the CAS appellate arbitration procedure provides for a *de novo* review of the merits of the case. Accordingly, as is well-established in CAS jurisprudence, a Panel is not limited to deciding if the Appealed Decision is correct or not but rather its function is to make an independent determination as to the merits.

B. Was the Player's termination of the Playing Contract with or without just cause?

96. The respective positions of the Parties, set out in summary above, are clear. The Appellant maintained that the Player did not have just cause to terminate the Playing Contract because he remained a registered player with the Egyptian Club, with his registration unaffected by the signing of other foreign players, and the Egyptian Club continued to pay the Player on time notwithstanding his failure to attend training on certain occasions. In contrast, the Player

stated that the Egyptian Club had a quota of four foreign players, which it exceeded when it signed a further foreign player in the January 2019 transfer window, thereby placing the Player on the waiting list, which meant he was not able to take part in official matches. He wrote to the Egyptian Club on three occasions requesting that he be reinstated to the quota to allow him to play in official matches but the Egyptian Club failed to respond, in addition to the Egyptian Club's failure to pay him his salary for February 2019, leaving him with no alternative but to serve notice to terminate the Playing Contract, citing just cause.

97. Article 8 of the Swiss Civil Code states that a party has the burden of proving the facts underlying its claim(s) and it follows therefore that in the present case it is for the Egyptian Club to establish that the Player remained registered with the Egyptian Club and able to take part in official matches.

98. The Egyptian Club produced in evidence a letter from the EFA, dated 16 May 2019, addressed to the Egyptian Club which stated, inter alia, as follows:

"Further to your request dated 15/5/2019, kindly note that the player Lassaad Gaziri is registered at Ismaili list for the season 2018/2019, and his contract is valid till season 2020/2021, his registration number is P000737.

[…]".

99. In respect of the Player remaining able to take part in official matches, the Egyptian Club stated that the maximum number of foreign players that could be registered was actually five, again confirmed by way of a letter addressed to the Egyptian Club from the EFA, dated 18 May 2020, which stated, inter alia, as follows:

"Further to your inquiry concerning the maximum number of non-Egyptians players that may be registered in the list of the football first team for the first division clubs in seasons 2018/2019 and 2019/2020 according to the last updated registration regulations during each season.

We hereby confirm the right of registration maximum of 5 non Egyptian players for each club participating in first division in season 2018/2019 and 2019/2020 according to last updated registration regulations during each season.

[…]".

100. On the other hand, the Player stated that following the (unsuccessful) attempts to force the Player to leave the Egyptian Club, the Egyptian Club's action of placing him on the 'waiting list' without his consent, and thereby preventing him from having the opportunity to participate in official matches, coupled with the Egyptian Club's failure to respond to his three letters, requesting that his situation be resolved to allow him to continue to play in official matches, was sufficient to destroy the trust and confidence which was required for the employment relationship to be maintained.

101. In terms of the letters the Player sent to the Egyptian Club seeking assurances and a resolution which would allow him the opportunity to participate in official matches, the Player stated

that the letters dated 28 January 2019 and 13 February 2019 were sent by email to the EFA because the Playing Contract did not have the email address for the Egyptian Club and the third letter was also sent by email to the EFA on 21 February 2019 and by rapid post. The Player provided the delivery receipt for the Egyptian Club in relation to the third letter in evidence.

102. The Egyptian Club confirmed in its submissions that it received the third letter, dated 21 February 2019, but it did not receive the first or second letters. However, the Panel notes that the Egyptian Club's letter in response, dated 12 March 2019, states, inter alia, as follows:

"Further to your mail dated 16 Feb 2019, kindly note the followings:

[…]".

103. In addition, the Player also produced in evidence a copy of a fax sent on 16 February 2019 by the EFA, apparently to the Egyptian Club, which enclosed a copy of the Player's second letter, dated 13 February 2019, which further confirmed both the Egyptian Club's receipt of this second letter but also explained the dating error the Egyptian Club made in its reference to the Player's letter being dated 16 February 2019, as it had presumably taken the date of the fax, not the date of the actual letter.

104. Indeed, given the EFA only forwarded the second letter dated 13 February 2019 rather than also include the first letter, it is therefore reasonable to assume that it also forwarded the first letter dated 28 January 2019 to the Egyptian Club, given that it has been proven that the EFA's process was to forward the correspondence it received to the Egyptian Club (as the various letters requested that the EFA did so).

105. Whilst the Panel is satisfied that the Player has discharged his burden of proving that, at the very least, the Egyptian Club received his second and third letters, and may well have also received his first letter as well, the Panel is concerned that the Egyptian Club did not adduce as evidence in this proceeding either its letter of 12 March 2019 or the fax received from the EFA with the copy of the Player's second letter, given both confirmed the Egyptian Club had received the second letter, yet in its submissions it sought to maintain that it had not received the second letter.

106. The Player's position is that the Egyptian Club's failure to respond to his letters and failure to resolve the issues he raised so as to allow him to resume the opportunity to participate in official matches resulted in him concluding that the Egyptian Club would not resolve these issues and in so doing, breached the fundamental duty of trust and confidence between employer and employee. The Player claimed he was left with no option but to send a termination notice to the Egyptian Club, dated 3 March 2019, citing just cause for the termination of the Playing Contract.

107. The Panel notes that the Player maintained that he did not receive any communication from the Egyptian Club to any of his letters until he received the letter dated 12 March 2019, at which point he had already served his notice of termination.

108. The Parties are in agreement that the Player's third letter dated 21 February 2019 was received by the Egyptian Club, but it did not respond, and that the 3 March 2019 notice of termination was received. However, although the Player adduced the first response from the Egyptian Club, dated 12 March 2019, as noted above the Egyptian Club failed to adduce this as evidence or make any reference to it in its submissions.

109. It is further noted that the notice of termination, dated 3 March 2019, makes reference to the Player not having received his salary for February 2019; the Egyptian Club accepted this had not been paid on time and upon receipt of the notice of termination, it paid this monthly salary.

110. The Egyptian Club claimed that the Player was absent from training on several occasions, which the Player denied and he asserted that he was always present but was not provided with a proper training environment having being left to train alone at times. The Panel has considered the respective submissions of the Parties in this regard and is satisfied that neither Party has fully discharged its burden to prove whether or not any absences occurred as alleged by the Egyptian Club and moreover, the Panel decides that this argument was not determinative to the main issue.

111. The main question is whether the alleged actions of the Egyptian Club that the Player has put forward were sufficient to terminate the Playing Contract with "just cause". In order to determine this question, it is necessary to first consider the facts of the case.

112. Turning to the established facts of the case in hand, it is accepted by both Parties that the Egyptian Club signed three new foreign players (on 1 January 2019, 6 January 2019 and 7 January 2019) to add to one of the existing foreign players (Mr Richard Bafour) already signed to complete the foreign player quota, which meant that the Player was moved to what was known as the 'waiting list' the same month. This fact was confirmed by the Egyptian Club in its submissions and also by way of a media article dated 23 January 2019 submitted by the Player in evidence, the free translation of which was not objected to by the other Parties and read as follows:

"News / in view of terminate the relationship with them: ismaily puts Mendoga and Jaziri in waiting list

The club is trying now to find a good offers for the Cameroon and Tunisian players in order to terminate the relationship with them during the winter registration window.

During this winter registration window, the club has recruited the Namibian striker Benson Shelongo, the negirian [sic] *Odda Marshal and the Tanzanian Yahia Zayed.*

With the Ghanaian player Richard Bafour ismaily has 4 foreigner players in its actual list which represents the limit of the quota for foreign players".

113. This position was further supported by the Egyptian Club's press release dated 10 March 2019, also submitted by the Player in evidence, the free translation of which stated:

"In addition, the board of directors declares that in January the player was put on the waiting list following the recommendations of the technical staff following the decline in the player's technical level but he continued to receive his financial emoluments from 'on a regular basis, with the exception of February".

114. The Egyptian Club then played two matches on 7 February 2019 and 15 February 2019 in which the Player was not part of the squad, accepted by the Egyptian Club and confirmed by the match reports published on the Egyptian Club's media channels and submitted in evidence by the Player.

115. The Egyptian Club effectively confirmed receipt of the Player's second letter (dated 13 February 2019), via the EFA, on 16 February 2019 but failed to respond, and then the Player's third letter (dated 21 February 2019) on 24 February 2019 and again failed to respond. The Egyptian Club then held a training camp between 27 February 2019 and 1 March 2019 to which the Player was not invited, a fact accepted by both Parties. The Player then files his notice of termination on 3 March 2019 having still had no response from the Egyptian Club. The first time the Egyptian Club engaged with the Player was more than a week after the 3 March 2019 termination notice was served, by way of its letter of 12 March 2019.

116. The FIFA RSTP do not explicitly define what constitutes "just cause" and, in line with CAS jurisprudence, it is necessary to look to Swiss law and the way in which the jurisprudence has interpreted it to answer this question.

117. The concept of "just cause" was considered in CAS 2006/A/1062, noting *"[t]he FIFA Regulations do not define when there is such "just cause". One must therefore fall back on Swiss law. Pursuant to this, an employment contract which has been concluded for a fixed term can only be terminated prior to expiry of the term of the contract if there is 'good cause' (see also ATF 110 I 167). In this regard Art. 337(2) of the Code of Obligations ("CO") states – in loose translation: "Particularly any circumstance, the presence of which means that the party terminated cannot in good faith be expected to continue the employment relationship, is deemed to be good cause". The courts have consistently held that a grave breach of duty by the employee is good cause (ATF 121 III 467; ATF 117 II 72)".*

118. Furthermore, in CAS 2006/A/1180, it was held that *"[a]ccording to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (…). Particular importance is thereby attached to the nature of the breach of obligation. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (…). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus. According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (…). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence (…). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted".*

119. It is therefore well-established CAS jurisprudence that the termination of a playing contract must be for a sufficiently serious breach, or breaches, to justify termination with "just cause".

120. It is widely held in CAS jurisprudence that the obligations of a club to a player extend beyond the requirement to make payments to the player on time and in accordance with the playing contract, to include the requirement to provide the player with suitable training facilities and the ability to play matches; see CAS 2011/A/2428:

"The Panel concluded that the Contract was there to establish the rights and obligations of the parties. The Club had to pay the Player for his services and provide him with the ability to ply his trade, ie. to play football. This would extend to play in matches, if selected, and training to improve and develop his skills".

121. There is helpful commentary in CAS 2013/A/3091, 3092 & 3093 which covers both an examination of just cause and to what extent personality rights can be asserted by a player. The Award states, inter alia, as follows:

"190. The Swiss Federal Tribunal also holds that when immediate termination is at the initiative of the employee, a serious infringement of the employee's personality rights (Judgment 4C.240/2000 of 2 February 2001), consisting, for example, in unilateral or unexpected change in his status which is not related either to company requirements or to organization of the work or the failings of the employee (Unpublished judgments of October 7, 1992 in SJ 1993 I 370, of November 25, 1985 in SJ 1986 I 300 and of 16 June 1981 in case C.40/81), or even, in certain circumstances, a refusal to pay all or part of the salary (STAEHLIN A., Kommentar zum Schweizerishcen Zivilgesetzbuch, Obliagtionenrecht, V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, N 27 ad Art. 337 CO; BRUNNER/BÜHLER/WAEBER/BRUCHEZ, Commentaire du contrat de travail, Lausanne 2010, N 7 ad Art. 337 CO), may be deemed "good reason".

[…]

222. With regard to the deregistration as such, the Panel agrees with the FIFA DRC's position in the Appealed Decision, that it may infringe upon the Player's personality rights.

223. According to Articles 28 et seq. of the Swiss Civil Code ("CC"), any infringement of personality rights caused by another is presumed to be illegal and subject to penalties unless there is a justified reason that overturns this presumption.

224. As stated by FC Nantes, it is generally accepted in jurisprudence (ATF 120 II 369; ATF 102 II 211; ATF 137 III 303; Judgment of the Swiss Federal Tribunal 4A_558/2011, dated March 27, 2012) and among legal scholars (BADDELEY M., Le sportif, sujet ou objet?, in: Revue de Droit Suisse; 1996 II, pp. 135 et seq., p. 162; LUDWIG/SCHERRER, Sportsrecht, eine Begriffserläuterung, Zürich 2010, p. 212; AEBI-MÜLLER/MORAND, Die personlichkeitsrechtlichen Kernfragen der "Causa FC Sion", CaS 2012, p. 234-235) that personality rights apply to the world of sport. For athletes, personality rights encompass in particular the development and fulfilment of personality through sporting activity, professional freedom and economic freedom (BADDELEY, op. cit., p. 171). Under this definition, personality rights protect the right of movement, which comprises in particular the right to practice a sports activity at a level that accords with the abilities of the athlete (BUCHER A., Personnes physiques et protection de la personnalité, Basel 1999, N 467). When the sport is practised professionally, a suspension or any other limitation on access to the sport may impede the economic development and fulfilment of the athlete, the freedom of choosing his professional activity and the right to practice it without restriction (OSWALD D., Le règlement des litiges et la repression des comportement illicites dans le domaine sportif; in: Mélanges Grossen, Basel 1992, p. 74). This freedom is

particularly important in the area of sport since the period during which the athlete is able to build his professional career and earn his living through his sporting activity is short (AEBI MÜLLER/MORAND, op. cit., p. 236). In football in particular the length of a career is appreciably shorter than in other sports (AEBI MÜLLER/MORAND, op. cit., p. 237).

225. Professional freedom, in particular for professional athletes, therefore includes a legitimate interest in being actually employed by their employer (REHBINDER/STOCKLI, Berner Kommentar, 2010, N 13 to Art. 328). Indeed, an athlete who is not actively participating in competitions depreciates on the market and reduces his future career opportunities (Judgment of the Cantonal Court of Valais, decision of November 16, 2011, CaS 2011, 359). It is thus widely accepted in jurisprudence and among legal scholars that athletes have a right to actively practice their profession (ATF 137 III 303). To the extent that Articles 28 et seq. CC protect parties from negative actions and require offending parties to refrain therefrom, but do not grant rights to positive actions, such right to actively practice one's profession is resolved notably by labour law (ATF 137 III 303).

226. Upholding this approach, the Swiss Federal Tribunal stated with regard to a professional football player that "it is obvious that a professional football player playing in the premier division must, in order to retain his value on the market, not only train regularly with players of his level but also compete in matches with teams of the highest possible level" (Judgment 4A_53/2001 of March 2011).

227. Furthermore, legal scholars (BADDELEY, op. cit., p. 182), and jurisprudence (ATF 137 III 303; ATF 120 II 369) acknowledge that decisions relating to selection, qualification and suspension, as well as licensing refusals, may constitute an infringement of the personality rights of the athlete from the standpoint of his economic freedom (BADDELEY, op. cit., p. 182).

228. In view of the above-mentioned jurisprudence of the Swiss Federal Tribunal and Swiss legal scholars, the Panel agrees with the FIFA DRC, which, in the case at hand, concluded that "among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow team mates in the team's official matches" and that "by "de-registering" a player, even for a limited time period, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, is violating one of his fundamental rights as a football player" and that therefore "the de-registration of a player could in principle constitute a breach of contract since it de facto prevents a player from being eligible to play for his club".

122. The principle of a quota for foreign players is used in a number of countries and has been the subject of CAS jurisprudence; for instance, in CAS 2017/A/5182, the appellant club took certain steps, including removing the respondent player from the first team squad, to try to force the respondent player to leave, and therefore the sole arbitrator held in that case:

"53. In the context of the present case and considering that (a) the Respondent was hired to play with the Appellant's team with the status of a professional footballer according to the Contract, i.e. to play with the Appellant's first team in the professional Turkish Super League, (b) the Respondent was part of the Appellant's first team during the 2013/2014 season, which is not disputed by the Appellant, (c) the Appellant was obviously not content with the Respondent's performance and such discontent was expressed not only verbally to the Respondent but also in writing in the correspondence of the Appellant with the Respondent's legal counsel (letters of 10 July and 6 August 2014), (d) the Respondent was informed that he was no longer considered part of the Appellant's first team for the coming 2014/2015 season and was asked to train alone

and/or with the U21 team of the Appellant, and (e) the Respondent was asked by the Appellant to find a new team before the beginning of the 2014/2015 season, which is not disputed by the Appellant, the Sole Arbitrator holds that the Respondent had objective reasons to believe that the Appellant had no intention to perform its side of the employment agreement. His exclusion from the team could have seriously prejudiced his career development, as it completely deprived him of the chance to put his talent on display thereby potentially increasing his market value. Bearing in mind the Appellant's criticism and attitude towards the Respondent, the Sole Arbitrator finds that the latter could not reasonably be expected to carry on the employment relationship.

54. For the same reasons, the Sole Arbitrator does not see any more lenient measures which could have been taken by the Respondent in order to resolve the situation and to maintain the contractual relationship. In particular and under the specific circumstances of the case, the Sole Arbitrator sees no reason for the Respondent to give additional warning to the Appellant prior to his resignation, other than the formal notice included in the 6 August letter of the Respondent's legal representative, as such a notification would have been of no use. As a matter of fact, the Respondent had no motive to believe that the Appellant's decision to remove him from the first team was either not final or not permanent (see CAS 2014/A/3643)".

123. Furthermore, CAS 2017/A/5182 went on to explore what ultimately was a disputed national federation regulation which was alleged to allow a club to demote one foreign player to the youth team if, by signing additional foreign players, it exceeded the quota in any given season providing it continued to pay the salary of the demoted player:

"62. For the sake of completeness, the Sole Arbitrator notes that, even if the Appellant had met its burden of proof with respect to the alleged TFF regulation and if its content was indeed established as described in par. 19 of the appeal brief, the Respondent would still be in a position where he could not reasonably have been expected to carry on the employment relationship. The TFF regulation, assuming it had the alleged content, could not possibly allow clubs to remove foreign players from their first teams and order them to train with the U21 teams, on account of them exceeding the relevant quota. To hire and to maintain the football player as a professional footballer is a basic obligation assumed by any football club that is party to a professional footballer's employment contract. Moreover, considering that the Respondent played in the Appellant's first team during the first season of the Contract, it would be contrary to good faith and to the principle of pacta sunt servanda for the Appellant to knowingly sign more foreign players during the 2014 summer transfer window, as was claimed by the Respondent and not disputed by the Appellant, and then invoke the latter agreements as being compulsory for the Appellant over the one signed with the Respondent".

124. The reference above to the case CAS 2014/A/3643 provides another relevant case, which is also based on similar facts, being that the appellant club did not register the respondent player for a new season, instead signing an alternative foreign player to take his place in the quota, and the panel held in that case:

"In light of the above considerations, the Panel holds that the Player had objective reasons to believe that the Appellant had no intention to perform its side of the Employment Agreement. The Player was hired to train and play with the Appellant's first team and had a right to be employed under these terms, which had been agreed contractually. The exclusion from this position and his de facto demotion, since a substitute was hired, could have seriously prejudiced his career development, as it deprived him completely of the chance to put his talent in evidence and to increase accordingly his market value. Bearing in mind the Appellant's criticism and

attitude towards the Player, the Panel finds that the latter could not reasonably be expected to carry on the employment relationship. For the same reasons, the Panel does not see any more lenient measures, which could have been taken by the Player in order to resolve the situation and to maintain the contractual relationship. In particular and under the specific circumstances of the case, the Panel sees no reason for the Player to give a warning prior to his resignation as such a notification would have been of no use. As a matter of fact, the Player had no motive to believe that the Appellant's decision to substitute him was not final".

125. The concept of just cause is also explored in CAS 2014/A/3706 in which it was held that:

"80. According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (ATF 108 II 444, 446; ATF February 2 nd , 2001). Particular importance is thereby attached to the nature of the breach of obligation.

81. Always according to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the Parties be continued, such as a serious breach of confidence (CAS 2006/A/1180; ATF February 2nd, 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit., p. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496).

82. Should the breach be of a minor severity, Swiss jurisprudence is of the opinion that it can still lead to an immediate termination but only if it was repeated despite a prior warning (ATF 130 III 213 v. 3.1 p. 221).

83. Nonetheless, the severity of the breach cannot lead by itself to a termination for just cause. What is decisive is that the facts adduced in support of the immediate termination have resulted in the loss of trust which is the basis of the employment contract (ATF 130 III 213 c. 3.1 p. 221; 127 III 1534 c. 1c p. 157 s)".

126. When applied to the facts of the case in CAS 2014/A/3706 (in summary, the respondent ignored the appellant's multiple letters in which the appellant requested the provision of flight tickets and renewal of his visa to allow him to return to the country where the respondent was based, together with information on the training schedule), the sole arbitrator concluded that:

"96. Indeed, general principles of good faith states that if a party has clearly shown that it is willing to rely upon a signed contract by performing its contractual obligations, as in casu returning to the Kingdom of Saudi Arabia and resuming training with the Club, it may legitimately expect the counterparty to behave in good faith and to do its utmost in order to have said contract performed.

97. Based on the above element - and on a body of evidence which, at the very least, reveals that the Respondent has systematically ignored the Appellant's request in order to avoid his timely return to Kingdom of Saudi Arabia -, the Sole Arbitrator is of the opinion that the Respondent lacked of willingness to prevent the present conflict, acting as a consequence with such negligence as to constitute clear bad faith.

98. As a consequence of this bad faith and lack of interest for the Player, the Club breached the Contract by breaking the Appellant's trust, which constitutes an essential element of an employment contract. Consequently,

the Sole Arbitrator concludes that the Respondent's behavior gave the Appellant "just cause" for termination of the contract.

99. Moreover, this opinion is also reinforced by the extensive warning of the Appellant and his genuine good faith throughout the entire duration of the case".

127. There are similarities in this case given that the Panel has found that the Player has demonstrated good faith by repeatedly indicating that he wished to perform his obligations under the Playing Contract and requested that the Egyptian Club act reciprocally in good faith by taking steps to allow this to happen and for the Playing Contract to be performed.

128. Whether or not the Player was correct regarding his de-registration and his status on the waiting list, his repeated requests of the Egyptian Club to resolve the situation clearly evidence his state of knowledge at the time, which was that he had been removed from the list of eligible players for official matches. Indeed the correspondence also repeatedly references that the Player may be left with no option but to terminate the Playing Contract if the Egyptian Club does not address his concerns.

129. The Panel found that the issue of de-registration, the status of the players on the waiting list and the ability for players to pass freely to and from the waiting list so the Player could have played in future official matches was not clearly proven by either Party.

130. However, even if the Player was ultimately mistaken in his belief at the time, crucially, the majority of the Panel finds that the Egyptian Club's failure to take steps to either resolve the situation to allow the Player to be capable of being selected in official matches or provide him with sufficient assurances that his understanding (set out repeatedly in correspondence) was not correct, evidenced by the way it ignored the Player's letters, demonstrates its bad faith and steadfast refusal to resolve the issues. Having been presented with the Player's understanding of his status and the fact that he will be left with no option but to terminate the Playing Contract citing just cause if the Egyptian Club did not resolve matters, if it was acting in good faith the Egyptian Club would have immediately taken steps to demonstrate the Player remained part of the squad and could be freely selected for official matches, and provided him with such assurances to alleviate his concerns. In contrast, faced with what the Egyptian Club later said was an entirely incorrect conclusion as to his status and the real prospect of the Player terminating the Playing Contract based on what it now maintains was a false premise, the fact it took no steps to prevent this, simply remaining silent and allowing the situation to play out as foreshadowed and then to claim that the Player has breached the Playing Contract by terminating without just cause is found by the majority of the Panel to be clear evidence of its bad faith.

131. It follows that this bad faith was deemed sufficient by the Player to destroy the essential requirement of trust and confidence for the employment relationship to be maintained, viewed subjectively at the time. Accordingly the majority of the Panel is satisfied, to its comfortable satisfaction, that this was an entirely reasonable reaction and the conclusion reached by the Player that the employment relationship could not reasonably continue provided him with just cause to terminate the Playing Contract.

C. What are the consequences that follow the termination of the Playing Contract?

132. Having established that the Player's termination of the Playing Contract on 3 March 2019 was with just cause, based on the majority view of the Panel, the Panel needs to determine the consequences that follow.

133. In this context, and to start with, the Panel holds that, in accordance with the well-established jurisprudence of both the FIFA DRC and the CAS, and the principle of *pacta sunt servanda*, the Egyptian Club is liable to fulfil its contractual obligations to the Player under the Playing Contract, meaning that the contractual entitlements not paid as at the date of termination are payable in full.

134. It is relevant to note that the FIFA RSTP firstly apply to the case in hand, with Swiss law being applied if required to complete any gap or to provide any interpretation of the FIFA RSTP.

135. It follows therefore that Article 17 of the FIFA RSTP is relevant setting out, as it does, the principle that if a contract is terminated without just cause, the party in breach pays compensation to the other party. It goes on to set out certain matters which should be taken into account, where relevant, in determining the appropriate levels of compensation, which includes the remuneration and other benefits due to a player under the breached contract and any new contract, and the time remaining on the existing contract up to a maximum of five years, all of which should be taken into account in mitigation.

136. Accordingly, the majority of the Panel also finds that, given that the Egyptian Club is liable for the early termination of the Playing Contract, the Player is entitled to receive an amount in compensation for the breach of contract by the Egyptian Club.

137. Therefore, the Egyptian Club is liable to pay compensation to the Player calculated as the residual value of the Playing Contract at the point of termination. This is confirmed in CAS 2015/A/4206 & 4209 which states, *"consistent with the well-established CAS jurisprudence, the injured party is entitled to a whole repatriation of the damages suffered according to the provisions of articles 337 b) and 337 c) of the SCO, pursuant to the principle of the "positive interest", under which compensation for breach must be aimed at reinstating the injured party to the position it would have been in, had the contract been fulfilled to its end (CAS 2012/A/2698; CAS 2008/A/1447; CAS 205[sic]/A/801; CAS 2006/A/1602)".*

138. Firstly, the Player claims that the salaries payable on 1 February 2019 and 1 March 2019 were outstanding, in the sum of USD 17,332 and remain unpaid. The Player refers to the payment records supplied by the Egyptian Club which covered the salary payments for 1 August 2018 – 1 January 2019 (inclusive) but stated that the Egyptian Club had failed to provide a payment record for either of the salaries due on 1 February 2019 and 1 March 2019. The Egyptian Club maintains that it paid the salary due on 1 February 2019 on 12 March 2019, providing a copy of the payment record as per earlier payments as supporting evidence; however there is no evidence of the payment of the salary due on 1 March 2019. Accordingly the Panel has no option but to find that the salary due on 1 March 2019 remains outstanding.

139. Therefore, the majority of the Panel finds that the Egyptian Club has to pay the Player the sum of USD 8,666 for the unpaid salary of March 2019 due to the Player.

140. Furthermore, the Egyptian Club is obliged to pay the residual value of the Playing Contract, as at the date of termination, by way of compensation to the Player which is calculated on 3 March 2019 to be USD 496,001.

141. Article 17 of the FIFA RSTP sets out that the value of the new playing contract that the Player entered into with his new club, i.e. the Saudi Arabian Club, should be taken into account in mitigation to reduce the amount awarded by way of compensation for breach of contract by the Egyptian Club. It states as follows, *"in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract"*.

142. Accordingly, the Panel notes that the Appealed Decision correctly took into account that the Player signed a playing contract with the Saudi Arabian Club on 17 July 2019, valid for the period 14 July 2019 to 30 May 2020, for a total remuneration of USD 40,000.

143. However, after the Appealed Decision was issued, the Player signed another playing contract with the Saudi Arabian Club on 31 January 2020, valid for the period 1 June 2020 to 31 May 2021, for a total remuneration of USD 90,000, which was submitted in evidence as part of these proceedings.

144. There is CAS jurisprudence (CAS 2016/A/4678) that a panel is able to take into account in mitigation any new playing contracts entered into after the first instance decision and the Panel is of the view that this is appropriate to do so in this case given the general power conferred on CAS panels by Article R57 of the CAS Code which states, *"The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance"*. This is attributed consistently in CAS jurisdiction to afford CAS panels with the power to consider cases *de novo*. The Panel further notes that the Egyptian Club specifically asked that any new playing contract for the season 2020/21 be submitted and taken into account in mitigation, and made reference to this in general terms in its requests for relief, which was taken as sufficient to allow the Panel to do so without displacing the principle of *ne ultra petita*.

145. Therefore, the majority of the Panel finds that the Player is entitled to the sum of USD 504,667 minus USD 130,000 (i.e. the First Contract plus the Second Contract), for a total of USD 374,667.

146. As an aside, it will be noted that whilst the above calculation includes one monthly salary which the Appealed Decision did not award, however when applying the full mitigation before

this Panel, the sum awarded to the Player is lower than that awarded in the Appealed Decision. The Panel is satisfied that this is in accordance with its powers under Article R57 of the CAS Code and given the Player's claim is clear and consistent throughout for the payment of the outstanding sums owed plus the balance of the Playing Contract (although this Award does not grant the full Player's claim given the Panel's satisfaction that one of the two outstanding salaries was paid by the Egyptian Club), the Panel is content that this does not offend the principle of *ne ultra petita*. In support of this contention, the Panel relies on CAS 2017/A/4935, which confirms that although the amounts may differ in an appealed decision and a CAS award, provided that the general claim is consistent then this is acceptable, as follows:

"163. Shakhtar submitted that Article 182 of the PILA requires an analysis of the applicable FIFA Regulations and the CAS Code. Shakhtar cited CAS 2008/A/1644 as an example of how the CAS has interpreted the application and limitations imposed by Article R57 of the CAS Code. Shakhtar submitted that should the CAS increase the amount of compensation awarded, as Shakhtar requested, the CAS would not be in violation of the "ne eat iudex ultra petita partium" principle ("ultra petita") as it manifests itself in Article R57 of the CAS Code. The applicable limitation imposed by Article R57 of the CAS Code is the relief that is requested before the CAS and not what was initially requested before a FIFA body.

164. Following a discussion of Article R57 of the CAS Code and relevant portions of the FIFA Statutes and the FIFA Disciplinary Code ("FIFA DC"), Shakhtar submitted that "there is no FIFA regulation specifying that the CAS does not have the ability to issue an award that grants something that the FIFA DRC did not, or that was not requested at that time". Shakhtar further submitted that the CAS issuing an award in excess of the amount requested before the FIFA DRC would not violate the PILA either. In support, Shakhtar submitted that "FIFA judicial bodies are not arbitral tribunals but are considered to be dispute resolution bodies".

165. FIFA submitted that Shakhtar's claim for compensation in the amount of EUR 2,000,000 is inadmissible. FIFA cited CAS 2012/A/2874 and CAS 2015/A/3993 in support of its position that a request made in front of the CAS, which was not made in front of the FIFA DRC must be declared inadmissible, as it goes beyond the scope and the amount in dispute in the previous litigation that resulted in the Appealed Decision.

166. The Panel notes these counter arguments. The basic claim by Shakhtar is that the Player has breached the Contract without just cause, so it wants to be compensated. The Panel notes that the basic claim has not changed between FIFA and CAS. That said, the quantum of the claim has changed.

167. This is not perhaps as new an issue as the parties make out. In cases involving a breach of the employment contract between a player and a club, they are first dealt with at FIFA and then some are appealed and later considered by the CAS. Often, if it is the club that has breached without just cause, an issue to be considered by both FIFA and then CAS is the player's mitigation. Often the CAS will have more up to date information regarding the player's career post-termination than would have been available to FIFA. The jurisprudence is that the most accurate information is taken into account, as part of the de novo process and often the player's compensation is reduced. The case at hand is the mirror opposite. Further information has come to hand for the Panel to consider that increases the claim, rather than decreases it.

168. The Panel notes that in the case cited by Shakhtar (CAS 2012/A/2874) there was a breach of the employment contract between a player and a club. The Panel in that case allowed an increase in the basic claim for compensation, as it was able to see that an event that triggered a bonus had been satisfied by the time the appeal was heard at CAS, when it had not been so triggered by the time the matter was heard at FIFA.

169. The restrictions on the Appellant in the case at hand would be if it sought to make a fresh claim before the CAS, but the Panel is satisfied that the basic claim is simply for compensation for breach of contract and has not changed since that was made at FIFA".

147. It is important to note the above case (CAS 2017/A/4935) is also supportive of the Panel's conclusion to further reduce the sum awarded to the Player based on the value of the second playing contract which the Player entered into with the Saudi Arabian Club after the date of the Appealed Decision.

148. The Egyptian Club requested that the sums payable to the Player should be paid net rather than the gross amounts expressed in the Playing Contract. In order to determine this, it is necessary to consider whether the Playing Contract makes any reference to the tax position on the payments set out therein.

149. In that regard, the Panel notes that the sums payable to the Player are set out in the Playing Contract as gross amounts and furthermore, the Playing Contract states:

"5 – The player should bear the taxes of this contract and other remuneration according to the law".

150. The Egyptian Club refers to the fact that it paid the Player in net sums, having accounted for tax, as being determinative that any award of compensation should be paid net of taxes. However, notwithstanding that in practical terms the Egyptian Club may have accounted for the tax owed by the Player, the fact remains that the Playing Contract expresses the sums to be payable in gross amounts and indeed, it makes specific provision that the Player must *"bear the taxes of this contract"*. Therefore, the Panel is satisfied that the Player should receive the gross amounts by way of compensation and it will be his responsibility to then account for any tax owed.

151. There is supporting CAS jurisprudence for the conclusion reached by the Panel, including CAS 2015/A/4055 which addresses the same point as follows:

"The same applies in the case of a claim for damages when the loss consists in the non-payment of remuneration. In such a case, as long as there is the proper causal connection, the claimant is entitled to compensation for all consequential loss incurred due to the other party's fault by the wrongful premature termination of the employment relationship. The claim is based on the claimant's legitimate interest in having the contract fulfilled. The innocent party must be put in the position he/she would have been in had the employment contract continued in effect. In doing so, the contractual notice period (or the end of the contract in the case of contracts for limited periods of time) constitutes the limit in terms of time for calculating the damages claim. The damage is calculated according to the so-called difference method, i.e. the difference between the actual situation that occurred because of the termination and the hypothetical situation without the damaging event of wrongful termination. The damage consists of the loss of remuneration plus all other contractual entitlements such as special bonuses and

any remuneration in kind. In calculating damages for loss of earnings, the so-called gross-wage method is to be used, i.e. loss is calculated based on the injured party's loss of gross earnings. Any advantages obtained by the injured party on account of the damaging event – for example, by tax reduction – must be taken into account by way of corresponding reduction of the damages. The wrongdoer is entitled to raise as part of his/her defence any points which might reduce the damages in that way (see also RSTP Commentary, para. 2 to Article 17 with reference to CAS 2004/A/587 and Article 337c of the Swiss Code of Obligations)".

152. In the case at hand, there is no suggestion that the termination of the Playing Contract (or *"damaging event"*) has afforded the Player any advantage per se in terms of taxation and it remains his responsibility to account for tax which falls due. The Egyptian Club is simply seeking to pay him on a net basis; however, the responsibility to pay taxes is the Player's, both in law and in accordance with the Playing Contract. If, for instance, the Egyptian Club neglected to make the tax payments on his behalf in relation to the sums awarded, the taxation authorities would seek payment from the Player being his responsibility. Thus, to ensure finality of the dispute, the gross sum should be awarded to the Player.

153. Furthermore, in CAS 2018/A/6005, this exact issue in relation to the standard Egyptian playing contract was considered and the sole arbitrator concluded that:

"In any event, it is absolutely clear that Clause four para. 5 of the Employment Contract does not allow the Club to withdraw any amount from the Player's wages".

154. The Panel notes, for completeness, that this contractual reference was, as expected, the same clause as in the case at hand, given it relates to the standard playing contract in Egypt, as confirmed in CAS 2018/A/6005:

"Clause four para. 5 of the Employment Contract, which states that "The Player should bear the taxes of this contract and other remuneration according to the law"".

155. Therefore, the Panel is satisfied to its comfortable satisfaction that the Player should receive the gross amounts listed in the Playing Contract without any deduction for any tax that may be payable, as that remains the Player's responsibility to account for from the sums received.

156. Turning to the remaining requests the Egyptian Club makes for further deduction from the compensation payable to the Player, these can be dealt with in fairly short order.

157. First, the Egyptian Club argues that the Playing Contract is varied by the existence of an additional general Egyptian Club document entitled *"The Financial Regulations for The First Team of (Ismaily Sporting Club) 2018/2019 Season"* (the "Regulations"). Within the Regulations, it states as follows:

"25% out of the total value of the player's contract shall be reserved and shall be paid after the end of the season in case of player's participation in 80% of the games.

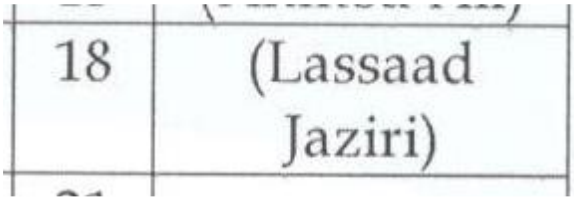
The player shall be entitled to receive the 25% for the number of games where The Player participates in not less than 11 games. The player shall receive a percentage equal to the games, in which the player participates".

158. The Egyptian Club alleges that the Player agreed to the provisions of the Regulations firstly because it bears his signature and secondly due to the reference in the Playing Contract (which he also signed) which read, *"Financial regulations for the first football team Ismaily sporting club is an integral part of the contract between the player and the club and complementary to"*.

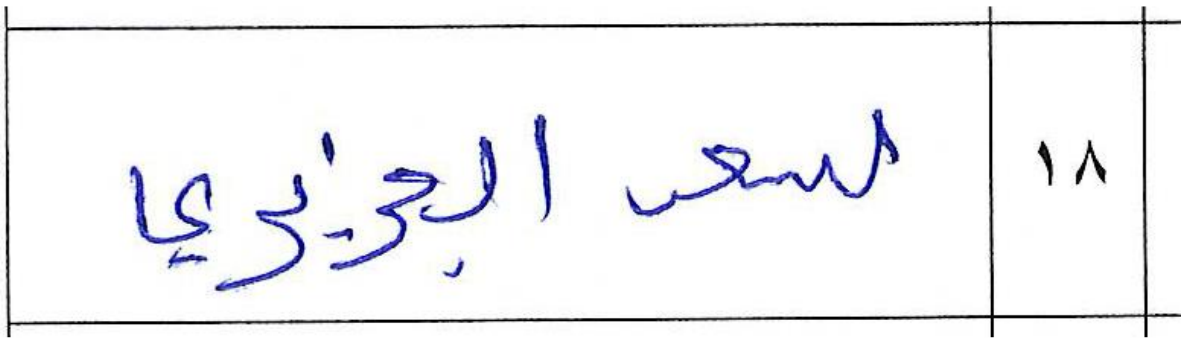
159. The Player, on the other hand, disputes ever having been provided with a copy of the Regulations, whether in Arabic or in translated form (as was submitted late in these proceedings) and notes that the document does not contain the Player's signature.

160. Upon an examination of the Regulations, the original Arabic version contains a sheet against each page of the Regulations which displays a table and handwriting in some of the spaces. Turning to the translation supplied of the Regulations, the final page is titled Signatures and lists a number of names in different boxes, including the Player's name (fifth name in column three).

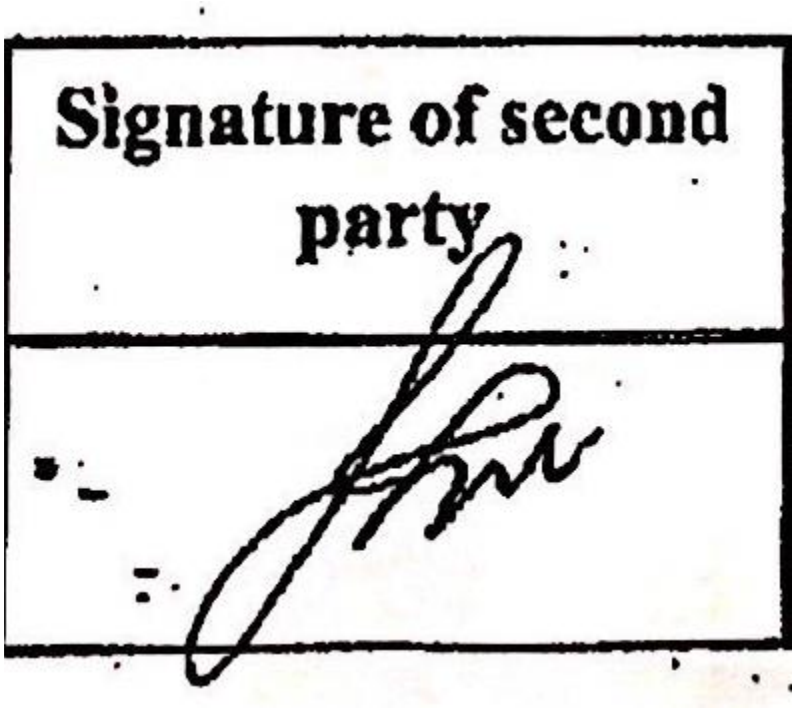
161. Upon an examination of the translation supplied of the Regulations, the final page is titled Signatures and lists a number of names in different boxes, including the Player's name (fifth name in column three), as follows:



162. Turning to the original Arabic version, this contains a sheet against each page of the Regulations which displays a table and handwriting in some of the spaces. The Arabic version transposes the table so it is column one in that table, and the fifth name is shown below:



163. In comparison, the signature of the Player as shown on the Playing Contract is as follows:



164. The Panel finds, to its comfortable satisfaction, that the signature shown in the Playing Contract (which neither Party disputes is genuine), bears no resemblance to that which appears in the Regulations, referenced in the translation to be *"Signatures"*, and therefore agrees with the Player's position that the Regulations do not bear his signature.

165. In accordance with Article 8 of the Swiss Civil Code, the party asserting a fact has the burden to prove it; in this case it is the Appellant's burden to prove that the Player was both aware of and accepted the legal effect of the Regulations. The Panel finds that the Appellant has failed to discharge its burden as it has provided no evidence that the Player was ever supplied with a copy of the Regulations. It follows that the Appellant cannot assert that the Player was bound by the Regulations, particularly so where the original version supplied was in Arabic, with a translation produced for the purposes of these proceedings, in contrast to the Playing Contract which exists and is signed in English version.

166. Finally, where the Egyptian Club seeks to benefit from a rule in circumstances where the Panel has found that the Egyptian Club was in breach of contract, the Panel is mindful of the general principle regularly applied by FIFA judicial bodies and supported by considerable CAS jurisprudence (CAS 2009/A/1756; CAS 2012/A/2988; CAS 2015/A/4097; CAS 2017/A/4946), that the Egyptian Club should not be able to seek a benefit from its own wrongful conduct (*nemo auditor propriam turpitudinem allegans*); accordingly, in circumstances where the Egyptian Club is not even able to demonstrate the Player is aware of the separate Regulations, it would not be appropriate to hold the Player to it and then to apply any provision of the same to the sums awarded to the Player.

167. Next, the Egyptian Club alleges that the Player missed various training sessions and therefore,

he should suffer a deduction in the sums awarded to recognise these breaches of the Playing Contract; the Player, on the other hand, disputes that he ever missed any training sessions. The Egyptian Club provided images of some training sessions which it maintained did not show the Player present and therefore confirmed his absence. The Player argued that he was not absent but was often ordered to train alone, just running around a pitch, and was not invited on the training camp with the rest of the squad.

168. The Panel notes that the Egyptian Club had confirmed in submissions that it had already reprimanded the Player for the alleged absences from training at the time. Accordingly, the Player, despite disputing the absences even occurred, can reasonably expect that such matters had already been dealt with at the time by the Egyptian Club. Given that the Egyptian Club did not deem at the time that such offences were worthy of anything more severe than a reprimand – for instance, issuing a fine to the Player – then the Panel is satisfied that it would not be appropriate now to effectively fine the Player for such absences. This view is reached independent of the Panel's conclusion, in any event, that the Egyptian Club has failed to discharge the burden imposed on it by Article 8 of the Swiss Civil Code to prove the Player's absence at any time to the Panel's satisfaction.

169. Finally, the Egyptian Club seeks to rely on the COVID-19 pandemic and its impact on the Egyptian Club to justify a reduction in the compensation awarded to the Player. In short, the Egyptian Club claims that the pandemic was a force majeure event which would give the Egyptian Club the ability to terminate the Playing Contract or to stop paying the Player until such time as the force majeure event had concluded.

170. In addition, the Egyptian Club refers to certain financial losses it has suffered related to the pandemic which have negatively impacted its financial position such that the payment of the compensation to the Player would worsen the Egyptian Club's financial position.

171. Finally, the Egyptian Club refers to the FIFA publication issued on 3 April 2020, entitled *"COVID-19: Football Regulatory Issues"* (the "FIFA COVID-19 Guidance"), particularly referencing the section which advises, amongst other things, that, *"Clubs and employees (players and coaches) be encouraged to work together to find appropriate collective agreements on a club or league basis regarding employment conditions for any period where the competition where the competition is suspended due to the Covid-19 outbreak".*

172. The Player's position is that the pandemic is irrelevant to the case at hand; the Playing Contract was terminated, with just cause, in March 2019 and the impact of the pandemic only began approximately 12 months later. The Egyptian Club should not be able to rely on a later event to avoid what it is directed to pay to the Player. Finally, the Player argues that the FIFA COVID-19 Guidance related to contracts with players in force at the time, not contracts which had been terminated for just cause.

173. The Panel has considered the respective positions of the Parties and first notes that indeed, the breach of contract by the Egyptian Club took place in early 2019, well before the COVID-19 pandemic. The Egyptian Club therefore cannot claim force majeure.

174. Furthermore, the Panel notes that the Egyptian Club did not provide any evidence of any actual financial difficulties it had suffered apart from referring to the general impact on clubs with the suspension of football during this period. It did not provide any documentary evidence of a financial nature to prove it had suffered financial difficulties.

175. The Egyptian Club's argument that the pandemic was of itself a force majeure event which meant the Egyptian Club could terminate players' contracts and / or suspend payments to players under their contracts was again unsupported; it did not provide any evidence that it had taken either step in relation to its current players at the time of the pandemic.

176. Finally, the section the Egyptian Club referred to in the FIFA COVID-19 Guidance is entitled *"Agreements that cannot be performed as the parties originally anticipated"* and the Panel noted that it was indeed directed at employment contracts currently in force, which is not relevant to the matter at hand. Indeed, a later section of the FIFA COVID-19 Guidance is found to be more relevant which states,

> *"**Enforcement of decisions rendered by the DRC, PSC or the Disciplinary Committee in the context of RSTP matters***
>
> *Although FIFA is fully aware of the potential financial difficulties of some clubs flowing from the obligation to comply with financial decisions rendered by the DRC, PSC or the Disciplinary Committee, no exceptions will be granted in this regard.*
>
> *In this context, decisions passed by the above-mentioned judicial bodies must be respected by MAs, clubs, players and coaches without exception. FIFA will continue to apply art. 15 of the FIFA Disciplinary Code in case of failure to respect these decisions"* (emphasis in original).

177. It is for all of the above reasons that the Panel finds that, to its comfortable satisfaction, the COVID-19 pandemic cannot be relied upon to affect the sums awarded to the Player.

178. Finally, in accordance with Article 104 of the Swiss Code of Obligations, the Egyptian Club has to pay interest at the rate of 5% per annum on the amounts due, calculated from the date the sum fell due for payment until the date of effective payment.

179. Given that the majority of the Panel has determined that the Player terminated the Playing Contract with just cause, the Appellant's request for the imposition of sporting sanctions against the Respondents is dismissed, as are all other claims.

D. Conclusion

180. Based on the above, and having taken into account all the arguments put forward and the evidence supplied, the Panel finds that:

(a) the Player terminated the Playing Contract with just cause on 3 March 2019;

(b) the Egyptian Club has to pay to the Player the amount of USD 374,667 plus interest as follows:

- at the rate of 5% per annum on the amount of USD 8,666 for the salary of March 2019 as from 1 March 2019 until the date of effective payment;

- at the rate of 5% per annum on the amount of USD 366,001 as from 4 March 2019 until the date of effective payment.

(c) the Egyptian Club´s appeal against the FIFA DRC Decision dated 17 January 2020 is partially upheld.

181. Accordingly, the Egyptian Club's appeal against the FIFA DRC Decision is partially upheld and the said decision is amended by the above.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 15 April 2020 by Ismaily SC against the decision issued on 17 January 2020 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially upheld.

2. The decision passed on 17 January 2020 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is amended in part.

3. Ismaily SC is ordered to pay USD 374,667 to Lassaad Jaziri plus interest as follows:

   (a) at the rate of 5% per annum on the amount of USD 8,666 for the salary of March 2019 as from 1 March 2019 until the date of effective payment;

   (b) at the rate of 5% per annum on the amount of USD 366,001 as from 4 March 2019 until the date of effective payment.

4. (…).

5. (…).

6. (…).

7. All other and further motions or prayers for relief are dismissed.