Arbitration CAS 2020/A/6793 Aloys Bertrand Nong v. FC Pars Jonoubi Jam, award of 17 January 2022

Panel: Mr Alain Zahlan de Cayetti (France), Sole Arbitrator

Football
Termination of the employment contract
Nature of a settlement agreement
Concessions in a settlement agreement
Ratification of the settlement agreement

1. **Under Swiss law, a settlement agreement aims at putting an end to an existing conflict specified therein against mutual concessions granted by the parties. The parties' decision incorporated in such agreement is binding.**

2. **In the matter of concessions linked to a transaction, it is a question of considering not only what the party could have obtained, from an objective point of view, in the event of a lawsuit, but also of the parties' concern to avoid risks pertaining to a lawsuit, at the cost of concessions which may undoubtedly be excessive, but which are inherent in the nature of the transaction. Therefore, a possible dissatisfaction by a party in respect of a concession which it would have granted in a settlement agreement, even if excessive, does not necessarily give legal grounds for a nullification thereof. The acceptance by a party in a settlement agreement to terminate a legal action is inherent to its legal nature and cannot be considered as an excessive benefit extorted from him.**

3. **If the party acting under error, fraud or duress has not declared to the other party that he intends not to honour the settlement agreement, but all such correspondence was only sent to third parties (e.g., inter alia, the FIFA Players' Status Committee), the settlement agreement is deemed to have been ratified, pursuant to the provisions of Article 31 of the Swiss Code of Obligations.**

I. PARTIES

1. Aloys Bertrand Nong (the "Player" or the "Appellant") is a professional football player of Cameroonian nationality, who has retired and is currently residing in Belgium.

2. Football Club Pars Jonoubi Jam (the "Club" or the "Respondent") is a professional football club based in Jam, Bushehr province of Islamic Republic of Iran. The Club currently competes in the Persian Gulf Pro League (formerly known as the Iran Pro League) and is affiliated with

the Football Federation Islamic Republic of Iran (the "FFIRI"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

3. Aloys Bertrand Nong and Football Club Pars Jonoubi Jam are collectively referred to as the "Parties".

II. BACKGROUND FACTS

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced[1]. Additional facts and allegations found in their written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion which follows. While the Sole Arbitrator 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.

5. On 12 July 2017, the Player and the Club entered into an employment contract (the "Employment Contract"), valid *"for one football seasons from **12 July 2017** and will be terminated after the end of football season matches in 2017-2018"* (Article 3 – *"Duration of the contract"* – of the Employment Contract).

6. Article 7 – *"amount of contract and conditions of payment"* – of the Employment Contract provided for the Player's remuneration as follows:

"7-1) Amount of contract for football season 2017- 2018 will be 5,600,000,000 rial net.

7-2) 30% of the amount of contract after signing the contract and registering at league organization will be paid to him.

7-3) Bounus of 1,000,000,000 rial if the player plays %80 of the games as first eleven or as substitute

7-4) Bounus of 1,000,000,000 rial if the player scores 10 goals or above.

7-5) The club will prepare accommodation and food for the player".

7. On 8 December 2017, the Player's attorney sent the first default notice to the Club, stating, in particular, that the Club *"owes the player the amount of 140,639,183 Rials since 12 July 2017"* out of the first payment of his salary (i.e. 30% of the amount of the Employment Contract), along with the *"monthly salary owed from August to November"* 2017 in the calculated total amount of IRR 1,568,000,000.

8. On 20 December 2017, the Player's attorney extended to the Club an email containing the Player's *"Second Request for payment"* and indicating, in particular, that should the Club fail to

[1] Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for sake of efficiency and reduction of arbitration costs, misspellings have not all been identified with e.g. a *"sic"*.

proceed with the payment to the Player of the outstanding amounts by 24 December 2017, the latter would have *"no other remedy but terminate the contract with just cause and claim damages before FIFA Dispute Resolution Chamber"*.

9. On 27 December 2017, by email of the same date, the Player's attorney submitted to the Club the Termination Letter of the same date by which the Player terminated *"the labor contract* [the Employment Contract] ***with immediate effect*** *due to the repeated breach of contract committed by FC Pars Junoubi Jam Bushehr"*.

10. On 8 January 2018, the Player's attorney informed the FFIRI by email of the same date that the Employment Contract had been terminated by the Player based on the Club's breach of its contractual obligations (i.e. the non-payment of the Player's salaries) and that the Club prevented the Player from signing a new employment contract with another club and from leaving Iran by *"retaining unjustifiably"* his passport and inducing him to sign a settlement agreement with the Club. In his email, the Player's attorney requested, in particular, for the FFIRI's interference and *"adoption of immediate measures"*.

11. On 10 and 14 January 2018, emails with the same contents were sent by the Player's attorney to the FFIRI and to the Persian Gulf Pro League, indicating, in particular, that the Player would have to *"report this matter to AFC Disciplinary and Ethics Committee, asking the imposition of sanctions not only against the Club but also against League and Federation"*, should he not be allowed to register with a new club withing the next 24 hours.

12. On 12 February 2018, the Player brought his claims against the Club before FIFA.

13. On 3 May 2018, by email of the same date, the Player's attorney informed the FIFA Players' Status Committee and the FIFA Disciplinary Committee that the Player had terminated the employment contract with Saipa Cultural and Sport Company (the Player's new employer in Iran) ("Saipa") and that Saipa was preventing *"the player from leaving the country, retaining his passport and denying the issuance of his exit permit"*. The Player's attorney requested for FIFA's *"immediate intervention"* in this matter.

14. On 9 May 2018, the Player's attorney sent an email to Saipa, acknowledging its correspondence and indicating, in particular, that, given that Saipa had signed the employment contract with the Player without obtaining his *"residence or work permits due to the lack of a settlement agreement with the player's former Club* [the Club]*"* it was Saipa's responsibility to arrange for the Player's permit *"to leave your country* [Iran] *without any restraint or restriction"*.

15. On 16 May 2018, the Deputy Secretary to the FIFA Disciplinary Committee requested the FFIRI to *"enquire and look into this matter"* and to provide the FIFA Disciplinary Committee with its and Saipa's positions in that respect.

16. On 24 May 2018, by email of the same date, the Player's attorney brought to the attention of the FIFA Disciplinary Committee the summary of facts pertaining to the matter-at-hand, indicating, in particular, that after the termination of the Employment Contract, the Player was employed by Saipa on 15 January 2018 and terminated such employment on 26 April 2018

due to Saipa's failure to pay the Player's remuneration. The Player's attorney highlighted that since 26 April 2018 (the date of the termination of the employment with Saipa) the Player had been *"trying to leave the country"*, whilst both the Club and Saipa were preventing him from doing so. The Player's attorney referred in his email to Saipa's allegations that the Player had failed to obtain the necessary work permit after the termination of the Employment Contract and to the Club's attempts to induce the Player to sign a settlement agreement, in order to arrange his exit paperwork. The Player's attorney concluded the said email, in particular:

"In light of this unfortunate situation, it is very possible that the Player be forced to sign the agreements with both clubs, although it is clear that such agreements do not obey to any waive, but that they seem to be the only alternative for the Player to leave Iran.

In view of these considerations:

1º.- This part wants to expressly state that the Player has no intention of giving up future claims against both clubs and that the signing of any agreement has the sole purpose of leaving the country. The signing of any agreement with this exclusive purpose will be communicated to both this Disciplinary Commission and the Chamber of Dispute Resolution for its due constancy and effects".

17. On the same date, the Player's attorney sent email to the Club, indicating, in particular, that FIFA had been informed of the details of this matter and *"severe sanctions"* had been requested for the imposition on the Club, and requesting the Club *"for last time"* to proceed with *"the immediate payment of all taxes accrued by the payments already made to the player or for salaries owed to the player"* and with *"the immediate issuance of exit or work permits which allows the player to leave the country"*.

18. On 2 June 2018, the Player's attorney reminded the Club by email of the same date of the (settlement) letter signed by the Parties on 27 May 2018, by which the Club had agreed to *"make all the arrangements that allow the player to depart from Iran on 4 of June"*.

19. On 13 June 2018, the Player's attorney sent *"a final warning"* to both the Club and Saipa to arrange the Player's paperwork for his exit from Iran *"within the next 24 hours"*.

20. On 18 June 2018, the Player's attorney replied to Saipa's communication of the preceding date, indicating that the employment contract with Saipa had been terminated by the Player with just cause on 26 April 2018 and he was not under an obligation to return to Saipa. The Player's attorney reiterated his demands for Saipa, in particular, to arrange the Player's exit from Iran, the prevention of which constituted a breach of *"his fundamental rights and his freedom of movement"*.

21. On 19 June 2018, in his correspondence with Mr Roy Vermeer, Director of Legal Division of FIFPRO, the Player's attorney indicated that the Club and Saipa were referring to *"tax issues"*, creating a problem for the Player to leave Iran.

22. On 25 June 2018, the Player and the Club entered into a settlement agreement (the "Settlement Agreement") which provided for, in particular:

"1- The player or his legal agent or lawyer certify that mutual contract terminated legally on 27 Dec 2017 and there is no any claims or responsibilities on any matters against Club after half session.

2- The club should pay just 50 percent of amount of contract (5,600,000,000 IRR) totally which 30 percent paid by club previously according to attached receipts dated 06/09/2017, 25/08/2017, /07/2017 and 04/08/2017. By signing this agreement, player or his legal lawyer confirms that they have no any demands to Club.

The Club guarantee, payment of remaining 20% of contract also the responsibility of providing required documents related visa and permission work to depart player from Iran.

3- After the date of this agreement, all previous and current complaints in all legal or Sport organization such as FIFA , CAS or IRIFF [the FFIRI] *against Pars Jonoubi Jam Sport & Cultural Club, behalf of player or his legal lawyer, are cancelled and will be void. Including attached letters specifically, which dated 11 Feb 2018 from lawyer to FIFA.*

4- The player or his legal lawyer has no any complaints against the club since today. They must contact with FIFA to announce his regardless of the current complaint against the Club before departing from Iran and getting the rest of salary. Sending a transcript of mentioned letter to Club and Football Federation of Islamic Republic of Iran is necessary".

23. On the same date, the Player signed the "Payment Receipt" with regards to the payment by the Club of *"1/150/000/000 Rials as remaining amount of the contract* [the Employment Contract] *…".* Following the signature of the Settlement Agreement and the said receipt, the Player left Iran.

24. On 16 July 2018, the Player's attorney sent a letter to the FIFA Players' Status Committee, indicating, in particular, what follows with regards to the Settlement Agreement:

"Regarding to the document filed by the Club [the Settlement Agreement]*, by virtue of which, the Club intends to have reached an agreement with the Player, this party does not recognize the validity of said document, nor does it recognize as made by the Player the signature inserted in the same.*

[…]

During the months following the filing of the claimant, the defendant Club and a second Club, the Saipa Cultural and Sport Company, have tried by all means to prevent the departure of the Player from Iran".

25. On 11 September 2018, in his letter to the FIFA Players' Status Committee, the Player's attorney reiterated the Player's denial of the validity of the Settlement Agreement, indicating that *"he was forced by the Club to sign such documents as a condition of delivery of their passport and authorizations to leave the country".*

III. PROCEEDINGS BEFORE FIFA DISPUTE RESOLUTION CHAMBER

26. On 12 February 2018, the Player lodged a claim with the FIFA Dispute Resolution Chamber (the "FIFA DRC") against the Club, arguing that he had terminated the Employment Contract with just cause with effect on 27 December 2017, based on the breach by the Club of its contractual obligations. The Player requested the *"outstanding remuneration and compensation for breach in the total amount of IRR 4,060,639,183, plus 5% interest p.a. calculated as from the due dates"* as follows:

"a) IRR 140,639,183 as outstanding remuneration;

b) IRR 3,920,000,000 as compensation for breach of contract, corresponding according to the player to "the residual value of the contract, i.e. the 70% of the contract".

(Paragraph 7 of the Decision of FIFA DRC dated 2 October 2019).

27. On 2 October 2019, the FIFA DRC rendered the following decision (the "Appealed Decision"): *"The claim of the Claimant, Aloys Bertrand Nong, is rejected".*

28. On 6 February 2020, the grounds of the Appealed Decision were communicated to the Parties. In the Appealed Decision, the FIFA DRC took into consideration, in particular, *"the two agreements provided by the Respondent: one allegedly signed by the parties on 27 May 2018 and the one signed on 25 June 2018, as well as the payment receipt / waiver dated 25 June 2018 and allegedly signed by the Claimant".,* and observed that *"the Claimant did not deny having signed the second agreement dated 25 June 2018, nor the payment receipt / waiver also dated 25 June 2018".* Consequently, FIFA DRC decided to reject the Player's claim in its entirety.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

29. On 25 February 2020, pursuant to the provisions of Articles R47 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code"), the Appellant filed a Statement of Appeal against the Respondent and FIFA with the Court of Arbitration for Sport (the "CAS") with respect to the Appealed Decision.

30. On 28 February 2020, the CAS Court Office initiated an appeal arbitration proceeding under the case reference *CAS 2020/A/Aloys Bertrand Nong v FIFA & FC Pars Jonoubi Jam*, providing the Respondents with a copy of the Statement of Appeal.

31. On 6 March 2020, FIFA requested to be excluded as a party from these proceedings.

32. On 8 March 2020, the Appellant filed his Appeal Brief in accordance with Article R51 of the CAS Code.

33. Also on 8 March 2020, the Appellant informed the CAS Court Office that one of the Club's email addresses (i.e. info@parsjonoubiclub.ir) provided by him in his Statement of Appeal

appeared to be incorrect and thus communicated the correct email address of the Club (i.e. info@parsjonoobiclub.ir).

34. On 9 March 2020, the CAS Court Office, by a letter of the same date, invited the Appellant to express his position with regard to FIFA's request to be excluded as a respondent in this proceeding.

35. On 10 March 2020, the CAS Court Office informed the Parties that the Club's email provided by the Appellant on 8 March 2020 (i.e. info@parsjonoobiclub.ir) was not functioning and requested them to provide it with any other functioning email address of the Club. In addition, the CAS Court Office requested the Appellant to clarify the origin of the other Club's email address indicated by him in the Statement of Appeal (i.e. majid.shab@gmail.com).

36. On 13 March 2020, FIFA confirmed the Club's email addresses contained in the Transfer Matching System ("TMS") to be the two addresses provided by the Appellant (i.e. info@parsjonoobiclub.ir and majid.shab@gmail.com).

37. On 16 March 2020, the Appellant agreed to exclude FIFA as a party from these proceedings; accordingly, on the same date, the CAS Court Office confirmed that FIFA was no longer a respondent in this proceeding and informed the Parties that the new case reference was *CAS 2020/A/6793 Aloys Bertrand Nong v. FC Pars Jonoubi Jam*.

38. On 17 March 2020, the CAS Court Office notified the Appellant's 8 March 2020 Appeal Brief to the Respondent and set the deadline for the Respondent to file its Answer in accordance with Article R55 of the CAS Code.

39. On 21 April 2020, the CAS Court Office informed the Parties that the Respondent had not filed its Answer to the Appeal Brief and further indicated that, in the absence of the Respondent's expressed position with regards to the appointment of a sole arbitrator in these proceedings, the number of arbitrators would be decided by the President of the CAS Appeals Arbitration Decision, or her Deputy.

40. On 1 September 2020, after confirmation of the payment of the advance of costs by the Appellant, the CAS Court Office informed the Parties in accordance with Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, that Mr Alain Zahlan de Cayetti, Attorney-at-law in Paris, France, had been appointed as Sole Arbitrator in these proceedings.

41. On 3 September 2020, the Sole Arbitrator, requested FIFA to produce a copy of the case file related to these appeal proceedings.

42. On 10 September 2020, FIFA produced a copy of FIFA DRC case file.

43. On 17 September 2020, in light of the continued lack of participation by the Respondent in the arbitration proceeding and given the difficulties of delivering courier documents to the Islamic Republic of Iran, the CAS Court Office requested the Parties to again clarify the origin

of the Club's registered email address majid.shab@gmail.com and *"the position of Mr Shab with respect to the Respondent"*.

44. On the same date, the CAS Court Office requested the Respondent to confirm that *"it is in receipt of CAS' present letter (and/or any previous correspondence sent by the CAS Court Office)"*. The CAS Court Office indicated that the *"present letter is being sent by email and post, and if possible considering the present difficulty in shipping to Iran, by DHL"*.

45. On 24 September 2020, the Appellant provided the CAS Court Office with the requested clarifications with regards to the Club's registered email address majid.shab@gmail.com and to the designation of its owner.

46. On 4 December 2020, in the absence of the Respondent's reply to CAS' request that the Respondent confirm receipt of correspondence in this proceeding, the CAS Court Office acting on behalf of the Sole Arbitrator, requested the FFIRI to provide it with *"the email address and the mailing address"* of the Respondent.

47. On 17 December 2020, the FFIRI produced the Respondent's address and email details.

48. On 21 December 2020, the CAS Court Office requested the FFIRI to confirm the accuracy of the email address it had provided for the Respondent.

49. On 22 December 2020, the FFIRI provided the CAS Court Office with the correct email address of the Respondent (i.e. info@parsjonoobiclub.ir), which corresponded to the email address provided by the Appellant and FIFA for the Respondent.

50. On 11 January 2021, after consultation with the Parties and in the absence of the Respondent's reply, the CAS Court Office informed the Parties that, pursuant to Articles R44.2 and R57 of the CAS Code, the Sole Arbitrator had decided to hold a hearing by video-conference in this proceeding on 9 February 2021.

51. On 28 January 2021, the Appellant provided the CAS Court Office with his List of Participants for the hearing.

52. On 29 January 2021, the Respondent provided the CAS Court Office with its List of Participants for the hearing.

53. On the same date, the CAS Court Office issued the Order of Procedure in these proceedings, which was duly signed by the Appellant and by the Respondent on 4 February 2021.

54. On 9 February 2021, a hearing was held by videoconference via Cisco Webex in accordance with Article R44.2 of the CAS Code. The following persons attended the hearing, in addition to Ms Kendra Magraw, CAS Counsel:

For the Appellant: Mr Alberto Ruiz de Aguiar Diaz-Obregon (Counsel);
Mr Juan de Dios Crespo Pérez (Counsel);
Mr Roberto Porteos (Observer/Trainee counsel);

Ms Karen Alejandra Zaragoza (Observer/Trainee counsel);
Mr Aloys Bertrand Nong (Appellant).

For the Respondent: Mr Bahram Rezaeean (General Manager);
Mr Majid Hatami (Translator).

55. At the outset of the hearing, the Parties confirmed that they had no objections with regard to the constitution and composition of the Arbitral Tribunal. During the hearing, the Parties had the opportunity to present their cases, submit their arguments and answer all the questions posed by the Sole Arbitrator. At the end of the hearing, the Parties and their counsel expressly declared that they did not have any objections with respect to the procedure adopted by the Sole Arbitrator and that their right to be heard had been fully respected.

V. SUBMISSIONS OF THE PARTIES

56. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each contention put forward by them. However, in considering and deciding the Parties' positions, the Sole Arbitrator has carefully considered all the submissions made and evidence adduced by the Parties, even if there is no specific reference to those submissions in this section of the award or in the legal analysis that follows.

A. Submission of the Appellant

57. The Appellant sustains that he has terminated the Employment Contract with just cause and that the Settlement Agreement should be considered null and void. Accordingly, the Player challenges the Appealed Decision and claims for compensation.

58. Firstly, the Appellant affirms that at the time of the termination of the Employment Contract, part of his first salary payment, as well as his salary for the months from August to November 2017, were not paid to him by the Club.

59. The Player indicates that, although the Employment Contract provided for the payment of 30% of the total amount of the contract *"after signing the contract"*, the payment of the remaining 70% was not scheduled. Accordingly, the Appellant refers to the relevant provisions of Swiss law (in particular the Swiss Civil Code and the Swiss Code of Obligations ("SCO")), in order to support his affirmations that the *"labour financial obligations shall be payable monthly"*. Based on the calculation of such monthly salary, the Player argues that IRR 1,568,000,000 (representing a 4-month salary) were outstanding and due to him by the Club at the date of the termination of the Employment Contract. The Player further refers to the default notices sent by him to the Club in December 2017 by which he requested the Club to proceed with the payment of the outstanding amount of the first salary (30% of the total amount of the contract), as well as for the payment of the outstanding monthly salaries, within the given deadlines. Given that the Player's notices remained unanswered, the Player considers that he had just cause to terminate the Employment Contract with immediate effect on 27 December 2017, based on the Club's breach of its payment obligations thereunder.

60. Secondly, the Player challenges the validity of the Settlement Agreement for the following reasons:

- The Player affirms that he was forced to sign such agreement in order to leave Iran. The Player clarifies that after the termination of the Employment Contract, the Club prevented him, first, from getting new employment and, eventually, from leaving the country by retaining his passport and forcing him to sign a settlement agreement with the Club. The Player insists that he *"was forced"* to sign the Settlement Agreement as *"the only alternative for the Player to leave Iran"*. In support of his allegations, the Player refers to the letters sent by his attorney to FIFA at the time when the related proceedings were ongoing before the FIFA DRC, informing it of the same and indicating, in particular, that *"this part does not recognize the validity of the documents signed by the Player* [the Settlement Agreement]*, since he was forced by the Club to sign such documents as a condition of delivery of their passport and authorizations to leave the country"*.

- Accordingly, the Player challenges the validity of the Settlement Agreement under Article 29 of the SCO (i.e. *"Where a party has entered into a contract under duress from the other party or a third party, he is not bound by that contract"*). In that respect, the Player considers that the Club coerced him to sign the Settlement Agreement by retaining his passport and preventing him from leaving Iran.

- Similarly, the Player argues that the Settlement Agreement cannot be considered as valid under Article 21 of the SCO. The Player insists that (i) there was *"a clear disparity between the performance and consideration"* in the Settlement Agreement, (ii) he was *"in strained circumstances when concluding the contract* [the Settlement Agreement]*"*, and (iii) the Club *"exploited"* and took *"advantage of the player's vulnerability"*. In view of such allegations, the Player considers that he is not bound by the Settlement Agreement.

- Finally, the Player refers to Article 341 of the SCO, indicating that *"the employee may not waive claims arising from mandatory provisions of law or the mandatory provisions of a collective employment contract"* during the period of his employment and *"for one month after its end"*. The Player indicates that the "period" of his employment with the Club ended in May 2018 and accordingly the date of signing the Settlement Agreement fell under the provisions of Article 341 of the SCO. Accordingly, the Player concludes that the waiver of his claims, contained in the Settlement Agreement, cannot be considered as valid.

61. Thirdly, the Player admits that upon the signature of the Settlement Agreement, he received IRR 1,150,000,000 from the Club, reflected in the signed receipt of the same date.

62. Based on the above-mentioned allegations, in his Appeal Brief the Appellant requests the CAS for the following relief:

"1º.- To uphold the present appeal, and annul the appealed decision condemning the Club to pay the amount of TWO THOUSAND MILLION, NINE HUNDRED TEN THOUSAND MILLION SIX HUNDRED THIRTY NINE ONE HUNDRED EIGHTY-THREE IRANIAL RIALS

*(*IRR *2.910.639.183,00 plus the accrued interest at the 5% rate as from the relevant due dates up to the entire payment.*

2º.- That the Club and FIFA be ordered to pay the costs of the present procedure".

B. Submission of the Respondent

63. The Respondent has not filed its Answer or any other written submissions in these proceedings.

64. During the hearing the Respondent inter alia contested the Player's allegations, arguing that it never retained his passport or prevented the Player from leaving Iran. The Club indicated that due to the Player's employment with different football clubs in Iran and because of certain uncleared tax issues, the Player could not leave the country unless he settled such issues and obtained the required paperwork. The Club affirmed that it was willing to assist the Player with the related formalities and requested his passport, in order to obtain the exit permit for him to leave Iran and to clear the related tax obligations.

65. As to the validity of the Settlement Agreement, the Club considers it to be binding on the Player, as it was willingly signed by him, especially in the circumstances where, as a result, the Player has received his outstanding remuneration under the Employment Contract.

VI. JURISDICTION

66. Article R47 of the CAS Code provides as follows:

"An 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".

67. Article 58 (1) of the FIFA Statutes states:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".

68. In consideration of the provisions mentioned above and of the fact that (a) the jurisdiction of the CAS is not contested by the Parties and (b) the Parties have expressly recognized the jurisdiction of the CAS by signing the Order of Procedure, the Panel is satisfied that the CAS has jurisdiction to decide the present matter.

VII. 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".

70. Article 58 (1) of the FIFA Statutes establishes:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".

71. The grounds of the Appealed Decision were notified to the Parties on 6 February 2020. The Club filed its Statement of Appeal with the CAS on 25 February 2020, hence within the 21-day term established by the applicable regulations. It follows that the Appeal is admissible.

VIII. APPLICABLE LAW

72. 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".

73. Furthermore, Article 57 (2) of the FIFA Statutes provides:

"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".

74. The Employment Contract does not contain an explicit choice by the Parties of the law applicable to the said contract.

75. The Appealed Decision was rendered by the FIFA DRC based on the FIFA regulations and, in particular, the FIFA Regulations on the Status and Transfer of Players ("RSTP") (January 2018 edition).

76. Therefore, pursuant to the provisions of Articles R58 of the CAS Code, the applicable law to these proceedings shall be the FIFA regulations, in particular, the FIFA RSTP, and Swiss law on a subsidiary basis, in accordance with Article 57 (2) of the FIFA Statutes.

IX. MERITS

77. In consideration of the facts in dispute and taking into account the content of the Appealed Decision, the main issues to be resolved by the Sole Arbitrator are as follows:

a. Is the Settlement Agreement valid and binding on the Parties?

If not:

b. Did the Player terminate the Employment Contract with just cause?

c. And if so, what are the consequences deriving from the termination of the Employment Contract with just cause?

Issue 1. Is the Settlement Agreement valid and binding on the Parties?

78. The FIFA RSTP do not contain any provisions on the validity of a contract signed under duress or resulting in an unfair advantage. Thus, the Sole Arbitrator shall resort to the Swiss law which is subsidiarily applicable to this proceeding.

79. As a preliminary note, the Sole Arbitrator insists on the particular nature of a settlement agreement under Swiss law, whereby it aims at putting an end to an existing conflict specified therein against mutual concessions granted by the parties. The parties' decision incorporated in such agreement is binding, as this clearly stems from the provisions of Article 208 para. 2 of the Swiss Civil Procedure Code:

"2 The settlement, acceptance or unconditional withdrawal shall have the effect of a binding decision".

80. By definition, the parties' mutual concessions are *"something that is given up, often in order to end a disagreement, or the act of allowing or giving this"* (Cambridge Dictionary definition).

81. In this particular matter, Swiss jurisprudence provides:

*"En matière de vices du consentement liés à une transaction, il s'agit de considérer non seulement ce que la partie aurait pu obtenir, d'un point de vue objectif, en cas de procès, mais aussi du souci des parties d'éviter les risques d'un procès, cela au prix de concessions qui peuvent sans doute être excessives, mais qui sont inhérentes à la nature de la transaction (**ATF 110 II 136** in fine)" (Arrêt de la Ière Cour civile – 8 October 1985 – BGE 111 II 349)*, which can be translated as follows:

"In the matter of concessions linked to a transaction, it is a question of considering not only what the party could have obtained, from an objective point of view, in the event of a lawsuit, but also of the parties' concern to avoid risks pertaining to a lawsuit, at the cost of concessions which may undoubtedly be excessive, but which are inherent in the nature of the transaction".

82. Therefore, a possible dissatisfaction by a party in respect of a concession which it would have granted in a settlement agreement, even if excessive, does not necessarily give legal grounds for a nullification thereof.

83. This being noted, as for all contracts, a settlement agreement is subject to nullification for altered consent, fraud or legitimate fear. Swiss law contains many examples in that respect.

84. Taken the above into consideration, the Sole Arbitrator shall now address the Appellant's claims successively.

85. Firstly, the Appellant insists that the Player *"was forced"* to sign the Settlement Agreement as *"the only alternative for the Player to leave Iran"*. The Player alleges that the Club prevented him, first, from getting new employment and, eventually, from leaving the country by retaining his passport and forcing him to sign a settlement agreement with the Club. Accordingly, the Appellant claims for the nullification of the Settlement Agreement based on the provisions of Article 29 of the SCO: *"Where a party has entered into a contract under duress from the other party or a third party, he is not bound by that contract"*.

86. However, the Club argues that it never retained the Player's passport after the termination of the Employment Contract and indicates in that respect that the Player could not have signed an employment agreement with Saipa without his passport. The Club further indicates that the only time when the Club was in the possession of the Player's passport after the termination by the latter of the Employment Contract was in May 2018, when the Player has requested the Club to regularize his tax issues and paperwork, in order for him to leave Iran.

87. It appears from the Parties' oral submissions during the hearing that the Player discovered that he could not leave Iran at the moment he was at the airport, thus, with his passport. Furthermore, the Sole Arbitrator observes that the Settlement Agreement does not contain any provision mentioning that the Club would restitute the passport to the Player, whereas such a provision would have been essential should the passport be retained by the Club. Finally, it appears that the reasons for which the Player could not leave Iran were linked to his status vis-à-vis the Iranian social and tax administrations and that the issues related thereto should have been resolved prior to his departure. The Settlement Agreement addresses this point by indicating that the Club has taken the responsibility *"of providing required documents related visa and permission work to depart player from Iran"*.

88. Consequently, the Sole Arbitrator finds that the Player did not establish to the Sole Arbitrator's comfortable satisfaction that the Respondent retained the Player's passport and forced the Player to sign the Settlement Agreement, in order to repossess his passport and leave Iran.

89. Secondly, the Player argues that the Settlement Agreement cannot be considered as valid under Article 21 of the SCO, paragraph 1 of which provides as follows:

> *"Where there is a clear discrepancy between performance and consideration under a contract concluded as a result of one party's exploitation of the other's straitened circumstances, inexperience or thoughtlessness, the person suffering damage may declare within one year that he will not honour the contract and demand restitution of any performance already made"*.

90. In order for Article 21 of the SCO to apply, i) the party entitled to benefit from the contract must have exploited the other's vulnerability, ii) the injured party must have been in straitened circumstances when concluding the contract, and iii) a clear disparity between performance and consideration is required (HONSELL (ed.), Obligationenrecht, 2014, p. 106-109).

91. The Player insists that he has been in straitened circumstances when signing the Settlement Agreement as this was the only way to leave Iran. Based on these allegations, the Player considers that he is not bound by the Settlement Agreement.

92. The Sole Arbitrator finds that the Club could be considered as having exploited the Player's vulnerability since it has admitted in the Settlement Agreement to: *"…guarantee, payment of remaining 20% of contract also the responsibility of providing required documents related visa and permission work to depart player from Iran"* (emphasis added). However, the issue is to determine whether the seriousness of the Player's vulnerability can be of a nature to lead to the nullification of the Settlement Agreement.

93. In that respect, Article 30 of the SCO provides:

"1. A party is under duress if, in the circumstances, he has good cause to believe that there is imminent and substantial risk to his own life, limb, reputation or property or to those of a person close to him.

2. The fear that another person might enforce a legitimate claim is taken into consideration only where the straitened circumstances of the party under duress have been exploited in order to extort excessive benefits from him".

94. Consequently, the Sole Arbitrator finds that the Player's precarious financial situation after the termination of his employment agreement with Saipa and his strong desire to return to his family could be considered as an inconvenience which could not reasonably make him believe in good faith *"that there is imminent and substantial risk to his own life, limb, reputation or property or to those of a person close to him".*

95. Furthermore, it appears in the case-at-hand that there is no clear disparity between performance and consideration. Indeed, in addition to its responsibility to facilitate the exit formalities, the Club accepted to pay the Player an amount equal to 20% of the Employment Contract's value. Together with 30% of the Player's contractual salary, paid to him by the Club *"after signing the contract"*, such amount corresponds to the Player's monthly salary for a period of more than five months, ending on the date of the termination of the Employment Contract. It is also noted that the Player acknowledged, upon the signature of the Settlement Agreement, that he had accepted and received the transactional amount of IRR 1,150,000,000 from the Club, which was reflected in a signed receipt of the same date.

96. In addition to the above, the acceptance by a party in a settlement agreement to terminate a legal action is inherent to its legal nature and cannot be considered as an excessive benefit extorted from him.

97. Finally, Article 31 of the SCO provides:

"(1) Where the party acting under error, fraud or duress neither declares to the other party that he intends not to honour the contract nor seeks restitution for the performance made within one year, the contract is deemed to have been ratified".

98. Accordingly, taking into account the facts of this matter, the Player has not provided any evidence whereby he would have declared to the Club that he intends not to honour the contract, all such correspondence was sent to third parties, e.g., *inter alia*, the FIFA Players'

Status Committee. In these conditions, pursuant to the provisions of Article 31 of the SCO, the Settlement Agreement *"is deemed to have been ratified"*.

99. Further, the Player refers to Article 341 of the SCO, indicating that *"the employee may not waive claims arising from mandatory provisions of law or the mandatory provisions of a collective employment contract"* during the period of his employment and *"for one month after its end"*. The Player indicates that the "period" of his employment with the Club ended in May 2018 and accordingly the date of signing the Settlement Agreement fell under the provisions of Article 341 of the SCO. Accordingly, the Player concludes that the waiver of his claims, contained in the Settlement Agreement, cannot be considered as valid.

100. In that respect and in line with established CAS jurisprudence (in particular, CAS 2015/A/4122 and CAS 2015/A/4296), the Sole Arbitrator directs his attention to the *"mandatory provisions of law"* referred to in Article 341 of the SCO and provided for in Articles 361 and 362 of the SCO.

101. The Sole Arbitrator observes that one such *"mandatory provision"* states as follows: *"When the employment relationship ends, all claims arising therefrom fall due"* (Article 339.1 of the SCO).

102. Accordingly, contrary to the Player's allegations, the *"period of the employment relationship"* referred to in Article 341 of the SCO ends on the date of the termination of such employment. Consequently, the Sole Arbitrator finds that the Player's argument in that respect is irrelevant and shall be disregarded.

103. Based on the above, the Sole Arbitrator does not express any opinion on whether or not the Settlement Agreement is fair to both Parties, but finds such Settlement Agreement valid, binding on the Parties and duly performed, in line with the Appealed Decision.

104. There are no grounds for the Sole Arbitrator to further expand on the reasons for which the Settlement Agreement was executed by the Parties or, in particular, to address the remaining issues identified above, maintly whether or not the termination of the Employment Agreement was made with just cause and if so, what are the consequences arising therefrom.

X. CONCLUSION

105. In light of the foregoing, the Sole Arbitration decides to uphold FIFA DRC's decision and to dismiss the Appellant's claims.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Aloys Bertrand Nong on 25 February 2020 against the decision rendered by the FIFA Dispute Resolution Chamber on 2 October 2019 is dismissed;

2. The decision rendered by the FIFA Dispute Resolution Chamber on 2 October 2019 is confirmed;

3. (…);

4. (…);

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