Arbitration CAS 2020/A/6770 Sabah Football Association v. Igor Cerina, award of 20 November 2020

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

Football
Termination of the employment contract with just cause by the player
Validity of a contract
Just cause of termination
Consequences of the absence of FIFA as respondent with regard to sporting sanctions

1. **Pursuant to Article 8 of the Swiss Civil Code, the burden of proof that a club's stamp does not belong to it lies on the club itself. Such proof cannot be reasonably or legally established by a simple statement made by the club in the CAS proceedings, in the absence of any relevant evidence. In any case, the affixation of a stamp under a contract is not a mandatory condition of the contract's validity whether under the provisions of the Swiss Code of Obligations or under the CAS jurisprudence: a contract is only binding when signed by authorised persons representing the club; the stamp of the club, although bearing its name and official address, is no legal substitution for such an authorisation. In the same vein, the absence of a witness at the time of the player's signature of the contract cannot legally be considered as a condition of validity of the contract where none of the Parties has challenged the genuineness of any affixed signatures. Also, an incorrect date of signature is not a material error which would cause the invalidation of the contract.**

2. **A player arriving on location before the start of the season, in order to start his trainings with the club, with in his possession the relevant medical report confirming he is fit for the purposes thereof, but who is instructed by a club's coach not to attend the team's trainings which represent part of the player's obligations under his contract, and who, on several occasions, sends default notices to the club granting the latter deadlines to remedy, all of which being unsuccessful, appears to have performed his obligations under the contract to the extent possible and therefore has just cause to terminate his employment contract. Indeed, given the circumstances, in particular, considering the club's irresponsive and passive behavior with regards to the default notices sent by the player, the latter cannot reasonably expect the club to start fulfilling its obligations under the contract and/or to pay to the player the outstanding salary and other dues.**

3. **Allegations by a club to lift or revise sporting sanctions imposed to it by FIFA cannot be entertained if the club has neither brought FIFA into the proceedings nor provided any request for relief or evidence which would sustain the allegations.**

I. PARTIES

1. Sabah Football Association (the "Club" or the "Appellant") is a professional football club based in Sabah, Malaysia. The Club currently competes in the Super League which is the top division in Malaysia. It is affiliated to the Malaysian Football Federation, which in turn is affiliated to the Fédération Internationale de Football Association ("FIFA").

2. Igor Cerina (the "Player" or the "Respondent") is a professional football player of Croatian nationality, who currently plays for the Croatian football club NK Dugopolje.

3. Sabah Football Association and Igor Cerina are individually referred to as, the 'Party' and collectively 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. 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, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 18 December 2015, the Club and the Player entered into an employment agreement (the "First Contract"), valid from 18 December 2015 until 17 December 2016, which provided for the Player's monthly salary in the amount of MYR 20,000 ("Schedule A – Salary" of the First Contract) and for certain in-kind benefits ("Schedule B – Other Benefits" of the First Contract).

6. On the same date, the Parties have agreed on the *"extra allowance amount RM 10,000.00 per month nett"* to be paid by the Club to the Player, by signing the "Extra Allowances of Premier League Player Season 2016".

7. On 18 December 2016, the Parties concluded the second employment agreement (the "Second Contract"), valid from 18 December 2016 until 30 November 2018.

8. The Second Contract provided for the Player's remuneration consisting of, in particular:

   (i) monthly salary in the amount of MYR 20,000 ("Schedule A – Salary" of the Second Contract),

   (ii) certain in-kind benefits ("Schedule B – Other Benefits" of the Second Contract), and

(iii) bonus of USD 10,000 or USD 20,000 *"if the team qualified for the Malaysia Cup in 2017"* or *"for the Super League in 2018",* respectively ("Schedule B – Other Benefits" of the Second Contract).

9. In addition, the Parties signed the "Salary Increase and Extra Allowances of Premier League Player Season 2017/2018" by which the Club agreed *"to increase player salary 20% if the team qualify to Super League 2018"* and to pay to the Player *"extra allowance amount RM 29,200 […] effective from 18 December 2016 till 30 November 2018"*.

10. On 15 May 2017, the Player suffered an injury.

11. On 19 May 2017, the Club and the Player entered into an agreement (the "Agreement on Leave") pursuant to which the Club agreed *"to cover player medical expenses up to USD 5,000.00"* and half of such expenses exceeding USD 5,000.00.

12. Pursuant to the provisions of the Agreement on Leave, the Player was to perform his medical treatment in Croatia, to be *"deregistered from the Malaysia Premier League for the remaining of 2017 season"* and to be *"registered for the 2018 season" "upon the player making a full recovery and is match fit"*.

13. On 28 September 2017, the Player was contacted by the Club summoning him *"to resume training with Sabah* [the Club's] *senior team on the 28 December 2017"*.

14. On 29 January 2018, following the Player's MRI check-up initiated by the Club, the latter received a medical report with regards to the Player's health condition, advising, in particular, that the Player *"reduce high impact training for 4 weeks"*.

15. On 9 February 2018, the Club extended its instructions for the Player to train *"with the Sabah President Cup team"* due to the ongoing rehabilitation.

16. On 13 February 2018, the Player's attorney sent an email to the Club stating, in particular, that the Club's behavior in forbidding the Player to train with the Club's First Team was discriminatory and that the Player was considering a possibility of terminating the Second Contract based on the said breach by the Club of its provisions.

17. On 20 March 2018, the Club and the Player entered into the "Agreement to Terminate" effective on the same date (the "Termination Contract"), pursuant to which the Parties agreed to terminate the Second Contract with a compensation *"of nett RM 132,066.80"* to be paid by the Club to the Player.

18. On 21 March 2018, the Parties signed a letter titled "SAFA Guarantees Full Payment of Outstanding Allowances" (the "Annex to Termination Contract") which formed *"an integral part of the termination of the contract"*, pursuant to which the Club acknowledged *"its obligation to pay* [the Player] *his outstanding allowances"* in the amount of MYR 233,600 *"before 20 June 2018"*.

19. On 24 July 2018, the Player's attorney sent a notice to the Club by email to proceed with the payment of the Player's allowances in the amount of MYR 233,600 which were outstanding and informed the Club of the Player's intent to initiate a legal action against it, should it fail to do so.

20. On 25 August 2018, the Club appointed a new Head of First Team Operation.

21. On the same date, the Player was contacted by the Club's officers who informed him of the Club's intent to resume his employment.

22. During the period from 25 August 2018 to 28 August 2018, the Club and the Player were negotiating the draft of the new employment contract.

23. On 3 September 2018, the Club sent the signed and stamped original of the new employment contract (the "Third Contract") by DHL to Croatia for the Player's signature.

24. The Third Contract was valid from 1 December 2018 until 30 November 2019 and provided for the Player's remuneration consisting of (i) a monthly salary in the amount of MYR 20,000 ("Schedule A – Salary" of the Third Contract), and (ii) certain in-kind benefits ("Schedule B – Other Benefits" of the Third Contract).

25. Pursuant to the provisions of "Schedule D – Contract Enforcement" of the Third Contract, *"this contract will only take effect after the player passes a health examination to be conducted at a clinic or hospital designated by a club based on regulations set by the Football Association of Malaysia LLP"*.

26. In addition, the Parties signed the letter dated 29 August 2018 and titled "Allowances for Igor Cerina" (the "Annex to Third Contract") by which the Club agreed *"to pay extra allowance with the amount of RM 29,200 […] effective from 1 December 2018 to 30 November 2019"*.

27. On 21 November 2018, prior to his trip to Malaysia, in order to join the Club, the Player underwent a medical examination in Croatia and was declared *"capable"* to play.

28. On 30 November 2018, the Player arrived in Malaysia and started to train with the Club.

29. On 21 December 2018, by email of the same date, the Player's attorney extended a notice to the Club requesting for the payment to the Player of the outstanding amount of MYR 233,600 under the Annex to Termination Contract and for fulfilling the Club's obligations under the Third Contract.

30. On 22 December 2018, the Player's attorney sent another notice to the Club by email, indicating, in particular, that the Club did not allow the Player to train with the Club's First Team, as provided in the Third Contract, and expressing the Player's intent to initiate legal action against the Club before the FIFA Dispute Resolution Chamber (the "FIFA DRC").

31. On 27 December 2018, following a medical examination at a private clinic of his choice, the Player obtained a report of being *"fit and healthy to work and play soccer"*.

32. On 3 January 2019, the Player's attorney sent a notice to the Club by email, enclosing the obtained medical report and indicating the Player's intent to initiate legal action against the Club, should the latter refuse to fulfill its obligations under the Third Contract and should it fail to pay the Player the outstanding amount of MYR 233,600 under the Annex to Termination Contract.

33. On 7 January 2019, the Club requested the Player to undergo a medical examination at a hospital designated by the Club.

34. On 10 January 2019, in its letter of the same date, the Club provided the Player with a copy of a banking cheque for the payment of the outstanding amount of MYR 233,600 under the Annex to Termination Contract. Pursuant to the said letter, the Player and his *"agents/representatives are hereby agree not to make any further claims or any other claims with regards of any outstanding allowances or contracts which involves SAFA"*.

35. On 11 January 2019, the Player's attorney sent an email to the Club, indicating, in particular, that the conditions imposed by the Club made it impossible for the Player to sign the letter of 10 January 2019 and to accept the Club's banking cheque.

36. On 17 January 2019, the Player sent a notice of the unilateral termination of the Third Contract with immediate effect based on the Club's breach of its obligations, in accordance with Article 14 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP").

III. PROCEEDINGS BEFORE THE FIFA DRC

37. On 1 March 2019, the Respondent brought his claims before the FIFA DRC.

38. In his claim, the Respondent requested the FIFA DRC to order the Appellant to pay him the following amounts:

"- *MYR 233,600, corresponding to the amount established in the letter dated 21 March 2018, plus 5% interest p.a. as from 21 June 2018;*

- *MYR 590,000, as compensation for "the unilateral termination of the player by the fault of the club", plus 5% interest p.a. as from 18 January 2019, and further detailed as follows:*

  - *MYR 240,000, corresponding to "12 basic months salaries";*

  - *MYR 250,400, corresponding to "12 special charges of net [MYR] 29,200";*

- *EUR 1,200, plus 5% interest p.a. as from 18 January 2019, corresponding to the air ticket mentioned in schedule B of the contract".*

"In addition, the player requested the payment of the procedural costs by the Club".

39. On 30 October 2019, following written submissions filed by the Parties, the FIFA DRC rendered the following decision:

"1. The claim of the Claimant, Igor Cerina, is partially accepted.

2. The Respondent, Sabah Football Association, has to pay to the Claimant, Igor Cerina, outstanding remuneration in the amount of MYR 49,200, plus 5% interest p.a. as from 7 January 2019 until the date of effective payment.

3. The Respondent has to pay to the Claimant additional outstanding remuneration in the amount of MYR 233,600, plus 5% interest p.a. as from 21 June 2018 until the date of effective payment.

4. The Respondent has to pay to the Claimant the additional outstanding amount of CHF 900.

5. The Respondent has to pay to the Claimant compensation for breach of contract in the amount of MYR 541,200, plus 5% interest p.a. as from 1 March 2019 until the date of effective payment.

6. Any further claim lodged by the Claimant is rejected.

7. The Claimant is directed to inform the Respondent, 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 Respondent must pay the amounts mentioned under points 2, 3, 4 and 5 above.

8. The Respondent shall provide evidence of payment of the due amounts in accordance with points 2, 3, 4 and 5 above to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).

9. In the event that the amount due in accordance with points 2, 3, 4 and 5 above are not paid by the Respondent within 45 days as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amounts are 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).

10. The ban mentioned in point 9. above will be lifted immediately and prior to its complete serving, once the due amounts are paid".

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

40. On 13 February 2020, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"), the Club filed a Statement of Appeal with the Court of

Arbitration for Sport (the "CAS") with respect to the decision rendered by the FIFA DRC on 30 October 2019 (the "Appealed Decision").

41. In its Statement of Appeal, the Appellant requested that the dispute be decided by a Sole Arbitrator and that the execution of the Appealed Decision be stayed until an award is issued in the appeal proceedings.

42. In addition, in its Statement of Appeal, the Appellant submitted the request *"for relief for the payments to the Respondent MYR 541,200 plus 5% interest being compensation of breach of Contract + MYR 233,600 as remuneration amount + MYR 49,200 outstanding remuneration + CHF 900 additional outstanding amount mention in the said Decision by FIFA"*.

43. On 19 February 2020, the CAS Court Office acknowledged receipt of the Statement of Appeal and requested the Appellant to confirm its request for a stay.

44. On the same date, the CAS Court Office notified FIFA of the appeal proceedings and of its right to intervene in such proceedings in accordance with Article 41.3 of the CAS Code.

45. On 27 February 2020, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

46. On 28 February 2020, the Respondent objected to the appointment of a Sole Arbitrator in these proceedings, requested that the present dispute be heard by a panel of three arbitrators and nominated Mr. Lovro Badžim, attorney-at-law in Zagreb, Croatia, as the Respondent-appointed arbitrator. The Respondent further requested that the time limit for the filing of the Answer be fixed after the payment of the advance of costs by the Appellant in accordance with Article R64.2 of the CAS Code. In addition, the Respondent objected to the Appellant's application for a stay.

47. On 2 March 2020, the CAS Court Office informed the Parties, in particular, that, based on the Appellant's failure to withdraw the application for a stay within the set time limit, an Order on Provisional Measure would be issued by the President of the CAS Appeals Arbitration Division, or her Deputy.

48. On 3 March 2020, the CAS Court Office informed the Parties that FIFA had renounced its right to intervene in the present proceedings.

49. On the same date, the CAS Court Office informed the Parties that the composition of the Arbitral Tribunal in these proceedings shall be determined by the President of the CAS Appeals Arbitration Division, or her Deputy.

50. On 4 March 2020, the CAS Court Office took note of the Appellant's request for the implementation of mediation in these proceedings and invited the Respondent to inform the CAS Court Office whether he could have any interest in mediation procedure.

51. On 13 March 2020, the CAS Court Office confirmed that the time limit for the Respondent to file his Answer would be set after the payment by the Appellant of the advance of costs.

52. On 27 March 2020, following the Appellant's reiterated request of the same date for the implementation of mediation in these proceedings, the CAS Court Office set a new deadline for the Respondent to inform the CAS Court Office of his interest in the mediation procedure. In addition, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided that a sole arbitrator be appointed in these proceedings.

53. On 1 April 2020, the CAS Court Office informed the Parties that in the absence of the Respondent's reply, the matter at hand shall not be submitted to the CAS mediation.

54. On 12 May 2020, the CAS Court Office acknowledged receipt of the advance of costs paid by the Appellant and set a time limit for the Respondent to file his Answer.

55. On 10 June 2020, the Respondent filed his Answer.

56. On 22 June 2020, the CAS issued the Order on Request for a Stay as follows:

"1. The request for a stay filed by Sabah Football Association on 13 February 2020 in this matter CAS 2020/A/6770 Sabah Football Association v. Igor Cerina is dismissed.

2. The Costs of the present order shall be determined in the final award or in any other final disposition of this arbitration".

57. On 23 June 2020, on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that Mr. Alain Zahlan de Cayetti, Attorney-at-law in Paris, France, had been appointed as Sole Arbitrator in these proceedings.

58. On 8 July 2020, after consultation with the Parties, the CAS Court Office informed the Parties that, pursuant to Article R57 of the CAS Code, the Sole Arbitrator had decided to hold a hearing in these proceedings.

59. On 16 July 2020, the CAS Court Office issued the Order of Procedure in these proceedings, which was duly signed by the Parties, respectively on 17 and 20 July 2020.

60. On 11 August 2020, a hearing was held by videoconference via Cisco Webex, in accordance with Article 44.2 of the CAS Code. The following persons attended the hearing:

- For the Club: Mr. Hairul Vaiyron bin Othman J.P., counsel
  Mr. Datuk Juil Nuatim, witness

- For the Player: Mr. Igor Cerina, Respondent
  Mr. Davor Radić, counsel

In addition, Mr. Fabien Cagneux, Counsel to the CAS, assisted the Sole Arbitrator at the hearing.

61. At the outset of the hearing, the Parties confirmed that they had no objection with regard to the constitution and composition of the Arbitral Tribunal. During the hearing, the Parties had the opportunity to present their case, submit their arguments, examine and cross-examine the witness and answer all the questions posed by the Sole Arbitrator. The witness has previously taken oath to tell the truth and confirmed that he was isolated in his office. At the end of the hearing, the Parties and their counsels 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

62. 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 the 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

63. The Appelant's submissions, in essence, may be summarized as follows:

64. The Appellant sustains that the Third Contract is not valid and, therefore, should be considered as void, as there have never been any offer or acceptance with regards to such employment of the Player by the Club. The Appellant indicates that its internal policies provide for a certain selection procedure which has never been conducted with regards to the Player.

65. Furthermore, arguing the validity of the Third Contract, the Appellant refers to the procedure of the execution of the Third Contract, which it considers to be wrongfully conducted. In particular, the Appellant indicates that, contrary to the signing provisions of the Third Contract, the signature of the Player has never been witnessed and, therefore, may not be considered as valid and genuine. Furthermore, the Appellant considers that the absence of a clearly indicated year on the first page of the Third Contract serves as another proof that the Club has never meant to execute such contract with the Player.

66. In addition, the Appellant affirms that the stamp contained in the Third Contract does not belong to the Club, indicating that it visually differs from the one contained in the First Contract and in the Second Contract respectively. Taking this into account, the Club denies having executed the Third Contract and insists on its invalidity.

67. Finally, the Appellant sustains that, should the validity of the Third Contract be acknowledged by the Sole Arbitrator, the Player is not entitled to any compensation for its termination, as

the Third Contract has never been performed by the Player. The Appellant states that the Player has never attended the Club's trainings and *"was not even fielded even once for the 2019 season* [the relevant season under the Third Contract]". In that regard, the Appellant refers to the absence of the Player's name in the *"players attendance record"* kept by the Club for every training.

68. In the similar way, the Appellant contests the validity of the Annex to Third Contract, indicating that (i) such document has never been made by the Appellant, (ii) *"the format of the said letter is disputed"* and (iii) the stamp under this document is *"different from the Club'/Appellant's original rubber stamp"*.

69. Therefore, and based on its abovementioned submissions, the Appellant has requeted *"relief for the payments to the Respondent MYR 541,200 plus 5% interest being compensation of breach of Contract + MYR 233,600 as remuneration amount + MYR 49,200 outstanding remuneration + CHF 900 additional outstanding amount mention in the said Decision by FIFA"*.

B. Submission of the Respondent

70. The Respondent's submissions, in essence, may be summarized as follows:

71. The Respondent considers that the Third Contract has been validly signed and is binding for both Parties. The Respondent further sustains that it was his clear intent to perform the Third Contract, for which purposes he has joined the Club in due time and has made himself available for trainings with the Club's designated team. The Player alleges that the Club has prohibited him to attend such trainings, thus making it impossible for the Player to proceed with the performance of his obligations under the Third Contract. The Player considers that he has terminated the Third Contract with just cause based on the breach by the Club of its contractual obligations.

72. Consequently, the Respondent submitted the following request for relief:

"1. The appeal filed by Appellant Sabah Football Association against the Decision by the Dispute Resolution Chamber of the Federation Internationale de Football Association (FIFA) on 30 October 2019 is dismissed.

2. The Decision by the Dispute Resolution Chamber of the Federation Internationale de Football Association (FIFA) on 30 October 2019 is confirmed.

3. All costs of these proceedings shall be charged to the Appellant:

a) the costs of the arbitration, which will be communicated by the CAS Court Office to the parties at a later stage, shall be borne by Appellant Sabah Football Association.

b) Appellant Sabah Football Association shall pay to the Respondent Igor Cerina the amount of CHF 5,000.00 as a contribution towards its legal fees and other expenses incurred in connection with this arbitration.

4. All other of further motions or prayers for relief from the Appellant are dismissed".

73. In reply to the Appellant's statements with regards to the invalidity of the Third Contract, the Player affirms that:

- the Third Contract, similar to all employment agreements existing between the Club and the Player (*i.e.* First Contract, Second Contract), has been drafted by the Club and submitted for the Player's signature, based on the Club's adopted template and signed by the Club's President. Therefore, the Player considers that the Club's allegation that it did not mean to enter into the Third Contract with the Respondent, is ungrounded.

- the stamp of the Club under the Third Contract has been affixed by the Appellant as its "original" stamp. In particular, the Player indicates that the First, the Second and the Third Contracts, entered into by the Player and the Club, contain different stamps. Consequently, the Player believes that the Club may have several "original" stamps. The Player refers to Article 3.8 of the Third Contract, which indicates, in particular, that the *"contract must be signed and stamped by the Club"*. Therefore, the Player indicates that it was the Club's obligation to affix its stamp under the Third Contract. Finally, the Player points out that the Agreement on Leave and the Termination Contract which have not been stamped by the Club, were not challenged by the Club.

- negotiations relating to the conclusion of the Third Contract have validly taken place. The Player insists that the offer to re-join the Club, together with the related conditions, have been extended to him directly by the newly appointed President of the Club and numerous correspondence and discussions have followed, in order to determine the final draft of the Third Contract. Therefore, the Player declares the relating allegations of the Appellant to be untrue.

- the Player has signed the Third Contract in accordance with the agreed procedure and the Club's affirmations with regards to the absence of the required witness are irrelevant. The Player points out that it was the Club's initiative that the Third Contract be sent for the Player's signature by DHL, given that the Player resided at that time in Croatia. The Player further refers to the Club's preference that the said contract be signed and stamped by the Club prior to being sent for the Player's signature. Finally, the Player sustains that the absence of the fact of physically witnessing the Player's signature does not affect the validity of the Third Contract, such witness neither being its party nor such requirement being stipulated by the applicable law.

- the fact that the year is not clearly mentioned in the first page of the Third Contract is insignificant, taking into account that the contract mentioned its validity from 1 December 2018 until 30 November 2019. Furthermore, the Player refers to the Annex to Third Contract which clearly mentions the date of 29 August 2018. Therefore, the Player considers the Club's argument in that regard to be irrelevant to the determination of the validity of the Third Contract.

- regarding the witness testimony during the hearing, the Player has pointed out the lack of admissibility of such testimony based on the fact that Mr. Datuk Juil Nuatim has been, at the time he signed the Third Contract as a witness and until the date of the hearing, an employee of the Club and that, therefore, his impartiality is impaired.

VI. JURISDICTION

74. Article R47 of the CAS Code states:

"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. […]".

75. Article 58 (1) of the FIFA Statutes provides:

"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".

76. Article 24 (2) of the FIFA RSTP states the following:

"[…] Decisions reached by the DRC or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS)".

77. 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 Sole Arbitrator is satisfied that the CAS has jurisdiction to decide the present matter.

VII. ADMISSIBILITY

78. 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".

79. 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".

80. The grounds of the Appealed Decision were notified to the Parties on 29 January 2020. The Club filed its Statement of Appeal with the CAS on 13 February 2020, hence within the 21-day term established by the applicable regulations. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

81. Article R58 of the CAS Code reads as follows:

"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".

82. 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".

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

84. The Appealed Decision was rendered by the FIFA DRC based on the FIFA regulations and, in particular, the FIFA RSTP (June 2018 edition).

85. 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 OF THE APPEAL

A. Introduction

86. 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:

1) Was the Third Contract valid and binding to the Parties?

2) Did the Player terminate the Third Contract with just cause?

In the affirmative:

3) What are the legal consequences deriving from the termination of the Third Contract with just cause?

4) Is the Player entitled to be paid the outstanding amount mentioned in the Annex to the Termination Contract?

B. Issue 1: Was the Third Contract valid and binding to the Parties?

87. The validity of the Third Contract is contested by the Club based, in particular, on the following allegations: (i) the stamp of the Club affixed to the Third Contract does not belong to the Club (ii) the signature of the Player has not been witnessed (iii) the date of the Third Contract is not properly mentioned (the year is missing therefrom) and (iv) there was neither offer to nor acceptance by, the Player with regards to his employment with the Club for the season in question.

88. The Club's argument that the stamp does not belong to it cannot be reasonably or legally established by a simple statement made by the Appellant in these proceedings, whilst the burden of proof lies on the Appellant itself who has failed to establish such relevant evidence pursuant to Article 8 of the Swiss Civil Code ("SCC") and the longstanding jurisprudence of the CAS (CAS 2013/A/3424; CAS 2016/A/4885).

89. The Sole Arbitrator further observes that (i) the Club's President, Mr. Alijus Mohd Ali Bin Hj Sipil, has signed the Third Contract and his signature is not disputed by the Appellant, (ii) there exists strong visual similarities between the said litigious stamp and the ones affixed to the Club's letters sent to the Player on 7 and 10 January 2019 (Exhibits 34 and 35 to the Player's Answer) respectively and which are unchallenged by the Appellant, and (iii) the affixation of the stamp under a contract is not a mandatory condition of a contract's validity whether under the provisions of the Swiss Code of Obligations or under the CAS jurisprudence. In particular, in CAS case 2007/A/1366, *"A professional football player ought to know that a contract is only binding when signed by authorised persons representing the club; the stamp of the club, although bearing its name and official address, is no legal substitution for such an authorisation"*. This decision is in line with, in particular (i) Article 2 para. 2 of the FIFA RSTP which provides for the existence of a *"written contract"* between a club and a player and (ii) CAS jurisprudence CAS 2013/A/3424 and CAS 2010/A/2316: *"A contract required by law to be in writing must be signed by all persons on whom it imposes obligations"* which were grounded n the provision of Article 13 of the Swiss Code of Obligations which does not provide for a mandatory condition for a contract to be stamped.

90. In particular, the Club's allegations concerning the absence of a witness at the time of the Player's signature of the Third Contract cannot legally be considered as a condition of validity of a contract where none of the Parties has challenged the genuineness of any affixed signatures. Furthermore, in the case at hand, Mr. Datuk Juil Nuatim has testified during the hearing that he affixed his signature as witness of the Player's signature without actually seeing the Player signing the Third Contract and that he does not remember who gave him the instructions to do so, at a time where he was employed by the Club.

91. Regarding the Club's argument concerning the invalidity of the Third Contract based on the incorrect date of signature, the Sole Arbitrator observes that (i) Article 1 of the Third Contract ("Duration of the Contract") provides: *"The contract is effective from: 1 DECEMBER 2018 and it will be in force until 30 NOVEMBER 2019 […]"*), (ii) the year whilst missing is not a material error which would cause the invalidation of a contract, (this has been provided in CAS 2009/A/1909 whereby *"A contract is not binding because of an error only if the error is material ("essentielle") and the invocation of the error is not contrary to the good faith of the other party"*), (iii) in any case, the Appellant has not established any legal grounds to support its allegations according to which the Third Contract would be considered as invalid in the conditions hereof.

92. With regard to the Club's statement concerning the alleged absence of any offer extended to the Player by the Club and, accordingly, of any acceptance from the Player's side, the Sole Arbitrator considers that the signatures of the Parties under the contract (the authenticity of which being unchallenged by the Parties) indicate explicitly the Parties' free consent and agreement on the Third Contract's terms and conditions and, therefore, confirm that the requirements of the offer and acceptance were duly met.

93. In its Appeal Brief, the Club sustains that *"the letter* [Annex to Third Contract] *were never sent and/or made and the format of the said letter is disputed"*. However, the Club has not provided any legal of factual grounds which would support its allegation. Notwithstanding such lack of evidence, the Annex to Third Contract is a part thereof. It was negotiated by the Parties along with the Third Contract (Exhibits 21-23 to the Player's Answer). It was sent subsequently by DHL for the Player's signature and was eventually signed by both Parties.

94. Based on the foregoing facts and considerations, the Third Contract including, in particular, the Annex to Third Contract, is valid and binding to the Parties.

C. Issue 2: Did the Player terminate the Third Contract with just cause?

95. On 17 January 2019, the Player terminated the Third Contract *"with immediate effect pursuant to Article 14 of the FIFA Regulations on the Status and Transfer of Players"*. In the Appealed Decision, the FIFA DRC has *"unanimously concluded that the player had just cause to terminate the contract"*, given that *"the club did not comply with any of the provisions contained in said contract"*.

96. The Club sustains that the Third Contract is not valid and hence, it was not possible for the Player to have just cause for its termination. In particular, the Club alleges that the Third Contract was never performed by the Player, indicating, in particular, that *"the payments to Igor Cerina for the 2019 season were never made to him and he was not even fielded even once for the 2019 season"*.

97. However, (i) the Player arrived in Malaysia on 30 November 2018, in order to start his trainings with the Club, and had in his possession the relevant medical report confirming that he was fit for the purposes thereof. Upon arrival, the Player was instructed by a Club's coach not to attend the team's trainings which represented part of the Player's obligations under the Third Contract; (ii) on several occasions, the Player's attorney sent default notices to the Club granting the latter deadlines to remedy, all of which having been unsuccessful.

98. Consequently, it appears that the Player has performed its obligations under the Third Contract to the extent possible and that his inability to continue performing his obligations deriving therefrom was exclusively due to the Club's behaviour aiming at preventing the Player to proceed with the performance of his obligations.

99. Article 14 of the FIFA RSTP provides: *"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause"*.

100. Article 337 (2) of the SCO provides: *"In particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice"*.

101. This definition is envisaged by the CAS long-established jurisprudence. In particular, in the case CAS 2017/A/5228, the Panel refers to the CAS jurisprudence based on which *"only a "material breach" of a contract can possibly be considered as "just cause" for termination without consequences of any kind (CAS 2006/A/1062; CAS 2006/A/1180; CAS 2007/A/1210; CAS 2006/A/1100; CAS 2013/A/3091, 3092 & 3093). A material breach occurs "when the main terms and conditions, under which it was entered into are no longer implemented. The circumstances must be such that, according to the rule of good faith, the party terminating the employment relationship cannot be required to continue it" (CAS 2013/A/3091, 3092 & 3093; CAS 2012/A/2698)"*.

102. On another occasion, in the case CAS 2006/A/1180, the Panel has established that *"the only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5 et seq.)"*.

103. Given the circumstances, in particular, considering the Club's irresponsive and passive behavior with regards to the default notices sent by the Player, the Player could not reasonably expect that the Club would start fulfilling its obligations under the Third Contract and/or that it would pay to the Player the outstanding salary and other dues. Consequently, the Third Contract must be considered as having been terminated by the Player with just cause pursuant to the provisions of Article 14 of the FIFA RSTP.

D. Issue 3: What are the legal consequences deriving from the termination of the Third Contract with just cause?

a) Remuneration and other benefits due to the Player under the Third Contract

104. The Third Contract was effective since 1 December 2018 until 17 January 2019 (i.e. the date on which it was terminated by the Player with immediate effect). In his termination notice of 17 January 2019, the Player indicates that his salary for December 2018 due on 7 January 2019, was not paid by the Club.

105. The Third Contract provides for the Player's monthly salary in the amount of MYR 20,000 ("Schedule A – Salary" of the Third Contract). The Annex to Third Contract provides for the *"extra allowance"* in the amount of MYR 29,200 to be paid to the Player on a monthly basis during the validity period of the Third Contract. Therefore, the Player's salary for December 2018 is due to him in the amount of MYR 49,200.

106. Therefore, pursuant to the following:

- Article 17.1 of FIFA RSTP which provides: *"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period"*;

- The general legal principle of *pacta sunt servanda* deriving from the provisions of Article 12bis (1) of the FIFA RSTP whereby *"Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements";*

- The CAS constant jurisprudence (*e.g.* CAS 2013/A/3383-3385, CAS 2014/A/3742);

the Sole Arbitrator finds that the Player's salary for December 2019 is due to him and, therefore, shall be paid to him by the Club in the full amount of MYR 49,000, with an applied late payment interest of 5% per annum accrued from the due date until its effective payment, which is in line with the provisions of Articles 102 and 104 (1) of the SCO and with the CAS long-established jurisprudence.

107. The Third Contract provides for certain in-kind benefits to be provided by the Club to the Player (para. d) of the "Schedule B – Other Benefits" of the Third Contract), namely:

"a. Member [the Club] *will provide car for player, (Petrol/Diesel) to be paid by player.*

b. Member will provide fully furnished house for player, The rental limited is to RM 2,500.00 per month. Any additional rental to be paid by player, Electricity & water bill to be paid by player.

c. Return flights tickets (Economy Class) for player, his wife and son (Vito) only".

108. The Player has not claimed for any of such benefits before the FIFA DRC, except for the price of the return air tickets in the amount of EUR 1,200.

109. FIFA DRC has deciced that the Player has not provided evidence as to *"whether he* [the Player] *effectively incurred in the costs of said tickets"* and that, accordingly, he is entitled to a *"compensation equivalent to the price of one trip to return to his home country and as established by FIFA Travel, i.e. CHF 900".*

110. Article 8 SCC states that *"unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"* and which is established by the CAS jurisprudence (CAS 2008/A/1519-1520).

111. In these proceedings where he would have another opportunity to provide sufficient evidence with respect to the actual expenses incurred by him as a result of the payment for the return air ticket, the Player failed to do so. Consequently, the Player is not entitled to such compensation and the Appealed Decision shall be upheld in this respect.

b) Calculation of compensation for breach of the Third Contract by the Club

112. The Third Contract does not contain any explicit agreement of the Parties in respect of the calculation of compensation for breach and/or in case of early termination. Consequently, the criteria deriving from the provisions of Article 17 (1) of the FIFA RSTP and, in particular, the principle of positive interest based on the long-established CAS jurisprudence shall be applied in the case at hand.

113. In particular, in the matter CAS 2014/A/3584, the Panel brought the following grounds in the reasoning of its decision: "[…] *if the employee terminates the contract with just cause because the employer breaches the contract, the employee has a claim to compensation for the amount which he would have earned had the employment been terminated in compliance with the notice period or by expiry of the fixed term. According to this principle, it is fully justified to award the player the wages to be paid until the end of the employment contract, with deduction of which he has saved or earned elsewhere because of the (early) termination of the employment contract or could have earned elsewhere had he made reasonable efforts. […]".*

114. Accordingly, the principle of calculation must take into account (i) the residual value of the Third Contract since the date of its termination and (ii) any other amounts (*e.g.* remuneration under any new employment contracts signed by the Player) which would mitigate the Player's damages.

115. In the case at hand, should the Third Contract not have been terminated with just cause by the Player in January 2019, the Player would have received a salary for the remaining eleven

months of the Third Contract's validity in the total amount of MYR 220,000, as provided in "Schedule A – Salary" of the Third Contract (*i.e.* monthly salary of MYR 20,000 x 11 months = MYR 220,000).

116. In addition, with reference made to the Annex to Third Contract which provides for a monthly *"extra allowance"*, the total of which for eleven months is MYR 321,200 (i.e. monthly allowance of MYR 29,200 x 11 months = MYR 321,200).

117. Finally, the Club has provided no evidence as to the existence of the Player's remuneration which could be taken into account and which would mitigate the damages incurred by him as a result of the early termination of the Third Contract caused by the breach of the said contract by the Club.

118. In the Appealed Decision, the FIFA DRC has ordered the application of a late payment interest of 5% interest per annum, applicable to the compensation amounts mentioned in paragraphs 115 and 116 above, to be paid by the Club to the Player *"as from 1 March 2019 until the date of effective payment"*. The Sole Arbitrator observes that none of the Parties has challenged the application, the interest rate or the starting date thereof and, therefore, the Appealed Decision shall be confirmed in that regards.

c) Imposition by FIFA of sporting sanctions

119. Article 24bis of the FIFA RSTP provides, in particular, that the FIFA DRC may impose on a club *"a ban from registering any new players, either nationally or internationally, up until the due amounts are paid"* and that *"the overall maximum duration of the registration ban, including possible sporting sanctions, shall be of three entire and consecutive registration periods"*.

120. In accordance with CAS jurisprudence, in particular, case CAS 2019/A/6131, *"the commencement of disciplinary proceedings and/or the imposition of sporting sanctions concern the relation between the regulatory body and its (indirect) members in a vertical relationship, and, as such, is explicitly reserved for FIFA, UEFA or national federations. It is for these sports governing bodies to secure the proper enforcement of applicable regulations and principles within an association, and consequently ultimately touches on the interest of the association itself. […] As such, the Sole Arbitrator considers that the Agent could not seek relief for the commencement of disciplinary proceedings and/or the imposition of sporting sanctions, because the Agent did not call any regulatory body, such as FIFA, as a respondent in the current appeal arbitration proceedings"*.

121. The Club against which the sporting sanctions were imposed by FIFA, has neither brought FIFA into these proceedings nor provided any request for relief or evidence which should sustain its allegations to lift or revise the sporting sanctions. The Club's request for relief contained in its Statement of Appeal, concerns exclusively the financial aspects of the Appealed Decision.

122. In these circumstances, the Appealed Decision shall be upheld.

E. Issue 4: Is the Player entitled to be paid the outstanding amount mentioned in the Annex to the Termination Contract?

123. The Player's claims that the amount of MYR 233,600 owed to him by the Club under the Annex to Termination Contract, was not paid to him. This fact is not disputed by the Club which, on the contrary, has confirmed its intent to proceed with the payment of the said amount to the Player.

124. For these reasons, the Club shall pay to the Player the amount of MYR 233,600 and the Appealed Decision in this respect shall be upheld.

125. The late payment interest of 5% shall be applied to the amount mentioned above *"from 21 June 2018 until the date of effective payment"*, in line with the Appealed Decision.

X. CONCLUSION

126. The Sole Arbitrator concludes that the Third Contract has been terminated by the Player with just cause and, therefore, compensation for breach shall be paid to him by the Club.

127. In light of the foregoing facts and considerations, the Sole Arbitrator decides to uphold the Appealed Decision and to dismiss the Club's Appeal in its entirety.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Sabah Football Association on 13 February 2020 against the decision rendered by the FIFA Dispute Resolution Chamber on 30 October 2019 is dismissed;

2. The decision rendered by the FIFA Dispute Resolution Chamber on 30 October 2019 is confirmed;

3. (…);

4. (…);

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