Arbitration CAS 2010/A/2159 Al-Khor Sports Club v. Jean-Paul Rabier, award of 17 January 2011

Panel: Mr Martin Schimke (Germany), President; Mr José Juan Pintó (Spain); Mr Maurizio Cohen (Monaco)

Football
Early termination of a contract of employment entered into between a club and a coach
Applicable law
Late submissions
Contractual compensation for early termination of the contract
Inapplicability of the duty to mitigate the damage in case of liquidated damages

1. **According to art. R58 of the Code of Sports-related Arbitration, the law applicable to the merits is the law chosen by the parties. As long as the wording of the applicable contract clearly indicates the equality of both FIFA Regulations and of a national law, both sets of rules are applicable without one prevailing on the other.**

2. **Under art. R55 par. 2 of the Code of Sports-related Arbitration, only exceptional circumstances justify the acceptance by a panel of late submissions.**

3. **Under the termination terms of the contract, the attempt of the parties to quantify a loss connected to an early termination of the contract in advance is a kind of liquidated damages. Such understanding of the contract neither disrespects the principal of equal treatment of the parties nor contradicts the parties' will in accordance with the principle *pacta sunt servanda*. The liquidated damages include damages caused by an early termination of the contract, e.g. future salaries due after the termination's effective date. The payment of a contractual compensation which covers (only) liquidated damages in case of early termination of a contract cannot be considered as compensation of all financial terms contained in the contract. Therefore, the club that terminated the contract is not relieved from the payment of the salaries due before the termination took effect.**

4. **The generally accepted duty to minimize the loss in case of breach of contract does not apply where a predetermined agreement between the parties on the compensation as liquidated damages considers on the one hand a lump sum independent of the real amount of the damages and on the other hand the freedom of contracting after the termination without any restriction, in particular without any reduction of the lump sum.**

Al-Khor Sports Club (*"the Appellant"* or *"the Club"*) is a football club with its registered office in Al-Khor, Qatar. It is affiliated to the Qatar Football Association (QFA) which itself is affiliated to the Fédération Internationale de Football Association (FIFA).

Mr Jean-Paul Rabier (*"the Respondent"* or *"the Coach"*) is a professional football coach of French nationality. At present, he is the coach of the national team of Madagascar.

On 29 May 2007, the Appellant and the Respondent signed an agreement titled "Football Coach's Contract" ("the Contract") according to which the Respondent was employed by the Appellant as a professional football coach for the Appellant's first team from 1 July 2007 until 30 June 2008. In the Contract the parties stated the terms of termination as follows:

"Article VIII: Termination by the Club or the Coach

1. *The Club and the Coach shall be entitled to terminate this Contract, before its expiring term, by thirty (30) days' notice in writing according with the FIFA Regulations governing this matter as well as the Law of the State of Qatar.*
2. *In the case provided under the previous comma 1 and when the termination of the Contract is not due to a just cause or a mutual agreement between the Parties concerned, the Club or the Coach shall be entitled to receive from the other party in breach of the contract a compensation for an amount of 100.000 $ (One hundred thousand USA Dollars)".*

The agreed remuneration was stated in the "Football Coach's Contract Schedule" on page 8 of the Contract ("the Payment Schedule"). It reads in pertinent part as follows:

"(a) 400.000 $ (total amount)

Four hundred thousand USA Dollars only.

(b) Signing on fee

100.000 $ (One hundred thousand USA Dollars only) on 1, July 2007.

100.000 $ (One hundred thousand USA Dollars only) on 1, October 2007.

(c) Monthly salary.

16.666 $ (Sixteen thousand and sixty hundred sixty six USA Dollars only). Per moth [sic] from 30. July 2007, until 30, June 2008.

(d) Other benefits in favour of the Player:

[...]".

On 30 May 2007, only one day after the signing of the Contract, the parties signed a second agreement titled "Contract Supplement" ("the Supplement Agreement") which reads in pertinent part as follows:

"The two parties agreed

1. *The first party (Al Khor Sports Club) and represented by Mr. Rashed Ali Al- Mohannadi vice president.*
2. *The Second party (French Coach) John Paul Rabier and carries a French passport number (06BV52961).*

- *The second party will training the first team of football club starts in season 2007 / 2008 are estimated at $ 100.000 (only one hundred thousand dollars) in addition to the amount of the first contract.*
- *to pay the amount of $ 50.000 (50th thousand dollars) dated 1, July 2007 and the rest 50.000 dollars (fifty thousand dollars) 1, October 2007, as agreed follows:*
    1. *This contract as a supplement and complement to the basic contract signed between the two parties earlier dated in 29, May 2007.*
    2. *In the event of the conflicts of the contract for any reason between the parties, the Second party binding to return a amount of $ 100.000 (one hundred thousand dollars) to the first party.*

[...]" (sic).

Thereafter, the Club made several payments to the Coach. It provided the Coach with two cheques for Qatari Riyals (QAR) 182,500.- each (corresponding to USD 50,000.- each). The Coach acknowledged receipt of both cheques by confirmation letters. Furthermore, the Club paid to the Coach the first three monthly salaries of USD 16,666.- each via bank transfer to the Coach's bank account at the Qatar National Bank.

On 7 November 2007, after returning from a training camp, the Coach received an undated letter from the Club informing him that his services as coach of the first team were no longer needed. The Coach left the State of Qatar in the following days.

On 14 November 2007, the Coach lodged a complaint with FIFA against the Club for breach of Contract without just cause. He requested the amount of USD 337,220.- consisting of outstanding salaries (USD 37,220.-) and the outstanding signing fee (USD 200,000.-) as well as compensation pursuant to Article VIII par. 2 of the Contract (USD 100,000.-). In addition, he asked for the reimbursement of flight tickets as well as a lump sum for further damages. Moreover, he requested a declaration from FIFA that the clause contained in the Supplement Agreement obliging him to refund USD 100,000.- to the Club in the event of a conflict between the parties be declared null and void.

At the beginning of 2008, the Coach entered into an employment agreement whereby he was engaged as coach of the Japanese club FC Ryūkyū for the period from 20 January to 20 December 2008. An appendix of the employment agreement stipulated a remuneration in the total amount of EUR 110,000.- paid in eleven monthly instalments of EUR 10,000.-.

In February 2010, the case file was submitted to the Single Judge of the FIFA Players' Status Committee ("the FIFA Judge") for consideration and a formal decision.

On 5 March 2010, the FIFA Judge rendered the following decision ("the FIFA Decision"):

"1. *The claim of the Claimant, Jean-Paul Rabier, is partially accepted.*

2. *The Respondent, Al-Khor Sports Club, has to pay to the Claimant, Jean-Paul Rabier, the amount of USD 237,220 within 30 days as from the notification of this decision.*

3. *Any further claims lodged by the Claimant, Jean-Paul Rabier, are rejected.*

4. *If the aforementioned sum is not paid within the aforementioned deadline, an interest rate of 5% per year will apply as of expiry of the fixed time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*

5. *The Claimant, Jean-Paul Rabier, is directed to inform the Respondent, Al-Khor Sports Club, immediately and directly of the account number to which the remittance is to be made and to notify the Players' Status Committee of every payment received.*

6. *The costs of the proceedings in the amount of CHF 10,000 are to be paid in equal shares by both parties to the dispute. [...]".*

On 12 March 2010, the findings of the FIFA Decision were sent to the parties by facsimile. The fax-letter contained a note stating that *"a request for the grounds of the decision must be sent, in writing, to the FIFA general secretariat within 10 days of receipt of the notification of the findings of the decision"*. Within this time limit, the Qatar Football Association (QFA) made a request on the Club's behalf for the grounds of the FIFA Decision.

On 16 June 2010, FIFA notified the reasons of the FIFA Decision to the Parties and to the QFA. These reasons can be summarized as follows:

- As to the Club's argument that Qatari law should be taken into account, the FIFA Judge held that since the parties had referred the dispute to the competent judicial bodies of FIFA and had recognized FIFA's competence in this matter, FIFA Regulations should therefore be applicable and not Qatari law.
- The Contract and the Supplement Agreement were valid and binding on both parties and not abusive in any way. In particular, the amount of USD 100,000.- stated under the first bullet point of the Supplement Agreement constituted in fact a supplementary amount to be paid by the Club to the Coach in addition to the sum of USD 400,000.- already agreed upon in the Contract.
- The FIFA Judge concluded that the Club had not respected all terms of the contractual relationship entered into by the parties: the signing fee of USD 200,000.- and the salaries in the total amount of USD 37,220.- were still outstanding.
- Considering that the Contract had not been terminated on the basis of a mutual agreement and that the Club could not prove a just cause to dismiss the Coach, a compensation of USD 100,000.- as stipulated in Article VIII par. 2 of the Contract (hereinafter "the Compensation") should be paid to the Coach. However, the amount paid by the Club to the Coach under the terms of the Supplement Agreement (2 x USD 50,000) should be reimbursed by the Coach to the Club because of the reimbursement clause in No. 2 of the Supplement Agreement. Consequently, the FIFA Judge held that there was an offset of these amounts and that they should not be paid or reimbursed.
- Due to the fact that the terms of the Contract, in particular Article VIII par. 2, provide for a mechanism of compensation in case of breach of contract without just cause the claim for an additional amount for damages was rejected. Furthermore, the claim for compensation for flight tickets was not accepted because the Coach had not provided any evidence pertaining to the price of the relevant flight tickets.

On 6 July 2010, the Club filed a statement of appeal with the CAS directed against the Coach with respect to the FIFA Decision of 5 March 2010 and paid the Court Office CHF 500.-.

The statement of appeal contains the following request:

"1. To fully accept the present Appeal.

2. As consequence, to partially update the appealed Decision of the FIFA Single Judge of the Players' Status Committee passed in Zurich, Switzerland on 5 March 2010, stating that the claims lodged by the Coach Jean-Paul Rabier are rejected and, therefore, Al-Khor Sports Club shall not pay any amount to the Respondent as well as that the Respondent shall pay any and all costs of the proceedings before the Single Judge of the Professional Player's Committee equal to CHF 10,000,00/- (Ten Thousand Swiss Francs Only).

3. For the effect of the above, to state that the Respondent shall be condemned to pay any and all costs of the present arbitrational proceedings including, without limitation, attorney's fee as well as any eventual further costs and expenses for witnesses and experts".

On 12 July 2010 the CAS Court Office informed FIFA about the statement of appeal and asked, according to Article R41.3 of the Code of Sports-related Arbitration (2010 edition) ("the Code"), whether FIFA intended to participate as a party in the arbitration. By letter dated 13 July 2010, FIFA renounced its right to request an intervention but provided the CAS Court Office with a clean copy of the FIFA Decision.

On 17 July 2010, the Appellant filed its appeal brief. Its request contained in the statement of appeal was amended with an alternative request as follows:

"IN THE ALTERNATIVE

4. To partially accept the present Appeal.

5. As consequence, to partially update the appealed Decision of the FIFA Single Judge of the Players' Status Committee passed in Zurich, Switzerland on 5 March 2010, stating that the claims lodged by the Coach Jean-Paul Rabier are rejected insofar as Al-Khor Sports Club is condemned to pay to the Respondent an amount exceeding USD 61,110.43/- (Sixty One Thousand One Hundred and Ten US Dollars and Forty Three Cent).

6. As consequence, to state that the Respondent shall pay any and all costs of the proceedings before the Single Judge of the Professional Player's Committee equal to CHF 10,000,00/- (Ten Thousand Swiss Francs Only).

7. For the effect of the above, to state that the Respondent shall be condemned to pay any and all costs of the present arbitrational proceedings including, without limitation, attorney's fee as well as any eventual further costs and expenses for witnesses and experts".

By letter of 20 July 2010, in accordance with Article R55 of the Code, the CAS Court Office invited the Respondent to file an answer within 20 days of its receipt (the Respondent received the appeal brief on 22 July 2010 and its Answer was therefore due on Wednesday, 11 August 2010). On 14 August 2010, the Respondent filed a document dated 12 August 2010 entitled "Exposé de la défense" which was written in French (hereinafter "the Answer").

The CAS Court Office did not receive any communication from the Respondent regarding the nomination of an arbitrator. On 28 September 2010, the CAS Court Office informed the parties that the Panel had been constituted in accordance with Article R53 of the Code as follows: Dr Martin Schimke, President of the Panel, Mr José Juan Pintó and Mr Maurizio Cohen, arbitrators. The parties did not raise any objection as to the constitution and composition of the Panel.

By letter of 7 October 2010, the Panel requested that the Respondent submit information and documents regarding his employment situation between 1 November 2007 and 30 June 2008. Thereafter, the Respondent's counsel provided the CAS Court Office with a copy of a contract titled "Coach Agreement for 2008" by which the Respondent was engaged as coach of the Japanese club FC Ryūkyū.

On 10 November 2010, after the parties submitted their comments on the admissibility of the Answer, the CAS Court Office informed the parties of the Panel's decision that, pursuant to Articles R55 and R32 of the Code, the Answer was late and therefore not admissible. As a consequence, any discussion as to whether the Answer should be translated into English was moot. Moreover, the parties were requested to inform the CAS Court Office whether their preference was for the Panel to hold a hearing in this arbitration.

On 14 November 2010 and on 22 November 2010 the counsels of the Respondent and of the Appellant respectively agreed to waive a hearing and that the Panel may decide the matter based on the parties' written submissions. In light of the parties' positions and pursuant to Article R57 of the Code, the Panel deemed itself to be sufficiently well informed and decided not to hold a hearing.

LAW

CAS Jurisdiction

1. The jurisdiction of the CAS, which is not disputed, derives from Article R47 par. 1 of the Code as well as Article 23 par. 3 of the FIFA Regulations on the Status and Transfer of Players and Art. 63 par. 1 of the FIFA Statutes.

2. Article R47 par. 1 of the Code provides as follows:

   "An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".

3. The last sentence of Article 23 par. 3 of the FIFA Regulations on the Status and Transfer of Players provides as follows:

"Decisions reached by the single judge or the Players' Status Committee may be appealed before the Court of Arbitration for Sport (CAS)".

4. Article 63 par. 1 of the FIFA Statutes supplements the aforementioned provision relating to the time limit for filing an appeal with the CAS. It reads as follows:

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

5. The Appellant appealed the FIFA Decision, i.e. a decision of the Single Judge of the FIFA Players' Status Committee of 5 March 2010. It follows that the CAS has jurisdiction to decide on the present dispute.

6. Under Article R57 of the Code, the Panel has the full power to review the facts and the law. The Panel therefore dealt with the case *de novo*, evaluating all facts and legal issues involved in the dispute.

Applicable law

7. Article R58 of the Code provides as follows:

   "The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

8. Due to the fact that the present dispute is of a contractual nature relating to the Contract and the Supplement Agreement, these individual agreements take precedence in this arbitration.

9. In the Contract, the Appellant and the Respondent agreed in Article X titled "Law and Jurisdiction" that *"[i]n case of any contractual dispute the applicable law shall be the Law of the State of Qatar as well as the FIFA, AFC and QFC Regulations governing this matter"*. In addition, Article VIII par. 1 of the Contract states that a termination of the Contract is only valid under the terms of this provision *"according with the FIFA Regulations governing this matter as well as the Law of the State of Qatar"*. The Supplement Agreement does not contain a provision regarding the applicable law but refers in general to the Contract (*"This contract as a supplement and complement to the basic contract signed between the two parties earlier dated 29, May 2007"*) and therefore also to Articles VIII and X of the Contract. Regarding Qatari Law the Appellant refers to Article 54 of the Qatar Labour Law no. (14) of the year 2004 ("the Qatar Labour Law Act").

10. According to Article R58 of the Code, the Panel shall at first observe the law the parties have chosen. Only if there is no such choice is the Panel allowed to consider the law of the country in which the judging body is domiciled or the law the Panel deems appropriate. Due to the fact that in the present case the parties explicitly agreed on the application of specific laws (Qatari Law as well as FIFA, AFC and QFC Regulations), the second option under Article R58 of the

Code is irrelevant. This is also in line with Article 187 par. 1 of the Swiss Private International Law Act (PILA) which in its English version states as follows: *"The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected"*.

11. The fact that the FIFA, AFC and QFC Regulations are rules of private organisations does not change this result. It is generally accepted that the parties may choose a system of rules which is not the law of a State and that such a choice is consistent with Article 187 PILA (see CAS 2006/A/1180, par. 6 with several references).

12. The Appellant requests that the present dispute shall be resolved at first in accordance with Qatari Law and only in addition with the relevant FIFA Regulations. However, the wording of Articles VIII and X of the Contract indicates the equality of both laws. In particular, the conjunction "as well as" emphasizes that none of them shall prevail. If the parties intended the laws to be ranked they could have used another wording like "in addition" or "subsidiary". Furthermore, in Article VIII of the Contract the expression "FIFA Regulations" stands in the first position, i.e. in front of the conjunction, followed by the expression "Law of the State of Qatar" whereas in Article X of the Contract it is the other way round. Thus, pursuant to the actual wording in the Contract the regulations and provisions stated in Articles VIII and X of the Contract as the applicable law in the present dispute are equal.

13. In the FIFA proceedings the Single Judge established that since the parties to the present dispute had recognized the FIFA's competence in this matter, FIFA's Regulations should be applicable and not Qatari Law. But, even if Qatari Law was applicable in the FIFA proceedings, Article 54 of the Qatar Labour Law Act would not have changed the result of the FIFA Decision. The Panel finds that this provision does not restrict the Respondent's entitlement to the sums due under the Contract.

14. The Respondent's request in its submissions of 31 October 2010 that French Law be the applicable law is not accepted by the Panel. French Law is not mentioned in any of the agreements between the parties. Being bound by the terms of Article R58 of the Code the Panel does not see any legal basis to adopt French Law as the applicable law.

15. Thus, the applicable law in this arbitration is the law chosen by the parties, i.e. Qatari Law as well as the FIFA, AFC and QFC Regulations of which none prevails.

Admissibility

16. The appeal was filed within the deadline provided by Article 63 par. 1 of the FIFA Statutes and stated on the last page of the FIFA Decision, that is 21 days after notification of such decision: the grounds of the FIFA Decision were notified to the parties by FIFA on 16 June 2010 and the statement of appeal was filed by the Appellant on 6 July 2010. The Appellant complied with all of the other requirements of Article R48 of the Code, including the payment of the Court Office fee. It follows that the appeal filed by the Appellant is admissible, which is undisputed.

17. The Answer was not filed in due time. Therefore, the Panel decided that it was inadmissible for the following reasons:

18. On 20 July 2010 the CAS invited the Respondent to file an answer within 20 days of receipt of the said communication. According to the courier delivery report the CAS letter was delivered on 22 July 2010 and thus the deadline to file the Answer expired on 11 August 2010. The Respondent's answer is dated 12 August 2010 and was filed on 14 August 2010. Hence, it was outside of the granted deadline.

19. Article R55 par. 2 of the Code states the following: *"If the Respondent fails to submit its response by the given time limit, the Panel may nevertheless proceed with the arbitration and deliver an award"*. Thus, on the one hand the Code orders that the Panel shall proceed with the arbitration but on the other hand it neither states that late submissions shall not be accepted under any circumstances nor under which (exceptional) circumstances the Panel shall accept submissions which were filed outside the given deadline.

20. Even if the Panel had discretion to accept late submissions, in the case under consideration the Answer would be inadmissible due to the absence of exceptional circumstances.

    a. The Respondent's argument of a breakdown of the office's fax system does not establish an exceptional circumstance which could justify the acceptance of the submission due to the fact that in accordance with Article R31 of the Code communication from the parties to the CAS shall be sent by courier <u>or</u> facsimile. Thus, in the case of a breakdown of the fax system there was still the possibility to send the communication by courier.

    b. The argument that the Respondent and his counsel could not liaise with each other due to their personal summer holidays until two days before "11 July 2010" shall in general not be deemed as exceptional circumstances and, in particular, not due to the fact that the appeal brief was delivered on 22 July 2010, i.e. eleven days after the 11 July 2010.

    c. The argument that the expiry of the time limit was on the weekend is incorrect. Although Article R32 par. 1 of the Code states that *"If the last day of the time limit is an official holiday or a non-business day in the country where the notification has been made, the time limit shall expire at the end of the first subsequent business day"* and although Thursday and Friday constitute the weekend in Qatar, the 11 August 2010 (i.e. the date on which the time limit expired) was a Wednesday and therefore a business day.

21. In any event, the Respondent did not provide the CAS with any evidence to support his assertions. Additionally, the Respondent could have requested an extension to the time limit but did not exercise this option.

Merits of the Appeal

22. It is undisputed that according to Article VIII par. 2 of the Contract the Coach is entitled to compensation in the amount of USD 100,000.- due to the Club's termination of the Contract

("the Compensation"). The Club exercised its right stipulated in Article VIII par. 1 of the Contract to terminate the Contract before its expiration date. Since the termination was without just cause and not due to a mutual agreement, the Club was obliged to pay the Compensation to the Coach.

23. It is also undisputed that, according to Article 2 no. 2 of the Supplement Agreement, the Coach is obliged to return the amount of USD 100,000.- to the Club because of *"conflicts of the contract for any reasons between the parties"*.

24. In addition, the Club has accepted the FIFA Judge's finding as regards the offset of the amounts of USD 100,000.- each (on the one hand to be paid from the Club to the Coach pursuant to Article VIII par. 2 of the Contract and on the other hand to be returned from the Coach to the Club under the Supplementary Agreement's terms).

25. Hence, the present dispute is not about the payment of USD 100,000.- according to Article 2 no. 2 of the Supplement Agreement and not about the payment of the Compensation according to Article VIII par. 2 of the Contract. The present dispute is rather about the further amounts the Respondent is awarded in the FIFA Decision, i.e. the signing fee in the amount of USD 200,000 and outstanding salaries amounting to USD 37,220.-.

26. Therefore, the main issues to be resolved by the Panel are:

    A Does the payment of the Compensation relieve the Club from any payment obligations under the Contract?

    B If not, is the Coach entitled to the following amounts awarded to him by the FIFA Decision:

      a. Signing fee in the amount of USD 200,000.-?

      b. Salaries amounting to USD 37,220.-?

    C If the Coach is entitled to any of the aforementioned amounts, has the Panel to consider the following elements?

      a. The Respondent's remuneration after the termination of the Contract;

      b. Article 54 of the Qatar Labour Law Act.

A. Does the payment of the Compensation relieve the Club from any payment obligations under the Contract?

27. The Appellant submits that the Compensation has to be considered as *"of predetermining nature with regards to the damage of a party should the other breach the Contract without just cause"*. The Panel agrees with this opinion, in particular with the reference to the categorisation of such compensation, i.e. to compensate a party for the damages triggered by breach of contract.

28. The Appellant then submits that according to the legal principal *pacta sunt servanda* the Compensation has also to be considered *"as conclusive concerning all amounts under the Contract's financial terms and conditions"*. In addition, the Appellant submits that the Compensation shall

explicitly replace any salary *"not yet due"* or salary which *"would not amortize"* and shall not be paid in addition to such salary.

29. The Panel finds that the rationale behind Article VIII par. 2 of the Contract, mentioned by the Appellant as "the ratio", is the attempt of the parties to quantify a loss connected to an early termination of the Contract in advance and that, therefore, the Compensation is a kind of liquidated damages. Such understanding of Article VIII par. 2 of the Contract neither disrespects the principal of equal treatment of the parties nor contradicts the parties' will in accordance with the principle *pacta sunt servanda*.

30. To determine the parties' actual will the Panel had to interpret the relevant provision, i.e. Article VIII par. 2 of the Contract, in the context of the entire agreement. The wording of Article VIII par. 2 of the Contract itself only says that if one party breaches the Contract the other party will be entitled to the Compensation. Moreover, the Panel has not found any wording that would support the Club's allegation and the parties did not define the term "compensation". The Club does not submit that the parties had explicitly discussed this issue before signing the Contract.

31. The parties clearly separated the remunerations stated in the Payment Schedule and the liquidated damages stipulated only under the termination terms of the Contract, i.e. Article VIII of the Contract. The liquidated damages include damages caused by an early termination of the Contract, e.g. future salaries due after the termination's effective date. Payments due before the termination's effective date have to be paid in addition. This is not the question of a "duplicate benefit" because there is no double payment regarding one title. The Compensation and the remunerations stipulated in the Payment Schedule are based on different legal grounds.

32. Thus, the Panel finds that the parties have agreed the Compensation (only) as liquidated damages in case of early termination of the Contract and not as compensation of all financial terms contained in the Contract.

B. Is the Coach entitled to the amounts awarded to him by the FIFA Decision?

33. Because the payment of the Compensation does not relieve the Club from the payment obligations under the Contract's terms the Panel has to decide whether the Coach is entitled to the amounts awarded to him in the FIFA Decision, i.e. the signing fee of USD 200,000.- and outstanding salaries amounting to USD 37,220.-.

a) Is the Coach entitled to the signing fee in the amount of USD 200,000.-?

34. The Contract stipulates in the Payment Schedule that the two instalments of the signing fee in the amount of USD 100,000.- each were due on 1 July and 1 October 2007. However, the Club submits that when the parties entered into the Supplement Agreement they agreed a postponement of the payments and that the parties deemed the signing fee as advance salary payments to be amortised *pro rata* over the relevant period of the Contract.

aa) Postponement of the signing fee payments?

- The Club fails to submit any specific information or evidence in which way the parties postponed the payments, e.g. new payment dates. Therefore the Club's allegation is not substantiated. Moreover, if the parties wanted to amend the Contract in such an important aspect they could have easily recorded the respective agreement in written form in the Supplement Agreement. This is especially the case in light of the fact that, as the Appellant alleges the *"postponement"* was agreed *"when entering into the Supplementary Agreement"*. If such an agreement was in fact made the Panel does not understand why it was not recorded in writing.
- Irrespective of the above, in any event, the Appellant explicitly refers to a *"postponement/delay"* not a *"release/waiver"* of the signing fee. The Panel sees no reason, in the absence of contractual provision so providing, that it should assume that the Respondent's entitlement to the signing fee is extinguished merely because the contract was terminated. As the parties have not put forward different payment dates, the Panel finds that the payment dates stipulated in the Payment Schedule are still effective, i.e. 1 July 2007 and 1 October 2007.

ab) The signing fee as advance salary payments?

- The Club submits that according to *"the pertinent and well-established jurisprudence of the CAS as well as the Judicial Bodies of FIFA"*, signing fees must be understood as advance salary payments for the period for which they are paid. However, the Club failed to submit any relevant decisions of the CAS or FIFA. Moreover, it follows up with the allegation that such advance salary payments performed by a club amortizes over the relevant period in return for the services provided by an employee.
- Although the Club did not provide references to CAS or FIFA decisions, the Panel carried out some research of relevant jurisprudence rendered by CAS or FIFA (examples include: CAS 2008/A/1644; CAS 2007/A/1205; CAS 2005/A/866; FIFA DRC 35243_1058; and FIFA DRC 35918_1030). The result of such research has not shown a *"pertinent and well-established jurisprudence"* as alleged by the Appellant but instead turned up CAS 2006/A/1024 in which the respective Panel awarded the full signing-on fee stipulated in the employment contract to the player:
    - In the appealed decision rendered by the FIFA Dispute Resolution Chamber the player had been awarded only an amount *pro rata* for the period until he had left his club and had returned to his home state. However, the CAS Panel in charge has decided to award the full fee because the full amount was due and payable prior to the unilateral termination by the club.

- Because the Panel could not find the pertinent jurisprudence alleged by the Appellant, the Panel is of the view that it is required to interpret the Contract and especially the Payment Schedule.
    - The signing fee is stipulated in the Payment Schedule which at first states the "total amount" under its lit. a. Thereafter it lists the "signing on fee" (lit. b), the "monthly

salary" (lit. c) and "other benefits: bonuses" (lit. d). The Payment Schedule clearly distinguishes between the different kinds of remuneration. Furthermore, the salary was payable in monthly instalments while the signing fee had to be paid on specific payment dates not connected to the payment dates of the salary or even the bonuses. The structure of the Payment Schedule indicates that the parties treated the signing fee differently from the salary. The total amount under lit. a of the Payment Schedule only shows the total sum which had to be paid during the Contract, i.e. the value of the Contract.

- The Panel would like to point out at this stage that it has not overlooked the issue of Article 17 of the FIFA Regulations on the Status and Transfer of Players (the "Regulations). However, as was made clear in recent CAS case law (CAS 2008/A/1464 & 1467) *"…the Regulations concern players not coaches. Moreover, the FIFA Regulations no longer contain the provision which appeared in Article 33.4 of their 2001 version which equated coaches with players…"*. It is accordingly the Panel's view that there is no involuntary loophole in the Regulations which would allow it to "fill the gap" and apply Article 17 to coaches (as it is clear FIFA does not intend the Regulations to apply to coaches and if it wants them to then it is up to it, as legislator, to make such a change).
- Additionally, the Panel sees no reason to apply the legal principles, established by CAS and FIFA when applying Article 17 to players, to coaches in order to determine in what circumstances a partially unpaid signing on fee is due to the coach in its totality. In this regard it is important to note that Article 17, even if it or the general legal principle associated with it were applicable to coaches generally, concerns the calculation of compensation for damages. In the present case, the signing fee has never been regarded as compensation for damage as covered by Article 17. In the FIFA procedure the Coach claimed for the "payment" of the signing on fee. The Club also never claimed for damages but argued that the signing fee should be considered as "advance salary". It seems that the Club only wanted to split the signing on fee into monthly instalments corresponding to the contract term. This is not "amortization" in the sense of Article 17.
- The Panel also notes that the Club terminated the Contract. If the signing on fee was principally (i.e. without the explicit consent of the Coach) considered as an amount owed on a *pro rata* basis, at any time during the contract term the Club alone would have been in the position to decide (by issuing notice of termination) how many instalments of the signing on fee would be paid to the Coach. In the Panel's view, this does not reflect the will of the parties at the time of entering into the Contract.

35. The Panel finds that the "signing on fee" stipulated in the Payment Schedule was a reward to the Coach for joining the Club and not linked to the terms of the agreement. Therefore, the two payments of the signing fee were due in the full amount on the dates stated in the Payment Schedule, i.e. an amount of USD 100,000.- on 1 July 2007 and a further amount of USD 100,000.- on 1 October 2007. In line with CAS 2006/A/1024, the Panel awards these sums amounting to a total of USD 200,000.- to the Coach.

b) Is the Coach entitled to salaries amounting to USD 37,220.-?

36. It is undisputed that the Club had only compensated the Coach until the end of September 2007. Thus, the salary for the period from 1 October 2007 to the end of the Contract, i.e. 7 December 2007, is still outstanding. The termination letter was received by the Coach on 7 November 2007. Considering the 30-day notice period stipulated in Article VIII par. 1 of the Contract, the effective date of the Club's termination was on 7 December 2007.

37. Even though the Club contests its obligation to make payments for the period from November 2007, this does not mean that it alleges the effective date of the termination was before 7 December 2007. The Club's challenge is based on the argument that all financial claims are precluded due to the payment of the Compensation. It did not submit that the Coach would generally not be entitled to salary for the notice period. Besides, the Club refers several times to the rules in Article VIII of the Contract and requests its alleged rights be based thereon. Thus, the Panel is convinced that the Appellant wanted to follow the termination procedure agreed in Article VIII par. 1 of the Contract, in particular, the 30-day notice period.

38. The fact that the Coach actually provided his service until the end of the training camp on 7 November 2007 (and not only until the end of October 2007 as alleged in the Appeal brief) is irrelevant because it was the Club's decision to suspend the Coach immediately after submitting the termination letter and not to ask for his services for the full notice period until 7 December 2007.

39. The salaries were all due before the termination took effect and can therefore not be covered by the Compensation:

- The regular salary for the period from 1 October to 7 November 2007 amounts to USD 20,554.-. According to the Payment Schedule, the salary for October 2007 in the amount of USD 16,666.- was due on 30 October 2007 and the salary for the period from 1 to 7 November 2007 in the amount of USD 3,888.- was due at least on 30 November 2007.
- The salary for the notice period is equal to a monthly salary in the amount of USD 16,666.-. Its due date was at least on the last day of the Contract, i.e. 7 December 2007, and therefore was also not after the effective date of the termination.

40. Hence, the Panel finds that the Coach is entitled to salaries amounting to USD 37,220.- in total.

C. Respondent's remuneration after the termination and Article 54 of the Qatar Labour Law as limitation of the awarded entitlements?

41. Because the Coach is generally entitled to all amounts awarded to him in the FIFA Decision, the Panel has to consider whether the Respondent's remuneration after the termination of the Contract or Article 54 of the Qatar Labour Law Act would change the aforementioned result.

a) Has the Respondent's remuneration after the termination of the Contract to be considered in the decision about his financial claims?

42. After his departure from the Club the Coach entered into an employment agreement whereby he was engaged as coach of a Japanese football club for the period from 20 January to 20 December 2008. An appendix of the respective employment agreement stipulated monthly payments of EUR 10,000.- beginning on 20 February 2008 and payable on or before the 20th of each month. Therefore, in the relevant period until 30 June 2008 the Coach was entitled to an amount of EUR 50,000.- in total.

43. In the present dispute, the generally accepted duty to minimize the loss in case of breach of contract does not apply because of the parties' predetermined agreement on the Compensation as liquidated damages. Such an agreement considers on the one hand a lump sum independent of the real amount of the damages and on the other hand the freedom of contracting after the termination without any restriction, in particular without any reduction of the lump sum. The Panel notes that the Coach entered into his new employment contract about two months after the termination of the Contract took effect and all payments received by his new club were paid even later. Therefore, he was free to contract without any restriction.

44. The Panel finds that the Coach's remuneration after the termination of the Contract does not have to be taken into account.

b) Does Article 54 of the Qatar Labour Law restrict the Respondent's entitlement to the sums due under the Contract?

45. Regarding Qatari law the Club refers to Article 54 of the Qatar Labour Law only and not to any other provision of that code or any other Qatari Law.

46. Pursuant to the Appellant's exhibits Article 54 of the Qatar Labour Law Act reads in English as follows:

"In addition to any sums to which the worker is entitled to upon the expiry of his service, the employer shall pay the end of service gratuity to the worker who has completed employment of one year or more. This gratuity shall be agreed upon by the two parties, provided that it is not less than a three-week wage for every year of employment. The worker shall be entitled to gratuity for the fractions of the year in proportion to the duration of employment.

The worker's service shall be considered continuous if it is terminated in cases other than those stipulated in article (61) of this Law and is returned to service within two months of its termination.

The last basic wage shall be the base for the calculation of the gratuity.

The employer is entitled to deduct from the service gratuity the amount due to him by the worker".

47. The Panel wants to emphasise the first sentence of Article 54 of the Qatar Labour Law Act where it is stated that *"in addition to any sums to which the worker is entitled to upon the expiry of his services the employer shall pay the end of service gratuity"*. Therefore, and in contrast to the Appellant's

submission, Article 54 of the Qatar Labour Law does not say that an employee shall not be entitled to *"any compensation"* in case of breach of contract should he not have completed one entire contractual years service.

48. The Panel is of the view that the *"end of service gratuity"* appears to be a type of statutory severance payment that Qatari employees are entitled to if they are dismissed after completing at least one year of service. Such gratuity is payable *"in addition to any sums to which the worker is entitled to"* at the time of termination. Thus, if the Coach had been an employee for at least one year he would be entitled to such an end of service gratuity in addition to the contractually agreed compensations and other financial terms. As he was dismissed before the completion of at least one year's service the Coach (like every employee in Qatar) is only entitled to the amounts stipulated in the respective contractual agreements.

49. The Panel finds that Article 54 of the Qatar Labour Law Act does not restrict the Respondent's entitlement to the sums due under the Contract.

Conclusion

50. In summary, the Panel concludes that

    a. the Compensation stipulated in Art. VIII par. 2 of the Contract has to be seen as liquidated damages in case of early termination of the Contract and that the payment of the Compensation does not relieve the Appellant from its payment obligations under the Contract's terms;

    b. the Respondent is entitled to the outstanding signing fee in the amount of USD 200,000.- because the signing fee is a reward for joining the Appellant and not linked to the Contract's term of validity and because the Appellant did not prove its allegation of a postponement agreement between the parties in regard to the payments of the signing fee;

    c. the Respondent is entitled to outstanding salaries amounting to USD 37,220.- because they all were due before the termination of the Contract took effect;

    d. the Coach's remuneration after the termination of the Contract does not have to be taken into account and Article 54 of the Qatar Labour Law does not restrict the Respondent's entitlement to the sums due under the Contract.

51. Considering the circumstances of the FIFA case, in particular that the FIFA Judge explained his decision on the costs in detail, and taking into account that the Respondent is entitled to all the amounts awarded to him in the FIFA Decision, the Panel sees no reasons to revise the FIFA Judge's decision on the costs of the FIFA proceedings.

52. Based on the foregoing and after taking into due consideration all admissible submissions, evidence produced and arguments made, the Panel finds that the Appellant's appeal is rejected and that the FIFA Decision of 5 March 2010 is upheld.

The Court of Arbitration for Sport rules:

1. The appeal filed by Al-Khor Sports Club on 6 July 2010 is rejected.

2. The decision of the Single Judge of the FIFA Players' Status Committee taken on 5 March 2010 is upheld.

(…)

5. All other or further claims are dismissed.