Arbitration CAS 2013/A/3354 Abdelali Boussaboun v. Al-Nasr S.C., award of 30 September 2014

Panel: Mr Fabio Iudica (Italy), Sole Arbitrator

Football
Breaches of a contract of employment entered into between a player and a club
Deregistration of a player by a club

According to the CAS jurisprudence, in absence of compelling evidence that a player was absent from official matches and training sessions, it appears that by deregistering a player, a club committed an infringement of the employment contract, preventing the player from being fielded in competitive matches of the club, which also affects his personality rights with regard to his sporting activity, professional freedom and economic development. Moreover, the failure to pay the player's remuneration as of the deregistration constitutes another breach of the contract by the club. As a consequence, from this moment on, a club is not entitled to demand performance of the player's obligations. On the other hand, the player is entitled to receive remuneration of the outstanding salaries from the deregistration until the expiration of the contract.

I. INTRODUCTION

1. This appeal is brought by Mr Abdelali Boussaboun (hereinafter also referred to as "the Player" or "the Appellant"), against the decision issued by the FIFA Dispute Resolution Chamber (hereinafter also referred to as the "FIFA DRC") on 31 July 2013 (hereinafter also referred to as "the Appealed Decision") regarding an employment-related dispute between the Appellant and Al-Nasr S.C.

II. THE PARTIES

2. Mr Abdelali Boussaboun is a professional football player, born in Tangier (Morocco) on 18 June 1979 and citizen of the Netherlands.

3. Al-Nasr S.C. (hereinafter also referred to as "the Club" or "the Respondent") is a professional Football Club based in Dubai, United Arab Emirates, competing in the UAE Arabian Gulf League, member of the United Arab Emirates Football Association which is affiliated to FIFA.

III. THE CHALLENGED DECISION

4. The Appealed Decision is the decision rendered by the FIFA DRC on 31 July 2013, on the claim lodged by the Player against the Club regarding an employment-related dispute between the parties.

IV. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions and relevant documentation produced. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

6. On 7 July 2009, the Player and the Club concluded an employment contract valid as from 15 July 2009 until 14 July 2010 (hereinafter referred to as the "Employment Contract") according to which the Club undertook to pay a total remuneration of EUR 800,000, of which EUR 300,000 became payable on 15 July 2009 and EUR 500,000 were divided into 12 equal monthly instalments of EUR 41,666 to be *"paid on the first week of each month"*.

7. According to the Employment Contract, the Player was also entitled to receive other benefits, such as a 4x4 car including insurance and maintenance, a fully furnished three bedroom accommodation, five round trip business class air tickets per year (Dubai – Amsterdam –Dubai) and medical health insurance.

8. Paid leave was also granted to the Player for 30 days per year, the leave starting and end date to be decided by the management of the first football team.

9. With regard to the Player's commitments, Clause 2 of the Employment Contract provided, *inter alia,* the following duties:

   - Participation *"in all matches, training sessions and all related activities, unless otherwise required by the Club unless his health condition prevents him from doing so, subject to verification by medical reports acceptable to the Club";*

   - Compliance *"with performance of training programs decided by the technical staff at any time during the day";*

   - *"not to depart the country without a written permission from the club management. If the Player's return is late beyond the agreed date, the player will be fined (5,000) euro (five thousands) EURO for each day delayed, and two month salary if he delays more than five days".*

10. In case of violation of the Player's obligations under the Employment Contract, Clause 9 established the following relevant penalties:

- a fine of EUR 5,000 for each training session missed by the Player without providing acceptable reason;

- a fine equalling three-months of salary in case the Player is absent from an official match without an acceptable reason.

11. Finally, Clause 12, lit. j) of the Employment Contract provided that *"if any party wishes to terminate the contract before its expiry date: The wishing party must pay the rest of the contract value to the other party"*.

12. On 23 September 2012, the Player lodged a claim before the FIFA DRC against the Club for alleged breach of contract, requesting the payment of EUR 291,662 corresponding to outstanding monthly salaries from January until July 2010 included, plus 5% p.a. of interest.

13. The Club rejected the Player's claim maintaining in its reply that, in view of the Player's violation of his contractual obligations, i.e. not attending training sessions as of 16 January 2010 and leaving the country without permission a number of times, it was entitled to refuse payment of the salaries in dispute as a result of the applicable deductions and fines as foreseen by the Employment Contract.

14. Furthermore, the Club lodged a counter-claim requesting EUR 1,433,338 as compensation allegedly due under the Employment Contract as a result of the Player's multiple violations of his contractual obligations and for terminating the Employment Contract without just cause.

15. On 31 July 2013, the FIFA DRC fully rejected both the Player's Claim and the Club's counter-claim basing its reasoning on the fact that both parties committed contractual breaches and that neither the Player nor the Club *"were able to prove, based on substantial evidence, their legitimate intention and interest to pursue a contractual obligation with their counterparties"*.

V. SUMMARY OF THE APPEALED DECISION

16. The grounds of the Appealed Decision can be summarized as follows:

- The underlying issue in the dispute was to determine whether the Employment Contract had been unilaterally terminated with or without just cause by any party, and, if so, which party was responsible for the early termination and, eventually, to determine the consequences for the party that caused the unjust breach of the contract;

- on the basis of a statement issued by the Ministry of Interior – Naturalization & Residency Administration – of the United Arab Emirates and submitted by the Club (hereinafter also referred to as the "Immigration Statement"), the FIFA DRC assumed that the Player had been outside the United Arab Emirates for an approximate total of 133 days during the period from January 2010 until the expiry of the Employment Contract on 14 July 2010;

- the Player contested the authenticity of the Immigration Statement but did not provide any evidence contrary to the content of the same document and therefore, could not prove he did not commit a breach of contract;

- despite the period of absence as shown in the Immigration Statement, the DRC found that the Club only warned the Player once, by letter of 10 April 2010, and did not provide any other proof that it had effective interest in retaining the Player's services or in his return to resume his duties;

- the Respondent also acknowledged having registered another player before the expiration of the transfer period on 24 January 2010, i.e. before having properly warned the Player of his absenteeism or any possible breach of contract committed by the same;

- as to the Player's position, the DRC noted that, according to the documentation provided, he neither contacted the Club once the salaries fell due, nor did he warn the Club of any other contractual breach prior to lodging the claim before FIFA, thus failing to demonstrate any effective interest to pursue his contractual entitlements vis-à-vis the Club;

- in consideration of the above and referring to the principle of the burden of proof, the FIFA DRC rejected the claim of the Player as well as the counter-claim of the Club;

- The challenged decision was notified to the Appellant on 23 September 2013.

VI. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 14 October 2013, Mr Abdelali Boussaboun filed an appeal before the Court of Arbitration for Sport (hereinafter also referred to as the "CAS") against Al-Nasr S.C. against the decision taken by the FIFA DRC on 31 July 2013 by submitting a Statement of Appeal, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter referred to as the "CAS Code").

18. By letter of 22 October 2013, the CAS Court Office opened the proceedings and provided procedural directions to the Parties according to the CAS Code and, following the proposal contained in the Statement of Appeal, invited the Respondent to inform the CAS Court Office whether it agreed to submitting the arbitration to a Sole Arbitrator.

19. On 24 October 2013, the Respondent informed the CAS Court Office that it agreed to submit the present case to a Sole Arbitrator.

20. On 24 October 2013, the Appellant filed his Appeal Brief, accordance with Article R51 of the CAS Code.

21. By letter of 12 November 2013, the Respondent requested the CAS Court Office to extend the time limit for filing its Answer by one week.

22. In the absence of an objection by the Appellant, the Respondent was granted an extension for filing its Answer until 25 November.

23. On 17 November 2013, the Respondent filed its Answer, in accordance with Article R55 of the CAS Code.

24. By letter of 19 November 2013, the Parties were invited to inform the CAS Court Office whether they preferred that a hearing be held in the present case.

25. On 21 November 2013, the Appellant informed the CAS Court Office that he preferred that a hearing be held, while, by fax letter of 25 November 2013, the Respondent expressed its preference for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

26. On 11 December 2013, the CAS Court Office informed the Parties that Mr Fabio Iudica, Attorney-at-law in Milan, Italy, had been appointed as Sole Arbitrator in the proceedings. Neither party objected as to the appointment of the Sole Arbitrator.

27. On 15 January 2014, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in the present case and invited the Appellant to submit a copy of the Player's sport passport and to present the original travel passport at the hearing.

28. On 23 January 2014, the Appellant provided the CAS Court Office with a complete colour copy of his travel passport but informed that he could not submit his sport passport since the Royal Dutch Football Association (hereinafter also referred to as the "KNVB") refused to provide him with a copy.

29. On 6 February 2014, after consulting the Parties, the CAS Court Office informed both the Appellant and the Respondent that they were called to appear at the hearing which would take place on 7 May 2014 at the CAS Headquarters in Lausanne.

30. On 11 February 2014, the CAS Court Office requested a copy of the Player's sport passport from the KNVB, which was provided on 12 February 2014.

31. On 22 April 2014, Mr David Casserly, Barrister in Lausanne, Switzerland, informed the CAS Court Office that he had been appointed to act for the Respondent in the present proceedings and that he would attend the hearing, accompanied by Mr José Luis Andrade, Attorney-at-law.

32. On 23 April 2014, the Appellant informed the CAS Court Office that, at the hearing, he would be represented by Mr Breno Costa Ramos Tannuri, Attorney-at-law in São Paolo, Brazil.

33. The Order of Procedure was sent to the Parties by the CAS Court Office on 1 May 2014 and was signed on the same day by the Appellant and on 5 May by the Respondent. With the signature of the Order of Procedure, the Parties confirmed the jurisdiction of the CAS.

VII. HEARING

34. On 7 May 2014, a hearing was duly held at the CAS Headquarters in Lausanne.

35. The following persons attended the hearing before the Sole Arbitrator:

- for the Appellant, the Player himself and Mr. Breno Costa Ramos Tannuri, Attorney-at-law.

- for the Club, Mr. David Casserly and his legal assistant, Mr. José Luis Andrade.

36. Mr. Christopher Singer, Counsel to the CAS, assisted the Sole Arbitrator at the hearing.

37. At the beginning of the hearing, the Parties confirmed that they did not have any objection to the appointment of the Sole Arbitrator, nor to the jurisdiction of CAS.

38. Upon request of the Sole Arbitrator, the Parties declared that there was no possibility to resolve the present dispute by conciliation.

39. After the Sole Arbitrator submitted the preliminary remarks to the Parties, the Respondent withdrew its procedural objection relating to the alleged lateness of the Appeal Brief lodged by the Appellant and also waived its counter-claims as put forward in its Answer.

40. The Sole Arbitrator further observed that the Power of Attorney produced by the Appellant required a specific approval by the appointer (the Player) with respect to any decision or judgement related to the present dispute. Upon invitation of the Sole Arbitrator, the Appellant declared to submit to the CAS final Award.

41. Thereafter, the Respondent notified that the translated version of the Immigration Statement attached to its Answer was erroneous and, with the authorization of the Sole Arbitrator and the consent of the Appellant, submitted the amended translated version of such document which was subsequently added to the file.

42. As requested by the Sole Arbitrator in the course of the procedure, the Appellant submitted his original travel passport, which was duly copied and put on the file during the hearing.

43. Therefore, with the consent of the Parties, the Sole Arbitrator proceeded to the comparison of the contents of the Immigration Statement with the contents of the Player's travel passport with regard to the exits from and the entries in to the country and confirmed that the relevant information in the documents were matching, a matter of fact which was also acknowledged by the Parties.

44. As a consequence, the Appellant withdrew his objection to the authenticity of the Immigration Statement as well as his request to refer this issue to the FIFA Disciplinary Committee.

45. Thereafter, the Parties were granted the opportunity to present their oral arguments and answer the questions posed by the Sole Arbitrator. A summary of the oral submissions brought forward by the Parties at the hearing is set forth under section VIII of the present Award.

46. At the conclusion of the hearing, the Parties explicitly agreed that their right to be heard and to be treated equally in these arbitration proceedings had been fully observed. The Parties were also satisfied that due process had been fully observed.

VIII. SUBMISSIONS OF THE PARTIES

47. The following outline is a summary of the main positions of the Appellant and the Respondent and does not comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by Appellant and Respondent, even if no explicit reference has been made in what follows. The Parties' written submissions, their verbal submissions at the hearing, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. Appellant's Submissions and Requests for Relief

48. The Appellant made a number of submissions, in his statement of Appeal, in his appeal brief and at the hearing. These can be summarized as follows.

49. The Appellant principally maintains that during the course of the Employment Contract, in January 2010, he was compulsorily de-registered as a consequence of the unilateral decision of the Club to replace two of its foreign players. The Player contends that deregistration of players seems to be a current illegal practice applied by the Respondent in recent years and, in this respect, quoted a couple of similar cases brought by other players before the FIFA DRC and CAS against the Respondent.

50. The Appellant asserted that, pursuant to the regulations of the UAE Football Association, once a player is de-registered, he is no longer entitled to play official matches for the Club at which he is under contract, amounting to an infringement of the player's personality rights.

51. In this context, the Player avers that the Club contacted him in order to negotiate the term and conditions of a possible amicable agreement to early terminate the Employment Contract and that, from this moment on, he was no longer authorised to train with the other players of the first team, but had to train alone as far as authorised by the Respondent.

52. At the same time, from the moment of the deregistration, the Club stopped paying the Player's remuneration until the expiration of the Employment Contract, for a total outstanding amount of EUR 291,662 but still provided payment for the rent of the Player's apartment and other relevant costs.

53. With regard to the allegations of the Club that the Appellant left the country without authorisation and that he was absent from training sessions without justified reason, the Player alleges that he fully fulfilled his obligations under the Employment Contract through its term.

He also contests that he never received the warning letter dated 10 April 2014 nor any other warning from the Respondent and also rejected the accuracy and authenticity of the Immigration Statement submitted by the Club, which, according to the Player, had the effect of misleading the FIFA DRC in making the Appealed Decision.

54. Moreover, the Player specified he only remained eight days out of the country (leaving the country on 12 February 2010 and returning on 20 February 2010) as opposed to 78 days purported by the Respondent and that this is confirmed by the visas stamped by the immigration authorities on his passport. In addition, the Respondent has failed to submit any evidence that the Player had no permission to leave the country in the relevant dates.

55. As a consequence, the Player contests the conclusions made by the FIFA DRC that he would not be entitled to receive the outstanding remuneration because of his absence from the country for an approximate total of 133 days during the period of January 2010 until the expiry of the Employment Contract.

56. In addition, the Player argues that the Respondent was not entitled to sanction him with a fine under the Players Status & Transfers Regulations of the UAE Football Association since they are not in accordance with the terms and conditions as set out in the Employment Contract. In any event, the deduction applied by the Respondent from the basic salaries of January, February and March 2010 is disproportionate.

57. Contrary to the documentation submitted by the Respondent, the Player affirms to have fully fulfilled its obligations under the Employment Contract, notwithstanding his deregistration carried out by the Respondent in January 2010. In this respect, the Appellant argues that, due to the fact that the deregistration took place close to the expiry of the transfer period (24 January 2010), he was forced to accept the relevant situation and execute the Employment Contract until its expiration, given that there was no possibility at that time to sign a new employment contract with a third club.

58. As a conclusion, assuming but not admitting that the Respondent was entitled to impose a fine on the Appellant, the Player contends that such penalty should adhere to the terms and conditions as set out in the Employment Contract and that the Appellant may, in any event, not be liable to pay more than EUR 15,000 as a consequence of returning to the country three days late.

59. In his Statement of Appeal and his Appeal Brief, the Appellant submitted the following prayers for relief:

" FIRST - To partially dismiss the Appealed Decision, in particular, relating to the segment which states that the Appellant is not entitled to receive the remuneration due by the Respondent between January 2010 and July 2010, based upon to the terms and conditions as set out in the Employment Contract;

SECOND – To confirm that the Respondent breached its obligations towards the terms and conditions as set out in the Employment contract;

THIRD – To uphold, on other hand, that the Appellant has fully fulfilled with its obligations towards the Employment contract and, consequently, shall be legally accredited to receive the overdue remuneration;

FOURTH - To order the Respondent to pay to the Appellant the total amount of EUR 291,662 (two hundred and ninety one thousand and six hundred and sixty two Euros) regarding the outstanding salaries of January 2010, February 2010, March 2010, April 2010, May 2010, June 2010 and July 2010;

FIFTH – To also condemn the Respondent to pay 5% p.a. due as interest rate over the amounts claimed above by the Appellant from the due dates until the date of effective payment;

SIXTH – To confirm that the Respondent produced false documents during the investigation phase before the FIFA DRC, in particular, the Immigration Statement and, consequently, violated some of the most important legal principles set out by the various regulations of FIFA, in particular, Art. 5, par. 2 and 3 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber;

SEVENTH – To address (if applicable) the abovementioned disciplinary violation to the FIFA Disciplinary Committee together with a request for the commencement of disciplinary proceedings against the Respondent in accordance to the FIFA Disciplinary Code (cf. Art. 25, par. 4 of the FIFAS Regulations on the Status and Transfer of Players);

EIGHTH – To condemn the Respondent to the payment of the legal expenses incurred by the Appellant; and

NINETH – To establish that the costs of this arbitration procedure before CAS will be borne by the Respondent.

Subsidiary and only in the event the above is rejected.

TENTH – To confirm that the terms and conditions as established in the warning dated 10 April 2010 and allegedly forwarded to the Appellant shall be partially accepted since it failed to fulfil with the terms and conditions of the Employment Contract and the Lex Sportiva;

ELEVENTH – To uphold, therefore, that pursuant to the valid contents of said warning, in combination with the facts of the present case and the provisions as set out in li. (a) of Clause 9 of the Employment contract, that the Respondent was only entitled to apply a fine of EUR 15,000 (fifteen thousand Euros);

TWELVETH – To condemn the Respondent to the payment of the legal expenses incurred by the Appellant; and

THIRTEENTH – To establish that the costs of this arbitration procedure before CAS will be borne by the Appellant".

60. At the hearing, the Appellant specified that, contrary to the finding of the FIFA DRC, there was no unilateral termination of the Employment Contract, neither by the Player nor by the Club.

61. In fact, the Player argued that at some point during the course of the contract, in coincidence with his deregistration towards the end of January 2010, the Club invited him not to attend the

training sessions with the first team. At the same time, the Appellant rejected the Respondent's allegation that he had been absent from two official matches without justified reason, alleging that he was not selected by the team coach.

62. With regard to the arguments put forward by the Respondent in its Answer, the Player alleged the following inconsistencies:

- The Respondent contends that the Club tried numerous times to contact the Player before the warning letter on 10 April 2010 without providing any evidence in this regard;

- while the Respondent contends in the warning letter of 10 April 2010 that the Player allegedly left the country without the authorization of the Club, in the Answer, the Respondent only argues that the Player delayed his returns to the country, leaving to assume that he had the permission to leave;

- notwithstanding the *shipment details* produced by the Respondent, the Player still denied having received the warning letter questioning the Club's behaviour to wait until 10 April 2010 to formally warn the Player about the alleged breaches of the Employment Contract;

- the Player further maintained that the Respondent stopped paying his monthly salaries as of January 2010, but still provided for the other Player's costs as set forth in the Employment Contract;

- in any case, the Respondent failed to prove that the Player did not fulfil his obligations towards the Club with regard to his allegedly unjustified absences from the training sessions as well as from two official matches;

- with regard to the Respondent's argument that he left the Club two months before the expiration of the Employment Contract, on 25 May 2010, the Player also argued that according to FIFA Circular letter no. 1170, the final match day at club level was 16 May 2010 because of FIFA World Cup South in Africa and that the Club played its final match on 21 May 2010.

B. Respondent's Submissions and Requests for Relief

63. The Respondent made a number of submissions, in its Answer and at the hearing which can be summarized as follows.

64. As to the procedural issues, the Respondent preliminarily objected to the admissibility of the Appeal as being filed late in view of the time limit set forth in Article 67 of the FIFA Statutes.

65. With regard to the facts of the case, the Club maintains that the Player did not fulfil his obligations under the Employment Contract, since he was absent from the first team training sessions as of 16 January 2010 and left the country without written permission and without notifying the Club between 18 and 23 January 2010 and from 12 to 21 February 2010. In addition, the Player was also absent from two official matches on 25 December 2009 and 17

January 2010. In this context, the Club alleges that a relevant warning letter was sent to the Player on 10 April 2010, imposing a financial penalty on him and urging to report for training within 48 hours from the date of receipt of the letter.

66. According to the Respondent's position, the Player violated Clause 2 of the Employment Contract as well as Article 13 of the Player's Status Regulations of the UAEFA. As a consequence, the Club contends that the following amounts shall be deducted to the Player's salaries:

- 50% of the Player's salary of the months of January, February and March 2010 according to Article 86 of the Player's Status Regulations of the UAEFA (EUR 62,499);

- two months salaries (EUR 83,223) as penalty for the Player's delayed return to the country (literally: *"since the Player was late in his travel from 18 – 23 January 2010 (6 days) and from 12-21 February 2010 (9 days) according to Clause 2 of the Employment Contract"*);

- the full salaries of April, May, June and July 2010 (EUR 124,988), representing the remaining value of the contract since the player was absent from the training sessions without justified reason.

67. In addition to the above, the Respondent lodged a counter-claim against the Player requesting compensation in the amount of EUR 1,433,333 broken down as follows:

- EUR 700,000 pursuant to Article 2 and Article 9 of the Employment Contract, as compensation for being absent from five training sessions a week over a period of 7 months;

- EUR 249,996 as penalty for being absent from two official matches played on 25 December 2009 and 17 January 2010, pursuant to Article 9 of the Employment Contract;

- EUR 83,332 corresponding to two months of salaries, given that the absence exceeded five days, in accordance with Article 2 of the Employment Contract;

- EUR 400,000 as a fine according to Article 12 of the Employment Contract.

68. Regarding the deregistration of the Player, which the Appellant contends violates his rights, the Club maintains that this was the consequence (and not the reason for) of the Player's failure to attend training sessions and to participate in two official matches. In this respect, the Respondent alleges that it had tried many times to contact the Player without effect before issuing the warning letter on 10 April 2010 and that consequently, due to the unjustified absence of the Player, it was compelled to register another player in his place.

69. In its Answer, the Respondent submitted the following prayers for relief:

"1 - Holding on all our previous demands of a compensation of a total amount of (€ 1,433,338) as per the terms of the employment contract of the Player.

2 – Dismissing the decision of the Dispute Resolution Chamber at the FIFA.

3 – Dismissing all the demands of the Appellant for contradicting the reality and for violating his employment contract with the Club which sustained massive technical and financial damages to the Club.

4 – The Appellant shall bear all the proceedings costs before the CAS in addition to CHF 30,000 as lawyer services.

5 – The Appellant shall bear all the costs before the Dispute Resolution Chamber at the FIFA".

70. With regard to the alleged violations by the Player, the Respondent confirmed at the hearing that the Appellant was absent without justified reason from two official matches of the team on 25 December 2009 and 17 January 2010 and also that he left the country without the Club's permission from 18 until 23 January 2010 and from 12 until 21 February 2010; according to the Respondent's position, these breaches by the Appellant compelled the Club to de-register the Player and replace him with another footballer in order to prevent any damage to the Club.

71. In addition, the Respondent argued that the deregistration was a temporary measure and that the intention of the Club was to register the Player again once he would have resumed his commitments towards the Club. In view of this expectation, according to the Respondent, the Club continued to pay the Player's rent and relevant costs, while it suspended the payment of his salaries.

72. Moreover, the Player failed to prove when exactly the deregistration took place and, therefore, it is not demonstrated that the absences of the Player were a consequence of the deregistration as the opposite was true.

73. The Respondent also stressed that the Player did neither provide any evidence that he indeed attended the training sessions, nor that the Club authorized him to leave the country, nor that he was absent from the official matches for a justified reason. Moreover, the Player failed to admonish the Club of the unpaid salaries prior to lodging his claim before the FIFA DRC.

74. Upon request of the Sole Arbitrator, the Respondent acknowledged, however, that the Club always reimbursed the flights expenses of the Player, the reason for this allegedly made since it was set forth in the Employment Contract and in view of the expectation to register the Player in the future and shall not be deemed as a sign of approval towards the Player's leaves.

IX. CAS JURISDICTION

75. The jurisdiction of CAS shall be examined in light of Article R47 of the CAS Code (Edition 2013), which reads as follows: *"An Appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".*

76. Both the Appellant and the Respondent rely on Article 66 *et seq.* of the FIFA Statues which establish the jurisdiction of CAS over appeals against final decision passed by FIFA's legal bodies.

77. The jurisdiction of CAS, which is not disputed, is further confirmed by a footnote in the Appealed Decision of the FIFA DRC according to Article. 67 par. 1 of the FIFA Statutes.

78. The Parties also confirmed the jurisdiction of the CAS by signing the Order of Procedure and at the Hearing. Accordingly, the Sole Arbitrator is satisfied that he has jurisdiction to hear this case.

79. Under Article R57 of the CAS Code, the Sole Arbitrator has the full power to review the facts and the law and may issue a new decision which replaces the decision appealed or annul the challenged decision and refer the case back to the previous instance.

X. APPLICABLE LAW

80. Article R58 of the CAS Code provides the following: *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

81. In the Appeal Brief, the Appellant relies on the FIFA Regulations on the Status and Transfer of Players and, subsidiarily on Swiss Law, while the Respondent also specifically refers to the Player's Status Regulations of the UAE Football Association.

82. Clause 7 of the Employment Contract establishes that *"All regulations and resolution issued by FIFA, the Association and Committee as well as all amendments thereto shall be considered an integral and complementary part hereof".*

83. Moreover, Clause 12, lit. f) reads as follows: *"The provisions of the FIFA and Association regulations shall be applicable for any matter not included herein. In case any part of this contract not to be in conformity by FIFA and Association rules and regulations, only that part would be considered null and void and it will not affect on validity of the other parts of the contract".*

84. Therefore, the Sole Arbitrator deems that the FIFA Rules and Regulations and the UAE Regulations are primarily applicable, with Swiss law applying subsidiarily.

XI. ADMISSIBILITY OF THE APPEAL

85. Pursuant to Article 67 par. 1 of the FIFA Statutes, the decision rendered by the FIFA DRC on 31 July 2014 may be appealed against before CAS within 21 days of receipt of notification.

86. The Sole Arbitrator notes that the Appealed Decision was notified to the Appellant on 23 September 2013. Considering that the Appellant filed his Statement of Appeal on 14 October 2013, which is within the 21-day time limit, and also taking in consideration that the Respondent has withdrawn its objection to the admissibility in the course of the hearing, the Sole Arbitrator is satisfied that the Appellant's appeal was timely filed and is therefore admissible.

XII. MERITS OF THE APPEAL – LEGAL ANALYSIS

87. It is undisputed that the Parties entered into the Employment Contract on 7 July 2009, valid as from 15 July 2009 until 14 July 2010, pursuant to which the Player joined the Club as a professional footballer and the Club undertook to pay a total remuneration of EUR 800,000 of which EUR 300,000 became payable on 15 July 2009 and EUR 500,000 were divided into 12 equal monthly instalments of EUR 41,666 to be *"paid on the first week of each month"*.

88. It is also undisputed that, at some point during the course of the Employment Contract, the Club decided to deregister the Player and replace him with another footballer.

89. According to the Appellant's position, the deregistration took place towards the end of January 2010, before the expiration of the relevant transfer period on 24 January 2010. In its Answer, the Respondent incidentally admitted having registered another player in the place of the Appellant without specifying when this happened. In this respect, however, the Sole Arbitrator noted that it emerges from the file of the case that in the proceedings before the FIFA DRC, the Respondent had in fact acknowledged having registered another player in place of the Appellant few days before 24 January 2010 (*cf.* the Club's pleadings before the FIFA DRC on 11 April 2011). In addition, at the hearing on 7 May 2014, the Respondent only argued that the Player failed to provide evidence that the deregistration occurred before 24 January 2010 but did not deny the relevant circumstance. As a consequence, the Sole Arbitrator reached the conclusion that the Player's deregistration by the Club occurred towards the end of January 2010, before 24 January 2010.

90. Another undisputed fact is that the Club failed to pay the Player's monthly basic salaries as of January 2010 until the expiration of the Employment Contract, for an outstanding amount of EUR 291,662.

91. In this respect, the Respondent maintains that, due to the Player's breaches of the Employment Contract with regard to his unjustified absences from training sessions and his unauthorized leaves from the country, the outstanding remuneration claimed by the Player is entirely offset by the total amount of the fines which the Club is entitled to impose pursuant to the Employment Contract to sanction the Player's violations of his contractual duties.

92. On the other hand, the Player argues that it was the Club who was in breach of contract, while he fully fulfilled his obligations and therefore he shall be entitled to receive the overdue remuneration.

93. In consideration of the foregoing, the main issue to be determined is whether the Player has retained his right to receive the overdue salaries, under the Employment Contract, in full or in part, despite the Respondent's allegation that he committed the alleged breaches.

94. In this respect, the Sole Arbitrator notes that the Respondent ultimately raised the following objections against the Player's claims:

    (i) the Player was absent from two official matches on 25 December 2009 and 17 January 2010;

    (ii) the Player was absent from the first team trainings as of 16 January 2010;

    (iii) the Player left the country without written permission and without notifying the Club from 18 - 23 January 2010 and from 12 - 21 February 2010.

95. With regard to i) above, the Sole Arbitrator considers that the Respondent did not fulfil the requirements of its burden of proof, since it did not provide any evidence that the Player was absent from those matches without acceptable reason as stipulated in Clause 9, lit. b. of the Employment Contract.

96. The same conclusion applies with regard to ii) and the Player's alleged absences from training as of 16 January 2010, given that the Respondent provided no evidence in this regard. In addition, it was found that the Player was deregistered by the Club before 24 January 2010 and therefore it can be assumed that he was no longer required to attend the training with the first team as of such date or, as an alternative, considering that the Respondent did not warn the player in this respect prior to April 2010, that such absences were at least tolerated by the Club.

97. In consideration of the above, the Sole Arbitrator is of the opinion that the Club could not be deemed entitled to impose any fine or penalty to the Player with respect to the relevant Player's absences.

98. As to the allegation referenced in iii), it shall be observed first that the circumstance of the Player's leaving in the relevant dates was confirmed at the hearing by the comparison between the Player's passport and the Immigration Statement. In addition, the Player failed to demonstrate that he had received a permission (neither written nor oral) by the Club to leave the country on the relevant dates. In this respect, the Sole Arbitrator notes that at least with regard to the period from 12 until 21 February 2010, it is undisputed that the Player had already been deregistered by the Club, as established above. In consideration of the above, the Sole Arbitrator notes that according to CAS jurisprudence, the deregistration, as such, by preventing a player from being eligible to play for his Club, may infringe the player's personality rights and could constitute a breach of contract by the Club. In similar recent cases in which the Respondent has been also involved (CAS 2013/A/3091 & 3092 & 3093) the Panel, upholding the jurisprudence of the Swiss Federal Tribunal confirmed that *"…among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow team mates in the team's official matches and that by de-registering a player, even for a limited time period, a club is effectively barring, in an*

absolute manner, the potential access of a player to competition and, as such, is violating one of his fundamental rights as football player and that therefore, the de-registration of a player could in principle constitute a breach of contract since it de facto prevents a player from being eligible to play for his club". Moreover, according to the CAS jurisprudence at reference *"When the sport is practised professionally, a suspension or any other limitation on access to the sport may impede the economic development and fulfilment of the athlete, the freedom of choosing his professional activity and the right to practice it without restriction"*. Therefore and in absence of compelling evidence that the Player was absent from two official matches and the first team's training sessions (*cf.* paras. 94 *et seq.* above) for the Respondent's allegations referred to under i) and ii) above, the Sole Arbitrator finds that, by deregistering the Player in January 2010, the Respondent committed an infringement of the Employment Contract, preventing the Player from being fielded in competitive matches of the Club, which also affects his personality rights with regard to his sporting activity, professional freedom and economic development. Moreover, it is undisputed that from the deregistration, the Club stopped paying the Player's salaries, which also involves breach of contract. Since the Employment Contract provided that each monthly salary be paid to the Player on the first week of each month, the Sole Arbitrator notes that the Club was in breach since the end of the first week of January 2010. In this respect, the Sole Arbitrator makes reference to Article 82 of the Swiss Code of obligations according to which *"A party of a bilateral contract may not demand performance until he has discharged or offered to discharged his own obligation, unless the terms or nature of the contract allow him to do so at a later date"*. Accordingly, the Sole Arbitrator holds that, since the Club committed an infringement of the Employment Contract by deregistering the Player and by failing to pay his remuneration as of the month of January 2010, from this moment on, the Club was not entitled to demand performance of the Player's obligations, and therefore no fine or penalty imposed to the Player can be justified with reference to the absence from the country in the period from 12 until 21 February 2010.

99. With regard to the Player's absence from the country in the period from 18 until 23 January 2010, and following the reasoning above, it can be considered that, although the Player could not demonstrate the precise date when the deregistration occurred, it is undisputed that it certainly took place before 24 January 2010, which means that the deregistration may have occurred on 23 January 2010, at the latest. In this framework, in the Sole Arbitrator's view, the Club's request to fine the Player for being late in his travel in the relevant period, shall be upheld, according to Clause 2, lit. L of the Employment Contract, by imposing a fine of EUR 5,000 for each day of delay before the deregistration, from 18 until 22 January, namely five days.

XIII. CONCLUSION

100. In view of all the above, the Sole Arbitrator has reached the following conclusions:

- with regard to the alleged violations by the Player for being absent from two official matches on 25 December 2009 and 17 January 2010 and from the first team trainings as of 16 January 2010, the Club did not meet the requirement of the burden of proof and therefore its relevant requests in this respect are dismissed;

- with regard to the Player's leaves from the country without permission, the Club's request to fine the Player for being late in his travel in the relevant period, shall be upheld, according to Clause 2, lit. L of the Employment Contract, by imposing a fine of EUR 5,000 for each day of delay before the deregistration, i.e. from 18 until 22 January, namely 5 days, corresponding to a total amount of EUR 25,000;

- finally, the Player's request to receive remuneration of the outstanding salaries of January 2010, February 2010, March 2010, April 2010 May 2010, June 2010 and July 2010 under the Employment Contract is partially upheld;

- as a result, the Club shall pay to the Appellant the amount of EUR 266,662 (two hundred sixty six thousand, six hundred sixty two euros), resulting from the deduction of a fine amounting to EUR 25,000 (twenty five thousand) from the outstanding salaries plus 5 % p.a. interest on each EUR 38,095 (the respective monthly salary of EUR 41,666 minus a *pro rata* deduction of the EUR 25,000 fine on the last business day of the first week of each month in the UAE, in accordance with Clause 4 lit. B of the Employment Contract which provides that the monthly salaries fell due *"on the first week of each month"*) from 7 January 2010, 4 February 2010, 4 March 2010, 1 April 2010, 6 May 2010, 3 June 2010 and 1 July 2010 respectively until the date of effective payment.

101. As a result of the above, the appeal filed by the Player is partially upheld, and the Appealed Decision is set aside and replaced by a new decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Abdelali Boussaboun is partially upheld.

2. The decision rendered by the Dispute Resolution Chamber of FIFA on 31 July 2013, is set aside.

3. Al-Nasr S.C. shall pay to Mr Abdelali Boussaboun the amount of EUR 266,662 (two hundred sixty six thousand, six hundred sixty two euros) plus 5 % p.a. interest on each EUR 38,095 from 7 January 2010, 4 February 2010, 4 March 2010, 1 April 2010, 6 May 2010, 3 June 2010 and 1 July 2010 respectively until the date of effective payment.

(…)

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