Arbitration CAS 2013/A/3426 Zamalek SC v. Manuel Agogo, award of 31 October 2014

Panel: Mr Mark Hovell (United Kingdom), President; Mr Michael Gerlinger (Germany); Mr Christian Duve (Germany)

Football
Termination of a contract of employment with just cause
Nature of the deadline for the payment of the advance of costs
Just cause
Non-performance of obligations due to the late payment by the employer
Tacit acceptance of the late payment as an abuse of legal right
Calculation of compensation under Article 17 of the RSTP
Article 17 of the RSTP and protection of contractual stability
Principle of positive interest in the FIFA RSTP and in the CAS case law

1. **As long as a CAS panel is satisfied that the payment of the advance of costs was made within the applicable time limits, the appeal is deemed to be admissible. The panel is not bound by a different declaration made by the CAS Court Office, in which it deemed the payment not to have been made and stated that a termination order would follow. Such correspondence is not itself a termination order and cannot bind the panel in any way to issue a termination order in the matter at hand. On the contrary, the effect of such letter is to allow any party to react promptly in case of problems related to money transfer by the bank before the arbitration is definitively terminated. Further, the deadline for the payment of an advance of costs is an indicative time limit and not a mandatory one. As such, the non-payment of an advance cannot be invoked by one party to request that an appeal be automatically considered as inadmissible.**

2. **According to the FIFA Commentary, the definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. A violation of the terms of an employment contract can only justify the termination of a contract for just cause if it persists for a long time or many violations are cumulated in order to make probable that the breach of contract has reached such a level that the party suffering the breach may terminate the contract unilaterally.**

3. **As established by the Swiss Federal Tribunal, in case of late payment by the employer, the employee may withhold the performance of his obligations.**

4. **The termination can, in some circumstances, be an abuse of a legal right if the player gives the club the impression that he will accept late payment. This is so because if an employee gives the impression that he will accept late payment, then there is an absence of the breach of confidence that is required for termination without notice, which would make continuation of the employment relationship unreasonable. If the employee**

nevertheless bases the termination without notice on the breach of obligation accepted by him, then his own conduct is contradictory and he is therefore abusing a legal right.

5. In the absence of any contractual provision determining the consequences of unilateral breach, Article 17(1) of the RSTP determines the financial consequences of terminating a contract without just cause: in all cases, the party in breach shall pay compensation. Generally, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. Article 17(1) is consistent with Article 337b of the Swiss Code of Obligations, which provides that if the just cause for termination without notice lies in the conduct of one of the parties, then that party must pay full compensation taking into account all claims arising out of the employment relationship.

6. There is a long line of previous CAS jurisprudence which established that the purpose of Article 17 of RSTP is basically nothing more than to reinforce contractual stability, i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player.

7. The compensation of the former club for breach of the employment contract by the player can be calculated as the amount of money that the player would have earned with his former club until the end of his contract deducted from the amount of money that he earns with his new club for the same period. This deduction is consistent with the principle of positive interest embodied in Art. 17(1) RSTP and the practice of other CAS panels.

1. THE PARTIES

1. Zamalek Sporting Club (the "Club" or the "Appellant") is a football club with its registered office in Zamalek, Egypt. It is a member of the Egyptian Football Association (the EFA).

2. Manuel "Junior" Agogo (the "Player" or the "Respondent") is a former professional footballer of Ghanaian and British nationality.

2. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by

the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 29 June 2008, the Appellant and the Respondent entered into negotiations for the Respondent to join the Appellant. On this date the Respondent's first lawyers, T. I. Shawdon & Co Solicitors, wrote to the Appellant's President setting out various contractual terms and benefits that the firm considered contractual (the "Shawdon Letter").

5. On 1 July 2008, Nottingham Forest Football Club and the Appellant entered into a financial agreement for the transfer of the Respondent to the Appellant.

6. On 2 July 2008, the Appellant and the Respondent entered into an employment contract for three seasons (the "Contract"). The third clause of the Contract provided:

"The Club agreed that the Player will join football team for the total amount of: (only Three million four hundred thousands Euro)
Distributed on the duration of the years of the contract.
** First Season amount of: (one million Euro).*
Advance payment: amount of 250000 Euro represents 25% of the value of the contract for the season settled on 2/7/2008 & 50% on monthly ten instalments maximum settled as follows:
First instalment: amount of (250000 Euro).
(only two hundred and fifty thousands Euro settled on 5/7/2008
Second instalment: amount of (250000 Euro).
(only two hundred and fifty thousands Euro settled on 1/1/2009…
& 25% settled at the end of the season according to the proportion of the participation of the player. In playing the proportion of 80% of the number of matches will be considered the rate which the player is due for these amounts (25%) completely. The entry of the Player in the list of the match is considered participation in it".

7. On or around 2 July 2008, the Appellant and the Respondent entered into an undated supplemental agreement to the Contract (the "Supplemental Agreement"). The Supplemental Agreement provided a number of contractual benefits to the Respondent including:

"2.1 The 25% dues of the Player settled at the end of each season as per the terms and conditions of the Contract shall be conditional upon the Player being available for participating in at least 80% of the matches in that season.

…

2.4 Paragraph (8) of Clause Five of the Contract entitled "Commitments of the Club towards the Player" shall be amended to read as follows:

If the player does not receive his due instalment within 14 business days after the due date, the issue will be submitted to the committee of player affairs for its determination.

…

2.8 The Player can get a house and a car of a reasonable choice to be paid for by the Club".

8. On 14 July 2008, the Appellant paid the Respondent the gross amount of EUR 500,000 by way of a cheque which amounted to a EUR 366,000 net payment after the deduction of EUR 100,000 for tax and EUR 34,000 for the EFA registration fee.

9. On 15 July 2008, the EFA acknowledged receipt of the registration fee for the Respondent.

10. Having already paid for the Respondent's initial accommodation in a hotel, on 10 August 2008, the Appellant paid the sum of EUR 24,000 for the Respondent's accommodation in a flat.

11. On 24 September 2008, the Respondent entered into a lease agreement for a new apartment starting on 1 October 2008 and ending on 30 September 2010.

12. At some stage in October 2008, the Appellant wrote to the EFA responding to a fax sent by the Ghanaian Football Federation ("the GFF") requesting the participation of the Respondent with the national team on 11 October 2008. The Appellant requested that the EFA ask the GFF to let the Respondent return to the Appellant after the match dated 11 October 2008 and not to participate in the friendly match dated 15 October 2008, which was not listed in the international calendar.

13. On 11 October 2008, Ghana played Lesotho in the qualifications for the World Cup.

14. On 12, 13, 14, and 15 (Respondent disputes 16th) October 2008, the Respondent was absent from training.

15. On 15 October 2008, Ghana played a friendly match against South Africa. On 17 October 2008, the Appellant plays its match against Tala'ae El Gaish, however the Respondent did not play.

16. On 26 October 2008, the Appellant played El Olympi Alexandria. After the match, the Appellant fined the entire team 4% of their annual salaries due to their "outrageous performance".

17. On 14 November 2008, the Appellant played Petrojet. After the match, the Respondent was accused, by the EFA, of misconduct and bad behaviour by virtue of a gesture to another player.

18. On 18 November 2008, the EFA suspended the Respondent for three matches and imposed a 20,000 Egyptian Pound fine to be deducted by the Appellant from the Respondent's salary.

19. The Appellant, pursuant to Article 6.8 of the Contract, levied its own sanction upon the Respondent for this suspension and sought to deduct 10% of his wages for the 26 days he was suspended by the EFA.

20. On 18 December 2008, the Appellant claimed to have given the Respondent a cheque for EUR 12,000.

21. On 19 December 2008, the Appellant claimed to have given a cheque for USD 15,000, after the deduction of USD 3,000 tax, in relation to the Respondent's housing allowance for three months.

22. On 25 December 2008, the Appellant provided the Respondent with a cheque for EUR 20,000.

23. On 6 January 2009, the Respondent attempted to cash the cheque dated 25 December 2008, but is unable to clear it.

24. On 12 January 2009, the Appellant gave the Respondent a cheque for EUR 75,132 (the "January Instalment"). The Appellant explained that the payment was for a gross amount of EUR 250,000 less EUR 50,000 for tax and EUR 124,868 for various deductions.

25. On 15, 16, 21, 22, 23 and 27 January 2009, the Respondent allegedly failed to attend training sessions with the Appellant.

26. On 27 January 2009, the Respondent's first lawyers wrote to the EFA regarding the monies owed to him by the Appellant, stating *"on the basis of this misconduct by Zamalek we would like to terminate our contract with the Appellant as it is a bad reflection on the Respondent's profile and his international selection with his national team. Please be assured that these are very serious matters and that if they are not resolved immediately the matter will be referred to FIFA"*.

27. On 6 February 2009, the Respondent allegedly failed to attend training.

28. On 25 February 2009, the Appellant provided the Respondent with a cheque for EUR 25,000, which was intended to reimburse the 4% performance fine the Appellant had levied on all the players and to reduce the fine for the EFA suspension.

29. On 2, 4, 6, 7, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 March 2009, the Respondent was allegedly absent from training.

30. In March 2009, the Respondent contacted the EFA to check on the progress of his complaint dated 27 January 2009, only to be told the EFA had lost it.

31. At some stage between 17 and 24 March 2009, the Respondent left Egypt and returned to London, England.

32. On 28 March 2009, the Respondent's second lawyers, Monteneri Sports Law, sent a letter to the Appellant regarding the monies owed to the Respondent and providing the Appellant with a deadline of 31 March 2009 to comply with its commitments as per the Contract.

33. On 1 April 2009, the Respondent wrote to the Appellant terminating the Contract with the Appellant with immediate effect (the "Termination Letter").

Proceedings before the FIFA Dispute Resolution Chamber

34. On 29 May 2009, the Appellant filed a claim with FIFA against the Respondent for the unilateral termination of the employment contract by the Respondent without just cause. During the proceedings the Appellant claimed an amount of EUR 3,408,892.40 as compensation from the Respondent.

35. On 16 June 2009, the Respondent lodged a counterclaim with FIFA, alleging that the Appellant had breached the Contract without just cause and claiming outstanding remuneration and compensation in the sum of EUR 3,467,460.

36. On 4 August 2009, the Respondent signed an employment contract with Apollon Limassol ("Apollon").

37. On 28 June 2013, FIFA's Dispute Resolution Chamber (the "FIFA DRC") held (the "Appealed Decision"):

"1. The claim of the Claimant/Counter-Respondent, Zamalek Sporting Club, is rejected.

2. The counterclaim of the Respondent 1/Counter-Claimant, Manuel Junior Agogo, is partially accepted.

3. The Claimant/Counter-Respondent, Zamalek Sporting Club, has to pay to the Respondent 1/Counter-Claimant, Manual Junior Agogo, ***within 30 days*** *as from the date of notification of this decision, the amount of EUR 189,767, plus interest of 5% p.a. as follows:*

- 5% p.a. over the amount of EUR 34,000 as of 6 July 2008 until 1 January 2009;
- 5% p.a. over the amount of EUR 155,767 as of 2 January 2009 until the date of effective payment;

4. The Claimant/Counter-Respondent, Zamalek Sporting Club, has to pay to the Respondent 1/Counter-Claimant, Manual Junior Agogo, ***within 30 days*** *as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 1,400,000 plus interest of 5% p.a. of said amount as from the date of the decision until the date of effective payment.*

5. In the event that the aforementioned amounts plus interest due to the Respondent 1/Counter-Claimant, Manuel Junior Agogo, are not paid by the Claimant/Counter-Respondent, Zamalek Sporting Club, within the stated time limit, the present matter shall be submitted, upon request, to the FIFA's Disciplinary Committee for consideration and a formal decision.

6. Any further claims lodged by the Respondent 1/Counter-Claimant, Manual Junior Agogo, are rejected.

7. The Respondent 1/Counter-Claimant, Manuel Junior Agogo, is directed to inform the Claimant/Counter-Respondent, Zamalek Sporting Club, immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received".

38. On 19 November 2013, the Appealed Decision was notified to the parties.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

39. On 10 December 2013, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"). In this submission the Appellant made the following requests for relief:

"1. To accept this appeal against the decision rendered by the FIFA Dispute Resolution Chamber dated 28th of June 2013.

2. To adopt an award annulling the said decision and adopting a new one declaring that:

a. the decision of the FIFA Dispute Resolution Chamber dated 28th of June 2013 is annulled; and

b. the Player breached his employment contract with no just cause and that he is not entitled to receive any compensation of whatsoever kind;

c. consequently, the Player shall pay an indemnity to the Club to be calculated for his breach with no just cause of the employment contract. This will be indicated in the Appeal brief.

3. To order the Player to pay an additional 5% annual interest on the amount due to the Appellant as from the date of the breach of the employment contract with no just cause, i.e. 1 April 2009.

4. To fix a sum of 10,000 CHF to be paid by the Player to the Appellant, to help the payment of its legal fees and costs.

5. To condemn the Player to the payment of the whole CAS administration costs and the Arbitrators fees.

OR

6. IN THE UNLIKELY ALTERNATIVE that the Panel decides that the Respondent prematurely rescinded his employment contract with just cause, to mitigate the compensation and limit the amount to be paid by the Club to the Player only to the outstanding remuneration – if any at all – due up to the date when the Player unilaterally rescinded his employment contract with the Appellant, i.e. 1 April 2009.

7. To fix the sum of 10,000 CHF to be paid by the Player to the Claimant, to help the payment of his legal fees and costs.

8. To condemn the Respondent to the payment of the whole CAS administration cost and the Arbitrators fees".

40. On 12 December 2013, the CAS Court Office acknowledged receipt of the Statement of Appeal and noted the Appellant's nomination of Mr. Chris Georghiades as an arbitrator. Further, that the Appellant had taken the necessary steps to pay the CAS Court Office fee.

41. On 18 December 2013, the Respondent nominated Prof. Dr. Christian Duve as an arbitrator.

42. On 20 December 2013, the Appellant filed its Appeal Brief, in accordance with Article R51 of the CAS Code. The Appellant challenged the Appealed Decision, submitting the following amended requests for relief:

"A). To fully accept the present appeal against the Decision of the FIFA Dispute Resolution Chamber dated 28 June 2013.

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

1). The appealed Decision passed on 28 June 2013 in Zurich, Switzerland, is fully set aside and

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

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

2.1.2). As consequence of the above to order the Respondent to pay to the Appellant a compensation in the amount of 3,525,000.00 Euros (Three Million Five Hundred and Twenty-Five Thousand Euro only).

OR, IN THE ALTERNATIVE

2.2) In the unlikely event that the Panel decides that the Appellant was in breach of contract, to mitigate the indemnification according to point 27 to 34 of the present Appeal Brief.

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

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

E). To order the Player to pay an additional 5% annual interest on the amounts due to the Appellant as from the date of the breach of the Employment Contract as from the date of the breach of the employment contract with no just cause, i.e. 1 April 2009".

43. On 23 December 2013, the CAS Court Office acknowledged receipt of the Appeal Brief. Pursuant to Article R55 of the CAS Code, the Respondent was invited to file his Answer within twenty days of receipt of the letter by courier.

44. On 23 December 2013, the Appellant wrote to the CAS Court Office regarding the payment of costs and requesting an extension until 30 January 2014 for the payment of its share of the costs. On the same date, the CAS Court Office granted the Appellant's request.

45. On 24 December 2013, the Respondent, in accordance with Article R55 of the CAS Code, requested that the time limit for filing his Answer be fixed after the payment on 30 January 2014 of the Appellant's share of the advance of costs. Further, the Respondent requested an extension to 30 January 2014 to pay its portion of the advance of costs.

46. On 30 December 2013, the CAS Court Office confirmed that the Respondent's deadline to file his Answer would be fixed after the payment by the Appellant of its share of the advance of costs. Further, that the parties' deadline to pay their share of the advance of costs was 30 January 2014.

47. On 21 January 2014, the Appellant, in light of Mr. Georghiades declining his appointment, nominated Dr. Michael Gerlinger as arbitrator for the Appellant.

48. On 30 January 2014, the Respondent confirmed his new legal representative and that he would not be paying his share of the advance of costs.

49. On 31 January 2014, the Appellant took issue with the Respondent over his decision not to pay his advance of costs and requested that the Appellant be granted an extension until 15 March 2014 for the Appellant to pay the Respondent's share.

50. On 10 February 2014, the CAS Court Office referred to the CAS Finance Director's letter of 3 February 2014 and noted that the Appellant had not provided the CAS with the requested proof of payment of its share of the advance of costs. Further, that no money had been received by the CAS. Therefore, in accordance with Article R64.2 of the CAS Code, the parties were advised that the present procedure was deemed withdrawn and that a termination order would be issued.

51. On 10 February 2014, the Appellant acknowledged receipt of the CAS Court Office letter and explained that it had sent the advance and provided the documentation. The Appellant enclosed a letter dated 3 February 2014 which enclosed proof of payment within the granted deadline.

52. On 11 February 2014, the CAS Court Office acknowledged receipt of the Appellant's letter. The Appellant was informed that the letter of 3 February 2014 had not been received. However, in light of the enclosures to the letter and that the CAS had received the Appellant's share of

the advance of costs, the parties were informed that the Appeal should not be deemed as withdrawn and no termination order would be rendered. Thus, in accordance with Article R55 of the CAS Code, the Respondent was invited to file his Answer within twenty days of receipt of the letter by facsimile.

53. On 11 February 2014, the Respondent stated that he was dissatisfied with the explanation and documentation provided by the Appellant regarding the payment of its share of the advance of costs. The Respondent stated that the Appeal should be deemed withdrawn and that the CAS should terminate the arbitration.

54. On 12 February 2014, the CAS Court Office acknowledged receipt of the Respondent's letter of 11 February 2014 and advised that although the payment by the Appellant of its share of the advance of costs reached the CAS bank account on 10 February 2014, the enclosure to the Appellant's letter of 3 February 2014 indicated that the request for payment had been made to the bank on 29 January and was acknowledged and paid out to the CAS on 30 January 2014. The CAS Court Office explained that it was these latter dates which were to be taken into consideration to verify whether the Appellant had made its payment within the deadline prescribed by the CAS Finance Director. It was confirmed that the position and content of the CAS Court Office letter of 11 February 2014 remained applicable.

55. On 13 February 2014, the Respondent requested that the CAS confirm the contents of the CAS Court Office letter of 10 February 2014 and issue a termination order.

56. On 14 February 2014, the CAS Court Office explained that the CAS letter of 10 February 2014 was issued on a wrong basis and therefore had to be disregarded. The CAS Court Office confirmed that it was *prima facie* satisfied that all appropriate deadlines had been met and that the CAS would not reconsider its position. On the same date, the Respondent reserved his position regarding the admissibility of the Appellant's appeal.

57. On 14 February 2014, the Respondent requested that the time limit for the Respondent to file his Answer be fixed after the payment by the Appellant of the balance of the advance of costs.

58. On 17 February 2014, the Appellant agreed with the Respondent's request for his Answer to be submitted once the Appellant pays the second share of costs. The Appellant explained the situation in Egypt and stated that the payment was made on time. On the same date, the CAS Court Office confirmed that a new deadline of twenty days from receipt of the Appellant's second payment would be fixed for the Respondent to file his Answer.

59. By letter dated 3 March 2014, the CAS informed the parties that the Panel to hear the appeal had been constituted as follows: Mr. Mark Hovell, President of the Panel, Dr. Michael Gerlinger and Prof. Dr. Christian Duve, arbitrators. The parties did not raise any objection as to the constitution and composition of the Panel.

60. On 10 March 2014, the Appellant requested, pursuant to Article R57 of the CAS Code, that the Panel request the FIFA file and forward the same to the parties.

61. On 9 April 2014, the Respondent filed his Answer, in accordance with Article R55 of the CAS Code, with the following requests for relief:

"I. This Answer is admissible and well-founded; and

II. The Club's appeal is dismissed and the Decision is upheld; and

III. The Club shall pay the full costs of these proceedings and shall pay in full, or in the alternative, a contribution towards:

i) The costs and expenses, including the Player's legal expenses, pertaining to these appeal proceedings before the CAS; and

ii) The costs and expenses, including the Player's legal expenses, pertaining to the proceedings before the FIFA".

62. On 14 April 2014, the Respondent requested that the matter be dealt with on the parties written submissions. On the same date, the Appellant requested that a hearing be held.

63. On 14 May 2014, the Respondent requested that the Panel decide as to whether Limassol should participate in the proceedings.

64. On 16 May 2014, the CAS Court Office, in accordance with Article R41.2 of the CAS Code, informed the parties that the Panel had decided that Respondent's request to join Limassol to the present proceedings was inadmissible as it should have been filed with his Answer at the latest.

65. In accordance with Article R57 of the CAS Code, a hearing was held on 18 June 2014 at the CAS premises in Lausanne, Switzerland. The Panel was assisted by Mr. William Sternheimer, Managing Counsel and Head of Arbitration of the CAS. The following persons attended the hearing:

i. Appellant: Mr. Juan de Dios Crespo Pérez and Mr. Nasr Eldin Azzam, both counsel, and Mr. Hany Zada, Member of the EFA and Mr. Reggie Vunderpuise, adviser to the Appellant;

ii. Respondent: Mr. Stuart Baird, counsel, the Respondent, and Mr. Nick Cusack, observer.

66. The parties were given the opportunity to present their cases and make their submissions and arguments. In the case of the Respondent, he was given the opportunity to answer questions posed by the Appellant and by the Panel. Likewise, Mr. Zada was given the opportunity to answer questions posed by the Respondent and by the Panel. After the parties' final, closing submissions, the hearing was closed and the Panel reserved their detailed decision to this written award, subject only to the parties being able to make submissions on costs after the award was rendered, if they so wished.

67. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their right to be heard and had been treated equally in these arbitration proceedings. The Panel had carefully taken into account in their subsequent deliberation all the evidence and the arguments presented by the parties, both in their written submissions and at the hearing, even if they had not been summarised in the present award.

68. On 24 June 2014, the Respondent provided the Panel with enlarged copies of his passport and an independent translation of the copies to assist the Panel with an issue that had arisen at the hearing.

69. On 25 June 2014, the Appellant argued that the documents provided by the Respondent on 24 June 2014 be ruled inadmissible pursuant to Article R56 of the CAS Code. The Panel have determined that these documents may be admitted into evidence under Article R56 of the CAS Code. The Panel note that (1) the original scans of the Player's passport did not form part of the Appeal Brief or Answer in the CAS proceeding, but instead were submitted to FIFA by the Player in connection with the DRC proceeding. On 9 May 2014, the FIFA file was produced upon request by the CAS Panel in accordance with Article R44.3 of the CAS Code; (2) the enlargements of the passport scans appear to be identical to the original scans submitted in the FIFA proceedings and thus do not constitute new evidence within the meaning of Article R56 of the CAS Code; and (3) although the translation was not previously produced, the Panel's position is that it should be admitted in the circumstances, as it clarifies an issue raised in the hearing (i.e. the Player's departure date from Egypt), and is necessary for the Panel to understand the exit stamps. As to the content and accuracy of the translation, this was addressed by the Panel when it assesses the evidence and assigns weight to the translation.

4. THE PARTIES' SUBMISSIONS

A. Appellant's Submissions

70. In summary, the Appellant submits the following in support of its Appeal:

71. In relation to the EUR 500,000 payment made to the Respondent on 14 July 2008, the Appellant explained that the amount of EUR 100,000 had to be deducted for tax. Further, that 1% of the overall salary of the Respondent during the entire Contract was deducted and paid to the EFA in accordance with the EFA Players Affairs Regulations (herein after referred to as the "EFA Regulations"). The Respondent was well aware of the deduction for the registration fee in light of the Contract, the EFA Regulations and customary practice by the Appellant. Further, the Respondent consented to the deductions by signing for receipt of the cheque in the sum of EUR 366,000.

72. The Appellant explained that it had paid 27,000 EGP covering the Respondent's stay at the Marriott Hotel. Further, that a spacious apartment was provided to the Respondent, the cost of which (although five times in excess of the housing allocation allowed for foreign players as stipulated by the Appellant's regulations) amounted to USD 6,000 per month and was paid by

the Appellant. The Appellant paid USD 24,000 for accommodation expenses from August 2008 until December 2008.

73. In relation to the Respondent's transportation, the Appellant offered the Respondent a car however he rejected the offer. In light of the Respondent's objection to the car, the Appellant increased the Respondent's accommodation allowance to the USD 6,000 per month.

74. The Appellant stated that in October 2008 the Respondent started acting "incomprehensively" and was absent from training on five consecutive days. The Respondent was released by the Appellant to play for the Ghanaian football team however the Respondent did not return to the Appellant as directed. The Appellant was fully entitled to refuse permission for the Respondent to remain with the Ghanaian football team for the second (friendly) match and in accordance with the FIFA Regulations on the Status and Transfer of Players (the "RSTP") the Appellant was entitled to request that the Respondent returned to the Appellant. Therefore, the Appellant was entitled to impose a sanction on the Respondent for the unauthorised absence from 12 to 16 October 2008. Consequently, a fine of 75,000 Egyptian Pounds was imposed on the Respondent pursuant to the Appellant's internal regulations.

75. After the game against El Olympi Alexandria on 26 October 2008, the Appellant imposed a fine against the Respondent, and all the other players, of a 4% deduction from their annual salaries due to "a lack of seriousness and commitment" in that game. Thus, the Respondent was sanctioned with a EUR 40,000 fine.

76. In the match versus Petrojet on 14 November 2008, the Respondent made a gesture which resulted in the EFA imposing a fine of 20,000 EGP. The EFA decision provided that the Appellant was to deduct the fine from the Respondent. Additionally, the Appellant was compelled by the EFA to suspend the Respondent for the next 3 consecutive matches. Therefore, the Respondent was unable to perform his duties towards the Appellant for the period of 26 days. Pursuant to the Contract, the Appellant was entitled to deduct from the Respondent a proportion of his salary, corresponding to the suspension period. Thus, the Respondent was sanctioned with a EUR 72,202 fine.

77. During the suspension, the Respondent failed to attend training on one day. Although the Respondent was granted 5 days leave during the period of suspension, the Respondent insisted that he also receive leave for the Christmas holiday as he wished to travel to London. Further, the Respondent requested an advance payment as part of his salary to be deducted from the next due instalment to be paid in January 2009. In accordance with the Respondent's request, the Appellant provided the Respondent on 18 December 2008 with a cheque for the net amount of EUR 12,000.00. On the following day, a cheque dated 15 December 2008 for the net amount of USD 15,000 was given to the Respondent in relation to the payment of his accommodation allowance covering the period from 10 December 2008 to 9 February 2009. At this time, the Respondent was not taking his obligations towards the Appellant seriously and showed a minimum commitment towards the Appellant.

78. As from January 2009, the Appellant started using the services of a different bank and any and all cheques issued by the Appellant were covered by funds deposited at the new bank. Thus, when the Respondent attempted to cash the cheque dated 25 December 2008, he was informed that the account had insufficient funds. As the Respondent was unable to bank the cheque, this amount was not deducted from his second salary instalment, due in January 2009.

In January 2009, the Appellant issued a cheque dated 12 January 2009 for the net amount of EUR 75,132.00. The gross amounts payable in accordance with the Contract to the Respondent totalled EUR 250,000, however the following deductions had been taken from this amount: EUR 50,000 deducted from the Respondent's salary for tax reasons; EUR 72,202 deducted from the Respondent's salary corresponding to the period of ineligibility imposed on him by the EFA; 20,000 EGP (or EUR 2,666) deducted from the Respondent's salary and paid directly to the EFA, as its fine; the 75,000 EGP (or EUR 10,000)[1] fine imposed by the Appellant for not returning after the international match; and the fine imposed by the Appellant at the deduction of 4% of the total remuneration of the Respondent's annual wage totalling EUR 40,000.

79. Before FIFA, the Respondent alleged that the cheque was not covered by sufficient funds, however, the statement of insufficient funds issued on 6 January 2009 corresponded to another cheque whereas the cheque for the EUR 75,132 corresponded to the Appellant's Suez Canal bank account. At the time, the Respondent never complained about the second instalment, but rather complained about the sanction imposed by the Appellant which ultimately went before the Appellant's board resulting in the Appellant withholding the deduction of the EUR 12,000 until the board ruled upon the Respondent's request. Ultimately the Appellant's board decided to diminish the last two sanctions and to reimburse part of the Respondent's salary by approving the EUR 12,000 received by the Respondent in December 2008 and not deducting it from his January 2009 instalments. Further, the Appellant issued the Respondent with another cheque in the net amount of EUR 20,000 to reduce the sanctions. Consequently, the sanction imposed on the Respondent for the suspension period was reduced to EUR 60,202.

80. In January 2009, the Respondent failed to attend training on six occasions and on another occasion in February 2009. The Respondent did not justify his absences nor tried to provide any reasoning despite the grave breaches of the Contract. Further, in February 2009, the Respondent went to the media and revealed details of the internal disciplinary proceedings. In accordance with the Appellant's disciplinary regulations, the Respondent was sanctioned with a fine of EGP 25,000 for speaking to the media. Despite these breaches the Appellant provided the Respondent, on the 25 February 2009, with a cheque for the net amount of EUR 25,000 in order to diminish once again the sanctions that had been imposed upon him in 2008.

81. The Appellant explained that the 4% deduction (i.e. EUR 40,000) that was issued in compliance with the Appellant's disciplinary regulations might have been perceived as a disproportionate fine. However, the deduction had been entirely reimbursed to the Respondent. Further, the Appellant also decided to add a further EUR 5,000 reimbursement for the suspension period. Thus, the Appellant explained that as from 25 February 2009, the only fines imposed on the

[1] As such, the Panel notes the Appellant equates 7.5 EGP = £1.

Respondent were as follows: (a) following his EFA suspension for 3 matches, was the application of the Appellant's disciplinary regulations which resulted in a salary deduction for that period of EUR 55,202; (b) EUR 2,666 deducted from the Respondent's salary to be paid to the EFA as ordered by them; and (c) EUR 10,000 due to the Respondent's absences on 12, 13, 14 and 15 October 2008 without authorisation.

82. The second instalment was due as from 1 January 2009, however due to administrative complications it was paid on the 12 January 2009.

83. From 2 March 2009 the Respondent was absent without justification on seventeen occasions.

84. In relation to the Respondent's second lawyer's letter of 28 March 2009, which referred to several supposed contractual violations, if the Respondent really thought that the Appellant had committed all the contractual violations as mentioned, he expected the Appellant to remedy the same within the timeframe given of three days. This timeframe signified that the Respondent's lawyer's true intention was to prevent the Appellant from communicating with the Respondent and not granting the opportunity for the Appellant to remedy any breach. The Respondent, by way of the Termination Letter, unilaterally terminated the Contract as he wished to leave Egypt. The Appellant found it telling that the Termination Letter was provided only three days after the Respondent drew the Appellant's attention to the alleged outstanding payment. The Appellant had fulfilled all of its contractual obligations to the Respondent until the Respondent terminated the Contract. The Respondent terminated his Contract as he had already planned from being released from the Contract. This allowed him to sign with Limassol free of any transfer fee on a more profitable contract.

85. In the Termination Letter the Respondent stated that the Appellant had neither paid the amounts due to him nor taken care of providing any of the benefits in accordance with the Contract. The Respondent's bonuses were paid by the Appellant to the Respondent according to the stated amounts in the Appellant's internal regulations. The Respondent's salaries had always been duly paid by the Appellant. Further, in relation to the Respondent's benefits, it was the Respondent himself who refused the Appellant's transportation and the Appellant increased the Respondent's accommodation allowance above that to which he was contractually entitled.

86. In accordance with CAS jurisprudence, it has been established that the early termination for valid reasons of a contract has to be restrictively admitted. The Respondent's lawyers alleged that he had grounds to terminate the Contract from December 2008, however they only made the Appellant aware of the purported breaches in March 2009. The Respondent had made no complaints himself. At the hearing, the Appellant referred to the obligation under Swiss law for an employee faced with breaches of contract to act without delay, failing which he would renounce any breaches. The Appellant noted that the Respondent sent the first notification to the Appellant regarding certain alleged outstanding amounts after having repeatedly breached the terms of the Contract and the Appellant's regulations himself.

87. The Appellant also noted that due to the Respondent's numerous absences, it had just cause to terminate the Contract before the Respondent did so and that the Respondent could have

resorted to the EFA as stipulated in the Contract. The Appellant further noted that the Respondent did not refer the matter to the EFA for six months despite claiming to have suffered breaches that would have enabled him to do so.

88. The Appellant doubted that the Respondent did in fact try to cash the cheques when he claimed to and stated that had a reasonable deadline be given to it, then it would have been able to remedy any breach of the Contract. At the hearing, the Appellant sought to demonstrate from the Respondent's own bank statements, that he did not attempt to cash the January cheque in January 2009, but rather waited until March 2009, when he knew the cheque would not be honoured.

89. The Appellant stated at the hearing that there were no arrears at the time of the Termination Letter, as the Respondent was paid monthly and at that time had been at the club for around 8 months. The two salary payments he'd received were for 75% of his year's money (assuming he played enough games to receive the final annual instalment), yet he'd only provided 2/3rds of a season's labour. In effect, he was paid in advance and had already received more money than he was due on a monthly basis at that time.

90. When the Respondent terminated the Contract by serving the Termination Letter upon the Appellant, there was no just cause to justify the Respondent's unilateral termination of the Contract. Consequently, the Appellant is entitled to compensation corresponding to its actual loss. Therefore, the Appellant should be awarded the remaining remuneration under the Contract and the unamortised transfer fee of EUR 375,000. Further, in light of the Respondent's bad faith, the Appellant stated that the Respondent should be imposed with a sanction equivalent to half of the annual wages that the Respondent would receive for one sporting season corresponding to the specificity of sport in line with well-established CAS jurisprudence. Thus, an additional compensation amount of EUR 500,000. In total the Appellant requested EUR 3,525,000 from the Respondent. At the hearing, the Appellant withdrew his suggestion that either the Panel or FIFA should sanction the Respondent by way of a restriction in playing in official matches of up to 6 months.

91. Should the CAS find that the Respondent terminated the Contract with just cause, then the Respondent had a duty to mitigate his losses. The Appellant explained that the Respondent would have been entitled to EUR 750,000 for the sporting season 2008/2009 and that he would not have received the fourth and final instalment as that was conditional upon the Respondent playing in a certain number of games. Further, that the Respondent would have received up to EUR 1,000,000 for the second year of the Contract but that this would have amounted to EUR 800,000 after tax, and he would have received up to EUR 1,400,000 for the third year of the Contract however that this would only amount to EUR 1,120,000 after the deduction of tax. However, as year 2 and year 3 of the Contract also provided conditional payments these cannot be awarded to the Respondent; consequently the value of the remainder of the Contract amounted to EUR 1,350,000. The Appellant again stressed that the Respondent had a duty to mitigate his losses and to seek a contract with a high salary which must be deducted from the amount of compensation. The Appellant also submitted that compensation should be reduced due to the circumstances of the case and in particular to the three day deadline provided by the

Respondent to the Appellant to remedy the breach. The Appellant explained that before the Respondent served the warning letter on 28 March 2009, the Respondent had already collected his personal belongings from his accommodation in Egypt and refused to be contacted by telephone.

92. At the hearing, the Appellant further submitted, that should the Panel determine both parties were in breach of the Contract at 1 April 2009, then, as the Appellant had paid a transfer fee and only had around 8 months service from the Respondent, there should be no payment from any party to the other.

B. Respondent's Submissions

93. In summary, the Respondent submits the following in defence:

94. The Respondent relied upon Article 14 of the RSTP, the FIFA commentary on Article 14 of the RSTP and referred to various CAS jurisprudence, to explain that he did have just cause to terminate the Contract. By 1 April 2009, the Appellant owed the Respondent a significant amount of salary which had been outstanding for several months as well as additional contractual benefits. The Respondent stated that the Appellant failed to act upon, or even respond to, his warning. Thus, he considered the Appellant to have committed a number of serious and persistent breaches of the Contract and, with no signs of the situation improving, he felt he had no alternative but to terminate the Contract.

95. The Respondent noted that in accordance with the Contract, by 1 April 2009, he should have received the following net sums: EUR 200,000.00 on 2 July 2008; EUR 200,000.00 on 5 July 2008; and EUR 200,000.00 on 1 January 2009. However, the Respondent only received the following cheques from the Appellant during this time: EUR 366,000.00 on 14 July 2008; EUR 20,000.00 on 25 December 2008; EUR 75,132.00 on 12 January 2009; and EUR 25,000.00 on 25 February 2009.

96. In relation to the cheque in the amount of EUR 366,000.00, the Respondent explained that this was provided to him several days late. It was also EUR 34,000.00 less than what had been contractually agreed due to the Appellant's unjust deduction of the EFA registration fee. In relation to the cheque in the amount of EUR 20,000.00, the Respondent provided his bank statements which evidenced that the amount was credited into the Respondent's account on 24 December 2008 but then debited on 30 December 2008 and that this happened again with a credit on 31 December 2008 with a debit on 8 January 2009. The Respondent explained that this was because the cheque had bounced. Further, it had bounced due to insufficient funds. In relation to the amount of EUR 75,132.00, this cheque was also given to the Respondent several days late and also bounced. Thus, the Appellant only issued the Respondent with two valid cheques during this time and these totalled EUR 390,935.06 which was EUR 209,064.94 short of what the Appellant was contracted and bound to pay the Respondent under the Contract.

97. In addition to not paying the salary, the Appellant also failed to cover the cost of accommodation for several months and it never paid for, or contributed towards, the car in breach of clause 2.8 of the Supplemental Agreement. It was explained that the Appellant did pay some initial accommodation expenses on behalf of the Respondent, however, that these were only paid after the Respondent chased the Appellant on numerous occasions, and that the Appellant agreed to cover the cost of the Respondent purchasing an Audi Q7 in accordance with the Shawdon Letter (which the Respondent maintained, at the hearing, formed part of the Contract, whilst the Appellant challenged this interpretation). However the Appellant refused to do so. The Respondent decided to purchase his own car and asked the Appellant to increase his accommodation allowance due to the non-payment of the car allowance.

98. The Respondent made numerous attempts during his time with the Appellant to speak to the Appellant about payment problems. As the issues had not been rectified, the Respondent sent a final written warning to the Appellant in March 2009. The Appellant did not remedy the problems nor did they even respond. By 1 April 2009, with the salary of EUR 209,064.94 outstanding, accommodation costs outstanding and no payment for his car, and without the Appellant having given any valid explanation for this (despite numerous warnings), and with no prospect of the issue being resolved, the Respondent believed he had just cause to terminate the Contract.

99. The Respondent also referred to clause 5 of the Contract which provided that if the Respondent did not receive his due instalment during one month then the issue could be submitted to the EFA's committee of players affairs to consider if the Contract would be cancelled. Further, that this clause was amended to 14 days in accordance with the Supplemental Agreement.

100. In response to the Appellant's submissions, the Respondent explained that he did not receive the additional cheques that the Appellant claim to have issued to the Respondent including: a cheque in the amount of EUR 12,000 presented to the Respondent on 18 December 2008; USD 15,000 originally given to the Respondent on 15 December 2008; and EUR 20,000 allegedly given to Respondent on 19 January 2009.

101. Further, the Respondent explained that if these had been given to him then they had been returned to the Appellant as instructed by them. In relation to the alleged cheque in the amount of EUR 12,000, the Respondent explained that he never requested an advance payment of his salary and that he had more than sufficient monies in his bank account at that time. It was also stated that the Appellant's suggestion that the Respondent would not have cashed the cheque was ludicrous. The Respondent also noted that if the Appellant had given the Respondent the disputed cheques, then there would still have been an outstanding amount of EUR 177,064.94 outstanding to the Respondent as at 1 April 2009.

102. In relation to the alleged deductions, the Respondent explained that the deductions made were either unjustified or disproportionate. In relation to the deduction for the EFA registration fee, it was explained that the Contract did not provide for the registration fee to be deducted from the Respondent's salary. Further, that the Respondent never accepted that the EFA registration fee would be deducted from his overall remuneration. At the hearing, the Respondent noted

that Mr. Zada confirmed that the EFA would accept the fee from a club and that the Contract contained a repeat of the EFA Regulations, with the obligation for the player to pay the fee removed, as this had been negotiated out between the parties.

103. In relation to the second instalment, it was noted that a deduction of EUR 124,868 was applied to this payment. It was explained that the following fines had been deducted: EUR 2,500 due to the unauthorised absence from 12 – 16 October 2008; EUR 7,500 relating to alleged unauthorised participation in an international match for Ghana; EUR 40,000 a fine of 4% of annual salary imposed on all players for poor performance; EUR 2,666 imposed by the EFA for the Respondent's alleged misconduct; and EUR 72,202 fine imposed by the Appellant as punishment for the days the Respondent would be unavailable for selection due to the three match suspension imposed by the EFA.

104. In respect of the deduction of EUR 2,500, it was noted that this deduction was because of the alleged unjustifiable absence whilst the Respondent was on international duty with Ghana in October 2008. It was noted that the Appellant's board minutes showed that the Respondent was absent for four days and not five. It was suspected that the reason was because the Appellant had realised that, pursuant to the Appellant's financial list, that it should fine the Respondent no more than EGP 22,000 rather than EGP 25,000.

105. It was also explained that the Respondent had the Appellant's approval to play for Ghana on 11 October 2008 and that he was entitled to 24 hours of travel time, so any fines for missing a training session on 12 October 2008 was groundless. It was also stated that the Respondent informed the Appellant of his intentions to stay with the Ghana national team and that the Appellant had accepted this request. Therefore, the Respondent was of the belief that he could remain with the Ghana national team.

106. In respect of the deduction of EGP 50,000, the Appellant fined the Respondent this amount due to his participation in the friendly match against South Africa. The Respondent noted that he did not participate in the match and that, pursuant to the Appellant's financial list, the fine to be imposed on players playing outside of the Appellant without permission was EGP 15,000. Therefore, the fine imposed upon the Respondent was over 300% more than stated in its own rules. In relation to the deduction of EUR 40,000, the Respondent explained that this fine was entirely unjustified even if such a sanction is envisaged in the Appellant's financial list. Further, this is supported by FIFA jurisprudence.

107. In respect of the deduction of EUR 2,666, the Respondent explained that he denied such misconduct and that the Appellant supported him in his defence before the EFA. Finally, regarding the deduction of EUR 72,202, the Respondent explained that he was still able to train and perform other services for the Appellant during this suspension. Thus, it was entirely unjustified to fine the Respondent for this period. The Appellant's fine was clearly disproportionate compared to the EFA fine as it was approximately 2,700% more.

108. It was explained that the Appellant never notified the Respondent of any fines that it was imposing upon him and that he only found out when presented with a number of cheques. At

the hearing, the Respondent confirmed that he did sign for his cheques, but could not read what he was signing, as the words and numbers were in Arabic, a language he does not read or speak. As such, he was only acknowledging receipt of, not agreement with any cheques. It was noted that the Appellant did not follow any formal disciplinary process or even write to the Respondent before imposing such sanction. Further, that the Appellant claimed to have refunded some of the fines which demonstrated that they were unjustifiably deducted in the first place.

109. In relation to the Appellant's submission that the Respondent had a disrespectful attitude, the Respondent denied that this was the case. In response to the Appellant's explanation as to why the cheques bounced, the Respondent noted that it was incumbent on the Appellant to notify the Respondent and take necessary steps to ensure that the payments were honoured. Further, the Respondent explained that he tried to pay a cheque before the alleged change of bank by the Appellant.

110. The Respondent explained that he also complained about the deductions on numerous occasions. It was also noted that the Appellant had not provided any evidence in relation to the complicated banking arrangements in Egypt that may have resulted in late payments to the Respondent.

111. In relation to the Appellant's allegation that the Respondent was absent from training on 24 occasions, it was explained that these absences were irrelevant for the purposes of whether or not the Appellant complied with its obligation to pay the second instalment which was due on 1 January 2009 before the alleged absences. The Respondent stated that even if he was absent on these occasions, which was denied, then this did not entitle the Appellant to not make the payment on 1 January 2009. The Respondent explained that he may have missed the odd training session as he was trying to resolve the problems with the Appellant, however, although not present at training he would have been in a meeting with the Appellant's senior management. It was also noted that the Appellant did not take issue with the Respondent in relation to the alleged missed training sessions at the time; no written notice or warnings were given to the Respondent as it would reasonably be expected.

112. It was also highlighted that the Appellant continued to play the Respondent during the period it alleged that the Respondent was in breach of the Contract. It was also noted that the Respondent was playing with reserved team as late as 16 March 2009. In relation to the Appellant's absence sheets, the Respondent explained that he had no recollection of a register of absent players ever being taken at training, that no other professional club that he had played for had taken such register, and that these may not have been genuine. The Respondent also explained that if the documents had not been fabricated then, at the very least, they were unreliable.

113. The Respondent maintained that he granted the Appellant reasonable opportunity to remedy the numerous breaches of the Contract. The Appellant could have issued a cheque to pay the outstanding amounts. The Respondent explained that there was not a malicious strategy in

giving a short deadline and stated that the Appellant could have responded within the time limit granted to his lawyer or write a cheque for the amount within that time.

114. The Respondent explained that the Appellant made no effort to enter into amicable negotiations with him, even after the Respondent sent the warning letter to the Appellant. The Respondent also maintained that he had raised, on numerous occasions, the issue in relation to the non-payment and fines imposed upon him and that the warning letter was not the first time that he had brought it to the Appellant's attention. He did not want to be released from the Contract and he did not orchestrate his departure in the manor alleged by the Appellant. It was also stated that the Respondent had agreed a good salary, was playing for one of the biggest clubs in Egypt, and had established himself in Egypt and secured accommodation which he had furnished at his own expense. Further, he had not signed with Limassol until some four months after leaving Egypt.

115. In light of the above, the Respondent explained that he was due compensation from the Appellant. The Respondent explained that the FIFA DRC had erred in its finding and that the Panel should take into account these errors when calculating the compensation as due to the Respondent. As a result of the errors made by the FIFA DRC, the Respondent explained that he had been awarded less than the residual value of the Contract, which is the minimum compensation that a party can expect to receive following the unilateral breach. Therefore, the Respondent submitted that an award of EUR 1,589,767, less than half the residual Contract, is a minimum amount of compensation that he should receive as a result of the Appellant's breach. Thus, the Appealed Decision should be upheld.

116. In relation to the Appellant's submission that the last instalments were only due to the Respondent should he participate in 80% of matches, it was noted that FIFA jurisprudence provides that such provisions are considered arbitrary as it is entirely at the Appellant's discretion as to how many games a player can play. Therefore, such clauses are unacceptable and cannot be relied upon by the Appellant to reduce the compensation playable to the Respondent. The Respondent also noted that the Appellant's interpretation of the Contractual provision was wrong and that it did in fact provide a pro-rata amount to be paid to the Respondent. The Respondent also maintained that he did mitigate its losses.

117. Should the Panel rule that the Respondent did not terminate the Contact with just cause, then the Respondent submitted that the Appellant's request for compensation in the amount of EUR 3,525,000 should be dismissed and/or significantly reduced. The Respondent submitted that due to the facts of the case, the Appellant's conduct and actions were a significant contributing factor to the termination of the Contract and that the Appellant too was culpable and therefore should not be entitled to any compensation. At the hearing, the Respondent's position if both parties were in breach was that the Panel should follow the FIFA DRC and award approximately 50% of the residual value of the Contract.

118. In the alternative, the Respondent explained that the Appellant's claim for the remuneration due to the Respondent under the Contract could not be awarded as this was an amount saved by the Appellant. The Respondent should not be liable for any part of the unamortised transfer

fee because he was not privy to the transfer negotiations between the Appellant and Nottingham Forest. That the EUR 500,000 in respect of the specificity of sport should be rejected as the Appellant was unable to prove its losses in this regard. Lastly, the sporting sanctions could not be applied as FIFA was not a party to the proceedings.

119. In conclusion, the Respondent maintained that he had just cause to terminate the Contract as a significant amount of his salary was outstanding and that the Appellant failed to remedy these issues when the Respondent brought them to the Appellant's attention.

5. JURISDICTION OF THE CAS

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

"An appeal against the decision of a federation, association or sports-related body may be filed with the 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".

121. The jurisdiction of the CAS was not in dispute in this matter. It derives from Article 67(1) of the FIFA Statutes, 2012 edition, which states that:

"[a]ppeals against final decisions passed by FIFA's legal bodies…shall be lodged with CAS within 21 days of the notification of the decision in question".

122. The jurisdiction of the CAS was further confirmed by the order of procedure duly signed by the parties.

6. APPLICABLE LAW

123. Article R58 of the CAS Code provides as follows:

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

124. The parties agreed to the application of the various regulations of FIFA, in particular the RSTP, and the subsidiary application of Swiss Law should the need arise to fill a possible gap in the various regulations of FIFA.

7. ADMISSIBILITY

125. The Appeal was filed within the deadline of 21 days set by Article 67(1) of the FIFA Statutes and complied with all other requirements of Article R48 of the CAS Code, save that the Respondent raised an issue with the timing of the payment of the CAS Court Office fees.

126. The Respondent noted that Article R64.2 of the CAS Code requires the advance of costs to be paid within the time limit fixed by the CAS Court Office, failing which the Appeal shall be deemed withdrawn and the CAS shall terminate the arbitration.

127. In the matter at hand, on 23 December 2013 the CAS Court Office wrote to the parties and set the deadline of 30 January 2014 for each of the parties to pay their share of the advance of costs. On 30 January 2014, the Respondent declined to pay its half share. On 31 January 2014, the Appellant requested until 31 March 2014 to pay the other half of the advance.

128. On 3 February 2014, the CAS Court Office wrote to the Appellant enquiring whether it had sent its own share of the advance and asking for proof that *"payment was made within the granted deadline"*. On the same day, the Appellant purports to have sent a fax confirming that it had made the payment of its share of the advance and attached documentary proof. It appears that fax was not received by the CAS Court Office, as it again wrote to the parties, on 10 February 2014, advising the parties that the procedure was *"deemed"* withdrawn and that a termination order would follow.

129. On 10 February 2014, the Appellant responded and resubmitted a copy of its earlier fax, dated 3 February 2014, stating its position that the payment was made by its bank within the given deadline and the Appeal could not be considered withdrawn.

130. It is uncontested that the funds arrived in the CAS's bank account on 10 February 2014, after the CAS Court Office had sent its fax. In response to the Appellant's correspondence of 3 and 10 February 2014 and in the light of the attached documentation, the CAS Court Office, reviewed its position and confirmed the procedure was no longer deemed withdrawn.

131. Like the CAS Court Office, the Panel is satisfied that the payment was made by the Appellant's bank on 30 January 2014. The Appellant produced a copy of its bank's confirmation that it had sent the advance on 30 January 2014. There has been no challenge to its authenticity by the Respondent. No claim that this has been forged. As such the Panel takes it at face value and determines that the Appellant's bank sent the advance on 30 January 2014, within the CAS Court Office's deadline. Why it took 11 days to arrive at the CAS can remain a mystery. The Panel does note, however, that the payment of the second advance of costs, made by the Appellant on behalf of the Respondent, was paid by the bank on 3 March 2014 and only arrived at the CAS on 17 March 2014.

132. The final question for the Panel is whether it was somehow bound by the CAS Court Office's letter of 10 February 2014, in which it deemed the payment not to have been made and stated that a termination order would follow. The Panel determines that such correspondence is not

itself a termination order and cannot bind the Panel in any way to issue a termination order in the matter at hand. On the contrary, the effect of such letter is to allow any party to react promptly in case of problems related to money transfer by the bank before the arbitration is definitively terminated. At the time the letter was sent, the funds had not been received and, due to a stray fax, the CAS Court Office had no way of knowing that the advance had been paid. The Panel notes that this matter has been considered before in the CAS 2010/A/2170 & 2171 joint procedure, which stated:

"…a Termination Order must fulfil the same legal prerequisites enshrined in Art. 189 par. 2 of the Swiss International Private Law as an arbitral award. It is apparent from the outset, that the letter by the CAS Court Office does not fulfil these minimum requirements and differs in layout and design considerably from awards or Termination Orders from the CAS".

133. Further, in CAS 2010/A/2144, it was noted that the deadline for the payment of an advance of costs is an indicative time limit and not a mandatory one. As such, the non-payment of an advance cannot be invoked by one party to request that an appeal be automatically considered as inadmissible.

134. It follows that the Appeal is admissible.

8. MERITS OF THE APPEAL

135. The main issues to be resolved by the Panel are:

a) When did the Contract end?
b) At that time, was there just cause to terminate the Contract?
c) If so, were the necessary prerequisites to terminate with just cause met?
d) If so, what amount of damages should be awarded?
e) Is interest applicable?

A. When did the Contract end?

136. Before determining why the Contract ended, the Panel firstly needs to determine how and when it ended. The Panel notes that the Respondent sent the Appellant the Termination Letter on 1 April 2009, stating that he had not received *"any reaction on the letter sent by my lawyer dated 28 March 2009"*. However, during the procedure before the DRC, as was noted from the FIFA File, the Respondent stated that he trained with the Appellant on 23 March 2009, but was in England, with his mother between 24 and 31 March 2009. At the hearing, the Respondent stated that he left Egypt on 17 March 2009 and at that stage he simply wanted out of the Contract and had no intention of returning; not even if the Appellant complied with the demands made in his lawyer's letter of 28 March 2009. The Panel notes that the Appellant, in its prayers for relief in both its Statement of Appeal and its Appeal Brief referred to the termination date being 1 April 2009.

137. The Panel notes the Respondent's statement at the hearing that he had already returned to England in March 2009 and would not have gone back, but also notes that this statement was made in retrospect. It is not clear, whether – at that time – one could assume that by leaving the country the Respondent definitively refrained from performing his contractual obligations. What the Panel does know is the Respondent took legal advice in March 2009, the warning letter was sent and when the demands were ignored, the Termination Letter followed. At that stage, on 1 April 2009, it was clear that both parties knew the Contract was terminated. As such, the Panel determines the Contract was terminated formally by the Termination Letter on 1 April 2009.

B. Was there just cause to terminate the Contract?

138. In order to answer this question, it is important for the Panel to look at what is meant by "just cause" under the RSTP, to provide its summary of the parties' obligations under the Contract and other documents, to review how the parties behaved during the currency of the Contract, in a chronological order, and to look at any breaches in existence at the date the Contract ended.

139. The Panel notes that Article 14 of the RSTP states:

"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause".

140. Further, in the Commentary to this part of the RSTP, FIFA state:

"The principle of respect of contract is, however, not an absolute one. In fact, both a Player and a Club may terminate a contract with just cause, i.e. for a valid reason.

The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behavior that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally".

141. The Contract (along with the Supplemental Agreement and possibly the Shawdon Letter) sets out the obligations on the parties. For the Appellant, it is obliged to pay the salary instalments each year and to provide the additional benefits, such as a car and accommodation. For the Respondent, according to clause 6, it is that he *"attends all the practices and friendly and official matches of the Club whether national or international…with his best effort".*

142. The Panel notes that the standard EFA contract is structured for a Appellant to pay 25% of the salary as an advance, then the next 50% is spread over the next 10 months equally (so 5% of the salary each of those 10 months), with a final payment in the last month of the remaining 25%, should the Respondent have played in 80% of the Appellant's matches. There was a

dispute between the parties as to whether this is an "all or nothing" final payment. The Appellant submits that a player would have to play in 80% or more to get anything, whereas the Respondent submits the fact the word *"completely"* is used, demonstrates that if a player features in less than 80% of the games, then the 25% final instalment is reduced on a pro rata basis. The point is further confused by the Supplemental Agreement, which refers to the Player *"being available for participating in at least 80% of the matches in that season"*. On that point the Panel determined that there is a double-barrelled test. Firstly, the Respondent must be *"available for participating in at least 80% of the matches in the season"*, as per the Supplement Agreement; secondly, if so, then the Respondent's entitlement to the 25% instalment shall be calculated on a pro rata basis in proportion to the number of matches he actually played in.

143. The Panel notes that in the Contract, the 50% is dealt with differently from the standard EFA contract, as described above. In the case at hand, the parties agreed that the Respondent would get more of his money "up front". So half of that 50%, i.e. 25% was payable at the beginning of July in the first year (and in the October in the second and third years) and the other 25% was payable at the beginning of January each year. The Panel rejects the Appellant's arguments that the salary was paid in advance, but accrued monthly – there were just 4 instalments payable at specific dates during the first year and 3 in the second and third years.

144. As regards the car and the accommodation, these were referred to in both the Shawdon Letter and the Supplemental Agreement. The Appellant argued that the Shawdon Letter was superseded and replaced by the Contract and the Supplemental Agreement, whereas the Respondent submitted they were all legally binding. The Panel notes the only additional point regarding the Shawdon Letter was that it specified the type of car (the Audi Q7 range) that the Respondent was entitled to, whereas the Supplemental Agreement refers to a car of *"a reasonable choice"*. The Supplemental Agreement also states the Respondent *"can get a home…paid for by the Club"*.

145. The Panel notes that after a period of time in a hotel, on 10 August 2008, the Appellant did contribute (via the Respondent's landlord) the sum of USD 24,000 net towards the Respondent's rent for the next 4 months. The Panel also notes that it is undisputed that the Appellant sought to provide the Respondent with a Peugeot car, however the Respondent did not accept it. The Supplemental Agreement is open as to whether such a car has to be reasonable in the eyes of the Appellant or the Respondent or, indeed, of a judging body, and whilst the Respondent submitted that it must be of the Audi Q7 range, the Panel can leave that dispute to one side, as it is undisputed that the Respondent waived his entitlement to a car and instead asked for the value to be added to his accommodation allowance. There is nothing to demonstrate that the Respondent did not accept the USD 6,000 per month as satisfactory for both his car and home allowance, whereas the Appellant claimed the accommodation allowance was five times that of the normal contribution it makes, as a result of adding the car allowance in.

Under the Contract, the 25% salary advance and the 25% July 2008 instalments were made on or around 14 July 2008, slightly late, due to *"administrative reasons"*. The first year's salaries were EUR 1m. As such, the first joint payment was EUR 1/2m gross. The actual amount paid was

EUR 366,000. The Panel note that 20% tax was deducted, to be paid to the tax authorities. A further 1% of the entire value of the Contract (i.e. of the EUR 1m for the first year, the EUR 1m for the second year and the EUR 1.4m of the final year) was also deducted and paid to the EFA, as a registration fee for the Contract. Again, the Panel notes the different position of the parties regarding this deduction. On the one hand, the Appellant argued that it is a condition of the EFA Regulations that the Respondent pays this fee and that the Appellant must deduct it at source. Further, the Respondent signed for his cheque and did not complain about the deduction. The Respondent, on the other hand, explained that the form he was asked to sign was in Arabic, so he was unaware of the deduction, as he could neither understand the words nor the digits. He was only aware once the cheque had been banked that it was for less than he was expecting. He did not complain forcefully, as he did not want to *"rock the boat"* this early on in his time with the Appellant. Finally, the key wording in the EFA Regulations[2] had been removed when these regulations were copied into the Contract. The obligation on the Respondent, therefore, seems to have been negotiated out, and was simply not contained in the Contract. The Panel, when weighing up these positions, was swayed by the testimony of Mr Zada, the former President of the EFA's local association. He confirmed that the EFA would take payment from a club, with no need to look behind to see if a deduction from the Player had been made. As such, the Panel determines that the parties had in the Contract removed any obligation of the Respondent to pay the registration fee and therefore the Appellant was not able to deduct this sum from the Respondent. As such, at this time, the Panel determines the Appellant was first in breach of the Contract. However, as the Respondent made no real complaints regarding this deduction, it could not be seen, on its own, as providing just cause to terminate the Contract.

146. As has been noted above, the Appellant made payments in August 2008 direct to the Marriott Hotel and then to the Respondent's landlord for his rent up until December 2008. However, the Respondent submitted that it was actually 1 month's deposit and 3 months' rent and that he moved out of the first rented accommodation to a new flat on 1 October 2008. The Respondent stated that he paid the rent from October 2008 until April 2009, when he was evicted and his new landlord detrained over his possessions. The Panel notes that the Appellant claimed it paid USD 15,000 to the Respondent on 15 December 2008, which was for the rent for the months of December 2008 to February 2009. Three months at USD 6,000 per month, less USD 1,000 per month, which was for the tax. The Panel has to determine whether the October and November 2008 contributions were paid, whether any amount (and if so, the correct amount) was paid for December 2008 to February 2009 and whether March 2009 should have been paid.

147. The Panel observes that there is nothing before it that demonstrates whether the payment of USD 24,000 was for 3 months' rent and 1 month's deposit (which deposit the Respondent presumably is claiming the Appellant would have received back from the landlord) or for 4 months' rent. Further, the Panel notes the Respondent decided to move out of the first premises and find a larger flat at the beginning of October 2008, when the first premises was let for him until mid-December 2008. The second lease was for USD 7,000 per month, payable in 6 month

[2] *"And the Appellant will make the payment for each season of the contract and deduct 1% from the Player".*

blocks. It appears the Respondent paid for October 2008 to the end of March 2009. The Panel assumes that he was then evicted in April for not paying the next 6 month block, but had already left Egypt by that time. The Panel also notes that in the second lease, a deposit of 1 month's rent was paid. Unfortunately, the Appellant did not attach a copy of the first lease, but the Panel determines that it is usual for a landlord to take a month's deposit from a tenant. As such, the payment made in August, covered the rent for August, September and October 2008. The Respondent decided to move to a more expensive flat in October, but the Appellant had already made its contribution for that month. As such, the contributions for November 2008 to March 2009 remain i.e. 5 months at USD 6,000 per month. The Appellant claims it paid USD 15,000 on 15 December 2008, however, the Panel could see no trace of this sum in the Respondent's bank account. It could have been that the cheque was in favour of his landlord, however, the Panel note from the translation of the cheque (number 0001327837) it is made out to the Respondent personally. He denies ever receiving it. Further, at the hearing, the Respondent produced a transaction statement for the Appellant's bank account, which appears to show USD 15,000 being credited to the Appellant's account, not debited from there. The Panel also questions why this second cheque would be for USD 15,000 and not USD 18,000. No tax had been deducted from the first payment the Appellant made towards rent in August 2008. On balance, the Panel are not convinced the Respondent ever received the cheque and determines, in relation to accommodation (and motor, combined) allowances, at the time the Contract ended, there was USD 30,000 due and owing to the Respondent.

148. Returning to the chronology of the contractual relations between the parties, from October 2008, the Appellant started to complain about the behaviour of the Respondent. The first dispute arose from the release of the Respondent for international duty in that month. It is undisputed that Ghana played two international matches in that month: the first was against Lesotho, a World Cup qualifier, on 11 October 2008; the second was against South Africa, a friendly match, on 15 October 2008. The Appellant claims it gave permission (not that it could refuse pursuant to the RSTP) for the first game, but not for the second. As such, the Respondent would have 24 hours after the game on 11 October to return, so should have been back in training for 12 October, especially as there was a match on 17 October. The Respondent thought he had permission to play in the friendly, so stayed with the national team and did not return until 17 October, too late to play in the Appellant's match that day. The Appellant wrote to the Ghanaian Football Association (the "GFA") via the EFA asking for the Respondent to return after the first game. It's not clear to the Panel when that letter was sent, nor whether the GFA ever received it. Further, the clear wording of clause 6.3 of the Contract stipulated that the Respondent needed the *"written agreement from the Club"* to participate in such a friendly game and that he was unable to produce such written agreement (albeit, his position was he had been told he could go) to the Panel. Whilst the Respondent submitted that the Appellant clearly had a request from GFA for both matches, so was aware of his wish to play in both, the Contract requires a written agreement, not just a request. The Panel therefore determines that staying for the second game was a disciplinary breach that the Appellant was entitled to sanction the Respondent for, in accordance with the Appellant's financial list. The Panel notes that if he was to return on 12 October, the first day's training he would have missed would be on 13 October. He also missed 14, 15 and 16 October – a total of 4 days. Under the Appellant's financial list, the sanction would be 10,000 Egyptian Pounds or EUR 1,333.

149. On 26 October 2008, the Appellant lost their match with El Olympi Alexandria. The Appellant initially claimed that, as the Respondent (and other players) had not shown *"seriousness and commitment"*, they should be disciplined and fined 4% of their current year's salary i.e. EUR 40,000 for the Respondent. This sum was firstly deducted from the January Instalment, but it was claimed that as the Respondent complained, it was initially reduced to a 2% deduction, by providing the Respondent with a cheque for EUR 20,000 on 19 January 2009. Then a further cheque was paid to him on 25 February 2009 in the sum of EUR 25,000, which was to totally reimburse the initial deduction and to reduce a second fine relating to his gesture and the suspension by the EFA (see below). The Panel will discuss the cheques and which cleared and which did not below, but are pleased to note that the Appellant ultimately withdrew this fine for the outcome of a match. The Panel concludes that this sum of EUR 40,000 should never have been deducted from the January Instalment.

150. The Panel notes that during a match between the Appellant and Petrojet on 14 November 2008, the Respondent made a gesture either to the crowd or, as he testified, to his team mate. The outcome was that he was sanctioned by the EFA with a fine of 20,000 Egyptian Pounds or EUR 2,666 (which the Appellant was to deduct from his January Instalment and to pay to the EFA) and a 3 match ban. The Appellant decided to sanction the Respondent too, under clause 6.8 of the Contract, which states:

"Any period of suspension imposed on the Player under a decision from the association or the Club which the Player is responsible for its reasons after adequate investigation and after the suspension is approved by the association, the Club has the right to deduct proportion from the Players dues equal to the period of suspension to the season (article 6/80 the regulations)".

151. The Panel notes that the Appellant determined that the Respondent's suspension meant that he was unable to play for 26 days, so they deducted 26/31th of a month's salary (i.e. EUR 72,202) from his January Instalment. However, as with the 4% fine mentioned above, after the Respondent complained, the Appellant itself twice reduced the sanction. The Appellant claimed that the payment of EUR 12,000 made on 18 December 2008 reduced the fine and that the EUR 5,000 balance of the cheque paid on 25 February 2009 further reduced the fine. As such, the Panel notes that Appellant intended to fine the Respondent EUR 52,202 as an additional sanction under clause 6.8 of the Contract. In the Appealed Decision, FIFA felt that the wording of clause 6.8 of the Contract was unclear and that the Appellant should only be able to reduce the salary for the 3 days of the matches he missed due to suspension. FIFA also noted that the fine of the Appellant was disproportionate when compared to the fine of the EFA for the same offence. The Panel determined that the wording of clause 6.8 of the Contract was clear. Whilst the effect is quite severe, the Respondent was represented by lawyers when registering the terms of the Contract and the Supplemental Agreement and should have advised him of this clause. The Respondent was suspended by the EFA, he was given the opportunity to challenge that suspension and was even supported by the Appellant, but was still ultimately suspended. Whilst he was perhaps still able to provide some services to the Appellant (by training) he could not play in those 3 matches over 26 days and clause 6.8 was designed to cover such eventuality by allowing the Appellant to deduct his salary in full over that period. However, the Panel notes

that the Appellant itself noted the severity of the clause, and whilst it could have sought to deduct EUR 72,202, it decided to deduct EUR 52,202 instead. As such, the Panel determines that lower deduction was in accordance with the Contract and was a legitimate deduction.

152. By the time the January Instalment was due, the Respondent had breached the Contract, but the Panel accepts these breaches were disciplinary matters and had been dealt with, not perfectly, but ultimately the Panel has been able to determine what sums should have been deducted as sanctions for such disciplinary issues. The Appellant was also in breach at that time. The Appellant was starting to fall behind on reimbursement of the accommodation contributions and had deducted 1% of the entire salaries under the Contract from the first instalment. In the eyes of the Panel, these were both remedial breaches and without more by way of complaints or formal demands by the Respondent did not amount to just cause at that stage.

153. On 1 January 2009, the January Instalment was due. It is undisputed that a cheque for the sum of EUR 75,132 was given to the Respondent on 12 January 2009. The Appellant explains the lateness was as a result of *"administrative problems"*. The Respondent was expecting EUR 250,000, which would net down to EUR 200,000 after a deduction for the tax. However, the Appellant had sought to deduct the sum due to the EFA, its own fine following on from the EFA sanction, the 4% fine for the performance in the El Olympi Alexandria match and the fine for the unauthorized absence whilst with the GFA on international duty. The Panel has already determined above that the sums of EUR 52,202, EUR 2,666 and EUR 1,333 should have been deducted along with the tax and as such EUR 143,799 should have been paid as the January Instalment.

154. In any event, whilst there is some dispute as to whether the cheque for the sum of EUR 75,132 was presented in January or March 2009 or, indeed, twice, what is undisputed is that: a) it never cleared; and b) the Respondent never received any money for the January Instalment. The Panel notes that the Respondent signed to accept the cheque and that the document he signs sets out the deductions. The Panel cannot accept this as some form of waiver of his right to receive the correct amount, as he could not read Arabic nor understand the digits to see what he was signing for. Ultimately, the cheque was dishonoured. This, in the determination of the Panel is a significant breach of the Contract, which could justify the termination of the Contract with just cause, and was only compounded by the other two breaches already in existence.

155. The Appellant subsequently alleged that the Respondent missed around 24 days of training between mid-January and mid-March 2009. The Respondent testified that it was no more than a few days in total and that on those days he was present at the Club - he was trying to speak to the officials of the Appellant to get his contractual arrears fully paid. The Panel determines not to accept deductions from the January Instalment for disciplinary issues and any sanctions imposed after the date of that instalment, since – as established by the Swiss Federal Court (see BGE 120 II 209 f.) – in case of late payment by the employer, the employee may withhold the performance of his obligations. Further, the Panel notes that no disciplinary action was ever taken by the Appellant, which seems somewhat surprising, given the number of alleged days

training missed and the Appellant's disciplinary actions taken previously against the Respondent.

156. The Panel notes that the Appellant claims further payments were made to the Respondent. The Panel notes that it alleges: an advance of the January Instalment in the sum of EUR 12,000 was made on 18 December 2008 (which the Respondent submits he either never received or was asked to return and which does not appear in the bank account from the statements provided); a second advance against the January Instalment in the sum of EUR 20,000 was made on 25 December 2008 (which does show as bouncing in the Respondent's bank account and the Respondent submitted was never honoured); and the sum of EUR 25,000 was made on 25 February 2009 (which sum appears in the Respondent's bank account). The Panel determines that only the final cheque was received, thus reducing the indebtedness of the Appellant to the Respondent by that sum of EUR 25,000, leaving EUR 118,799 outstanding from the January Instalment at the date the Contract was terminated.

157. The Panel notes there was also a dispute regarding the payment of win bonuses under the Contract. The Appellant claims these were always paid in cash and listed the 3 games in which the Respondent triggered his bonuses and when these were paid. A total of 11,500 Egyptian pounds. The Respondent testified that he could not remember ever receiving such sums from the Appellant. The Panel notes that Appellant produced sheets for these matches where all the players have signed to acknowledge receipt of their bonuses. In the light of this evidence, the Panel determines that the Appellant discharged its obligation to pay the Respondent these bonuses.

158. Finally, the Panel notes the argument that the payment of the advance and the first instalment covered 50% of the salaries for the year and if compared to the time the Respondent had spent with the Appellant, he had in effect been paid up to date. The Panel reject this argument as it disregards the wrongful deduction of the EFA 1% registration fee; the Contract had clearly been amended so salaries were not paid monthly, rather in instalments and the significant January Instalment had not been paid; and there were other breaches relating to the accommodation that were persistent breaches by or around the end of the Contract. The Panel further reject the Appellant's theory that the Respondent held onto the cheque for the January Instalment until March, only to bank it then when he knew it would bounce. The Panel fails to see how he would know it would bounce, he would not have access to any bank statements for the Appellant. Instead, the Panel believes he simply tried to cash it before he left the country.

159. In summary, at the time the Contract ended, there were significant breaches of a serious nature that the Appellant had had more than enough time to remedy, yet did not and these resulted in the existence of just cause to terminate the Contract.

C. Were the necessary prerequisites to terminate with just cause met?

160. The Panel notes that there has been much jurisprudence on the issue of non-payment of salaries by an Appellant. Both parties referred to the CAS 2006/A/1180 matter. Indeed, the Panel finds it helpful to quote par. 26 of that award:

> *"The non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated as in the present case - constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5 et seq.)".*

161. The Panel determines that the balance of the January Instalment in the sum of EUR 118,799 is substantial. Add to that the USD 30,000 due for the car/accommodation and the EUR 34,000 for the EFA registration fee and it is clear the Appellant had significant indebtedness to the Respondent. The Respondent was not receiving monies each month, he was receiving large instalments periodically each year. The January Instalment was never paid and was long overdue when the Contract was terminated a couple of months later.

162. The first crucial question for the Panel is whether the Respondent gave "a warning". In his testimony, the Respondent claimed that he attempted to cash the cheque for the January Instalment in January 2009 and complained about the deductions that were made. Indeed, the Appellant confirms in its Appeal Brief that the Respondent did appeal against such deductions[3]. He stated that some of the times he missed training after January were because he was attempting to speak to various people at the Appellant, including the finance director. It is undisputed that Mr. Mamdouh Abbas, the previous chairman of the Appellant, who had brought the Respondent to the Appellant had initially been the Respondent's point of contact at the Appellant. However, he left around September 2008. The Respondent submitted that his new point of contact at the Appellant was Mr. Abdullah. The Respondent claimed he repeatedly asked him about both his January Instalment and his accommodation expenses and asked if Mr. Abdullah would speak to the team manager, Mr. Alaa Maklad. The Respondent claimed that he did eventually speak with Mr. Maklad, who apparently informed him that the Appellant had no money. By way of support of this position, the Respondent produced numerous press articles concerning many other players (Ayew, Hussein Yasser, Amr Zaki, Omotoyossi, Shikabala,

[3] Page 14, para. 33 *"The Player …complained at that time about the amount of the sanctions deducted and just requested from the Appellant officials to reduce the amount of the last 2 sanctions".*

Gaafar and Mendomo) that complained of non-payment by the Appellant around that time and produced witness statements from Mr. Abdul Ibrahim Ayew (who was a former player of the Appellant that complained of late payments too and was aware of others not being paid on time either) and Mohammed Sorour (who the Respondent stated was present with him some of the times when he tried to complain to the Appellant). Mr. Sorour stated that the Respondent informed him he tried to present his cheque for the January Instalment in January 2009, but does not say he was with him at the bank. He also says he was with the Respondent when he went to speak with Mr. Abdullah and Mr. Maklad *"after his cheque had been returned to explain Junior's case and to try to get Zamalek to pay him the salary that was owed to him"*.

163. On the other hand, the Appellant referred to the Respondent's own bank statements. The cheque representing the January Instalment was numbered 0038715. There was a previous cheque for the initial instalment and that was numbered 01259658. That first cheque can be seen as a credit in the account on 29 July 2008. A second cheque, numbered 01327835 for EUR 20,000, bounces. It can be seen as a credit for EUR 19,947.85 in the account, but then also as a debit of EUR 20,000 a few days later on 8 January 2009. So it comes in and goes out, with shortfall of EUR 52.15, which the Panel assumes is some sort of bank charge. There are no more material deposits made in January or February, but in March there is a cheque, number 00093857, in the sum of EUR 25,000 that clears and there are some related bank charges. There are also bank charges in relation to cheque 0038715, however the statements do not show the money coming in as a credit and leaving again a few days later as a debit, as they had with the previous cheque that had bounced. The Respondent did confirm that he re-presented the cheque in March, so the statements support that March presentation, even if they do not show the credit and debit. The Appellant submitted that the bank statements do not support the Respondent's position that he first attempted to bank the cheque for the January Instalment earlier than March, i.e. in the January when he received it and when he testified he first sought to bank it. The Respondent suggested it may be as a result of the 01327835 cheque coming from one bank (United Bank) and the 0038715 cheque coming from a different bank (Suez canal Bank).

164. The Respondent also submitted that on 27 January 2009, in accordance with article 5.8 of the Contract, that states:

"If the Player does not receive his due instalment during one month[4] *after the date the issue will be submitted to the committee of the Player affairs to consider if the contract will be cancelled and force the Club to pay the Player his dues which the committee determines"*.

his lawyer wrote to the EFA and the Respondent co-signed the letter. The lawyer complains of various breaches relating to the car and accommodation. He also submitted:

"…the Player has not to date received his due instalment which was due on 01/01/09. This is a fundamental breach of contract.
…

[4] The Panel notes that this was varied by the Supplemental Agreement to 14 days.

On the basis of this misconduct by Zamalek we would like to terminate our contract with the Club as it is a bad reflection on the Player's profile and his international selection with his national team.
…
Please be assured that these are very serious matters and that if they are not resolved immediately the matter will be referred to FIFA".

165. The Respondent claimed that he spoke to the EFA in March to enquire on the progress of his dispute, but was informed by the EFA that they had lost his file.

166. The Panel finally notes the clear wording contained in the Respondent's lawyer's letter of 28 March 2009, however also notes the short deadline set by the Respondent for the Appellant to remedy the breaches.

167. On balance, the Panel was satisfied that the Respondent gave a "warning". Whilst the Panel could consider the breaches sufficiently severe (in the amount outstanding and for the length of time the sums had been overdue) so as to alleviate the Respondent of the need to give any warning, the Panel is satisfied that the Respondent:

(i) did complain vis-à-vis the Appellant by appealing against the deductions (see footnote 3)
(ii) did complain vis-à-vis the EFA on 27 January 2009
(iii) did complain in a public interview, and
(iv) did finally warn the Appellant that it would terminate the Contract by letter of 28 March 2009.

Whilst a 3 day deadline might not be reasonable in every case, here the Panel felt it was sufficient as a final demand, following on from the specific circumstances of the case, i.e. the previous developments, and the Panel notes in particular, that the Appellant did not even respond to the letter. The situation developed as such that the Respondent, on 28 February 2009 in an interview, publicly complained about not having received his full salary and that the deductions were not justified. In addition, the Respondent said that it would *"try to get over it"* and perform further for the Appellant. The Respondent in particular complained about the lack of communication and organisation at the club for solving these problems. Therefore, at that time, the Appellant knew that the Respondent still claimed the outstanding amounts, wanted to discuss this issue with the Appellant, but would not yet terminate the Contract. Approximately one week later, the Appellant paid to the Respondent a cheque of EUR 25,000, but not the sum the Respondent was claiming. Being aware of this situation, the Appellant received the letter of 28 March 2009, by which the Respondent again complained that still not all sums had been paid and that it would – now – terminate the Contract, if those sums were not paid. In this specific situation, where the Appellant clearly knew about the outstanding amounts and the respective background, one would expect that the Appellant at least answers to the letter, which it did not. For this reason, the Respondent, lacking any response from the Appellant, could assume that the Appellant would still not pay the full amount outstanding, and terminate the Contract.

168. The second crucial question relates to the delay in reacting to the Appellant's breach. The Panel again refers to the CAS 2006/A/1180 case, par. 34:

"Finally, the termination could, in some circumstances, be an abuse of a legal right if the Player gave the Appellant the impression that he would accept late payment; for if an employee gives the impression that he will accept late payment, then there is an absence of the breach of confidence that is required for termination without notice, which would make continuation of the employment relationship unreasonable (CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5 et seq.). If the employee nevertheless bases the termination without notice on the breach of obligation accepted by him, then his own conduct is contradictory and he is therefore abusing a legal right. In the present case, the Player did not give the Appellant any reason to believe that he would accept the breaches of obligation committed by the Appellant without consequence. In the light of the clear letter from the agent, the Panel is of the opinion that the requirements to be met by any such tacit consent by the Player must be set high. If there is any doubt, an expressly declared intention always takes precedence over consent expressed tacitly. Insofar as the Appellant submits that in the press the Player always made positive comments about the Appellant and, when asked in Player meetings, even confirmed to the President that "everything was O.K"., this – in view of the Player's special situation, namely the fact that he is a young Player in a foreign country, whose language he cannot speak – is not sufficient to give rise to any confidence on the part of the Appellant meriting protection".

169. It is undisputed the Respondent signed for the cheque for the January Instalment on 12 January 2009. There was then a dispute between the parties as to whether he attempted to bank the cheque in January 2009. The Appellant said not and refers to the Respondent's bank statements. The Appellant also stated that its management were not aware of issues with the Respondent and referred to an interview given reported on www.masress.com on 13 April 2009, in which the Respondent states, in answer to the question that he left Egypt without knowledge of the Appellant's management *"I admit it, but everyone knows I was mistreated and not respected"*. The Appellant submitted that the Respondent needed to react quicker – the cheque was received more than 2 months before he left Egypt – the Appellant referred to a decision of the Swiss Federal Tribunal ATF 123 II 86, under which the employee must act without delay, otherwise he has renounces any breach.

170. On the other hand, the Respondent maintained that he did attempt to bank the cheque for the January Instalment in January 2009 and that he complained about his non-payment regularly, including to the EFA. He never waived his rights nor accepted the position. He continued to play and to train, as not to do so would have meant he could have been seen to breach the Contract. He also referred to the interview on 18 February 2009, in which he stated that the Appellant had deducted USD 200,000 from him and *"I've had several meetings with different board members who said they would resolve my issue. Days, weeks and months passed and nothing has been done. And when I talk to a different board member I have to start all over again. I finally, with my personal manager, reported these incidents to the Egyptian FA three weeks ago but I'm still waiting as nothing has been done"*.

171. The Panel notes that the Appellant submitted that the Respondent left for a *"more profitable contract"* with Apollon, as if he could manufacture a breach of the Contract, then that new club would avoid paying a transfer fee. However, the Respondent produced a copy of his new contract and admitted there was a second contract, but the two together were for far less than he was due to earn under the Contract.

172. The Panel, on balance, were satisfied that the Respondent undertook a course of complaints and warnings following his late receipt of the January Instalment as outlined above. While the Respondent, as he stated in his interview on 18 February 2009, first tried to clarify the situation without threating to terminate the Contract, he then warned to terminate after having received only a part of the sums due. The Panel determined there was no delay that should be seen as waiving or renouncing the Appellant's breaches. The Panel also dismiss the Appellant's suggestions that the Respondent only sought to cash the cheque for the January Instalment when he knew it would bounce and that he manufactured a situation to end the Contract so he could sign with Apollon. The Respondent had no duty to inquire with the Appellant when he tried to deposit the cheques, and no duty to deposit immediately. Regardless of the circumstances of and reasons for the late deposit of the January Instalment cheque, the monies were not received by the Respondent and remain outstanding.

D. What amount of damages should be awarded?

173. Having established the due amounts to the Respondent at the termination date of the Contract on 1 April 2009, the Panel will now proceed to assess the consequences of the unilateral breach without just cause by the Appellant.

174. The Panel notes that in the absence of any contractual provision determining the consequences of unilateral breach, Article 17(1) of the RSTP determines the financial consequences of terminating a contract without just cause:

> *"The following provisions apply if a contract is terminated without just cause:*
>
> *1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the Respondent under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former Appellant (amortised over the term of the contract) and whether the contractual breach falls within a protected period".*

175. Article 17(1) is consistent with Article 337b of the Swiss Code of Obligations, which provides that if the just cause for termination without notice lies in the conduct of one of the parties, then that party must pay full compensation taking into account all claims arising out of the employment relationship. As determined by a previous CAS panel, when calculating compensation, Article 337c (2) applies *mutatis mutandis*. According to Article 337c (2), the employee's claim for compensation is reduced by everything *"which he saved as a consequence of the termination of the employment relationship and which he earned or intentionally failed to earn through other work"* (CAS 2006/A/1180, para 41).

176. The Panel notes there is a long line of previous CAS jurisprudence which established that the purpose of Article 17 of RSTP is basically nothing more than to reinforce contractual stability,

i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (CAS 2008/A/1519-1520, § 80, with further references to: CAS 2005/A/876, p. 17: *"[…] it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability' […]"*; CAS 2007/A/1358, § 90; CAS 2007/A/1359, § 92: *"[…] the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability […]"*; confirmed in CAS 2008/A/1568, § 6.37).

177. In respect of the calculation of compensation in accordance with Article 17 of RSTP and the application of the principle of "positive interest", the Panel follows the framework as set out by a previous CAS Panel as follows:

> *"When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.*
>
> *As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have if no breach had occurred.*
>
> *The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see Streiff/von Kaenel, Arbeitsvertrag, Art. 337d N 6, and Staehelin, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also Wyler, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) (…).*
>
> *The principle of the "positive interest" shall apply not only in the event of an unjustified termination or a breach by a Respondent, but also when the party in breach is the Appellant. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the Respondent by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the Respondent from a third party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including the specificity of sport, as foreseen in art. 17 FIFA Regulations"* (CAS 2008/A/1519-1520, at § 80 *et seq.*).

178. The Panel finds that the legal framework set out above and the principle of positive interest are applicable to the present case. Against this background the Panel will now proceed to assess the Respondent's objective damages one by one below.

a) The fixed Salary

179. As set out above, the Panel notes that in each year of the Contract, 75% of the salaries were fixed. Following the date of termination of the Contract, the following instalments would have been due, had the Contract not been determined:

1 July 2009	EUR 250,000;
1 October 2009	EUR 250,000;
1 January 2010	EUR 250,000;
1 July 2010	EUR 350,000;
October 2010	EUR 350,000;
January 2011	EUR 350,000;
Total	EUR 1,800,000.

180. The Appellant submitted that as the Respondent was also in breach of the Contract, then no compensation should be paid and instead the Respondent should only receive his outstanding remuneration at the termination date. The Respondent was of the opinion that the jurisprudence of CAS regarding the amounts payable by a club which has breached the contract of a player, resulting in that player terminating the contract with just cause is consistent and unequivocal; the Respondent is entitled to receive all the amounts which would have been payable if the Contract would have been fulfilled by the Appellant. The Respondent therefore submits that all the amounts which would have been payable in the event the Contract would have been properly performed by the Appellant are due as compensation. However, the Respondent noted that the total amount of salaries due under the residue of the contractual term exceeded the EUR 1.4m awarded by the FIFA DRC in the Appealed Decision, and was prepared to accept that sum.

181. The Panel noted that the Respondent left Apollon on 28 June 2010 when he concluded a settlement agreement with that club. Without having been provided with much by way of detail, the Panel notes the Respondent had failed a doping test and was therefore unable to play professional football or train. The Panel notes the position of previous CAS panels with respect to deductions for everything an employee *"saved as a consequence of termination of the contract and which he earned or intentionally failed to earn through other work"* (CAS 2006/A/1180, para 41; see also CAS 2010/A/2202, paras 24 *et seq.*) and determines that this factor must be considered in this matter – he has contributed this factor.

182. The Panel agrees with the Respondent in awarding all the amounts which would have been payable if the Contract would have been fulfilled by the Appellant, but only to the extent that the Respondent could have fulfilled his part of that Contract too. As he was banned from playing football, he would have been unable to perform his part of the Contract from 28 June

2010 and, as such, the starting point for compensating the Respondent is to look at payments that he would have received between the termination date of 1 April 2009 and when he effectively he was unable to play professional football, i.e. 28 June 2010. This would cover the fixed salary instalments of EUR 750,000.

b) The conditional Salary

183. The Panel notes that the following instalments would only be paid if the Respondent had fulfilled the double-barrelled test of firstly being available for 80% of the Appellant's matches in each season and then he would get a pro rata share of the instalments based on the proportion of matches he actually participated in:

End of 2008/09 season	EUR 250,000;
End of 2009/10 season	EUR 250,000; and
End of 2010/11 season	EUR 350,000

184. The Respondent maintains that during the 2008/09 season, he participated in 11 league games. The Panel notes that in that season there were 38 games played. The amount due is therefore EUR 72,368 (11/38 x EUR 250,000).

185. The Panel next has to firstly determine whether it is satisfied that the Respondent would have been available for selection in 80% of the Appellant's matches for 2009/10 season, then secondly what number of matches he would actually have participated in. Had the Appellant been paying the Respondent on time and honouring the Contract, then, the Panel could see no reason why the Respondent would not have been available for 80% of the matches in that season. The number of matches he would have participated in is less straight forward. Neither party presented any evidence to assist the Panel (perhaps details of matches he played for Apollon, details of any injuries, etc., might have assisted), however, the Panel noted that the panel in CAS 2012/A/2874 faced a similar consideration when looking at the bonuses the player in that matter should receive and determined to award him the same for future seasons as he had achieved before the breach. The Panel determines to follow this approach and to award the Respondent a further sum of EUR 72,368.

186. The Panel notes that the Respondent did not play in the 2010/11 season, and as such, determines that the Respondent should not be awarded any part of the final instalment for that season.

c) Housing and motor benefits

187. As mentioned *supra*, the Panel noted that the Respondent was receiving a housing and motor allowance in a total amount of USD 6,000 per month. Since the Panel has already awarded an

amount of USD 30,000 for this allowance until the moment the Contract ended, the Panel will therefore proceed to assess whether the Respondent is entitled to any further amount.

188. Although the Appellant did not put forward any specific position in this respect, the Panel deems it important to emphasise that the housing and motor benefits are not a salary, but that these benefits are intended to cover actual and real expenses of the Respondent in respect of his housing and running a car. The Panel noted that the Respondent left Egypt at some stage in March 2009 and that after some time at home in England, he joined Apollon on 4 August 2009. The Panel noted from the copy of the Apollon contract that the Respondent submitted that Apollon did not pay for his housing in Cyprus or for a car. Subsequently, the Panel is of the opinion that the Respondent therefore incurred his own housing and motor costs in the period of time he was in Cyprus i.e. between August 2009 and June 2010, before he stopped playing, and can therefore only award the Respondent with compensation for his housing and motor benefits during that 11 month period.

189. The Panel notes that the Respondent did not produce any evidence of actual housing and/or motor expenses incurred by him during his time in Cyprus, but also notes that the Appellant and the Respondent agreed that an appropriate contribution whilst in Egypt was USD 6,000 per month, so determines to use that sum and awards the Respondent USD 66,000 (11 x USD 6,000).

d) Mitigation

190. The Panel notes that the Respondent did, after a few month, find a new club. Much as the Appellant submits he could have found a new club that paid more, there is no evidence that the Respondent turned down any better offers and it appears to the Panel that the Respondent accepted the offer of work from the new club, that took some risk itself by employing a player with an allegation of breach of contract hanging over him. He joined Apollon on 4 August 2009 on a contract that paid EUR 70,000 for the 2009/10 season. It would have paid EUR 85,000 for the 2010/11 season, however, the Respondent and Apollon compromised this contract. The Panel noted from the Respondent's third lawyer's letter addressed to FIFA during the FIFA DRC proceedings, that there was a second contract with Apollon and that during his time with that club, the Respondent received EUR 240,000 from Apollon. As such, this sum needs deducting from the compensation referred to above. The compensation of the former club for breach of the employment contract by the player can be calculated as the amount of money that the player would have earned with his former club until the end of his contract deducted from the amount of money that he earns with his new club for the same period (CAS 2008/A/1453 and CAS 2008/A/1469, para 27). This deduction is consistent with the principle of positive interest embodied in Art. 17(1) RSTP, the practice of other CAS panels (CAS 2010/A/2202, paras 24 et seq and CAS 2006/A/1180, para 41) and Swiss legal doctrine, Article 337c(1) and (2) of the Code of Obligations, which apply by analogy to Article 337b, as detailed above.

191. In summary, the Panel finds that the Appellant has to pay to the Respondent an additional amounts of compensation of EUR 654,736 (being EUR 750,000 + 2x EUR 72,368 - EUR

240,000) and USD 66,000 for the damages incurred by him due to the breach of the Contract by the Appellant.

E. Is any interest due?

192. In the Appealed Decision, the FIFA DRC awarded interest on both the arrears due at the termination date and on any late payment of the compensatory part of the award. The Appellant claimed interest on any sums to be awarded to it and the Respondent asked for the Appealed Decision (including the award for interest) to be upheld. As such, the Panel determines to confirm the Appealed Decision insofar as it sets out the award of interest payable towards the Respondent, however, amends it as follows:

a) 5% p.a. as of 6 July 2008 until the date of effective payment on the amount of EUR 34,000;

b) 5% p.a. as of 1 January 2009 until the date of effective payment on the amount of EUR 118,799; and

c) 5% p.a. as of 1 April 2009 until the date of effective payment on the amount of USD 30,000

193. As to the compensation, the Panel notes that in the Appealed Decision interest of 5% p.a. shall accrue from the date of the decision until the date of effective payment.

F. Conclusion

194. Based on the foregoing, and after taking into due consideration all the evidence produced and all the arguments made, the Panel finds that:

a) The Respondent unilaterally terminated the Contract with just cause in response to the Appellant's contractual breaches on 1 April 2009.
b) The Respondent is entitled to outstanding payments in a total amount of EUR 152,799 and USD 30,000 at the moment the Contract was terminated with just cause by the Respondent, together with interest at the rate of 5% p.a. on the sum of EUR 34,000 from 6 July 2008; on the sum of EUR 118,799 from 1 January 2009 and on the sum of USD 30,000 from 1 April 2009, in each case until the date of effective payment.
c) The Respondent is entitled to an amounts of EUR 654,736 and USD 66,000 as compensation for objective damages incurred due to the breach of the Contract by the Appellant together with interest of 5% p.a. on such sums from the date of this award until the date of effective payment.

195. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Zamalek SC on 10 December 2013 against the decision of the FIFA Dispute Resolution Chamber dated 28 June 2013 is partially upheld.

2. The decision of the FIFA Dispute Resolution Chamber dated 28 June 2013 is replaced with this award.

3. Manuel Agogo unilaterally terminated his contract with Zamalek SC with just cause in response to Zamalek SC's contractual breaches on 1 April 2009.

4. Zamalek SC shall pay to Manuel Agogo the amounts of EUR 152,799 and USD 30,000 as arrears at the moment the contract was terminated, together with interest at the rate of 5% p.a. on the sum of EUR 34,000 from 6 July 2008; on the sum of EUR 118,799 from 1 January 2009 and on the sum of USD 30,000 from 1 April 2009, in each case until the date of effective payment.

5. Zamalek SC shall pay to Manuel Agogo the amounts of EUR 654,736 and USD 66,000 as compensation for objective damages incurred due to the breach of the Contract by Zamalek SC together with interest of 5% p.a. on such sums from the date of this award until the date of effective payment.

6. (…).

7. (…).

8. All other or further claims are dismissed.