Arbitration CAS 2014/A/3706 Christophe Grondin v. Al-Faisaly Football Club, award of 17 April 2015

Panel: Mr Olivier Carrard (Switzerland), Sole arbitrator

Football
Termination of a contract of employment
Existence of just cause for the player to unilaterally terminate the contract
General principles of good faith in a contract between a player and a club
Legal consequences of termination with cause under Swiss law

1. **A just cause for the termination of a contract by one party is usually the consequence of a violation of the contract by the other party. Article 14 of the FIFA Regulations on the Status and Transfer of Players (RSTP) does not define when there is a "just cause" to terminate a contract. One must therefore fall back on Swiss law: accordingly, an employment contract which has been concluded for a fixed term, can only be terminated prior to expiry of the term of the contract if there are "valid reasons" or if the parties reach mutual agreement on the end of the contract. The "good cause" depends on the overall circumstances of the case. Only a breach which is of a certain severity justifies termination of a contract without prior warning. In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence. Should the breach be of a minor severity, Swiss jurisprudence is of the opinion that it can still lead to an immediate termination but only if it was repeated despite a prior warning. Nonetheless, the severity of the breach cannot lead by itself to a termination for just cause. What is decisive is that the facts adduced in support of the immediate termination have resulted in the loss of trust which is the basis of the employment contract.**

2. **General principles of good faith state that if a party has clearly shown that it is willing to rely upon a signed contract by performing its contractual obligations, such party may legitimately expect the counterparty to behave in good faith and to do its utmost in order to have said contract performed. A club that systematically ignores the player's request trying to return to his club's country and resume training with the club acts with clear bad faith.**

3. **Article 14 RSTP does not fully address the consequences of a unilateral termination of the employment contract with just cause. It only states that the injured party can terminate the contract without consequences of any kind in the case of just cause but leaves open to interpretation what the consequences for the other party of the contract are. Due to the fact that Article 14 RSTP is silent on the calculation of the due compensation and as Article 17 RTSP expressly refers only to termination of a contract**

without just cause, the principles of Swiss employment law and previous CAS jurisprudence apply.

I. FACTS

A. The Parties

1. Mr. Christophe Grondin (the "Player" or the "Appellant") is a French professional football midfield player. He was born in the French city of Toulouse on September 2, 1983.

2. He is a professional player since 1999 and has played for various football club as FC Toulouse, Birmingham City, K.S.K. Ronse and Cercle Bruges K.S.V.

3. The Al-Faisaly FC (the "Club" or the "Respondent") is a Saudi Arabian football team based in Harmah City.

4. The Club plays in the first level (D1) of the Saudi Professional League. It is affiliated to the Saudi Arabian Football Federation, which is in turn affiliated to the International Federation of Association Football (FIFA) since 1956.

B. Facts of the case

5. On July 1st, 2012, Mr Christophe Grondin and Al Faisaly FC signed an employment contract (the "Contract") of a duration of two years, valid as of the date of signature until June 30th, 2014.

6. The Contract specifies at its article 19 that the Club would provide the Player in particular with the following remuneration:

   - A monthly salary of USD 18'333.- payable at the end of each month;
   - USD 50'000.- as contract advance, payable upon signature of the contract and the Player's presence in Saudi Arabia.
   - Housing allowance;
   - Transportation allowance;

7. Moreover, in accordance with the same article 19, the Club has to provide the Player with *"two tickets travel in case of approval of the first party"* as well as *"one round ticket for family in case of coming to Saudi Arabia"*.

8. The remuneration of the Player for the second year had to be set in the same manner as for the first year.

9. Article 29 of the contract stipulates that the Respondent *"is entitled to take back the total contract value from the player in case he is absent of training or any official or friendly match, non-commitment for the club's internal lists and systems, or in case he requests for terminating the contract"*.

10. Finally, vacation period is mentioned in article 10 of the Contract which stipulates that *"*[t]*he player has the right to use his annual paid vacation for a period of* …. [Not mentioned in the Contract]. *The date of vacation shall be confirmed by both parties, and the player shall observe the club's professional instructions with regard to this vacation"*.

C. Origin of the dispute

11. After returning to France in June 2013 for a few days off and without having convened with the Respondent of any timeline for the resumption of training sessions nor for the beginning of season 2013/2014, the Appellant contacted the Respondent either by fax or e-mail, on June 11th, 14th, 17th and 28th 2013, asking for information regarding the start of pre-season training and for a return flight ticket.

12. Moreover, in his correspondence of June 28th, 2013, the Appellant indicated that his visa expired on June 27th, 2013 and asked for all necessary documentation in order to fulfil his contractual obligations.

13. On June 29th, 2013, the Respondent answered stating that it received the Appellant's last fax, that it tried to contact the Appellant several times and that it had been informed by the Appellant's agent of his intention to terminate the contract.

14. The Appellant replied on July 2nd, 2013 insisting that the agent referred to did not represent him, that he did not receive any communications from the Respondent, that he had no intention to terminate the contract and that he still awaited the necessary documentation in order to travel to the Kingdom of Saudi Arabia, in particular the training program, a flight ticket and a valid visa. On this occasion, the Appellant warned the Respondent that he would have recourse to a lawyer if the Club did not provide him with the requested documents or did not answer his letter within the allowed timeframe.

15. By e-mail dated July 6th, 2013, the Respondent informed the Appellant that it received only two of his previous communications, that he should have returned to Saudi Arabia before his visa had expired and that it would have reimbursed the costs of the flight upon his arrival. On this same occasion, the Respondent stated that it will apply the relevant sanctions due to the Appellant's absence while criticizing his unsatisfactory technical level.

16. In his reply of the same day, the Appellant maintained that his absence from the Club was only due to the failure of the Respondent to respond to his correspondence dated June 11th, 14th, 17th and 28th 2013. The Appellant reiterated his willingness to pursue the Contract.

17. On July 9th, 2013, the Respondent stated that it had no objection with the Appellant fulfilling his contract, that the Appellant would be provided with a visa and that he should buy his own flight ticket which would be reimbursed upon arrival.

18. In his response dated July 12th, 2013, the Appellant acknowledged the Respondent's intention to organize the issuance of a visa but maintained that it was the Respondent duty to provide him with a flight ticket while stating that, if needed, he would take all necessary decisions to protect his interests.

19. By e-mail dated July 15th, 2013, the Respondent informed the Appellant that a specific training program had been prepared for him since he had been absent from a pre-season camp in Rome. The Respondent added that it would have been surprised that the Appellant failed to come back before the expiry of his visa as he was given a vacation of thirty five days as it proceeded with all professional football players.

20. In his response dated July 18th, 2013, the Appellant stated that he had never been called-up for the training camp in Rome despite the fact that he contacted the Club since June 11th, 2013, well before the expiry of his visa. Moreover, the Appellant stated that he never received any training program and that his visa had still not been issued while warning again the Respondent that he would have called upon the services of a lawyer if needed.

21. The Respondent then informed the Appellant on July 18th, 2013 that it was seriously thinking of terminating the contract or negotiating a mutual termination due to the Appellant's alleged negligence towards his duties.

22. Then, on July 19th, 2013, the Respondent informed the Appellant that a visa was going to be issued shortly for the Appellant to travel to Saudi Arabia *"in order to pay all amounts required from you"*. In this context, the Respondent made reference to article 29 of the contract, considering that the Appellant was *"responsible of being late to come back in time before the expiration of the visa regarding to the fact that the vacation is limited with the duration of the visa"* and recalling him that *"the duration of the visa is limited with the day of return so there is need to call back and check due to the fact that this is not your first trip and you are used to travel a lot especially the past year"*.

23. On July 20th, 2013, the Appellant addressed a default notice to the Respondent, requesting the payment of alleged unpaid "signing fees" by no later than July 22th, 2013.

24. On July 23th, 2013, after not having received any reply from the Club, the Player lodged a claim before FIFA against the Club, requesting the imposition of sporting sanctions as well as a total amount of USD 290'000- since he would have terminated the Contract with just cause.

25. On July 25th, 2013, the Respondent wrote to the Appellant that it hoped that he would come back and underlined that he would be compensated for the price of his flight ticket. In the same letter, the Club underlined that the Appellant's alleged requests for information about his return to Saudi Arabia *"have actually no sense because you are bound to the date of the expiration of the visa that we defined so, you had to come before the date to start the training and the camps"* and recalled him article 29 of the Contract according to which he would he is *"charged to pay the total value of the contract"*.

26. By decision of October 14th, 2013 and upon request from the French Football Federation, this federation was authorized to provisionally register the Player, who was affiliated with the amateur club, US Castanéenne.

27. By decision dated April 25th, 2014 and notified to the Player on August 7th, 2014, the Dispute Resolution Chamber (DRC) rejected the claim stating that the Player was not entitled to any compensation since he breached the Contract without just cause by terminating it on 28 June 2013 and that the Respondent was not to be held liable for said termination.

D. Proceedings before the Court of Arbitration for Sport

28. The Player filed, on August 18th, 2014, his Statement of Appeal at the Court of Arbitration for Sport (CAS) against the DRC decision, requesting a total amount of USD 270'000- broken down as follows:

- USD 50'000- as unpaid signing fees for the season 2013/2014, plus 5% interest p.a. as of July 2nd, 2013;
- USD 220'000- as compensation corresponding to the total salaries for the season 2013/14, plus 5% interest p.a. as of July 24th, 2013.

29. On September 5th, 2015, the Player submitted his Appeal Brief and confirmed his prayers for relief.

30. On September 15th, 2014, the Club submitted its Answer before the CAS, rejecting the Player's claim considering that since it had not committed any violation of its contractual obligations he could not consequently be held liable for the termination of the contract.

31. On November 4th, 2014 and further to a request from the Appellant tacitly accepted by the Respondent, the Parties were informed that the President of the CAS Appeal Arbitration Division had confirmed the appointment of a sole arbitrator in this case.

32. On November 28th, 2014, pursuant to Article R54 of the Code of Sport-related Arbitration (the "CAS Code"), the CAS Court Office informed the Parties that the Arbitral Panel called upon to resolve the dispute at hand is constituted as follows:

Sole Arbitrator: Mr. Olivier Carrard, Attorney-at-Law in Geneva, Switzerland

33. On January 9th, 2015 and after having duly consulted the Parties, the CAS invited the Parties at a hearing to be held on February 6th, 2015.

34. On January 15th, 2015, the CAS sent to the Parties a copy of the file that was submitted by FIFA upon request from the Sole Arbitrator.

35. On January 25th, 2015, the Respondent requested the postponement of the hearing until its participants to such hearing would have received their visa. This request was denied on January 26th, 2015, the Respondent having however the possibility either to submit a new application for a postponement or a request to be authorized to attend the hearing via video-conference, should the needed visas not be obtained on time.

36. On January 28th, 2015, the CAS, on behalf of the Sole Arbitrator, sent both Parties an Order of Procedure, confirming, amongst others, the holding of a hearing at the CAS Court Office in Lausanne, on February 6th, 2015. In the same letter, the Sole Arbitrator requested both Parties to sign and return a copy of the Order of Procedure to the CAS Court Office by Monday, February 2nd, 2015.

37. As per the CAS request, the Appellant returned on January 29th, 2015 a signed version of the Order of Procedure.

38. By letter dated January 30th, 2015, the CAS acknowledged receipt of the Appellant's signed Order of Procedure and draw both Parties' attention to the fact that according to Article R57, para. 4 of the CAS Code *"if any of the parties, or any of its witnesses, having been duly summoned, fails to appear, the Panel may nevertheless proceed with the hearing and render an award"*.

39. On February 1st, 2015, the Respondent requested the postponement of the hearing but on February 4th, 2015, it returned a signed version of the Order of Procedure.

40. By letter of the same day, the CAS hence acknowledged receipt of the Respondent's signed Order of Procedure. In the same letter, CAS outlined the fact that it was its understanding that the Respondent's representatives would personally attend the hearing to be held on February 6th, 2015 and, should that not be the case, the Respondent was invited to inform the CAS Court office by return fax. Again, CAS draws both Parties' attention to Article R57, para. 4 of the CAS Code.

41. As announced, the Sole Arbitrator held, on February 6th, 2015, a hearing at the CAS Court Office, in Lausanne, where eventually only the Appellant attended the hearing despite both Parties confirmed their venue.

42. At this hearing, the Sole Arbitrator requested to the Player to provide an earnings statement for the period from the date of the termination of the Contract until its natural expiration which would have occurred on June 30th, 2014

43. Following upon said request, the Appellant informed the Sole Arbitrator by fax and e-mail dated February 21st, 2015 that he received from Pole Emploi Midi Pyrénées, a French governmental agency, a total unemployment benefit of EUR 9'083.22 as for the period starting September 15th, 2013 until June 30th, 2014.

44. By letter of February 24th, 2015, the Respondent was invited to submit observations strictly limited to this mew information within a week. The Respondent however filed observations broader than requested on March 17th, 2015. Further to an objection sent by the Appellant on

March 18th, 2015, the Sole Arbitrator excluded the Respondent's observations of March 17th, 2015 by decision of March 19th, 2015.

45. By letter of March 22nd, 2015, the Respondent apologized for the delay *"due to external circumstances"* and requested additional information on the relevancy for the present matters of the documents submitted by the Appellant on February 21st, 2015 which are related to the Appellant's remuneration *"after his failure to commit to the second year of his contract"*.

46. By letter of April 15th, 2015, the CAS Court Office noted that the observations filed by the Respondent were in any case not related to the documents filed by the Appellant on February 21st, 2015, that these documents were submitted upon request from the Sole Arbitrator and that this evidentiary request aimed at the correct calculation of the compensation that might be due by the Respondent.

II. SUBMISSIONS OF THE PARTIES

A. The Appellant's submissions

47. In this context and supported by an argumentation similar as the one held before the DRC, the Appellant alleged that he always professionally fulfilled all his contractual obligations whereas the Respondent did not comply with its primary obligation of wage and "signing fees" payment.

48. Indeed, according the Appellant, the Respondent lacked genuine interest to retain his services on the grounds of an unsatisfactory technical level. The Appellant highlighted the fact that he had never been contacted anyhow in order to resume training or to take part in pre-season camp. The Appellant insisted that his multiple attempts to contact the Respondent before expiry of his visa remained unanswered.

49. According to the Appellant, the Respondent had to be held liable for his incapacity to return to the Kingdom of Saudi Arabia since it failed to carry out the necessary administrative steps to renew his visa. In addition, the Appellant underlined the Respondent's violation of article 19 of the contract since it refused to book the return flight ticket.

50. Moreover, according the Appellant, the Respondent did not pay the "signing fees" of USD 50'000.- allegedly due for the season 2013/2014 and that he was entitled to receive a compensation for breach of contract by the Club of an amount of USD 220'000.-, corresponding to the residual value of his Contract with the Respondent.

51. For the reason set above, the Appellant is of the opinion that he was entitled to terminate the Contract with the Respondent for "just cause" as of the day he filed his claim before the DRC on July 23th, 2013.

52. Finally, the Appellant maintained that the Respondent was in bad faith when it informed him on July 19th, 2013, that he should reimburse the entire value of the contract pursuant to article 29 of the Contract for not having resumed the training.

53. In view of the above, the Appellant submitted the following requests for relief:

"DECLARES the appeal brought by Mr Ch. GRONDIN against the club AL FAISALY, to be admissible as well as founded.

REFORMS THE DECISION OF THE FIFA DRC ON 25 APRIL 2014 AS FOLLOWS:

DECLARES that Mr Ch. GRONDIN terminated (on the 23 July 2013) the employment contract binding him to the club AL FAISALY, in accordance with art. 14 of FIFA Regulations in force, i.e. for just cause (this termination being exclusively attributed to the club AL FAISALY).

ORDERS the club AL FAISALY to pay an amount of $ 270,000.00 Net (plus interest of 5% per annum) to Mr. Ch. GRONDIN, subject to the following breakdown:

$ 50,000.00 Nets as outstanding remuneration (sign on fee) plus interest of 5% per annum from 2 July 2013 until the date of perfect payment by the club AL FAISALY;

$ 220,000.00 Nets as compensation for breach of contract plus interest of 5% per annum from 24 July 2013 until the date of perfect payment by the club AL FAISALY.

REJECTS any broader claim of any nature by the club AL FAISALY against Mr Ch. GRONDIN.

ORDERS the club AL FAISALY to pay all arbitration costs (including fees for registration and service in the amount of CHF 1,000.00).

ORDERS the club AL FAISALY to pay defence costs and other miscellaneous costs incurred by Mr Ch. GRONDIN, these costs being estimated ex aequo et bono in the amount of CHF 10,000.00".

B. The Respondent's submissions

54. In its Answer - also supported by an argumentation similar as the one held before the DRC - the Respondent held that the fundamental cause in the present issue was the Appellant's non-return to the Kingdom of Saudi Arabia before the end of the visa on June 27th, 2013, despite the fact that he was perfectly aware of the importance of arriving on time.

55. The Respondent also pointed out the Appellant's negligence regarding his professional duties since he has already been absent for 4 days without any formal reason and has initiated a strike of two days with other players during the 2012/2013 season.

56. While recalling that it had no intention to terminate the contractual relationship with the Appellant before he went on vacation, the Respondent asserted that the Player had received all his financial dues for the season 2012/2013 before he left the Kingdom for holidays.

57. Regarding the Appellant's requests for information about training and flight ticket, the Respondent maintained that since he travelled many times the previous year, the Appellant knew about his obligation to return to the Kingdom of Saudi Arabia before the expiry of his visa.

58. According to the Respondent, this was the demonstration of the Appellant's lack of desire to pursue the contractual relationship. In this respect, the Respondent also recalled that it only had to cover the Appellant's travel costs *"in case of approval of the first party"* (i.e. the Club), pursuant to article 19 of the contract, before underling that it had eventually offered the Appellant to reimburse the value of his plane ticket to return to the Kingdom. The Respondent also underlined that the Appellant started threating it to lodge a claim before FIFA once he knew the Club's willingness to issue his visa and to apply the sanction provided for by Article 29 of the Contract.

59. The Respondent also recalled that on July 6th, 2013, it proposed to terminate the Contract in a friendly way if the Appellant agreed.

60. Finally, the Respondent emphasized that it eventually sent a new visa to the Appellant in order for him to return to the Kingdom of Saudi Arabia, thus requesting the Appellant's return. In this respect, the Respondent referred to its correspondence dated July 26th, 2013 by means of which it informed the Appellant of the issuance of his new visa, and its correspondence of 28 July 2013 *"asking your presence to the Kingdom of Saudi Arabia in order to complete the remaining period of your employment contract and to negotiate on paying item 29 with the club due to your evident absence any your tardiness to come before the expiration of the visa that was given to you"*.

III. LEGAL DISCUSSION

A. CAS Jurisdiction

61. The jurisdiction of CAS derives from Article 60 ff. of the International Federation of Association Football Statutes ("FIFA Statutes").

62. According to Article 66.1 of the FIFA Statutes:

"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and players' agents".

63. Moreover, Article 67.1 of the FIFA Statutes provides that:

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

64. In this regard, Article R47 of the CAS Code provides as follows and is not disputed by the Parties:

"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".

65. Both Parties having signed the Order of Procedure without amendment in this respect and in the absence of any objection, the Sole Arbitrator concludes that he has jurisdiction to resolve the present dispute.

66. Under Article R57 of the Code, the Panel has full power to review the facts and the law.

B. Applicable law

67. Article R58 of the 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".

68. Article 66 par. 2 of the FIFA Statutes states:

"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

69. Moreover, the Parties have not expressly chosen any specific rules of law to be applicable to their contractual relationship. As the seat of the CAS is in Switzerland, this arbitration is subject to the rules of Swiss private international law (LDIP). Article 187 para. 1 LDIP provides that the arbitral tribunal decides in accordance with the law chosen by the Parties or, in the absence of any such choice, in accordance with the rules with which the case has the closest connection.

70. Although the Parties have not expressly chosen any specific law, there is, in cases of appeals against decisions issued by FIFA, a tacit and indirect choice of law, in accordance with Article R58 of the Code and Article 66 para. 2 of the FIFA Statutes. Such tacit and indirect choice of law is considered as valid under Swiss law and complies in particular with Article 187 para. 2 LDIP (see for instance KARRER T., Basler Kommentar zum Internationalen and Privatrecht, 1996, N. 92 & 96 ad Article 187 LDIP; POUDRET/BESSON, Droit comparé de l'arbitrage international, 2002, N. 683, page 613; DUTOIT B., Droit international privé suisse, Commentaire de la Loi fédérale du 18 décembre 1987, Bâle, N. 4 ad Art. 187 LDIP, page 657; CAS

2004/A/574). Indeed, these rules provide for the application of the FIFA Regulations and, subsidiarily, Swiss law.

C. Admissibility of the appeal

71. The Appellant filed his Statement of Appeal on August 18th, 2014, and therefore within the deadline provided by the FIFA Statutes and as stated in the decision of the DRC dated April 25th, 2014. Moreover, the Player submitted his Appeal Brief on September 5th, 2015 and therefore within the deadline provided by article R51 of the CAS Code.

72. The Respondent having not raised any objections with regards to the admissibility of the Appeal, the Sole Arbitrator concludes that the appeal is admissible, having regard to the fact that the Appellants submitted it within the deadline provided by Article R49 of the CAS Code and complied with all the other requirements set forth by Article R48 of the CAS Code.

D. Merits of the appeals

73. Acknowledging that the Parties were bound by an fixed duration employment contract, which was signed on July 1st, 2012 and that said Contract has been unilaterally terminated by the Appellant, the Sole Arbitrator is of the opinion that the present dispute can be solved only after having determined, on the basis of the good faith and of the real intention of the Parties, whether it has been terminated with or without just cause by the Appellant.

74. Once the abovementioned question will be answered, the Sole Arbitrator will then determine the consequence of such termination and the calculation of any potential compensation on the basis of the precise date of the termination of the Contract.

i. Existence of just cause for the Player to unilaterally terminate the Contract

75. According to Article 14 of the 2012 Regulations on the status and transfer of players ("FIFA Regulations") 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.

76. According to the Commentary on the Regulations for the Status and Transfer of Players ("FIFA Commentary") on Article 14 (page 39, para. 2) *"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".*

77. On this topic, FIFA Commentary specifies that a just cause for the termination of a contract by one party is usually the consequence of a violation of the contract by the other party.

78. Moreover and although Article 15 of the FIFA Regulations determines for which "sporting just cause" a player may terminate his contract, Article 14 of the FIFA Regulations does not define when there is a "just cause" to terminate a contract. One must therefore fall back on Swiss law.

79. Pursuant to this, an employment contract which has been concluded for a fixed term, can only be terminated prior to expiry of the term of the contract if there are "valid reasons" or if the Parties reach mutual agreement on the end of the contract (see also ATF 110 I 167; WYLER R., *Droit du travail*, Berne 2002, p. 323 and STAEHELIN/VISCHER, *Kommentar zum Schweizerischen Zivilgesetzbuch, Obligationenrecht, Teilband V 2c, Der Arbeitsvertrag, Art. 319-362 OR*, Zurich 1996, marg. no. 17 ad Art. 334, p. 479). In this regard, Article 337 para. 2 of the Code of Obligations (CO) states that *"[i]n particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice"*.

80. According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (ATF 108 II 444, 446; ATF February 2nd, 2001). Particular importance is thereby attached to the nature of the breach of obligation.

81. Always according to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the Parties be continued, such as a serious breach of confidence (CAS 2006/A/1180; ATF February 2nd, 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., *op. cit.*, p. 364 and TERCIER P., *Les contrats spéciaux*, Zurich et al. 2003, no. 3402, p. 496).

82. Should the breach be of a minor severity, Swiss jurisprudence is of the opinion that it can still lead to an immediate termination but only if it was repeated despite a prior warning (ATF 130 III 213 v. 3.1 p. 221).

83. Nonetheless, the severity of the breach cannot lead by itself to a termination for just cause. What is decisive is that the facts adduced in support of the immediate termination have resulted in the loss of trust which is the basis of the employment contract (ATF 130 III 213 c. 3.1 p. 221; 127 III 1534 c. 1c p. 157 s).

84. Therefore, the question is whether in the case at stake, this severity breach threshold has been crossed by the behavior of the Respondent and if this would have allowed the Appellant to terminate the contract with immediate effect.

85. As described in section I C. above, it appears that the Appellant left Saudi Arabia with the permission of the Respondent to go on vacation. At that moment, he held a visa allowing him to exit and enter Saudi Arabia during a period of 60 days, until June 27th, 2014.

86. Based on the documentary evidence provided by either party and on the statement of the Appellant at the hearing held on February 6th, 2015, it also appears that the Appellant had contacted the Respondent four times during the month of June, asking for the starting date of

the pre-season training and for the new season as well as a flight ticket to return to the Kingdom of Saudi Arabia.

87. It the present case, it has been established that the Respondent answered for the first time only after the expiry of the Appellant's visa, informing this last that he should have returned within the 60 days for which he had a valid visa and that in any case, he had to bear his own travelling expenses since it had no contractual obligation to pay the Appellant's flight tickets in advance.

88. Regarding the flight ticket, the Sole Arbitrator recalls that, according to Article 19 of the Contract, the Respondent was contractually responsible to pay to the Appellant every contractual year *"two tickets travel to the second party* [the Appellant] *in case of approval of the first party* [the Respondent]*"* and *"one round ticket for family in case of coming to Saudi Arabia"*.

89. It is important to highlight that if Article 19 of the Contract is drafted in a manner which does not allow to precisely determining its scope, the Sole Arbitrator is nonetheless of the opinion that it helps to highlight the responsibility of the Club to pay tickets and not simply to reimburse them afterwards if approved by the Club as it has been proposed. Moreover it has been claimed by the Appellant at the hearing held on February 6th, 2015, and to date undisputed by the Respondent, that the consistent practice of the Club on this matter was to pay in advance to all its foreign player round trip tickets.

90. Based on the above, the Sole Arbitrator is of the opinion that the Appellant was legitimately entitled to request flight tickets to travel to the Kingdom Saudi Arabia and that the Respondent showed bad faith in systematically refusing it.

91. Regarding the pre-season training details and the new season information and based on the documentary evidence provided by either party, the Sole Arbitrator noted that the Appellant has never been provided by the Club with such information. On this regard, the Sole Arbitrator acknowledged that the Respondent has been able neither to produce proof of the contrary nor to establish that the Player should have known the length of his vacation. The Contract is silent on this respect and no evidence had been adduced that the Club would have actually provided the Player with the *"club's professional instructions with regard to this vacation"* referred to in the Contract.

92. Considering that it was the responsibility of the Respondent, as employer of the Appellant and being in a clear leadership position, to provide such information, the Sole Arbitrator concludes that, if for any reason the Respondent could not provide them at the time of the Appellant's departure, it was therefore all the more important for the Club to anticipate this issue and to send them, on time, before the beginning of the pre-season training.

93. However, that never happened and the Sole Arbitrator is of the opinion that the Respondent acted in bad faith on blaming the Appellant's absence from the pre-season camp in Rome.

94. Moreover and as it has been already mentioned above, the Appellant contacted several times the Respondent during the month of June in order to obtain information on the beginning of

the pre-season training. One could not expect from a player, employee of a professional soccer team, to do more than that.

95. As per the Player's visa renewal, the Sole Arbitrator considers that it was also the responsibility of the Respondent, as employer of the Appellant, to provide this last with all the necessary documents.

96. Indeed, general principles of good faith states that if a party has clearly shown that it is willing to rely upon a signed contract by performing its contractual obligations, as *in casu* returning to the Kingdom of Saudi Arabia and resuming training with the Club, it may legitimately expect the counterparty to behave in good faith and to do its utmost in order to have said contract performed.

97. Based on the above element - and on a body of evidence which, at the very least, reveals that the Respondent has systematically ignored the Appellant's request in order to avoid his timely return to Kingdom of Saudi Arabia -, the Sole Arbitrator is of the opinion that the Respondent lacked of willingness to prevent the present conflict, acting as a consequence with such negligence as to constitute clear bad faith.

98. As a consequence of this bad faith and lack of interest for the Player, the Club breached the Contract by breaking the Appellant's trust, which constitutes an essential element of an employment contract. Consequently, the Sole Arbitrator concludes that the Respondent's behavior gave the Appellant "just cause" for termination of the contract.

99. Moreover, this opinion is also reinforced by the extensive warning of the Appellant and his genuine good faith throughout the entire duration of the case.

100. The Sole Arbitrator disagrees indeed with the Respondent's assertions claiming that the Player acted in bad faith, considering that his non-return to the Kingdom of Saudi Arabia before the expiry of his Visa could be explained by his non desire to complete the Contract or to terminate it.

101. Indeed, the Appellant repeatedly expressed in his various correspondences of June and July 2013 his desire to continue to play for the Respondent. Moreover, there is no evidence whatsoever that the Appellant's main target was to terminate the Contract in order to joining a new football club team. Quite the contrary, following the termination of the Contract, not only he did not signed - to date - any new contract with another professional Club but, in order to maintain his sporting and commercial value, the Player had no choice but to accept a position with the amateur French club *US Castanéenne*.

ii. Legal consequences of Termination with Cause

102. Article 14 of the FIFA Regulations does not fully address the consequences of a unilateral termination of the employment contract with just cause. It only states that the injured party can

terminate the contract without consequences of any kind in the case of just cause but leaves open to interpretation what the consequences for the other party of the contract are.

103. Due to the fact that Article 14 RSTP is silent on the calculation of the due compensation and as Article 17 RTSP expressly refers only to termination of a contract without just cause, this Panel will apply the principles of Swiss employment law and look into previous CAS jurisprudence (cf. for instance, CAS 2008/A/1589, par. 40 ff or CAS 2010/A/2202, par. 18 ff, where Article 337b Swiss CO was applied by CAS Panels).

104. Firstly, Article 97 of the Swiss CO requires that the injured party receives an integral reparation of his damages by stating that:

"The debtor who fails to perform his obligation or does not fulfil it properly is liable for damages, unless he proves that there is no fault on his part. […]".

105. Article 337b of the Swiss CO, article which deals with the consequences of justified employment termination, provides that:

"Where the good cause for terminating the employment relationship with immediate effect consists in breach of contract by one party, he is fully liable in damages with due regard to all claims arising under the employment relationship.

In other eventualities the court determines the financial consequences of termination with immediate effect at its discretion, taking due account of all the circumstances".

106. Article 337c para. 1 of the Swiss CO, article which deals with the consequences of unjustified employment termination, provides that:

"Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration".

Para. 2 of the same article provides however that *"[s]uch damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work".*

107. As it can be appreciated from the wording of both articles, article 337b is less specific than article 337c with regard to the scope of the damages that the injured party is entitled to. According to Swiss legal doctrine, the injured party is entitled to integral reparation of its damages pursuant to the general principles set forth in article 97 of the Swiss CO. Thus, the damages taken into account are not only those that may have caused the act or the omission that justify the termination but also the positive interest. The positive damages of the employee are the salaries and other material income that he would have had if the contract would have been performed until its natural expiration. Nevertheless, since the law does not say this explicitly, article 337c applies by analogy. (ENGEL P., Contrats de droit suisse, Berne 2000, p. 499, section 2.1.2).

108. Furthermore, the CAS case law agrees that *"in principle the harmed party should be restored to the position in which the same party would have been had the contract been properly fulfilled"* (CAS 2005/A/801, para 66; CAS 2006/A/1061, para. 15; and CAS 2006/A/1062, para. 22).

109. For these reasons, the Sole Arbitrator rules the Player should therefore be entitled to claim payment of the entire amount he could have expected, and compensation for the damages he would have avoided, if the Contract had been implemented up to the end of the contract.

110. However, before addressing the calculation of this specific amount, it is crucial to determine the precise date of the Contract's termination

iii. The date of the Contract's termination

111. If it is undisputed that it is the Appellant who decided to terminate the Contract, the moment of such termination is less clear.

112. In its decision dated April 25th, 2014, the DRC came to the conclusion that the Appellant terminated the contract as a result of his incapacity to return to the Club after the expiry of his visa on June 27th, 2013 and that, accordingly, the contract should be considered as terminated by the Appellant as of June 28th, 2013.

113. The Sole Arbitrator disagrees with the DRC's conclusion.

114. Regarding to the date of termination of the Contract, the Sole Arbitrator notices three relevant events: **first**, it is necessary to highlight that the Contract do not provide any condition for anticipated termination; **second**, in his correspondence dated July 20th, 2013, the Appellant warned the Respondent that in case of no positive response by no later than July 22th, 2013, he would act before the DRC and **third**, in his claim before the DRC dated July 23th, 2013, the Appellant stated that the termination of the agreement had been done by the filing of such claim.

115. Based on the above and since it has not been dispute by the Respondent, the Sole Arbitrator decides not to uphold the position taken by the DRC and rules that the Contract should be considered as terminated on July 23th, 2013.

iv. Calculation of the compensation for the breach of the Contract by the Respondent

116. Based on the fact that it has been proved that the Contract has been terminated for just cause by the Appellant on July 23th, 2013, the Sole Arbitrator rules in this case that, subject to mitigation, the Appellant is entitled to receive the entire remaining value of the employment contract, from the date of termination until its natural expiration on June 30th, 2014.

117. For the purpose of clarification, it should be noted that since the Respondent has paid to the Appellant all his financial dues for the first contract year (i.e. from July 2012 to June 2013)

before the Player's departure for vacation, the Appellant should be entitled of his monthly wage of July 2013 not as compensation but as wage arrears.

a) Monthly wages

118. Pursuant to article 19 and 20 of the Contract, the Appellant should be compensated for the monthly wages for July 2013 to June 2014, included:

- July 2013 – December 2013 (6 months) and January 2014 – June 2014 (6 months) =12 months x USD 18'333.- = **USD 219'996.-**.

b) Contract advance

119. Pursuant to article 19 and 20 of the Contract, the Appellant should be compensated for the payment of the "contract advance" for the second contractual year starting on July 1st, 2013 = **USD 50'000.-** The Sole Arbitrator underlines here that this amount, expressly designated as a *"Contract advance"*, due for the second contractual year, is not due as an arrear but as part of the remaining total value of the Contract.

c) Mitigation

120. As it has been established above, since the Appellant already received from Pole Emploi Midi Pyrénées, a total unemployment benefit of USD 10'169.- (EUR 9'083.22 x 1.1196)[1], the Sole Arbitrator deems that, in accordance with Article 337c para. 2 Swiss CO, this amount shall be deducted from the remaining value of the Contract and rules that the Appellant is entitled of an amount of **USD 259'827.-** for as compensation for termination with just cause.

d) Interests

121. In his Appeal brief, the Appellant requested interest of 5% per annum from July 2nd, 2013 on the "signing fees" and interest of 5% per annum from July 24th, 2013 on wages.

122. According to articles 104 and 339 of the Swiss CO, the Respondent has to pay the Appellant a 5% annual interest rate on the compensation owed under article 337b of the Swiss CO for the termination of the Contract as from the date following its termination (i.e. July 24th, 2013).

123. For the above-mentioned reasons and as the "Contract advance" of USD 50'000 is due as part as the compensation for termination with just cause, the Sole Arbitrator rules that the Appellant is indeed entitled to receive from the Respondent interests on the amount of **USD 259'827.-** from the date following the termination of the Contract, on July 24th 2013.

[1] Exchange rate EUR/USD dated March 2nd 2015.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. Partially upholds the appeal filed by Mr Christophe Grondin on August, 18th, 2014.

2. Sets aside the Decision of FIFA Dispute Resolution Chamber dated April 25th, 2014.

3. The Club Al-Faisaly FC is ordered to pay to Mr Christophe Grondin the total amount of USD 259'827.- plus interests at the annual rate of 5% (five percent) as from July 24th, 2013.

4. (…).

5. (…).

6. Dismisses all other requests, motions or prayers for relief.