



**Arbitration CAS 2014/A/3804 Shahrđari Bandar Abbas v. Carlos Fabian Leeb, award of 29 April 2016**

Panel: Mr Stuart McInnes (United Kingdom), President; Mr Gerardo Luis Acosta Pérez (Paraguay); Mrs Deanna Reiss (USA)

*Football*

*Termination of employment contract between a club and a coach*

*Inadmissibility of documents not adduced before the first instance body*

**A document can only be adduced at an appellate hearing, if it did not exist at the time of the first instance hearing or hearings or was not in the possession of the party seeking to adduce it, at the time. Pursuant to Article R57 para. 3 of the CAS Code, a CAS panel should exercise its discretion to exclude any documents adduced for the first time at the appellate hearing and exhibited to the appeal brief or make reference to them in findings on the merits of the appeal. In this respect, a party has failed to satisfy its burden of proof to explain why the documentary evidence was not submitted to the earlier hearings if it failed to demonstrate that the failure to adduce evidence at the earlier hearing was for a reason not ascribable to itself and/or to explain and prove to the satisfaction of the panel any difficulty in adducing such evidence at an earlier hearing.**

**I. INTRODUCTION**

1. This appeal is brought by Shahrđari Bandar Abbas (the “Appellant”, “Shahrđari” or “the Club”) against the decision of the FIFA Players’ Status Committee dated 20 November 2013 (the “Appealed Decision”).
2. The Appealed Decision concerns alleged breaches of the Respondent’s contract of employment concluded between the Club and the Respondent on 4 September 2010 and related to failure to make payments of salaries due by the Club to the Respondent.

**II. PARTIES**

3. Shahrđari Bandar Abbas is an Iranian Football Club, based in Bandar Abbas, affiliated with the Football Federation of the Islamic Republic of Iran which, in turn, is affiliated to the Fédération Internationale de Football Association (“FIFA”).
4. Carlos Fabián Leeb (the “Respondent”) is an Argentinian Football Coach, who was employed by the Club as Head Coach under a contract of employment by the Club dated 4 September

2010, valid from 20 August 2010 until 20 August 2011, under which he was entitled to receive the sum of USD 220,000 payable as to 50% at the beginning of the 2010 Iranian Football Season and the balance over the following 10 months.

### III. FACTUAL BACKGROUND

#### A. The facts of the dispute

5. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While 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.
6. On 4 September 2010, the Appellant concluded an employment agreement with the Respondent. The Respondent was appointed the Appellant's head coach. The agreement was made through the intervention of an Iranian Agent, Mr Majid Niroomand, in the context of a collaboration agreement between the Argentine Professional Coaches Association and the Iranian Football Federation.
7. The agreement was drafted in Farsi. An unverified and unsigned translation of the agreement into Spanish has been provided to the CAS, which sets out the terms of the employment relationship between the Club and the Respondent as follows:

*FEDERACION DEL FUTBOL DE LA REPUBLICA ISLAMICA DE IRAN*

*CONTRATO*

*Este contrato es entre el Sr. Mohammad Rahimi , Director del Club Deportivo de Sharhdari Bandar Abbas (dirección: Organización Cultural y Deportivo de Sharhdari Bandar Abbas, Imam Blv. Bandar Abbass , Irán) y El Sr Carlos Fabián Leeb hijo de.....No de Identidad.....Fecha de nacimiento : .....Portador del pasaporte No.....Nacionalidad: argentino, que en este contrato se refiera como entrenador.*

*Articulo 1: Duracion del Contrato*

*La duración del contrato es 12 meses, empezando el 20 de agosto, 2010 (29-05-1389) y terminando el 20 agosto, 2011(29-05-1390)*

*Artículo 2: Condiciones del contrato*

*2-1 Compromisos del entrenador*

*2-1-1: El Entrenador sabiendo las reglas de transportaciones de los jugadores y entrenadores y otros principios del club, tiene que preparar los ejercicios en las mejores condiciones.*

*2-1-2: El Entrenador tiene que arreglar los programas de ejercicios y antes de empezar el director o el director técnico del club deportivo tiene que confirmar todo y cualquier cambio en el programa tiene el mismo procedimiento.*

*2-1-3: El Entrenador tiene que presentar todas las facilidades necesarias con explicaciones completos al club deportivo y también obtener la confirmación*

*2-1-4: El Entrenador tiene que presentar el reporte de los ejercicios y competiciones en escrito al director de club deportivo por cada semana.*

*2-2: Compromisos del club deportivo*

*2-2-1: El club deportivo tiene que proveer las facilidades necesarias por ejercicio.*

*2-2-2: El club deportivo es responsable para el campo de juego y los útiles relativos.*

*2-2-3: Condiciones de preparar la comida y alojamiento del entrenador.*

*2-2-4: El club deportivo debe asegurar el entrenador durante el tiempo del contrato por los accidentes y las enfermedades (excepto las enfermedades crónicas y odontología).*

*Artículo 3: Condiciones de pago*

*El club deportivo tiene que pagar USD 220.000 en total.*

*Se pagan 50% de la suma cuando se inicia la temporada y se paga el resto durante 10 meses.*

*Artículo 4: Otras condiciones del contrato*

*Fecha del contrato 13-06-1389 (4 –septiembre-2010).*

8. It is not in dispute that the payment terms of the Respondent's contract of employment were not adhered to by the Appellant, although the Parties do dispute what sums were paid.
9. The Parties also accept that the Respondent's contract of employment was prematurely terminated prior to 20 August 2011, but the circumstances of the termination are not agreed between the Parties.

**B. Proceedings before the FIFA Player's Status Committee**

10. On or about 16 January 2012, the Respondent issued a claim against the Appellant before the FIFA Players' Status Committee seeking the following relief:

1. *To admit the claim and the competence of FIFA's Players' Status Committee to judge it.*
2. *To condemn the Respondent to pay the amount of USD 200,000 plus 5% interest since 20 August 2011.*

11. The Appellant did not respond to the claim made by the Respondent and the FIFA Players' Status Committee made its decisions on the basis of the information and evidence at its disposal.

12. On 20 November 2013, the FIFA Players' Status Committee issued its decision in respect of the claim made by the Respondent as follows:

(Ref. Iza 12-0001691)

1. *The claim of the Claimant, Carlos Fabián Leeb, is accepted.*
2. *The Respondent Shahrdari Bandar Abbas, has to pay to the Claimant, Carlos Fabián Leeb, the amount of USD 200,000 plus 5% interest p.a. on the said amount until the date of effective payment from 20 August 2011, within 30 days as from the date of the notification of this decision.*
3. *If the aforementioned sum plus interest is not paid within the aforementioned deadline, the present matter shall be submitted, upon request to FIFA's Disciplinary Committee for consideration and a formal decision.*
4. *The final costs of the proceedings in the amount of CHF 8,000 are to be paid by the Respondent, Shahrdari Bandar Abbas, within 30 days as from the date of notification of the present decision as follows:*
  - 4.1 *The amount of CHF 4,380 has to be paid to FIFA [...].*
  - 4.2 *The amount of CHF 3,620 has to be paid to the Claimant, Carlos Fabián Leeb.*

13. The grounds of the Appealed Decision were notified to the Appellant by the FIFA Players' Status Committee on 7 October 2014.

**IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

14. On 27 October 2014, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport against the above mentioned FIFA Players' Status Committee decision. The appeal was accorded the action number CAS 2014/A/3804.

15. The Appellant nominated Mr Jahangir Baglari as arbitrator.
16. By letter dated 4 November 2014, Mr Arash Najafi, attorney-at-law, sought an extension of time of 5 days pursuant to Article R32 of the Code of Sports-related Arbitration (the “Code”), to file the Appeal brief.
17. On 5 November 2014, the CAS Court Office, pursuant to Article R51 of the Code acknowledged receipt of the Statement of Appeal and extended the time for filing the Appeal Brief by five days pursuant to Article R32 of the Code.
18. On 6 November 2014, the CAS Court Office noted that the appeal in action number CAS 2014/A/3805 had been lodged on same date as the present appeal and invited the parties, within three days, to agree to the appeals being referred to the same Panel.
19. On 7 November 2014, Dr Ariel Reck, attorney-at-law, on behalf of the Respondents in action numbers CAS 2014/A/3804 and CAS 2014/A/3805, confirmed their agreement to the matters being referred to the same Panel and nominated Professor Lucio Colantuoni as Arbitrator. On behalf of both Respondents in action numbers CAS 2014/A/3804 and CAS 2014/A/3805, Dr Reck also sought to defer filing answers to the appeals until after payment of the Appellant’s share of the advance of costs, pursuant to Article R55(3) of the Code. In the same letter, Dr Reck confirmed that the Respondents in action numbers CAS 2014/A/3804 and CAS 2014/A/3805 were interested in submitting the matters to Mediation. Dr Reck also lodged a challenge pursuant to Article R34 of the Code against the nomination, as arbitrator, of Mr Jahangir Baglari, on behalf of the Appellant.
20. On 11 November 2014, the Appellant filed its Appeal brief in accordance with Article R51 of the Code.
21. By letter dated 11 November 2014, the CAS Court Office invited the Appellant to clarify, within three days, if it agreed to submit the appeal to Mediation. It also sought confirmation from the Appellant to agree to submit the appeals in CAS 2014/A/3804 and CAS 2014/A/3805 to the same panel.
22. By further letters dated 11 November 2014, the CAS Court Office, pursuant to Article R51 of the Code acknowledged receipt of the Statements of Appeal in action numbers CAS 2014/A/3809 and CAS 2014/A/3810 and invited the parties, within three days, to agree to the appeals in CAS 2014/A/3804, CAS 2014/A/3805, CAS 2014/A/3809 and CAS 2014/A/3810 (the “Actions”) being referred to the same Panel.
23. By letter dated 12 November 2014, Dr Reck, on behalf of the Respondents in the Actions confirmed his clients’ agreement to all four appeals being referred to the same Panel and nominated Professor Lucio Colantuoni as Arbitrator for each respondent.
25. By letters dated 21 November 2014, addressed to the CAS Court Office, Dr Reck on behalf of the Respondents in the Actions, requested that as the appeals in the Actions should be heard together by the same panel, that the deadline to submit a single joint answer to all the

cases should be fixed upon receipt of the Appellant's share of the advance of costs, pursuant to Article R55(3) of the Code.

26. By letter dated 1 December 2014, Mr Najafi on behalf of the Appellant, confirmed that it would accede to the Respondents' challenge to the nomination of Mr Jahangir Baglari and instead nominated Ms Deanna Reiss, as arbitrator for the Appellant in the Actions.
27. By letter dated 20 January 2015, the CAS Court Office informed the parties that the Respondents to the Actions should file Answers pursuant to Article R55(3) of the Code, namely within 20 days from the date of receipt, by facsimile, of its letter. It further informed the parties that pursuant to Article R54 of the Code and on behalf of the President of the CAS Appeals Arbitration Division, the Panel appointed to decide the cases was constituted as follows:  
  
President: Mr Stuart McInnes, Solicitor, in London, United Kingdom  
  
Arbitrators Ms Deanna Reiss, attorney-at-law in New York, USA  
Professor Lucio Colantuoni, attorney-at-law in Savona, Italy.
28. On 5 February 2015, Dr Reck, on behalf of the Respondents to the Actions, sought an extension of time until 18 February 2015 pursuant to Article R32 of the Code in which to file the single consolidated Answer to the appeals.
29. On 18 February 2015, a joint Answer to the Appeal Briefs was filed on behalf of the Respondents to the Actions, in accordance with Article R55 of the Code.
30. On 19 February 2015, the Appellant filed English translations of the exhibits annexed to the Appeal Briefs in the Actions.
31. On 3 March 2015, the Appellant informed the CAS Court Office that it wished a hearing to be scheduled to determine the appeals in the Actions.
32. On 27 March 2015, the Respondents informed the CAS Court Office that they wished a hearing to be scheduled to determine the appeals in the Actions.
33. On 1 April 2015, Counsel for the Respondents in the Actions requested that the Panel make the following interim orders:

*"Documents in possession of the Appellant:*

*As provided by Article R44 of the Code, we ask the panel to request the Appellant to present the original documents presented as receipts signed by Mr Leeb.*

*Other evidentiary measures:*

*Reports.*

- A. *We ask the court to request FIFA*
1. *The complete file of the case leading to the current appeal references Iza -12-02978, Iza 12-01754, Iza 12-00797, Iza 12-00169*
- B. *We ask the court to request the Football Federation of Iran the following information:*
1. *To provide a copy and translation of the registered contracts for the coaching staff.*
  2. *To confirm the club's fixture for the 2010-2011 season*
- C. *We ask the court to request the City Council of the City of Bandar Abbas, Iran, the following information:*
1. *To provide a copy and a translation of the registered contracts for the coaching staff.*
  2. *To provide a statement detailing the payments made to the club to cover the coaches' salaries".*

34. By letter dated 15 April 2015, the Appellant responded that the original documents were in the possession of Mr Majid Niroomand and that it had requested that he deliver them to the CAS Court Office. The original documents were not provided. FIFA provided full copies of its files to the CAS Court Office. No response was received to the Panel's request for information from the Football Federation for the Islamic Republic of Iran or from the City Council of the City of Bandar Abbas.
35. On 15 April 2015, the CAS Court Office notified the parties that a hearing had been scheduled for 19 May 2015.
36. On 13 May 2015, Dr Reck signed and filed a consolidated Order of Procedure with the CAS Court Office on behalf of the Respondents in the Actions. The Appellant did not file a signed copy of the Order of Procedure.
37. On 19 May 2015, a hearing was held at the CAS headquarters in Lausanne, Switzerland. All members of the Panel were present. At the outset of the hearing, the parties confirmed that they had no objection to the constitution and composition of the Panel. Mr Christopher Singer, Legal Counsel to the CAS, assisted the Panel at the hearing.

The following persons attended the hearing:

For the Appellant: Mr Arash Najafi, Counsel for the Appellant

For the Respondent: Dr Ariel Reck – Counsel for the Respondents  
Ms Casilda Regueiro - Interpreter

38. At the hearing, the Panel heard detailed submissions of Counsel for both parties and evidence from the Respondent.

39. Before the hearing was concluded, the parties expressly stated that they were satisfied with how the hearing was conducted and that their right to be heard had been respected.
40. After the conclusion of the hearing, but before the award was issued, Professor Lucio Colantuoni, the Arbitrator appointed by the Respondents was tragically killed in a road traffic accident. Pursuant to Article R36 of the Code, on 11 January 2016 the Respondents nominated Mr Gerardo Luis Acosta Pérez, attorney-at-law in Asunción, Paraguay, as arbitrator in his place. Mr Acosta read the papers, heard the recording of the hearing and participated in a Panel deliberation held by telephone conference call on 11 February 2016.
41. The newly constituted Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations all the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present award.

**V. PRELIMINARY ISSUE: ADMISSIBILITY OF DOCUMENTS NOT ADDUCED BEFORE THE FIFA PLAYERS' STATUS COMMITTEE**

42. Article R57 of the Code provides as follows:

*“Scope of Panel’s Review – Hearing*

*The Panel has the full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. The President of the Panel may request communication of the file of the federation, association or sports –related body, whose decision is the subject of the appeal. Upon transfer of the CAS file to the Panel, the President of the Panel shall issue directions in connection with the hearing for the examination of the parties, the witnesses and the experts, as well as for the oral arguments.*

[...]

*The Panel has the discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply.*

*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”.*

43. On filing the Appeal Brief, the Appellant purported to exhibit the following documents which were not adduced before the FIFA Players’ Status Committee when the Respondent’s claim was determined:

Exhibit 1 – Authorization to Majid Niroomand to proceed with negotiations throughout the Asian Continent signed by Carlos Fabián Leeb dated 28 September 2010;

Exhibit 3 – Undated Receipt confirming payment of USD 42,000 – signed Carlos Fabián Leeb;



Exhibit 4 – Undated Receipt confirming payment two months’ salary– signed Carlos Fabián Leeb;

Exhibit 5 – Receipt dated 30 May 2011 confirming payment of USD 11,000 – signed Carlos Fabián Leeb;

Exhibit 6(3) – Undated letter of resignation signed by Paulo Miguel Leeb.

44. The submissions of the Appellant on the issue of why the documents were not adduced before the FIFA Players’ Status Committee may be summarized as follows:
- i. the documents were not available at the time of the hearings before the FIFA Players’ Status Committee as they were in the possession of Mr Niroomand;
  - ii. the documents evidence the bad faith of the Respondent in claiming monies from the Appellant which have been paid by the Appellant to Mr Niroomand as agent for the Respondent.
45. The submissions made on behalf of the Respondent on this issue may be summarized as follows:
- i. the Appellant was afforded many opportunities to adduce documentary evidence by the FIFA Players’ Status Committee, but failed to do so and has not provided any reasonable explanation to justify why the documents were not previously adduced, nor has it provided the Panel with any satisfactory independent evidence justifying the documents’ authenticity and veracity;
  - ii. the attempt to adduce the documents before the CAS is evidence of bad faith on the part of the Appellant and of a practice to delay making payment as described in CAS 2012/A/2824 as a “FIFA loan”;
  - iii. the document described as Exhibit 1 merely authorises Mr Majid Niroomand to act as agent in relation to pursuing negotiations and does not, as alleged by the Appellant, authorise him to act as intermediary and to receive payments from the Appellant on behalf of the Respondent;
  - iv. further, which the Respondent does not admit, the documents purport to prove that only partial payments were made and do not explain why default was made by the Appellant in relation to the balance of the monies due to the Respondent;
  - v. the amendment to the wording of Article R57 of the Code was made expressly to address the practice of delaying payment, employed by the Appellant and the Panel should exercise its discretion to exclude the evidence presented if it was available to it, or could reasonably have been discovered by it, before the challenged decision was rendered.

**DECISION OF THE PANEL ON THE PRELIMINARY ISSUE OF WHETHER TO ADMIT THE DOCUMENTS IN EVIDENCE BEFORE THE CAS**

46. A document can only be adduced at an appellate hearing, if it did not exist at the time of the first instance hearing or hearings or was not in the possession of the party seeking to adduce it, at the time. Save for the submission that the documents were in the possession of Mr Niroomand at the time of the FIFA hearings, no submission was made to the Panel, that the documents did not exist at the time of the hearings before the FIFA Players' Status Committee, nor was any explanation provided as to why the documents were not referred to in those proceedings, or what, if any, attempt was made by the Appellant to make them available to the FIFA Players' Status Committee.
47. The Panel has carefully considered the content and substance of the documents, but does not accept, in the absence of corroborating evidence, that the documents justify the allegation of bad faith on the part of the Respondent, made by the Appellant. In the Appeal Brief the Appellant refers to proposed testimony of Mr Niroomand to explain and justify the content of the documents, however Mr Niroomand was not called as a witness at the hearing by the Appellant and no witness statement has been filed with the CAS outlining his testimony.
48. In the circumstances the Panel concludes that, pursuant to Article R57 of the Code, it should exercise its discretion to exclude the documents enumerated in paragraph 42 and exhibited to the Appeal Brief and will not consider them or make reference to them in findings on the merits of the Appeal.

**VI. SUBMISSIONS OF THE PARTIES ON THE MERITS**

49. The following outline of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. Having exercised its discretion to exclude the documents exhibited to the Appeal Brief and enumerated in paragraph 42 above, any submissions made in respect of those documents will not be recorded. The Panel however, has carefully considered all other submissions made by the Parties, even if no explicit reference has been made in what follows.

**A. The Appellant's Submissions**

50. The Appellant has paid to the Respondent nearly 80% of the salary due under the contract of employment dated 4 September 2010.
51. The Respondent appointed Mr Majid Niroomand as his agent to conclude his employment agreement with the Appellant and in accordance with the terms of his representation agreement appointed him as his plenipotentiary representative authorised to receive his remuneration from the Appellant and to account to him thereafter.
52. The Respondent was also authorized by Paulo Miguel Leeb, Sergio Carossino and Walter Aguilar, the respondents in the Actions, to receive payment of their salaries, as payment of

the assistants coaches' salaries to the Head Coach for subsequent distribution is an established practice and customary in lower division clubs.

53. On 1 September 2010, at the beginning of the 2010 season, a payment was made to the Respondent by Mr Niroomand in the sum of USD 128,000, being USD 88,000 in respect of his own salary and USD 40,000 for the Respondents in the Actions.
54. Subsequently, the Appellant made payment of additional sums of USD 80,000, USD 42,000 and USD 11,000 to the Respondent. The Respondent therefore received in total USD 261,000, of which USD 180,000 represented payments under the terms of his contract of employment and the balance was to be divided rateably between Paulo Miguel Leeb, Sergio Carossino and Walter Aguilar.
55. The Club has paid income tax of 5% of the total salary pursuant to Article 104 of the Iran Tax Code as provisional mandatory tax which is withheld from the payments made.
56. On 26 March 2011, the Respondent voluntarily submitted his resignation, four months before the end of his of employment, as he had not fulfilled the objectives in his contract of employment, in that the Club would not be promoted to the first division of professional football leagues in the following season. The resignation was made voluntarily in writing in the presence of a translator.
57. As the resignation was made four months before his contract was due to expire the Respondent is not entitled to receive salary payments after the date of his resignation. Further, as the Respondent did not give the Appellant written notice warning it about its failure to fulfil its contractual obligations, this indicates that he was satisfied with the Appellant's behaviour and that content of the written resignation should be regarded as a bi-lateral termination of contract.
58. The Appellant submitted the following request for relief:
  - “1. *We respectfully ask to accept this appeal against the decision of the Players' Status Committee dated 6 October 2014*
  2. *To set aside the challenged PSC decision dated 6 October 2014*
  3. *To establish that no compensation is due by the Appellant to the Respondent or that the compensation is equal to the facts of the case and submissions*
  4. *To condemn the Respondent to the payment in favour of the Appellant of the legal expenses incurred*
  5. *To establish that the cost of the arbitration procedure shall be borne by the Respondent”.*

**B. The Respondent's submissions**

59. The Respondent's submissions form part of a composite joint Answer filed by Dr Reck to on behalf of the each of the Respondents in the Actions.
60. It is acknowledged in the joint Answer that each of the Respondents appointed Mr Majid Niroomand, as agent to negotiate their respective contracts of employment with the Club. It is denied that Mr Niroomand should be considered as a representative of the Respondent, authorised to receive payment of the Respondent's salary from the Appellant. Further, the Appellant failed to discharge the burden of proof that it was agreed that payment was to be made to the Respondent by Mr Niroomand, on behalf of the Appellant. Such payments that were made to the Respondent by Mr Nirromand, were not made on behalf of the Appellant, but were merely payments made by Mr Niroomand on his own account. It is further denied that the Respondent received payments on behalf of the other Respondents in the Actions and it is contended that each Respondent in the Actions, entered into separate employment contracts with the Appellant and did not relinquish their respective rights to receive direct payment of salary from the Appellant.
61. The Respondent acknowledges receipt of the following sums of money from Mr Niroomand, but not from the Appellant:
- 9 December 2010: USD 42,000;
  - February 2011: USD 33,000;
  - May 2011: USD 1,000.

No explanation or justification for the payments was made by the Respondent.

62. Further and contrary to what was submitted in the appeal lodged by the Respondent before the FIFA Players' Status Committee and in the joint Answer to the Actions, in oral testimony, the Respondent admitted to receiving payments of USD 24,000 and USD 43,000 from the Appellant in respect of salary and a payment of USD 1,000 in respect of personal expenses. The Respondent failed to confirm that he had made or discharged payment of any monies to Paulo Miguel Leeb, Sergio Carossino or Walter Aguilar. The Respondent indicated that he had 'overlooked' or forgotten that these payments had been received and was unable to explain why he had claimed to have received payment of salary of only USD 20,000 from the Appellant, in his claim before the FIFA Players' Status Committee.
63. Under the Respondent's stewardship, the Appellant had a successful campaign in the 2010-2011 season, but did not reach the play-offs to compete for promotion to the first division of professional football leagues and for this reason the Appellant decided to terminate the Respondent's contract of employment.
64. The Respondent was pressurised, under duress, into submitting his resignation and left Iran with promises that payment would be made in due course and his resignation should not be implied as a withdrawal of the debts owed by the Appellant to the Respondent.

65. The Respondents in the Actions submitted the following joint requests for relief:
- a. To confirm the decisions of the FIFA Dispute resolution chamber as requested here.*
  - b. To reject the late-filled (sic) evidence presented by the club.*
  - c. To entirely reject the appeals presented by the club.*
  - d. To allocate to the Club the costs of this procedure, the procedure before FIFA and a contribution of CHF 10,000 – towards the appellants costs”.*

## VII. JURISDICTION

66. Article R47 of the Code provides as follows:

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

67. The jurisdiction of CAS, which is not disputed by the Parties, derives from Article 67 para.1 of the FIFA Statutes and Article 24 para. 2 of the Regulations on the Status and Transfer of Players (Edition 2012), which determines that a decision of FIFA may be appealed to the CAS within 21 calendar days of receipt of the reasoned decision.
68. It follows that the CAS has jurisdiction to decide on the appeal against the decisions of the FIFA Player Status Committee dated 20 November 2013. Under Article R57 of the Code, the Panel has the full power to review the facts and the law and may issue a *de novo* decision, partially or entirely, superseding the appealed decision.

## VIII. ADMISSIBILITY

69. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.*

70. The grounds of the Appealed Decision were notified to the Appellant on 7 October 2014 and the Appellant filed its Statement of Appeal on 27 October 2014, *i.e.* within the deadline of 21 calendar days after receipt of the reasoned decision as set by Article 67 para. 1 of the FIFA Statutes (see *supra* para. 67).
71. In view of the above, it follows that the appeal is admissible.

## **IX. APPLICABLE LAW**

72. Article R58 of the Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, 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”.*

73. The Respondent’s contract of employment contains no provision for the applicable law in the event of dispute between the parties.

74. In the composite Answer, it was submitted that in the absence of a choice of law provision in the contract of employment, consideration must be made of Article 187 of the Swiss Public International Law Act (‘PILA’) which provides as follows:

*“The Arbitral Tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such choice, according to the rules of law with which the case has the closest connection”.*

Thereafter it was submitted that given the international dimension of the cases, the FIFA regulations must be considered as the applicable law.

75. Article 66 para.2 of the FIFA statutes provides that:

*“The provisions of the CAS Code of sports-related Arbitration shall apply to proceedings. CAS shall primarily apply the various Regulations of FIFA and additionally Swiss Law”.*

76. The Panel therefore decided that the various FIFA regulations and, subsidiarily, Swiss law, shall be applied to determine this appeal. As the present matter was submitted to FIFA on 16 January 2012, the 2010 version of the FIFA Regulations of the Status and Transfer of Players are applicable. Those regulations shall apply primarily, together with the other applicable rules of FIFA and additionally Swiss Law.

## **X. MERITS**

77. The following sections refer to the substance of the Parties’ allegations and arguments without listing them exhaustively. In their consideration of the case and the findings on the merits, the Panel has nevertheless examined and taken into account all of the Parties’ allegations, arguments and evidence on the record, whether or not expressly referred to in what follows.

78. The Panel shall determine the admissibility, relevance, materiality and weight of evidence provided by the Parties in the appeal proceedings.

79. On the basis of the facts listed in the Appealed Decision and emerging from the hearing, it is not in issue between the Parties that the Appellant did not fully participate in the hearings before the FIFA Players’ Status Committee, and that the evidence of purported payments of

monies to the Respondent was adduced by the Appellant for the first time only in the present proceedings.

80. The documents purporting to evidence the payments have, as shown above, been excluded from consideration by the Panel under Article R57 of the Code and the Panel is of the view that the Appellant has failed to demonstrate that the failure to adduce evidence at the earlier hearing was for a reason not ascribable to itself and/or to explain and prove to the satisfaction of the Court any difficulty in adducing such evidence at an earlier hearing. Further, the Panel considers that the Appellant has failed to satisfy the burden of proof to explain why the evidence of the purported payments was not submitted to the earlier hearings.
81. No evidence was called on behalf of the Appellant at the hearing and in the opinion of the Panel, the failure to explain why the documentary evidence was not produced to the FIFA Players' Status Committee hearings is material to determination of the present appeal.
82. Moreover, the Panel noted that even if such evidence had been adduced and was admissible, the payments allegedly made were at variance with what was due under the terms of the Respondent's contract of employment and, in the absence of an acceptable explanation, does not accept it was open to the Appellant, under the terms of the contract either to unilaterally withhold or vary the payment due or make the alleged payments to Mr Niroomand as agent for the Respondent.
83. In the absence of any cogent evidence that some or any payment was made (other than those admitted by the Respondent in oral testimony) referable to the contracts of employment, the Panel does not accept the submissions of the Appellant. The Panel notes the failure of the Appellant to call any evidence to justify the submissions made and specifically notes that Mr Niroomand, whose involvement was apparently central to the Appellant's claims was not called to give evidence on behalf of the Appellant and/or that no witness statement was filed on his behalf. The Panel is therefore unable to make any finding that the payments made by Mr Niroomand to the Respondent were made for an on behalf of the Appellant as salary for himself or for an on behalf of the other Respondents in the Actions.
84. The Panel however equally has difficulty in accepting the credibility of the evidence of the Respondent. In the written submissions it was asserted that the payments received from the Appellant were limited to the sums referred to in the claims made by the Respondent before the FIFA Players' Status Committee, namely USD 20,000. In oral evidence before the Panel, however, the Respondent asserted initially that he was not empowered by the other Respondents in the Actions to accept money on their behalf, but in the course of his testimony changed his evidence and admitted to accepting two payments in the sums of USD 24,000 and USD 43,000 and a payment of USD 1,000 in respect of personal expenses.
85. On cross-examination by the Appellant's Counsel, the Respondent indicated that he had 'overlooked' or 'forgotten' that these payments had been made and was unable to explain why he had claimed to have received payment of only USD 20,000 from the Appellant, in his claim before the FIFA Players' Status Committee. Whilst the Panel accepts the Respondent's testimony that he was conducting his affairs in circumstances of duress and also in a language

in which he had no competence, it has difficulty in accepting that he could ‘overlook’ or ‘forget’ receipt of substantial amounts of monies either on his own account or on the account of others. His failure to reconcile the claims made before the FIFA Players’ Status Committee wholly undermines the credibility of his evidence.

86. The Panel dismisses the submissions of the Appellant that the Respondent’s contract of employment was terminated voluntarily and accepts the Respondent’s evidence that the termination was made under duress.

## **XI. CONCLUSION**

87. Having taken into consideration all the facts and evidence and legal arguments, even if not directly referred to in the present award, made by the Parties in their written submissions and in the course of the hearing, the Panel acknowledges that the requests made by the Appellant are based only on evidence that is inadmissible.
88. The Panel concludes that in the light of what is stated above, that save for the admission made by the Respondent in the course of his evidence as to payment of the sum of USD 68,000, the Appellant is unable to demonstrate fulfilment of the obligation of payment of the salaries due under the contract of employment.
89. The appeal shall be partially accepted, such that paragraph 2 of the appealed decision of the FIFA Players’ Status Committee, dated 20 November 2013 shall be varied to require Shahrdari Bandar Abbas, to pay to the Respondent the amount of USD 152,000. All other provisions of the appealed decision shall be upheld.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by Shahrdari Bandar Abbas against Carlos Fabián Leeb on 27 October 2014 is partially upheld varying paragraph 2 of the decision of the Player’s Status Committee of the Fédération Internationale de Football Association issued on 20 November 2013 as follows:  
  
Shahrdari Bandar Abbas is ordered to pay compensation for breach of contract in the amount of USD 152,000, to Carlos Fabián Leeb with interest of 5% per annum as of 20 August 2011.
2. (...).
3. (...).
4. All other motions or prayers for relief are dismissed.