Arbitration CAS 2014/A/3816 Renato Moreira Nunes de Queirós v. Khazar Lankaran F.C., award of 9 July 2015

Panel: Mr Efraim Barak (Israel), Sole Arbitrator

Football
Outstanding salaries due to a player in execution of a contract of employment
Burden of proof to establish the existence of an alleged fact under Swiss law and the FIFA Procedural Rules
Interpretation of the form and the terms of the contract under Swiss law and CAS jurisprudence
Interpretation of the parties' intention based on the principle of confidence

1. **According to Article 8 of the Swiss Civil Code, respectively pursuant to article 12(3) of the FIFA Procedural Rules, the burden of proof to establish the existence of an alleged fact lies with the person who derives rights from the fact.**

2. **Article 18(1) of the Swiss Code of Obligations provides that for the form and terms of a contract *"the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement"*. According to CAS jurisprudence, the parties' intention prevails on the wording of the contract. If the common intention cannot be established, the judge must examine the formal agreement in order to find their subjective common intention, according to the ordinary sense one can give to the expressions used by the parties.**

3. **According to the jurisprudence of CAS and the Swiss Federal Tribunal, the real intention of the parties must be interpreted based on the principle of confidence. This principle implies that a party's declaration must be given the sense its counterparty can give to it in good faith, based on its wording, the context and the concrete circumstances in which it was expressed. Unclear declarations have to be interpreted against the party that drafted the contract. Moreover, the interpretation must stick to the legal solutions under Swiss law, under which the protection of the weakest party.**

I. PARTIES

1. Mr Renato Moreira Nunes de Queirós (hereinafter: the "Appellant" or the "Player") is a former professional football player of Portuguese nationality.

2. Khazar Lankaran F.C. (hereinafter: "Respondent" or the "Club") is a football club with its registered office in Lankaran, Azerbaijan. The Club is registered with the Azerbaijani Football Federation (*Azərbaycan Futbol Federasiyaları Assosiasiyası* - hereinafter: the "AFFA"), which in

turn is affiliated to the Fédération Internationale de Football Association (hereinafter: "FIFA").

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the main relevant facts, as established on the basis of the parties' written and oral submissions and the evidence examined in the course of the present appeal arbitration proceedings and the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

4. It is undisputed between the parties that on 4 August 2008 an employment contract was concluded in Azeri (hereinafter: the "Azeri Contract"), valid from 4 August 2008 until 30 June 2010. The Azeri Contract was subsequently registered with the AFFA on 11 August 2008.

5. The Azeri Contract determines, *inter alia*, the following:

> *"5.1 The wage of the Footballer is 4000 (four thousand) manats per month".*

6. The Player alleges that next to the Azeri Contract, the parties also concluded an employment contract in English on 4 August 2008[1] (hereinafter: the "English Contract"), valid from 24 July 2008 until 30 June 2009.

7. The English Contract determines, *inter alia*, the following:

> *"**ARTICLE THREE:***
>
> *THE FIRST PARTY UNDERTAKES TO REMUNERATE THE SECOND PARTY WITH A TOTAL AMOUNT OF US240.000 (TWO HUNDRED FORTY THOUSAND US DOLLARS), AGAINST HIS SERVICES OF THE TOTAL PERIOD OF THE CONTRACT TO BE PAID AS FOLLOWS:*
>
> *AN AMOUNT OF US 40.000 (FORTY THOUSAND US DOLLARS) WILL BE PAID TO PLAYER'S CLUB FOR HIS TRANSFER CERTIFICATE.*
>
> *AN AMOUNT OF US50.000 (FIFTY THOUSAND US DOLLARS) WILL BE PAID TO PLAYER AS ADVANCE CONTRACT (THE DAY OF SIGN CONTRACT)*

[1] The Sole Arbitrator observes that the English Contract refers to several dates (1 July 2008, 24 July 2008 and 4 August 2008), however, since the Player's signature contains the date of 4 August 2008 in handwriting, the Sole Arbitrator finds that it must be assumed that the English Contract was conduded on 4 August 2008.

AN AMOUNT OF US 100.000 (ONE HUNDRED THOUSAND US DOLLARS) AS MONTHLY SALARIES (10 MONTHS) FOR THE PERIOD OF THE CONTRACT (FREE TAXES, NET)

AN AMOUNT OF US 50.000 (FIFTY THOUSAND US DOLLARS) WILL BE PAID IN APRIL, 2009".

8. On 7 August 2008, the former football club of the Player, FC Paços de Ferreira (hereinafter: "Paços"), a football club with its registered office in Paços de Ferreira, Portugal, requested the Club to pay USD 40,000 as a transfer fee for the Player.

9. On 8 August 2008, the Club paid a transfer fee of USD 40,000 to Paços.

10. According to the Club, in approximately September 2008, the Player asked the Club to assist him to get credit from a Portuguese bank and that *"[f]or this purposes he needed a contract with the amounts more, than real"*. The Club confirms to have *"finally agreed to provide him the paper, but to ensure itself from possible outcomes* […]*, the date of the 'contract' was set as 24 July 2008, i.e. earlier than the real contract (date of which was 04 August 2008)"*.

11. On 29 January 2009, an Azeri document was signed by the Player describing the payments made up until that moment, whereby the Player added the following in handwriting: *"I don't have another contract with Kazhar Lankara F.C.* [sic]*"*.

12. On 27 May 2009, the Player, through the Portuguese Football Player's Union, sent a letter via registered mail to the Club as a reminder that the Club had failed to pay him the amount of USD 70,000, consisting of the sign-on fee of USD 50,000 due in April 2009 and his salary of April and May 2009 in the amount of USD 10,000 each, pursuant to the English Contract.

13. On 8 June 2009, the Player, through the Portuguese Football Player's Union, sent another reminder via registered mail to the Club arguing that it had failed to pay him the amount of USD 80,000, consisting out of the aforementioned USD 70,000 and the Player's salary of June 2009 in the amount of USD 10,000, pursuant to the English Contract.

14. On 2 July 2009, the Player, through the Portuguese Football Player's Union, sent a third reminder via registered mail to the Club arguing that it had failed to pay him the amount of USD 80,000.

15. According to the Club, the Azeri Contract was mutually terminated in August 2009.

16. On 20 October 2009, the Player, through the Portuguese Football Player's Union, sent another reminder to the Club by facsimile, with the FIFA Dispute Resolution Chamber (hereinafter: the "FIFA DRC") in copy, requesting the payment of USD 80,000 to be made by no later than 30 October 2009.

B. Proceedings before the Dispute Resolution Chamber of FIFA

17. On 26 November 2009, in absence of any payments made by the Club, the Player lodged a claim against the Club with the Dispute Resolution Chamber of FIFA (hereinafter: the "FIFA DRC"). The Player asked the FIFA DRC to order the Club *"to pay the amount of US 80.000,00 (eighty thousand US dollars) as well as interest at a rate of 5% and the costs of this dispute"*.

18. The Club contested the Player's allegations by disputing the existence of the English Contract and asserting that the only contract concluded between the parties was the Azeri Contract. The Club stated it had complied with all its obligations towards the Player from August 2008 until July 2009 in accordance with the Azeri Contract.

19. On 30 July 2014, the FIFA DRC rendered its decision (hereinafter: the "Appealed Decision"), with the following operative part:

> *"The claim of* [the Player] *is rejected"*.

20. On 23 October 2014, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:

- As to the question whether the English Contract constitutes a valid and binding contract, *"the DRC deemed it appropriate to remind the parties of the legal principle of the burden of proof, as stipulated in art. 12 para. 3 of the Procedural Rules, according to which a party claiming a right from an alleged fact shall carry the respective burden of proof. In the present case, this means that* [the Player] *bears the burden of demonstrating the validity of the English contract for the parties, in view of the fact that* [the Club] *contests its existence.*

- *In this respect, the members of the Chamber began by acknowledging that* [the Player] *expressly admitted being unable to provide the relevant employment contract in its original form. Therefore, the Chamber held that the fact* [the Player] *had only submitted a copy of the disputed contract was insufficient to establish the existence of the English contract"*.

- As to the Player's additional arguments in respect of the English Contract, the FIFA DRC determined that *"after having carefully taken into consideration all the arguments of* [the Player] *and while recalling that all documentation shall be considered with free discretion, the DRC was of the unanimous opinion that the evidence and arguments presented by* [the Player] *were insufficient in order to prove with certainty that the English contract was, in fact, concluded and executed between parties.*

- *In this order of ideas and while bearing in mind* [the Player's] *statement in respect that in January 2009 "all the payments were up to date", the members of the Chamber were of the opinion that it was rather simple for* [the Player] *to provide factual evidence that could have proven that he actually received any of the amounts established in the English contract, such as his bank statements or any kind of receipt. In other words, and since the payments were apparently made to the player's bank in Portugal, the Chamber fails to understand why* [the Player] *did not provide his bank statements for*

the period between 24 July 2008 until April 2009, which should indicate that prior to April 2009, he indeed received the amount of USD 10,000 per month.

- *In respect to the affidavit of Ms Esmeralda Maria Alves M. dos Santos, the Chamber was eager to emphasize that the information contained in a personal statement is of mainly subjective perception and might be affected by diverse contextual factors; therefore, the credibility of such type of documentation is rather limited. Consequently, the Chamber deemed that the statement of* [the Player's] *so-called bank manager mentioned above is unfit to establish the validity of the English contract. This argumentation also applies to the affidavit of Mr Rómulo da Silva.*

- *As conclusion, in view of all the aforementioned considerations and of the fact that no original version of the English contract was provided, the members of the Chamber deemed that* [the Player] *was not able to prove the existence of the English contract. Consequently and since* [the Player's] *claims are based on said contract only, the members of the Chamber decided to reject the claim of* [the Player] *in its entirety".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 13 November 2014, the Player lodged a Statement of Appeal with the Court of Arbitration for Sport (hereinafter: the "CAS") in accordance with Article R48 of the Code of Sports-related Arbitration (2013 edition) (hereinafter: the "CAS Code").

22. On 17 November 2014, the CAS Court Office invited both parties to inform the CAS Court Office whether they would agree to the appointment of a Sole Arbitrator and that in case of a disagreement among the parties with respect to the number of arbitrators, it would be for the President of the CAS Appeals Arbitration Division, or his Deputy, to decide.

23. On 20 November 2014, the Player agreed with the suggestion of appointing a Sole Arbitrator.

24. On 24 November 2014, the Player filed his Appeal Brief in accordance with Article R51 of the CAS Code. This document contained a statements of the facts and legal arguments. The Player challenged the Appealed Decision of the FIFA DRC, submitting the following requests for relief:

    1) *The annulment of the Decision dated 30 July 2014 passed by FIFA – Dispute Resolution Chamber;*

    2) *The issuance of a new decision ordering the Respondent to pay the Appellant the total amount of USD 80.000,00 (eighty thousand dollars) as well as interest at a rate of 5%;*

    3) *To order the Respondent to pay the costs of the Appeal;*

    4) *Given that the Respondent was assisted in the present procedure by a professional legal advisor, to order the Respondent to contribute towards its costs.*

25. On 26 November 2014, in the absence of an answer from the Club regarding the appointment of a Sole Arbitrator, the Club was invited to inform the CAS Court Office within three days

whether it would agree with such suggestion and that if the Club would remain silent, it would be for the President of the CAS Appeals Arbitration Division, or his Deputy, to decide.

26. On 15 December 2014, in the absence of an answer from the Club, the parties were advised by the CAS Court Office that the Deputy President of the CAS Appeals Arbitration Division, taking into account the circumstances of the case, had decided to submit these arbitral proceedings to a Sole Arbitrator.

27. On 24 December 2014, the Club filed its Answer in accordance with Article R55 of the CAS Code. The Club submitted the following requests for relief:

> *1) That the CAS rejects the present appeal and confirms the presently challenged decision passed by the Dispute Resolution Chamber on 30 July 2014.*
>
> *2) That the CAS orders the Appellant to bear all the costs of the present procedure.*
>
> *3) That the CAS orders the Appellant to cover all legal expenses of Khazar Lankaran Football Club related to the proceedings at hand.*

28. On 5 and 6 January 2015 respectively, the Club indicated to prefer the Sole Arbitrator to issue an award based solely on the parties' written submissions, whereas the Player informed the CAS Court Office that he would prefer a hearing to be held.

29. On 6 January 2015, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeal Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:

- Mr Efraim Barak, attorney-at-law in Tel-Aviv, Israel, as Sole Arbitrator.

30. On 5 February 2015, upon the request of the Sole Arbitrator pursuant to Article R57 of the CAS Code, FIFA provided CAS with a copy of its file related to the present matter.

31. On 13 February 2015, further to an invitation from the Sole Arbitrator, the Player filed a second written submission.

32. On 18 February 2015, further to an invitation from the Sole Arbitrator, the Club filed a second written submission.

33. On 20 and 23 February 2015 respectively, the Player and the Club returned duly signed copies of the Order of Procedure to the CAS Court Office.

34. On 4 March 2015, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed not to have any objection as to the constitution and composition of the Panel.

35. In addition to the Sole Arbitrator, Mr Antonio de Quesada, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

a) For the Player:

1) Mr Renato Moreira Nunes de Queirós, the Player;
2) Mr José Duarte Reis, Counsel

b) For the Club:

1) Mr Tuygun Nadirov, Vice-president;
2) Mr Ramil Jahangirov, Legal and foreign affairs counsel

36. The Sole Arbitrator heard evidence from Ms Esmeralda Alves M. Santos, Account manager of the Portuguese bank C.G.D. and witness called by the Player.

37. Ms Santos was invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury. Both parties and the Sole Arbitrator had the opportunity to examine and cross-examine the witness. The parties then had ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.

38. Although the Player initially intended to hear Mr Da Silva, former teammate of the Player at the Club, the Player finally informed the CAS Court Office that the witness could not be located and that he would therefore not attend the hearing.

39. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.

40. The Sole Arbitrator confirms that he carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

41. The Player's submissions, in essence, may be summarised as follows:

- The Player argues that the Club never provided him with an original copy of the English Contract. In the absence of an original copy of the English Contract, the Player attempts to establish that it nevertheless existed based on circumstantial evidence.

- In this respect, the Player provided evidence that the Club sent a copy of the English Contract to a Portuguese bank and argues that the Club thus cannot deny its existence. The Player argues that the bank required him to provide a copy of his English Contract to allow him to deposit his salary in USD and that this is why the Club sent a copy of the English Contract to the Player's bank.

- The Player also argues that the Club complied with its duty to pay Paços an amount of USD 40,000, which is in accordance with the English contract.

- Furthermore, the Player maintains that it is not logical to conclude that he would have accepted to play so far from home for a much lower salary as he earned with his former club (EUR 5,980 per month with former club, AZN (Azerbaijani Manat) 4,000, approximately equalling EUR 3,750 per month according to the Club).

- The Player filed a witness statement of Mr Da Silva, a former teammate of the Player at the Club, stating that several teammates did not receive their salary and that it was common practice of the Club to conclude an Azeri and an English contract with each player and that the payments were always made in accordance with the English version.

- The Player submits that the Club paid him a sum of USD 60,000 in cash at the conclusion of the English Contract, which is allegedly in accordance with the English Contract. Also the following six months, the Club allegedly paid the Player his salaries in cash in accordance with the English Contract. The Player argues that because the Club paid him in cash, he could not provide evidence that the Club deposited his salary. Instead, the Player submitted evidence of two deposits to his bank account, which deposits are allegedly in accordance with the payments in cash by the Club. The Player requested Ms Santos to be heard in this respect.

42. The Club's submissions, in essence, may be summarised as follows:

- The Club maintains to have concluded one employment contract with the Player on 4 August 2008; the Azeri Contract. The Club argues that the Player was fully paid in accordance with the content of the Azeri Contract, which was allegedly mutually terminated in June 2009. According to the Club, the termination agreement is missing because the Club moved to new offices in 2010.

- The Club does not deny the existence of the English Contract, but disputes its validity by arguing that the Club made this contract in order to enable the Player to obtain credit from the Portuguese bank.

- The Club submits that the English Contract *"cannot be real"* because i) the English Contract was backdated to 24 July 2008, in order to let the Azeri Contract prevail over the English Contract, as it is a common legal principle that the last contract shall be considered valid; ii) the English Contract does not contain a stamp of the Club; iii) the English Contract is not registered with the association; iv) the English Contract is only valid for one year, which is unrealistic.

- The Club further maintains that the Player's salary under the Azeri Contract was not as low as he argued, since the Player was entitled to certain bonuses. The Player just did not incur many bonuses because he only appeared in five matches for the Club.

- The Club submits that FIFA most likely based its decision on the document signed by the Player, in which he acknowledged to not have any other contract besides the Azeri Contract.

- Lastly, the Club points out that, apart from relying on an invalid document, the Player has not provided any proof of the "debt" towards him.

V. JURISDICTION

43. The jurisdiction of CAS, which is not disputed, derives from article 67(1) of the FIFA Statutes as it determines that *"[a]ppeals 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"* and Article R47 of the CAS Code.

44. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.

45. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

46. The appeal was filed within the 21 days set by article 67(1) of the FIFA Statutes (2014 edition). The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.

47. It follows that the appeal is admissible.

VII. APPLICABLE LAW

48. Article R58 of the CAS Code provides the following:

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

49. The Sole Arbitrator notes that article 66(2) of the FIFA Statutes stipulates the following:

> *"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".*

50. The parties did not make any statements regarding the law or regulations to be applied by CAS. In view of the fact that the Appealed Decision was issued by FIFA and because FIFA

is domiciled in Switzerland, the Sole Arbitrator is satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

A. The Main Issues

51. As a result of the above, the main issues to be resolved by the Sole Arbitrator are:

i. Is the English Contract valid and binding upon the parties?
ii. If so, does the club owe any amounts to the Player?
iii. Considering the decision in respect of the English Contract, what amount of outstanding remuneration is the Player entitled to receive from the Club?

i. Is the English Contract valid and binding upon the parties?

52. The Sole Arbitrator observes that the Club, contrary to its position in the proceedings before the FIFA DRC, currently no longer disputes the existence of the English Contract. However, the Club maintains that the English Contract did not serve as an employment contract but merely as a document that was signed by the Club upon the request of the Player, to enable him to obtain a credit from a Portuguese bank.

53. Since the Club unequivocally confirmed that the existence of the English Contract is no longer disputed, the Sole Arbitrator does not find it necessary to address the Player's statement on the Azeri document on 29 January 2009, by means of which he confirmed that *"I don't have another contract with Kazhar Lankara F.C.* [sic]*"*.

54. The Sole Arbitrator finds that in applying general procedural rules confirmed in CAS jurisprudence, article 8 of the Swiss Civil Code (*"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact")*, respectively pursuant to article 12(3) of the FIFA Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: the "FIFA Procedural Rules") (*"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof"*), the burden of proof to establish the existence of the English Contract lies with the Player, whereas, once the afore-mentioned has been established, the burden of proof shifts to the Club to establish that the English Contract did in fact not serve as an employment contract but as a document concluded with the intention to facilitate the Player to obtain a credit from a Portuguese bank and as such does not establish any contractual duties between the parties.

55. Since it is no longer in dispute that the English Contract exists, the Sole Arbitrator is only required to determine the purpose of the English Contract. The Sole Arbitrator finds that, as a result of the divergent views of the parties, it is necessary to decide what was the true intention of the parties when they signed the English Contract and, to this end, it is important to interpret the content of the English Contract in order to decide whether, despite the plain

wording of the English Contract, the true intention of the parties was different from what they declared in the English Contract.

56. The Sole Arbitrator observes that article 18(1) of the Swiss Code of Obligations provides as follows:

> *"When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".*

57. The Sole Arbitrator observes that CAS jurisprudence determines the following in respect of this provision:

> *"According to the interpretation given to this article by CAS jurisprudence, "(u)nder this provision, the parties' intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention (WINIGER, Commentaire Romand – CO I, Basel 2003, n. 18-20 ad Art. 18 CO). This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them (WINIGER, op. cit., n. 26 ad art. 18 CO; WIEGAND, Obligationenrecht I, Basel 2003, n. 19 ad art. 18 CO). The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation (Winiger, op. cit., n. 33, 37 and 134 ad art. 18 CO; WIEGAND, op. cit., n. 29 and 30 ad art. 18 CO)". (CAS 2005/A/871, pg. 19, para. 4.29)*
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> *"By seeking the ordinary sense given to the expressions used by the parties, the real intention of the parties must – according to the jurisprudence of the Swiss Federal Court – be interpreted based on the principle of confidence. This principle implies that a party's declaration must be given the sense its counterparty can give to it in good faith ('Treu und Glauben': WIEGAND, op. cit., n. 35 ad art. 18 CO), based on its wording, the context and the concrete circumstances in which it was expressed (ATF 124 III 165, 168, consid. 3a; 119 II 449, 451, consid. 3a). Unclear declarations or wording in a contract will be interpreted against the party that drafted the contract (ATF 124 III 155, 158, consid. 1b): It is of the responsibility of the author of the contract to choose its formulation with adequate precision (In dubio contra stipulatorem – WINIGER, op. cit., n. 50 ad 18 CO). Moreover, the interpretation must – as far as possible – stick to the legal solutions under Swiss law (ATF 126 III 388, 391, consid. 9d), under which the accrued protection of the weakest party". (CAS 2005/A/871, pg. 19, para. 4.30)"* (CAS 2008/A/1518, §143-144).

58. Against the above-mentioned guidelines and CAS jurisprudence, which is to be taken into account in the case at hand for the purpose of seeking the true intention of the parties, the Sole Arbitrator finds that the wording of the English Contract itself leaves little room for interpretation. Article 2 of the English Contract provides that *"*[the Club] *has agreed to appoint* [the Player] *as a football professional player of* [the Club's] *first team"* and article 3 determines that *"*[the Club] *undertakes to remunerate the* [Player] *with a total amount of US240.000 (two hundred forty thousand US Dollars), against his services of the total period of the contract to be paid as follows:* […]*".*

59. Although the Sole Arbitrator finds that the content of the English Contract is clear and therefore does not require interpretation in itself, the Sole Arbitrator finds that, in view of the Club's arguments, it needs to be examined whether the parties attempted to *"disguise the true nature of the agreement"*, *i.e.* whether, despite the clear wording of the English Contract, the parties did not intend to conclude an employment contract, but rather concluded such contract with the intention to enable the Player to obtain a loan from a Portuguese bank.

60. After a detailed scrutiny of the arguments of both parties and of the evidence submitted – and regardless of the fact that the Club would possibly have violated different legal duties by agreeing to conclude a fake employment contract with the Player, while being aware that the sole reason to conclude such fake contract was to enable the Player to obtain a credit from a Portuguese bank – the Sole Arbitrator is not convinced that the parties concluded the English Contract for this reason.

61. In coming to this conclusion, the Sole Arbitrator deems it important that the Club did not provide any evidence from which it derives that the Player made such request to the Club and that the Player denies such allegation.

62. The Sole Arbitrator finds that the testimony of Ms Santos was credible in the sense that the Portuguese bank needed to know the providence of the amounts deposited in a foreign currency on the Player's account and that this was the reason why the bank required the Player to provide it with his employment contract, which was subsequently sent to the bank by the Club. Furthermore, Ms Santos testified that the Player did not apply for a credit from the bank during his period with the Club.

63. Finally, the Sole Arbitrator observes that it appears that the parties abided by the English Contract rather than the Azeri Contract since it is undisputed that the employment relation came to an end at the end of the 2008/2009 season, which is in accordance with the English Contract. Although the Club alleges that the Azeri Contract was mutually terminated at the end of the 2008/2009, the Sole Arbitrator observes that this was disputed by the Player and that the Club did not provide evidence of such mutually agreed termination.

64. In view of the above, the Sole Arbitrator finds that the Club's explanation as to the parties' intention with the conclusion of the English Contract must be dismissed. The Sole Arbitrator will however examine the additional arguments of the Club, on the basis of which the Club argues that the English Contract was not valid, below.

65. As to the Club's argument that the English Contract was intentionally backdated to ensure the invalidity thereof because *"according to the common legal principle, in case of existence of two contracts between the same parties, the later one is considered as a valid.* [sic]*"*, the Sole Arbitrator finds that this argument must be dismissed. The Sole Arbitrator is not aware of the existence of such *"common legal principle"*. To the contrary, the Sole Arbitrator finds that, in general, a contract is not automatically invalidated for the mere reason that another contract is concluded on a later date, unless this is specifically determined in the latter contract.

66. Furthermore, in respect of the Club's argument that the English Contract is not valid because it did not contain an official stamp of the Club, the Sole Arbitrator finds that this argument must be dismissed because the Club failed to establish that this was a mandatory legal requirement for the validity of the contract.

67. As to the Club's argument that the English Contract is not valid because it was not registered with the AFFA, the Sole Arbitrator finds that this argument must be dismissed because it is the responsibility of the Club to register such contract with the AFFA, for if the Club's failure to register a contract with the national federation would necessarily entail the invalidity of the contract, a club would have full unilateral discretion to decide whether to validate the contract or not.

68. Finally, regarding the Club's argument that it is not logical to conclude a contract for one season following the transfer of the Player to the Club, the Sole Arbitrator finds that this argument must be dismissed because the Club failed to established that it is a mandatory requirement that the term of a contract shall be longer than one season. In addition, the Sole Arbitrator is not convinced that it is illogical for the Player and the Club to conclude an employment contract for one season only, nor did the Club established any such custom.

69. Consequently, the Sole Arbitrator finds that the English Contract is valid and binding upon the parties.

ii. If so, does the club owe any amounts to the Player?

70. Since the argument of the Club that it did not have to make any payments on the basis of the English Contract, but only on the basis of the Azeri Contract, was denied and because the English Contract was found to be binding upon the parties, the Sole Arbitrator decides that the Club should have paid the Player the amounts set out in the English Contract.

iii. Considering the decision in respect of the English Contract, what amount of outstanding remuneration is the Player entitled to receive from the Club?

71. The Sole Arbitrator observes that the Player solely bases his claim of USD 80,000 on the English Contract, *i.e.* the Player claims that his salary of USD 10,000 per month over the months of April, May and June 2009 remained unpaid and that he did not receive the amount of USD 50,000 due in April 2009.

72. The Club does not deny not having paid the above-mentioned amounts, but rather argues that it did not have to make any payments on the basis of the English Contract, but only on the basis of the Azeri Contract.

73. The Club maintains that it paid the Player AZN (Azerbaijani Manat) 4,000 per month (which equals the amount of USD 4,932 according to the Club), in accordance with the Azeri Contract.

74. The Sole Arbitrator observes that the Player neither disputed having been paid these amounts in Azerbaijani Manat, nor that the exchange rate was incorrect.

75. Since the main argument of the Club has already been dismissed *supra*, the Sole Arbitrator finds that, in the absence of any additional arguments of the Club justifying the lack of payment, the Player is in principle entitled to receive the amount of USD 80,000 from the Club as outstanding remuneration.

76. The Sole Arbitrator noted that the Player claims the amount of USD 80,000, regardless of the fact that he was paid a monthly amount in Azerbaijani Manat. As such, the Player was apparently of the view that he was entitled to remuneration on the basis of the English Contract as well as on the basis of the Azeri Contract.

77. The Sole Arbitrator observes that the Club, in its requests for relief, requested the appeal to be dismissed. However, the Club did not put forward an alternative request for relief pursuant to which the amounts paid in accordance with the Azeri Contract shall be deducted from the overdue payables on the basis of the English Contract.

78. Regardless of the fact that the Club did not put forward such argument, the Sole Arbitrator deems it necessary to verify this issue *ex officio*.

79. The Sole Arbitrator observes that neither the English Contract nor the Azeri Contract is clear in determining whether the Player is entitled to the remuneration set out in both agreements, or whether the remuneration set out in the Azeri Contract shall be considered included in the remuneration pursuant to the English Contract, or *vice versa*.

80. Observing that the Club did not raise any objections in this respect during the proceedings before FIFA and CAS, nor when the Player, through the Portuguese Player's Union, notified the Club in writing regarding the overdue payables (on 27 May, 8 June and 2 July 2009), nor when the Player notified the Club in writing himself on 20 October 2009, the Sole Arbitrator finds that the Player is entitled to the remuneration set out in the English Contract and in the Azeri Contract as the Club would surely have raised such argument if this would have been the intention of the parties, however, it remained silent.

81. Consequently, the Sole Arbitrator finds that the remuneration paid to the Player by the Club pursuant to the Azeri Contract shall not be deducted from the remuneration due pursuant to the English Contract. As such, the Sole Arbitrator finds that the Player is entitled to the amount of USD 80,000.

82. In view of the fact that the Player claimed *"interest at a rate of 5%"*, without however mentioning as from which date such interest shall accrue, the Sole Arbitrator is required to examine this issue.

83. Since the English Contract does not determine on which day of the month the Player's salary was to be paid, the Sole Arbitrator finds that interest shall accrue as from the first day of the month following the month in which the payment fell due.

84. Consequently, the Sole Arbitrator finds that the Club shall pay outstanding remuneration to the Player in the amount of USD 80,000, with interest at a rate of 5% *per annum* in accordance with the scheme set out below:

- USD 50,000 as from 1 May 2009 until the date of effective payment;
- USD 10,000 as from 1 May 2009 until the date of effective payment;
- USD 10,000 as from 1 June 2009 until the date of effective payment;
- USD 10,000 as from 1 July 2009 until the date of effective payment.

B. Conclusion

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

i. The English Contract is valid and binding upon the parties.
ii. The Club shall pay outstanding remuneration to the Player in the amount of USD 80,000, with interest at a rate of 5% *per annum* in accordance with the scheme above.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 13 November 2014 by Mr Renato Moreira Nunes de Queirós against the Decision issued on 30 July 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is upheld.

2. Khazar Lankaran F.C. shall pay to Mr Renato Moreira Nunes de Queirós the amount of USD 80,000, with interest at a rate of 5% per annum as follows:

   USD 50,000 as from 1 May 2009 until the date of effective payment;

   USD 10,000 as from 1 May 2009 until the date of effective payment;

   USD 10,000 as from 1 June 2009 until the date of effective payment;

   USD 10,000 as from 1 July 2009 until the date of effective payment.

(…)

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