Arbitrations CAS 2015/A/4081 Everton Ramos da Silva v. Al Nassr FC & CAS 2015/A/4087 Al Nassr FC v. Everton Ramos da Silva and Shanghai Shenxin FC, award of 12 January 2017

Panel: Mr Lars Halgreen (Denmark), President; Mr Jirayr Habibian (Lebanon); Mr Frans de Weger (The Netherlands)

Football
Termination of the employment contract with just cause
Alleged forgery of document
Determination of the time to assess the existence of just cause to terminate an employment contract
Contractual penalty clause
Standing to be sued

1. **In the process to establish that it be satisfactorily convinced of the authenticity of an alleged forged document, a CAS panel may make use of its full power of review (article R57 of the CAS Code) by analysing a copy of the challenged document on its face but also by taking into account testimonies provided by witnesses having attended the circumstances of its signature.**

2. **Should an employment contract have been *de facto* terminated before having been terminated in writing, the analysis whether said contract has been terminated with or without just cause by a party shall be based on the circumstances at the time when the termination *de facto* occurred.**

3. **A contractual clause imposing the payment of a fine in case of breach of execution of one party's contractual obligation(s) may qualify as a penalty clause (Article 160 of the Swiss Code of Obligations, SCO) provided the parties bound thereby are mentioned, the kind of penalty has been determined, the conditions triggering the obligation to pay it are set and its measure is defined. Accordingly, and as per Article 161 paragraph 3 SCO, a CAS panel may consider to reduce the amount(s) of the relevant fine(s) to an equitable amount should they be considered excessive. Such reduction, based on the merits of the case and on all the relevant circumstances, shall nonetheless be implemented with due consideration for the principle of contractual liberty, which needs to prevail in case of doubt.**

4. **No standing to be sued can be found when a party is named to answer a claim referring to a claimant's right which may (or may not) exist only against a different subject. Accordingly, no standing to be sued can be found against a respondent who had no involvement in the relevant contract or no proven involvement in the circumstances having led to its termination. Additionally, article R57 of the CAS Code does not provide jurisdiction to a panel to deal with new disciplinary-related claims against said respondent should there not having been disciplinary-related claims lodged against it before the first instance body in the first place.**

I. PARTIES

1. Mr Everton Ramos da Silva (hereinafter referred to as the "Player" or the "Appellant/Counter Respondent") is a professional football player of Brazilian nationality.

2. Al Nassr Football Club (hereinafter referred to as the "Club" or the "Respondent/Counter Appellant") is a professional football club incorporated in the Kingdom of Saudi Arabia with its registered office in Riyadh. It is affiliated to the Saudi Arabian Football Federation (SAFF), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter referred to as "FIFA").

3. Shanghai Shenxin FC (hereinafter the "Chinese Club" or the "Respondent") is a professional football club incorporated in China with its registered address in Shanghai. It is affiliated to the Chinese Football Association (CFA), which in turn is affiliated with FIFA.

4. The Player, the Club and the Chinese club together shall hereinafter be jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

5. The elements set out below are a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced and 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 the award only to the submissions and evidence it considers necessary to explain its reasoning.

6. On 1 July 2013, the Player and the Club entered into an employment contract valid from 1 July 2013 until 30 June 2015, i.e. for a period of two years (hereinafter referred to as the "Contract").

7. The material obligations under the Contract are set out as follows:

   "Article 3:

   The player is committed to participate and devote all of his efforts and capabilities during training sessions and matches as required by the club anywhere any time as determined by the club unless his health status doesn't permit (as approved by a medical report issued by an authorized medical identity).

   Article 19:

   The club shall pay to the Player during the term of this contract the following payments:

   - USD 1,008,000 payable in 24 monthly salaries of USD 42,000 "at the end of each month;

- USD 500,000 payable on 20 August 2013;
- USD 246,000 payable on the 1 February 2014;
- USD 500,000 payable on the 1 July 2014;
- USD 246,000 payable on the 1 February 2015;
- 5 business class return tickets for the player and his family (Sao Paulo- Riyadh).

Article 25:

All correspondences and notification related to this contract shall be addressed to both parties' addresses as shown in this contract unless otherwise notified by either party in writing of any change in the address".

In this respect the *"mailing address"* indicated in the preamble of the Contract referred only to "*P.O. Box 60506 Postal Code 11555"*.

8. On 1 July 2013, an *"Annex of employment contract"* (hereinafter referred to as the "Annex") was signed between the Club and the Player (which existence and duly signature has been challenged by the Club).

9. The Annex stipulates that the following fines will be imposed on the Club if the Club *"fails to timely execute the sign-fee payment"*:

   a. USD 250,000 for the payment due on 20 August 2013;

   b. USD 125,000 for the payment due on 1 February 2014;

   c. USD 250,000 for the payment due on 1 July 2014;

   d. USD 75,000 for the payment due on 1 February 2015.

10. On 8 April 2014, the Player lodged a claim in front of the FIFA Dispute Resolution Chamber (hereinafter referred to as the "DRC") against the Club, alleging that he terminated the Contract with just cause on 31 March 2014 and requesting a compensation in the amount of USD 2,871,500 plus 5% interest from the due dates, calculated as follows:

   a. USD 210,000 as outstanding remuneration for the salaries of November 2013 to March 2014 (5x USD 42,000);

   b. USD 317,000 for the *"rest value of the compensation"* due on 20 August 2013;

   c. USD 246,000 for the payment due on 1 February 2014;

   d. USD 375,000 for the fines regarding the payments due on 20 August 2013 and 1 February 2014 (USD 250,000 + USD 125,000);

   e. USD 630,000 for the *"rest value"* of the salaries until June 2015 (15x USD 42,000);

f. USD 746,000 for the payments due on 1 July 2014 and 1 February 2015;

g. USD 325,000 for the fines due on 2 July 2014 and 2 February 2015;

h. USD 7,500 for one flight ticket to Riyadh- Sao Paulo (invoice for Saudi Riyal (SAR) 28,250 dated 27 December 2013 provided by the Player);

i. USD 15,000 for legal costs.

11. The Player explained that the Club, from the beginning of the Contract, was in default of its payment obligations.

12. The Player indicated before the DRC that:

a. he sent the Club an e-mail on 7 October 2013 asking for his outstanding salaries, followed by a second notification on 11 November 2013 to SAFF asking the latter *"to use its rules to ask and push"* the Club to pay its debts *"before the opening of the new transfer window"*;

b. in December 2013 the Club allowed him to travel to Brazil to be with his son (who was suffering from an illness), that he left the Club on 28 December 2013 and was bound to return on 10 January 2014. However, according to the Player, the Club did not facilitate the issuance of his visa (iqama) with respect to this return from Brazil to the Kingdom of Saudi Arabia;

c. his agent sent an e-mail on 6 January 2014 to the Club asking for the latter's assistance in issuing a visa to the Player's family. Such e-mail remained unanswered according to the Player's submissions before the DRC;

d. the Club remained passive to his requests of paying his outstanding salaries and issuance of a visa to his family, hence he was obliged to stay in Brazil and was unable to carry out his profession;

e. on 16 February 2014, the Club issued a letter to the Player stating that it was ready to terminate the Player's Contract on the condition that the Club will ask for no transfer fee from the Player (in case of a transfer to another club) nor that the Player will ask for any compensation from the Club;

f. that this letter was a basis to consider his Contract still valid as of the date of its issuance and that he terminated his Contract on 30 March 2014 for just cause.

13. In its answer to the Player's claim lodged before the DRC, the Club argued that:

a. The employment contract and Annex were not approved by the SAFF;

b. "Whatsapp" messages as referred to by the Player of his communication with the Club could not be regarded as valid proof;

c. The email of 6 January 2014 was sent to *"unknown people which has no relation with the Club"*;

d. The Player had a residency permit which was valid until 23 November 2014;

e. To obtain the visa for his family, the Player had to be in Saudi Arabia to make the application. Therefore, his allegations that the Club *"did not make the visa for his family is without sense"*.

14. The Club lodged a counterclaim against the Player and the Chinese club, being the new club of the Player, where the latter signed an employment contract on 23 July 2014, requesting compensation for the breach of the Contract in the amount of USD 2,295,163 plus interest calculated as follows:

a. USD 187,000 as the non-amortised part of the commission of USD 250,000 paid to the agent Mr. Rossi, USD 50,000 in cash and USD 200,000 by bank transfer;

b. USD 50,000 since the replacement of the Player earned USD 50,000 more;

c. USD 1,667,776 as the transfer fee paid for the replacement of the Player;

d. USD 34,685 for damages to the Player's villa;

e. USD 625,000 as extra compensation corresponding to 6 monthly salaries.

f. The Club further argued that it had imposed a deduction of 50% of the Player's November 2013 salary for leaving the training camp on the evening before an important match on 25 November 2013, which match he missed. The Club argued that it only knew the reason of the Player's refusal to partake at a later stage.

g. The Club admitted that it owed the Player half of his November 2013 salary, and the December 2014 salary being late in addition to the down payment due on 20 August 2013. However, the Club argued before the DRC that the amount outstanding was small comparing to the *"generous amount of USD 351,000"* already received by the Player. Further, the Club argued that it had not received any communication from the Player notifying the Club of its default. Therefore, the Player had no just cause to terminate the Contract. Furthermore, the Club stated that the Annex submitted by the Player was forged since the President of the Club never signed it, the document did not bear the stamp of the SAFF, which was a requirement in accordance with the SAFF Regulations, and it was obvious that the Club would never agree to such high penalties.

15. The Chinese club informed the DRC that it had signed a contract with the Player in July 2014 and had been informed by the Player's representative that the Player had terminated his

Contract with the Club in April 2014. Furthermore, after receiving further documents from the Player indicating his termination of the Contract with the Club in April 2014, the Chinese Club signed an employment contract with the Player on 23 July 2014. The Chinese Club further added that the Club had agreed to release the ITC of the Player and never objected nor indicated that the Player was in breach of his contract.

16. On 21 January 2015, the DRC issued its decision with respect to the claim lodged by the Player and the counter-claim lodged by the Club and concluded the following:

1) *The claim of the Claimant/Counter-Respondent 1, Everton Ramos da Silva is partially accepted.*

2) *The claim of the Respondent/Counter-claimant, Al Nassr Football Club is rejected.*

3) *The Respondent/Counter-claimant has to pay the Claimant/Counter-Respondent 1, within 30 days as from the date of notification of the present decision, outstanding remuneration in the amounts of USD 401,000 and SAR 29,250 plus 55 interest p.a. until the date of effective payment as follows:*

   i. *5% p.a. as of 21 August 2013 on the amount of USD 317,000;*

   ii. *5% p.a. as of 1 December 2013 on the amount of USD 42,000;*

   iii. *5% p.a. as of 1 January 2014 on the amount of USD 42,000;*

   iv. *5% p.a. as of 28 December 2013 on the amount of SAR 29,250.*

4) *The Respondent/Counter-claimant has to pay the Claimant/Counter-Respondent 1, within 30 days as from the date of notification of the present decision, compensation for breach of contract in the amount of USD 978,000 plus 5% interest p.a. on said amount as from 8 April 2014 until the date of effective payment.*

5) *In the event that the amounts due to the Claimant/Respondent 1 in accordance with the above-mentioned (3 and 4) are not paid by the Respondent/Counter-claimant within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and formal decision.*

6) *Any further claim lodged by the Claimant/Counter-Respondent 1 is rejected.*

7) *The Claimant/Counter-Respondent 1 is directed to inform the Respondent/Counter-claimant immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received.*

17. The grounds of the DRC decision were communicated to the Parties on 5 May 2015.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 26 May 2015, the Player filed his Statement of Appeal before the Court of Arbitration for Sport (hereinafter referred to as the "CAS") against the Club with respect to the decision rendered by the DRC on 5 May 2015 (hereinafter referred to as the "Appealed Decision").

19. The Player requested that his appeal be submitted to a sole arbitrator, but nominated Mr Frans de Weger, attorney-at-law in Zeist, the Netherlands, as arbitrator, in case the dispute would be referred to a Panel of three arbitrators.

20. On that same day, the Club filed a Statement of Appeal before the CAS against the Player and the Chinese club with respect to the Appealed Decision. In its Statement of Appeal, the Club requested that its appeal be submitted to a sole arbitrator, but nominated Mr Jirayr Habibian, attorney-at-law in Dubai, United Arab Emirates, as arbitrator, in case the dispute would be referred to a Panel of three arbitrators.

21. On 1 June 2015, the CAS Court Office initiated an appeals arbitration procedure under the reference CAS 2015/A/4081 Everton Ramos da Silva v. Al Nassr Football Club and requested the Club to inform it within five days whether it agreed to submit the dispute to a sole arbitrator.

22. On 3 June 2015, the CAS Court Office initiated an appeals arbitration procedure under the reference CAS 2015/A/4087 Al Nassr Football Club v. Everton Ramos da Silva & Shanghai Shenxin FC and requested the Player and Chinese club to inform it within five days whether they agreed to submit the dispute to a sole arbitrator. Moreover, the CAS Court Office noted that an appeal procedure (CAS 2015/A/4081) was already pending in relation to the Appealed Decision and invited the Club, the Player and the Chinese club to inform it within three days whether they would agree to consolidate the two proceedings, pursuant to Article R52 of the Code of Sports-related Arbitration (hereinafter referred to as the "Code").

23. On 5 June 2015, the Player filed with the CAS its Appeal Brief in the proceedings CAS 2015/A/4081 in accordance with Article R51 of the Code. The Club did not file an answer with the CAS in accordance with Article R55 of the Code.

24. On 11 June 2015, the Club filed its Appeal Brief in the proceedings CAS 2015/A/4087 in accordance with Article R51 of the Code.

25. On 6 July 2015, the Player filed his Answer in the proceedings CAS 2015/A/4087 in accordance with Article R55 of the Code. The Chinese Club did not file any Answer with the CAS in accordance with Article R55 of the Code.

26. On 13 July 2015, in the absence of any communication from all three parties on both the issue of consolidation and the number of arbitrators, the President of the CAS Appeals Arbitration Division decided to consolidate the proceedings CAS 2015/A/4081 and CAS 2015/A/4087, pursuant to Article R52 of the Code, and to submit the consolidated proceedings to a Panel of three arbitrators, pursuant to Article R50 of the Code.

27. In the above-mentioned letter of 13 July 2015, the CAS Office also invited the Player and the Chinese club to inform the CAS Court Office within ten days to either jointly confirm the nomination of Mr Frans de Weger or to jointly nominate a new arbitrator. The Player and the Chinese club were advised that their silence would be deemed as their tacit confirmation of the nomination of Mr de Weger.

28. On 20 July 2015, the Club requested to be reinstated in the time limit for the filing of the Answer in the proceedings 2015/A/4081.

29. On 24 July 2015, the CAS Court Office noted that the Player and the Chinese club had remained silent with regard to the joint confirmation of the nomination of Mr de Weger or a joint nomination of a new arbitrator and confirmed the joint nomination of Mr de Weger as arbitrator. The Club was granted a time limit of ten days to confirm its nomination of Mr Habibian. The Club was advised that its silence would be deemed as its tacit confirmation of the nomination of Mr Habibian.

30. On 5 August 2015, the CAS Court Office noted that the Club had remained silent with respect to the confirmation of the nomination of Mr Habibian and confirmed his nomination.

31. On 7 August 2015, Mr de Weger accepted his nomination, considering himself independent and impartial but disclosed some information to the attention of the parties and of the CAS.

32. On 10 August 2015, the CAS Court Office notified Mr de Weger's "Arbitrator's Acceptance and Statement of independence" form with the above-mentioned disclosures to the Parties.

33. On 16 August 2015, the Club filed a petition for challenge against the joint nomination of Mr de Weger pursuant to Article R34 of the Code.

34. The matter was referred to the ICAS Board for deliberation and on 21 December 2015 the ICAS Board rejected the petition to challenge Mr de Weger's independence filed by the Club and decided that the "costs of the present order shall be determined in the final award".

35. The decision of the ICAS Board was duly notified to the Parties, Mr. de Weger and Mr Habibian by CAS office on 22 December 2015.

36. The Club kept on insisting that the Panel was biased by the fact that Mr de Weger's independence being questioned despite the ICAS Board's decision which was duly notified to the Club.

37. On 20 January 2016, the CAS Court Office notified the Parties of the constitution of the Panel as follows:

President:	Mr Lars Halgreen, Attorney-at-law, Copenhagen, Denmark
Arbitrators:	Mr Jirayr Habibian, Attorney-at-law, Dubai, United Arab Emirates
	Mr Frans de Weger, Attorney-at-law, Zeist, the Netherlands

38. On 23 February 2016, the CAS Court Office informed the parties of the Panel's decision to dismiss the Club's request for reinstatement in the time limit for the filing of the Answer in the proceedings CAS 2915/A/4081.

39. On 11 March 2016, the Parties were informed that a hearing would be held on 26 May 2015 in Lausanne, Switzerland.

40. On 4 May 2015, the Player respectively signed and returned the Order of Procedure to the CAS Court Office. On 11 May 2015, the Chinese club respectively signed and returned the Order of Procedure to the CAS Court Office. On 12 May 2015, the Club respectively signed and returned the Order of Procedure to the CAS Court Office.

41. On 26 May 2016, a hearing was held in Lausanne, Switzerland (hereinafter referred to as the "Hearing"). The Panel was assisted at the Hearing by counsel to the CAS, Mr Daniele Boccucci.

42. As a preliminary issue, the Panel considered the admissibility of the literature submitted by the Club.

43. The Player objected to the admission of the documents submitted by the Club.

44. With regard to the legal literature submitted by the Club, the Panel concluded to excluding the documents being filed outside the time limits permitted in the Code.

45. The Player was represented by Mr Roberto Branco Martins, attorney-at-law in Amsterdam, the Netherlands. The Player called the following witnesses via video conference:

    - Mr Fernando César Souza;

    - Mr Marcelo Robalinho Alves.

46. The Club was represented by video conference by Mr Boughrara Khaled, attorney-at-law, United Arab Emirates. The Club did not call any witnesses.

47. The witness testimonies called by the Player may be summarized as follows:

(i) The testimony of Mr Fernando César Souza (via video conference)

Mr Fernando César Souza (hereinafter "Mr Fernando") was the representative of the Player in relation to his footballing career and took part in the negotiations of the Contract and the Annex. Mr Fernando informed the Panel that he went to Saudi Arabia and was involved in the negotiations on behalf of the Player in relation to his transfer to the Club. According to Mr Fernando, he met the President of the Club, HRH Faisal bin Turki bin Nasser bin Abdulaziz. The Club proposed the Annex with the fines in case of non-payment in order to give the Player

the security and tranquillity that the financial obligations towards him were going to be honoured in the future since the Player was concerned about non-payments due to the reputation of the Club. According to Mr Fernando, the Contract and the Annex were drafted by the Club. Mr Fernando confirmed that the Contract and the Annex were signed simultaneously. He and the Player signed the Contract and the Annex. The Club stamped the Contract and the Annex and sent it to the President to sign it. Mr Fernando confirmed that other players also had similar annexes.

(ii) The testimony of Mr Marcelo Robalinho Alves (via video conference)

Mr Marcelo Robalinho Alves (hereinafter "Mr Marcelo") was the legal representative of the Player who attended the negotiations of the Contract and the Annex with the Player in Riyadh. Mr Marcelo informed the Panel about the role of Mr Rossi. According to Mr Marcelo, Mr Rossi contacted him after Mr Rossi was being mandated by the President of the Club about a player that was represented by Mr Marcelo. Mr Rossi made an offer in the name of the Club but the player that was represented by Mr Marcelo did not accept. According to Mr Marcelo, the Club had interest in the Player after Mr Marcelo informed the Club that he was an interesting player for the Club as an alternative for the player that was represented by Mr Marcelo. The Club liked the Player's profile and therefore contacted Mr Fernando who was the lawyer/agent of the Player. Mr Marcelo informed the Panel about a meeting in Lausanne with Mr Rossi who was representing and mandated by the Club to start negotiations. After a discussion with Mr Fernando, the latter and Mr Rossi agreed on the financial details and reached an agreement. Mr Marcelo was asked about the circumstances regarding the conclusion of the Contract and the Annex. Mr Marcelo was present in Riyadh on and around 1 July 2013 when the Contract was negotiated with the Club. Mr Marcelo indicated that he was aware of the Annex. Mr Marcelo confirmed that the Annex being signed by the Player on the same date that the Contract was signed. According to Mr Marcelo, the rationale behind the amount of fines indicated in the Annex was related to the reputation of the Club and its status in relation to non-complying with payment obligations. Therefore, according to Mr Marcelo, the fines were a sort of an insurance to the Player. Mr Marcelo also remembered that the Annex was signed by him and the Player and stamped by the Club. He confirmed that the Annex was sent to the President of the Club for his signature, which was duly signed thereafter.

48. The Chinese club was represented at the hearing by Ms Rui Zhang and Mr Kai Cheong Derrick, attorneys-at-law in Shanghai, China.

49. Following the testimonies, the Parties presented their closing statements and conclusions. All Parties explicitly stated at the end of the hearing that they had no objection to the constitution of the Panel and that their right to be heard and to be treated equally in the arbitration had been fully observed and they all confirmed having duly signed the Order of Procedure. The representative of the Club was clearly asked by the President of the Panel whether he had any objection on the constitution of the Panel and he confirmed not having any objection on the

formation of the Panel and confirmed that his right to be heard had been fully observed by the Panel.

IV. SUBMISSIONS OF THE PARTIES

50. The following outline of the Parties' positions which is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference has been made in what follows.

A. The position of the Player

51. In the Appeal Brief, the Player challenged the Appealed Decision and considered that the Appealed Decision should be partly set aside. It requested CAS to issue a new decision submitting the following requests for relief:

   a) *"To partly set aside the decision of the FIFA Dispute Resolution Chamber, respecting the decision of the existence of a just cause for a preliminary breach of contract by the player.*

   b) *To issue a new decision in which your respected Court shall add to the calculation of damages of the decision of the FIFA Dispute Resolution Chamber:*

   c) *The amount that Respondent is obliged to compensate on the basis of an Annex to the employment contract in which a fine was due in case of non or late payment of the salary. The addition amounts to 700.000 USD DOLLARS NET.*

   d) *140.000 Dollars as the FIFA Dispute Resolution Chamber wrongly calculated the amounts that Appellant was supposed to receive as a salary at his new club, and which served for the mitigation of the total amount of damages.*

   e) *Therefore, in total an addition to the amount of damages and compensation of:* ***840.000 US DOLLARS NET****. (total amount to be paid by Respondent USD 2.226.000, including the fixed 5% interest p.a. from very due date).*

   f) *To order Respondent to bear all costs incurred with the present procedure.*

   g) *To order Respondent to pay Appellant a contribution towards its legal and other costs in an amount to be determined at the discretion of the panel".*

52. In support of his requests for relief, the Player's submissions, in essence, may be summarized as follows:

The Player does not appeal in relation to the Appealed Decision that the Player had a just cause to terminate the Contract. However, the Player submits that the DRC miscalculated the amounts that are due by the Club to the Player.

According to the Player, the DRC came to a total amount of USD 1.386.800,-- plus interest rate of 5% p.a. until the date of effective payment over:

- USD 317,000 as of 21 August 2013;
- USD 42,000 as of 1 December 2013;
- USD 42,000 as of 1 January 2014;
- USD 7,800 as of 8 December 2013.

In particular, according to the Player, the miscalculation was based on two false grounds. The first of those ground is that the calculation of the remuneration that the Player was going to receive at the Chinese club was less than what was included as a source of mitigation as calculated by the DRC, the Player stated the following. Due to the pressure in which the Chinese club found itself after the legal threat of the Club, the Player signed another contract that manifested a decrease in salary. According to the Player, the total amount that the Player was going to receive for the period of the original rest-duration of the contract between the Player and the Club, was not USD 770,000 but USD 630,000. The difference between the calculation of the DRC and the amount the Player claimed was in reality USD 140,000.

The second false ground at the basis of the miscalculation of the DRC is that the DRC had not included a contractually agreed upon fine for the late payments of salaries in the calculation, the Player stressed that all fines as laid down in the Annex were due. The Player emphasised that the document was not a fraud and that it was completed in good faith. In order to demonstrate the authenticity of the Annex, the Player made reference to and submitted similar documents that were included in other contracts of former team mates with the Club. According to the Player, the Annex to the Contract is genuine. Therefore, according to the Player, the Panel must add the total amount of fines as laid down in the Annex to the compensation that was established by the DRC in the Appealed Decision.

53. In its Answer to the appeal of the Club, the submissions of the Player, in essence, may be summarized as follows:

The Player is of the opinion that it had a just cause to terminate the Contract with the Club.

According to the Player, the Club had presented many creative arguments as a justification for not paying in time or not paying at all. These arguments included a fine of 50% of the November 2013 salary based on regulations that had never been presented to the Player. An argument of the Club was that the Player could only receive parts of his salary in December 2013 because only then he could use his account. According to the Player, this is not correct since the account

was already in operation in October 2013. Furthermore, the Club raised an argument that it had no funds to pay the salary because it was depending on the SAFF for its incomes based on TV rights and sponsor income. According to the Player, also this argument is completely irrelevant and underlines that the Club was unable to duly perform its obligations.

The Player also stresses that arguments of the Club for not performing its financial obligations, such as the fact that "the Player had already received a generous amount" and that "the Player had a beautiful villa and a BMW car", are irrelevant. According to the Player, the Club had no excuse for not paying the salary of the Player according to the Contract.

The Player claims that the Club was duly notified by the Player about late payments. The Player had already informed the Club on 7 October 2013 that it had failed the payments in the second and third months of the Contract (August and September). According to the Player, this was followed by a second official notification on 11 November 2013. Three letters then followed on 20, 27 and 31 March 2014. In the letter of 31 March 2014, the Player stated that there was no way back and the Player had to seek a satisfaction of the Contract before FIFA. The messages were sent to the people that were involved and present in the negotiations. With regard to the question as to whether or not the Club has received letters of the Player in which he summoned the Club to comply with its obligations, according to the Player, the letters were received by the Club since it stated that it was "bombarded" with letters.

The Player alleges that he asked for permission to move to Brazil and to take care of his son that was in sincere need of a medical treatment. The Player declares it is ready to witness about the health condition of his son during that period. The Player submits that the whatsapp messages between the Player and the President of the club also prove that the Club was aware and supported the travel to Brazil and that the necessary documents would be signed.

The Player submits, as opposed to the Club, that he did have to collaborate with the Club in order for him to obtain the visa (iqama) for the family. The Player submitted a page to prove that the assistance of the Club was needed with this very complex procedure.

The Player made reference to the fact that the Club positioned Mr Rossi as the agent of the Player. However, according to the Player, Mr Rossi was not his agent. The agent/lawyer for many years of the Player is Mr Fernando. It was Mr Rossi that approached the Player and his former colleague Mr Elton Rodrigues Brandão. The Player alleges that it was clear that Mr Rossi had been paid directly by the Club and that there was no representation contract nor mandate whatsoever allowing him to represent the Player. According to the Player, Mr Rossi worked for the Club. There was no documentation in which Mr Rossi appears as the agent of the Player.

The Player also makes reference to the position of the Chinese club. The Player submits that since the Player has a just cause, for this reason alone the Chinese club has nothing to do with any potential claim or sporting sanction. According to the Player, the Chinese club could have never induced the Player as more than 6 months had passed between the Player moving to Brazil and signing in China. Further to this, the Club agreed to delivering the ITC at the request

of the Chinese club. Due to the extra pressure on the Chinese club and the threat of the case before the DRC, the relationship between the Player and the Chinese club was also under pressure.

B. The position of the Club

54. In the Appeal Brief, the Club challenged the Appealed Decision and considered that the latter should be set aside. It requested CAS to issue a new decision submitting the following requests for relief*:*

1. *"Accepts this Appeal against the Decision;*

2. *Replaces the appealed decision of 13 February. Decision of the FIFA DRC and issues a new decision.*

3. *to declare the player "Everton Da Silva" in breach of the labour contract without just cause.*

4. *To conform the sanction imposed by the club (50% deduction from November 2013 Salary following to the infringement committed by the player before 24 hours of the game of AL Hilal played on 25 November 2013).*

5. *to order the Player to send an invoice to SAFF to collect the overdue payment Set Off of USD*

6. *To order the player "Everton Da Silva" to pay an amount of USD 1,030,200, with interest at 5% from 24 July 2014.*

7. *To order the player to compensate the club the commission agent of USD 200,000paid to Mr. ROSSI.*

8. *To order the player to compensate the 6 months (i.e. 185,000 SA almost 50,000 USD) abandoned and without any prior permission to either EID Compound management to open the property.*

9. *To announce appropriate sanction on the club for breach of Art18.3 of FIFA TMS.*

10. *To declare "Shanghai Shenxin Football Club" jointly and severally liable with Mr "Everton Da Silva" to pay Al Nasr Saudi Club the amount of USD of USD 1,280,200, (One thousand Thirty dollars American dollars), with interest at 5% from 28 July 2014.*

11. *To order the appropriate Sportive sanctions on the player and the new club*

12. *Orders that the Respondents pay the amount so assessed; and*

13. *Order the Respondents to pay costs before the DRC and CAS in an amount to be assessed by the CAS.*

14. *in any case, to order to the Respondent to pay the entire cost of the present arbitration, if any;*

15. *in any case, to order the Respondent to pay the entire costs for the Appellant's legal representation and assistance as well as other costs incurred by the Appellant in connection with this arbitration".*

55. In support of its requests for relief in the counter-appeal against the Player and the Chinese club, the Club's submissions, in essence, may be summarized as follows:

The Club submits that the Player did not have a just cause to terminate the Contract.

The Club alleges that it imposed a disciplinary sanction corresponding to a 50% deduction of his November 2013 salary for refusing to partake in a match on 25 November 2013.

According to the Club, the Player left Saudi Arabia without permission of the Club. The permission was given verbally at a later stage at the moment the Club was informed about the illness of his son. The Player never provided the Club with proof of the illness.

The Club further submits that the Player bombarded the Club with intense correspondence including a letter of termination dated 20 May 2015.

With regard to the outstanding salaries, the Club alleges that the payments were late due to the fact that the SAFF fully controlled club incomes in relation to TV-rights and league sponsors. The Club alleges that it duly explained verbally the valid reasons for the delay in payments to the Player. The Player never warned the Club of any outstanding payments.

With regard to the visa, the Club submits that the Player allegedly invented a false scenario so that he could not return to Saudi Arabia. According to the Club, the Contract did not stipulate that the Club was responsible to apply for the visa of his wife. The Player was aware of the Saudi Arabia rules in relation to immigration. According to the Club, the Player left the country unlawfully and with the intention not to return to Saudi Arabia.

C. The position of the Chinese club

56. The Chinese club in its submissions at the hearing before the Panel reiterated its position before the DRC and informed the Panel that:

   a. It entered into an employment agreement with the Player on 23 July 2014 i.e. considerable time after the date of his termination of the Contract with the Club;

   b. It undertook a proper due diligence prior to signing the agreement with the Player by ensuring the Player provided documentation that proved that his Contract with the Club was terminated, including but not limited to an undertaking by the Player that his Contract was terminated in April 2014;

c. At the moment it requested the ITC of the Player in the TMS from the Club, the latter did not make any objection to the ITC issuance, nor made any remarks to the fact that the Player was in breach of his contract;

57. In view of the above, the Chinese club would like to ask the Panel to uphold the Appealed Decision related to the just cause of the Player in terminating the Contract and not to impose any sporting sanctions nor compensation on it.

V. JURISDICTION

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

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

59. The jurisdiction of CAS, which is not disputed by the Parties, derives from Article 66 and 67 of the FIFA Statutes, which determines that a decision of FIFA may be appealed to the Court of Arbitration for Sport in Lausanne within 21 calendar days of receipt of the reasoned decision.

60. The jurisdiction of CAS has not been contested by the Parties, and they have all signed the Order of Procedure without any objections on jurisdiction grounds. It follows that the CAS has jurisdiction in this matter.

VI. ADMISSIBILITY

61. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".

62. The Appealed Decision was notified to the Parties on 5 May 2015 and both the Player and the Club filed their respective appeals within the deadline of 21 calendar days after receipt of the Appealed Decision as set by Article 67 para. 1 of the FIFA Statutes.

63. In view of the above, it follows that both appeals are admissible.

VII. APPLICABLE LAW

64. 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".

65. The Club in its Appeal Brief referred to an extract from the Contract entered between the Player and the Club whereby it concluded that the Panel will decide according to the various regulations of FIFA and additionally Swiss Law.

66. Further, the Player also argued that the relevant FIFA regulations should apply in addition to Swiss Law.

67. 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".

68. The Panel therefore decided that the various FIFA Regulations and subsidiarily Swiss law, shall be applied to determine this dispute. As the present matter was submitted to FIFA in April 2014, the 2013 version of the FIFA Regulations on the Status and Transfer of Players is applicable. Those regulations shall apply primarily, together with the other applicable rules of FIFA and additionally Swiss law.

VIII. SCOPE OF THE PANEL'S REVIEW

69. According to Article R57 of the CAS Code:

"The Panel shall have 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…".

IX. MERITS

70. The following issues shall be determined by the Panel in these proceedings:

Question 1:
Did the Player or the Club terminate the Contract with just cause?

Question 2:
If so, what should be the financial consequences of such a termination?

Question 3:
Does the Chinese club have standing to be sued in these appeal proceedings?

Analysing Question 1

71. In the following, the Panel will outline the relevant context and factual circumstances, which have been presented in these proceedings as regards the issue of a possible "just cause" termination of the Contract signed on 1 July 2013 between the Player and the Club.

72. Based on the written evidence presented during these proceedings as well as the witness statements given at the hearing by Mr Fernando and Mr Marcelo, this Panel is satisfactorily convinced that the Player and the Club concluded the Contract valid as from 1 July 2013 until 30 June 2015, according to which the Player was entitled to a monthly salary of USD 42,000 and in addition hereto four lump sum payments in the total amount of USD 1,492,000; the first of which to be paid on 20 August 2013 amounting to USD 500,000.

73. One of the main disputed facts in the case has been to determine whether the Contract of 1 July 2013 was the only valid and binding contractual basis between the two parties, or whether the Annex from the same date, 1 July 2013, was also agreed upon by the Parties, as alleged by the Player. In this respect, the Panel has noted that the DRC in its decision stated that *"after a thorough analysis of the relevant documents, the Chamber came to the conclusion that it appeared that the "original" provided by the Player was in fact not the original version of the "Annex", but rather a copy. As such and in accordance with its practise, the DRC had no other option but to conclude that the relevant documents could not be considered"*. As a result, the DRC decided not to award the Player any damage amounts on the basis of the "Annex".

74. According to Article 8 of the Swiss Civil Code, and well-established CAS jurisprudence, it falls upon the Player to carry the burden of proof regarding the existence of an alleged fact, i.e. *in casu*, that the Annex dated 1 July 2013 was in fact a valid and binding addendum to the Contract signed by the Player and the Club on the same day.

75. According to Article R57 of the CAS Code, the Panel has the full power to review the fact and the law *"de novo"* and, based upon the Panel's scope of review of the document in question, the Panel finds that the Annex on the face of the document appears to have been signed by the Club the same way as the Contract itself, which undisputedly was the signature of the President of the Club, HRH Faisal bin Turki bin Nasser bin Abdulaziz. Likewise, the signature of the Player, Mr Everton Ramos da Silva, appears to be the same as in the Contract.

76. As for the validity of the Annex itself, the Club has submitted that the document is a falsification, and that the missing stamp, which was present on the Contract with the wording

"Certified by professionalism and Players' Statute Committee" demonstrates that the Annex was indeed forged and should be dismissed as evidence during these proceedings. In order to verify that the Annex was genuine, valid, and binding part of the contractual relationship between the parties, the Player summoned Mr Fernando and Mr Marcelo to give witness statements in support of the alleged existence and validity of the Annex at the hearing.

77. Based on the witness statements from both Mr Fernando and Mr Marcelo, the Panel is satisfactorily convinced that the Annex was in fact drafted by the Club, and the reason that the Annex came into existence in the first place was that the Club was not willing to pay a sign-on fee at the same time, as the contract was concluded, i.e. 1 July 2013. Instead, the Club had insisted on paying the first lump sum of USD 500,000 on 20 August 2013, approximately, one and a half month after the signing of the Contract. Both witnesses have convincingly explained that the Annex was a kind of a compromise between the Parties and served as a reassurance for the Player that the four lump sums would indeed be paid on time; otherwise a significant penalty/fine would have to be paid in addition to the contractual amounts in the Contract itself.

78. Against this background and the fact that the Club has not called any witnesses to rebut the witness statements of Mr Fernando and Mr Marcelo or presented any other written documents in favour of its claim, the Panel concludes that the employment relationship between the Player and the Club consisted of both the Contract as well as the Annex to the Contract, both signed on 1 July 2013.

79. Having established the full contractual basis of the employment relationship as at 1 July 2013 between the Club and the Player, the Panel will now analyse, if the employment relationship has been terminated with just cause by either Party.

80. Based on the evidence presented during these appeal proceedings, this Panel concurs with the findings of the DRC that the Player had indeed *de facto* terminated the Contract on 7 January 2014 by not returning to Saudi Arabia after having travelled to Brazil at the end of the 2013. It is the position of this Panel that the Player as of 7 January 2014 thereby effectively stopped rendering his services to the Club and thus as of this date in reality terminated the employment relation. Therefore, the pivotal point in this examination of whether termination had taken place with just cause concerns if the Player's decision not to return to Saudi Arabia as of 7 January 2014 was justified under the given circumstances.

81. As duly noted by the DRC, the Club has already recognized that it had not fully complied with its financial obligations towards the Player in the period as from 1 July 2013 until 7 January 2014. In fact, the Club has acknowledged that it did neither pay the Player a substantial part of the lump sum payment of USD 500,000, which fell due on 20 August 2013, nor half of his salary for November 2014, nor his full salary in December 2013. The DRC put particular emphasis on the fact that the amount of USD 317,000 had been outstanding since 21 August 2014, and that the Club thereby had been neglecting its contractual obligations from the very beginning of the employment relationship. This Panel has duly noted that the Club has not presented any compelling evidence to explain why these contractual obligations had not been

fulfilled. On the contrary, this Panel has been satisfactorily convinced that the Club was well aware that a number of payments were outstanding and that it had even learned that the reason for which the Player did not want to play, was the non-fulfilment of the Club's responsibilities in paying his salaries in full. Therefore, the submissions and arguments presented by the Club must be rejected, as it is undeniably clear to this Panel that the Player on more than one occasion in no uncertain terms informed the Club about his disagreement with the non-payment of these salaries.

82. Having examined the scope of the Club's contractual breach of its payment obligations, this Panel is of the opinion that the breach is indeed material and has been continuous right from the beginning of the contractual relationship. Not even half of the total amount that the Player was entitled to receive until 7 January 2014 had been paid by the Club. Indeed, the amount of USD 317,000 of the lump sum payments together with the amount of USD 84,000, regarding the salaries for November and December 2013, were still outstanding as of 7 January 2014. The amount of USD 317,000 had in fact been outstanding for more than four months, and the Club had been late with all of its payments according to the stipulated payment deadlines in the Contract.

83. Against this background, this Panel finds that the Club as of 7 January 2014 had violated its contractual obligations towards the Player in a continuous and material manner to such an extent that the Player had a justified reason to terminate effectively his services by not returning to Saudi Arabia from Brazil. Therefore, the Panel holds that the Player had just cause to terminate the employment relationship as of 7 January 2014.

84. In reaching this decision, this Panel at the same time dismisses all arguments and submissions rendered by the Club as to the legitimacy of the fine imposed on the Player in November 2013 for not partaking in a match on 25 November 2014. The Club was clearly in breach of its contractual obligations at that time, and the Club was therefore in no position to fine the Player. Consequently, the Player is entitled to his full salary for November 2013 without any deductions.

Analysing Question 2

85. Having established that the Player *de facto* terminated his employment relationship with the Club with just cause as of 7 January 2014, the Panel now turns to the question, which financial consequences should follow from such a breach of contract.

86. The Panel has carefully examined the evidence presented during these proceedings, and is of the opinion that the Club is liable to pay the Player his full remuneration that was outstanding at the time of the termination. This means that the Player is entitled to USD 401,000 consisting of the outstanding monthly salaries of November and December 2013 in the amount of USD 84,000 as well as the remaining amount of the lump sum payment stipulated to be paid on 20 August 2013 in the amount of USD 317,000.

87. This Panel also concurs with the findings of the DRC that the Player was entitled to flight tickets and that he has provided sufficient evidence that he did indeed buy flight tickets in the amount of Saudi Riyal (SAR) 29,250. Therefore, the Panel confirms to award the amount of SAR 29,250 for flight tickets to the Player. In addition, the Panel confirms that the Club must pay 5% interest on the above-mentioned amounts as of the dates stipulated in the decision of the DRC.

88. The Panel will now analyse the alleged miscalculation of the awarded compensation, which the Player has claimed during these appeal proceedings. The Panel will first deal with the argument that the DRC did not include a contractually agreed upon fine for the late payment of salaries in its calculations, and secondly that the calculation of the remuneration that the Player was entitled to receive at his current club, the Chinese club is less than what was included by the DRC as a source of mitigation of the total amount.

89. In the analysis above regarding question 1, the Panel reached the conclusion that the Annex to the Contract signed on 1 July 2013 was a valid and binding part of the employment relationship between the Player and the Club. According to the Annex, the Club took an obligation upon itself to pay a fine to the Player, if the Club failed timely to execute the payment of the signed fee payments in the employment contract. The totality of the four fines, each allocated to the late payment of the four lump sums in the employment contract, is USD 700,000.

90. Since the Panel has already reached the conclusion that the Club was in breach of its contractual obligations, when only a part of the agreed lump sum payment of USD 500,000, which fell due on 20 August 2013, was paid, the Panel consequently must also come to the conclusion that the Club is liable to pay the full amount of the fine set at USD 250,000 regarding the first lump sum payment. Since the contractual relationship was effectively terminated with just cause as of 7 January 2014, it is the view of the Panel that not only the fine of USD 250,000, but also the remaining USD 450,000, i.e. a total of USD 700,000 shall be paid by the Club as a penalty for breach of contract.

91. In reaching this decision, the Panel notes that the Annex to the Contract regarding the payment of fines must be construed as a penalty clause. Under Swiss law (Article 160 CO), such contractual penalty clauses ("clause pénale" or "Konventionalstrafe") will have to be analysed as to the actual scope of the penalty. In the Panel's opinion, the fine described in the Annex contains all the necessary elements required for such purpose according to Swiss law: (i) the parties bound thereby are mentioned, (ii) the kind of penalty has been determined, (iii) the conditions triggering the obligation to pay it are set, (iv) its measure is defined (COUCHEPIN, La clause pénale, Zürich, 2008, § 462).

92. The Panel remarks that, in principle, under Swiss law, the parties are free to determine the amount of the contractual penalty (Article 163.1 CO). However, the court may reduce penalties that it considers excessive at its discretion (Article 163.3 CO). The law, on the other hand, does not state clearly what an excessive penalty is, so that it is for the judge to establish, with regard to the merits of the case and all the relevant circumstances, whether the penalty is excessive

and, if so, to what extent it should be reduced (ATF 82 II 142 consid. 3, *JdT* 1957 I 104). In any case, it must be underlined that the judge should not reduce a penalty too easily and that the principle of contractual liberty, which is essential under Swiss law, has always to be privileged in case of doubt (MOOSER, *Commentaire Romand du Code des obligations*, Basel, 2003, n. 7 ad art. 163; COUCHEPIN, *op. cit.*, § 934).

93. The Panel notes that, according to the Swiss case law and legal doctrine, a penalty is deemed to be excessive when it is not reasonable and exceeds patently the amount that would seem just and equitable (ATF 82 II 142 consid. 3, *JdT* 1957 I 104). Thus, the judge may reduce the penalty when it is unreasonable to an extent which cannot be justified (COUCHEPIN, *op. cit.*, § 840 ff.). In that respect, it is to be emphasized that the burden of the proof of the penalty's excessiveness falls upon the debtor (Article 8 of the CO) (COUCHEPIN, *op. cit.,* § 851; ATF 114 II 264, *JdT* 1989 I 74).

94. In light of the above, and weighing all the relevant factors, the Panel finds that the measure of the penalties or fines stipulated in the Annex to the Contract is not excessive with respect to the breach imputed by the Club and the interest of the Player to secure performance of the breached obligation. Indeed, the Annex came about as a consequence of the Club's reluctance to pay the sign-on fee at the time of the conclusion of the Contract. The Panel has also taken note of the fact that the penalty clause of USD 700,000 is not triggered by the occurrence of only one breach of the Club's payment obligations, but is corresponding to the payment of the four lump sums of the contract, cf. Article 19(b). Hence, the Panel finds that the behaviour of the Club with respect to the breach of both the first lump sum payment and the salary payments in general has caused the Player to terminate the employment relationship altogether. For that reason, it also justifies the payment of the total stipulated penalty of USD 700,000. Consequently, the Club should pay the full penalty amount of USD 700,000 due to the just cause termination, but the Panel finds that no additional interest payment should be made on top of the fine/penalty.

95. When it comes to the second issue, i.e. whether the DRC decision made an error in the calculation of the amount, which ought to be deducted from the compensation due to the mitigation of the Player's loss, the Panel will first and foremost determine what the remaining value of the Player's contract as from its early termination until the regular expiry of the Contract would amount to.

96. Having examined the documents and evidence brought forward during these proceedings, the Panel has reached the conclusion that it concurs with the decision of the DRC taking into account the remuneration due to the Player in accordance with the Contract as well as the time remaining on the same contract along with the professional situation of the Player after the early termination occurred. These circumstances result in fixing the amount of USD 1,748,000 as the basis for the final determination of the amount of compensation for breach of contract. In reaching this result, the Panel dismisses all submissions and claims presented by the Club as regards the breach itself and the consequences for the determination of the compensation amount.

97. The Panel has noted that both during the proceedings before the DRC and during these proceedings, the Player has alleged that even though his employment contract with the Chinese club stipulates that he would be entitled to the amount of USD 770,000 during the period between July 2014 to the end of the contractual period of 30 June 2014, this amount is in fact far less. The statement of the Player indicates that the terms in the contract is not the reality, as he had later on agreed with the Chinese club to receive only one third of his salary, which should reduce the deduction by 2/3 of USD 770,000.

98. After having carefully evaluated the evidence brought forward during these proceedings and at the hearing in Lausanne, the Panel is, however, not satisfactorily convinced that the Player has not been entitled to USD 770,000 during the period July 2014 and 30 June 2015. This reduction does not in the view of the Panel appear to have been substantiated by the statement of the legal representatives of the Chinese club during the hearing. As the Player according to Article 8 of the Swiss Code of Obligation bears the burden of proof for the existence of the alleged fact, the Panel therefore rejects the claim by the Player that a lesser amount should be deducted from the compensation as being unsubstantiated.

99. In conclusion, the Panel finds that the contractual amount found in the employment contract between the Player and the Chinese club of USD 770,000 shall be deducted from the basis amount for the final determination of compensation, fixed at USD 1,748,000, as being the correct damage amount after the Player has correctly mitigated his losses. Hence, this Panel concurs with the findings of the DRC, namely that the Player shall be entitled to an amount of USD 978,000 plus 5 % interest p.a. on said amount as of 8 April 2014 until the date of effective payment.

Analysing Question 3

100. As for the question, whether the Chinese club has standing to be sued in these arbitration proceedings, the Panel concurs with the understanding expressed in previous CAS jurisprudence (CAS 2009/A/1869) that the standing to be sued should be treated as an issue of merits and not as a question for the admissibility of appeal.

101. Under Swiss law, an entity has standing to be sued (*légitimation passive*), and can therefore be summoned as a party in a CAS arbitration, only if something is sought from it and it is personally obliged by the "disputed right" at stake (SUTTER-SOMM/HASENBÖHLER/LEUENBERGER-ZÜRCHER in: *Kommentar zur Schweizerischen Zivilprozessordnung (ZPO),* 2nd ed., 2013, No. 67 zu Art. 59 ZPO; STAEHELIN/STAEHELIN/GROLIMUND, Zivilprozessrecht, 2nd ed., 2013, § 13 no. 20; BGE 107 II 82 E. 2a; such definition has been expressly endorsed by a long standing jurisprudence of CAS: CAS 2006/A/1189; CAS 2006/A/1206; CAS 2007/A/1367; CAS 2012/A/3032). As a consequence, and conversely, no standing to be sued can be found when a party is named to answer a claim referring to a claimant's right which may (or may not) exist only against a different subject.

102. When looking at the merits of this case, the Panel notes that the Club in these appeal proceedings has made a request for relief towards the Chinese club stating that the club as the Player's new employer should be obligated to jointly and severally be liable for the payment of the claim, which the Club has raised against the Player of USD 2,295,163 for breach of contract. Furthermore, the request for relief also entails a plea for a sanction imposed on the Chinese club in the form of a ban from registering any new players. It is the Panel's understanding that these monetary and disciplinary claims are made, since the Chinese club allegedly should have induced the Player to breach his Contract with the Club.

103. Having carefully examined the evidence presented before the DRC and in these appeal proceedings, this Panel puts great emphasis on the fact that no evidence whatsoever has been presented by the Club substantiating or even suggesting that the Player and the Chinese club were in contact with each other at the time, when the Player decided not to return to Saudi Arabia in January 2014. Moreover, the legal representative of the Club confirmed during the hearing that the Club without any objections or reservations had released the Player's ITC to the Chinese club at the time when the new employment contract came in place in the summer of 2014. Thus, by the Club's own admission, the Chinese club was not in any way involved in the previous contractual dispute between the Player and his former employer regarding the termination of their employment relationship in January 2014. As the Player was not in any way liable to pay compensation, cf. the conclusion above re question 1, the Chinese club can never be jointly and severally liable for any compensation in accordance with Art. 17, para. 2, of the RSTP.

104. Against this background, the Panel concludes that the Chinese club in these appeal proceedings has no standing to be sued, as the Chinese club was not a party to the disputed contractual relationship, nor did it have anything to do with the alleged breach of Contract by the Player. Moreover, the Panel concludes that FIFA has never received a request from the Club to open any disciplinary sanctions against the Chinese club pursuant to FIFA Disciplinary Code, and for that reason, this Panel has no jurisdiction according to R57 of the CAS Code to review any claims for disciplinary measures in these appeal proceedings. This result follows from both the application of fundamental principles under Swiss law as well as CAS jurisprudence.

105. Consequently, the Panel concludes that all requests for relief raised by the Club against the Chinese club shall be rejected under these appeal proceedings.

X. CONCLUSION

106. Based upon the foregoing, the Panel concludes that the Player's request for relief shall be partially upheld, as the Panel finds that the Club is liable to pay a penalty in the amount of USD 700,000 without interest for breaching its contractual obligations pursuant to the stipulations in the Annex of the Contract of 1 July 2013. With the addition of this penalty payment, the Panel upholds the Appealed Decision of 21 January 2015. Consequently, the Panel dismisses all other motions or prayers for relief raised by the Club against the Player and the Chinese club.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Everton Ramos da Silva on 26 May 2015 against the decision issued by the FIFA Dispute Resolution Chamber on 21 January 2015 is partially upheld.

2. The appeal filed by Al Nassr Football Club on 26 May 2015 against the decision issued by the FIFA Dispute Resolution Chamber on 21 January 2015 is dismissed.

3. Al Nassr Football Club is ordered to pay to Everton Ramos da Silva outstanding remuneration in accordance with the Contract in the amount of USD 401,000 and SAR 29,250 plus 5% interest p.a. until the date of effective payment as follows:

   i. 5% p.a. as of 21 August 2013 on the amount of USD 317,000;

   ii. 5% p.a. as of 1 December 2013 on the amount of USD 42,000;

   iii. 5% p.a. as of 1 January 2014 on the amount of USD 42,000;

   iv. 5% p.a. as of 28 December 2013 on the amount of SAR 29,250.

4. Al Nassr Football Club is ordered to pay to Everton Ramos da Silva the amount of USD 700,000 as a penalty for breach of contract.

5. Al Nassr Football Club is ordered to pay to Everton Ramos da Silva compensation for breach of contract in the amount of USD 978,000 plus 5% interest p.a. on said amount as from 8 April 2014 until the date of effective payment.

(…)

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