**Arbitration CAS 2015/A/4283 Al Nassr Saudi Club v. Shavkatjon Mulladjanov, award of 28 April 2016**

Panel: Mr Michael Gerlinger (Germany), Sole Arbitrator

*Football*
*Termination of a contract of employment between a player and a club*
*FIFA Jurisdiction to hear employment-related disputes*
*Payment obligation resulting from the termination agreement*

1. **The rule is that FIFA is competent to decide upon employment-related disputes between a club and a player of an international dimension. The exception is that FIFA is not competent if national arbitration tribunals exist and specific requirements for such tribunals are met i.e. guaranty of fair proceedings and compliance with the principle of equal representation between players and clubs. If, however, in application of Article 8 of the Swiss Civil Code concerning the burden of proof, the existence of such requirements has not been proven by the party arguing the competence of the national tribunal, it follows that the FIFA DRC is competent to decide the matter. Furthermore, in compliance with the guarantee of access to courts, provided under Article 29a of the Federal Constitution of the Swiss Confederation, a party cannot be denied access to FIFA arbitration pursuant to article 22 lit. b FIFA RSTP after having received no answer from the national football federation whose competence was provided in a termination agreement.**

2. **A termination agreement can be a result of a dispute between the parties about a series of outstanding amounts of salary payments. However, the salary which just became due in the same month when the termination agreement was signed, but was not integrated in the termination agreement as it was not part of the dispute so far, has to be paid by the debtor in addition to the outstanding amount agreed in the termination agreement.**

## I. PARTIES

1. Al Nassr Saudi Club (hereinafter referred to as the "Appellant" or the "Club") is a professional football club with its registered office in Riyadh, Kingdom of Saudi Arabia. It is a member of the Saudi Arabia Football Federation (hereinafter referred to as the "SAFF"), which in turn is a member of FIFA, and plays in the Saudi Professional League.

2. Mr Shavkatjon Mulladjanov (hereinafter referred to as the "Respondent" or the "Player") is a professional football player, with a last assignment with the club Al-Shaab CSC in United Arab Emirates, Sharjah, in the UAE Arabian Gulf League.

## II. FACTUAL BACKGROUND

### A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions. 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 Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

4. On 1 July 2012, the Parties concluded an employment contract (hereinafter: the "Contract"), valid from the date of signature until 30 June 2013.

5. According to clause 19 of the Contract, the Respondent was entitled to receive *inter alia* a monthly salary in the amount of USD 41,666.67 as well as USD 200,000 as *"advance paid on signing this contract"*.

6. On 25 February 2013, the Parties entered into an "Agreement for Cordial Termination of Contract" (hereinafter referred to as the "Termination Agreement") with the following stipulations:

> *2. The Club will transfer to the Player's Bank account an Amount of 41,666 [... USD] representing one monthly salary.*
>
> *3. The remaining salaries of the player will be (4) months.*
>
> *4. The outstanding payment due by the Club to the Player is USA 100.000 […] the remaining amount of the signing fee in addition to USA 166.664,00 […] representing four months salaries.*
>
> *The total is US$ 266.664,00 […]. The Club is committed to transfer this amount on the Player's Bank account on 25th March 2013"*
>
> *[…]*
>
> *6. In case of any dispute arising because of this agreement between the two parties, the case shall be referred to Saudi Arabian Football Federation.*

7. The Appellant did not perform its payment obligations.

8. Therefore, on 16 April 2013, the Respondent's counsel set a final deadline to the Appellant in order to pay the total amount of USD 266,664,-. On the same day, the Respondent sent a

letter to the SAFF and requested the assistance of the SAFF and strong intervention in order to recall to the Appellant its pending payment obligation

9. On 3 July 2013, the Respondent's counsel wrote a second letter to the Appellant and to the SAFF to receive an answer with explanations as regards the non-performance of the payment obligation by the Appellant.

10. A respective claim before the FIFA Dispute Resolution Chamber (hereinafter referred to as the "FIFA DRC") was deposited by the Respondent on 14 November 2013, claiming compensation for outstanding salaries as follows: USD 41,666 plus 5% interest p.a. as from 26 February 2013, plus USD 266,664 plus 5% interest p.a. as from 26 March 2013.

## B. Proceedings before the FIFA DRC

11. On 20 November 2014, the FIFA DRC sent a facsimile to the SAFF for onward transmission to the Appellant and invited the Appellant to present its final comments pertaining to the present affairs by 1 December 2014 at the latest.

12. On 4 February 2015, the FIFA DRC sent another facsimile to the SAFF in which the FIFA DRC referred to its letter dated 20 November 2014 which had remained unanswered by the Appellant.

13. On 24 April 2015, the FIFA DRC ruled as follows (hereinafter referred to as the "DRC Decision"):

> *"1. The claim of the Claimant, Shavkatjon Mulladjanov, is accepted.*
>
> *2. The Respondent, Nassr Saudi Club, has to pay to the Claimant,* ***within 30 days*** *as from the date of notification of this decision, the amount of USD 308,330 plus 5 % interest p.a. until the date of effective payment as follows:*
>
> *- 5 % p.a. as of 26 February 2013 on the amount of USD 41,666;*
>
> *- 5 % p.a. as of 26 March 2013 on the amount of USD 266,664.*
>
> *4. In the event that the aforementioned sum plus interest is no paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision*
>
> *5. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*

14. The DRC Decision including grounds was notified to the Appellant on 22 October 2015.

## III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 12 November 2015, the Appellant lodged a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as the "CAS"). The Appellant requested the appointment of a sole arbitrator. It submitted the following requests for relief:

*"The Appellant respectfully requests to this Court of Arbitration for Sport the following:*

*a) To declare the jurisdiction over the present dispute.*

*b) To accept the appeal against the decision adopted by FIFA DRC on 8 June 2015.*

*c) The decision shall be **set aside** where the club's right to be heard or the principle of equal treatment has been violated.*

*d) To quash the decision issued by FIFA on 8 June 2015 where it has to be doubtless established that:*

*i. No amount is due to the respondent for February 2013 salary.*

*ii. In this respect, the club maintain its position to pay only the outstanding due amounted to USD 266,664 "without any interest on the proposed date by the player counsel because he made a mistake with his client on the concept of Article 2 of the termination (there is no payment due in 25/2/2013)".*

*And in any case, that:*

*iii. The Respondent or the Player of "Shavkatjon Mulladjanov" shall reimburse the administrative costs within FIFA.*

*iv. The costs related to the present arbitration shall be borne by the Respondent.*

*v. The Respondent or the Player of "Shavkatjon Mulladjanov" shall pay the legal fees and other expenses incurred by Al Nassr Saudi Club in connection with the present arbitration procedure.*

16. On 23 November 2015, the Respondent agreed with the appointment of a sole arbitrator by the President of the CAS Appeals Arbitration Division.

17. On 26 November 2015, the Appellant filed its appeal brief in accordance with Article R51 of the Code of Sports-related Arbitration (hereinafter the "Code"). The appeal brief contained the same requests for relief than in the statement of appeal.

18. On 9 December 2015, the Appellant requested the CAS to suspend the ongoing arbitration for a limited period of time in order to reach a settlement agreement with the Respondent. On 11 December 2015, within the deadline set by the CAS Court Office, the Respondent objected to such request from the Appellant as he did not intend to enter into any settlement discussions.

19. On 18 December 2015, FIFA renounced its right to intervene but emphasised that – since FIFA was not designated a party by the Appellant – the question of competence of FIFA's decision making body with respect to the DRC Decision had become final and binding. Furthermore, FIFA deemed that the Appellant's argument that a violation of is right to a due process/right to be heard occurred is unproven, left alone justified.

20. On 22 December 2015, the Respondent filed his answer in accordance with Article R55 of the Code. The Respondent's requests for relief are as follows:

*"Consequently, the Respondent respectfully submits that the appeal of the Appellant should be dismissed in its entirety and the Decision should be upheld.*

*The Respondent respectfully requests that in the event that the Appellant's appeal is dismiised that the Sole Arbitrator shall give consideration to the Art. R64.5 of the CAS Code and order to the Appellant to be responsible for the costs of these appeal proceedings and to make a contribution to the costs and expenses the Respondent has incurred".*

21. On 29 December 2015, the Appellant agreed that the Sole Arbitrator may decide this issue only on the basis of the parties' written submissions, without the need for an oral hearing. On 4 January 2016, the Respondent did not consider a hearing to be necessary either, but reserved the right to request such a hearing in the event the submissions of the parties would be amended or supplemented in the future.

22. By letter dated 11 January 2016, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division has appointed Mr Michael Gerlinger, Munich, Germany, as Sole Arbitrator. The parties did not raise any objections as to the appointment of the Sole Arbitrator.

23. On 26 January 2016, the CAS Court Office informed the parties that the Sole Arbitrator had decided that no hearing shall be held and that an award shall be rendered on the basis of the parties' written submissions.

24. The parties were invited to sign and return an Order of Procedure for the above-referenced matter which they did respectively on 2 February 2016 by the Appellant and on 3 February 2016 by the Respondent. By signing the Order of Procedure, the parties expressly confirmed that their right to be heard had been fully respected.

## IV. SUBMISSIONS OF THE PARTIES

25. The Appellant's submissions, in essence, may be summarized as follows:

- The Appellant contests the authenticity of the Termination Agreement and requests the production of an original copy. The signature of the club representative appeared to be non-identical to other signatures of the President on other documents on file.

- The Appellant confirms owing the Respondent the total amount of USD 266,664, but rejects the Respondent's request for the amount of USD 41,666, stating that *"it is not possible that the player will sign the agreement without getting his due while signing the document"*, (i.e. the club asserts that there were no outstanding salaries due at the time the Respondent signed the Termination Agreement.)

- The FIFA DRC was not competent to issue the DRC Decision. According to Article 22 lit. b) of the FIFA Regulations on the Status and Transfer of Players (hereinafter "RSTP"), as an exception to the rule, the FIFA DRC is not competent to deal with disputes if an independent arbitration tribunal guaranteeing fair proceedings and complying with the principle of equal representation of players and clubs has been established at national level. Such exception applied here. The Appellant deems that the claim of the Respondent falls under the Regulations as foreseen in the jurisdiction clause under the Contract and therefore shall be arbitrated exclusively by the SAFF competent bodies.

- The Appellant considers that the FIFA DRC violated the principles of due process, in particular its right to be heard and to be treated equally where, in point 8 of its decision, it declares that *"[d]espite having been invited to do so, the club did not provide FIFA with its final comments on the present affair"*.

26. The Respondent's submissions, in essence, may be summarized as follows:

- The Appellant did not challenge the authenticity of the Termination Agreement in front of the FIFA DRC. The Appellant also possesses a copy of this agreement and may thus produce on its own an original copy of the document it challenges.

- The Appellant has still not paid any amount to the Respondent. As the contract has been terminated on 25 February 2013, payment of the wages was due until the end of February 2013.

- The DRC Decision in conformity with its Procedural Rules an in application of the RSTP.

- The Respondent has the right to receive the wage of February 2013 in amount of USD 41.666,-, according to the clear wording of the Termination Agreement.

- The interests result from Article 2 of the Termination Agreement for the wage of February 2013 from 26 February 2013 and for the other amounts which were to be paid on 25 March 2013 from 26 March 2013 according to Article 4 par. 2 of the Termination Agreement.

- According to Article. 22 lit b) of the RSTP, the DRC was competent to adjudicate the present case. The Appellant has not demonstrated that the national arbitration tribunal respects the fundamental principles presupposed on Article 22 lit. b), or Article 24 al. 1 of the RSTP, when ruling a case. The national arbitration tribunal may hardly meet the

principle of equal treatment when its bylaws are only available in Arabic. Furthermore, the Appellant did not challenge the jurisdiction of the DRC in front of the DRC Panel.

- The SAFF never answered to the Respondent's letters of 16 April 2013 and 3 July 2013. Therefore, even in the very hypothetical case that a national tribunal within the SAFF was competent in the present case, this tribunal did and does not respect minimal (international) procedurals standards as laid down in several laws and rules of procedure for arbitral tribunals.

- The DRC Decision neither violated the right to be heard of the Appellant nor breached the principle of equal treatment. Furthermore, the Appellant does not produce any exhibit contradicting the findings of the DRC. According to Article 12 al. 3 of the Procedural Rules, any party claiming a right on the basis of an alleged fact shall carry the burden of proof.

## V. JURISDICTION

27. Article R47 of the Code provides as follows:

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

28. The jurisdiction of the CAS is not disputed by the Parties and was confirmed by the signature of the Order of Procedure. It derives from Article 67 para. 1 of the FIFA Statutes and Article 24 para. 2 of the RSTP (Edition 2012) according to which a decision of the FIFA DRC maybe appealed to the Court of Arbitration for Sport in Lausanne.

29. It follows that the CAS has jurisdiction to decide on the present appeal against the DRC Decision. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law and may issue a de novo decision, partially or entirely, superseding the appealed decision.

## VI. ADMISSIBILITY

30. 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.*

31. The appeal was filed on 12 November 2015, *i.e.* within the deadline of 21 days after receipt of the reasoned decision as set by Article 67 para. 1 of the FIFA Statutes.

32. It follows that the appeal is admissible.

## VII. APPLICABLE LAW

33. Article R58 of the Code provides as follows:

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

34. The Sole Arbitrator shall apply the applicable regulations of FIFA, i.e. the RSTP (2012 edition), and in addition, in absence of an explicit choice of law by the parties, Swiss Law.

## VIII. MERITS

### A. The competence of the FIFA DRC

35. The Appellant first argues that the FIFA DRC was not competent to deal with the dispute submitted by the Respondent and refers to the fact that clause 24 of the Contract referred disputes between the parties to the SAFF and that a national arbitration tribunal existed within the SAFF. The Respondent argues that the competence of the FIFA DRC derives from Article 22 lit. b) of the FIFA RSTP without the exception of a national arbitration tribunal being applicable, since the relevant clause was clause 6 of the Termination Agreement and the Appellant failed to prove that an independent national arbitration tribunal existed within the SAFF.

36. Article 22 lit. b) of the FIFA RSTP reads as follows:

*"Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:*
…
*b) employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement;*

37. The Sole Arbitrator first of all notes that the underlying agreement for the claims is the Termination Agreement and not the Contract for the reasons set out below under section C, and that clause 6 of the Termination Agreement required the Respondent to "refer" the dispute to the SAFF. Such clause did not further specify any formal requirements for such "referral". Since the Respondent's counsel sent respective letters to the SAFF on 16 April and 3 July 2013, the Sole Arbitrator considers that the Respondent had complied with such requirement. For this reason and in compliance with the guarantee of access to courts,

provided under Article 29a of the Federal Constitution of the Swiss Confederation, the Respondent cannot be denied access to FIFA arbitration after having received no answer from the SAFF.

38. In addition, the Appellant cannot invoke that due the existence of an independent national arbitration tribunal, the FIFA DRC was not competent to decide. Article 22 lit b) of the FIFA RSTP establishes a rule and an exception. The rule is that FIFA is competent to decide upon employment-related disputes between a club and a player of an international dimension. This is the case here, since the Player is of Uzbek nationality. The exception is that FIFA is not competent if national arbitration tribunals exist and specific requirements for such tribunals are met. The Appellant, however, in application of Article 8 of the Swiss Civil Code concerning the burden of proof, failed to prove the existence of such requirements. In this respect, the Appellant only requests the SAFF to produce the relevant Statutes that only exist in Arabic in an English translation instead of providing the CAS with such documents. The Appellant refers to Articles R41.3 and R41.4 of the Code for such request. However, such rules concern a third party intervention requested by another party. This is not the case here. The SAFF has not requested to participate. Therefore, the SAFF cannot be requested to produce documents. It was up to the Appellant to outline and prove the requirements of an independent national arbitration tribunal, which it did not. It follows that the FIFA DRC was competent to decide the matter.

39. In view of the above findings, the Sole Arbitrator deems it unnecessary to address the issues raised by FIFA in its letter of 18 December 2015.

## B. The alleged infringement of the right to be heard

40. The Appellant further argues that its right to be heard was not respected by the FIFA DRC, since - contrary to the findings in the decision of the FIFA DRC - it was not invited to file its final comments in the proceedings. The Respondent, however, submitted a letter of FIFA of 20 November 2014 pursuant to which the Appellant was invited to file its final comments in the proceedings. For this reason, and independent from the question whether it would have constituted an infringement of its right to be heard if not invited to file the final comments, the Sole Arbitrator is satisfied that the Appellant was invited to file its final statements.

41. In any event, pursuant to CAS constant jurisprudence, as the present appeal is dealt with *de novo*, all procedural defects before FIFA are cured by the present appeal before CAS.

## C. The payment obligation resulting from the Termination Agreement

42. First, the Appellant questions the authenticity of the signature of the Club's representative on the Termination Agreement and requested the Respondent to produce an original of such document. Notwithstanding the fact that the Appellant should have an own original copy of such document, the Appellant does not further specify any reason or facts that could be analysed by the Sole Arbitrator regarding the signature on an original copy. The Appellant simply argues that the signature "appears" to be different from other signatures of the

President. It does not specify one single reason for such assumption. For this reason, the Sole Arbitrator does not see any ground to request an original copy from the Respondent. The Appellant did not sufficiently specify the reasons for questioning the authenticity of the signature. Since the Appellant bears the burden of proof for a potential non-authenticity, it cannot invoke the latter.

43. Second, the Appellant argues that there was a misunderstanding in the payment stipulations of the Termination Agreement. It seems to rely on the assumption that the Respondent would not have acknowledged that there were no outstanding salary payments other than the amount due for 4 months salary and at the same time claimed an outstanding salary for the month of February 2013. The Appellant, therefore, acknowledges that it owes USD 100,000.- as outstanding signing fee and USD 166,664.- for four months outstanding salaries, but not USD 41,666.- for the salary of February 2013. The Respondent argues that the salary for February 2013 was still due when signing the Termination Agreement, which is why it was due in addition to the other two outstanding amounts. Therefore, there was no misunderstanding when signing the Termination Agreement.

44. The Sole Arbitrator acknowledges that the clear wording of clauses 2 and 4 of the Termination Agreement establish two different payment obligations, while the payment of USD 266,664.- contained two amounts of outstanding payments, i.e. the outstanding signing fee and four months of salary. Therefore, the wording of the Termination Agreement indicates that the parties intended to establish an obligation to pay all three amounts. There is also no systematic indication in the Termination Agreement that could speak against an obligation to pay the salary for February 2013 separately. To the contrary, it appears that the Parties separated the salary payment from the other outstanding amounts intentionally, because clause 3 differentiates the February salary from the other salary payments by naming the latter the "remaining salaries" (i.e. remaining open after payment of clause 2). Lastly, the *ratio* of the Termination Agreement also speaks for a separate obligation to pay the February salary. The Termination Agreement is a result of a dispute between the Parties about a series of outstanding amounts of salary payments. The February salary, however, was just due in the same month when the Termination Agreement was signed, so it had just become due and was not part of the dispute so far. For all these reasons, the Sole Arbitrator believes that the Appellant had to pay the amount of USD 41,666.- in addition to the outstanding amount of USD 266,664.-.

## D. Conclusion

45. It follows that the Appellant was obliged to pay the amount USD 308,330.- as well as interests to the Respondent, which is why the appeal has to be rejected in its entirety.

## ON THESE GROUNDS

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

1. The appeal filed by the Appellant on 12 November 2015 against the decision issued by the FIFA Dispute Resolution Chamber on 24 April 2015 is dismissed.

2. The decision issued by the FIFA Dispute Resolution Chamber on 24 April 2015 is confirmed.

3. (…).

4. (…).

5. All other prayers for relief are dismissed.