Arbitration CAS 2015/A/4360 Al-Itthiad FC v. João Fernando Nelo, award of 13 July 2016

Panel: Prof. Luigi Fumagalli (Italy), Sole Arbitrator

Football
Contract of employment between a club and a player
Termination of employment contract and outstanding salaries

If the parties had agreed that the employment contract comes to an end at a certain point in time, without necessity of a prior notice by either party, neither a termination notice is required nor is it possible for either of the parties to terminate the employment contract with or without just cause. Outstanding salaries accrued before the end date of the contract – provided they are undisputed – may therefore not be withheld.

1. BACKGROUND

1.1 The Parties

1. Al-Ittihad FC (the "Club" or the "Appellant") is a football club with its registered office in Jeddah, Saudi Arabia. The Club is affiliated to the Saudi Arabian Football Federation (the "SAFF"), which in turn is a member of the Fédération Internationale de Football Association ("FIFA").

2. João Fernando Nelo (the "Player" or the "Respondent") is a Brazilian professional football player, born on 18 March 1979.

1.2 The Dispute between the Parties

3. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence given in the course of the proceedings[1]. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

4. On 15 August 2013, the Player and the Club signed an employment contract (the "Employment Contract"), under which the former undertook to provide the latter with his services as a professional football player for a term starting on 15 August 2013 and ending on 30 June 2014,

[1] Several of the documents submitted by the parties and referred to in this award contain various misspellings: they are so many that the Sole Arbitrator, while quoting them, could not underscore them all with a *"sic"* or otherwise.

for a total remuneration of USD 800,000.

5. The Employment Contract contained, *inter alia*, the following provisions:

> *"18. The club shall have the option to break this contract by 31/12/2013, without any compensation to the second party [the Player].*
>
> *19. The club shall pay to the player during the term of this contract the following payments:*
>
> *a) Monthly salary: The player will be paid a monthly salary at the end of each (Gregorian) month of an amount as per both parties agree in (18-D-2) ….*
>
> *d) … compensations to be paid by the club to the player as follows: …*
>
> *1. An amount of ($ 100,000) upon signing the contract.*
>
> *2. An amount of ($ 300,000) to be divided by 4 months as monthly salaries, … (75,000 USD) per month.*
>
> *3. In the case of the club desire to complete the contract till 30/6/2014 the club will pay to the player an amount of (400,000 USD) will be paid as follows:*
>
> *- An amount of (100,000 USD) on 15 January 2014.*
>
> *- An amount of (300,000 USD) will be divided as monthly salary for the period of the contract. …*
>
> *23. If the Player decides to break this contract before the end of its term then the Player has to pay to the Club an amount of (USD 800,000). ….*
>
> *25. Should there be any dispute between the parties regarding the present agreement, the parties will attempt to settle such dispute in an amicable manner within 15 days of the notification of the dispute. In the assumption the parties have not reached an amicable agreement within the aforesaid time limit the dispute shall be settled in first instance by the FIFA competent judicial body and in appeal by the Court of Arbitration for Sport (Lausanne). Swiss law and FIFA regulations shall be applicable to such dispute. …".*

6. On 9 January 2014, the Player's counsel contacted the SAFF to inform it (i) that the Club had failed to pay *inter alia* the entire amount due to the Player under the Employment Contract, and (ii) that the amount of USD 300,000 was still outstanding, and to ask SAFF *"to take appropriate action with the club so that it pay the amount due to the player"*.

7. On 10 January 2014, the Player sent a letter captioned *"BREACH OF CONTRACTUAL CLAUSE – NON PAYMENT OF THE JOÃO FERNANDO DE NELO EMPLOYMENT CONTRACT"* to the Club as follows:

> *"We use the present notification in order to inform you that the club branched the employment professional player contract signed with the player JOÃO FENANDO NELO, now represented by the lawyer who signs this, as attorney attached.*
>
> *The contract entered into effect on 15/august/2013, and would be valid until 30/6/2014, with the possibility to the club break the contract in 31/12/2013.*
>
> *During the contract, this club should pay to the player an amount total of US$ 800,000.00, as follows:*
>
> *1 - US$ 100,000.00 at sight – ALREADY PAID;*

2 - US$ 300,000.00 in 4 (four) installments, as follows:

A. On September/2013 = US$ 75,000,00; - MISSING
B. On October/2013 = US$ 75,000,00; - MISSING
C. On November/2013 = US$ 75,000,00; - MISSING
D. On December/2013 = US$ 75,000,00; - MISSING

3. - US$ 400,0000,00, in case of the club desire to complete the contract until 30/6/2014, as follows:

a. On January/2014 = US$ 100,000,00; - NOT YET DUE
b. On February/2014 = US$ 75,000,00 - NOT YET DUE
c. On March/2014 = US$ 75,000,00 - NOT YET DUE
d. On April/2014 = US$ 75,000,00 - NOT YET DUE
e. On May/2014 = US$ 75,000,00 - NOT YET DUE

However, although this club has paid US$ 100,000.00 upon signing the contract (item 1 above), it is certain that the payments listed in item 2, A, B, C, and D above have not been paid yet.

So, the player is a creditor of the amount of US$ 300,000.00 (Three hundred thousand US Dollars).

Moreover, in view of the attitude of this club (nonpayment of agreed wages), which has caused immense damage to the player, there is clear lack of interest of the club to keep the labor contract signed with the player.

Because of all that has been stated in this document, THE PLAYER NOTIFIES THE CLUB FOR:

- *Pay to the player, in a maximum of 48 hours, the amount due to him, that is, US$ 300,000.00 duly corrected;*
- *Making use of the clause 18 of the contract, declare, at a maximum of 24 hours, which no longer has any interest in having the player and maintain employment contract;*
- *Perform, also within 24 hours, the liberation of the player in the BID (Boletine Informative Diário da Confederação Brasileira de Futebol – Informative Daily Bulletin of the Brazilian Football Confederation), reducing the account for damages, since the player is unable to bind to another club nor may remain in this club for nonpayment of wages.*

Importantly to say that the timing mentioned begins with the send of the notification to this club by this e-mail".

8. On 7 February 2014, the Player lodged a claim with FIFA against the Club, maintaining that the Club had breached the Employment Contract and requesting payment in the amount of USD 300,000 as outstanding salaries for the months of September, October, November and December 2013, plus interest. The Player indicated that the term of the Employment Contract had not been extended to 30 June 2014, and therefore he did not submit any claim for salaries after 31 December 2013.

9. On 2 July 2015, the FIFA Dispute Resolution Chamber (the "DRC") issued a decision (the "Decision"), holding as follows (emphasis in the original):

"1. The claim of the Claimant, João Fernando Nelo, is partially accepted.

2. The Respondent, Al-Itthiad FC, has to pay to the Claimant, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of USD 300,000 plus 5% interest

p.a. until the date of effective payment as follows:

a. 5% p.a. as of 1 October 2013 on the amount of USD 75,000;

b. 5% p.a. as of 1 November 2013 on the amount of USD 75,000;

c. 5% p.a. as of 1 December 2013 on the amount of USD 75,000;

d. 5% p.a. as of 1 January 2014 on the amount of USD 75,000.

4. In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to the FIFA's Disciplinary Committee for consideration and a formal decision.

5. Any further claim lodged by the Claimant is rejected …".

10. On 3 December 2015, the Decision, together with the grounds supporting it, was notified to the Appellant.

11. In its Decision, the DRC first found that the 2012 edition of the Regulations on the Status and Transfer of Players (the "RSTP") was applicable to the merits of the dispute. The DRC, next, stated the following:

"5. The members of the Chamber acknowledged that the parties to the dispute had signed a valid employment contract on 15 August 2013, in accordance with which the Respondent would pay the Claimant total Remuneration of USD 400,000 between 15 August 2013 and 31 December 2013.

6. Subsequently, the DRC noted that the Respondent failed to present its response to the claim of the Claimant in spite of having been invited to do so. By not presenting its position to the claim, the members of the Chamber were of the opinion that the Respondent renounced its right of defence and had thus accepted the allegations of the Claimant.

7. Furthermore, as a consequence of the aforementioned consideration, the Chamber concurred that in accordance with art. 9 par. 3 of the Procedural Rules, it shall take a decision on the basis of the documentation already on file; i.e. upon the statements and documents presented by the Claimant.

8. In continuation, the Chamber acknowledged that in accordance with the employment contract provided by the Claimant, the Respondent had the obligation to pay to the Claimant the total amount of USD 400,000 for the first part of the contract, i.e. until 31 December 2013.

9. In this respect, the DRC took into consideration that according to the Claimant, the Respondent paid the amount of USD 100,000 in accordance with the contract … but had failed to pay his remuneration in the total amount of USD 300,000 corresponding to unpaid salaries of September until December 2013. Consequently, the Claimant requested to be awarded the payment of the total amount of USD 300,000 plus 5% interest p.a. as from the relevant due dates.

10. Taking into account the documentation presented by the Claimant in support of his position, the members of the Chamber concluded that the Claimant had substantiated his claim pertaining to outstanding remuneration with sufficient documentary evidence.

11. On account of the aforementioned considerations, the members of the Chamber established that the Respondent had failed to remit the Claimant's monthly remuneration in the total amount of USD 300,000 corresponding to the salaries of September to December 2013.

12. Consequently, the DRC decided that in accordance with the general legal principle of pacta sunt servanda, the Respondent is liable to pay to the Claimant outstanding remuneration in the total amount of USD 300,000.

13. In addition, taking the Claimant's request into account as well as the constant practice of the Dispute Resolution Chamber, the members of the Chamber decided that the Respondent must pay to the Claimant interest of 5% p.a. on the total amount of USD 300,000 as from the day following the due date of each monthly payment …".

2. THE ARBITRAL PROCEEDINGS

2.1 The CAS Proceedings

12. On 23 December 2015, the Club filed a statement of appeal with the CAS pursuant to Article R47 of the Code of Sports-related Arbitration (the "Code") against the Player and FIFA to challenge the Decision.

13. The statement of appeal contained the appointment of Mr Victor Berezov as arbitrator.

14. On 28 December 2015, the CAS Court Office transmitted the statement of appeal to the Respondent and, by separate letter, to FIFA informing it of the appeal filed in the event FIFA would decide to intervene in the arbitration.

15. On 11 January 2016, the Club lodged with CAS, pursuant to Article R51 of the Code, its appeal brief, together with 3 exhibits.

16. In a letter of 18 January 2016, FIFA informed the CAS Court Office that it renounced its right to intervene. At the same time, FIFA underlined the following:

"… after having read the statement of appeal and the appeal brief submitted by Al-Ittihad FC (the Appellant), we noted that in said submissions, the latter inter alia requested the imposition of sporting sanctions upon the Respondent, Mr Joao Fernand Nelo ….

In this respect, we wish to point out that the Appellant has not designated FIFA as a respondent in the appeal it lodged against the decision of the Dispute Resolution Chamber dated 2 July 2015. ….

However, we hereby wish to stress that only FIFA has the standing to defend the point of the hypothetical imposition of sporting sanctions in a litigation. It follows from the aforementioned that in the absence of FIFA having been called as a party in the appeal procedure at hand, the question of the imposition of sporting sanctions is outside the scope of the relevant Panel's power of review. It appears to us that this approach has been confirmed by the CAS in its jurisprudence.

In order to uphold the above-mentioned, we respectfully refer the CAS to its jurisprudence, inter alia, in the case CAS 2011/A/2656-2657, in particular the CAS' Order … rendered in connection with the request for a suspension of the challenged decision, or more recently in the case CAS 2013/A/3167, in particular the Order rendered by CAS … in connection with the request for a suspension of the challenged decision, and which read that an arbitration Panel is not in a position to decide as to the question of the imposition of sporting sanctions in case FIFA itself is not a party to the procedure at stake. Undoubtingly, such condition is met in

the present procedure".

17. On 19 January 2016, the Respondent requested from the CAS Court Office some information regarding the compliance by the Appellant with the deadline for the filing of the appeal brief.

18. On 21 January 2016, the CAS Court Office referred the Respondent to the correspondence already exchanged regarding the time limit for the filing of the appeal brief.

19. In a letter of 26 January 2016, the Appellant requested that the dispute be submitted to a Sole Arbitrator, *"taking into account that the Respondent has decided to not pay its shares of the advance of costs"*.

20. On 29 January 2016, the Respondent lodged with CAS his answer in accordance with Article R55 of the Code. The answer had attached 5 exhibits.

21. On 2 February 2016, the Respondent requested that a panel of three arbitrators be appointed.

22. On the same 2 February 2016, as a result, the CAS Court Office informed the parties that given the parties' divergent requests, the question of the number of the arbitrators would be decided by the President of the CAS Arbitration Division in accordance with Article R50.1 of the Code.

23. On 9 February 2016, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division had decided to submit the case to a Sole Arbitrator.

24. By communication dated 18 March 2016, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, Sole Arbitrator.

25. On 2 June 2016, the CAS Court Office issued on behalf of the Sole Arbitrator an order of procedure (the "Order of Procedure"), which was accepted and signed by the parties.

26. On 10 June 2016, pursuant to notice given to the parties in a letter of the CAS Court Office dated 10 May 2016, a hearing was held in Lausanne. The Sole Arbitrator was assisted at the hearing by Mr Brent J. Nowicki, Counsel to CAS. The following persons attended the hearing:

    i. for the Appellant: Mr Juan de Dios Crespo Pérez, counsel;

    ii. for the Respondent: Mr Régis G. Villas Bôas Villela, counsel.

27. At the opening of the hearing, both parties confirmed that they had no objections to the appointment of the Sole Arbitrator. The parties next, by their counsel, made submissions in support of their respective cases. At the conclusion of the hearing, finally, the parties expressly stated that their right to be heard and to be treated equally in the proceedings had been fully respected.

2.2 The Position of the Parties

28. The following outline of the parties' positions is illustrative only and does not necessarily

comprise every submission advanced by the Appellant and the Respondent. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.

a. The Position of the Appellant

29. In its statement of appeal, the Club requested the CAS to:

> *"1. Accept this Statement of Appeal against the decision …;*
>
> *2. Adopt an award to set aside the decision appealed;*
>
> *3. Uphold the Appeal presented and in virtue of the arguments that will be presented decide to condemn the Player to pay the Appellant 400,000 USD for the unilateral termination of the employment contract without just cause and within the protected period plus a 5% of interest rate since the date of termination.*
>
> *4. Condemn the Respondent to the sporting sanctions established in art. 17 of the FIFA RSTP.*
>
> *5. Contemn the Respondent to the payment of the whole CAS administration costs and Panel Fees;*
>
> *6. Fix a sum to be paid by the Respondent to the Club in order to cover its defence fees and costs in the amount of CHF 15,000".*

30. Such request for relief was confirmed in the appeal brief.

31. In support of its request, the Appellant preliminarily underlines that its failure to state its case before the DRC does not prevent it from challenging before CAS the Respondent's claims, in light of the *de novo* power of review of the dispute allowed by the Code.

32. On the merits, then, the Appellant indicates that the Employment Contract was signed by its former President, at a time a new President had been elected. That notwithstanding, the Club, *"after several discussions"*, decided to keep the Player. Therefore, even though it does not dispute the validity of the Employment Contract, the Club notes that, by the time a decision was taken, some monthly salaries were already owed to the Player. As a result, the Club tried to reach an agreement with the Player concerning the outstanding salaries, and paid him the amounts of USD 50,000 and USD 37,500. However, despite the good faith efforts of the Club, the Player turned to FIFA without prior notice and without mentioning the payments received.

33. In light of the foregoing, the Club submits the following:

i. *"the Club did not receive the prior warning"*: there is no proof of receipt of the email transmitting the letter of 10 January 2014, which was to be provided by the Player who sent it, as confirmed in a CAS precedent (award in CAS 2014/A/3858);

ii. *"the prior warning is mandatory before the termination of the contract"*: according to the CAS jurisprudence, this follows from the principle of good faith, when the breach is not so important as to prevent the continuation of the employment, and the principle of contractual stability, since the termination of a contract must be considered as an absolute last resort;

iii. *"the deadline allegedly granted was absurd"*, since in the letter of 10 January 2014 only 48 hours were given to the Club to pay the outstanding amounts;

iv. in addition, as indicated at the hearing, the procedure followed by the Player was not in line with Article 25 of the Employment Contract.

34. In conclusion, the Club submits that it is *"crystal clear"* that *"the Player did not put the Club in default as requested by the Jurisprudence and did not inform … FIFA about the payments done by the Club before filing the Claim therefore claiming for amount that were not due, reasons why this party considers that the Decision … shall be set aside and the Player condemned for the unilateral termination of the employment contract without just cause"*.

b. The Position of the Respondent

35. In his answer, the Respondent indicated that:

> *"… it requires to be denied the appeal, refusing all requests made by the club.*
>
> *It requires also be condemned the club to pay the player the amount of CHF 15,000 (fifteen thousand Swiss francs) to cover the costs of response and the fees of his lawyer.*
>
> *It requires finally be given to the club that meets FIFA decision within 30 days of the decision to dismiss the appeal filed by the appellant club, making the payment of wage arrears in the amount of $ 300,000.00 plus 5% interest p.a. from the date of each instalment due until the date of effective payment"*.

36. In essence, the Respondent requests the CAS to dismiss the appeal and to confirm the Decision. With regard to the Appellant's submissions, the Respondent notes that:

i. there is no evidence that *"the change of president"* created problems for the Club. Indeed, the Player was duly registered with the SAFF and played for the Club in the local championship;

ii. the Player *"signed in good faith the contract … the club registered the player as [its] athlete and [the Player] developed his work like a professional football player"*. Therefore, the Player *"should be paid for the service"*;

iii. the Club paid the total amount of USD 100,000, which includes the amount of USD 87,500 indicated by the Appellant and mentioned by the Player in his petition to FIFA. As a result, USD 300,000 remain outstanding;

iv. the Player returned to Brazil as a result of the Club's breach of contract. The notification to the Club of 10 January 2014 and to SAFF of 9 January 2014 made it clear that the Player was aware of *"the Club's lack of interest in the continuity of the employment contract"*;

v. the Club's failure to pay the overdue salaries to the Player is confessed by the Appellant in its appeal brief to CAS;

vi. as a result of the gravity of the Club's breach of contract, a prior warning was not required, but still was sent on 10 January 2014: the Club did not reply and the Player filed his complaint with FIFA 28 days later;

vii. the Club in any case did not challenge during the FIFA proceedings the receipt of such notification, therefore, by remaining silent, it accepted its *"occurrence"*;

viii. the Club received the notification of the petition filed with FIFA, but failed to react, requesting only extensions of deadlines: upon receipt of such petition, the Club could pay the amounts due and express its interest in the continuation of the employment relation with the Player;

ix. it cannot be maintained that the Player breached the Employment Contract without just cause, as claimed by the Club before CAS: the termination was caused, and justified, by the Club's failure to pay the substantial outstanding salaries.

3. LEGAL ANALYSIS

3.1 Jurisdiction

37. CAS has jurisdiction to decide the present dispute between the parties.

38. In fact, the jurisdiction of CAS is not disputed by the parties, has been confirmed by the Order of Procedure, and is contemplated by the Statutes of FIFA, which provide materially as follows:

Article 66

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

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

Article 67

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

2. Recourse may only be made to CAS after all other internal channels have been exhausted.

3. CAS, however, does not deal with appeals arising from:

(a) violations of the Laws of the Game;

(b) suspensions of up to four matches or up to three months (with the exception of doping decisions);

(c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.

4. The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect. […]".

3.2 Appeal Proceedings

39. As these proceedings involve an appeal against a decision rendered by FIFA, brought on the basis of rules providing for an appeal to the CAS, in a dispute relating to a contract, they are considered and treated as appeal arbitration proceedings in a non-disciplinary case, within the meaning, and for the purposes, of the Code.

3.3 Admissibility

40. The statement of appeal was filed within the deadline set in Article 67.1 of the FIFA Statutes. The admissibility of the appeal is not challenged by the Respondent. Accordingly, the appeal is admissible.

41. An issue, indeed, could arise in theory with respect to some of the requests filed by the Club before this Sole Arbitrator. The Appellant, in fact, in these proceedings not only challenges the Decision in order to have it set aside, but also requests that the Decision be replaced with another decision finding the Player responsible for breach of contract, awarding damages and imposing sporting sanctions on the Player.

42. In that regard, the Sole Arbitrator notes (i) that the Club did not file any substantive submissions before the DRC and therefore did not lodge any petition in the lower instance regarding its claim for compensation for an alleged breach of contract by the Player, and (ii) that FIFA has not been named as a respondent in these CAS proceedings. The point has been noted and criticized by FIFA in its letter of 18 January 2016 (§ 16 above), which maintains therefore that the Sole Arbitrator cannot hear such claims of the Club.

43. The Sole Arbitrator, however, even though finding FIFA's considerations plausible, does not see it necessary to declare at this stage that the Appellant's claims beyond the request to set aside the Decision are inadmissible. Such issue, in fact, would only become relevant if the Player is found in breach of the Employment Contract and the Decision is, for that reason, set aside. Should, on the other hand, the Sole Arbitrator hold that the Decision correctly found that the Club, and not the Player, breached the Employment Contract, the Appellant's claims for compensation and sanctions would become moot.

3.4 Scope of the Panel's Review

44. According to Article R57 of the 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. …".*

3.5 Applicable Law

45. Pursuant to Article R58 of the Code, this Sole Arbitrator is required to decide the dispute

> *"… according to the applicable regulations and 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".

46. In the present case, the *"applicable regulations"* for the purposes of Article R58 of the Code are, indisputably, the FIFA regulations because the appeal is directed against a decision issued by FIFA, which was passed applying FIFA's rules and regulations. More specifically, the Sole Arbitrator agrees with the DRC that the particular regulations concerned – apart from the FIFA Statutes – are the RSTP in their 2012 edition, in force since 1 December 2012, given that the petition to FIFA by the Player was received in February 2014, before the entry into force (on 1 August 2014) of the subsequent edition of the same regulations.

47. In this respect, it is to be noted that the FIFA Statutes provide for a choice-of-law rule, if an appeal against a final decision passed by FIFA's legal bodies is filed with the CAS. As already mentioned, in fact, pursuant to Article 66.2 of the FIFA Statutes:

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

48. As a result, it can be assumed that the parties agreed to a choice of law, for they submitted to Article 66.2 of the FIFA Statutes, which provides that, in the event that CAS has the competence to decide the case, this is to be decided according to Swiss law. In this case, therefore, the FIFA rules and regulations fall to be applied primarily. Swiss law, then, applies subsidiarily to the merits of the dispute.

3.6 The Dispute

49. The object of these proceedings is the Decision. The Decision, in fact, is challenged by the Appellant and defended by the Respondent: the former seeks to have it set aside; the latter requests the Sole Arbitrator to confirm it.

50. In the Decision, the DRC found that the Club failed to comply with its payment obligations regarding the Player's salaries from September to December 2013 and therefore had to pay the outstanding total amount of USD 300,000, plus interest as from the day following the due date of each monthly payment.

51. The question to be addressed by the Sole Arbitrator concerns therefore the possibility for the Player to invoke the Club's breach of such payment obligations. In fact, the Club argues that, contrary to the Decision's findings, the Player was not entitled to enforce his claim to payment because no proper request was sent; on the contrary, in Appellant's opinion, the Player breached the Employment Contract, by terminating it without *"just cause"*.

52. As a result, the dispute between the parties concerns the Player's letter of 10 January 2014, whereby the Club was summoned *inter alia* to pay outstanding salaries for USD 300,000 within 48 hours: in the Appellant's view, there is no evidence (to be offered by the Player) that such letter was received, and in any case the deadline thereby given for payment was too short.

53. The binding force of the Employment Contract and the fact that material salaries were outstanding on 10 January 2014 are, on the other hand, undisputed. Under the Employment Contract, the Club was to pay, for the period between its signature (15 August 2013) and 31 December 2013, USD 400,000 in total, of which USD 100,000 upon signature and the rest divided in monthly salaries. As a matter of fact, the Club submits only that the Player had failed to mention to FIFA, and in the letter of 10 January 2014, that payments for USD 87,500 had been made. However, the Sole Arbitrator remarks that:

    i. no mention is made by the Appellant of any other payment made to satisfy the amount of USD 400,000 due for the period ending on 31 December 2013; and in any case, that

    ii. the plain reading of the letter of 10 January 2014 and of the Player's submissions makes it clear that the Respondent openly admitted that partial payments (amounting to USD 100,000 – *i.e.*, for more than the Club contends) had been received, and the Club did not offer any evidence indicating that the USD 87,500 it refers to were additional to (and not part of) the USD 100,000 admitted by the Player.

54. As a result, the Sole Arbitrator is persuaded that as of 10 January 2014, USD 300,000, the salaries of September, October, November and December 2013 were due and payable by the Club: in addition to the initial payment, no salary had been paid by the Club to the Player.

55. In order to deny the possibility for the Player to enforce his claim for payment, the Appellant cannot contend that no proper notice had been given and that therefore the Player terminated the Employment Contract without just cause. In fact:

    i. contrary to the Appellant's opinion, there is no issue in this case concerning the termination by the Player of the Employment Contract with or without just case. Actually, as it is undisputed between the parties, the Employment Contract had already (at least tacitly) come to an end on 31 December 2013, pursuant to its Article 18: actually, the Club never claimed, even following the Player's letter of 10 January 2014, that it was interested in the Player's services also beyond 31 December 2013;

    ii. the absence of evidence of receipt by the Appellant of the Respondent's letter of 10 January 2014 and the limited extension of the deadline imposed appear irrelevant, since, in any case, it is undisputed that the monthly salaries were due on the dates indicated in the Employment Contract, irrespective of any request of payment by the Player, and that the Club in any case received the claim lodged thereafter by the Player with FIFA, but still failed to either make the payment requested or react in any other way;

    iii. the Club did not even send a letter, or make any inquiry, to understand where the Player was – a behaviour patently inconsistent with a claim that the Employment Contract was still in force in January 2014 and that the Club had not received the letter of 10 January 2014.

56. As a result of the finding above, the Sole Arbitrator holds that the Club has to pay the salaries due for the months of September, October, November and December 2013 for a total amount of USD 300,000.

57. In accordance with the conclusions reached in the Decision, interest at 5% p.a. is applicable on the various components of the outstanding salary, starting from the respective due dates to the date of final payment.

3.7 Conclusion

58. In light of the foregoing, the Sole Arbitrator holds that the appeal brought by the Club is to be dismissed and that the Decision is to be confirmed. As a result, all other prayers for relief are to be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 23 December 2015 by Al-Itthiad FC against João Fernando Nelo with respect to the decision taken by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA) on 2 July 2015 is dismissed.

2. The decision taken by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA) on 2 July 2015 is confirmed.

(…)

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