Arbitration CAS 2016/A/4605 Al-Arabi Sports Club Co. For Football v. Matthew Spiranovic, award of 22 February 2017

Panel: Mr Lars Hilliger (Denmark), President; Mr Hendrik Kesler (The Netherlands); Mr Manfred Nan (The Netherlands)

Football
Termination of the employment contract without just cause by the club
Applicable law
Nullity of a reciprocal contractual clause setting a disproportionate obligation for one party towards the other
Application of article 17 RSTP and of the principle of the 'positive interest' for the assessment of the amount of compensation
Duty to act in good faith and to mitigate damages

1. **In a situation where the applicable regulations contain a reference to a national law (Swiss law) and the law chosen by the parties in the contract refers to another national law, the scope of application of the national law invoked in the applicable regulations must be delineated from the law chosen by the parties. As such, Swiss law does not prevail over the choice of law made by the parties. Rather, this gives rise to a co-existence of the applicable regulations, Swiss law and the law chosen by the parties. The application of Swiss law is confined to ensuring uniform application of the FIFA Regulations on the Status and Transfer of Players (RSTP), and Article 66(2) of the FIFA Statutes merely clarifies that the RSTP are based on a normative preconception, which is borrowed from Swiss law. Therefore, if a question of interpretation is raised over the application of the RSTP, *i.e.* regarding the consequences of the termination of a contract without just cause for which FIFA has set uniform standards for the football industry, recourse must consequently be made to Swiss law in this regard. However, and accordingly, any other issues (regarding interpretation and application) that are not addressed in the RSTP, *i.e.* for which FIFA has not set uniform standards of the football industry, are subject to the law the parties may have chosen.**

2. **Parties to a contract of employment are free to stipulate a liquidated damages clause to be referred to in case of termination of said contract without any just cause. However, if the reciprocal obligations it sets forth actually disproportionately favour one of the parties and gives it an undue control over the other party, such clause is incompatible with the general principles of contractual stability and therefore null and void.**

3. **In the absence of a valid liquidated damages clause inserted in the relevant contract of employment, the amount of compensation for termination of contract without just cause payable by the relevant party needs to be assessed in application of the other parameters set out in article 17 paragraph 1 RSTP and in the light of the principle of *"positive interest"*.**

4. Within the aforementioned process, one panel shall also duly consider the aggrieved party's good faith after the wrongful termination occurred and its duty to mitigate damages, which integrates in the calculation of the compensatory amount what said party saved because of the termination, what it earned from other work, or what it intentionally failed to earn. The duty to mitigate should not be considered satisfied when, for example, the player deliberately fails to search for a new club or unreasonably refuses to sign a satisfying employment contract, or when, having different options, he deliberately accepts to sign the contract with worse financial conditions, in the absence of any valid reason to do so. However, the circumstance that a player received a higher remuneration under his former contract than he will receive under his new contract is not in itself sufficient to mean automatically that the compensation payable from his former club has to be reduced in the event that the new contract does not pay the player just as well as the original contract did.

1. THE PARTIES

1.1 Al-Arabi Sports Club Co. For Football (the "Appellant" or the "Club") is a Qatari professional football club active in the Qatar Stars League and affiliated with the Qatar Football Association ("QFA"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

1.2 Mr Matthew Spiranovic (the "Respondent" or the "Player") is a professional football player of Australian nationality born on 27 June 1988. The Respondent currently plays for Hangzhou Greentown in China and is a member of the Australian national team.

2. FACTUAL BACKGROUND

2.1 The elements set out below are a summary of the main relevant facts as established by the Panel on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (the "FIFA DRC") on 28 January 2016 (the "Decision") and the written and oral submissions of the Parties. Additional facts may be set out, where relevant, in the legal considerations of the present Award.

2.2 On 9 July 2012, the Club and the Player signed an Employment Contract (the "Contract"), valid from 1 July 2012 until 31 May 2014 and a Football Player's Contract Schedule regulating the remuneration of the Player in relation to the Contract (the "Schedule") (collectively the "Contracts"). Both the Contract and the Schedule established the legal framework under which the Player provided his services as a professional football player to the Club.

2.3 The Contract stated, *inter alia*, as follows:

*"**Article (1) the following elements form an integral part of this Contract**:*
a. Statutes and Regulations of the [Club].
b. Professional Local Players Regulations.
c. Statutes and Regulations of the Qatar Football Association (QFA);
d. Statutes and Regulations of Qatar Stars League Management (QSLM)
e. Statutes and Regulations of AFC and FIFA (including the Laws of the Game)
The Player acknowledges the aforementioned statutes and regulations as strictly binding on him, in so far as they are consistent with legal provisions and public order.

(…)

Article (9) Contract Commencement and Termination:
This Contract begins on 01/07/2012 and terminates on 31/05/2014. To Extend the contract for third and fourth year is option of the club. The validity of the Contract is subject to the specific approval of the QFA and the confirmation that the Player is eligible to play and the approval of QSLM (ratification of the contract).

Article (10) Termination by the Club or the Player:
1. [The Club] and the Player may terminate this Contract, before its expiring term, by mutual agreement.
2. [The Club] and the Player shall be entitled to terminate this Contract, before its expiring term, by fifteen (15) days' notice in writing for just cause according with the FIFA regulations governing this matter as well as the Law of the State of Qatar.
3. When the termination of the Contract is not due to a just cause or a mutual agreement between the Parties concerned, the [Club] or the Player shall be entitled to receive from the other party in breach of the Contract a compensation for a net amount of:
- *To the [Club]. Total amount of the contract.*
- *To the [Player]. Remaining salaries of the same season.*

(…)

Article (13) Applicable Law and Jurisdiction
In case of any contractual dispute the applicable law shall be firstly the Law of the State of Qatar and subsequently, the QFA, AFC and FIFA Regulations governing this matter. The parties agree to submit this Contract to the non exclusive jurisdiction of the Qatari Courts or of any other arbitral tribunal established by QFA and QSLM in accordance to its Statutes and the FIFA National Dispute Resolution Chamber, if applicable".

2.4 The Schedule stated, *inter alia*, as follows:

*"**Football Player's Contract Schedule***
Total amount
(US$ 2.954.000) = (USD. Two Million Nine Hundred Fifty Four Thousand Only) for season 2012/2013 – 2013/2014.
(b) Monthly Salaries for the first season: (US$ 107.418) (USD. One Hundred Seven Thousand Four Hundred Eighteen Only) per month from 01/07/2012 to 31/05/2013.

(c) Monthly Salaries for the Second Season: (US$ 98.466) (USD. Ninety Eight Thousand, Four Hundred Sixty Six Only) form [sic] 01/06/2013 to 31/05/2014.
(d) Monthly Housing allowance (for the first year only).
(e) Advanced payment for the first year.
US$ 295.000 = (USD. Two Hundred Ninety Five Thousand Only) for each season 2012/2013 and 2013/2014.
(f) Other benefits in favour of the player
- Car.
- House or Villa.
- Tickets (For the player 2 Business class per season (Melbourne – Doha – Melbourne) for his wife and three children under 18 years One Ticket in the season for each year).
- Bonuses:
1 – (US$ 100.000) for winning Q.S.L League.
2 – (US$ 50.000) for winning Amir Cup.
3 – (US$ 50.000) for winning Heir Apparent Cup.
4 – (US$ 200.000) for winning Asian Championship.

The player's income refers to gross amounts. Regarding the payment of eventual taxes and social costs, the legal provisions applicable at the club's domicile apply".

2.5 During the 2012/2013 season, the Player made 13 appearances for the Club, scoring one goal. The Club finished the season second bottom in the Qatar Stars League and was forced to play in the relegations play-off match to secure its position in the league, which it subsequently won.

2.6 By e-mail of 7 May 2013, and following a meeting with the management, the Player received a written notice of termination of the Contract signed by Dr. Ahmed A. Al-Emadi, General Secretary of the Club. The notice of termination, which was dated 6 May 2013, stated, *inter alia*, as follows:

"Dear Mr. Spiranovic,

(…)

We would like to inform you that the Executive Board has decided to terminate the Professional Player Contract has signed between the club and the player Matthew Thomas Spiranovic, which has signed on 09/07/2012, this termination effective from 07th May 2013.

(…)".

2.7 On 1 October 2013, the Player signed an employment contract with the Australian club Western Sydney Wanderers, valid from its signature date until 31 May 2014, and on the basis of which he was entitled to receive AUD 100,686.50.

2.8 On 4 September 2013, the Player lodged a claim against the Club with the FIFA DRC for breach of contract requesting the following relief:

- The amount of USD 1,477,402, i.e. USD 2,954,000 minus USD 1,476,598 the Player acknowledges to have received, plus interest on said amount calculated as from 7 May 2013;

- Sporting sanctions against the club.

2.9 In support of its claim, the Player stressed, *inter alia*, that whereas he had always complied with his obligations, the Club unilaterally terminated the employment relationship. The notice of termination did not mention any reason for the termination of the Contract, and the Club had never informed the Player that it was not satisfied with his personal conduct or sporting performance. In addition, the Player stressed that at the time of termination, the Club had repeatedly been late in paying the Player his monthly salaries and that, at the time of termination, the Club's last payment dated back to February 2013, when the Club paid him his salary for December 2012. Furthermore, his salaries for March, April and May 2013 were only paid on 24 July 2013, i.e. after the termination of the Contract.

2.10 In its reply to the Player's claim, the Club stated, *inter alia*, that the Player's recruitment was a substantial investment for the Club and that the Player was offered contractual terms that significantly exceeded his market value. The Club had been late with its payments of salaries to the Player only with a few days, and the fact that the Player never complained to the Club in this regard must be considered equivalent to the Player's acceptance hereof. In any case, the Club had paid all of the Player's salaries until the end of May 2013.

2.11 With regard to the termination of the Contract, the Club rejected the Player's argumentation and claimed that it had been entitled to terminate the Contract on the basis of Article 10(3) of the Contract, which provision complies with the FIFA Regulations. This termination process had been negotiated and freely agreed upon by both Parties, and the Club was therefore allowed, in keeping with the legal principle of *pacta sunt servanda,* to terminate the Contract in accordance with said provision. In addition, said provision can also be seen, *mutatis mutandis*, as the execution of a contractual buy-out clause, which is to be considered as valid. Furthermore, the termination clause in the Contract is also valid under the QFA rules, which, according to the Contract, are an integral part of the Contract. Since the Club did not breach the Contract, the Player is not entitled to any amount other than the sum he already received as salary, and no sporting sanctions can be imposed on the Club. However, in the unlikely event that the Player's claim was to be accepted, a mitigation of the compensation should be applied.

2.12 The FIFA DRC, after having confirmed its competence, first of all concluded that it had been established that the Contract had been terminated unilaterally by the Club with effect from 7 May 2013. However, while the Player claims that the termination of the Contract was made without just cause, the Club is of the opinion that the termination of the Contract is lawful and, thus, no compensation is payable to the Player. Based on that, the FIFA DRC deemed that it first had to decide whether or not the Club terminated the Contract with just cause.

2.13 The FIFA DRC analysed the notice of termination and took into account that the notice neither set forth a specific cause for the Club's decision to terminate the Contract nor referred to any particular article of the Contract to justify the termination.

2.14 With regard to the Club's argument that it was entitled to terminate the Contract on the basis of Article 10(3) of the Contract, the FIFA DRC found that said provision does not grant the Parties a contractual right to terminate the Contract without giving a cause for such termination, but solely foresees the financial obligations to be borne by a Party at the origin of a termination of the Contract without just cause. Furthermore, the FIFA DRC stressed that Article 10(3) cannot be considered as a buy-out clause, since the "classical" buy-out situation cannot relevantly be treated analogously to a situation in which a variable amount of money is paid by a player or a club itself to the other party after the termination of a contract on the basis of a clause explicitly related to payments due *"when the termination of the contract is not due to a just cause or a mutual agreement"*, as stipulated in Article 10(3) of the Contract. Finally, the FIFA DRC found it irrelevant whether or not the clause concerned would be valid under the QFA rules, since the Parties had certainly not agreed on the exclusive application of the QFA regulations, but clearly established that their contractual relationship should be governed by the FIFA Regulations, just as the FIFA DRC stressed that when deciding a dispute before the FIFA DRC, FIFA's Regulations prevail over any national law chosen by the Parties. Based on that, the FIFA DRC decided to reject the Club's argument that Article 10(3) of the Contract permitted it to terminate the Contract lawfully without giving a just cause and, consequently, found that the Club had terminated the Contract with effect from 7 May 2013 without just cause.

2.15 With regard to the financial consequences of the Club's early termination of the Contract without just cause, the FIFA DRC noted that it was undisputed between the Parties that no remuneration in connection with the 2012-13 season was still outstanding. On the basis of Article 17 paragraph 1 of the Regulations of the Status and Transfer of Players (the "Regulations"), the Player is then entitled to receive compensation for breach of contract without just cause from the Club. In its application of this provision, the FIFA DRC held that it first had to ascertain whether the Contract contained a provision under which the Parties had beforehand agreed on an amount of compensation payable by the Parties in the event of breach of contract.

2.16 In this regard, the FIFA DRC recalled the wording of Article 10(3) of the Contract, however, considering that this clause establishes different and unbalanced financial consequences of a breach of contract without just cause for the Player and the Club, i.e. it is not reciprocal as it does not grant similar rights to the Player. Based on that, the FIFA DRC found that said provision cannot be taken into consideration in the determination of the amount of compensation. Instead, the FIFA DRC established that it had to assess the compensation due to the Player in accordance with the other parameters set out in Article 17 paragraph 1 of the Regulations.

2.17 Taking into account the wording of the Schedule, the FIFA DRC found that the amount of USD 1,476,592, corresponding to the global amount due for the 2013-14 season, should serve as the basis for the final determination of the amount of compensation for breach of contract.

However, since the Player had signed a new employment contract with Western Sydney Wanderers on 1 October 2013, valid from its signature date until 31 May 2014, according to which the Player was entitled to a global salary in Australian Dollars equalling USD 95,000, such amount should be taken into consideration with regard to the Player's obligation to mitigate his damages. Consequently, the FIFA DRC decided that the Club must pay to the Player the amount of USD 1,381,592 as compensation for breach of contract. In addition, taking into account the Player's request as well as its own jurisprudence, the FIFA DRC found that the said amount should be subject to interest at the rate of 5% *p.a.* as of 4 September 2013 until the date of effective payment.

2.18 On 28 January 2016, the FIFA DRC rendered its Decision, finding, *in particular*, that:

1. *"The claim of the Claimant, Matthew Spiranovic, is partially accepted.*

2. *The Respondent, Al-Arabi Sports Club, has to pay to the Claimant, within 30 days as from the date of the notification of this decision, compensation for breach of contract in the amount of USD 1,381,592, plus 5% interest p.a. as from 4 September 2013 until the date of the effective payment.*

3. *In the event that the amount due to the Claimant is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

4. *Any further claim lodged by the Claimant is rejected.*

5. *(…)".*

2.19 On 20 April 2016, the grounds of the Decision were communicated to the parties.

3. THE PROCEEDINGS BEFORE THE CAS

3.1 On 11 May 2016, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2016 edition) (the "Code") against the Decision rendered by the FIFA DRC on 28 January 2016. The Appellant's appeal was directed against the Player and FIFA.

3.2 On 17 May 2016, the Appellant withdrew its appeal against FIFA.

3.3 On 6 June 2016, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.

3.4 By letter dated 27 June 2016, in accordance with Article R54 of the Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, attorney-at-law in Copenhagen, Denmark (President of the Panel), Mr Hendrik Willem Kesler, attorney-at-law in Enschede, The Netherlands, (nominated by the Appellant), and Mr Manfred Peter Nan, attorney-at-law in Arnhem, The Netherlands, (nominated by the Respondent).

3.5 On 15 July 2016, the Respondent filed its Answer in accordance with Article R55 of the Code.

3.6 By letter of 27 July 2016, the Parties were informed that the Panel had decided to hold a hearing in this matter.

3.7 On 7 October 2016, the CAS Court Office sent the Parties the order of procedure which was returned duly signed on 10 and 13 October 2016 by the Respondent and the Appellant respectively.

3.8 On 19 October 2016, a hearing was held at the CAS Headquarters in Lausanne, Switzerland.

3.9 At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel.

3.10 In addition to the Panel and Mr Jose Luis Andrade, Counsel to the CAS, the following persons attended the hearing:

- For the Appellant: Mr Stephen Sampson (solicitor) and Mr Charbel Maakaron (attorney-at-law);

- For the Respondent: Dr Lucien W. Valloni (attorney-at-law).

3.11 Mr Saber Farrag Abo Ethah, General Manager of the Club, was heard by conference call. He gave his testimony after being duly invited by the President of the Panel to tell the truth subject to the sanctions of perjury. The parties and the Panel had the opportunity to examine and cross-examine Mr Saber Farrag Abo Ethah.

3.12 The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel. After the Parties' final submissions, the Panel closed the hearing and reserved its final Award. The Panel took into account in its subsequent deliberation all the evidence and arguments presented by the Parties although they may not all have been expressly summarised in the present Award. Upon closure of the hearing, the Parties expressly stated that they did not have any objection in respect of their right to be heard and to be treated equally in these arbitration proceedings.

4. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

4.1 Article R47 of the Code states as follows: *"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".*

4.2 With respect to the Decision, the jurisdiction of the CAS derives from Article 67(1) of the FIFA Statutes (2015 edition) as it determines that *"[a]ppeals against final decisions passed by FIFA's legal*

bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question". In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, which was furthermore confirmed by the Parties signing the Order of Procedure.

4.3 The Decision with its grounds was notified to the Appellant on 20 April 2016, and the Appellant's Statement of Appeal was filed on 11 May 2016, *i.e.* within the statutory time limit set forth in Article 67(1) of the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the Code.

4.4 It follows that the CAS has jurisdiction to decide on the Appeal and that the Appeal is admissible.

5. APPLICABLE LAW

5.1 Article R58 of the Code states 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"*.

5.2 In his submissions, the Respondent maintains that pursuant to Article R58 of the Code, the FIFA Regulations are applicable and additionally, only Swiss law. However, the Appellant refers to the wording of Article 13 of the Contract: *"In case of any contractual dispute the applicable law shall be firstly the Law of the State of Qatar and subsequently, the QFA, ADC and FIFA Regulations governing this matter",* and submits that while the FIFA Regulations are applicable and Swiss law is applicable to the interpretation of the FIFA Regulations, if needed, the Panel must respect the explicit agreement between the Parties, that the *Law of the State of Qatar* shall be applicable on, *inter alia*, the consequences of the termination of the contractual relationship between the Parties.

5.3 The Panel notes that the Parties agree on the application of the FIFA Regulations, which implies, according to Article 66(2) of the FIFA Statutes, that *"CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law"*.

5.4 The Panel further notes that the question of the meaning of Article 13 of the Contract is relevant only "subsidiarily".

5.5 In a situation like this, where the applicable regulations contain a reference to a national law (Swiss law), the scope of application of the national law thus invoked must be delineated from the law chosen by the Parties.

5.6 As such, Swiss law does not prevail over the choice of law made by the Parties. Rather, this gives rise to a co-existence of the applicable regulations, Swiss law and the law chosen by the

Parties. The application of Swiss law is confined to ensuring uniform application of the Regulations, and Article 66(2) of the FIFA Statutes merely clarifies that the Regulations are based on a normative preconception, which is borrowed from Swiss law. Therefore, if a question of interpretation is raised over the application of the Regulations, *i.e.* regarding the consequences of the termination of a contract without just cause for which FIFA has set uniform standards for the football industry, recourse must consequently be made to Swiss law in this regard. However, and accordingly, any other issues (regarding interpretation and application) that are not addressed in the Regulations, *i.e.* for which FIFA has not set uniform standards of the football industry, are subject to the law the Parties may have chosen (see Ulrich Haas, CAS Bulletin 2015/2, p. 7 ff.).

5.7 The Panel notes that, although the Respondent objected to the application of Qatari law, the Respondent did not dispute the fact that the Parties agreed in Article 13 of the Contract to apply the law of the State of Qatar.

5.8 Based on the above, the Panel is therefore satisfied to accept the application of the Regulations and, additionally, Swiss law, insofar as the application relates the normative application and interpretation of the Regulations. However, to the extent that the Panel has to decide on matters not addressed in the Regulations, the Panel will take into consideration the relevant provisions of Qatari law.

5.9 Since the contractual relationship was terminated with effect from 7 May 2013, the Panel agrees with the FIFA DRC that the 2012 edition of the Regulations is applicable to the present matter.

6. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

6.1 The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel has, however, carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

6.2 The Appellant

6.2.1 In its Appeal Brief, the Appellant requested that the CAS:

"(a) Annuls the Challenged Decision and issues a new decision;

(b) Declares that the Employment Contract was terminated in accordance with its terms;

(c)

(i) Declares that the Club is not liable to make any payment to the Player;

or

(ii) In the alternative, orders that the Club was liable only to pay compensation in the amount required by clause 10.3 of the Employment Contract;

or

(iii) In the further alternative, orders that compensation be paid at the discretion of the Panel which shall reduce the excessive, disproportionate and/or incorrectly determined amount set out in the [Decision] and/or give due regard to mitigation;

(d) Orders that:

(i) No interest shall be payable on any sums awarded;

(ii) The Player shall reimburse the Club for all costs incurred by the Club in respect of the procedures before the DRC;

(iii) The Player shall be liable for all the costs of this arbitration; and

(iv) The Player shall be liable for all of the Club´s costs incurred in relation to this arbitration, including but not limited to legal fees, disbursements and any and all fees payable to the CAS".

6.2.2 In support of its requests for relief, the Appellant submitted as follows.

a) It is undisputed that it was the Appellant which terminated the contractual relationship between the Parties without just cause with effect from 7 May 2013.

b) As a consequence of the unilateral termination of the contractual relationship without just cause and in accordance with Article 10(3) of the Contract, the Appellant paid to the Respondent an amount of compensation equal to the residual value of the Contract of the same season.

c) Thus, as the Respondent has already been paid the amount of compensation to which he was entitled in accordance with the Contract, no further compensation is payable to the Respondent.

d) The facts regarding the circumstances in connection with the Parties' negotiations and signing of the Contracts are undisputed, and the Parties validly agreed on the wording in the Contracts. The provision expresses the clear common intention of the Parties, and the Respondent never proved that this is not the case. The Respondent was not in a weaker position to negotiate than the Appellant and the Respondent signed the Contract on his own free will.

e) The reason for the termination of the contractual relationship is irrelevant, since the Appellant does not dispute that the termination was made without just cause.

No matter what, however, the Appellant acted in good faith and treated the Respondent in accordance with the terms of the Contracts.

f) In accordance with Article 17 paragraph 1 of the Regulations, the party in breach of a contract shall pay compensation to the other party, which compensation shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria, unless otherwise provided for in the contract.

g) In this case, the Parties did in fact agree on the amount of compensation payable in case of breach of contract, which agreement is found in Article 10(3) of Contract, which, *inter alia*, states:

"When the termination of the Contract is not due to a just cause or a mutual agreement between the Parties concerned, the [Club] or the Player shall be entitled to receive from the other party in breach of the Contract a compensation for a net amount of:
- To the [Club]: Total amount of the contract.
- To the [Player]: remaining salaries of the same season".

h) The provision set out above is clear, and there can be no confusion about the wording. Both Parties are protected in the event of termination without just cause by the other, and the provision is in fact a valid liquidated damages clause.

i) A liquidated damages clause is effectively a clause which identifies the amount to be paid in case of breach of contract and such clauses are both common and enforceable under the Regulations, as well as under Qatari law and QFA Regulations.

j) While Swiss law is not directly applicable to determine these proceedings, for such a clause to be binding and applied when considering Swiss law, according to CAS jurisprudence, the following elements are required; (i) the parties bound thereby are mentioned, (ii) the kind of penalty has been determined, (iii) the condition triggering the obligation to pay it is specified, and (iv) its measure is identifiable.

k) Each of these elements is satisfied in Article 10(3) of the Contract, which must be considered a valid liquidated damages clause.

l) Furthermore, such clause is not required to be considered reciprocal to be valid, which is why the fact that the clause is not reciprocal in this case does not render it unenforceable or null and void.

m) To exclude or overrule the application of Article 10(3) of the Contract would imply that the Panel re-writes the agreement which the Parties negotiated and concluded freely and which operated for their mutual benefit, not least taking into consideration the substantial income for the Respondent.

n) The Appellant acknowledges that the effect of Article 10(3) is to permit the Appellant to terminate an otherwise fixed-term contract early, but the Panel needs to consider the particular circumstances, *inter alia* that the Respondent was generously rewarded for his services during the first season of the Contract and the provision of Article 10(3) of the Contract is not unbalanced given the duration of the Contract, the value of the transfer fee of USD 500,000 and the remuneration paid to the Player at his age.

o) Based on the above, there is no consideration of contractual stability offended as both CAS jurisprudence and the Regulations respect the enforceability of liquidated damages clauses *per se*.

p) In the alternative, and by applying the remaining terms of Article 17 paragraph 1 of the Regulations, any compensation payable to the Respondent should be reduced below the residual value of the Contracts.

q) According to Article 17 paragraph 1 of the Regulations, any compensation payable must be assessed in the light of the circumstances of each particular case by considering the law of the country concerned, the specificity of sport and any other objective criteria, including, in particular and *inter alia*, the remuneration and other benefits due to the player under the existing contract and/or the new contract.

r) The concept of mitigation of loss is not only a fundamental part of Article 17 paragraph 1 of the Regulations, but is also a well-understood concept under Qatari law, and the Panel is therefore permitted in any case to take into account such circumstances as it considers appropriate in order to reduce the amount of compensation payable to the Respondent.

s) In assessing any compensation payable to the Respondent, the Panel should, *inter alia*, take into consideration the generosity of the package paid to the Respondent and the mitigation of the Respondent's loss.

t) The Respondent's salary from his new contract should be deducted from the residual value of the Contracts. However, it should also be noted that, despite being an international football player, the Respondent did not sign a contract with a new club until more than four months after the Contracts were terminated by the Appellant, and then at a level of salary vastly below that which he earned from the Appellant. The Appellant submits that the Respondent should have taken reasonable steps to sign with a new club sooner and at a level of remuneration similar to that of the value of the Contracts.

u) Furthermore, the Panel should take into consideration the proportionality of the residual value of the Contracts as against the value of the Respondent's new

contract as the Appellant should not be punished for its own generosity to the Respondent.

v) Finally, and in case any compensation is to be paid to the Respondent, such amount, according to the Qatari Civil Code, should not be subject to interest.

6.3 **The Respondent**

6.3.1 In its Answer, the Respondent requested the CAS to:

"(a) dismiss the appeal filed by the Appellant on 11 May 2016;

(b) affirm the Challenged Decision of the FIFA DRC dated 28 January 2016 which awarded the Player the amount of USD 1,381,592 (plus 5% interest p.a. as from 4 September 2013 until the date of effective payment);

(c) order the Appellant to pay all costs incurred in relation to the appeal; and

(d) order the Appellant to pay all legal expenses of the Respondent in relation to the appeal".

6.3.2 In support of its requests for relief, the Respondent submitted as follows.

a) First of all, the Respondent agrees that the Appellant unilaterally terminated the contractual relationship between the Parties without just cause.

b) However, Article 10(3) of the Contract does not grant the Appellant a right to decide on such termination, but rather only seems to set the consequences in case of such early termination of the contractual relationship without just cause or mutual agreement.

c) In accordance with Article 17 paragraph 1 of the Regulations, the party in breach of a contract must pay compensation to the other party, which compensation must be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria, unless otherwise provided for in the contract.

d) The Respondent objects to the Appellant's submission that the Parties should have provided otherwise in the Contract.

e) Article 10(3) of the Contract is neither a liquidated damages clause nor should it be considered a "buy-out" clause.

f) The Respondent agrees with the Appellant that in order to validly be considered a liquidated damages clause, and for such a clause to be binding and applied when considering Swiss law, the following elements are required; (i) the parties bound

thereby are mentioned, (ii) the kind of penalty has been determined, (iii) the condition triggering the obligation to pay it are set, and (iv) its measure is identifiable.

g) However, Article 10(3) of the Contract does not stipulate a fixed amount the Appellant has to pay to the Respondent as compensation for the unilateral termination of the Contract without just cause.

h) Furthermore, it operates solely for the benefit of the Appellant as it would receive the full value of the Contracts in all circumstances if the Respondent had unilaterally terminated the Contract without just cause.

i) Since the Appellant was free to decide if and when to terminate the contractual relationship, the amount of compensation to be paid to the Respondent would be entirely at the sole discretion of the Appellant, which is clearly unacceptable.

j) Since the wording of Article 10(3) of the Contract does not sufficiently determine the penalty for the breach of contract and since "*its measure is not identifiable*", the provision does not meet the requirements of a liquidated damages clause.

k) Moreover, Article 10(3) of the Contract in reality provides for two different periods of notice as the size of the compensation payable by the Respondent in case of his unilateral termination without just cause in actual fact means that the Respondent, for financial reasons, is precluded from terminating the Contract before its expiry. Such actually different periods of notice cannot validly be agreed on under mandatory Swiss law. Article 10(3) of the Contract is in fact a hidden exit plan for the Appellant.

l) Thus, Article 10(3) of the Contract is so unbalanced that it should in any case be declared null and void.

m) Since Article 10(3) of the Contract is thus not applicable, the other parts of Article 17 paragraph 1 of the Regulations must apply to the calculation of the compensation payable to the Respondent.

n) According to Article 17 paragraph 1 of the Regulations, any compensation payable must be assessed in the light of the circumstances of each particular case.

o) The residual value of the Contracts is undisputed and should thus provide the basis for the calculation of the compensation payable to the Respondent.

p) Furthermore, the Respondent does not dispute his obligation to try to mitigate his damages and accordingly, the Respondent signed a new contract with the Western Sydney Wanderers valid as from 1 October 2013 until May 2014, according to which the Respondent was entitled to remuneration for the rest of the original

contract period in an amount equal to USD 95,000, which amount the Respondent agrees should also be taken into consideration when calculating the compensation.

q) The Respondent did his utmost to ensure a new good contract as soon as possible after the termination of the contractual relationship with the Appellant. However, an injury sustained by the Respondent was one of the reasons why the Respondent only managed to sign a new contract valid as from 1 October 2013.

r) The Appellant has failed to discharge the burden of proof to show that the Respondent failed to take reasonable steps to ensure employment sooner and, in this way, to mitigate his loss even more.

s) Thus, the FIFA DRC was correct in the Decision when calculating the compensation payable to the Respondent for the Appellant's breach of contract, being the residual value of the Contracts (USD 1,476,592 for the 2013/2014 season) less the Respondent's earnings from his employment with the Western Sydney Wanderers (USD 95,000), amounting to USD 1,381,592.

t) Interest should be paid in accordance with Swiss law at the rate of 5 % p.a. on the entire compensation from the date of the termination of the contractual relationship, *i.e.* in effect from 7 May 2013.

7. THE MERITS

7.1 Initially, the Panel notes that the factual circumstances pertaining to the Contracts between the Parties and the Appellant's termination of the contractual relationship without just cause are undisputed by the Parties. In rendering its Award, the Panel has therefore taken into account the following non-exhaustive list of factors and considerations:

- On 9 July 2012, the Parties signed the Contracts valid from 1 July 2012 until 31 May 2014.

- The football seasons of the QFA run from 1 July until 31 May.

- Article 10(3) of the Contract states as follows:

> *"**Article (10) Termination by the Club or the Player:***
> *1. [The Club] and the Player may terminate this Contract, before its expiring term, by mutual agreement.*
> *2. [The Club] and the Player shall be entitled to terminate this Contract, before its expiring term, by fifteen (15) days' notice in writing for just cause according with the FIFA regulations governing this matter as well as the Law of the State of Qatar.*
> *3. When the termination of the Contract is not due to a just cause or a mutual agreement between the Parties concerned, the [Club] or the Player shall be entitled to receive from the other party in breach of the Contract a compensation for a net amount of:*
> *- To the [Club]. Total amount of the contract.*

- To the [Player]. Remaining salaries of the same season".

- The Appellant unilaterally terminated the contractual relationship between the Parties without just cause with effect from 7 May 2013.

- The Appellant subsequently paid to the Respondent the full salary for the period 1 July 2012 until 31 May 2013.

- According to the schedule, the Respondent was entitled to receive as remuneration for the 2013-2014 season the global amount of USD 1,476,592.

- On 1 October 2013, the Respondent signed an employment contract with Western Sydney Wanderers, valid from its signature until 31 May 2014, on the basis of which the Respondent received a salary amounting to USD 95,000.

7.2 However, while the Parties agree that it was the Appellant who unilaterally terminated the contractual relationship between the Parties without just cause, and consequently is obligated to pay compensation for breach of contract to the Respondent in accordance with Article 17 paragraph 1 of the Regulations, the Parties are not in agreement regarding the validity and the legal consequences of Article 10(3) of the Contract, including the question regarding which impact said provision has on the determination of the amount of compensation to be paid by the Appellant to the Respondent.

7.3 The Appellant submits, *inter alia*, that Article 10(3) of the Contract constitutes a valid liquidated damages clause, which sets out, in a valid and exhaustive manner and in accordance with Article 17 paragraph 1 of the Regulations, the final amount of compensation payable by the Appellant to the Respondent as a consequence of the Appellant's decision to terminate the contractual relationship between the Parties without just cause.

7.4 The Respondent, on the other hand, submits, *inter alia*, that Article 10(3) of the Contract must be deemed null and void, and the amount of compensation payable to the Respondent is therefore not subject to the said provision, but must instead be calculated on the basis of the other criteria mentioned under Article 17 paragraph 1 of the Regulations.

Thus, the main issues to be resolved by the Panel are:

a) Is the amount of compensation payable to the Respondent to be determined on the basis of Article 10(3) of the Contract or on the basis of the other criteria mentioned under Article 17 paragraph 1 of the Regulations? and, depending on the answer to that question,

b) What amount is the Appellant obliged to pay to the Respondent as compensation for breach of contract?

a. Is the amount of compensation payable to the Respondent to be determined on the basis of Article 10(3) of the Contract or on the basis of the other criteria mentioned under Article 17 paragraph 1 of the Regulations?

7.5 The Panel notes initially that it agrees with the Parties that the party responsible for the termination of a contract without just cause is liable to pay compensation to the other party for damages suffered as a consequence of the early termination, which situation is governed by Article 17 paragraph 1 of the Regulations as follows:

"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".

7.6 In accordance with said article, the parties to an employment contract may stipulate in the contract the amount of compensation payable to the other for breach of contract. The wording of such a clause should leave no room for interpretation and must clearly reflect the true intention of the parties (CAS 2013/A/3091, CAS 2013/A/3092 & CAS 2013/A/3093, para. 259). Regardless of the name of such provisions, they legally correspond to liquidated damages clauses (CAS 2008/A/1519 & CAS 2008/A/1520, para. 68).

7.7 As already mentioned above (para 8.3), the Appellant submits, *inter alia*, that Article 10(3) of the Contract constitutes a valid liquidated damages clause, which sets out, in a valid and exhaustive manner and in accordance with Article 17 paragraph 1 of the Regulations, the final amount of compensation payable by the Appellant to the Respondent as a consequence of the Appellant's decision to terminate the contractual relationship between the Parties without just cause.

7.8 Article 10(3) of the Contract states as follows:

"When the termination of the Contract is not due to a just cause or a mutual agreement between the Parties concerned, the [Club] or the Player shall be entitled to receive from the other party in breach of the Contract a compensation for a net amount of:
- To the [Club]. Total amount of the contract.
- To the [Player]. Remaining salaries of the same season".

7.9 With regard to the principles outlined in Article 17 of the Regulations, the Panel makes reference to CAS 2008/A/1519 & CAS 2008/A/1520, in which award the CAS stated, *inter alia*, as follows:

"The termination of a contract without just cause is a serious violation of the obligation to respect an existing contract and triggers the consequences set out in Article 17 para. 1 of the RSTP.

The purpose of Article 17 of the RSTP is basically nothing else than to reinforce contractual stability, i.e. to strengthen the principle of pacta sunt servanda in the world of international football, by acting as deterrent against unilateral contractual breaches and terminations. This, because contractual stability is crucial for the functioning of the international football. The deterrent effect of Art. 17 of the RSTP shall be achieved through the impending risk for a party to incur disciplinary sanctions, if some conditions are met, and the risk to have to pay compensation for the damage caused by the breach or the unjustified termination.

As it is the compensation for the breach or the unjustified termination of the valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest") i.e. it will aim at determining an amount which shall basically put the injured party in to the position that the same party would have had if the contract was performed properly, without such contractual violation to occur.

By asking the judging authorities to duly consider a whole series of elements, including such a wide concept like "sport specificity", and asking the judging authority to even consider "any other objective criteria", the authors of Article 17 of the RSTP achieved a balanced system according to which the judging body has on one side the duty to duly consider all the circumstances of the case and all the objective criteria available, and on the other side a considerable scope of discretion, so that any party should be well advised to respect an existing contract as the financial consequences of a breach or a termination without just cause would be, in their size and amount, rather unpredictable. At the end, however, the calculation made by the judging authority shall be not only just and fair, but also transparent and comprehensible".

7.10 In relation to Article 10(3) of the Contract, the Panel finds no grounds for assuming that the Respondent did not know, or should not have known, the contents thereof before signing the Contract, and similarly, the Panel finds no grounds for concluding that the Respondent, either directly or indirectly, was subjected to undue pressure to accept the term in question.

7.11 However, against the background of the testimony given by Mr. Saber Farrag Abo Ethah among other factors, the Panel finds that Article 10(3) of the Contract, besides being intended to regulate the amount of compensation payable to the other party in case of early unilateral termination of the Contract without just cause, has also been inserted in the Contract for the purpose of making it possible for the Appellant to terminate the Contract early and without just cause without running the risk of being forced to pay a substantial amount to the Respondent for breach of contract.

7.12 Moreover, the Panel attaches particular importance to the assumption that this must effectively be considered a provision that unilaterally accommodates the Appellant's wish to be permitted, potentially, to terminate the Contract without just cause before its expiry without taking on a huge financial risk, in view of the fact that the amount of compensation payable by the Respondent to the Appellant if the Respondent chooses to terminate the Contract early without just cause in reality precludes the Respondent from doing so on account of the severe financial consequences, *i.e.* the payment of the total amount of the Contract.

7.13 The way this provision has been drafted implies a set-up which disproportionately favours the Appellant and constitutes an easy way for the Appellant to terminate the Contract at the end of

the first year without any consequences, whereas the Player in turn does not have such an equal possibility.

7.14 In actual fact, the provision also implies a scenario of different periods of notice for each Party – something the Panel finds to be inconsistent with Article 335a of the Swiss Code of Obligations ("SCO") (*"Notice periods must be the same for both parties; where an agreement provides for different notice periods, the longer period is applicable to both parties"*), which provision is mandatory (decision of the Swiss Federal Tribunal dated 5 September 2006, 4C.186/2006 considering 2.1; ATF 108 II 115; WYLER R., p. 437).

7.15 Although this particular case involves a two-year contract, as opposed to for instance CAS 2014/A/3707, which involved a three-year contract, and although the Appellant argues that the Respondent, through his high remuneration, had already been financially rewarded for accepting this difference in the level of compensation and explicitly accepted the contents of the provision by signing the Contract, the Panel finds that such a provision, considering its consequences, is clearly contrary to the general principles of contractual stability and labour law as it gives the Appellant undue control over the Respondent.

7.16 Based on that, and in accordance with CAS 2014/A/3707, the Panel finds that the reciprocal obligations deriving from Article 10(3) of the Contract are so unbalanced and clearly contrary to the general principles of contractual stability that said article is null and void.

7.17 The Panel finds, accordingly, that since no valid agreement can be assumed to exist between the Parties concerning the amount of compensation payable to the Respondent due to the Appellant's termination of the Contract without just cause, the Panel needs to calculate such compensation on the basis of the other criteria mentioned under Article 17 paragraph 1 of the Regulations.

b. What amount is the Appellant obliged to pay to the Respondent as compensation for breach of contract?

7.18 Initially, the Panel notes, as already mentioned above, that it is undisputed by the Parties that the residual value of the Contract amounts to USD 1,476,592.

7.19 Furthermore, it is undisputed that the Respondent signed an employment contract with Western Sydney Wanderers on 1 October 2013, valid from its signature until 31 May 2014, on the basis of which the Respondent received a salary amounting to USD 95,000.

7.20 Based on the above, the Panel is satisfied that the compensation payable to the Respondent, since Article 10(3) of the Contract is null and void, has to be assessed in application of the other parameters set out in Article 17 paragraph 1 of the Regulations.

7.21 As such, the FIFA DRC correctly applied the other parameters set out under Article 17 of the Regulations, particularly taking into account the entire remuneration payable to the Respondent

under the Contract for the remaining time of its duration, that is USD 1,476,592, as the basis for the determination of the amount of compensation to be awarded to the Respondent.

7.22 In fact, consistent with the well-established CAS jurisprudence, the injured party is entitled to a whole reparation of the damages suffered, pursuant to the principle of the *"positive interest"*, under which compensation for breach must be aimed at reinstating the injured party to the position it would have been, had the contract been fulfilled to its end (CAS 2012/A/2698; CAS 2008/A/1447).

7.23 Moreover, the Panel observes that article 337c (1) and (2) of the SCO provides the following:

"(1) If the employer dismisses the employee without notice in the absence of a valid reason, the latter shall have a claim for compensation of what he would have earned if the employment relationship had been terminated by observing the notice period or until the expiration of the fixed agreement period. (2) The employee must permit a set-off against this amount for what he saved because of the termination of the employment relationship, or what he earned from other work, or what he has intentionally failed to earn".

7.24 In view of the above, the Panel is satisfied that the Respondent has the right to compensation to be determined under the provisions of Article 17 of the Regulations, in the light of the principle of the *"positive interest"* as specified above and with due consideration of the duty to mitigate damages according to Swiss law which is consistent with CAS jurisprudence (CAS 2005/A/909-912; CAS 2005/A/801; CAS 2004/A/587).

7.25 In this context, the Decision correctly deducted the salaries the Respondent received under the employment contract with Western Sydney Wanderers in the amount of USD 95,000.

7.26. As a consequence, the Panel holds that the Respondent, in principle, is entitled to receive from the Appellant the amount of USD 1,381,592 (USD 1,476,592 less USD 95,000).

7.27 The Appellant, however, submits that the compensation payable to the Respondent must be assessed in view of the circumstances of this particular case, for instance by taking into account the generosity of the remuneration paid by the Appellant to the Respondent during the 2012-2013 season, which should lead to the compensation being reduced below the residual value of the Contract.

7.28 Furthermore, the Appellant argues that the concept of mitigation of loss is not only a fundamental part of Article 17 paragraph 1 of the Regulations, but is also applicable under Qatari law. However, the Respondent did not fulfil his obligation to mitigate his loss.

7.29 Finally, the Appellant maintains that the Respondent should have signed a new contract sooner and at a level of remuneration similar to that of the value of the Contracts. Taking into consideration the proportionality of the residual value of the Contract as against the value of the Respondent's new contract, the Appellant should not be punished for its own generosity.

7.30 Based on the facts of the case and the Parties' submissions, the Panel is not persuaded by the allegations of the Appellant with respect to the alleged failure of the Respondent to mitigate his damages, because he only accepted to sign a new employment contract after 146 days and with worse financial conditions.

7.31 As already noted above, according to Article 337 c (2) of the SCO, the duty of mitigation is related to the rule that the employee must permit a set-off against the amount of compensation for what he saved because of the termination of the employment relationship, or what he earned from other work, or what he has intentionally failed to earn.

7.32 In the opinion of the Panel, such a rule implies that, in accordance with the general principle of fairness, the injured player must act in good faith after the breach by the club and seek for other employment, showing diligence and seriousness. The Panel considers that this principle is aimed at limiting the damages deriving from the breach and at avoiding that a possible breach committed by the club could turn into an unjust enrichment for the injured party.

7.33 Moreover, the wording of Article 337 c (2) of the SCO, with reference to what the employee intentionally failed to earn, suggests that the duty to mitigate should not be considered satisfied when, for example, the player deliberately fails to search for a new club or unreasonably refuses to sign a satisfying employment contract, or when, having different options, he deliberately accepts to sign the contract with worse financial conditions, in the absence of any valid reason to do so.

7.34 The Panel emphasises in this context, *inter alia*, that the Respondent produced evidence during the proceedings proving that the Respondent participated in trial training sessions with potential new clubs on multiple occasions, and moreover, according to the information available, the Respondent sustained a minor injury in the period around the termination of the contractual relationship, which, in the Panel's view, could have contributed to impeding the Respondent's search for a new football club interested in signing him.

7.35 The Panel further notes that there are evident differences in the level of remuneration paid in different leagues in different parts of the world. Besides, the circumstance that a player received a higher remuneration under his former contract than the relevant player will receive under his new contract is not in itself sufficient to mean automatically that the compensation payable to the player from his former club has to be reduced in the event that the new contract does not pay the player just as well as the original contract did.

7.36 Based on the foregoing, and since the Appellant did not submit any evidence proving differently, the Panel finds that the Respondent was sufficiently diligent and has shown a serious commitment in limiting his damages, and as such must be considered having fulfilled his obligation to mitigate his loss, and since the Panel finds no other grounds for reducing the compensation payable, the Panel finds that the residual value of the Contract must be reduced only by the value of the Respondent's new contract, *i.e.* USD 95,000, the effect of which therefore is that the Appellant must pay the amount of USD 1,381,592 to the Respondent as compensation for breach of contract.

7.37 The Appellant finally submits that, according to the applicable Qatari Civil Code, any compensation payable to the Respondent should not be subject to interest.

7.38 The Respondent, on the other hand, does not dispute that this might be the case according to the Qatari Civil Code. However, submits that since Qatari law is not applicable, the amount of compensation should be subject to interest at the rate of 5% p.a. in accordance with Swiss law from 4 September 2013.

7.39 Initially, the Panel notes, as already mentioned in para 6.6 above, that even if the Regulations are applicable to this case, and thus subsidiarily Swiss law, any issues that are not addressed in the Regulations, *i.e.* for which FIFA has not set uniform standards of the football industry, are subject to the law that may have been chosen by the Parties.

7.40 The Panel finds that the issue whether or not an amount of compensation for breach of contract payable in accordance with Article 17 paragraph 1 of the Regulations should be subject to compensatory interest is not addressed in the Regulations, which is why the Panel, as already mentioned in para 6.8, will take into consideration the relevant provisions of Qatari law.

7.41 Based on the above, and since the Respondent did not submit differently under Qatari law, the Panel finds that the compensation payable by the Appellant to the Respondent is not subject to compensatory interest.

7.42 However, while any claim for compensatory interest forms part of the requested damage, which means, *inter alia*, that a panel does not have the prerogative to grant compensatory interests *ex officio* or in conflict with the applicable law, the Panel finds that default interest of 5% p.a. pursuant to Swiss law shall nevertheless accrue on the amount due for the compensation after expiration of the deadline for the payment until the date such payment is made.

8. SUMMARY

8.1 Based on the foregoing and after taking into consideration all the evidence produced and all arguments made, the Panel finds that the Appellant terminated the contractual relationship between the Parties without just cause, and that, in accordance with Article 17 paragraph 1 of the Regulations, the Appellant has to pay the sum of USD 1,381,592 to the Respondent as compensation for breach of contract. The compensation is not subject to compensatory interest and shall be paid within thirty (30) days of notification of this award. Default interest of 5% *p.a.* shall nevertheless accrue on the amount due for the compensation after expiration of the deadline for the payment until the date such payment is made.

8.2 The Appeal filed against the Decision is therefore partially upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 11 May 2016 by Al-Arabi Sports Club Co. For Football against the decision rendered by the FIFA Dispute Resolution Chamber on 28 January 2016 is partially upheld.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 28 January 2016 is partially amended.

3. Al-Arabi Sports Club Co. For Football shall pay to Mr Matthew Spiranovic an amount of USD 1,381,592 as compensation for breach of contract within thirty (30) days of notification of this award. The compensation shall not be subject to compensatory interest. Default interest of 5% p.a. shall accrue on the amount of USD 1,381,592 after expiration of the deadline for the payment until the date such payment is made.

4. (…).

5. (…).

6. All further and other requests for relief are dismissed.