Arbitration CAS 2016/A/4843 Hamzeh Salameh & Nafit Mesan FC v. SAFA Sporting Club & Fédération Internationale de Football Association (FIFA), award of 24 November 2017

Panel: Mr Olivier Carrard (Switzerland), President; Prof. Massimo Coccia (Italy); Mr Jirayr Habibian (Lebanon)

Football
Termination of the employment contract without just cause by the player
Determination of the law applicable to the dispute
Definition of contract of employment under Swiss law
Existence of a valid and binding employment contract based on the presence of the essentialia negotii in an agreement
Annulation of contract based on material error
Status of professional football player
Burden of proof
Just cause of termination
Joint and several liability of a player's new club to pay compensation due to his termination of contract without just cause
Principle of positive interest

1. **The choice of law made by the parties can be tacit and/or indirect, by reference to the rules of an arbitral tribunal. In agreeing to arbitrate a dispute according to the CAS Code, the parties submit to the conflict-of-law rules contained therein, in particular to art. R58 of the CAS Code.**

2. **According to Swiss law, the individual employment contract is a contract whereby the employee has the obligation to perform work in the employer's service for either a fixed or indefinite period of time, during which the employer owes him a wage. The main elements of the employment relationship are the employee's subordination to the instructions of the employer and the duty to personally perform work.**

3. **A binding and valid employment contract exists if it contains all the *essentialia negotii* for a *bona fide* contract of employment, *i.e.* it establishes that one player is a football player for one club during a fixed period of time and that, in exchange, said club has to pay said player a remuneration.**

4. **According to art. 23 to 25 of the Swiss Code of Obligations (SCO), a contract does not bind the party that, at the time of its conclusion, was in material error. The party in error is not permitted to avail itself of such error if this is contrary to good faith principles.**

5. **Pursuant to art. 2 para. 2 of the FIFA Regulations on the Status and Transfer of Players (RSTP), a professional is a player who (i) has a written contract with a club and (ii) is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs. The status of a player as professional is**

exclusively defined in the RSTP without any reference to national regulations and its provisions do not foresee a minimum wage.

6. **In accordance with Art. 8 of the Swiss Civil Code, unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact. The two requisites included in the concept of 'burden of proof' are (i) the 'burden of persuasion' and (ii) the 'burden of production of the proof'. In order to fulfil its burden of proof, a party must, therefore, provide the judging body with all relevant evidence that it holds, and, with reference thereto, convince the judging body that the facts it pleads are true, accurate and produce the consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party.**

7. **A player that is not being paid his salaries has the onus of giving a proper notice to the club before unilaterally terminating a contract for just cause. If, after the player's warning, the club is still not paying the outstanding salaries, the player can terminate the contract. Only in some exceptional circumstances no warning is necessary.**

8. **The second sentence of article 17(2) RSTP plays an important role in the context of the compensation mechanism set by Article 17 RSTP. It is aimed at avoiding any debate and difficulties of proof regarding the possible involvement of the new club in a player's decision to terminate his former contract. It also better guarantees the payment of whatever amount of compensation a player is required to pay to his former club on the basis of Article 17 RSTP.**

9. **According to the principle of the *"positive interest",* compensation for breach must be aimed at reinstating the injured party to the position it would have been in, had the contract been fulfilled to its end.**

I. FACTS

A. The parties

1. Mr Hamzeh Salameh (the "Player") is a Lebanese football player, born on 3 May 1986.

2. Nafit Mesan FC ("Nafit Mesan") is a football club with its registered office in Amarah, Iraq. It is an affiliated member of the Iraqi Football Federation ("IFA"), which is itself affiliated with the Fédération Internationale de Football Association ("FIFA").

3. SAFA Sporting Club ("Safa") is a football club with its registered office in Beirut, Lebanon. It is an affiliated member of the Lebanese Football Federation ("FLFA"), which is itself affiliated with FIFA.

4. FIFA is the international governing body of football, with its registered office in Zurich, Switzerland.

B. Factual background

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

6. On 17 October 2013, the Player and Safa signed a document titled "Sports Agreement" (the "Sports Agreement") valid as from 17 October 2013 until 17 October 2018.

7. In accordance with the Sports Agreement, Safa obliged itself, *inter alia*:

   - *"to provide medical insurance to* [the Player] *during the term of* [the Sports Agreement]*";*
   - *"to pay an amount of USD 10,000 (ten Thousand Dollars) to* [the Player] *for each season during the term of* [the Sports Agreement]*";*
   - *"to pay a monthly salary of USD 1,000 (One Thousand US Dollars) to* [the Player] *during the term of* [the Sports Agreement]*".*

8. The Sports Agreement also provides that the Player *"irrevocably acknowledges that it has delegated to* [Safa] *exclusively the right to negotiate on his behalf any potential transfer whether in Lebanon or abroad with any club that might be interested in signing the player at any point in time".*

9. As to the applicable law, Article 7 of the Sports Agreement provides that *"the applicable rules are the regulations of the Lebanese Football Association".*

10. On 23 July 2014, the Player signed an employment contract with the Nafit Mesan valid until 15 June 2015, according to which he was entitled to receive a salary of USD 125,000 payable as follows:

    - *"40% from the total amount of the contract will be paid upon of completing the contract procedures (…);*
    - *30% from the total amount will be paid as a monthly salary (…);*
    - *30% from the total amount of the contract will be paid at the end of the above mentioned period".*

11. On 25 July 2014, Nafit Mesan inserted information in the FIFA Transfer Matching System ("TMS") in the aim of obtaining an International Transfer Certificate ("ITC").

12. Following the First Respondent's explanations, Safa sent a letter of notice to Nafit Mesan on 1st August 2014 to inform Nafit Mesan that the Player was under contract with Safa.

13. On 4 August 2014, the IFA requested the deliverance of an ITC through the TMS for the Player in order to register him with its affiliated club, Nafit Mesan.

14. On 5 August 2014, the FLFA rejected the relevant ITC request of the IFA through the TMS stating that the contract between Safa and the Player had not expired.

15. Following Safa's explanations, towards the end of August 2014, Nafit Mesan made an offer to Safa consisting in the transfer of the Player to Nafit Mesan on a loan basis for the 2014/2015 season, which according to it stipulated a "yearly value" for the Player of USD 125,000. According to Safa, this offer was rejected.

16. On 2 September 2014, the IFA requested the assistance of FIFA with regard to the provisional registration of the Player for Nafit Mesan.

17. On 10 September 2014, the FLFA informed FIFA that it insisted on the rejection of the ITC's request for the Player since the latter was under contract with Safa until 17 October 2018. In addition, the FLFA stated as follows: *"*[Safa] *received a loan transfer request from Nafit Mesan club for the aforementioned player. However, Safa Club is still studying the matter since the player is still under contract with the club"*.

18. On 16 September 2014, the Single Judge of the Players' Status Committee rendered a decision authorizing the IFA to provisionally register the Player for Nafit Mesan with immediate effect. The decision reads as follows: *"However the Single Judge was eager to point out that the Lebanese club had not explicitly requested the return of the player at any point during the current procedure"*. The Single Judge therefore concluded that Safa did not seem to be *"genuinely and truly interested in maintaining the services of the player"*, but was *"rather looking for financial compensation"*.

19. On 27 September 2014, Safa lodged a claim in front of FIFA against the Player and Nafit Mesan arguing that the latter was to be held liable for breach of contract without just cause, and requesting the payment of compensation in the following amounts:

    - USD 200,000 *"for the cost of replacing the player with a player of similar value for the coming 4 seasons"*;

    - USD 187,500 *"for the fee of permanent transfer of* [the Player] *being 50% of the contractual value of the deal between the player and* [Nafit Mesan]*, based on the value of the loan request made to* [Safa] *in August"*;

    - USD 150,000 for the overall damage suffered (…);

    - CHF 6,000 as legal fees.

20. Safa further claimed that Nafit Mesan was to be held jointly and severally liable for the payment of compensation, as it induced the Player to terminate the Sports Agreement unilaterally.

21. Moreover, Safa requested sporting sanctions to be imposed on the Player and Nafit Mesan.

22. On 12 January 2015, the Player and Nafit Mesan terminated their employment agreement by mutual consent.

23. The Player then signed an employment agreement with Al Nasr Sports Club, a football club affiliated with the Oman Football Association, valid until 31 May 2015.

24. In June 2015, the Player returned playing for Safa. According to the Appellants, he played at least three games of the Lebanese championship during the first half of season 2015/2016 before signing employment agreement with Iraqi club Najaf FC valid until 23 April 2016.

25. On 17 June 2016, the FIFA Dispute Resolution Chamber (the "FIFA DRC") rendered a decision (the "Appealed Decision") stating *inter alia* as follows:

> *"the Chamber was eager to highlight that based on the parties' respective statements and the documentation available on file, it was undisputed that* [the Player] *signed an employment contract with* [Nafit Mesan] *covering the same period of time as the employment contract* [the Player] *signed with* [Safa]. *By acting as such, the Chamber concurred that [the Player] had acted in breach of the employment contract concluded with* [Safa] *and is therefore to be held liable for said breach".*

26. Having established that the Player had acted in breach of his employment contract concluded with Safa, the FIFA DRC imposed on Nafit Mesan a ban from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods, as well as a four-month restriction on the Player's eligibility to play in official matches and an obligation to the Player to pay to Safa compensation for breach of contract in the amount of USD 312,375.

27. In addition, Nafit Mesan was held jointly and severally liable for the payment of the compensation.

C. Procedure before CAS

28. On 30 October 2016, the Appellants filed their Statement of Appeal with the Court of Arbitration for Sport ("CAS") in accordance with Article R48 of the Code of Sports-related Arbitration (2016 edition) (the "CAS Code") against the Appealed Decision, together with a request for production of documents and a request for a stay of the Appealed Decision. The Appellants requested the appointment of a sole arbitrator and a suspension, alternatively, a four week-extension of the time limit for the filing of their appeal brief.

29. By facsimile of 8 November 2016, FIFA objected to the communication of the documents requested by the Appellants, to their request for a suspension/extension of the time-limit for

the filing of the appeal brief and to their request of nomination of a sole arbitrator. FIFA did not object to their request to stay the execution of the Appealed Decision.

30. By facsimile of 9 November 2016, Safa submitted that the dispute had to be referred to a panel of three arbitrators and objected to the suspension/extension requested by the Appellants.

31. By facsimile of 9 November 2016, the CAS Court Office informed the parties that the Appellants' requests would be submitted to the President of the CAS Appeals Arbitration Division.

32. On 15 November 2016, the President of the CAS Appeals Division granted the stay requested by the Appellants.

33. By letter of 23 November 2016, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided that (i) it would be for the Panel, once constituted to decide on the Appellants' request for the production of documents, (ii) the Appellants was invited to submit their appeal brief within 12 days from receipt of the letter in accordance with Article R32 of the CAS Code, (iii) the dispute shall be submitted to a three-member panel and (iv) the Appellants were invited to jointly appoint an arbitrator form the CAS list within 10 days from receipt of the letter.

34. By facsimile of 28 November 2016, Safa nominated Mr Jirayr Habibian, attorney-at-law in Dubai, United Arab Emirates, as an arbitrator.

35. By facsimile of 1st December 2016, the Appellants nominated Prof. Massimo Coccia, attorney-at-law in Rome, Italy, as an arbitrator.

36. By facsimile of 6 December 2016 and further to a request from the Appellants, FIFA requested the Lebanese Football Association to take the necessary steps in order to ensure the correct execution of the Order on request for a stay issued by the President of the CAS Appeals Arbitration Division.

37. On 7 December 2016, the Appellants filed their Appeal Brief in accordance with Article R51 of the CAS Code.

38. On 17 January 2017, the CAS Court Office informed the Parties that the Panel appointed to decide the present arbitration proceedings was constituted as follows:

- Mr Olivier Carrard, attorney-at-law in Geneva, Switzerland, as President;
- Prof. Massimo Coccia, attorney-at-law in Rome, Italy, co-arbitrator;
- Mr Jirayr Habibian, attorney-at-law in Dubai, United Arab Emirates, co-arbitrator.

39. On 30 January 2017, FIFA filed its Answer, together with a request for the exclusion of some of the Appellants exhibits, in accordance with Article R55 of the CAS Code.

40. On 10 February 2017, Safa filed its Answer in accordance with Article R55 of the CAS Code.

41. On 15 February 2017, the CAS Court Office invited the Appellants to indicate, within five days, which of their evidentiary requests they wished to maintain. The CAS Court Office also invited the Parties to state, within the same time limit, whether they requested a hearing to be held.

42. On 20 February 2017, the Appellants informed the Panel about the evidentiary requests they wished to maintain, submitted some unsolicited observations and requested a second round of written submissions.

43. By facsimile of 10 April 2017 and after due consultation with the Parties, the CAS Court Office informed the Parties that the Panel had taken *inter alia* the following decisions:

- A hearing was to be held in the present arbitration proceedings;
- Safa was ordered to submit, within 10 days:
  - the proof of all payment it made to the Player during season 2013/2014;
  - the proof that it provided the Player with the health insurance stipulated in clause 3 of the Sports Agreement during the season 2013/2014;
  - the original copy of the loan transfer offer that it alleged having received from the Player (or – should the Player not have the original copy – any document evidencing how the loan transfer offer would have been sent to it).
- The other evidentiary requests were dismissed.
- The Appellants' request for a second round of written submissions and their unsolicited observations were rejected.
- FIFA's request to exclude some of the Appellants' exhibits was rejected.
- Safa's request for relief going beyond a request for a confirmation of the Appealed Decision were deemed inadmissible.

44. By letter of 19 April 2017, Safa submitted some payment vouchers for the season 2013/2014 signed by the Player and a scanned copy of a loan transfer offer in Arabic signed and stamped by Nafit Mesan.

45. By e-mail of 21 April 2017, Safa submitted a letter signed by the Director General of a hospital in Beirut, along with an English translation.

46. On 26 April 2017, the Panel invited Safa, through the CAS Court Office, to provide an original copy of the loan transfer offer within two weeks and, further to a request from the Appellants of 16 April 2017, it also invited the parties to submit, within the same time-limit, witness statements of any witnesses mentioned in their written submissions they intend to call at the hearing and any comments strictly limited to the last documents and explanations produced by Safa.

47. By facsimile of 8 May 2017, the Appellants filed additional observations, along with two witness statements signed by Mr Yahya Zkeer Mohsen and the Player.

48. On 9 May 2017 and after having duly consulted the Parties, the CAS Court office informed them that a hearing would be held on 27 June 2017 in Lausanne, Switzerland, and invited the Parties to submit a list with the names of all the persons who would be attending the hearing.

49. By letter of 11 May 2017, Safa submitted the original copy of the loan transfer offer.

50. By e-mail of 15 May 2017, Safa submitted three witness statements signed by Messrs. Ali Al Saadi, Haytham Chaaban and Jihad El Chohof.

51. By facsimile of 30 May 2017, Safa requested that Mr Walid Sfeir be heard as a witness.

52. By facsimile of 31 May 2017, the Appellants responded that they had no objection to Mr Walid Sfeir being heard as a witness, provided that a witness statement be filed. In addition, the Appellants submitted unsolicited legal arguments.

53. On 6 June 2017, the Panel (i) authorized Safa's additional witness to appear at the hearing, (ii) invited Safa to submit a witness statement by 12 June 2017, (iii) invited the Parties to submit any documentary evidence strictly relating to the witness statements by 19 June 2017 and (iv) informed the Parties that, unless the Respondents would expressly agree otherwise by 9 June 2017, the Appellant's document including unsolicited legal arguments of 31 May 2017 would be excluded from the CAS file.

54. On 9 June 2017, the CAS Court Office informed the Parties that Mr Pierre Ducret, attorney-at-law in Geneva, Switzerland, had been appointed *ad hoc* Clerk in the present arbitration.

55. By e-mail of 9 June 2017, Safa submitted a witness statement signed by Mr Walid Sfeir and objected to the submission of unsolicited legal arguments by the Appellants. On the same day, the CAS Court Office advised the Parties that the Appellants' document incorporating unsolicited legal arguments would not be taken into account.

56. By e-mail 18 June 2017, the Appellants submitted additional documentary evidence, along with unsolicited observations.

57. On 21 June 2017, the CAS Court Office forwarded the Order of Procedure to the Parties.

58. On 22 June 2017, the Parties returned duly signed copies of the Order of Procedure to the CAS Court Office, confirming the jurisdiction of the CAS.

59. A hearing was held on 27 June 2017 at the CAS Headquarters in Lausanne, Switzerland. The members of the Panel were present and assisted by Mrs Pauline Pellaux, Counsel to the CAS and Mr Pierre Ducret, attorney-at-law in Geneva, Switzerland, serving as *ad hoc* Clerk in the present matter.

60. The following persons attended the hearing:

- For the Player: the Player attended the hearing via videoconference and was assisted by his legal counsel, Mr Nezar Ahmed.

- For Nafit Mesan: Mr Yaha Zhgair Mohsein Al-Saadi, President of Nafit Mesan, assisted by his legal counsel, Mr Nezar Ahmed.

- For Safa: Safa was represented by its legal counsels, Mr Joseph Yazbeck and Mrs Dima Sarkis.

- For FIFA: Mrs Letizia de Bergia and Mr Marco Amezcua, both legal counsels at FIFA's Players' Status Department.

61. The Panel heard evidence from the following persons:

- The Player (via Skype);

- Mr Yahya Zkeer Mohsen Al-Saadi, President of Nafit Mesan (in person);

- Mr Haitham Chaaban, General Secretary of Safa (in person);

- Mr Jihad El Chohof, General Secretary of the Lebanese Football Federation (in person);

- Mr Ali Al Saadi, player of Safa (via Skype); and

- Mr Walid Sfeir, former President of Safa.

62. The Parties had ample opportunity to present their cases, submit their arguments and answer the questions posed by the Panel. After the final submissions, the President closed the hearing and reserved the Panel's final award. The Panel heard carefully and took into account in its subsequent deliberation all the evidence and arguments presented by the Parties although they have not been exhaustively summarized in the present Award. Upon closure, the Parties expressly stated that they did not have any objections in respect of their right to be heard and to be treated equally in these arbitration proceedings.

D. Overview of the parties' positions

a) The Appellants

63. In their Appeal Brief of 7 December 2016, the Appellants submitted the following prayers for relief:

> *i. "Holding that the CAS has jurisdiction to entertain this proceedings and all parties to this arbitration and the appeal is admissible.*
>
> *ii. Review the facts and law of the Challenged Decision* de novo*, and issue new decision which replaces the decision challenged;*
>
> *iii. Hold that the First Appellant was not in breach of the sports agreement concluded between the First Appellant and First Respondent on 17 October 2013 and hence annul the Challenged Decision in its entirety.*
>
> *iv. Order the First Respondent to pay the First Appellant a total of USD 36,261 plus interest of overdue payments.*
>
> *v. Alternatively, reduce the compensation ordered by the DRC by a significant amount. Equally, reduce the liability of the Second Respondent by same amount.*
>
> *vi. Set aside the restriction of four months on the First Appellant's eligibility to play in official matches imposed on him by the Second Respondent.*
>
> *vii. Set aside the ban imposed on the Second Appellant from registering any new players either nationally or internationally, for two next entire and consecutive registration periods.*
>
> *viii. For the effect of the above, condemn the Respondents have to bear any and all the cost of the present arbitrations, as well as to pay to the Appellants any and all costs and expenses incurred in connection of this procedure, including – without limitation – legal fee, expenses and any eventual further costs".*

64. On the merits, the Appellants' position can be summarized as follows:

a. Safa submitted false evidence before the FIFA DRC. The facsimile allegedly sent by Safa to Nafit Mesan on 1st August 2014 refers to fact that Safa could not have known until 5 August 2014. Moreover, Nafit Mesan never sent any loan offer to Safa.

b. The Sports Agreement between Safa and the Player does not qualify as a valid contract of employment. According to the Claimants, the remuneration contained in the Sports Agreement was intended as a lump-sum reimbursement for the Player's expenses and was not intended as a compensation for the his services. His monthly footballing expenses amount to USD 2,015 and cover the following categories of expenses: housing and utilities, transportation, food and nutrition, personal care items, sports and personal clothing, digital communications and gym membership.

c. The Sport's Agreement lacks the required elements in order to be considered as a binding employment contract:

- The title and the preamble of the Sports Agreement do not reflect any intent to conclude an employment contract.

- According to the correct English translation of Clause 2 of the Sports Agreement: "[Safa] *agreed to filed the* [the Player] *as a football player in its "A" football team for 5 years starting 17/10/2013 until 17/10/2018"*. In the Appellants' view, this clause only obliged Safa to make the Player eligible to play for the team. By contrast, it did not oblige the Player to play for Safa.

- The conduct of the Parties reflects the discretionary nature of their relationship. In this regard, the Appellants state as follows: *"following the early termination of the employment relationship between the Appellants,* [the Player] *returned to* [Safa]*, provided his services on the basis of the Sports Agreement; then he went to play for the Omani Nasr club; then he returned to* [Safa]*; then he played for the Iraqi Club Najaf; then he returned to* [Safa]*; and then he signed with another Lebanese club"*.

- The sole purpose of the Sports Agreement was to enable Safa to register the Player, who provided his services for Safa since the age of 13 as amateur player, with the Lebanese Football Association. It was never intended to bind the Player with a fixed-term employment contract.

- Clauses 3 and 4 do not specify the reasons for which Safa is bound to provide a medical insurance to the Player and to pay him USD 22,000 per year.

- The Sports Agreement does not define the duties of the Player, which makes its object ambiguous.

d. The Sports Agreement qualifies the Player as an amateur player in light of the fact that the Player's football expenses exceed his net remuneration. Accordingly, the Sports Agreement does not fall under the protection of Article 13 of the FIFA Regulations on the Status and Transfer of Players ("RSTP").

e. The Player was under error when he consented to the Sports Agreement. Referring to Lebanese and Swiss law, the Appellants contend that fundamental error constitutes a just cause allowing the party under error to unilaterally terminate a bilateral contract.

f. Alternatively, the Sport Agreement would also be null and void under Articles 13-17 RSTP on the grounds that the reciprocal obligations contained therein are too unbalanced.

g. In any event, the Sports Agreement was terminated for just cause:

- The Player was not invited by Safa to participate in the club's summer training camp and was not listed as a player in the list submitted to FLFA in accordance with the federation's regulation. Therefore, the Player had valid reason to consider that Safa did not intend to register him for season 2014/2015.

- Safa did not provide any health insurance and failed to pay the remuneration stipulated in the Sports Agreement. As a result, Safa must be ordered to pay the Player a total of USD 36,261 plus interest.

h. Furthermore, the Sports Agreement was never terminated as it is evidenced by the fact that the Player played for Safa's team in season 2015/2016 while they never signed any new agreement, Safa being further still the holder of the Player's ITC".

i. In the further alternative, based on Lebanese law, the Player had the right to unilaterally terminate the Sports Agreement and, in case of misuse of this right, he is only liable for a maximum compensation equivalent to four months of salary.

j. If, notwithstanding the above arguments, the Panel finds that the Player breached the Sports Agreement, the Appellants emphasize that Safa has failed to prove that it sustained actual damage due to the breach. As a result, Safa is not entitled to any compensation. The Appellants reach the same conclusion in applying the "objective criteria" of Article 17(1) RSTP. In the alternative, the Appellants consider that the compensation to be granted to Safa must be reduced based on the specific circumstances of the case.

k. In their observations of 8 May 2017, the Appellants argued *inter alia* that towards the end of August 2014, the Parties had signed a loan agreement according to which the Player was loaned for free to Nafit Mesan during season 2014/2015. According to the Appellants, the Sport's Agreement was therefore "suspended" during the loan period. Thus, there was no breach of Article 18(5) RSTP.

b) Safa

65. In its Answer Brief of 10 January 2017, Safa submitted the following prayers for relief:

"a- Consider that the Agreement dated October 17, 2013 is unilaterally terminated by the Player in breach of article 17 RSTP within the protected period.

b- Consider that the contract signed between the Player and Nafit Mesan is in breach of the contractual stability principle announced in article 17 RSTP.

c- Announce that Nafit Mesan induced the Player to terminate the Agreement unilaterally.

d- To bound the Player and Nafit Mesan (Jointly and Severally) to pay the Respondent a compensation for the damages caused by the unilateral induced termination as follows:

- *200,000 USD for the cost of replacing the Player with a Player of similar value for the coming 4 seasons (the remaining of his contract with the Respondent).*

- *187,500 USD for the fee of permanent transfer of the Player being 50% of the contractual value of the deal between the Player and Second Appellant (based on the value of the loan request made to the Club in August).*

- *An amount of 150,000 USD for the overall damage suffered by the Respondent in terms of technical damage to the Club's performance as well as to the reputational damage of the club as a result of the press coverage of this case which harmed the image of the Club which will have substantial impact on its sponsorship effort especially that it is competing on the Asian Championship level.*

e- To impose sporting sanctions on the Player and aggravating such sanctions given the aggravating circumstances of the case at hand.

f- To impose sporting sanctions on Nafit Mesan (Second Appellant) for its obvious and non-deniable role in inducing the Player in terminating the contract and signing a contract with Nafit Mesan, aggravating circumstances (i.e. the knowledge of Second Appellant of the existence of a contract with the Respondent).

g- Appellants to bear the cost of these proceedings before your esteemed Panel and to participate to the Club's reasonable Lawyers' fees estimated at USD 15,000.

h- Legal interest to be applied on the above amounts from the due date till full and final settlement".

66. On the merits, Safa's position can be summarized as follows:

a. The Sports Agreement constitutes a valid employment contract, which meets all the conditions and criteria of a professional football agreement. Hence, the Sports Agreement is subject to the provisions of the RSTP, in particular the principle of contractual stability.

b. The Sports Agreement's translation provided by the Appellants is not correct.

c. The Sports Agreement was terminated within the protected period, as it occurred throughout the duration of the contract.

d. The Sports Agreement was not terminated for just cause. In this regard, Safa points out that it has never received any notice from the Player about the alleged non-payment of his remuneration.

e. A compensation for the damage suffered by Safa is due and should be calculated in taking into account, *inter alia*, the value of the loan transfer agreement that was proposed by Nafit Mesan, *i.e.* USD 125,000.

f. Nafit Mesan induced the Player to breach his contract with Safa. Sporting sanctions should therefore be imposed to Nafit Mesan.

c) FIFA

67. In its Answer Brief of 30 January 2017, FIFA submitted the following prayers for relief:

> *"1. That the CAS rejects the present appeals and confirms the presently challenged decision passed by the Dispute Resolution Chamber (hereinafter also referred to as: the DRC) on 17 June 2016 in its entirety.*
>
> *2. That the CAS orders the Appellants to bear all the costs of the present procedure.*
>
> *3. That the CAS orders the Appellants to cover all legal expenses of FIFA related to the proceedings at hand".*

68. On the merits, FIFA's position can be summarized as follows:

a. The only criteria to be applied in order to assess whether a document signed between a player and a club is a valid contract or not is the verification of the inclusion of the *essentiali negotii* in the document under examination. In the case at hand, the contract under analysis is signed by both Parties, it stipulates a clear (and valid) duration, as well as a representation of the roles and obligations of the respective parties. Consequently, the Sports Agreement contains all *essentialia negotii* of a valid contract.

b. The Player is to be considered as a professional player. In this regard, FIFA recalls that Article 2(2) RSTP provides as follows: *"A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs".*

c. It is clear that although the Player had a valid contract binding him to Safa until 17 October 2018, the Player joined Nafit Mesan after having signed an employment contract with the latter on 23 July 2014. This change of club was not justified by any valid reason, or in other words, any just cause.

d. Nafit Mesan induced the Player to breach his contract with Safa. It results from the explanations given by Nafit Mesan that after a contact was established with the Player, Nafit Mesan knew about the existence of a relationship between the Player and Safa.

e. As to the consequences of the breach of contract, FIFA considers that the FIFA DRC made a correct use of the information it had at its disposal whilst it proceeded to the determination of the compensation the Appellants shall be jointly and severally liable to pay to Safa. The compensation for unjustified contractual breach amounting to USD 312,375 – composed of the average between the Player's remunerations with Safa and the Nafit Mesan, calculated until the original expiry of the employment contract with Safa (17

October 2018) – was determined by the FIFA DRC in accordance with the criteria set out in Article 17 RSTP.

f. The unjustified breach of contract occurred within the applicable protected period. Based on Article 17(3) RSTP, sporting sanctions must therefore be imposed to the Player. The Appealed Decision according to which a four-month restriction on the Player's eligibility to participate in any official football match is well-founded. As to Nafit Mesan, it is obvious that it played a decisive role in the occurrence of the breach of contract. In application of Article 17(4) RSTP, the Appealed Decision banning Nafit Mesan from registering any new players, either nationally or internationally, for the next entire and consecutive registration periods was justified and must be upheld by the Panel.

II. LEGAL DISCUSSION

A. CAS jurisdiction and admissibility of the appeal

69. Since the CAS has its seat in Switzerland, the provisions of Chapter 12 of the Swiss Private International Law Act ("PILA") apply to the present arbitration.

70. According to Article 186 PILA, the arbitral tribunal shall rule on its own jurisdiction. The objection of a lack of jurisdiction must be raised prior to any defence on the merits.

71. Article R47 of the CAS 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 the said sports-related body".*

72. In the case under scrutiny, the jurisdiction of the CAS derives from Article 58 of the FIFA Statutes (2016 edition) in force at the time of the FIFA DRC rendering the Appealed Decision. In addition, none of the Parties objected to the CAS jurisdiction and the Parties confirmed it by signing the Order of Procedure.

73. The Appealed Decision was notified to the Appellants on 14 October 2016, and the Statement of Appeal was lodged on 30 October 2016, *i.e.* within the time limit set forth in Article 58 of the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief comply with all requirements of Article R48 and R51 of the CAS Code.

74. It follows that the CAS has jurisdiction to decide on this Appeal and that such Appeal is admissible.

B. Applicable law

75. Article 187(1) PILA stipulates how the applicable law is to be determined in each case. The provision reads as follows:

> *"The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected".*

76. According to the legal doctrine, the choice of law made by the parties can be tacit and/or indirect, by reference to the rules of an arbitral tribunal (see CAS 2014/A/3850 para. 45 *et seq.* quoted by HAAS U., *Applicable law in football-related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law*, in: CAS Bulletin 2015/2, pp. 9-10).

77. In the present case, in agreeing to arbitrate the present dispute according to the CAS Code, the Parties have submitted to the conflict-of-law rules contained therein, in particular to Article R58 of the CAS Code, which provides as follows:

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

78. In the case under scrutiny, the Panel observes that the applicable regulations are the FIFA regulations in force at the time the present case was submitted to FIFA, namely the FIFA Statutes, edition August 2014 ("the applicable FIFA Statutes") and the RSTP, edition 2014.

79. Pursuant to Article 66 para. 2 of the applicable FIFA Statutes, *"[t]he 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".*

80. In their appeal brief, the Appellants make reference to FLFA regulations, Lebanese Law, FIFA regulations and Swiss law. Safa claims that FIFA regulations and Swiss law apply to the case at hand. For its part, FIFA argues that FIFA regulations apply primarily and Swiss law subsidiarily.

81. In the case at hand, the Panel observes that the applicable federation rules – *i.e.* the applicable FIFA regulations – provide that Swiss law is to be applied additionally to the rules and regulation of FIFA.

82. In light of the foregoing, the Panel finds that the dispute at hand shall be decided based on the various regulations of FIFA, in particular the RSTP. Swiss law shall be applied to matters not covered by relevant FIFA regulations.

C. Merits of the case

83. The main issues to be resolved by the Sole Arbitrator in deciding this dispute are the following:

a. Does the Sports Agreement constitute an employment contract?

in the affirmative:

b. Was the Player a professional player before joining Nafit Mesan?

in the affirmative:

c. Did the Player breach the Sports Agreement without just cause?

in the affirmative:

d. Was the Player loaned to Nafit Mesan?

e. What are the financial consequences of the alleged breach of contract without just cause?

f. What are the sporting consequences of the alleged breach of contract without just cause?

a) Does the sports agreement constitute an employment contract?

84. According to Swiss law, the individual employment contract is a contract whereby the employee has the obligation to perform work in the employer's service for either a fixed or indefinite period of time, during which the employer owes him a wage (Article 319(1) of the Swiss Code of Obligations - "CO"). The main elements of the employment relationship are the employee's subordination to the instructions of the employer and the duty to personally perform work (Decision of the Swiss Federal Tribunal 4C.419/1999 of 19 April 2000, consid. 1a; ATF 112 II 41 consid. 1a/aa).

85. In the present dispute, the Appellants challenge the accuracy of the translation of the Sports Agreement submitted by Safa before the FIFA DRC. The Panel disagrees with the Appellants. After careful examination of the original version of the Sports Agreement, as well as of the official translation submitted by Safa in the present procedure, the Panel concludes that the translation provided by Safa in the procedure before the FIFA DRC was correct. In this regard, the Panel stresses the fact that one of its members is a native Arabic speaker.

86. The Appellants then argue that the Sports Agreement lacks the required elements to be considered as a binding employment contract. In the Appealed Decision, the FIFA DRC found that the Sports Agreement contains the *essentialia negotii* of an employment contract. The Panel shares the same opinion. As correctly stated by the FIFA DRC, the Sports Agreement signed by the Parties is, to all effects and purposes, a binding and valid agreement since it had all elements necessary for a *bona fide* employment contract: it establishes that the Player is a football

player for Safa during a fixed period of time, and that, in exchange, Safa has to pay to the Player a staggered remuneration. The Panel, therefore, has no doubt that the Sports Agreement constitutes a valid and binding employment contract.

87. Moreover, referring to Lebanese and Swiss contract law, the Appellants submit that the conclusion of the Sports Agreement was vitiated by an error since the real intent of the Player was to conclude a *"unilateral agreement to i) allow* [Safa] *to register him with FLFA in light of the FLF new law, ii) to amalgamate his footballing expenses in one lump-sum payable to him if he chooses to render his services for* [Safa] *and not payable to him if she* [sic] *chooses not to do so"*.

88. In this respect, the Panel observes that the provisions of the Swiss Code of Obligations ("CO") on error are *inter alia* the following:

> *Article 23 CO* ["Effets de l'erreur"]
> *"Le contrat n'oblige pas celle des parties qui, au moment de le conclure, était dans une erreur essentielle".*
>
> *Translation: "Effects of error"*
> *"The contract does not bind the party that, at the time of the conclusion, was in material error".*
>
> *Article 24 CO* ["Cas d'erreur"]
> *"L'erreur est essentielle, notamment:*
>
> 1. *lorsque la partie qui se prévaut de son erreur entendait faire un contrat autre que celui auquel elle a déclaré consentir;*
> 2. *lorsqu'elle avait en vue une autre chose que celle qui a fait l'objet du contrat, ou une autre personne et qu'elle s'est engagée principalement en considération de cette personne;*
> 3. *lorsque la prestation promise par celui des contractants qui se prévaut de son erreur est notablement plus étendue, ou lorsque la contre-prestation l'est notablement moins qu'il ne le voulait en réalité;*
> 4. *lorsque l'erreur porte sur des faits que la loyauté commerciale permettait à celui qui se prévaut de son erreur de considérer comme des éléments nécessaires du contrat.*
>
> *L'erreur qui concerne uniquement les motifs du contrat n'est pas essentielle.*
>
> *De simples erreurs de calcul n'infirment pas la validité du contrat; elles doivent être corrigées".*
>
> *Translation: "Cases of error"*
> *"An error is in particular, deemed to be material:*
>
> 1. *if the party in error intended to enter into a contract other than the one he declared to consent to;*

2. *if the party in error had another thing in mind than the one which is the object expressed in contract, or another person, provided that the contract was concluded with a particular person in mind;*

3. *if the performance promised by the contracting party invoking his error is considerably greater in extent, or the performance promised by the other party is considerably smaller in extent, than the performance the party in error intended;*

4. *if the error related to certain facts that the party in error considered to be a necessary basis of the contract, in accordance with the rules of good faith in the course of business.*

The error concerning only the motives of the contract is not material.

Mere errors in calculations do not invalidate the contract; they shall be corrected.

Article 25 CO ["Action contraire aux règles de la bonne foi"]
La partie qui est victime d'une erreur ne peut s'en prévaloir d'une façon contraire aux règles de la bonne foi.

Elle reste notamment obligée par le contrat qu'elle entendait faire, si l'autre partie se déclare prête à l'exécuter.

Translation: "Action contrary to good faith principles"
The party in error is not permitted to avail himself of such error if this is contrary to good faith principles.

In particular, a party in error is bound by a contract as it was understood by him, as soon as the other party consents thereto".

89. In summary, according to Swiss law, a contract is not binding because of an error only if (i) the error is material and (ii) the invocation of the error is not contrary good faith.

90. In the Panel's opinion, the foregoing provisions do not allow the relief sought by the Appellants, *i.e.* the conclusion that the Sports Agreement was vitiated by an error, and therefore did not bind the Player.

91. The Panel considers that the legal argument raised by the Appellants is not supported by its findings relating to the content of the Sports Agreement. It is indeed clear from its text that the Sports Agreement constitutes an employment contract. There is therefore no doubt that the Player would have refrained from signing the Sports Agreement if his real intent was not to bind himself.

92. The Panel further notes that the Player validly bound himself since this contract does not present any kind of unbalance that would trigger its nullity either under Swiss law or under FIFA rules.

93. In conclusion, the Panel finds that the Player was bound by the Sports Agreement.

b) Was the Player a professional player before joining Nafit Mesan?

94. Article 2(2) RSTP reads as follows:

> *"A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs".*

95. The definition of "professional" in the RSTP is clear. To be a professional, the Player must meet two cumulative requirements: a) he must have a written employment contract with a club and b) must be paid more than the expenses he effectively incurs in return for his footballing activity (CAS 2015/A/4148 & 4149 & 4150 para. 64; TAS 2009/A/1895 para. 29). Furthermore, according to CAS jurisprudence, the status of the player as a "professional" is exclusively defined in the RSTP without any reference to national regulations (see TAS 2009/A/1895 quoted in: DUBEY J.-P., *The jurisprudence of the CAS in football matters (except Art. 17 RSTP)*, CAS Bulletin, 1/2011, p. 4.).

96. In light of the foregoing, the Panel must decide whether the two conditions set in Article 2(2) RTSP were fulfilled, while the Player was registered with Safa.

i) Was there a written employment contract between the Player and Safa

97. It is not disputed by the Parties that the Player and Safa have signed a written agreement on 17 October 2013. It follows that the formal requirement (existence of written contract) set out in Article 2(2) RSTP is met.

ii) When playing for Safa, was the Player paid more for his footballing activity than the expenses he effectively incurred?

98. According to CAS jurisprudence, the decisive substantive criterion for qualifying a player as a "professional" is whether the amount is "more" than the expenses effectively incurred by the player. In this respect, it is irrelevant whether it is much more or just a little more (CAS 2009/A/1781 para. 46; CAS 2006/A/1177 para. 7.4.5). The FIFA regulations do not stipulate a minimum wage. The player can still be considered as a non-amateur, even if he agrees to perform services for a meagre salary (CAS 2006/A/1027 para. 18).

99. In the case at hand, it results from the Sports Agreement signed between Safa and the Player, that the latter was entitled to:

- an annual lump-sum of USD 10,000; and
- a monthly salary of USD 1,000.

100. The annual remuneration of the Player was therefore USD 22,000, *i.e.* a gross monthly salary of USD 1,833.

101. The Player submits that his monthly football-related expenses amounted to USD 2,015. However, the Panel observes that the list of expenses provided by the Player contain expenses that are not related to his football activity, namely: housing (USD 733), utilities (USD 200), food & nutrition (USD 500), personal care items (USD 50), personal clothing (USD 50), internet (USD 70), cell phone (USD 100) and gym (USD 70). The only expenses that could fall into the category of football-related expenses are transportation (USD 192) and sport clothing (USD 50), *i.e.* a total of USD 242. It should be noted in passing that a good part of those sums are based on estimates provided by the Appellants and not on evidence.

102. The Panel also notes that the remuneration paid to the Player exceeded the expenses effectively incurred by the Player. It results that the Player was paid more for his footballing activity than the expenses he effectively incurred to practice football. The second condition set out in Article 2(2) RSTP is therefore met.

103. Based on the relevant FIFA regulations and in view of the specific circumstances of the case, the Panel concludes that the Player had signed a professional contract with Safa because he had a written contract, and because he was receiving compensation beyond whatever was necessary for him to cover his training costs.

104. The Player being considered as a professional player, the provisions regarding the maintenance of contractual stability between professionals and clubs in Article 13 to 18bis RSTP – including the consequences of terminating a contract without just cause – do apply.

c) Did the Player breach the Sports Agreement without just cause?

105. The answer to this question involves the examination of a preliminary question: did the Player breach his contract with Safa?

106. In this regard, reference is to be made to Article 13 RSTP, which provides as follows:

> *"A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement".*

107. Furthermore, Article 18(5) RSTP reads as follows:

> *"If a professional enters into more than one contract covering the same period, the provisions set forth in Chapter IV* [Maintenance of contractual stability between professionals and clubs] *shall apply".*

108. In the case at hand, the FIFA DRC held that *"it was undisputed that* [the Player] *signed an employment contract with* [Nafit Mesan] *covering the same period of time as the employment contract the Player concluded with* [Safa]. *By acting as such, the Chamber concurred that* [the Player] *had acted in breach of the employment contract concluded with* [Safa]*".*

109. The Panel share the view expressed by the FIFA DRC. The Player breached the Sports Agreement by entering into an employment contract with Nafit Mesan before the expiry of that

concluded with Safa. For the sake of completeness the Panel underlines that it deems that the Player's subsequent return to Safa does not cure or impede either the existence of an employment contract or the existence of its breach.

110. Then, the question arises whether the Player had just cause to terminate the contract. In this regard, Article 14 RSTP reads as follows:

> *"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause".*

111. The Appellants maintain that, in any case, the Player had just cause to terminate the Sports Agreement because he had valid reason to believe that Safa did not intend to register him for season 2014/2015. They further claim that Safa did not provide a health insurance and failed to pay the remuneration stipulated in the Sports Agreement.

112. In this respect, the Panel reminds the well-established CAS jurisprudence concerning burden of proof (CAS 2016/A/4580; CAS 2015/A/3909; CAS 2007/A/1380, with further references to CAS 2005/A/968 and CAS 2004/A/730):

> *"According to the general rules and principles of law, facts pleaded have to be proven by those who plead them, i.e. the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proven by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code: Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.*
>
> *It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites include the concept of 'burden of proof' are (i) the 'burden of persuasion' and (ii) the 'burden of production of the proof'. In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party".*

113. In the case at hand, the Panel observes that the Appellants' arguments that the termination of the Sports Agreement was justified are unsupported. In particular, the Appellants have not produced any conclusive evidence showing that the Player claimed at any time the payment of his remuneration. The Panel notes in particular that the evidence submitted by the Appellants did not contain any written records evidencing that the Player requested payment of his salaries.

114. In this regards, the Panel recalls that according to CAS jurisprudence, a player that is not being paid his salaries has the onus of giving a proper notice to the club before unilaterally terminating a contract for just cause. If, after the player's warning, his club is still not paying the missing

salaries, the player can terminate the contract (only in some exceptional circumstances – which are not given in the present case – no warning is necessary) (see CAS 2006/A/1180, CAS 2012/A/2698 and CAS 2013/A/3331).

115. In consideration of the above, the Panel believes the Appellants have not fulfilled their burden of proof, and that it could thus not determine with the required degree of certainty the Player had just cause to terminate the Sports Agreement.

d) Was the Player loaned to Nafit Mesan?

116. In their appeal brief, the Appellants denied the existence of any loan agreement concluded with Safa. Thereafter, in their observations of 12 May 2017, the Appellants modified their position by arguing that the Player was actually loaned to Nafit Mesan.

117. The evidence on records – in particular the witness statement signed by Safa's general secretary – demonstrates that a loan agreement was indeed signed between Nafit Mesan and Safa.

118. However, it emerges that the loan agreement was subject to the condition that an agreement was reached regarding the amount that had to be paid in return to Safa. In this regard, the Panel notes that the existence of such condition was acknowledged by the Player in the course of the FIFA procedure (see para. 21 of the Appealed Decision). This condition was not satisfied and the Player was therefore not loaned to Nafit Mesan. This conclusion is confirmed by the facts that (i) no loan agreement was registered in the TMS; (ii) Safa maintained its claim in front of FIFA; (iii) no amount was paid to Safa and (iv) the Player returned playing for Safa before the end of season 2014/2015.

119. It results that the Player was not loaned to Nafit Mesan.

e) What are the financial consequences of the alleged breach of contract without just cause?

120. Having established that the Player was not entitled to terminate the Sports Agreement and having therefore agreed with the FIFA DRC that there was a breach of contract committed by the Player, the further issue to be decided by the Panel is what amount of compensation for breach of contract Safa is entitled to receive from the Player.

121. Article 17(1) RSTP sets the principles and the method of calculation of the compensation due by one party because of a breach or unilateral and premature termination of contract. It provides 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 the 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".

122. According to Article 17(1) RSTP, primary role is played by the parties' autonomy. In fact, the criteria set in that rule apply *"unless otherwise provided for in the contract"*. Then, if the parties have not agreed on a specific amount, compensation has to be calculated *"with due consideration"* for:

    a. the law of the country concerned;

    b. the specificity of sport;

    c. any other objective criteria, including in particular:

        - the remuneration and other benefits due to the player under the 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.

123. In addition, pursuant to Article 17(2) RSTP (second sentence):

    "If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment".

124. This provision plays an important role in the context of the compensation mechanism set by Article 17 RSTP. As established by CAS jurisprudence, it is aimed at avoiding any debate and difficulties of proof regarding the possible involvement of the new club in the player's decision to terminate his former contract, and at better guaranteeing the payment of whatever amount of compensation the player is required to pay to his former club on the basis of Article 17 RSTP (see among others CAS 2013/A/3149 para. 99).

125. Against that framework, the FIFA DRC, assessed the compensation to be paid by the Appellants to Safa on the basis of the average of the remuneration payable to the Player under the Sports Agreement and the employment contract with Nafit Mesan for the period of 51 months between the date of the breach of the Sports Agreement (*i.e.* 23 July 2014) and its expiry (*i.e.* 17 October 2018). On this basis, the FIFA DRC concluded that the Player had to pay the amount of USD 312,375 to Safa and that Nafit Mesan shall be jointly and severally liable for its payment.

126. The Appellants claim that Safa has failed to prove that it sustained actual damage due to the breach and should therefore be denied the right to any compensation. In this respect, the Panel

observes that Safa proved that the Player breached his employment without just cause. It results that pursuant to Article 17(1) RSTP, the Player *"shall pay compensation"*. This compensation must be calculated by the Panel with due consideration for the objective criteria set out in Article 17(1) RSTP. In the case at hand, the Panel considers that the file contains sufficient information to assess the amount of the compensation to be paid by the Appellants. There is therefore no reason to deny Safa's right to be compensated.

127. The Panel is therefore satisfied that Safa has the right to compensation, to be determined under the provisions of Article 17(1) RSTP, in light of 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 in, had the contract been fulfilled to its end (CAS 2015/A/4206 & CAS 2015/A/4209; CAS 2012/A/2698).

128. Turning to the calculation of the compensation, the Panel preliminarily notes that in the Sports Agreement the Parties have not agreed any contractual remedy in case of breach. As a result, the actual measure of the damages sustained by Safa should be assessed with due consideration for the factors provided in Article 17(1) RSTP.

129. The Panel first remarks that no compelling indications have been given by the Parties as to the role of any "law of the country concerned" might have on the calculation of the damages to be compensated to Safa.

130. With respect to the "objective criteria", the Panel observes that the Appellants claim that the Player returned playing for Safa from 1st June 2015 to 10 January 2016 and from 24 April 2016 until 11 August 2016. This allegation was not challenged by Safa. The Panel also notes that an international transfer certificate ("ITC") was requested by the Iraqi Football Federation through the TMS on 21 December 2015. The ITC request mentions that the Player's former club was Safa. This confirms the Appellants' explanations. It must therefore be held that the Player returned playing to Safa as from 1st June 2015. The Panel considers that this circumstance – which was unknown to FIFA at the time of the Appealed Decision – must be taken into consideration for the assessment of the compensation. The relevant period for the calculation of the compensation is therefore from 23 July 2014 (*i.e.* the date of the breach of the Sports Agreement) until 1st June 2015 (*i.e.* the date of the Player's return to Safa). This period of time corresponds to season 2014/2015.

131. Furthermore, the Panel observes that, towards the end of August 2014, Nafit Mesan made an offer to Safa consisting in the transfer of the Player to Nafit Mesan on a loan basis for the 2014/2015 season. The offer stipulated that Nafit Mesan was ready to pay an amount of USD 125,000 as a compensation for the services of the Player. The Panel considers that the amount stipulated in the loan offer is particularly relevant to assess the Player's market value at the relevant period of time.

132. Having said that, the Panel believes it is adequate to also take into consideration the fact that Safa has saved the remuneration that it would have paid to the Player during the 2014/2015 season, *i.e.* USD 22,000.

133. Therefore, the amount of USD 22,000 must be deducted from the Player's market value at the relevant period of time (*i.e.* 125,000). This would result in an amount of USD 103,000.

134. With respect to the criteria of the *"fees and expenses paid or incurred by the former club"*, the Panel observes that there is no evidence in the file that Safa paid or incurred any fees and expenses due to the breach of contract or suffered any additional damages.

135. The Panel further notes that the breach of contract occurred during the protected period, *i.e.* in a period of three years following the entry into force of the Sports Agreement in accordance with item 7 of the "Definitions" section of the RSTP. The Panel considers that, depending on the specific circumstances of the case, the protected period criteria might constitute an aggravating factor justifying an increase of the compensation due to the aggrieved party. In the case under scrutiny, the Panel observes that Safa has not alleged that the occurrence of the breach of contract during the protected period led to any additional damage. The Panel therefore considers that an increase of the compensation is not justified.

136. In light of the foregoing, the Panel finds that the amount of USD 103,000 represents the actual damage incurred by Safa as a result of the termination by the Player of the Sports Agreement without just cause. Said amount takes into account the Player's market value, the savings made by Safa, the fact that the Player breached the Sports Agreement in the protected period and the fact that the Player returned to Safa on 1st June 2015.

137. This conclusion takes also into account the specificity of sport, which is in itself not an additional head of damage, but a factor to take into account in the evaluation of the other elements.

138. In summary, the Panel finds that Appealed Decision set the amount of compensation for Safa to an excessive level. As a result, this Panel finds it proper to review it and determine it in the amount of USD 103,000.

f) What are the sporting consequences of the alleged breach of contract without just cause?

139. The FIFA DRC, in the Appealed Decision, applied sporting sanctions on both the Player and Nafit Mesan, as a result of the Player's breach of contract. More exactly, the Player was sanctioned with a four-month restriction on playing in official matches pursuant to Article 17(3) RSTP, while Nafit Mesan was banned from registering new players from two registration periods under Article 17(4) RSTP.

i) The Player

140. Article 17(3) RSTP reads as follows:

> *"In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period. This sanction shall be a four-month restriction on playing in official matches. In the case of aggravating circumstances, the restriction shall last six months. These sporting sanctions shall take effect immediately once the player has been notified of the relevant decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs. This suspension of the sporting sanctions shall, however, not be applicable if the player is an established member of the representative team of the association he is eligible to represent, and the association concerned is participating in the final competition of an international tournament in the period between the last match and the first match of the next season. Unilateral breach without just cause or sporting just cause after the protected period shall not result in sporting sanctions. Disciplinary measures may, however, be imposed outside the protected period for failure to give notice of termination within 15 days of the last official match of the season (including national cups) of the club with which the player is registered. The protected period starts again when, while renewing the contract, the duration of the previous contract is extended".*

141. With reference to CAS jurisprudence, the Player argues that there is a well-accepted and consistent practice of the FIFA DRC not to apply automatically a sporting sanction. In this respect, he invokes various "mitigating factors".

142. Considering CAS jurisprudence, the Panel is ready to accept that Article 17(3) does not apply mandatorily, but the situation has to be analysed on a case-by-case basis, verifying in each case in particular if some general principles of law have been respected (see CAS 2016/A/4550 para. 124).

143. However, the Panel considers that the *"mitigating factors"* invoked by the Player do not justify to make an exception to the rule provided in Article 17(3). In this respect, the Panel recalls that the breach of contract was committed during the protected period.

144. It is therefore the Panel's opinion that the sporting sanction decided by the FIFA DRC, in the Appealed Decision, is fair and appropriate: it corresponds to the minimum set by Article 17(3) RSTP and is warranted by the circumstances of the case.

ii) Nafit Mesan

145. Article 17(4) RSTP reads as follows:

> *"In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not*

make use of the exception and the provisional measures stipulated in article 6 paragraph 1 of these regulations in order to register players at an earlier stage".

146. Under this provision, inducement to breach a contract is sanctioned with a ban on registration of new players for at least two *"transfer windows"*, and *"it shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach"*. It results that a rebuttable presumption is established: the new club is subject to sanction if it does not prove that it has not induced the breach (see CAS 2016/A/4550 para. 130).

147. Nafit Mesan invokes the fact that it was unaware that the Player was under contract with Safa at the time of concluding an employment agreement with him. In its view, it was therefore impossible to induce the Player to breach his contract with Safa.

148. The Panel considers that the argument raised by Nafit Mesan is unpersuasive. Indeed, on 1st August 2014, Nafit Mesan was informed about the existence of a contract between the Player and Safa. Despite this, Nafit Mesan went ahead with the Player's registration process by requesting on 4 August 2014 the deliverance of an ITC.

149. Considering that Nafit Mesan has failed to bring forward any argument allowing to rebut the presumption of Article 17(4), the Panel concludes that Nafit Mesan shall be considered as having induced the Player to termination the Sports Agreement, without just cause.

150. In this context, the Panel deems that the sanction imposed on Nafit Mesan by the FIFA DRC in the Appealed Decision, shall be confirmed.

III. CONCLUSION

151. Based on the foregoing, and after taking into consideration all evidence produced and all arguments of the Parties, the Panel finds that:

a. The Sports Agreement constitutes an employment contract;

b. The Player must be considered as a professional player;

c. By joining Nafit Mesan before the end of his employment contract, the Player breached the Sports Agreement without just cause;

d. The Player was not loaned to Nafit Mesan;

e. The financial consequences of the breach of contract without just cause amounts to USD 103,000;

f. The principle and the measure of the sporting sanctions imposed on the Player was rightfully assessed by the FIFA DRC;

g. Nafit Mesan was not able to rebut the presumption of Article 17(4) RSTP, and was therefore rightfully imposed sporting sanctions by the FIFA DRC.

152. The appeal shall therefore be partially upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Hamzeh Salameh and Nafit Mesan FC on 17 December 2016 against the Decision of the FIFA Dispute Resolution Chamber rendered on 17 June 2016 is partially upheld.

2. The principal amount relating to the compensation for breach of contract at item 2 of the Decision of the FIFA Dispute Resolution Chamber rendered on 17 June 2016 is fixed at USD 103,000.

3. All other points of the Decision of the FIFA Dispute Resolution Chamber rendered on 17 June 2016 are confirmed.

4. (…).

5. (…).

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