Arbitration CAS 2017/A/4955 Anouar Hadouir v. Club Moghreb Athletic Tétouan de Football & Royal Moroccan Football Federation (FRMF), award of 4 January 2018

Panel: Mr Jalal El Ahdab (Lebanon), Sole Arbitrator

Football
Termination of the employment contract without just cause by the club
Nullity of a provision
Interpretation of a provision
Contractual stability
Burden of proof

1. **Under Moroccan law like under any other civil law system, nullity for breach of a regulatory provision should be specifically and expressly provided for, either in the applicable regulation or preferably in the contract.**

2. **Applying article 18 para. 1 of the Swiss Code of Obligations, the true and mutual intention of the parties should be sought, when a contract is in need of interpretation. Moroccan law provides for a similar rule of interpretation in Article 462 of the Code of obligations and contracts. Article 465 of the Moroccan Code of obligations and contracts further provides that: *"when an expression or a provision may be understood in two different ways, it must be understood in the way with which it can have some effect, rather than the one with which it would have none".***

3. **What is provided contractually should prevail. The FRMF's *Règlement du statut et du transfert des joueurs* expressly state, at Article 15 titled *"Respect of contract"* that: *"The contractual relationship between a professional player and a club cannot be terminated except by mutual agreement or expiry of the term of the contract".* This provision aiming at ensuring the principle of contractual stability is also found at Article 13 of the FIFA Regulations on the Status and Transfer of Players, and is expressly mentioned by FIFA as mandatory in each association's regulations pursuant to Article 1.3.b.**

4. **It is well established under Moroccan law (Article 399 of the Code of obligations and contracts), Swiss law (Article 8 of the Swiss Civil Code) and CAS case law, that the burden of proof lies with the party alleging a fact.**

I. THE PARTIES

1. Mr. Anouar Hadouir (the "Appellant") is a professional Dutch-Moroccan football player domiciled in 's-Hertogenbosch, the Netherlands.

2. Club Moghreb Athletic Tétouan de Football ("CMATF" or the "First Respondent") is a professional football club with its registered office in Tétouan, Morocco. It is a member of the Royal Moroccan Football Federation.

3. The *Fédération Royale Marocaine de Football* (the Royal Moroccan Football Federation, "FRMF" or the "Second Respondent") is the governing body of football in Morocco with its registered office in Rabat Agdal, Morocco, affiliated to the Fédération Internationale de Football Association ("FIFA") since 1960.

4. The First Respondent and the Second Respondent are hereinafter referred collectively to as the "Respondents".

5. The Appellant and the Respondents are hereinafter collectively referred to as the "Parties".

II. FACTUAL AND PROCEDURAL BACKGROUND

6. 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.

A. Original Contractual Framework

7. On 21 June 2014, the Appellant signed an employment agreement (the "Agreement") with the First Respondent. The Agreement was concluded for a term going from 1 July 2014 up to 30 June 2016 – the seasons 2014-2015 and 2015-2016.

8. The Agreement provided for the following compensation (Article 5.1 of the Agreement):

- A net monthly salary, payable at the end of month: 44.000 MAD.
- Housing costs per month: 3.000 MAD.
- Airplane tickets.
- Match fees for each point scored by the team, based on participation by the player and the results obtained 2.000 MAD.
- A sign-on fee for the season 2014-2015: 660.000 MAD:
- A sign-on fee for the season 2015-2016: 880.000 MAD:

9. On 20 August 2015, the Appellant requested the First Respondent pay all the amounts due and payable.

10. On 8, 21 and 28 September 2015, the Appellant requested the First Respondent to fulfil its salary payment obligations and all other contractual obligations. The Appellant did not receive any response from the First Respondent.

B. Proceedings before the *Chambre Nationale de Résolution des Litiges* of the FRMF

11. On 21 June 2016, the Appellant formally notified, by registered mail, the First Respondent of the existence of a dispute.

12. On 14 July 2016 and according to the regulations of the FRMF's *Règlement du statut et du transfert des joueurs* (the "Regulations") and articles of association (the "Statutes"), the Appellant commenced proceedings against the First Respondent before the *Chambre Nationale de Résolution des Litiges* (the "CNRL") of the FRMF. The Appellant claimed a total amount of 1,248,680 MAD, which are divided as follows:

- The sign-on fee over the remaining period of the season 2014/2015: 130,000 MAD;
- The sign-on fee over the season 2015/2016: 880,000 MAD;
- Match appearance bonuses: 47,000 MAD;
- Monthly wages from March 2016 until June 2016: 176,000 MAD;
- Accommodation rental compensation from March 2016 until June 2016: 12,000 MAD;
- Airplane tickets: 3,680 MAD;

13. On 19 August 2016, the First Respondent filed a response with the CNRL and argued that the Appellant's request for the signing bonus of 130,000 MAD for the remaining part of the season 2014/2015 is justified and owed by the club, but the signing bonus for the season 2015/2016 would not be due as the Appellant had not appeared in any match during this season.

14. The First Respondent stated that the remaining payable amount is 29,000 MAD and that the due bonuses still owed to the Appellant are those of July 2015, May and June 2016, which the First Respondent considered was equally the case for the accommodation and air tickets expenses. The First Respondent added that it had already paid 31,090 MAD for the benefit of the third party upon a request of the Appellant. The total amount owed by the club is 272,590 MAD after deducting the amount already paid.

15. On 31 August 2016, the CNRL concluded that it is the competent decision-making body to resolve the present case concerning outstanding payments or back-payments due between a football club and a player.

16. The First Respondent declared at the session that the salary for March and April had been paid, and that the bonus for the 2015-2016 season was regarded as a performance fee.

17. The CNRL decided in favor of the Appellant in the following fashion: the First Respondent was required to pay the Appellant the total amount of 1,132,180 MAD, comprising of:

"- litigation costs: 1,500 dirhams;

- two months'salary: May and June 88,000 dirhams;
- rent: 9,000 dirhams;
- remainder of the signing bonus: 130,000 dirhams (2014-2015);
- the signing bonus: 880,000 dirhams (2015-2016);
- match fees: 29,000 dirhams" (translation provided by the Appellant).

C. Proceedings before the *Commission Centrale d'Appel* of the FRMF

18. On 31 August 2016 and pursuant to the FRMF's Regulations and Statutes, the First Respondent filed a notice of appeal against the decision of the CNRL before the *Commission Centrale d'Appel* (the "CCA") of the FRMF.

19. On 26 October 2016, a hearing took place where the First Respondent argued that the Appellant did not deserve the signing bonus which he was requesting because he had not actually played for the club for a period of two years and his performance was not at the standard expected, as opposed to his performances in the Dutch club, where he became a regular starter/holder and gained the confidence of the team. The Appellant stressed that he was giving his best during the training and was performing his duties at the best level, but the coach would not give him time during training sessions and was not using him during matches.

20. In a decision dated 7 December 2016 (the "Appealed Decision"), the CCA noted that: *"the review of the contract signed by the two parties has found a clause which determines the financial benefits of the player on the basis of his technical development and move, as stipulated in the Annex (G) of the statute of Moroccan Football Federation. This conditional clause has added a contractual nature to the regulatory aspect and has become an integral part of the contract that cannot be ignored since it was agreed upon by the free will of the two contracting parties when it comes to the determination of financial rights and privileges"* (translation provided by the Appellant). The CCA held that, assuming the establishment of a bonus had been provided for in the contract, this bonus should be seen as a performance related bonus. Consequently, such a bonus was not due to the Appellant because he did not play any matches for the First Respondent's professional team.

21. As a result, the CCA decided the following:

"1- To accept the appeal in form
2- To amend the challenged decision and determine the entitlements of the player Anouar Hadouir as 256.000 Dirham. This entitlement has to be paid by the appellant "Athlético Tétouan" within 15 days from the announcement date of this decision. This amount is deducted from the payments due in the national league award.
3-To charge the appellant with the expenses" (translation provided by the Appellant).

22. On 22 December 2016, the Parties were notified of the Appealed Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 10 January 2017, the Appellant, through his counsel, filed a statement of appeal with the Court of Arbitration for Sport ("CAS") in accordance with Article R48 of the Code of Sports-related Arbitration (the "Code") – as well as Articles 35 and 70 of the FRMF's articles of association (the "Statutes") which provide that the CAS shall hear appeals against final decisions of the FRMF's jurisdictional bodies – against the Appealed Decision.

24. On 20 January 2017, the Appellant submitted his appeal brief to the CAS Court Office, pursuant to Article R51 of the Code.

25. On 23 January 2017, the CAS Court Office formally initiated an appeals arbitration procedure under the reference *CAS 2017/A/4955 Anouar Hadouir v. Club Moghreb Athletic Tétouan de Football & Royal Moroccan Football Federation*.

26. On 26 and 27 January 2017, the CAS Court Office acknowledged receipt of the letters of the two Respondents of the same day, requesting the arbitration procedure be conducted in French and objecting to English being the language of the proceedings.

27. On 27 January 2017, the CAS Court Office granted the Appellant a deadline to advise whether he was maintaining English as the language of the procedure. On 30 January 2017, the Appellant maintained his choice for English as the language of the proceedings in accordance with its statement of appeal and appeal brief.

28. On 31 January 2017, the CAS Court Office noted the specificities of the matter at hand and suggested to the Parties that the dispute be referred to a trilingual sole arbitrator (Arabic, French and English) who would be appointed by the President of the CAS Appeals Arbitration Division and who would then determine the language of this arbitration procedure.

29. On the same date, the Respondents' respective time limits to file their answer were suspended until further notice from the CAS Court Office.

30. On 3 February 2017, the Appellant agreed with the suggestion of the CAS Court Office for the nomination of a sole arbitrator and suggested selecting a bilingual arbitrator (English and French).

31. On 10 February 2017, the CAS Court Office noted that the Respondents failed to file their comments regarding the Appellant's letter of 3 February 2017, despite having been invited to do so. Consequently, the President of the CAS Appeals Arbitration Division, or her Deputy, in accordance with Article R50 para.1 of the Code, would decide upon the question of the composition of the Panel.

32. On 10 February 2017, the First Respondent requested that, pursuant to Article R55 para. 3 of the Code, the time limit to file its answer be fixed after the payment by the Appellant of his share of the advance of costs.

33. On the same day, the First Respondent agreed with the choice of a sole arbitrator and for the nomination of a trilingual candidate speaking Arabic, English and French equally.

34. On 14 February 2017, the CAS Court Office acknowledged receipt of the First Respondent's letter for referral of the matter to a sole arbitrator and confirmed that, in view of the silence of the Second Respondent, the question of the composition of the arbitral tribunal was to be submitted to the President of the CAS Appeals Arbitration Division, or her Deputy, in accordance with Article 50 para. 1 of the Code.

35. On 23 March 2017, the CAS Court Office acknowledged receipt of the Appellant's payment of the advance of costs for the procedure and informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that Mr Jalal El Ahdab had been appointed as sole arbitrator in these proceedings.

36. On 6 April 2017, the Second Respondent sent a letter to the CAS Court Office, in which it stated, *inter alia*, what follows: *"(…) nous tenons à souligner que notre Fédération n'est pas partie au litige, d'une part parce qu'elle n'est pas contractante et d'autre part car elle a été saisie par requête pour trancher et prononcer une résolution à ce différend"*.

37. On 7 April 2017, the Appellant represented by his counsel MM. J.G. Kabalt, Esq. and P.M. Hoogstad, Esq., the First Respondent represented by its counsel, Me Antoine Séméria, M. Fabien Cagneux, Counsel to the CAS and the Sole Arbitrator set up a conference call for a special hearing specifically on the language of the arbitration. While the Appellant pleaded English should be the language of the proceedings, the First Respondent argued it should be French.

38. On the same date, the CAS Court Office, invited the Appellant to indicate whether he wished to maintain his appeal against the Second Respondent, expressly advising him that, in case of a failure to reply, it would be understood that the appeal was maintained. The Appellant failed to provide the letter at issue with any reply.

39. Respectively on 18 and 19 April 2017, the Appellant and the First Respondent filed their written observations on the issue of language. As the First Respondent's observations were filed in French, contrary to the Sole Arbitrator's recommendations to use English on a temporary basis, the First Respondent was requested to file its observations anew, in English, which it did on 24 April 2017.

40. On 9 May 2017, the Sole Arbitrator issued a procedural order on the language (the "Order"), which has considered, in accordance with Article R29 of the Code, that English should be the language of the arbitral proceedings. The Order also ruled that the Respondents should file, within 20 days from the notification of the Order, their respective answers in English, together with English translation of all exhibits attached thereto, in accordance with Article R55 of the Code, while the costs related to that Order shall be determined and allocated in the final award or in any final disposition of this arbitration. The Order was communicated to the Parties by the CAS Court Office on 10 May 2017.

41. On 24 May 2017, the Second Respondent reiterated that it was not a party to the dispute, because it is not a co-contracting party and because *"it has been formally applied to pronounce an arbitral award to that dispute"*.

42. On 30 May 2017, the First Respondent filed its answer.

43. On 20 and 21 June 2017, respectively, the Appellant and the First Respondent informed the CAS Court Office that they did not deem a hearing was necessary in this arbitration.

44. On 27 June 2017, the CAS Court Office invited again, in view of the Second Respondent's letter of 24 May 2017, the Appellant to inform the CAS Court Office whether it maintained or not the FRMF as a respondent.

45. On the same date, the Appellant informed the CAS Court Office that he wished to maintain the FRMF as a respondent in these proceedings.

46. On 29 June 2017, the CAS Court Office informed the Parties that the Sole Arbitrator deemed himself sufficiently well informed to decide the case with no need to hold a hearing. He also invited the Parties to sign and return a final procedural order (the "Order of Procedure"), as issued by the Sole Arbitrator by 6 July 2017.

47. On 30 June 2017 and 2 July 2017, respectively, the First Respondent and the Appellant returned the Order of Procedure duly signed. The Second Respondent failed to return a signed copy of the Order of Procedure.

48. On 7 July 2017, the Second Respondent sent a letter to the CAS Court Office to explain that they could not be cited as a respondent in such appeal proceedings.

IV. THE PARTIES' SUBMISSIONS AND PRAYERS FOR RELIEF

49. The following outline of the Parties' positions is illustrative only and does not necessarily encompass every contention put forward by each of them. However, the Sole Arbitrator has carefully considered all written and oral submissions made by the Parties, even if there is no specific reference to those submissions in the following summaries.

A. The Appellant

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

- The First Respondent breached the employment relationship without just cause. The Appellant requests the Sole Arbitrator to recognize that the First Respondent has, on multiple occasions, severely violated the employment relationship notwithstanding the careful and responsible attitude of the Appellant. The First Respondent is in default with respect to various payments in favor of the Appellant, without valid reasons. More specifically, the alleged reason for the First Respondent not to pay the sign-on fee for the

2015-2016 season to the Appellant, namely low performance, is unacceptable and invalid in professional football. Moreover, the First Respondent breached the Agreement without just cause during the protected period. The Appellant also requests the Sole Arbitrator to rule against the First Respondent, and order it to pay to the Appellant all the compensation due and payable, consisting in the salary for the period between 1 July 2014 and 30 June 2016, plus interest and additional costs.

- The Appellant is entitled to receive his full salary for the months of March, April, May and June 2016 together with the remainder of the sign-on fee for the 2014-2015 season and the full sign-on fee corresponding to the 2015-2016 season. The First Respondent is also bound to pay to the Appellant the amounts for the match appearance bonuses, the housing costs for the months of March, April, May and June 2016 and the airline tickets.

51. The Appellant has submitted the following claims, requesting the CAS:

"1. To accept the present appeal against the challenged decision;
2. To set aside the challenged decision;
3. To establish that Moghreb Tétouan breached the Agreement with Hadouir without just cause during the protected period;
4. To state that Moghreb Tétouan is obliged to fulfil all agreed financial conditions of the Agreement between Hadouir and Moghreb Tétouan until 20 June 2016;
5. To condemn Moghreb Tétouan primary to pay to Hadouir compensation in the amount of MAD 1.248.680,00 to be increased by the interest of 5% per year as from the successive days of the date that the amounts were contractually due by Moghreb Tétouan to Hadouir until the effective date of payment;
6. To condemn Moghreb Tétouan subsidiary to pay to Hadouir compensation in the amount of MAD 1.136.000,00 to be increased by the interest of 5% per year as from the successive days of the date that the amounts were contractually due by Moghreb Tétouan to Hadouir until the effective date of payment;
7. To condemn Moghreb Tétouan to pay to Hadouir compensation in the amount of EUR 722,24 for the airline tickets to attend the hearings with the legal bodies of the RMFF on 5 August and 16 November 2016 in Rabat (Morocco);
8. To condemn Moghreb Tétouan to the payment in favour of Hadouir of the legal expenses incurred;
9. To establish that the costs of the proceeding before the legal bodies of the RMFF (MAD 1.500,00) and the arbitration procedure before the CAS shall be borne by Moghreb Tétouan".

B. The First Respondent

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

- The First Respondent has considered that the signing bonus is a benefit that *may* be granted by the employer when the employee signs his employment contract. It is not intended to be paid outside the period covered by the Agreement and is a drafting error. In order to appreciate the form and the provisions of a contract, the actual and common intention of the parties must be sought.

- Clause 5.1 c) is totally contrary to appendix G of the Regulations and the spirit of the Agreement, because the signing bonus is exclusively designed for the first season. The

Appellant signed a new employment contract with the First Respondent on 21 June 2014 for a period of two sports seasons running from 1 July 2014 until 31 June 2016. As a result, in application of article G-1 of the Regulations, the Agreement could not provide for the payment of a signing bonus only for the 2014/2015 season. Any clause that runs contrary to this article is deemed to be null and void. The Appellant was entitled to claim the payment of the signing bonus provided for the 2014/2015 season only. Authorizing the contrary would result in the loss of all substance of the very principle of a signing bonus, as the sole purpose of the latter is to reward the player's commitment vis-a-vis the club that engaged him.

53. The First Respondent has submitted the following requests for relief, requesting the CAS:

"TO FIND that no signing bonus can be paid to Mr Hadouir for the 2015/2016 season
TO CONSIDER that MOGHREB ATHLETIC TETOUAN DE FOOTBALL intended to include a performance fee and not a signing bonus for the second period of Mr Hadouir's contract
TO FIND that Mr Hadouir did not play any match for MOGHREB ATHLETIC TETOUAN DE FOOTBALL during the course of the 2015/2016 season
TO CONSIDER that Mr Hadouir is accordingly unfounded in seeking, the payment of a performance fee for the 2015/2016 season
TO FIND that MOGHREB ATHLETIC TETOUAN DE FOOTBALL has paid the remaining amounts owed to Mr Hadouir in terms of the decision handed down by the FRMF's Central Appeal Commission on 7 December 2016
TO CONSIDER that MOGHREB ATHLETIC TETOUAN DE FOOTBALL owes no sum of money to Mr Hadouir
TO DISMISS all of Mr Hadouir's claims
TO ORDER Mr Hadouir to pay the amount of € 10,000 to cover the costs incurred by MOGHREB ATHLETIC TETOUAN DE FOOTBALL
TO LEAVE FOR THE ACCOUNT of Mr Hadouir the arbitration costs resulting from these proceedings
CONDEMN Mr. Hadouir to reimbursement of translation costs advanced by the Club".

C. The Second Respondent

54. The Second Respondent submitted solely that it is not a party to the dispute. It did not file any submission to support the Appealed Decision or any other pleadings on the merits. Furthermore, the few letters filed by the Second Respondent in these proceedings tended to simply convey or forward to the CAS the letters issued by the First Respondent. More specifically, no claims, defences or prayers for relief in this case have been filed by the Second Respondent.

V. JURISDICTION

55. Article R47 of the Code provides as follows:

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

56. Article 28 of the Regulations and Articles 35 and 70 of the Statutes establish that the decisions of the CCA can be appealed before the CAS.

57. The jurisdiction of the CAS is not disputed, and is in fact confirmed by the Order on Procedure duly signed by the Parties.

58. The Second Respondent has however submitted it should not be a party, for the first time in the present proceedings by letter dated 6 April 2017. If such submission was meant to be a jurisdictional objection, this is a rather belated objection, if at all, given its nature and the very advanced stage when it was raised. While it remained silent and passive all through the proceedings, transmitting occasionally to the CAS the First Respondent's letters, it did have the opportunity to challenge its being brought as a party when the arbitration actually commenced, back in January 2017, which it did not and chose not to do.

59. Furthermore, the Second Respondent has not formally objected to the jurisdiction of the CAS over it, as it failed to justify how the CAS should not have jurisdiction in these proceedings while the Regulations clearly give jurisdiction to the CAS by virtue of Articles 35 and 70 of the Statutes.

60. The Sole Arbitrator is therefore of the opinion that this question is not a matter of jurisdiction, but rather of standing to be sued which must be dealt with in the merits.

VI. ADMISSIBILITY

61. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".

62. The present appeal is filed against the Appealed Decision, the FRMF's appellate body, rendered on 7 December 2016 and notified to the Parties on 22 December 2016. The Appellant filed his Statement of Appeal with the CAS by registered letter on 10 January 2017. The appeal is admissible as the Appellant submitted it within the deadline provided by Article R49 of the Code as well as by Article 58 of the FIFA Statutes.

63. Furthermore, Article 28 of the Regulations and Articles 35 and 70 of the Statutes establish that the decisions of the CCA can be appealed before the CAS.

64. Related to the admissibility is the question of standing to be sued which will be addressed with the merits (see *infra*, n° 75 *et seq*.).

VII. APPLICABLE LAW

65. Article R58 of the Code provides as follows:

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

66. Pursuant to Article 28 of the Regulations and Articles 35 and 70 of the Statutes, any appeal against a decision of the CCA shall be filed before the CAS, in application of the FIFA Statutes.

67. Pursuant to Article 57 para. 2 of the FIFA Statutes:

"The provisions of the CAS code of Sport-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and additionally, Swiss law".

68. Article 1 of the Agreement, called "Legal scope of the contract", reads as follows:

"The present, employment contract of specified duration, entered into by the club and the player, is governed by the provisions in:
- Law 30/09 covering Physical Education and Sport;
- Existing legislation in Morocco covering professional sporting contracts;
- Provisions of the General Regulations of the Royal Moroccan Football Federation (FTMF), and, in particular the FRMF's Regulations on the Status and Transfer of Players;
- FIFA regulations" (translation provided by the Appellant).

69. The Parties have referred in their submissions to the FRMF Regulations, as well as to the FIFA Statutes and the FIFA Regulations, which are the regulations applicable to the case at hand.

70. The Parties having not agreed on the application of any specific rules of law, the Sole Arbitrator is of a view that all of the above rules as referred to in Article 1 of the Agreement should apply, with possible reference to Moroccan contract law as the case may be.

VIII. MERITS OF THE CASE

A. The Main Issues

71. The Appellant seems to request primarily from the Sole Arbitrator to set aside the Appealed Decision in full, i.e. in that it rejected the claim for compensation for the 2015-2016 signing bonus and in that it awarded to the Appellant compensation limited to 256,000 MAD – not including the 2015-2016 bonus.

72. Subsidiarily, i.e. in the alternative, the Appellant seems to request from the Sole Arbitrator to set aside the Appealed Decision in part, i.e. in that it rejected the claim for compensation for the 2015-2016 bonus, and to confirm the appealed decision in part, i.e. in that it awarded the Appellant compensation of a total amount of 256,000 MAD – not including the 2015-2016.

73. As a result of the above, the Sole Arbitrator has identified the following core issues to be resolved in this arbitration:

1) What is the correct interpretation of the Agreement regarding the signing bonus due to the Appellant for the 2015-2016 season and whether compensation is owed to the Appellant in that regard (C)?

2) If compensation is due to the Appellant aside from the 2015-2016 bonus, on grounds notably of termination without just cause from the part of the First Respondent, how much should the Appellant be awarded (D)?

74. Before resolving those core issues, there is a preliminary and procedural issue to tackle and settle which touches on the merits, relating to the standing to be sued of the Second Respondent's standing to be sued (B).

B. Standing to be sued

75. As indicated above (see *supra*, n° 36 and 58), the Second Respondent has submitted that it should not be a party in the present procedure, as it was not a "contracting party" but rather only the authority seized to adjudicate the dispute between the Appellant and the First Respondent, and that it would thus lack the standing to be sued.

76. The Sole Arbitrator, in any case, has not identified any particular claim, defense or request for relief addressed against the Second Respondent in the Parties' pleadings and also notes that the Second Respondent has not participated in this arbitration.

77. In view of the above, there is no need for the Sole Arbitrator to address the issue of the Second Respondent's standing to be sued, which can be left open. Furthermore, as per Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law.

C. Validity, scope, interpretation and effect of the signing bonus clause

1. The position of the Parties

78. The Appellant has argued that the sign-on fee is due and payable for the 2015-2016 season in two equal instalments of 440,000 MAD (the second sign-on bonus hereinafter referred to as the "Bonus") by virtue of the mere execution of the Agreement. The Appellant refers to the FIFA's Dispute Resolution Chamber ("DRC") case law to argue that this alleged signing Bonus, as part of a player's compensation under a contract, cannot be dependent upon performance of the player and would be viewed as a *"potestative clause"*. Furthermore, the Appellant has asserted that Appendix G of the Regulations can have no effect, as its

application would disturb the balance of rights and duties of the parties in an inadmissible way citing to DRC case law. The Appellant has finally denied the assertion of the First Respondent that he did not play for CMATF during the term of the Agreement and specifically during the 2015-2016 season.

79. The First Respondent has considered that the Appellant was entitled to claim the payment of the signing bonus provided for the 2014-2015 season only, the 2015-2016 season being regarded, by contrast, as a performance fee. The First Respondent has alleged that the second signing bonus was a drafting error and according to the principles of interpretation of contracts (see CAS 2013/A/3133, paragraphs 60 to 63, Award of 28 August 2013) and by application of Appendix G of the Regulations, article 5.1 c) of the Agreement should be construed as a performance fee. The First Respondent has argued that according to the CCA case law, a contract entered into between a player and a club may not go against the Regulations, specifically on the qualification of a signing bonus. Since, the First Respondent has alleged, the Appellant did not play any official matches during the 2015-2016 season, he is not entitled to a performance fee.

2. Relevant contractual and regulatory provisions

80. Article 5 of the Agreement sets out the basis for compensation as follows, in its relevant part:

"5.1. Remuneration of the player

In consideration of the obligations of the player defined in Article 6, the club agrees to grant the player remuneration as defined by the status of the player and transfer of the FRMF (especially its Annex G).

Pursuant to the present contract, the player shall receive the following remuneration:

[…]

c) ***The 2014-2015 season: a signing bonus***
- Six hundred sixty thousand dirhams (660,000) payable according to the schedule below:
- Three hundred thirty thousand dirhams (330,000 DH), payable from when the player is released (acceptance of the contract by FRMF)
- Three hundred thirty thousand dirhams (330,000 DH) payable at the end of January 2015.
For the 2015-2016 athletic season:
- Eight hundred eighty thousand dirhams (880,000 DH), payable according to the schedule below:
- Four hundred forty thousand dirhams (440,000 DH) payable at the end of September 2015
- Four hundred forty thousand dirhams (440,000 DH) payable at the end of January 2016 […]"

(translation provided by the Appellant).

81. Annex G-1 of the Regulations specify that a player's compensation is comprised of *"the monthly salary, the fee called 'the match fee', the bonus called 'signing bonus', the fee called 'performance fee'"* (translation provided by the Appellant).

82. Annex G-2 of the Regulations states in its relevant parts, on signing bonuses and performance fees:

> *"**Signing bonus***
> *1. The contract signing bonus entails the bonus that the player may receive for the first season of a contract newly signed and exclusively for this first season.*
> *2. If a signing bonus appears on a contract, half is payable before the end of the first half of the matches in the championship and half before the end of the first athletic season of the contract.*
> *3. The amount of the signing bonus is fixed and independent of the performance fee of the player for the first season.*
>
> ***Performance fee***
> *1. The performance fee is a fee of which the amount for each season may be agreed between the professional player and his club upon signing the contract.*
> *2. A player's contract may not accrued during the first season a performance fee and a signing fee (only one or the other of these fees should appear on the contract).*
> *3. When the performance fee appears contractually on the contract of the player, the performance fee is payable to the player at the end of the season, provided the club remains in the competitive division where it was upon signing the present contract.*
> *4. Except if the contract contains an annual performance fee binding to the player and the club and subject to the provisions in (5) of the present article* [relegation]*, the performance fee ('PF') payable to a player for an athletic season shall equal…"*
>
> (translation provided by the Appellant).

83. Annex G-2, at paragraph 4 of the performance fee section then provides a formula to determine the amount of said fee, the details of which do not seem to be relevant for the Sole Arbitrator to reach its decision.

84. It should be noted that FIFA regulations (specifically the Regulations on the Status and Transfer of Players) do not address *per se* compensation, bonuses and fees.

3. The decision of the Sole Arbitrator

85. In order to determine whether the Appellant is entitled to any compensation under Article 5.1. c) of the Agreement, the 2015-2016 bonus must first be defined and construed.

a. The Bonus is not a performance fee

86. The First Respondent has asserted, in summary, that the 2015-2016 bonus was a performance fee, that must be calculated according to the formula provided for in Appendix G-2 of the Regulations. Since the Appellant has not played any match during the 2015-2016 season – it should be noted that this allegation is contested by the Appellant, but no evidence is provided in defense of either position –, no performance bonus should be due.

87. While it is clear there is here a "drafting mistake" as contended by the First Respondent, the Sole Arbitrator does not share the view of the First Respondent as to the consequences to be drawn there from. It is plain upon reading Appendix G-2 that, central to the definition of a performance fee is that it must be indexed upon some element such as matches played or appearances on match sheets, as asserted by the First Respondent, which is without doubt not the case for the 2015-2016 bonus. In fact, the Agreement already seems to provide for some form of performance fee in Article 5.2. by providing for match appearances bonus. For these reasons, Article 5.1. c) cannot be construed as a performance bonus.

b. The Bonus is not a signing bonus

88. The Appellant has claimed that the 2015-2016 bonus should be construed as the second part of the signing bonus for the 2014-2016 season. Again, the Sole Arbitrator does not share this view. Appendix G-2 provides that there can be no signing bonus other than at the signature of a contract. This strict definition has entered the contractual scope by reference. It is also not the opinion of the Sole Arbitrator that the 2015-2016 bonus could be construed as a signing bonus with periodic payments since the bonus for the 2014-2015 season, expressly defined as *"signing bonus"* is already periodic. It is therefore doubtful another periodicity is provided for the second season of the Agreement.

c. The Bonus is a valid sui generis *bonus*

89. The Sole Arbitrator must preliminarily address the First Respondent's contentions regarding the nullity of the 2015-2016 bonus as it runs contrary to the FRMR's Regulations and notably its Statutes. The Sole Arbitrator is mindful to the fact that a contractual provision contrary to regulatory provisions should have the effect of rendering the contract or any provision thereof null and void. Indeed, under Moroccan law like under any other civil law system, the Sole Arbitrator is of the opinion that nullity for breach of a regulatory provision should be specifically and expressly provided for, either in the applicable regulation or preferably in the contract. For instance, the French *Cour de cassation* had held that the fact that a contract had not been submitted for approval to the regulatory body (here the French rugby union national league) in violation of a provision of the applicable regulation did not render the contract null and void, as this sanction was not expressly provided for (see Cass. soc., 17 March 2010, n° 07-44468). In the present case, nowhere in the Statutes, Regulations or in the Agreement, is it mentioned that a contractual provision contrary thereto should be deemed to be null and void. Furthermore, the First Respondent's reasoning seems flawed on this issue, not to say opportunistic. Concerning the signing bonus for the 2014-2015 season, which the First Respondent does not contest it owes, the terms of payment are in violation of the Annex G-2, yet the First Respondent does not seem preoccupied by its validity or lack thereof.

90. Also, the Sole Arbitrator is of the opinion that the Statutes and Regulations do not apprehend the bonuses in a comprehensive manner, while such compensations can be provided for in contracts in a variety of manner, beyond the ones listed in Annex G. Hence, the Sole Arbitrator considers the Bonus to be valid and that proper construction for this clause should

be determined based upon, *inter alia*, Moroccan law and the regulatory framework applicable as per the laws applicable to the merits (see *supra*, Section VII, n° 65 *et seq*.).

91. The Sole Arbitrator agrees with the First Respondent, and the CAS case law it cited to (i.e. CAS 2013/A/3133, para 61, applying article 18 para. 1 of the Swiss Code of Obligations), that the true and mutual intention of the parties should be sought, when a contract is in need of interpretation. Moroccan law provides for a similar rule of interpretation in Article 462 of the Code of obligations and contracts: *"In the event a contractual clause needs to be interpreted, one must seek the intention of the parties, notwithstanding the literal meaning of the words or the construction of the sentence"* (our translation).

92. Article 465 of the Moroccan Code of obligations and contracts further provides that: *"when an expression or a provision may be understood in two different ways, it must be understood in the way with which it can have some effect, rather than the one with which it would have none"* (our translation) (we underline).

93. Furthermore, it is the opinion of the Sole Arbitrator that what is provided contractually should prevail. Indeed, the Regulations expressly state, at Article 15 titled *"Respect of contract"* that: *"The contractual relationship between a professional player and a club cannot be terminated except by mutual agreement or expiry of the term of the contract"* (translation provided by the Appellant). This provision is also found at Article 13 of the FIFA Regulations on the status and transfer of players, and is expressly mentioned by FIFA as mandatory in each association's regulations pursuant to Article 1.3.b. By the same token, CAS precedents have expressly acknowledged and given weight to the similarly-worded Article 13 of the FIFA Regulations aimed at ensuring the principle of contractual stability (See e.g., CAS 2014/A/3505, para. 109).

94. Gathering upon the above-mentioned principles, and the principle of contractual freedom, it cannot be simply stated that, beyond what is in the Agreement or the Regulations, there cannot be any other bonuses in player-club contracts. Practice shows the contrary, as the parties' imagination has almost no limit in this field (e.g. loyalty bonuses, for goals scored, for titles won, etc. – for a non-exhaustive list of bonuses provided for in player-club contracts, see "Le monde merveilleux des primes de footballeurs", http://www.francetvinfo.fr/sports/foot/le-monde-merveilleux-des-primes-des-footballeurs_298643.html, last consulted, 13 September 2017). The valid Bonus provided for in the Agreement, without regard to its name – and in this case, it should be noted that the mention *"signing bonus"* is only apposed next to the 2014-2015 season line – should be held as due to the Appellant but with contractually defined installments.

95. This position seems to be coherent with the one adopted by previous CAS panels (see e.g. TAS 2016/A/4569, award dated 20 September 2016, previously quoted).

96. The Sole Arbitrator therefore holds that the Appealed Decision should be set aside in part, in that it held that the 2015-2016 bonus was not due to the Appellant; and further holds that the Appellant is due the 880,000 MAD of the 2015-2016 bonus in application of the Article 5.1.c) of the Agreement.

D. Concerning the breach of employment contract without just cause and damages

1. The position of the Parties and summary of the compensation claimed in the previous proceedings

a. The position of the Parties

97. The Appellant has considered that the Agreement has been breached by the First Respondent without just cause during the protected period because of the persistent non-payment and late payment of various remunerations amounting to a total of 1,248,680 MAD, divided as follows:

- 130,000 MAD for the remainder of the signing bonus for the 2014-2015 season,
- 880,000 MAD for the signing bonus for the 2015-2016 season,
- 47,000 MAD for match appearances bonuses,
- 176,000 MAD for the salaries of the months March to June 2016,
- 12,000 MAD for the accommodation compensation for the months of March to June 2016,
- 3,680 MAD for the airplane tickets.

98. Subsidiarily, the Appellant has claimed compensation in the amount of 1,136,000 MAD with no clear explanation as to the calculation, although the Sole Arbitrator would venture to guess that this amount represents the compensation awarded by the CCA (256,000) plus the 2015-2016 bonus (880,000).

99. The First Respondent does not address the Appellant's claim for a breach of contract without just cause other than by stating that it *"consistently met its commitments and paid the salary, bonuses and fringe benefits due to the Appellant"*.

100. As the appeal filed before the CCA only turned on the compensation due pursuant to the 2015-2016 bonus, these claims have not been otherwise discussed specifically.

b. Compensation claimed in the previous proceedings

101. In order to adequately deal with this claim, the Sole Arbitrator deems fit to recapitulate the various compensation claimed and/or awarded at the different stages of these proceedings.

102. Initially, the Appellant claimed a total amount of 1,248,680 MAD before the CNRL, in the same conditions as the amount claimed before the Sole Arbitrator (see *supra*, n° 97). The CNRL reduced the compensation owed, considering that the First Respondent had provided proof of payment of the salaries for two months (March and April 2016), awarded accommodation compensation for three months instead of four claimed (although it did not explain its reasoning), awarded only part of the match appearance bonuses, and did not award compensation for the airplane tickets. It further awarded 1,500 MAD for litigation costs. Therefore, the Appellant was awarded a total amount of 1,132,180 MAD (the CNRL apparently miscalculated the total amount, as an addition of the several amounts should add

to 1,137,500 MAD. The CCA also stated in its decision, apparently miscalculating, that the CNRL had awarded 1,132,180 MAD), divided as follows:

- 1,500 MAD for litigation costs,
- 88,000 MAD for the salaries of the months of May and June 2016,
- 9,000 MAD for the accommodation compensation,
- 130,000 MAD for the remainder of the signing bonus for the 2014-2015 season,
- 880,000 MAD for the signing bonus for the 2015-2016 season,
- 29,000 MAD for match appearances bonuses.

103. Before the CCA, the Appellant again claimed the initial amount (1,248,680 MAD – the CCA apparently miscalculated the total amount claimed to 1,245,000 MAD. Similarly, an addition of the several amounts listed should add to 1,248,680 MAD), and the CCA awarded the Appellant a total amount of 256,000 MAD, divided as follows:

- 88,000 MAD for the salaries of the months of May and June 2016,
- 9,000 MAD for the accommodation expenses,
- 130,000 MAD for the remainder of the signing bonus for the 2014-2015 season,
- 29,000 MAD for match appearances bonuses.

104. Notably, the First Respondent does not contest the Appealed Decision in that it awards the Appellant a total amount of 256,000 MAD as compensation, as detailed above. Those amounts seem to not have been contested during the CCA proceedings either. In fact, the First Respondent claims in its prayer for relief it has paid in full what it owed by virtue of the Appealed Decision.

2. Relevant contractual and regulatory provisions

105. Article 7 of the Agreement states that:

"The causes for terminating the contract must correspond with the provisions in the regulation on the status and transfer of players of the FRMF" (translation provided by the Appellant).

106. Article 14 bis of the Regulations provides:

"1. Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements" (our translation).

107. Article 15 of the Regulations states that:

"A contract between a professional player and a club may only be breached pursuant to an agreement between said parties or upon expiration of the term of the contract" (our translation).

108. Under article 16 of the Regulations, an employment contract between a player and a club may only be validly terminated without compensation where there is just cause.

109. Finally, Article 19 of the Regulations states that:

"In any event, the party who has breached the contract must pay compensation. Notwithstanding the provision of article 26 and Appendix A regarding youth development compensation and if no specific clause is provided in the contract, the compensation for breach of contract is calculated according to the applicable law, taking into account the specificities of sport and any other objective criteria. Those criteria including among others, the salary and other advantages due to the player pursuant to the current contract and/or the new contract, the remaining term of the contract up to five year, the fees and expenses paid incurred or paid by the former club […] as well as whether the breach has occurred during a protected period" (our translation).

3. The decision of the Sole Arbitrator

110. The Appellant seems in its claims to either, and primarily, request the Sole Arbitrator to set aside the Appealed Decision in full and judging *de novo*, awarding compensation in a total amount of 1,248,680 MAD representing the entire compensation the Appellant deemed due to it; or, alternatively, to confirm the Appealed Decision in that it awarded 256,000 MAD to the Appellant, which with addition of the 2015-2016 bonus, would entitle the Appellant to compensation in a total amount of 1,136,000 MAD.

111. The Sole Arbitrator has already decided on the Bonus and held that the Appellant is entitled to it in full.

112. Therefore, the discussion turns on whether the Appealed Decision should be confirmed in that it awarded 256,000 MAD to the Appellant or whether it should be set aside for this part, and therefore, whether the Appellant is owed the compensation claimed minus the Bonus already awarded.

113. More specifically, the Sole Arbitrator would have to decide, if it holds that the Appealed Decision should be set aside in full, whether the Appellant is owed, beyond the CCA compensation awarded:

- 88,000 MAD for the salaries of the months of March and April 2016 (i.e. 176,000 MAD claimed by the Appellant in these proceedings minus 88,000 MAD awarded by the CCA),
- 3,000 MAD for the accommodation expenses (i.e. 12,000 MAD claimed by the Appellant minus 9,000 MAD awarded by the CCA),
- 18,000 MAD for match appearances bonus (i.e. 47,000 MAD claimed by the Appellant minus 29,000 MAD awarded by the CCA),
- 3,680 MAD for the airplane tickets (not award by the CCA).

Amounting to a total of 112,680 MAD in excess of what has been awarded by the CCA (256,000 MAD) and disregarding the Bonus already deemed due by the Sole Arbitrator.

114. The Sole Arbitrator notes again that the First Respondent has not filed an appeal against the Appealed Decision, preventing the Sole Arbitrator to award to the Appellant an amount below the 256,000 MAD award in the Appealed Decision. With that in mind, the Sole Arbitrator is

inclined to defer to the decision of the CCA in that it only awarded a total amount of 256,000 MAD in compensation for the default of the First Respondent (the minimum threshold the Sole Arbitrator cannot go below).

115. In reaching this decision, the Sole Arbitrator has been convinced by the lack of evidence of the Appellant who has not been able to bring forward any element in support of its claims for compensation for the salaries of the months of March and April 2016, the accommodation expenses or match appearances bonus, as well as for the airplane tickets.

116. Indeed, it is well established under Moroccan law (see Article 399 of the Code of obligations and contracts), Swiss law (see Article 8 of the Swiss Civil Code) and CAS case law (see e.g. CAS 2014/A/3546, para. 7.3), that the burden of proof lies with the party alleging a fact.

117. The Sole Arbitrator further notes that the First Respondent requested the Sole Arbitrator to find that it had paid the remaining amounts owed to the Appellant by virtue of the Appealed Decision. However, the First Respondent has failed to produce any evidence in that regard and the Sole Arbitrator cannot deem this payment has been made just on the basis on the First Respondent's submission.

118. The Sole Arbitrator therefore confirms the Appealed Decision in that it awarded the Appellant compensation in a total amount of 256,000 MAD, but only to the extent is has not been paid by the First Respondent, and as such dismisses the claim of the Appellant for extra compensation of the 112,680 MAD.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Anouar Hadouir on 10 January 2017 against the decision of the *Commission Centrale d'Appel* of the Fédération Royale Marocaine de Football dated 7 December 2016 is partially upheld.

2. The decision rendered by the *Commission Centrale d'Appel* of the *Fédération Royale Marocaine de Football* dated 7 December 2016 is set aside only with respect to the claim for compensation under sign-on fee for the 2015-2016 season and Club Moghreb Athletic Tétouan de Football shall pay in favor of Mr. Anouar Hadouir the amount of 880,000 MAD for the sign-on fee for the 2015-2016 season, to be increased by the interest of 5% per year as from the successive days of the date that the amounts were contractually due, i.e. as from 30 September 2015 for

the first part amounting to 440,000 MAD, and from 30 January 2016 for the second part amounting to 440,000 MAD, until the effective date of payment.

3. The other elements of the decision rendered by the *Commission Centrale d'Appel* of the *Fédération Royale Marocaine de Football* dated 7 December 2016 are confirmed.

4. (…).

5. (…).

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