



Arbitration CAS 2018/A/6005 Al-Ittihad Alexandria Union Club v. Luis Carlos Almada Soares, award of 14 August 2019

Panel: Prof. Petros Mavroidis (Greece), Sole Arbitrator

Football

Termination of contract with just cause

Existence of just cause under Swiss law to terminate an employment contract

Non-payment or late payment as valid causes to terminate a contract of employment

Warning of termination of contract

- 1. Just cause exists whenever a terminating party can in good faith not be expected to continue the employment relationship. The definition of just cause, as well as the question whether just cause in fact existed, shall be established in accordance with the merits of each particular case.**
- 2. Non-payment or late payment of remuneration by an employer does in principle – and particularly if repeated – constitute just cause for termination of the employment contract, since an employer’s payment obligation is his main obligation towards an employee. Whether such employee falls into financial difficulties by reason of the late or non-payment is irrelevant.**
- 3. For a party to be allowed to validly terminate an employment contract, it must have warned the other party, in order for the latter to have had the chance, if it deemed that the complaint to be legitimate, to comply with its obligation.**

I. PARTIES

1. Al-Ittihad Alexandria Union Club (the “Club”) is a football club with its registered office in Alexandria, Egypt. It is a member of the Egyptian Football Association (“EFA”), itself affiliated with the Fédération Internationale de Football Association (“FIFA”).
2. Mr Luis Carlos Almada Soares (the “Player”) is a professional football player of Portuguese and Cape Verdean nationalities.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the Parties’ oral and written submissions and evidence adduced. References to additional facts and allegations found in the

Parties' oral and written submissions and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he deems necessary to explain his reasoning.

A. The employment contract signed by the Parties

4. On 15 August 2015, the Player entered into an employment contract with the Club (the "Employment Contract"). It contains the description of each party's respective obligations and its main characteristics can be summarised as follows:

- It was a fix-term agreement, valid for the 2015/2016 season.
- The Player was entitled to receive a total remuneration of USD 188'976 payable in four equal instalments of USD 47'244 each, due on 1 September 2015, 1 January 2016, 1 April 2016 and 1 August 2016, respectively.
- Pursuant to the third Clause of the Employment Contract, the Parties undertook to comply with the rules and regulations of FIFA.
- According to the fourth Clause of the Employment Contract, "*This contract should be certified and the club shall pay the fees of certifying*" (para. 1) and "*The Player should bear the taxes of this contract and other remuneration according to the law*" (para. 5).
- During the present arbitral procedure, the Club submitted for the first time a version of the Employment Contract that was different from the two copies filed during the proceedings before the FIFA Dispute Resolution Chamber (the "FIFA DRC"):
- In the copy of the contract filed before the Court of Arbitration for Sport (the "CAS"), the first instalment fell due on 30 September 2015 and not on 1 September 2015.
- The version before the Sole Arbitrator contains an extra hand-written page (page 11), signed by the Parties, which states the following (Clause 6):

- "1. The second party (the player) agreed to abide by the regulatory and financial regulation of the first team about the sportive season 2015/2016 and approval of all items of the Contract.*
- 2. In case of low technical or weak performance consequence of the (illegible text) the first party (the club) has the right to impose financial sanctions by deducting from the monthly remunerations of the player and exhibit his matter to the Board of Directors to take the necessary action.*
- 3. In case of breaching any terms and conditions of this contract, travelling without permission, careless, absence from attending the trainings, the second party (the player) shall pay to the first party (the club) amount 500,000 USD (...) as compensation".*

B. The termination of the Employment Contract

5. On an unspecified date, the Club paid USD 10,000 to the Player. It is the Club's position that this amount was the net salary corresponding to the first instalment (USD 47'244) after deduction of the various taxes and fees to be borne by the Player.

6. During the procedure before the FIFA DRC, the Club detailed the said taxes and fees as follows:

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|---|----------------------|
| - "Sports professions syndicate tax" (10% of the Player's total remuneration) | USD 18,896.70 |
| - "Income tax of 25%" of USD 47'244 | USD 11,811.00 |
| - "Registration fee of the Employment contract in the EFA" | <u>USD 2,834.50</u> |
| Total | USD 33,542.20 |

7. During the present arbitral proceedings, the Club detailed the said taxes and fees as follows:

| | |
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| - "Sports professions syndicate tax" | USD 18,896.70 |
| - "Income tax of 22.5%" of USD 47'224 | USD 10,629.90 |
| - "Registration fee of the Employment contract in the EFA" | <u>USD 5,669.01</u> |
| Total | USD 35,195.61 |

8. The payments of the various taxes and fees made by the Club on behalf of the Player allegedly occurred between 13 October and 1 November 2015.

9. At the hearing held on 25 April 2019 before the CAS, the Club admitted that it withdrew the corresponding amounts from the Player's wages, without his express authorisation. It claimed that it was entitled to proceed in this fashion, as it was its responsibility to make sure that the said taxes and fees were paid.

10. The Player played and trained with the Club until 8 November 2015, when he left Egypt to join his national team in order to take part in two matches played on 13 and 17 November 2015 for the preliminary competition to the FIFA World Cup, Edition 2018. He came back to Egypt (on 19 November 2015, according to the copy of the plane ticket filed by him or on 22 November 2015, according to a statement from the Egyptian Ministry of Interior submitted by the Club).

11. The Player was fielded in the starting eleven in a match played on 26 November 2015, opposing the Club to another Egyptian team. In view of his good performances, the Player received a gratification.

12. The Player claims that after the match played on 26 November 2015, "the Head Coach decided to grant a period of 6 days off". He left Egypt on 27 November 2015.

13. On 2 December 2015, the Player sent a default notice to the Club, urging the latter to pay USD 37,244, corresponding to the outstanding unpaid amount of the first instalment. He gave the Club three days to make the payment, failing which he would exercise his right "to immediately terminate the contract with just cause". This notice remained without effect.

14. With a letter dated 7 December 2015, the Player informed the Club that he was unilaterally terminating the Employment Contract with just cause.
15. The Player remained unemployed for the rest of the 2015/2016 season.

C. The Proceedings before the FIFA DRC

16. On 10 December 2015, the Player lodged a claim before FIFA against the Club, requesting that the latter be ordered to pay in his favour the total amount of USD 178,976 plus 5% interest *p.a.* as from 7 December 2015. This amount was broken down as follows:
 - USD 37,244 corresponding to the outstanding unpaid amount of the first instalment due on 1 September 2015; and
 - USD 141,732 as compensation for breach of contract equivalent to the remaining value of the Employment Contract, corresponding to the three instalments payable on 1 January, 1 April and 1 August 2016, respectively.
17. On 16 January 2016, the Club filed before FIFA a counterclaim against the Player, requesting the reimbursement of USD 50,000 corresponding to the amounts it paid on his behalf.
18. In its decision dated 19 April 2018 (the “Appealed Decision”), the FIFA DRC held that the Club failed to establish in a convincing manner that it actually paid a total amount of USD 33,542.20 in the name and on behalf of the Player. As a consequence, the DRC dismissed the Club’s counter-claim and found that it had no right to deduct any amount from the wages of the Player, who was therefore “*entitled to receive the first instalment as it was agreed between the parties in the contract, i.e. the amount of USD 47,244*”.
19. Furthermore, the FIFA DRC considered that the Club did not provide conclusive evidence in connection with the Player’s alleged absence before he terminated the Employment Contract on 7 December 2015. With reference to this last aspect, the FIFA DRC “*duly noted that, the first instalment payable to the [Player] was equivalent to 25% of the total remuneration, in this context, the [Player] only received 5.3% of said remuneration. Subsequently, it was considered by the Chamber that the [Player] did not receive a substantial amount during a considerable period of time since the contract had been running for more than 3 months. (...) Moreover, the Chamber took into account the particular circumstances of the present case, and concluded that, in view of the [Club’s] position in the present matter, the [Club] was not willing to pay more than USD 10,000 on each of the remaining instalments, therefore, the members of the Chamber unanimously established that the [Player] had just cause to terminate the contract on 7 December 2015*”.
20. Concerning the calculation of the amount of compensation payable to the Player, the FIFA DRC applied the parameters set out in Article 17 of the applicable Regulations on the Status and Transfer of Players (“RSTP”) and came to the conclusion that the compensation due was equivalent to the residual value of the Employment Contract in the amount of USD 141,732, corresponding to the second, third, and fourth instalments.
21. As a consequence, on 19 April 2018, the FIFA DRC decided the following:

- “1. *The claim of [the Player] is accepted.*
 2. *[The Club] has to pay to the [Player], **within 30 days** as from the date of notification of this decision, outstanding remuneration in the amount of USD 37,244.*
 3. *[The Club] has to pay to the [Player], **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of USD 141,732.*
 4. *In the event that the amounts due to the [Player] in accordance with the above-mentioned points 2. and 3. are not paid by the [Club] within the stated time limits, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limits and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
 5. *The [Player] is directed to inform the [Club] immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received.*
 6. *The counterclaim of the [Club] is rejected”.*
22. On 16 October 2018, the Parties were notified of the Appealed Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 31 October 2018, the Club filed its statement of appeal with the CAS in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (hereinafter the “Code”).
24. On 11 November 2018, the Club filed its appeal brief in accordance with Article R51 of the Code.
25. On 19 November 2018, the CAS Court Office acknowledged receipt of the Club’s statement of appeal as well as of its Appeal Brief and invited the Player to comment within five days on the Club’s request to submit the present matter to a sole arbitrator.
26. As the Player failed to provide his position on the Club’s request for a sole arbitrator within the prescribed deadline, the issue was referred to the President of the CAS Appeals Arbitration Division, who eventually decided to submit the present matter to a sole arbitrator.
27. On 7 December 2018 and within the set deadline, the Player filed his answer in accordance with Article R55 of the Code.
28. On 16 December 2018, the Appellant requested that the dispute be submitted to a panel of three arbitrators.
29. On 17 December 2018, the CAS Court Office noted the Appellant’s request for a panel, rather than a sole arbitrator, as it had already requested.

30. On 18 January 2019, the CAS Court Office advised the Parties that the President of the CAS Appeals Arbitration Division appointed Mr Petros Mavroidis, Professor, Commugny, Switzerland, as Sole Arbitrator.
31. On 22 February 2019, the Parties were informed that Mr Patrick Grandjean, attorney-at-law in Belmont, Switzerland, had been appointed as *ad hoc* clerk.
32. On 10 April 2019, the CAS Court Office sent to the Parties the Order of Procedure, which was returned duly signed by the Club on 13 April 2019 and by the Player on 15 April 2019.
33. The hearing was held on 25 April 2019 at the CAS premises in Lausanne. The Sole Arbitrator was present and assisted by Mr Fabien Cagneux, Counsel to the CAS, and Mr Patrick Grandjean, acting as *ad hoc* Clerk.
34. The following persons attended the hearing:
 - Mr Hisham Hassan Abd Rabou, counsel for the Club. He was assisted by Mr Ahmed Mostafa, interpreter.
 - The Player was present and assisted by his legal counsel, Mr Duarte Costa.
35. No witness was called to testify.
36. At the outset of the hearing, the Parties confirmed that they had no objection as to the appointment of the Sole Arbitrator.
37. At the conclusion of the hearing, the Club and the Player confirmed that their right to be heard in the present proceedings had been fully respected.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Appellant

38. The Club submitted the following requests for relief:

"The Requests

- 1- *To acceptance the appeal in front of the Court Arbitration for Sport, consequence our commitment to the instructions and deadline of appeal.*
- 2- *To repeal the decision of the Dispute Resolution Chamber.*
- 3- *To reject the player's claim against the club.*
- 4- *To consider that the player does not deserve any compensation or outstanding remunerations.*

5- *To instruct the player to pay 500,000 USD as compensation, consequence, his breach the contract and terminated unilaterally without just cause during the season upon the consensual compensation clause in the additional provision in contract.*

6- *To instruct the player to pay all of the fees and the expenses of the arbitration”.*

39. The submissions of the Club, in essence, may be summarized as follows:

- The Player breached the Employment Contract by not attending the training sessions as from 21 November 2015 and by leaving Egypt without the Club’s permission.
- The Player has never complained (orally or in written form) to the Club about the alleged unpaid wages prior his default notice sent on 2 December 2015.
- The Player unilaterally terminated the Employment Contract without just cause.
- The Club has fulfilled all of its financial obligations towards the Player *“since [it] paid him the amount of 10,000 USD the rest from the first installment after the club paid on behalf him the remunerations of the Egyptian governmental authorities and the [EFA], in addition to the club provided the player with proper accommodation (...) and a private car (...) without deducted it from the player’s dues”.*
- The Employment Contract specifies unambiguously that the Player must *“bear the taxes of this contract and other remuneration according to the law”*. As a consequence, the Club was *“obligated before the Egyptian government to pay the taxes on the amounts which are paid as salaries and rewards for the employees in it by deducting it from their dues it had and pay it on behalf of them. Furthermore, the club is responsible before the government to pay these remunerations, and it is sufficient for the Egyptian Government (Taxes Authority) access to the contract to know that the player bear the taxes according to the contract. **Therefore, the Egyptian Government claims these remunerations which are deducted from the dues of the players under the taxes item**”.*
- Contrary to the findings of the FIFA DRC, the evidence filed by the Club establishes in a conclusive way that a) it had paid USD 35,195.61 in the name and on behalf of the Player, b) this amount had to be deducted from the Player’s wages by virtue of law and c) the *“Sports professions syndicate tax”* as well as the *“Registration fee of the Employment contract in the EFA”* had to be paid once and for all and would not have been deducted from the other instalments due to the Player.
- The Player’s termination of the Employment Contract coincides with the departure of the technical manager, Mr Stoitcho Dimitrov, who left the Club on 20 November 2015 and told the media that the Player would join his new employer, PFC CSKA Sofia, in February 2016. In other words, the Player was looking for an excuse to put an end to his contractual obligations towards the Club and, nevertheless, to obtain the payment of his salary.

- Bearing in mind that the Player terminated the Employment Contract without just cause, in light of Article 17 para. 3 RSTP and Clause 6 para. 3 of the Employment Contract, the Player must pay to the Club a compensation of USD 500,000.

B. The Respondent

40. The Player submitted the following requests for relief:

“Bearing in mind that the bad faith of the Appellant Club is more than evident and, therefore, even if the new documents should surprisingly be admitted, the conclusion of FIFA DRC should not be anyhow changed, once is fully justified, CAS is requested:

1. *To reject the appeal against the decision of the Dispute Resolution Chamber dated 18 [sic] April 2018 and to confirm the relevant decision its entirely;*
2. *To order the Appellant to cover all the costs incurred with the present procedure; and,*
3. *To order the Appellant to bear all legal expenses of the second [sic] Respondent related to the proceedings at hand”.*

41. The Player’s submissions, in essence, may be summarized as follows:

- The version of the Employment Contract filed by the Club in support of its appeal is different from the two copies it submitted during the procedure before the FIFA DRC. This new document is forged and the Player *“will proceed with opening criminal proceedings regarding the forgery in Egypt”.*
- According to the Employment Contract, *“The Player should bear the taxes of this contract and other remuneration according to the law”.* The Club has never given to the Player any oral or written explanation regarding what *“taxes”* and *“other remuneration according to the law”* were actually referred to.
- The documents filed by the Club in order to prove the payments made on behalf of the Player are inconclusive.
- The documents filed by the Club do not prove a) that the Player was responsible for the alleged payments, b) what were the amounts actually due by the Player, c) that the Player authorised the Club to withdraw any amount from his salary. *“Therefore, no explicit contractual or regulatory basis was shown by the [Club] that not only had effectively deducted and paid expenses on behalf of the player, but also that was allowed by the player to deduct the amount for registration in EFA from the player salary”.*
- The Player has always fulfilled his part of the Employment Contract. The only time he left Egypt was to play with his national team, which the Club could not ignore simply because the Cape Verde Football Association formally requested it to release the Player for two matches played on 13 and 17 November 2015. The Player returned to the Club

on 19 November 2015 and, since then, participated in all the training sessions. He *“was on the initial eleven on the match of 26 November 2015 – Haras El Hodood – Al Ittihad Alexandria, away, in which he played 68 minutes and made the assistance to the goal (...) After the Win, the Head Coach decided to grant a period of 6 days off”*.

- The Player has never been notified any of the documents filed in the appeal brief (exhibits 5, 6 and 7 to the appeal brief), by means of which the Club allegedly summoned the Player to appear at the Club’s headquarter to discuss his alleged unauthorized absences and imposed upon the Player a fine. *“All these arguments are absurd particularly taking into consideration that the player was on the starting eleven of the match played on 26 November 2015”* and *“None of these facts were stated by the [Club] in the FIFA proceedings”*.
- The Club’s actions amount to a breach of trust such that the Player could no longer be expected to remain bound by the Employment Contract. Therefore, the Player terminated the Employment Contract with just cause.

V. JURISDICTION

42. The jurisdiction of the CAS, which is not disputed, derives from the Articles 57 *et seq.* of the applicable FIFA Statutes and Article R47 of the Code. It is further confirmed by the order of procedure duly signed by the Parties.
43. It follows that the CAS has jurisdiction to decide on the present dispute.
44. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

VI. ADMISSIBILITY

45. The appeal is admissible as the Club submitted it within the deadline provided by Article R49 of the Code as well as by Article 58 para. 1 of the applicable FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code.

VII. APPLICABLE LAW

46. Article R58 of the Code provides the following:

“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”.

47. Pursuant to Article 57 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”.
48. At the hearing before the CAS, the Club as well as the Player expressly confirmed that, subject to the primacy of applicable FIFA’s regulations, Swiss Law should apply to the extent warranted. The Sole Arbitrator agrees with this line of reasoning.
49. The case at hand was submitted to the FIFA DRC on 10 December 2015, *i.e.* after 1 April 2015, which is the date when the revised FIFA RSTP, edition 2015, came into force. As a consequence, the case shall be assessed according to these regulations (see Article 26 para. 1 of all the subsequent editions of the FIFA RSTP).

VIII. MERITS

50. On the one hand, the Club claims that it has always carried out its obligations timely and exhaustively and that the Player had no just cause to prematurely terminate the Employment Contract. The Club contends that the Player tried to create a misleading appearance of “*just cause*” for terminating the employment relationship in order to be free to sign with PFC CSKA Sofia, in February 2016. It is the Club’s position that the Player failed to attend training sessions as from 21 November 2015 and left Egypt without its permission, breaching therefore the Employment Contract.
51. On the other hand, the Player claims that he had a just cause to terminate the Employment Contract as he had numerous reasons to believe that the Club would not pay him the entire wages he was entitled to.
52. The main issues to be resolved by the Sole Arbitrator in deciding this dispute are the following:
 - A. Did the Player fail to attend the Club’s training sessions?
 - B. Did the Player have a just cause to terminate the employment relationship unilaterally and prematurely?
 - C. What is the compensation due?

A. Did the Player fail to attend the Club’s training sessions?

53. In its appeal brief filed before the CAS, the Club submits that “*The player stopped attending the trainings from 21 November 2015 i.e. About one month and half before the date of the second installment on 1 January 2016, therefore the club imposed financial sanctions after the Director of Players’ Affaires sent a letter (annex 5) to the Executive Director of the club stating that the player was absent from the training of the team without reasons then the Executive Director informed the player that he should attend to the club headquarters to investigate with him for knowing the absence reasons (annex 6) but the player didn’t respond so the legal*

affairs decided to apply the financial and regulatory regulations of the first team 2015-2016 season and deducted amount of 10,000 USD from the value of the player's contract (annexe 7)".

54. Annexe 5 is a letter sent by the "Player Affaires Director" of the Club to its "Executive Director" notifying that the Player "has been absence from attending the trainings without reasons on 21 November 2015" and requesting the matter to be investigated. Annexe 6 is a notice whereby the Player was summoned to appear "to the club headquarters on Monday 23 November 2015" and Annexe 7 is a one-page decision issued by the "Legal Affaires Director" imposing a fine of USD 10,000 on the Player, to be deducted from his salary.
55. The annexes referred to by the Club are undated and do not carry an address of notification. It is noteworthy to observe that annexe 6 is a document by means of which the Club invited the Player to "attend to the club headquarters on Monday 23 November 2015, for investigating with [him] about the reasons of the absence, and in case of not attending we will impose the financial sanctions according to the financial and regularity regulation of the club". In other words, the meeting was allegedly scheduled 6 days after the last match played by the Player with his national team, 2 days after the Player allegedly "stopped attending the trainings from 21 November 2015" and 3 days before the match played on 26 November 2015.
56. During the hearing before the CAS, the Club's legal counsel confirmed that it had never given any warning to the Player with regard to his alleged failure to attend the training and to the possible financial consequences, which may occur. It submitted that it gave a phone call to the Player but was unable to say when it took place. The Player contests having received any written or oral notification from the Club with respect to his alleged absences.
57. The Sole Arbitrator finds that the Club's position is inconsistent in many respects. In its appeal brief, the Club suggested that it gave a formal notice to the Player, summoned him to a meeting and sanctioned him with a fine, when, at the hearing, it admitted that it merely called the Player but could not remember when. The Club furthermore contended that the Player "has been absence from attending the trainings without reasons on 21 November 2015", accepting that the Player's attitude was irreproachable until that date. It is then hard to understand why it felt obliged to issue a formal warning, immediately after the Player's first alleged nonappearance. This is even more true that the Club has not sent any notice to the Player or taken any measure whatsoever when the Player left Egypt on 27 November 2015. After this date, the Club has never contacted (or tried to contact) the Player in order to ask him to carry out his work. On the contrary, it left the Player's notice of 2 December 2015 unanswered. Moreover, it is undisputed that the Player took part in the game played on 26 November 2015 and received a gratification for his good performances. Under these circumstances, the Club cannot reasonably claim that the Player showed signs that his intention was to leave for an indefinite period. Finally, during the procedure initiated before the FIFA DRC, the Club has not required the payment of USD 500,000. In its counterclaim before that instance, it only requested the reimbursement of USD 50,000 corresponding to the amounts it allegedly paid on the Player's behalf. The Club did not offer any explanation as to why it waited for the present arbitral proceedings to request for the first time the payment of USD 500,000.

58. For all the above reasons, the Sole Arbitrator finds that the version of facts presented by the Player is more credible than the Club's version. The Player explained that after the match played on 26 November 2015, "the Head Coach decided to grant a period of 6 days off". On that occasion, he left Egypt on 27 November 2015. This is even more plausible, that the Club, which was so quick to warn the Player after his alleged absence of 21 November 2015, did not act upon the Player's departure of 27 November 2015.
59. In light of the foregoing, the Sole Arbitrator finds that the Player cannot be accused of an unjustified non-appearance at or leaving of the working place. Nothing supports the allegation that he refused to train or comply with his contractual obligations. The Club did not produce any convincing evidence to demonstrate otherwise, in spite of the fact that the burden of proof lies upon it (CAS 2013/A/3261, consid. 57; decision of the Swiss Federal Court of 12 November 2013, 4A.337/2013, consid. 3).

B. Did the Player have a just cause to terminate the employment relationship unilaterally and prematurely?

60. Article 13 of the RSTP defends the principle of contractual stability by expressly stating that "[a] contract between a Professional and a club may only be terminated on expiry of the term of the contract or by mutual agreement".
61. However, the principle of contractual stability is not absolute as article 14 of the RSTP provides that "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". This provision is substantially identical to Article 14 of the RSTP edition 2005.
62. In this respect, the FIFA commentary on the RSTP (edition 2005) reads as follows (commentary ad. Article 14, page 39):

"1 The principle of respect of contract is, however, not an absolute one. In fact, both a player and a club may terminate a contract with just cause, i.e. for a valid reason.

2 The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally.

(...)

5 In the event of just cause being established by the competent body, the party terminating the contract with a valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions.

- 6 *On the other hand, the other party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed*".
63. The FIFA Regulations do not define what constitutes a "just cause". Therefore, abiding by ample CAS jurisprudence, the Sole Arbitrator examines the relevant provisions of Swiss law, applicable to the interpretation of the FIFA Regulations (CAS 2014/A/3643, para. 78; CAS 2008/A/1518, para. 59, page 22).
64. Article 337, para. 1, first sentence, of the Swiss Code of Obligations ("CO"), which applies complementarily, provides that *"Both employer and employee may terminate the employment relationship with immediate effect at any time for just cause"*.
65. Under Swiss law, such a just cause exists whenever the terminating party can in good faith not be expected to continue the employment relationship (Article 337 para. 2 CO). The definition of "just cause", as well as the question and whether just cause in fact existed, shall be established in accordance with the merits of each particular case (ATF 127 III 153 consid. 1 a). In other words, the event that leads to the immediate termination must so significantly shatter the trust between the parties that a reasonable person could not be expected to continue to work with the other party who is responsible for the just cause (ATF 130 III 28; ATF 116 II 145; ATF 116 II 142; ATF 112 II 41).
66. According to CAS jurisprudence, only material breaches of a contract can possibly be considered as "just cause" for the termination of the latter (CAS 2013/A/3091, para. 191; CAS 2006/A/1062).
67. Consistent with CAS jurisprudence, non-payment or late payment of remuneration by the employer does in principle – and particularly if repeated – constitute just cause for termination of the employment contract, since the employer's payment obligation is his main obligation towards the employee: *"If, therefore, he fails to meet his obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulties by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the party has in future performance in accordance with the contract, to be lost"* (CAS 2016/A/4693 para. 101, CAS 2013/A/3398; CAS 2013/A/3091, 3092 & 3093).
68. In addition and according to CAS jurisprudence (CAS 2016/A/4693 para. 104), and consistent with Swiss law (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446), for a party to be allowed to validly terminate an employment contract, it must have warned the other party, in order for the latter to have had the chance, if it deemed that the complaint to be legitimate, to comply with its obligations (CAS 2015/A/4327; CAS 2013/A/3091, 3092 & 3093; CAS 2013/A/3398; decision of the Swiss Federal Court of 12 November 2013, 4A.337/2013, consid. 3; ATF 121 III 467, consid. 4d).
69. The Sole Arbitrator has to examine whether the Club was somehow in breach of the terms of the Employment Contract in such a manner that the Player had a just cause to unilaterally put a premature end to the employment relationship.

70. It is undisputed that the first instalment contractually agreed between the Parties amounted to USD 47,244 and that the Club paid USD 10,000 to the Player.
71. In the present case, the Club alleges that a) it had paid USD 35,195.61 in the name and on behalf of the Player, b) this amount had to be deducted from the Player's wages by virtue of law and c) the "*Sports professions syndicate tax*" as well as the "*Registration fee of the Employment contract in the EFA*" had to be paid once and for all and would not have been deducted again from the second, third and fourth instalments.
72. As a preliminary remark, the Sole Arbitrator observes that before the FIFA DRC, the Club claimed to have paid on behalf of the Player a sum of USD 33,542.20 ("First Scenario") whereas, during the proceedings before the CAS, it submitted that it had paid USD 35,195.61 ("Second Scenario"). The Club attributes the difference between the two amounts to the fact that the income tax rate applied in the First Scenario was 25% and in the Second Scenario 22,5%. Likewise and according to the Club, the "*Registration fee of the Employment contract in the EFA*" went from USD 2,834.50 to USD 5,669.01. In light of the foregoing, should the Club's position be accepted, it appears that the Player did not receive the amount contractually agreed. In the First Scenario, the Club should have paid to the Player USD 13,701,80 (= USD 47,244 – USD 33,542.20) and, in the Second Scenario, it should have paid him USD 12,048,39 (= USD 47,244 – USD 35,195.61). The difference between the amount due and the amount finally paid to the Player cannot be related to the rent or to the car provided to him, as the Club admittedly did not deduct these costs from the Player's wages. In other words, the fact that the Club ended up paying to the Player only USD 10,000 remains unexplained to date.
73. In addition, the fact that the amounts withdrawn from the Player's wages differ from one procedure (before the FIFA DRC - USD 33,542.20) to another (before the CAS – USD 35,195.61) is quite perplexing. It is the Club's position that the Player received the remainder of the first instalment after deduction of the payments made on his behalf between 13 October and 1 November 2015. Under these circumstances, it is not clear how the Club was in a position to withhold further amounts at a later stage. This sequence of events confirms that the Club did not pay to the Player the remaining amount of his wages (after withdrawal of the charges allegedly paid on his behalf) and leaves the impression that the Club deducted the amounts from the Player's wages at its entire discretion and not because it was legally obliged to do so.
74. The Club claims that it paid USD 35,195.61 on behalf of the Player as a consequence of Clause four para. 5 of the Employment Contract, which states that "*The Player should bear the taxes of this contract and other remuneration according to the law*". At the hearing before the CAS, the Club's representative confirmed that it did not explain to the Player what "*the taxes of this contract and other remuneration according to the law*" actually referred to and what was included therein. In such a context, it is difficult to accept that the Player could have understood and agreed to pay "*Sports professions syndicate tax*", "*Income tax*" and "*Registration fee of the Employment contract in the EFA*". This is especially true as these taxes and registration fees represented 74% (*i.e.* almost 3/4) of the first contractually agreed instalment.
75. In any event, it is absolutely clear that Clause four para. 5 of the Employment Contract does not allow the Club to withdraw any amount from the Player's wages. In this regard, the Club

asserts that it “*is obligated before the Egyptian government to pay the taxes on the amounts which are paid as salaries and rewards for the employees in it by deducting it from their dues it had and pay it on behalf of them. (...) Furthermore, the club is responsible before the government to pay these remunerations, and it is sufficient for the Egyptian Government (Taxes Authority) access to the contract to know that the player bear the taxes according to the contract. **Therefore, the Egyptian Government claims these remunerations which are deducted from the dues of the players under the taxes item**”.*

76. However, the Club did not file any evidence corroborating the above assertion. Pursuant to Article 12 para. 3 of the applicable FIFA Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber, “*Any party claiming a right on the basis of an alleged fact shall carry the burden of proof*”. Consistently with the well-established CAS jurisprudence, “*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. (...) 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*” (CAS 2016/A/4580 consid. 91 and references). It is the Club’s duty to objectively demonstrate the existence of what it alleges (ATF 132 III 449; consid. 4). It is not sufficient for it to simply assert a state of fact for the Sole Arbitrator to accept it as true.
77. In the present case, the Club listed the names of several laws and regulations without providing a copy and a translation of the relevant provisions, which could support its alleged right to deduct any amount from the Player’s wages. The only legal texts filed by the Club are the following ones:
- A “*copy from the regulatory and financial regulation of the first team 2015/2016 [and its] translation*”. This document governs the right of the Club to impose fines on players who are absent from training without permission.
 - The “*Regulation of the Egyptian Football Association (art. 11 para. 16). And its translation*”. This document also governs the right for the Club to impose sanctions on players who do not comply with their contractual obligations.
 - The “*law No.96 of 2015 tax income – official journal in Egypt. And its translation*”, which is a decision of the “*President of the Arab Republic of Egypt*” published on 20 August 2015 and setting the maximum income tax rate at 22,5% for any remuneration higher than “*200,000 pounds*”.
 - “*Copies from law No.63 of 2010 (establishing and organizing of the Sports professions syndicate)*”. According to the translation provided by the Club, Article 48 para. 7 of this law states that “*An amount of 5% should be paid in regard of any contract concluded with players and national administrators, this amount is increased to 10% for foreigners. No contract will be accredited unless this percentage is paid*”. With respect to this provision, the Sole Arbitrator observes that it does not say that the amount has to be paid by the Player or by the Club.

78. Finally, the Club argues that the FIFA DRC erred when it held that the documents it filed could not be considered as conclusive and satisfactory evidence that it had indeed paid the litigious amounts on behalf of the Player.
- The Club claims that it paid on behalf of the Player USD 18,896.70 of “*Sports professions syndicate tax*”. In support of this assertion, it filed a document dated 13 October 2015, entitled “*Cash collection Receipt*”, which mentions a) the amount of USD 18,896, b) the name of the Player and c) the fact that the amount allegedly paid corresponds to “*10% from the value of contract of the player in Ittihad Alexandria Club / Luis Carlos Almada Soares*”. This document is a form, which was filled out by hand. There is no indication about who signed this “*receipt*”. In addition, it does not evidence that the litigious amount was actually paid.
 - The second payment allegedly made by the Club on behalf of the Player is the one related to the income taxes. The Club only provided a document confirming that the maximum income tax rate is at 22,5% for any remuneration higher than “*200,000 pounds*”, but did not file any evidence establishing the actual payment of USD 10,629.90.
 - Finally, USD 5,669.01 were allegedly paid on behalf of the Player as “*Registration fee of the Employment contract in the EFA*”. The Club has not given the legal or regulatory basis of this registration fee. In order to prove the litigious payment, the Club filed a copy of a cheque, dated 1 November 2015 as well as an undated letter and its translation of “*The Executive Director, Dr. thrawt Swalem*” of EFA, who confirmed that the Club had paid “*3% from the contract which equal 44,390 EGP equal 5669.28 USD of the total amount of the check No. 200004119*”. The Sole Arbitrator observes that there are at least three problems with these documents:
 - During the proceedings before the FIFA DRC, the Club claimed to have paid a “*Registration fee of the Employment contract in the EFA*” of USD 2,834.50 in the name of the Player. If this payment was effectively made on 1 November 2015 via cheque, it defies comprehension that the Club can contend before the CAS that it actually paid USD 5,669.28.
 - The translation of the cheque No. 200004119 mentions an amount of “*336,949.55 EGP*” in figures and in words, so that the assumption of a typing error can be ruled out. In view of the significant difference between the amount mentioned on the cheque (“*44,390 EGP*”) and the amount indicated in the translation (“*336,949.55 EGP*”), the reliability of the documents filed by the Club is questionable.
 - Bearing in mind the above two considerations, it is difficult to understand how the Executive Director of the EFA could declare that the Club had paid “*3% from the contract which equal 44,390 EGP equal 5669,28 USD of the total amount of the check No. 200004119*”. This document seems even less conclusive that it is undated and, as a consequence, does not allow identifying when it was issued and how the Executive Director of the EFA could affirm that the currency rate applicable to “*44,390 EGP equal 5669,28 USD*”.

79. In light of the above considerations, the Sole Arbitrator comes to the same conclusion as the FIFA DRC, *i.e.* the Club did not provide convincing evidence that it actually paid USD 35,195.61 or any amount on behalf of the Player. It is noteworthy to observe that the Club has never contended that it gave to the Player a formal confirmation of the payments it allegedly made in his name, which is, by itself, extraordinary, considering the significant amounts of taxes and fees paid. Moreover, the Club did not even submit a bank statement or a bookkeeping entry corroborating the money transfer from the Club to the “*Sport profession syndicate*”, to the tax authorities or to the EFA. The Club failed to offer any conclusive evidence in spite of the fact that it had ample time to do so.
80. As a conclusion and bearing in mind a) that even assuming that the Club’s submissions were true, it did not give any explanation for its failure to pay the Player USD 13,701,80 (in the First Scenario) or USD 12,048,39 (in the Second Scenario), b) the amounts allegedly paid on behalf of the Player varied significantly between the FIFA DRC procedure and the present arbitral proceedings, c) at the signature of the Employment Contract, the Club admittedly did not explain to the Player what taxes and fees would be charged to him, which is criticisable under the “*culpa in contrahendo*” principle, d) the amounts deducted from the Player’s wages were significant (*i.e.* almost 75% of the first instalment), e) the Club confirmed that it would keep deducting the income taxes from the other instalments, f) it has not satisfied its burden of submitting clear and convincing proof that it actually made the alleged payments on behalf of the Player and that it was authorised to withdraw any amount from the Player’s salary, the Sole Arbitrator holds that the Player had objective reasons to believe that the Club had no intention to fully perform its side of the contract. The Club unilaterally and at its own discretion forced the Player to bear various taxes and fees and did not even provide the latter with payment confirmations or explanations. On 2 December 2015, the Player sent a default notice to the Club, urging the latter to pay USD 37,244, corresponding to the outstanding unpaid amount of the first instalment. The Club has never contested that it had received the said notice and left it unanswered. At no moment, the Club tried to contact the Player in order to find a solution or to give any explanation to the latter. In view of the Club’s attitude towards the Player and its lack of transparency, the Sole Arbitrator finds that it materially breached the Employment Contract. Under these circumstances, the Player could not reasonably be expected to carry on the employment relationship and the Sole Arbitrator does not see any more lenient measures, which could have been taken by the Player in order to resolve the situation.
81. Finally, the Club contends that the Player acted in bad faith as he had planned to put an end to the Employment Contract in order to sign with PFC CSKA Sofia, in February 2016. The Club supported its assertion with a statement made by Mr Stoitcho Dimitrov before the media. The Sole Arbitrator finds that the Player cannot be held accountable for the declarations made by a third party to the press and observes that the Player has never signed a contract with PFC CSKA but also remained unemployed until the end of the 2015/2016 season. Under these circumstances, the Player cannot be accused of bad faith.
82. In conclusion and on the basis of the foregoing consideration, the Sole Arbitrator finds that the Player terminated unilaterally and prematurely the Employment Contract with a just cause.

C. What is the compensation due?

83. It appears that the Sole Arbitrator came to the same conclusion as the FIFA DRC, which held that the Club breached the Player's fundamental rights, by consistently refusing to pay his salary in a timely fashion.
84. Article 17 para. 1 of the RSTP states that *"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"*.
85. On the basis of the above quoted provision, the FIFA DRC concluded that the Player was entitled to compensation and gave a detailed explanation of the amounts to be awarded to him.
86. The Club did not provide any reason justifying a reduction of the compensation awarded by the FIFA DRC.
87. Under these circumstances, the Sole Arbitrator finds that the Appealed Decision must be upheld in its entirety, without any modification.

D. Conclusions

88. In light of the foregoing, the Sole Arbitrator finds that the Appealed Decision must be upheld in its entirety.
89. This conclusion makes it unnecessary for the Sole Arbitrator to consider the other requests and submissions submitted by the Parties. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 31 October 2018 by Al-Ittihad Alexandria Union Club against the decision issued on 19 April 2018 by the FIFA Dispute Resolution Chamber is dismissed.
2. The decision issued on 19 April 2018 by the FIFA Dispute Resolution Chamber is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.