Arbitrations CAS 2019/A/6416 Alejandro Gabriel Quintana v. Wydad Athletic Club & CAS 2019/A/6417 Wydad Athletic Club v. Alejandro Gabriel Quintana & Club Cafetaleros de Tapachula, award of 18 June 2021

Panel: Mr Efraim Barak (Israel), Sole Arbitrator

Football
Termination of the employment contract with just cause by the player
Power of the CAS to order the production of documents
Jurisdiction clause establishing national dispute resolution chamber as internal remedy
Jurisdiction of tribunals established at national level to settle employment-related disputes of an international dimension
Authority to draw adverse inferences
Non-appearance at or leaving of the working place
Determination of the just cause of termination
Demotion of a player from the first team of a club

1. **CAS is an arbitral tribunal rather than an ordinary court and therefore, the power to order the production of documents by virtue Article R44.3 CAS Code is vested upon it solely towards the Parties, on the basis of the arbitration agreement concluded between them. If a third party is not a party in the ongoing arbitral proceedings, the CAS has no judicial or any other power to order it to submit documents, as that third party would not be obliged to comply with the order. In view of this background, an evidentiary request addressed towards a third party to the ongoing proceedings would be procedurally "inefficient".**

2. **When it comes to the resolution of employment-related disputes of an international dimension between a club and a player, the implicated parties are not allowed to freely designate the deciding body of their choice nor to decide on a possible hierarchy between a national tribunal and the FIFA Dispute Resolution Chamber (DRC) but rather, they are limited to the alternatives and the venues provided under the applicable FIFA Regulations in this regard. Therefore, a jurisdiction clause that would establish a national dispute resolution chamber as an *"internal remedy"* that has to be exhausted prior to the submission of the pertinent dispute before the FIFA DRC, would be void in this respect. Articles 22 and 24 of the FIFA Regulations on the Status and Transfer of Players (RSTP) do not designate the FIFA DRC to act as an appeal body against decisions issued by any kind of internal authority established within the framework of the various national associations; by virtue of the aforementioned provisions, the FIFA DRC is established solely as a first-instance tribunal.**

3. **Tribunals established at national level have jurisdiction to settle employment-related disputes of an international dimension between clubs and players only if the following requirements are met: (i) there is an independent arbitral tribunal established at the**

national level; (ii) the jurisdiction of this independent arbitral tribunal derives from a clear reference in the employment contract; and (iii) this independent arbitral tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs. The terms *"independent"* and *"duly constituted"* require that an arbitral tribunal meets the minimum procedural standards which comprise the principle of parity in the constitution of said tribunal, the right to an independent and impartial tribunal, the principle of a fair hearing, the right to contentious proceedings and the principle of equal treatment.

4. **Although it is not obliged to do so, CAS may draw certain adverse inferences from a party's refusal to testify or its failure to submit the best evidence available.**

5. **There is an unjustified non-appearance at or leaving of the working place when the employee is absent for a certain amount of time and the employer can reasonably assume that it is not in the employee's intention to return and that his decision is final. This is particularly true if the employee is summoned to return to work or to justify his non-appearance (for instance by means of a medical certificate) and does not comply or is unable to provide a just cause. Likewise, if the employee does not return to work after vacation and leaves his employer without any news for several months, the employer can – in good faith – assume that the employee's employment has ended without having to dismiss him or the employee having explicitly resigned.**

6. **Art. 14(2) was added to the FIFA RSTP in its 2018 edition, where for the first time a specific conduct was defined as establishing *"just cause"* for the termination of employment agreements. An additional provision, Art. 14bis, dealing explicitly with the termination of employment agreements on the basis of financial overdues and establishing (a) which cases of overdue payments will be considered "just cause" and (b) the mandatory pre-condition for the termination of an employment agreement due to overdue payments, was later on inserted. The need to add Art. 14bis leads to the following conclusions: (i) the concept of abusive conduct is wider than the non-payment of salaries; (ii) non-payment of salaries can be considered an abusive conduct; (iii) but not any non-payment is considered an abusive conduct; only a case of *"unlawfully failing to pay … two monthly salaries"* will establish just cause; (iv) however, the just cause in this case also requires a default notice to be sent and a waiting period in which the debtor will be given the opportunity to repair its conduct. Therefore, the determination of the just cause, if any, that led to the termination of the employment contract is of essence for ascertaining the applicable provision(s) of the FIFA RSTP on the matter at hand, the process that should have been followed in terminating said contract and the legal implications thereof.**

7. **In ascertaining whether a football club is entitled to demote a player from its first team, a series of criteria should be taken into consideration, pertaining to the reasons and the**

duration of such measure, the conditions to which the player was subjected (whether he/she was training alone or with the reserves team and whether he/she was provided with adequate training facilities or not) and the contractual circumstances of the case under examination (whether the player's employment contract entitled the club to drop him/her from the first team and whether the player was still paid his/her entire salary). In principle, the parties can expressly agree for a player to play in a certain team. If the contract is silent, the player does in principle have certain fundamental rights, such as his "personality rights", but a coach and the club also have the right, in certain sporting circumstances, to move players between the first team and other teams. These rights may conflict and when they do, a review of the above points and of the facts of each case needs to be undertaken.

I. PARTIES

1. Mr. Alejandro Gabriel Quintana (the "Player") is a professional football player of Argentinean nationality.

2. Wydad Athletic Club ("WAC" or the "Club") is a professional football club with its registered office in Casablanca Morocco. It is affiliated with the Royal Moroccan Football Federation (the "FRMF"), which in turn is affiliated with *Fédération Internationale de Football Association* ("FIFA").

3. Club Cafetaleros de Tapachula ("CCT") is a professional football club with its registered office in Chiapas, Mexico. It is affiliated with the Mexican Football Federation (the "FMF"), which is turn is affiliated with *Fédération Internationale de Football Association* ("FIFA").

4. The Player and WAC shall be collectively referred to as the "Parties"[1].

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings. This background information is given 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.

[1] CCT remained silent during the entirety of the present proceedings. In order to avoid constant repetitions in this respect, the Sole Arbitrator will henceforth use the term for the Player and WAC only. In case of need CCT will be referred to as such.

A. Background facts

6. On 15 January 2018, an employment agreement was concluded between the Parties, valid as of the date of signature until the end of the 2019/2020 sporting season (the "Employment Agreement").

The Employment Agreement provides, *inter alia,* as follows[2]:

"Article 5: Obligations of [WAC]

5.1 Player's remuneration

In exchange for the [Player's] *obligations defined in article 6,* [WAC] *agrees to grant the* [Player]:

a) Monthly wages and Premium

For the 2017/2018 season starting from January 15,2018:

A monthly salary of 30,000,00 DH (thirty thousand dirhams)

And a signature bonus of:

.300,000.00 DH (three hundred Thousand dirhams) on 25/01/2018

.300,000.00 DH (three hundred Thousand dirhams) on 30/04/2018

.220,000.00 DH (two hundred and twenty thousand dirhams) on 15/07/2018

For the 2018/2019 sporting season:

A monthly salary of 30.000,00 DH (thirty thousand dirhams)

And a performance bonus of 1,640,000.00 (one million six hundred and forty thousand dirhams) in three instalments:

.550,000.00 DH (five hundred and fifty thousand dirhams) on 31/12/2018

.550,000.00 DH (five hundred and fifty thousand dirhams) on 30/04/2019

.540,000.00 DH (five hundred and forty thousand dirhams) on 31/08/2019

[2] The Employment Agreement was originally drafted in French. However, the translation of the pertinent provisions as presented by the Parties in the submissions or the exhibits and at the Appealed Decision is not contested between the Parties and is quoted as such.

For the 2019/2020 sports season:

A monthly salary of 30.000,00 DH (thirty thousand dirhams)

And a performance bonus of 1,640,000.00 (one million six hundred and forty thousand dirhams) in three instalments:

.550,000.00 DH (five hundred and fifty thousand dirhams) on 31/12/2019

.550,000.00 DH (five hundred and fifty thousand dirhams) on 30/04/2020

.540,000.00 DH (five hundred and forty thousand dirhams) on 31/08/2020

b) 4 Casablanca – Buenos Aires – Casablanca air tickets during each sporting season

c) An apartment + a car

d) A match bonus, the amount of which is set by [WAC's] *reward schedule and which is based on the* [Player's] *participation (holder or substitute) and the results obtained at each official meeting of the national or international competitions, and according to the scale established by the* [WAC].

5.2 Legal obligations

[WAC] *is bound by strict compliance to the applicable legal and regulatory provisions in force, in particular to:* […]

. Grant the [Player] *a holiday of 24 working days, the dates and periods of which will be fixed according to the schedule of meetings and commitments of* [WAC]. […]

Article 7: Termination of contract

The causes of termination of the [Employment Agreement] *must comply with the provisions of the FIFA regulations on the status and transfers of players.* […]

Article 12: Dispute Resolution

In case of a dispute and/or a litigation arising out of the execution and/or interpretation of the clauses of this [Employment Agreement]*, the parties are obliged to resort in priority to all the means and procedures for an amicable settlement of the dispute.*

In the event of failure, the dispute is submitted by one or the other party to the dispute resolution chamber of the [FRMF] – (the "Moroccan NDRC")

The decisions of the [Moroccan NDRC] *are subject to appeal to FIFA".*

7. On 21 May 2018, following the last official game of WAC for the respective sporting season (2017/2018), the Player departed from Morocco to spend his summer leave in Buenos Aires. According to WAC, the Player was expected to return to Morocco on 17 June 2018.

8. On 21 June 2018, the Player, through his legal representative, sent a letter to WAC requesting, *inter alia*, the payment of several outstanding amounts and to be provided with air tickets in order to return to Morocco, as provided under the Employment Agreement.

9. On 25 June 2018, WAC replied to the Player, arguing that the latter was unjustifiably absent from the training sessions of the Club. WAC stated that such absence *"constitutes a serious breach of contractual obligations"* and invited the Player to return to Morocco within the following 48 hours.

10. On 26 June 2018, the Player sent an email to WAC stating that since 16 June 2018 he had been asking from the Club's officials to provide him with air tickets for him and his family to return to Morocco. In the same letter, the Player clarified, *inter alia*, that his return to Morocco was in jeopardy, since WAC's failure to comply with its contractual obligations had left him in *"a very difficult financial situation"*.

11. In response to the previous email, WAC sent a new email to the Player on 9 July 2019, asserting, *inter alia*, the following:

> *"You should know that the air tickets mentioned in* [the Employment Agreement] *concern the flights authorized by your employer which is not applicable in this case since you left the Moroccan territory of your own initiative and means. You did not ask for a permission to leave the territory and the* [WAC] *administration never allowed you to leave.* […]
>
> *For other requests, you know very well that any effective claim will be fully settled upon your return to Morocco according to the usual method of payment* […]
>
> *Although it is extra-contractual, the return ticket will also be paid upon arrival at the Club.*
>
> *I remind you that* [WAC] *relies heavily on your services during the match of July 17, 2018 between* [WAC] *and […]".*

12. On the same date, WAC also contacted FIFA in order to inform the latter about the Player's *"unauthorized absence"*. In this respect, WAC revealed its intention to *"seize, if necessary, to make prevail its rights, the competent decision-making body"* against the Player.

13. On 12 July 2018, the Player returned to Morocco without the financial assistance of WAC. However, the sequence of events henceforth is contested between the Parties; whereas the Player claims that WAC prevented him from participating in the training sessions of the Club and he was effectively forced to train alone, WAC maintains that upon his arrival, the Player refused to train with the rest of the squad.

14. On 2 August 2018, the Player sent a default notice to WAC with, *inter alia,* the following contents (the "Default Notice"):

"On January 15, 2018 we signed [the Employment Agreement] *for 2 and ½ seasons until June 2020. The agreement established a monthly salary of 30.000 DH and a sign on fee each season payable in 3 instalments (January, April and July for the first ½ season and January April and August for the two complete seasons).*

The [Employment Agreement] *also established 4 plain* [sic] *tickets each season, a car and housing bonus for participation in official matches.*

From the beginning [WAC] *failed to comply properly with the stipulations of the* [Employment Agreement]*: the first sign on fee was paid late, and* [WAC] *had no car to give me and no proper house so we agreed that I was going to rent a car and a house and* [WAC] *shall make reimbursement, something the club did only partially.*

Up to this date, [WAC] *owes me the salaries for May, June and July. DH 30.000 each month and the two sign-on fee payments of April DH 300.000 and July DH 220.000 alongside other payments that are not substantial…This makes a total amount due of 610.000 DH plus interest.*

Since all my previous claims were not even answered, I have no further choice than, as provided for in article 14bis of the FIFA regulations, formally summon you to cancel such amounts in the next 15 natural days or I warn you that I will terminate the [Employment Agreement] *with just cause.*

Apart from the financial overdue, since my return to [WAC] *I have been subject to measures trying to force me to terminate the* [Employment Agreement] *surrendering all my financial claims.* […]

I was received by the coach, who told me that I was not in his plans for the season. Since then I'm training alone, isolated from the rest of the team without any guidance from a coach or a fitness coach.

You also told me that you are not willing to pay housing or car allowance anymore and you placed me in a hotel. I 'm not receiving any salary or bonus or payment of any kind and I have to pay for my meals and transfers every day and I don't have the financial resources because the last payment I received was more than 3 months ago.

Meanwhile the president and other members of [WAC] *are pushing me to agree on a mutual termination of the* [Employment Agreement].

This behaviour constitutes a clear violation of my essential rights as an employee and as a human being. Your conduct contravenes every basic right and – in particular – constitutes just cause for contractual termination as provided for in art. 14.2 of the FIFA regulations.

Accordingly, I formally summon you to immediately, i.e. within the next 72 hours, reinstate me with the rest of the team and provide me with a house and a car and make at least a partial payment to allow me to buy food.

Otherwise, I will have no choice but to consider your behaviour as just cause for contract termination and will procced accordingly in order to protect my rights*"*.

15. On 8 August 2018 and without insofar having received any answer in respect with the Default Notice, the Player sent a new letter to WAC by means of which he terminated the Employment Agreement (the "Termination Letter").

16. On 4 September 2018, the Player concluded an employment agreement with CCT, valid as of the date of signature until 31 May 2019. According to said agreement, the Player was entitled to receive a net monthly salary of Mex$140,000.00 (one hundred and forty thousand Mexican pesos) or USD 7,000 (seven thousand US dollars).

17. On 8 July 2019, the Player concluded an employment agreement with the Bolivian football club *"Club Deportivo Y Cultural Sport Boys"*, valid as of the date of signature until 30 June 2020. Under this agreement, the Player was entitled to receive the total amount of $ 74,800 (seventy-four thousand and eight hundred US dollars).

B. Proceedings before the FIFA Dispute Resolution Chamber

18. On 11 September 2018, the Player lodged a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC" or the "Chamber") against WAC for breach of the Employment Agreement without just cause and requested the payment of a total amount of MAD 4,910,00.00 (four million nine hundred and ten thousand Moroccan Dirhams) plus 5% interest *per annum* as from the date each amount fell due as well as the imposition of sporting sanctions against WAC. The Player's financial claim against WAC is detailed as follows:

- MAD 742,000 as outstanding remuneration under the Employment Agreement, further broken down as follows:

  a) MAD 90,000 corresponding to the salaries of May, June, July 2018 (i.e 30,000*3);

  b) MAD 300,000 corresponding to the sign-on bonus payable on 30/04/2018;

  c) MAD 220,000 corresponding to the sign-on bonus payable on 15/07/2018;

  d) MAD 102,000 corresponding to *"air tickets, car costs and apartment"*;

  e) MAD 30,000 as bonus for winning the 2018 African Super Cup

- MAD 4,168,000 as compensation for breach of contract without just cause, further detailed as follows:

a) MAD 690,000 corresponding to the Player's monthly salaries since August 2018 until June 2020 (i.e., 30,000*23);

b) MAD 1,640,000 corresponding to the sign-on bonus for the season 2018/2019;

c) MAD 1,640,000 corresponding to the sign-on bonus for the season 2019/2020;

d) MAD 198,000 corresponding to the costs of *"9 tickets Casablanca – Buenos Aires"* (22,000*9). The Player explained that he paid one return ticket in June 2018.

19. On 22 October 2018, WAC lodged its answer to the Player's claim including a counterclaim against the Player and CCT for breach of contract without just cause during the protected period. On a primary basis, WAC requested that the FIFA DRC declare itself incompetent to decide over the matter, given that under Article 12 of the Employment Agreement, any dispute arising out of its execution shall be submitted before the Moroccan NDRC. On a subsidiary basis, WAC requested, *inter alia* the payment of compensation for breach of contract without just cause during the protected period in the amount of MAD 10,300,000 (ten million three hundred thousand dirhams) plus 5% interest *p.a.* and the imposition of sporting sanctions against the Player and CCT. The financial claim of WAC against the Player is based on the following elements:

- MAD 720,000 corresponding to the remaining salaries under the Employment Agreement;
- MAD 40,000 corresponding to 8 flight tickets;
- MAD 192,000 i.e., 8,000*24, corresponding to apartment and car rental costs;
- MAD 4,000,000 corresponding to the Player's alleged remuneration under his employment agreement with CCT;
- MAD 10,000,000 corresponding to the alleged agreed amount for the transfer of the player Z., which WAC decided ultimately to refuse to transfer in order to employ his as a replacement for the Player;
- USD 600,000 corresponding to the costs of the player W.J., who allegedly plays in the same position as the Player;

20. The Player addressed the issue of competence of the FIFA DRC to decide upon the dispute by stating that the Moroccan NDRC does not respect the principle of equal representation between players and clubs since, *"out of 8 members, only one of them is representative of the players"*. The Player also questioned the independency of the Moroccan NDRC, given that its decisions are subject to appeal before the internal bodies of the FRMF and its president *"is chosen by the* [FRMF]*"*. In respect with the substance of the case, the Player argued that according to the jurisprudence of the Court of Arbitration for Sport (the "CAS") *"a player cannot be separated by the*

main squad without reasons and/or for an indeterminate time", since this type of behaviour falls within the scope of abusive conduct provided under Article 14 of the FIFA Regulations on Transfer and Status of Players (the "FIFA RSTP"). Further, the Player maintained that by severely failing to comply with its fundamental contractual obligations towards him, WAC demonstrated a lack of interest for the Player's services.

21. For its part, WAC argued that the current regulatory framework of the Moroccan NDRC is compliant with the FIFA Circular Letter 1010, while *"the previous decisions of the CAS as to this decisions-making body correspond to a regulatory framework dating back to the year 2013"*. In overall, WAC maintained that until the termination of the Employment Agreement it had adequately complied with its financial obligations towards the Player and considered that the Player was unable to provide evidence in support of his request in this regard. Further, WAC insisted that the Player had significantly breached his contractual obligations towards the Club given that he had left the Moroccan soil on many occasions during the term of the Employment Agreement and considering the fact that since 12 July 2018, he had consistently been failing to take part in the training sessions of the Club.

22. In reply to WAC's counterclaim, CCT considered such claim an act of bad faith, given that WAC had not raised any objection in relation to the transfer of the Player to CCT.

23. On 14 June 2019, the FIFA DRC issued its decision (the "Appealed Decision") with, *inter alia*, the following operative part:

"1. The claim of the Claimant / Counter-Respondent Alejandro Gabriel Quintana is partially accepted.

2. The Respondent / Counter-Claimant, [WAC], *has to pay to the Claimant outstanding remuneration in the amount of MAD 490,000, plus interest calculated as follows:*

- 5% interest p.a. as of 1 May 2018 over the amount of MAD 180,000 until the date of effective payment;

- 5% interest p.a. as of 1 June 2018 over the amount of MAD 30,000 until the date of effective payment;

- 5% interest p.a. as of 1 July 2018 over the amount of MAD 30,000 until the date of effective payment;

- 5% interest p.a. as of 31 July 2018 over the amount of MAD 220,000 until the date of effective payment;

- 5% interest p.a. as of 1 August 2018 over the amount of MAD 30,000 until the date of effective payment;

3. The Respondent / Counter-Claimant has to pay to the Claimant / Counter - Respondent, the additional outstanding amount of CHF 1,100 (one thousand and one hundred Swiss Francs).

4. Any further claim lodged by the Claimant / Counter – Respondent is rejected.

[…]

10. The counterclaim of the Respondent / Counter Claimant is rejected.

24. On 24 July 2019, the grounds of the Appealed Decision were communicated to the Parties, determining, *inter alia,* the following:

"6. […] *[T]he Chamber emphasized that in accordance with art. 22 lit. b) of the June edition of the* [FIFA RSTP] *it is competent to deal with a matter such as the one at hand, unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the Association and/or a collective bargaining agreement. With regard to the standards to be imposed on an independent arbitration tribunal guaranteeing fair proceedings, the* [FIFA DRC] *referred to FIFA Circular no. 1010 dated 20 December 2005. In this regard, the* [FIFA DRC] *further referred to the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations, which came into force on 1 January 2008.*

[…]

10. Taking into above, the [FIFA DRC] *entered into examination of the "Reglement de la Chambre Nationale de Resolution de Litiges" (hereinafter: the Moroccan NDRC Regulations), entered into force as from 1 August 2017* […].

11. In this respect, the [FIFA DRC] *analysed the contents of the Moroccan NDRC Regulations. In particular, the Chamber was able to note that Article 3 and 5 of said regulations* […].

12 After an in-depth analysis of the abovementioned provisions, the DRC recalled that, following the FIFA Circular 1010, one of the fundamental criteria that must be fulfilled for an arbitration tribunal to be categorized as independent and duly constituted under the terms of art. 58, par.3 (c) of the FIFA Statutes is that the parties must have equal influence over the appointment of arbitrators (principle of parity).

13. In this respect, the [FIFA DRC] *noted that, from Article 5 of the Moroccan NDRC regulations as provided by* [WAC]*, the principle of parity is not respected with regard to the appointment of arbitrators, because the parties do not choose arbitrators, since, from the wording of the aforementioned Moroccan NDRC Regulations, they appear to always be designated by the Executive Committee of the FRMF.*

14. In view of the above, the [FIFA DRC] *determined that* [WAC] *failed to provide sufficient evidence to prove that the Moroccan NDRC complies with the requirements outlined in art.22 lit. b) of the June 2018 edition of the* [FIFA RSTP] *in combination with FIFA Circular no.1010 dated December 2005.*

15. Consequently, the [FIFA DRC] *did not encounter any reason to deviate from the established jurisprudence in this matter, and consequently, considered, on a unanimous basis, that is competent to hear about the present dispute.*

[…]

22. In view of the above, the members of the Chamber understood that the main legal issue at stake is to establish whether the [Player] *had a just cause to terminate the* [Employment Agreement] *on 8 August 2018.*

23 In this regard, the members of the Chamber observed that, before terminating the contract on 8 August 2018, the [Player] *sent* [the Default Notice] *to* [WAC] *on 2 August 2018, by means of which it requested* [WAC] *inter alia to settle its alleged outstanding liabilities, and specifically granting a deadline of "15 natural days" before terminating the contract with "just cause".*

24. On this subject, the members of the Chamber observed that, although granting "15 natural days" to [WAC]*, the* [Player] *actually did not comply with the terms established by himself in his default notice, as he terminated the* [Employment Agreement] *merely 6 days after the default notice, i.e. on 8 August 2018.*

[…]

27. In view of the above, the chamber unanimously established that the [Player] *prematurely terminated the* [Employment Agreement] *with* [WAC]*, by not effectively granting* [WAC] *sufficient legal certainty about the possible actions to remedy its alleged default, as it contradicted the terms of his own default notice. As a result, the chamber understood that it is not in a position to grant compensation to the* [Player] *for the early termination of the* [Employment Agreement].

28. Notwithstanding the above, the Chamber noted that the [Player] *requested in his claim the payment of certain outstanding salaries.*

[…]

31. However, the Chamber observed the documentation provided by [WAC] *and noted that the latter sufficiently supported with evidence that it paid the* [Player] *with the total amount of MAD 120,000 during the period comprised between 6 April 2018 until 17 May 2018.*

32. In view of the differences between the aforementioned amounts, the Chamber decided that the [Player] *is entitled to a total outstanding amount of MAD 490,000 corresponding to his salaries of May, June, and July 2018, as well as the sign-on bonus in April and July 2018, minored by the paid amount of MAD 120,000.*

[…]

35. Subsequently, the Chamber turned its attention to the [Player's] *request to be awarded with the amount of MAD 30,000 as bonus for winning the 2018 African Super Cup.*

[…]

37. Within this context, the Chamber carefully examined the documentation presented by the [Player]*, and noticed that he failed to provide any evidence supporting that the aforementioned bonus was due. As a result, the* [FIFA DRC] *decided to reject this part of the* [Player's] *claim.*

38. In addition, the Chamber further analysed the [Player's] *request pertaining to "car costs and apartment".*

[…]

40.[…] *In the absence of any monetary value in the contractual condition relating to an apartment and a car and of any documentary evidence in this connection…the Chamber had to reject the* [Player's] *claim relating to said fringe benefits.*

41. Equally, as regards the [Player's] *claim pertaining to air tickets, on the basis of the information provided by FIFA Travel and referring to the relevant terms of the employment contract, the Chamber decided that* [WAC] *must pay to the* [Player] *the amount of CHF 1,100 for 2 air tickets".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 13 August 2019, the Player filed a Statement of Appeal with CAS against the Appealed Decision in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code"). In this submission, the Player requested that his Appeal be submitted to a Sole Arbitrator and that the proceedings be conducted in English.

26. On 15 August 2019, WAC filed a Statement of Appeal with CAS against the Appealed Decision in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code"). In this submission, WAC requested that its Appeal be submitted to a Sole Arbitrator and that the proceedings be conducted in French.

27. On 23 August 2019, following a suggestion from the CAS Court Office and the agreement of the Parties in this regard, their respective appeals were consolidated. The Parties were further informed that pursuant to Article R29 CAS Code and in view of the absence of an agreement between them regarding the language of the present proceedings, the time limit to file their respective Appeal Briefs was suspended.

28. On 17 September 2019, the CAS Court Office informed the Parties that, pursuant to Article R29 CAS Code, an Order on Language was rendered by the Deputy President of the CAS Appeals Arbitration Division in respect with the matter at hand, according to which: *"all written submissions shall be filed in English and all exhibits submitted in any other language should be accompanied by a translation into English"*. By means of the same letter, the CAS Court Office advised the Parties that the suspension on the time limit to file their respective Appeal Briefs was lifted and that said Appeal Briefs shall be filed by 15 October 2019.

29. On 9 October 2019, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided to submit the matter at hand to a Sole Arbitrator, in accordance with Article R50 of the CAS Code.

30. On 15 October 2019, the Parties filed their respective Appeal Briefs, pursuant to Article R51 CAS Code. By means of his Appeal Brief, the Player requested, *inter alia,* the production of several documents by FIFA and the FRMF.

31. On 24 October 2019, the Player requested that the time limit to file his Answer in *CAS 2019/A/4617* be fixed upon the payment by WAC of its share of the advance of costs in such procedure. This request was granted.

32. On 28 October 2019, WAC requested that the time limit to file its Answer in *CAS 2019/A/4616* be fixed upon the payment by the Player of his share of the advance of costs in such procedure. The request was granted.

33. On 25 November 2019, the CAS Court Office acknowledged receipt of payment of the Parties' shares of the advance of costs in regard with their respective Appeals. By means of the same letter and pursuant to Article R55 CAS Code, the CAS Court Office invited the Parties to file their respective Answers within 20 days upon receipt of said letter.

34. On 26 November 2019, the CAS Court Office informed the Parties that, pursuant to Article R54 CAS Code, the Deputy President of the CAS Appeals Arbitration Division had decided that the arbitral tribunal appointed to decide on the matter at hand was constituted as follows:

- Sole Arbitrator: Mr. Efraím Barak, Attorney-At-Law, Tel Aviv, Israel.

35. On 20 December 2019, following a reciprocal 5-day extension, the Parties submitted their respective Answers pursuant to Article R55 CAS Code.

36. On 3 January 2020, the Sole Arbitrator issued certain procedural instructions in respect with the matter at hand determining, *inter alia,* the following:

- The Sole Arbitrator informed the Parties that he had decided to request FIFA to produce *"a full copy of the FIFA File related to the above-referenced procedures"*. In this respect, the Sole Arbitrator requested the Parties to submit, within 10 days upon receipt of said file, a *"FIFA File Referral List"* (the "FFLR"), containing certain information about the documents to which the Parties may intend to refer.

- *"The Sole Arbitrator notes that* [the Player] *requests CAS to contact the* [FRMF] *to produce three documents that may be relevant for these proceedings …. [T]he Sole Arbitrator notes that* [the Player] *did not submit any evidence proving that he was not able to obtain such documents by himself. For these reasons,* [the Player's] *request at this stage is rejected. Notwithstanding the above,* [the Player] *may file such request again if he is able to prove that he made the expected and necessary efforts to obtain such documents and despite such efforts, he was not able to obtain such documents"*.

37. On 5 February 2020, the Player submitted his FFLR, including further arguments in respect with each document. Further, and due to his previous unsuccessful attempts in this respect, the Player requested by the Sole Arbitrator to order the production of the following documents by the FRMF (the "Evidentiary Request"):

- A copy of the pertinent rules of the FRMF that *"limits the registration of foreign players to just 4 players for the season 2018-2019"*;
- A copy of the foreign players registered by WAC during the sporting season 2018/2019, including registration and deregistration dates;
- A copy of the registration and deregistration of the Player, including registration and deregistration dates;

38. On 6 February 2020, WAC objected to the Evidentiary Request, asserting *inter alia* that said request was submitted belatedly, pursuant to Article R56 CAS Code. Further, WAC noted that certain documents contained into the Player's FFRL were already know to the Parties during the proceedings before the FIFA DRC and maintained that after the submission of his Appeal Brief, the Player should not be allowed to bring forward new arguments in respect with said documents.

39. On 28 February 2020, the Sole Arbitrator addressed the following decision to the Parties (the "Preliminary Decision"):

- *"The objection submitted by WAC in respect with the admissibility of comments made by* [the Player] *with respect to the referral No.3 of his … FFRL … is accepted. Said comment will be disregarded by the Sole Arbitrator in as much as it concerns its being part of the FFRL.*
- *The objections submitted by WAC in respect with the admissibility of comments No. 4 and 5 made by* [the Player] *in the FFRL are dismissed.*
- *The* [Evidentiary Request] *submitted by* [the Player] *with his abovementioned letter, regarding the production of the requested documents by the* [FRMF] *is dismissed, as the* [FRMF] *is not party to these proceedings.*
- *Yet, and as the Sole Arbitrator is of the opinion that these documents are relevant and may be in the possession of WAC, pursuant to Article R44.3. of the* [CAS Code], *the Sole Arbitrator requests WAC to inform if the documents are in tis possession or if they have access to these documents, and if the answer is of the affirmative to submit by* ***16 March 2020****, copies of the following documents & information:*

  a) *The regulations of the* [FRMF] *regarding the registration of foreign football players in the national league division to which WAC participated during the sporting season 2018-2019* […]

b) A list of all the foreign football players registered by WAC during the sporting season 2018-2019 which should include the date when each of them was registered with the [FRMF] *as a player of WAC.*

c) The official document being evident of the registration and deregistration (if any) of [the Player] *with the* [FRMF] *as a player of WAC for the sporting season 2018-2019, including the respective registration and deregistration dates* […].

40. On 24 and 26 March 2020 respectively and upon being invited to provide their views in this respect, the Parties stated their agreement for an award to be rendered on the matter at hand on the sole basis of their written submissions.

41. On 22 and 29 April 2020 respectively, the Parties filed the duly signed Order of Procedure.

42. On 11 May 2020, the Sole Arbitrator communicated the following to the Parties:

"The [Parties] *may recall that the original decisions in these two cases was of holding a hearing, Then, the Covid-19 breakout came up and both* [Parties] *informed that they prefer that an award will be rendered on the basis of the written submissions only. In between the* [Parties] *also submitted some more documents as a result of a request for disclosure of documents and various decisions of the Sole Arbitrator.*

After having examining again, thoroughly, the case file, and while of course fully respecting the preference of the [Parties]*, as expressed by the counsels, the Sole Arbitrator is of the opinion that for the best interest of both* [Parties] *and the better understanding of the facts by the Sole Arbitrator, the possibility of a hearing should be reconsidered. Before any further decision on this matter will be taken, the Sole Arbitrator considers that an "organizational conference" would be important. The Sole Arbitrator would like to have a video conference with the counsels in order to discuss the matter. Since the consultation already took place and a decision was taken, the Sole Arbitrator prefers to consult the matter again this time in person with the counsels in a video conference, in which the* [Parties] *may also agree not to have the full hearing over video but only the hearing of the* [Parties] *and the witnesses, a possibility covered also under R44.2".*

43. On 20 May 2020, following the Parties' agreement in this respect, an "organizational video-conference" took place between the Sole Arbitrator and counsels for the Parties, as well as Mr. Antonio De Quesada, Head of Arbitration Services for CAS and Mr. Antonios – Georgios Vogiatzakis, attorney-at-law in Thessaloniki, Greece, appointed as an *ad hoc* clerk to assist the Sole Arbitrator in the matter at hand.

44. On 27 May 2020 and upon being invited to provide their views in this respect, the Parties informed the CAS Court Office about their preferences on the issue of a hearing over video to be held on the present matter. Whereas the Player stated his availability for a hearing to be held on the date proposed by the Sole Arbitrator, WAC maintained its initial position for an award to be rendered solely on the basis of the Parties' written submissions.

45. On 3 June 2020, the Sole Arbitrator addressed the Parties about, *inter alia*, the following:

"[…] *Based on the original mutual preference of the Parties that the award will be rendered on the basis of the written submissions only, and the preferences following the reconsideration, the Sole Arbitrator decided to respect the original request of both* [Parties]. *Therefore, the Sole Arbitrator decides that no hearing will take place and he will now proceed to issue the award on the basis of the written submissions and the documents and other evidence on file".*

46. The case file contains only one witness statement i.e., the witness statement of Mr. Marcus Dabtas Fraga, intermediary (the "Intermediary"), called as a witness by the Player.

47. The Sole Arbitrator confirms that it carefully read and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if part of them is not specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES AND PRAYERS FOR RELIEF[3]

A. The Player

48. The submissions of the Player, in essence, may be summarized as follows:

1. The jurisdiction of the FIFA DRC

- *"*[…] *[T]he first relevant issue is that* [WAC] *admits the* [Moroccan NDRC] *does not comply with the FIFA circular 1010. However,* [WAC] *considers that since the body is only "a first instance body with appeal to FIFA" such requirement is not mandatory*;

- […] *First of all, the "principle of exhaustion of legal remedies" is not universal and in any event corresponds to appeal procedures but never to the right to lodge a claim. In any event, is not a requirement of the FIFA regulations and therefore rejecting jurisdiction for that reason is not possible*;

- *Second,* [FIFA DRC] *is not an appeal body of decision of national federations.* [WAC] *did not even prove the regulations of the* [Moroccan NDRC] *point to FIFA as appeal body for its decisions.* […]*"*;

- The pertinent clause of the Employment Agreement providing for the amicable resolution of disputes is vague and does not establish any procedures in this respect. Further, by remaining silent to the various letters sent by the Player, WAC demonstrated evidently its reluctance to negotiate with him.

[3] The submissions and the prayers for relief as presented in this chapter refer to both, The Player's Appeal and WAC's Appeal

2. The termination of the Employment Agreement

- *"While the first part of the* [Default Notice] *was related to outstanding amounts, the second paragraph was dedicated exclusively to the gross misbehaviour in relation to the* [Player's] *personality with the solo training and other conducts aiming to force the contractual termination*;

- *While the first part of the* [Default Notice] *was based on art. 14 bis of the FIFA RSTP and included a 15 days deadline as provided in such article; the second part of the claim, and certainly the most serious one, claimed attacks on the* [Player's] *personality on the basis of art. 14.2 of the FIFA RSTP and gave a 72 hours warning to remedy such breaches*;

- *Art. 14.2 does not provide any specific time limit to cease and desist with abusing* [sic] *conduct aiming to force a contractual termination. Considering the rights affected by the club with these kinds of conduct, is obvious that a shorter deadline is applicable. This has also been the position of FIFA and CAS in several precedents in which short time periods were applied*;

- *The conduct of* [WAC] *towards the* [Player], *sidelining him, making him train alone, obliging him to travel each day 1 hour by his own means to the club, all this why he was not being paid and was told he was not in the clubs plans, clearly constitutes a just cause for contractual termination as provided for in art. 14.2 of the FIFA RSTP* […]*".*

3. Compensation due because of the termination of the Employment Agreement

- *"It is well settled that the injured party must be restored to the position in which the same party would have been had the contract been properly fulfilled, the so called positive interest*;

- *Until the date of the termination with just cause,* [WAC] *owed the* [Player] *the amount of MAD 610.000 – Signing on fee MAD 520.000 – and 3 months salaries May, June and July MAD 90.000*;

- *The MAD 10.000 payment was the prize money for the Supercup, the MAD 80.000 was the payment of 3 months housing and 3 months car allowance*;

- *As to the other MAD 30.000 … there is not even a bank document supporting such amounts* […];

- *As to plane tickets, the price of an Iberia flight Buenos Aires Casablanca is usd 1.600…that shall be reimbursed. The excuse of* [WAC], *that the travel was "unauthorized" is nonsense. It was the end of the season and there was no restriction for an Argentinian player to return home*;

- *According to its own letter from June 25,* [WAC] *was expecting the* [Player's] *return on June 17. Therefore, from May until June 17 at least he was not absent*;

- […] [WAC] *cannot claim at this point that the salaries for the months of June, July and August cannot be claimed due to the Player's absence. There is not automatic forfeiture of salaries in case of an absence.*

The club must start a disciplinary procedure and decide the applicable measure. [WAC] *never informed the Player that they were not paying him die to his absence or as a disciplinary measure*;

- *The price for the* [car] *was approximately MAD 4.000 every 15 days and the housing MAD 13.900 per month…this makes an approximate total of MAD 22.000 per month and explains the transfer of MAD 80.000*;

- *The wording of the documents, the behavior of the club at the drafting and signing of the agreements, the subsequent behaviour in relation to payments and silence in relation to claims, proves that the MAD 500.000 for commission fee were additionally to the amounts agreed for the* [Player] *in the employment contract*;

- *The Player signed an employment contract with the Mexican team* [CCT] *for a total amount of USD 63.000. – and after that,* [the Player] *found a job with the Bolivian club Sport Boys for a salary of USD 74.800* […]*".*

4. WAC's claim for compensation

- *"The difference in the amounts saved by WAC and the actual "damage" suffered is also the best evidence to prove which party was really interested in forcing termination of the* [Employment Agreement]*".*

5. Sporting sanctions

- *"*[…] *[T]he request for sporting sanctions shall be in any case rejected due to the lack of* [WAC's] *standing to sue and also due to the lack of* [the Player's] *standing to be sued".*

49. On this basis, the Player submits the following prayers for relief:

(a) *"To revoke the decision of the* [FIFA DRC] *as requested here.*

(b) *To rule that the* [Player] *terminate the* [Employment Agreement] *with just cause due to the breaches by* [WAC] *and to admit the* [Player's] *claim in full.*

(c) *To condemn* [WAC] *to pay the* [Player] *the amount of USD 344.642*[4] *plus interests at a 5% annual rate from August 8, 2018.*

[4] While the amounts that the Player was supposed to receive under the Employment Agreement were in Moroccan Dirhams, the Player converted the amounts to US$ in order to reduce the mitigation amounts that were also converted by him to US$. The question of the relevant currency for any payment if due to any of the Parties will be further dealt with by the Sole Arbitrator in par. 143 *infra*.

(d) *To allocate to* [WAC] *the costs of this procedure, the procedure before FIFA and the contribution of CHF 15.000 towards the* [Player's] *costs".*

B. WAC

50. The submissions of WAC, in essence, may be summarized as follows:

1. The jurisdiction of the FIFA DRC

- The Moroccan NDRC does not act as a substitute of the FIFA DRC and therefore, FIFA circular 1010 is not to apply on its proceedings. In this respect, article 12 of the Employment Agreement is *"merely an illustration of a well-known principle in sports law: that of the exhaustion of legal internal remedies"*;

- *"Apart from not complying with the procedure for exhausting domestic remedies, the Player has also failed to implement the amicable dispute resolution procedure provided in Article 12 of the* [Employment Agreement];

- *FIFA's decision must therefore be annulled because it should have postponed its ruling until the Moroccan NDRC had issued its decision in order to respect the principle of exhaustion of legal remedies and the amicable dispute settlement procedure provided in the contract".*

2. The termination of the Employment Agreement

- *"*[…] *[I]t appears that the Player ignored* [the Default Notice] *and the time limit mentioned above by sending the* [WAC] *a letter of early termination of the* [Employment Agreement] *on 8 August, i.e. 6 days after the formal notice was sent*;

- *The termination is all the more faulty as the Player did not even bother to comply with Article 12 of the* [Employment Agreement];

- *While the* [FIFA DRC] *does not draw any conclusions from his contract termination and does not qualify it as a termination without just cause, it does state unequivocally that the* [Player] *terminated his contract prematurely and that he is not in position to claim any compensation for the early termination of the contract*;

- *However, if the termination of the* [Employment Agreement] *is premature and without just cause within the meaning of Article 14 bis of the FIFA Regulations, it is necessarily faulty and therefore falls with the scope of Article 17 of the FIFA RSTP on the consequences of a termination of the contract without just cause".*

3. Compensation due because of the termination of the Employment Agreement

- Compensation due for the breach of an employment agreement without just cause shall be calculated on the basis of the criteria set in Article 17 FIFA RSTP;
- The residual value of the Employment Agreement is MAD 4,422,000.00;
- Under the employment agreement between CCT and the Player, the latter is entitled to receive the total amount of MAD 488,954.00.

4. The Player's claim for compensation

- *"It should be noted that the Player left the club without permission on 21 May 2018 until 12 July 2018 and he refused to participate in trainings with WAC since this date*;
- *As a result, the Player is not entitled to claim payment of his contractual fees subsequent to his absence, insofar as he himself was in breach of his contract with just cause*;
- *Therefore, the salaries for the months June, July and August cannot be claimed from the WAC, as well as the last instalment of the signing bonus that was to be paid on 15 July 2018 (220,000 MAD)*;
- *Thus, on the date of termination of the* [Employment Agreement] *the Player should have received a total of MAD 720,000* […];
- *The Player…received a total of MAD 950,000 which is more that he should have received under the* [Employment Agreement];
- *The fact that the Player used the sum of 500,000 MAD to pay his agent's commission cannot be sufficient to invalidate the fact that the payment of the WAC corresponds to a salary paid to the Player*;
- *It is only today that* [the Player] *is arguing for the first time before CAS that the breach of his contract would be in fact based on Article 14.2 of the FIFA RSTP*;
- *Such a change in strategy is a violation of the principle of estoppel* […];
- *Furthermore, in considering the Player's allegations to be proven (which is not), it should be considered that WAC had valid reasons to request the Player to train provisionally away from the first team;*
- […] [T]*here are circumstances when a club may deem necessary for a player to train alone, for example if his fitness has dropped below the level of that of his team mates* [sic]*, if his body mass index was too high … etc*;

- *Regarding the consequences of the Player's unjustified absence, such circumstance justifies that the WAC may deem necessary for the Player to train alone provisory before coming back to the first team".*

5. Sporting sanctions

- *"The* [Employment Agreement] *was signed on 16 January 2018 and terminated on 8 August 2019, i.e. less than 8 months later*;

- *This presumption* [of Article 17.4 FIFA RSTP] *renders the new club liable to a sporting sanction which results in the prohibition to register new players, nationally or internationally, for two complete and consecutive registration periods".*

51. On this basis, WAC submits the following prayers for relief:

"– As a preliminary:

Declare that the FIFA DRC didn't have jurisdiction to rule over the case;

– Subsidiary:

In the event the CAS considers that FIFA has jurisdiction to rule over the case, [WAC] *requests CAS to:*

- *Say and judge that the Player has terminated* [the Employment Agreement] *without just cause and during the protected period.*

- *Order the Player and CCT to jointly and severally pay the WAC compensation of MAD 5,000,000.*

- *Refer back the case to FIFA to impose sporting sanctions provided for in Article 17 of the* [FIFA RSTP] *both against the Player and CCT.*

- *Order the Player and CCT jointly and severally to pay to the WAC an indemnity of 15,000€ to compensate for the damage suffered as a result of the costs incurred in connection with these proceedings;*

- *Order the* [Player and CCT] *to be responsible for the costs of the proceedings before* [the FIFA DRC] *and the CAS".*

52. It also follows that both Parties seek with their respective Answers for the dismissal of the other party's Appeal.

V. JURISDICTION

53. The Player submits that the jurisdiction of CAS derives from Article 58(1) FIFA Statutes, as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions*

passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".

54. WAC also maintains that the jurisdiction of CAS derives from Article 58(1) FIFA Statutes, and Article R47 of the CAS Code.

55. The jurisdiction of CAS is further confirmed by the Parties by means of their signature on the Order of Procedure.

56. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

57. Both Appeals were filed within the deadline of 21 days set by Article 58(1) FIFA Statutes. Both Appeals complied with all other requirements set in Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

58. It follows that both Appeals are admissible.

VII. APPLICABLE LAW

59. The Sole Arbitrator notes that pursuant to Article 1 of the Employment Agreement, said contract is primarily governed by *"the legislation in force in Morocco for professional sprortsmen"* and *"the provisions of the General Regulations of the* [FRMF] *and, in particular, the regulations on the status and transfer of players of the FRMF".*

60. The Player asserts that according to Article R58 CAS Code and Article 57 FIFA Statutes (2019 Edition), the matter at hand shall be decided according to FIFA Regulations and additionally, Swiss law.

61. In both submissions presented by WAC i.e., its Appeal Brief in *CAS 2019/A/6417* and its Answer in *CAS 2019/A/6416*, WAC does not provide any specific reference in regard with the applicable law. This silence of WAC with regard to the applicable law in conjunction with its agreement on the jurisdiction of CAS, leads the Sole Arbitrator to conclude that WAC also maintains that, in spite of the explicit choice of law made in Article 1 of the Employment Agreement, R58 CAS Code in conjunction with Art. 57 FIFA Statutes take precedence when deciding on the applicable law**.**

62. Article R58 of the CAS Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties, or in the absence of such a choice, according to the law of the country in which the

federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rule of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

63. Article 57(2) FIFA Statutes provides the following:

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

64. In accordance with the "Haas Doctrine", Article R58 CAS Code *"serves to restrict the autonomy of the parties, since even where a choice of law has been made, the 'applicable regulations are primarily applied, irrespective of the will of the parties.* […] *Hence any choice of law made by the parties does not prevail over Art. R58 of the CAS Code, but is to be considered only within the framework of Art. R58 of the CAS Code and consequently affects only the subsidiarily applicable law"* (HAAS U., Applicable law in football-related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, Bulletin TAS / CAS Bulletin, 2015/2, p. 11-12).

65. A further question arises as to the relation between the Parties' explicit choices of law in the Employment Agreement and the reference in Article 57(2) FIFA Statutes to the subsidiary application of Swiss law.

66. According to the Haas Doctrine, *"in appeal arbitration proceedings* [Article R58 CAS Code] *assumes that the federation regulations take precedence. Consequently, the rules and regulations of a federation also take precedence over any legal framework chosen by the parties* […]. *If, therefore, the federation rules provide that Swiss law is to be applied additionally (to the rules and regulations of FIFA) then this must be complied with by the Panel.* […] *Where* [Article 57(2) FIFA Statutes] *"additionally" refers to Swiss law, such a reference only serves the purpose of making the RSTP more specific. In no way is the reference to Swiss law intended to mean that in the event of a conflict between the RSTP and Swiss law, priority must be given to the latter.* […] *Consequently, the purpose of the reference to Swiss law in* [Article 57(2) FIFA Statutes] *is to ensure the uniform interpretation of the standards of the industry. Under* [Article 57(2) FIFA Statutes], *however, issues that are not governed by the RSTP should not be subject to Swiss law".* (HAAS U., Applicable law in football-related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, Bulletin TAS / CAS Bulletin, 2015/2, p. 14-15).

67. While the "Haas Doctrine" is not binding, the Sole Arbitrator finds it persuasive and coherent in its approach. This doctrine is also considered as an adequate systematic mechanism to resolve the complicated formula involving many factors in deciding what is the applicable law in a situation of multi-legal sources (the agreement between the Parties, the FIFA Statutes, the FIFA Regulations and the CAS Code). Therefore, the Sole Arbitrator adheres to it.

68. The Sole Arbitrator would still apply *"the legislation in force in Morocco for professional sportsmen"* and *"the provisions of the General Regulations of the* [FRMF] *and, in particular, the regulations on the status and transfer of players of the FRMF"* on a subsidiary basis, but only if it would have been properly submitted and insofar as it would concern issues that are not regulated in the FIFA RSTP or that are related to the interpretation of the FIFA RSTP, as part of an overall judicial system that governs the industry of football worldwide. However, this was not the case here and application of such national law and national regulations is not needed.

69. Accordingly, the Sole Arbitrator finds that the various regulations of FIFA are to be applied primarily, in particular the FIFA RSTP (edition June 2018), and, additionally, Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

A. Preliminary issue

70. In respect with the Preliminary Decision, the Sole Arbitrator notes the following:

71. As indicated above (par. 36), following the pertinent plea submitted by the Player, the Sole Arbitrator decided to request FIFA to produce a complete copy of the FIFA File related to the matter at hand. By means of the same correspondence, the Sole Arbitrator provided the Parties with certain instructions regarding the submission of their respective FFRL (the abbreviation stands for the "FIFA File Referral List" that the Parties were ordered by the Sole Arbitrator to submit, par. 36 *supra*), pertaining primarily to the description and references upon the documents on which the Parties intended to rely. The primary intention of the Sole Arbitrator in this respect was to provide the Parties with the opportunity to avail themselves of documents which were in the possession of FIFA and – save for the Parties' negligence – could not be submitted before CAS. Nevertheless, and in accordance with Article R56 CAS Code, the Parties were not authorized to *"supplement or amend their requests or argument"*.

72. In this respect, the Sole Arbitrator observes that WAC objected to the admissibility of the comments made by the Player with respect to the referral No.3 of his FFRL. By reviewing said comments, the Sole Arbitrator finds that indeed the Player sought to supplement his submissions by putting forward additional argumentation on the occasion of referring to the document in question and by this exceeding the limited permission granted by the Sole Arbitrator. Consequently, said argumentation is disregarded in as much as it forms part of the Player's FFRL.

73. On the contrary, the Sole Arbitrator finds that the objections submitted by WAC in respect with the admissibility of the comments made by the Player with respect to the referrals No.4 and No.5 of his FFRL, shall be dismissed. The Sole Arbitrator finds that the simple references of the Player on the content of said documents are not to be considered as additional assertions

and therefore are not in breach of Article R56 CAS Code nor of the instructions of the Sole Arbitrator.

74. The Sole Arbitrator further observes that by means of the Evidentiary Request, the Player sought for the production of the pertinent documents (par.37) by the FRMF. Nevertheless, the Sole Arbitrator wishes to emphasize the fact that CAS is an arbitral tribunal rather than an ordinary court and therefore, the power to order the production of documents by virtue Article R44.3 CAS Code is vested upon it solely towards the Parties, on the basis of the arbitration agreement concluded between them. Be it as it may, the Sole Arbitrator finds that the FRMF is not a party in the present proceedings and as a result the Sole Arbitrator has no judicial or any other power to order the FRMF to submit the requested documents, as the FRMF would not be obliged to comply with the Evidentiary Request. In view of this background, the Sole Arbitrator finds that an evidentiary request addressed towards a third party to the present proceedings would be procedurally "inefficient".

75. The Sole Arbitrator further observes that pursuant to Article R44.3 CAS Code *"[a] party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant"*, a provision that is also applicable on the present proceedings pursuant to Article R57 CAS Code. In this regard, the Sole Arbitrator finds that the documents sought by means of the Evidentiary Request are relevant to the present dispute and likely to be in the possession of WAC, and therefore WAC was ordered to provide the documents that were indeed in its possession.

B. Main issues

76. The main issues to be resolved by the Sole Arbitrator are:

(i) Was the FIFA DRC competent to decide upon the dispute?

(ii) Is the Player entitled to receive any outstanding remuneration under the Employment Agreement and if yes, to what extent?

(iii) Was the Employment Agreement terminated with just cause?

(iv) Which are the financial consequences of any of the findings under question (iii)?

(v) The issue of sporting sanctions requested by the Club.

(i) Was the FIFA DRC competent to decide upon the dispute?

77. The competence of the FIFA DRC to decide upon the Player's claim against WAC is contested between the Parties. WAC maintains that the competent first instance to deal with the present dispute is the Moroccan NDRC. According to WAC, said adjudicatory body shall not be

deemed as a substitute for the FIFA DRC but merely as an *"internal remedy"* that had to be exhausted prior to the submission of the pertinent dispute before the adjudicatory bodies of FIFA. Yet, even before taking recourse to the Moroccan NDRC, the Player was primarily obliged to engage any means necessary for the amicable resolution of the dispute between the Parties pursuant to Article 12 of the Employment Agreement. In this regard, WAC asserts that the FIFA DRC had erred in concluding that the Moroccan NDRC shall comply with the minimum procedural standards that need to be met by an arbitration tribunal recognized under the rules of a national association in order to be considered *"independent and duly constituted"*[5] (see *supra*, par. 24). In essence, WAC claims that following an unsuccessful settlement attempt, the Player should have lodged his claim against the Club before the Moroccan NDRC, the pertinent decision of which could be appealed before the FIFA DRC as provided under Article 12 of the Employment Agreement.

78. On the other hand, the Player submits that the legal principle of *"prior exhaustion of internal remedies"* is not universal and that in any event, it pertains solely to appeal proceedings as opposed to first-instance claims. According to the Player, the FIFA DRC is not designated to act as an appellate body against decisions issued by the internal authorities of the various national associations and therefore, the pertinent argument brought forward by WAC is *"untenable"*. The Player also maintains that notwithstanding the above, by virtue of Article 30 of the *"Reglement de la Chambre Nationale de Resolution de Litiges"* (the "Moroccan NDRC Regulations"), the decisions of the Moroccan NDRC are subject to appeal before the *"Chambre Arbitral du Sport"*. As a result, the Player upholds that the FIFA DRC was competent to decide upon the present dispute.

79. Which of the above views is to be followed depends first and foremost on the interpretation of the Employment Agreement regarding the extent of the Player's obligation to primarily resort to the amicable resolution of his claim against the Club and subsequently, on ascertaining which adjudicatory body (the FIFA DRC or the Moroccan NDRC) has jurisdiction to decide upon said claim in case a settlement is not achieved in this respect. For the sake of establishing which deciding body is competent to resolve the dispute between the Parties, the Sole Arbitrator considers of essence to determine, *inter alia*, the legal nature of the Moroccan NDRC and more specifically, whether it constitutes a mere *"internal remedy"* that had to be exhausted prior to the submission of any claim before the FIFA DRC or whether it is indeed designated to act as a substitute for the latter, pursuant to Article 59(3) FIFA Statutes and Article 22 FIFA RSTP. Therefore, the Sole Arbitrator will start his analysis by reviewing Article 12 of the Employment Agreement as well as the pertinent provisions of the FIFA Regulations.

80. Article 12 of the Employment Agreement provides the following:

[5] Article 59(3) FIFA Statutes.

"In case of a dispute and/or a litigation arising out of the execution and/or interpretation of the clauses of this [Employment Agreement]*, the parties are obliged to resort in priority to all the means and procedures for an amicable settlement of the dispute.*

In the event of failure, the dispute is submitted by one or the other party to the [the Moroccan NDRC].

The decisions of the [Moroccan NDRC] *are subject to appeal to FIFA".*

81. Article 59(3) FIFA Statutes stipulates the following:

"The associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the association or disputes affecting leagues, members of leagues, clubs, members of clubs, players, officials and other association officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the association or confederation or to CAS".

82. Article 22 FIFA RSTP provides as follows:

"Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;

b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs;

c) employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level;

d) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to different associations;

e) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to the same association provided that the transfer of a player at the basis of the dispute occurs between clubs belonging to different associations;

f) disputes between clubs belonging to different associations that do not fall within the cases provided for in a), d) and e)".

83. The Sole Arbitrator notes that Article 12 of the Employment Agreement provides solely for the amicable resolution of any dispute arising out of its execution without any further reference on the procedure that has to be followed or the means that need to be exploited for that purpose. Further, the Sole Arbitrator observes that during the term comprising between 21 June 2018 until 8 August 2018 - where the Employment Agreement was terminated - a correspondence that included several letters was exchanged between the Parties regarding the effective settlement of the Player's claims against the Club, albeit with unsuccessful results. Under such circumstances and given the absence of any evidence to the contrary, the Sole Arbitrator finds that the Player fulfilled his pertinent contractual duty and was under no obligation to make any further attempts or to engage any additional means for the amicable resolution of the present dispute. Consequently, the Sole Arbitrator does not concur with the pertinent argumentation brought forward by WAC and he finds that the Player complied adequately with his contractual obligation to *"resort in priority to all the means and procedures for an amicable settlement of the dispute"* prior to its judicial pursuit, in accordance with Article 12 of the Employment Agreement.

84. After having established the abovementioned, the Sole Arbitrator will proceed in ascertaining which adjudicatory body is competent to decide upon the dispute between the Parties, a question that mainly pertains to the legal nature of the Moroccan NDRC and whether it is to be classified as a *"national arbitration tribunal"* under the auspices of the abovementioned provisions of the FIFA Regulations or, according to the allegations of WAC, it shall be deemed as an *"internal remedy"* within the context of the FRMF, the decisions of which can be appealed before the FIFA DRC. The essence of the argument of WAC is that, whereas it does not deny the jurisdiction of the FIFA DRC to decide upon the present dispute, there is a certain pre-condition that needs to be fulfilled before the FIFA NDRC can apply its jurisdiction, and that pre-condition is a pre-adjudicatory phase before the Moroccan NDRC. At first sight, this argument is interesting as such and could have been even attractive if the worldwide system of dispute resolution with an international dimension in the field of football was established in such a two-stage system (or three if to count also CAS), the first of which being the national one and the first appellate court being the FIFA DRC, the pertinent decisions of which would be appealed before CAS. However, the Sole Arbitrator is of the opinion that the system suggested by WAC, even if worth a deep consideration as a reasonable possibility, cannot operate within the existing framework of the international dispute resolution system as designed and structured by FIFA.

85. The Sole Arbitrator notes that Article 59(3) FIFA Statutes provides primarily for the arbitral resolution of disputes between, *inter alia*, players and clubs, unless national law provides otherwise. Accordingly, Article 22(b) FIFA RSTP stipulates that the adjudicatory bodies of FIFA are competent to hear employment-related disputes of an international dimension between clubs and players, with the exception of submitting such disputes to *"an independent arbitration tribunal that has been established at national level within the framework of the association and/or*

a collective bargaining agreement" or to civil courts. The legal nature of the matter at hand is not contested between the Parties, being an employment-related dispute of an international dimension between a club and a player. Within the legal environment of FIFA and according to the structure that FIFA designed and imposed upon its members, said disputes are primarily resolved by the FIFA DRC, unless otherwise provided in FIFA's Regulations.

86. In view of the foregoing, the Sole Arbitrator finds that when it comes to the resolution of disputes such as the matter at hand, the implicated parties are not allowed to freely designate the deciding body of their choice nor to decide on a possible hierarchy between a national tribunal and the FIFA DRC but rather, they are limited to the alternatives and the venues provided under the applicable FIFA Regulations in this regard. Therefore, even if one were to assume that the Moroccan NDRC constitutes an *"internal remedy"* that had to be exhausted prior to the submission of the pertinent dispute before the FIFA DRC, said jurisdiction clause would be void in this respect.

87. Articles 22 and 24 FIFA RSTP do not designate the FIFA DRC to act as an appeal body against decisions issued by any kind of internal authority established within the framework of the various national associations; by virtue of the aforementioned provisions, the FIFA DRC is established solely as a first-instance tribunal. In any case and contrary to the argumentation brought forward by the Club, the Sole Arbitrator observes that pursuant to Article 30 of the Moroccan NDRC Regulations, the decisions of the Moroccan NDRC are subject to appeal not before the FIFA DRC but, before the *"Chambre Arbitral du Sport"*. This clear contradiction between the Moroccan NDRC Regulations and the adjudicatory scheme suggested in Article 12 of the Employment Agreement is another supporting element in reaching the conclusion that the submission of WAC in this respect is of no avail.

88. Denying WAC's submission with respect to the validity of the designation of the Moroccan NDRC as a preliminary stage before the submission of an appeal to the FIFA DRC is sufficient to conclude that the latter indeed had jurisdiction to deal with the matter at hand. Yet, even if the Moroccan NDRC cannot be considered as a legitimate first instance body that entails the need to exhaust proceedings in this tribunal before appealing to the FIFA DRC, still the Sole Arbitrator finds it important to examine, as the FIFA DRC also did, if the Moroccan NDRC can be considered a legitimate and valid arbitral tribunal under the FIFA RSTP, thus only precluding the possibility of an appeal but not the duty to approach the Moroccan NDRC as a valid national tribunal.

89. Art. 22 (b) of the FIFA RSTP stipulates that:

"FIFA is competent to hear: […] *employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national*

arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs".

90. As explained and interpreted by the long-standing jurisprudence of CAS and the FIFA DRC, tribunals established at national level have jurisdiction to settle employment-related disputes of an international dimension between clubs and players only if the following requirements are met: (i) there is an independent arbitral tribunal established at the national level; (ii) the jurisdiction of this independent arbitral tribunal derives from a clear reference in the employment contract; and (iii) this independent arbitral tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs. Pursuant to the FIFA Circular no. 1010, the terms *"independent"* and *"duly constituted"* require that an arbitral tribunal meets the minimum procedural standards which comprise the principle of parity in the constitution of said tribunal, the right to an independent and impartial tribunal, the principle of a fair hearing, the right to contentious proceedings and the principle of equal treatment.

91. The Sole Arbitrator observes that the FIFA DRC findings and conclusions in the Appealed Decision (as explained in paras. 10-15 of the Appealed Decision) that the Moroccan NDRC has no jurisdiction to decide upon the present dispute since it does not comply with said conditions and mainly the clear finding that: *"from article 5 of the Moroccan NDRC regulations as provided by* [WAC]*, the principle of parity is not respected with regard to the appointment of arbitrators, because the parties do not choose the arbitrators* […]*"* (para. 13 of the Appealed Decision), in essence was not contested by WAC in these proceedings but rather, WAC was focused on the argument that the venue to FIFA must pass first through the Moroccan NDRC. Therefore, the Sole Arbitrator has no grounds whatsoever to reach any different conclusion than the one of the FIFA DRC and there is no real necessity to proceed his analysis any further in this respect thereby confirming the findings of the Appealed Decision on the pertinent issue.

92. It follows that the Player validly submitted his claim against the Club before the FIFA DRC, which was competent to decide upon the present dispute.

(ii) Is the Player entitled to receive any outstanding remuneration under the Employment Agreement and if yes, to what extent?

93. The Player submits that already prior to the termination of the Employment Agreement, the Club was in default towards him, owing the amount of MAD 610,000 (or USD 63,080 pursuant to the pertinent request for relief), comprising of: i) MAD 520,000 corresponding to the signing bonus instalments due on April and July 2018 (MAD 300,000+220,000) and ii) MAD 90,000 corresponding to three salary instalments payable on May, June and July 2018 respectively.

94. In its answer to the Appeal Brief of the Player (*CAS 6416*), the Club claims that all the Prayers for Relief as presented by the Player should be rejected. The Club further claims that due to his absence, the Player is not entitled to receive the salary instalments payable on June, July and August 2018, as well as the signing bonus instalment due on July 2018. In overall, the Club avers

that for the term comprising between 15 January 2018 until 8 August 2018, the Player has received, not only the entirety of the monies provided by their contractual relationship for the period in which he was not absent but also, some remittance in excess.

95. The Sole Arbitrator notes that for the term in question, i.e. until the date of the Termination Letter sent by the Player on 8 August 2018, the Player was entitled to receive the following remuneration pursuant to Article 5.1 of the Employment Agreement: i) MAD 195,000 as fixed salaries, further broken down to six and a half monthly instalments of MAD 30,000 (half of January plus February – July 2018) and ii) MAD 820,000 as a sign-in bonus, payable on three instalments (in January, April and July 2018), both figures amounting to a total sum of MAD 1,015,000, plus some additional allowance for housing, car rental and 4 round-trip air tickets, not explicitly identified thereunder.

96. In reviewing the evidence submitted by the Parties, the Sole Arbitrator notes that during the abovementioned term WAC made the following payments towards the Player:

MAD 500,000.00 executed on 19/02/2018;
MAD 300,000.00 executed on 29/03/2018;
MAD 30,000.00 executed on 08/03/2018;
MAD 30,000.00 executed on 06/04/2018;
MAD 80,000.00 executed on 04/05/2018;
MAD 10,000.00 executed on 17/05/2018;
i.e a total amount of MAD 950,000.

97. Nonetheless, the Sole Arbitrator observes that the *rationale* behind certain payments is contested between the Parties; whilst the Club asserts that the payment of MAD 500,000 corresponds to *"a three-month salary advance (January, February, March) and … the first tranche of the Player's signing bonus"*, the Player maintains that said payment tallies with the Intermediary's commission, as agreed between the latter and WAC.

98. In this respect, the Sole Arbitrator notes that on 16 January 2018, a private agreement was signed between the Parties (the "Private Agreement") according to which *"*[WAC] *hereby certify* (sic) *to allocate to* [the Intermediary] *10% (ten percent): 500,000.00 (five hundred thousand Dirhams) of the global amount of the professional contract signed between WAC and the* [Player]*"*, without any further reference as to whether said amount was to be deducted from the Player's total compensation or it is to be considered as a separate sum, calculated on the basis of the Player's remuneration. In the attempt to determine the Parties' true intentions and the actual circumstances of the issue in question, the Sole Arbitrator observes that on 10 January 2018, a mandate was signed by the Club's president, Mr. S.N. (the "Mandate"), according to which *"*[WAC] *gives* [to the Intermediary]*, by virtue of the present, a mandate to assist and represent WAC for an eventual professional* (sic) *regarding the* [Player]*"*. Further, whereas WAC claims that the payment under examination corresponds to three salary instalments and the first tranche of the Player's signing bonus, the Sole Arbitrator finds that the amount deposited to the Player's bank account severely exceeds

the amount that the Player should have been paid under such circumstances (MAD 375,000, see *infra* par.100). More importantly, the Sole Arbitrator observes that by virtue of his witness statement, the Intermediary opposes to the argumentation brought forward by WAC in this respect. According to the Intermediary: *"In January 2018 I brokered a deal to bring the* [Player] *to* [WAC]. *As part of the negotiations, I agreed a commission fee of MAD 500.000 – upon receipt of the* [Player's] *ITC. The above-mentioned commission was agreed to develop services* (sic.) *in favour of WAC, according to the requests and mandate signed by his own president. With sort delay,* [WAC] *paid the agreed fee,* ***but with the requiring that I would have to receive in the account of*** **[the Player].** *In his presence and with his full acceptance"* (emphasis added).

99. WAC has chosen not to present any witness statement nor to invite any of its officials to give evidence in these proceedings. In view of this background, the Sole Arbitrator notes that albeit being offered the opportunity by the arbitral tribunal, WAC chose not to present any factual evidence to support its arguments regarding the nature of said payment, in order to explain and convince that indeed the disputed amount was part of the payments to the Player and not a payment to the Intermediary. This could have been done at least by offering a witness statement or a testimony of an official (as a party representative) during the hearing that both Parties were proposed to consider in both the CAS letter dated 11 May 2020 and the organizational meeting that took place at the initiative of the Sole Arbitrator on 20 May 2020. As already mentioned, the Player agreed to the holding of a hearing. WAC informed, by means of a letter dated 27 May 2020 the following: *"Please be informed that WAC does not wish to change its position regarding the lack of need to hold a hearing in this matter…by application of the order of procedure signed by both parties on April 21, 2020, the WAC requests the* [sic] *may decide this matter based on the Parties' written submissions".*

100. In coming to assess the issues at stake in this case, that calls upon the need to reveal the real facts of the matter, where providing the best possible evidence in support of the Parties' arguments is of essence, sometimes crucial. The Sole Arbitrator will therefore take into consideration the pertinent CAS jurisprudence on the issue, according to which the arbitral tribunal has the authority to draw certain adverse inferences from a party's refusal to testify or its failure to submit the best evidence available (see Art. 9.6 "IBA Rules on the taking of Evidence in International Arbitration", Ed. May 2010). Whereas there is no rule obligating an arbitral tribunal to draw adverse inferences from a party's "procedural behaviour", the Sole Arbitrator is inclined to adversely asses WAC's refusal to testify about the issue in question for the following reasons: Whilst the Player submitted an uncontroverted testimony by a credible individual that was involved in the conclusion of the Employment Agreement, WAC has chosen to remain silent in this respect, a choice that can also be perceived as an indirect admittance of the Player's pertinent argumentation or at least, lead to the conclusion that when a party's best choice is not to bring any witnesses in support of its arguments, this may indicate that bringing a witness would be counter-productive for said party. This is all the more important considering the fact that, naturally, several of the Club's officials and personnel were involved in the conclusion of the pertinent documents i.e., the Private Agreement and the Mandate. Therefore, said individuals could have reliably try to contest the witness statement provided by the Intermediary.

101. Furthermore, under Article 5.1(a) of the Employment Agreement the Player was supposed to receive until the end of March 2018, including the first payment of the sign-in bonus, a total amount of MAD 375,000 (75,000 being two and a half salaries + 300,000 as the first instalment of said bonus). The bank confirmation of the payments presented by WAC shows that, for the period in question, WAC actually paid towards the Player MAD 830,000. Why should WAC pay the Player MAD 455,000 more than the amount that it should have paid, unless indeed the first MAD 500,000 was paid against the Intermediary's commission? WAC has chosen not to provide any explanation in this regard.

102. Under such circumstances, the Sole Arbitrator finds that the Intermediary's witness statement, taken into account in light of the Mandate as well, provides sufficient evidence on the *rationale* behind the payment in question. Consequently, the Sole Arbitrator concludes that the bank transfer of MAD 500,000 corresponds to the payment of the Intermediary's commission as agreed between the latter and the Club. As a result, it is not to be considered as payment against the Player´s remuneration under the Employment Agreement.

103. The Player also maintains that the bank transfer of MAD 80,000 was made against housing and car rental expenses incurred by him for the term comprising between January until April 2018. In reviewing the receipts submitted by the Player in this regard, the Sole Arbitrator observes that the monthly housing and car rental costs of the Player amounted to MAD 22,000. Given that the total amount deposited to the Player's bank account was paid on 4 May 2018 and that the Employment Agreement was signed on 16 January 2018 and entered into force on 15 January 2018, the amount of said expenses for 3.5 months was of MAD 77,000, meaning that the pertinent payment is almost equal to the housing and car expenses effectively incurred by him for the respective term (22.000 x 3.5 months = 77,000). Therefore, and in the absence of any evidence on behalf of the Club to the contrary, the Sole Arbitrator concurs with the argumentation brought forward by the Player and concludes that the payment in question was made for the housing and car rental allowance pursuant to Article 5.1 of the Employment Agreement.

104. The Player alleges that the deposit of MAD 10.000, executed on 17/05/2018, corresponds to *"the prize money for the Supercup"*. However, the Sole Arbitrator notes that, pursuant to article 8 of the Swiss Civil Code, each party bears the burden of proving the existence of the facts on which it intends to rely. In this respect, the Sole Arbitrator notes that the Player failed to submit any evidence in support of his allegations an as a result, he concludes that said argument shall be dismissed.

105. By virtue of the Appealed Decision, the Club is obliged to pay an additional outstanding amount of CHF 1,100 to the Player *"for 2 air tickets"*, a finding of the Appealed Decision that is not contested by the Player. Nonetheless, the Sole Arbitrator observes that by means of his Appeal Brief in *CAS 6416* the Player seeks to be awarded an additional remuneration of USD 1,600 corresponding to the air-ticket costs that the Player had to incur in order to report himself at the premises of WAC on 12 July 2018. In this respect, Article 5.1 of the Employment

Agreement provides that the Player was entitled to receive 4 round-trip air tickets during each sporting season. Whereas the Club was able to prove that the Player exited from and entered Morocco several times during the term in question, it failed to submit any evidence verifying that the Player was actually reimbursed for said trips. Consequently, the Sole Arbitrator finds that additionally to the remuneration of CHF 1,110, the Player is also entitled to receive the amount of USD 1,600 for travelling expenses.

106. The Sole Arbitrator notes that the Club seeks to avail itself of the Player's allegedly *"unauthorized departure from Morocco"* and his subsequent *"long-lasting absence"* from WAC's training sessions in order to justify the non-payment of the outstanding salary and signing bonus instalments due to the Player until the moment the Termination Letter was sent. According to WAC, said behaviour is to be considered a *"severe breach"* of the Employment Agreement. In this respect, the Sole Arbitrator observes that the FIFA Regulations do not contain any provision regarding the consequences of an employee's absenteeism; Swiss law is therefore applicable on this issue, which is governed by Article 337d Swiss Code of Obligations (the "SCO") and provides the following:

"Art. 337d Failure to take up post and departure without just cause

1. Where the employee fails to take up his post or leaves it without notice without good cause, the employer is entitled to compensation equal to one-quarter of the employee's monthly salary; in addition he is entitled to damages for any further losses.

2. Where the employer has suffered no losses or lower losses than the value of the compensation stipulated in the previous paragraph, the court may reduce the compensation at its discretion.

3. Where the claim for damages is not extinguished by set-off, it must be asserted by means of legal action or debt enforcement proceedings within 30 days of the failure to take up the post or departure from it, failing which it becomes time-barred".

107. According to Swiss law, the individual employment contract is a contract whereby the employee has the obligation to perform work in the employer's service for either a fixed or indefinite period of time, during which the employer owes him a wage (Article 319 par. 1 SCO). If the employee decides to stop carrying out his work, he must warn his employer without delay in order to safeguard the latter's legitimate interests (Article 321a para. 1 SCO). Pursuant to the jurisprudence of CAS and the Swiss Federal Tribunal *"[t]here is an unjustified non-appearance at or leaving of the working place when the employee is absent for a certain amount of time and the employer can reasonably assume that it is not in the employee's intention to return and that his decision is final. This is particularly true if the employee is summoned to return to work or to justify his non-appearance (for instance by means of a medical certificate) and does not comply or is unable to provide a just cause"* (ATF 108 II 301, consid. 3 b; decisions of the Swiss Federal Court of 21 December 2006, 4C.339/2006, consid. 2.1; of 6 July 2005, 4C.155/2005, consid. 2.1; of 14 March 2002, 4C.370/2001, consid. 2a; WYLER R., Droit du travail, p. 499; AUBERT G., in Commentaire romand, Code des obligations,

vol. I, 2nd ed., 2012, ad art. 337d, N. 2, p. 2107). Likewise, if the employee does not return to work after vacation and leaves his employer without any news for several months, the employer can – in good faith – assume that the employee's employment has ended without having to dismiss him or the employee having explicitly resigned (ATF 121 V 277, CAS 2014/A/3707 par. 90).

108. The Sole Arbitrator fully adheres to the principles of the analysis adopted in the jurisprudence reflected above. Against this legal background, the Sole Arbitrator will examine the facts of the issue in question in order to ascertain whether the Club had legitimate reasons to suspend payment of the Player's remuneration.

109. In the present case, it is admitted by both Parties that on 21 May 2018, following the last official game of WAC for the respective sporting season, the Player departed from Morocco where he was expected to return on 17 June 2018 for the outset of the new season's training camp. In this respect, the Sole Arbitrator observes that pursuant to Article 5.2 of the Employment Agreement, the Club was obliged to *"Grant the* [Player] *a holiday of 24 working days, the dates and periods of which will be fixed according to the schedule of meetings and commitments of* [WAC]*"*; no additional formalities were required under the Employment Agreement in this regard. Given also the fact that under normal circumstances, the Player would not have been absent for a longer term than he was contractually allowed to, the Sole Arbitrator does not see any reason to consider WAC's authorization as a prerequisite for the departure of the Player from Morocco after the end of the sporting season. It is common knowledge in the world of football that following the end of each sporting season, the players are allowed to travel for their summer leave without any special authorization or procedure required in this respect, as long as they comply with the time schedule provided by their employers for the beginning of the new season. WAC did not provide any evidence that could establish any request addressed to the Player regarding any duty that he should have fulfilled as part of the Club after the last match of the season; nor any witness statement was adduced to suggest that such request was made to him verbally. Accordingly, the Sole Arbitrator concludes that after the end of the last match of the season, the Player was not obliged to seek for a specific authorization by WAC before departing from Morocco for his summer holidays and therefore, said behaviour is not to be considered as a breach of the Employment Agreement.

110. Subsequently and in the attempt to ascertain whether, under the following circumstances, the absence of the Player from the Club's training sessions - that apparently started in June anticipating the new coming season - constitutes a justifying reason for the suspension of payment of his remuneration under the Employment Agreement, the Sole Arbitrator notes the following: The Player was supposed to return to Morocco on 17 June 2018 for the outset of the Club's pre-season training camp. On 16 June 2018, the day before this deadline, the Player contacted some of the Club's officials requesting to be provided with air tickets in order to timely report himself at the premises of WAC. Whereas by means of the correspondence exchanged between him and the Club in the course of the following days (*supra*, par. 8-10), the Player repeated this particular request several times, the Club chose not to grant said request in

spite of the fact that under the Employment Agreement (Art. 5.1 b), it was for WAC to provide the tickets (and not just to pay for them); on the contrary, WAC considered such claim as *"extra-contractual"* and invited the Player to return to Morocco by its own means. There is no doubt in the mind of the Sole Arbitrator that, should WAC have dealt with said request properly, there still may have been a short delay in the return of the Player, a day or two, but in any case, such short delay could not have been considered as a severe breach of the Player's duties.

111. In light of the abovementioned remarks, and while it is legitimate to expect the Player to start asking for the ticket somewhat earlier (for instance, a week before the due date) it would at the same time have been expected that WAC would call the Player on time to inquire on the date of his intended return. Yet in comparing the attitudes of the Parties, it was the Player who approached WAC on this matter while WAC remained passive and even refused to provide the air tickets when asked.

112. The Sole Arbitrator finds that the Player demonstrated in an unreserved manner, even if a bit late, his intention to comply with his contractual obligations towards the Club and to return to Morocco without any delay. On the contrary, it was the Club that elected not to fulfil its commitments against the Player, thereby knowingly creating an obstacle for the Player to joining the former's training sessions on time or at least with a very short delay. In view thereof, WAC could not have reasonably assumed that the Player had irrevocably decided to abandon his working place, thereby breaching the Employment Agreement. The Sole Arbitrator fully adheres with the findings of previous CAS panels on the issue, establishing that: *"[G]eneral principles of good faith states that if a party has clearly shown that it is willing to rely upon a signed contract by performing its contractual obligations … it may legitimately expect the counterparty to behave in good faith and to do its utmost in order to have said contract performed"* (CAS 2014/A/3706 par.96). Under such circumstances, the Sole Arbitrator concludes that by not facilitating the timely return of the Player to Morocco, the Club acted in *mala fide* against him and therefore it is not to financially avail itself from his absence.

113. Based on the above findings, the Sole Arbitrator will proceed on the calculation of the outstanding remuneration owed to the Player by the Club until the date the Employment Agreement was effectively terminated. As set out above, whilst the Player was entitled to receive as compensation for the term in question the total amount of (195,000 as salaries + MAD 820.000 as a signing bonus =) MAD 1,015,000, he actually received the amount of (500,000 + 300,000 + 30,000 + 30,000 + 80,000 +10,000 =) MAD 950,000. The latter, as indicated *supra*, shall be reduced by (500,000 that was actually a payment to the intermediary + 80,000 that were paid for housing and car rental=) MAD 580,000 resulting in a final sum of [1,015,000 – (950,000 – 580,000) =] MAD 645,000.

114. Nonetheless, the Sole Arbitrator observes that pursuant to his prayers for relief, the Player seeks to be awarded for the term in question the amount of USD 63,080 only (the currency equivalent of MAD 595,841 based on the exchange rates applicable on the effective termination date of the Employment Agreement, as published by the Central Bank of Morocco). Pursuant to Article

R57 CAS Code and the legal principle of *"ne ultra petita"* which is applicable in the present proceedings, whereas the arbitral tribunal is vested with full power to examine *"de novo"* the facts and the law of the case in question, such assessment is limited by the submissions and the prayers for relief put forward by the parties. As a result, the Sole Arbitrator concludes that the Player is entitled to receive a total amount of outstanding remuneration from the Club in the amount of MAD 595,841, further increased by the amount of USD 1,600, being MAD 15,113, and in total MAD 610,954.

115. As to the due dates for payment and the interest rate applicable on the outstanding remuneration owed to the Player by the Club, the Sole Arbitrator observes that this is the case where the application of Moroccan law would have been proper, based on the "Haas Doctrine" as explained above. Yet, neither party presented any evidence in this respect and thus the Sole Arbitrator consider it proper to refer to Swiss law. Pursuant to Article 104(1) SCO *"[a] debtor in default on payment of a pecuniary debt must pay default interest of 5% per annum even where a lower rate of interest was stipulated by the contract"*. Further, Article 339(1) SCO stipulates that *"[w]hen the employment relationship ends, all claims arising therefrom fall due"*.

116. In view of the abovementioned provisions, the Sole Arbitrator finds that the salary instalments of May, June and July 2018 fell due on 1 June, 1 July and 1 August 2018 respectively, while the signing bonus instalments of April and July 2018 fell due on 1 May and 1 August 2018 respectively. Further and in the absence of any evidence to the contrary, the Sole Arbitrator finds that the remuneration corresponding to the travelling costs incurred by the Player (USD 1,600 or MAD 15,113) fell due on the date the Employment Agreement was effectively terminated, i.e. 8 August 2018. Nonetheless, the Sole Arbitrator observes that pursuant to his *petitum*, the Player requests that *"[a]ll these amounts shall bear an interest annual rate of 5%, starting from August 8th, 2018"*. Consequently, and in light of the legal principle of *"ne ultra petita"*, the Sole Arbitrator concludes that the Player is entitled to receive a total amount of outstanding remuneration in the amount of MAD 610,954 with interest at a rate of 5% *per annum* accruing as from 9 August 2018.

(iii) Was the First Employment Agreement terminated with just cause?

117. After having established the outstanding amounts of the Club towards the Player for the term comprising between 15 January 2018 until 8 August 2018, the Sole Arbitrator will proceed on determining whether the Player had just cause to terminate the Employment Agreement at the moment when the Termination Letter was sent. In this respect, the Sole Arbitrator notes that the sequence of events that led to the termination of said employment agreement as well as the legal reasoning behind said termination are contested between the Parties: According to the Player, upon his return in Morocco the Club demonstrated – apart from the financial overdue - a rather demeaning behaviour towards him as an employee by forcing him to train separately from the rest of the squad, without any assistance from the Club's coaches. Further, the Club refused to grant him any housing or car rental allowance thereby severely violating the

Employment Agreement and his *"essential rights* […] *as a human being"*. On the contrary, WAC maintains that by terminating the Employment Agreement due to his financial claims against the Club only five days after sending the Default Notice, the Player did not comply with the legal requirements provided under Article 14*bis* FIFA RSTP and that in any event, he effectively failed to submit any evidence in support of his allegations about the termination of said contract.

118. As a preliminary observation, the Sole Arbitrator wishes to emphasize that for the effective resolution of disputes such as the matter at hand and even more the issue in question - where the interpretation of the factual background of the case is of paramount importance – and due to the fact that WAC did not call any witnesses to deal with the facts, he considered that the conduct of a hearing would have been of assistance and allow WAC the opportunity to factually support its arguments regarding the issue of the termination of the Employment Agreement and the legal implications thereof. Yet, and as already explained (*supra*, par.45) the Sole Arbitrator respected the choice of WAC that the award to be issued solely on the basis of the written submissions and therefore, he will proceed his analysis based solely on the evidence contained in the file as presented by the Parties.

119. The pertinent provisions of the FIFA RSTP on the termination of employment agreements with just cause provides the following:

Article 14 FIFA RSTP

*"**Terminating a contract with just cause***

1.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.

2.Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause".

120. *Article* 14bis *FIFA RSTP*

*"**Terminating a contract with just cause for outstanding salaries***

1. In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered".

121. The FIFA RSTP in its previous versions did not contain a definition of *"just cause"*. As a result, the assessment of whether *"just cause"* existed was left to be determined by the adjudicatory bodies on a case-by-case basis since indeed different conducts or circumstances may or may not establish a *"jus*t *cause"* to terminate an employment agreement.

122. In accordance with the well-established CAS jurisprudence which has constantly referred to the principles of Swiss law, a "valid reason" or "just cause" for the termination of an employment contract exists when the relevant breach by the other party (or other impeding circumstances) is of such nature or has reached such a level of seriousness, that the essential conditions under which the employment agreement was concluded are no longer present and the injured party cannot in good faith be expected to continue the employment relationship.

123. Art. 14(2) was added to the FIFA RSTP in its 2018 edition, where for the first time a specific conduct was defined as establishing *"just cause"* for the termination of employment agreements.

124. The Sole Arbitrator observes that whereas the FIFA RSTP contain a generic provision regarding the termination of employment contracts with just cause, the draftsman of said regulations later on inserted an additional provision, Art. 14*bis* dealing explicitly with the termination of employment agreements on the basis of financial overdues and establishing (a) which cases of overdue payments will be considered *"just cause"* and (b) the mandatory pre-condition for the termination of an employment agreement due to overdue payments. The need to add Art. 14*bis* leads to the following conclusions: (i) the concept of abusive conduct is wider than the non-payment of salaries, (ii) non-payment of salaries can be considered as an abusive conduct but; (iii) not any non-payment is considered abusive conduct. Only a case of *"unlawfully failing to pay … two monthly salaries"* will establish just cause (iii) however, the just cause in this case also requires a default notice to be sent and a waiting period in which the debtor will be given the opportunity to repair its conduct.

125. The Sole Arbitrator also observes that in principle, according to CAS jurisprudence and by virtue of 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 with immediate effect, it must have warned the other party, in order for the latter to have the chance, if it deems the complaint legitimate, to comply with its obligations (CAS 2016/A/4884; CAS 2015/A/4327; CAS 2013/A/3091, 3092 & 3093; CAS 2013/A/3398; ATF 121 III 467, consid. 4d). This is a general principle that applies under Swiss law and the CAS jurisprudence to any *"just cause"* case. Yet in cases of overdue payments, the FIFA RSTP also added a minimum reasonable waiting before terminating an employment agreement.

126. Therefore, the application of each provision is accompanied by a different set of legal prerequisites. The determination of the just cause therefore, if any, that led to the termination of the Employment Agreement is of essence for ascertaining the applicable provision(s) of the FIFA RSTP on the matter at hand, the process that the Player should have followed in terminating said contract and the legal implications thereof.

127. As set out above, on 16 June 2018 and in light of his anticipated return in Morocco, the Player contacted with the Club's officials requesting to be provided with air tickets in order to timely introduce himself to the Club for the outset of the new sporting season, a request that he reiterated in his formal letters addressed to the Club on 21 and 26 June 2018. Nevertheless, the

Club never granted said demand; on the contrary, by means of its letters dated 25 June and 9 July 2018, WAC insisted that since he left Morocco without authorization, the Player's request for air tickets was to be considered as *"extra – contractual"*. Accordingly, the Club repeatedly invited the Player to return to Morocco by his own means.

128. It is undisputed among the Parties that the Player returned to Morocco on 12 July 2018 without any financial assistance from WAC in this respect. It is also uncontested between the Parties that upon his arrival in Morocco and until the date where the Employment Agreement was terminated, the Player was excluded from the Club's training sessions. Nevertheless, whilst the Player asserts that this was a decision of the Club, the latter maintains that it was the Player who refused to train with the rest of WAC's squad.

129. In reviewing the file of the matter at hand, the Sole Arbitrator primarily finds that both the Parties failed to submit any documentary evidence directly substantiating their allegations in this regard; it is only the Intermediary's witness statement that provides the arbitral tribunal with an insight about the incidents that occurred during the term in question. According to the Intermediary[6]: *"By the end of the season, I was contacted by* [the Player]*, who was informed by the coach that, since the* [Club] *was not happy with his performance and was not counting with him for the next season. After that, the* [Club's] *translator, by request of the president Mr. N., asked me to find* [the Player] *a new club and to agree on a termination of his employment contract. The* [Club] *offered only two months compensation for the early termination. When I told* [WAC] *that was hard to find a club willing to pay the same salary, Mr. N. (President) told me that if the* [Player] *was going to return to* [WAC] *he would have no place in the team. Since the* [Club] *was not paying some outstanding salaries nor his return ticket I contacted and payed a Portuguese lawyer I trust, travel to Casablanca and help* [the Player] *with his situation"*.

130. As indicated *supra* (par. 98-99), the Club chose not to contest the Intermediary's witness statement, albeit been offered the opportunity by the arbitral tribunal in this respect. Therefore, the Sole Arbitrator will primarily examine the entire factual background of the present case, pursuant to the submissions and the evidence put forward by the Parties. In this regard, the Sole Arbitrator reiterates that it was the Player who initiated contacts with the Club's officials and repeatedly requested from them to facilitate his return to Morocco, thereby demonstrating his intention to comply with his contractual obligations towards the Club. On the other hand, whilst the Club claimed to *"heavily rely"* on the Player's services for the upcoming official matches, it failed to ensure his timely return to Morocco. The submission of the Club that it *"heavily rely"* on the Player is clearly inconsistent with the Club's attitude towards the requests of the Player to be provided with flight tickets. Further, the Sole Arbitrator notes that by means of its letter dated 9 July 2018, the Club invited the Player to return to Morocco within 4 days upon receipt of said letter and assured him that his financial requests would be settled upon his arrival. i.e the Club finally asked the Player to return to Morocco by 13 July 2018. Nevertheless, WAC urged to contact FIFA already on the same day (i.e. 9 July 2018) and inform the latter

[6] The witness statement was submitted with several grammatical and syntactical mistakes. In order to avoid constant repetitions of "sic", the Sole Arbitrator chooses to quote it *verbatim*.

about the Player's refusal to *"resume his work"* and the Club's intention to *"seize, if necessary, to make prevail its rights, the competent decision-making body"* without informing FIFA that, on same day, the Club gave the Player the permission to return by 13 July 2018. Moreover, and despite the fact that on 12 July 2018 (within the time span granted by the Club) the Player returned to Morocco by his own means, the Club did not update FIFA that the Player had returned to Morocco and also failed to effectively settle the financial dispute that had arisen between the Parties.

131. Under such circumstances, the Sole Arbitrator is inclined to adversely assess the Club's refusal to testify and to contest the Intermediary's witness statement for the following reasons: By reviewing the factual background of the present case, it has become evident that the Club acted in bad faith against the Player on more than one occasions; either by repeatedly refusing to grant the Player's request for air tickets – a request that was in line with the employment contract concluded between the Parties – or by pretentiously claiming to rely on his services while preparing to take recourse against him before the adjudicatory bodies of FIFA, the Club's course of action demonstrated in a rather unequivocal manner that in reality, WAC was no longer interested in the Player's services and it was actively seeking to create an appearance as if the Player breached the Employment Agreement. The *mala fide* treatment to which the Player was subjected is all the more exacerbated considering the fact that not only did the Player demonstrate his clear intention to abide by his contractual obligations against the Club, but he also complied with the deadline that was set by the latter in this respect and returned to Morocco on 12 July 2018, albeit with the financial assistance of the Intermediary.

132. In view of this background, the Sole Arbitrator is of the opinion that this kind of behaviour is not to be rewarded. Further, it would be unreasonable for one to assume that after having demonstrated such behaviour against him, WAC suddenly opted to allow the Player's participation in its training sessions and to comply with its contractual obligations against him. Therefore, the Sole Arbitrator concludes that the Intermediary's witness statement is reliable in this respect and he finds that the Player was indeed forced to train separately from the rest of his teammates due to a Club's decision.

133. The issue of exclusion of a football player from the first team's training sessions has been dealt consistently by many previous CAS Panels; in CAS *2014/A/3643* (at par. 82 and 86) the CAS Panel explained: *"Under Swiss law, the employer has the obligation to protect the employee's personality. The case law has deduced thereof a right for some categories of employees to be employed, in particular for employees whose inoccupation can prejudice their future career development. The employer has to provide these employees with the activity they have been employed for and for which they are qualified. The employer is not therefore authorized to employ them at a different or less interesting position than the one they have been employed for…The Player was hired to train and play with the Appellant's first team and had a right to be employed under these terms, which have been agreed contractually. The exclusion from this position and his de facto demotion* […] *could have seriously prejudiced his career development, as it deprived him completely of the chance to put his talent in evidence and to increase accordingly his market value"*. The Sole Arbitrator fully adheres to these findings and conclusions.

134. The Club maintains that *"[I]t should be considered that WAC had valid reasons to request the Player to train provisionally away from the first team. Regarding the consequences of the Player's unjustified absence, such circumstances justifies that the* (sic) *WAC may deem it necessary for the Player to train alone provisory before coming back to the first team"*.

135. In ascertaining whether a football club is entitled to demote a player from its first team, previous CAS Panels have held that a series of criteria should be taken into consideration in this regard. According to the Panel in *CAS 2015/A/4286*, said criteria pertain to the reasons and the duration of such measure, the conditions to which the player was subjected (whether he/she was training alone or with the reserves team and whether he/she was provided with adequate training facilities or not) and the contractual circumstances of the case under examination (whether the player's employment contract entitled the club to drop him/her from the first team and whether the player was still paid his/her entire salary). As concluded by the Panel in the abovementioned case (par. 97 with further references): *"In principle, this Panel, like others, notes that the parties can expressly agree for a player to play in a certain team, but that if the contract is silent, then the player does in principle have certain fundamental rights, such as his "personality rights", but that a coach and the club also have the right, in certain sporting circumstances, to move players between the first team and other teams. These rights may conflict and when they do, a review of the above points and of the facts of each case needs to be undertaken"*.

136. The Sole Arbitrator fully adheres to the abovementioned findings and therefore, he will examine whether, in light of the factual background of the present matter, the Player was validly separated from the Club's first team.

137. Considering the absence of any evidence to the contrary, the Sole Arbitrator finds that whereas the Employment Agreement does not contain any explicit provision regarding the issue in question, the Club failed to respect the Player's *"personality rights"*: The Player was excluded from the training sessions of WAC's first team and he was effectively forced to train alone without any formal explanation about the reasons and the duration of such demotion and without being paid any of his salary in the course thereof. In view of the Club's failure to adhere to what in the opinion of the Sole Arbitrator are to be considered the most elementary of the abovementioned criteria, the Sole Arbitrator concludes that the treatment to which the Player was subjected upon his arrival in Morocco was in violation of his rights as an individual and as an employee and therefore, should be considered as an abusive conduct that justifies the unilateral termination of the Employment Agreement with *just cause* pursuant to Article 14 FIFA RSTP.

138. Nevertheless, WAC argues that the termination of the Employment Agreement *"only 5 days after* the sending *of* [the Default Notice] *constitutes a premature and not legitimate breach of contract"*. In ascertaining whether the Player terminated the Employment Agreement in a timely fashion, the Sole Arbitrator notes that by means of the Default Notice (*supra*, par. 15), the Player brought under the attention of the Club two distinct requests: Pursuant to the first part of the Default Notice, the Player invited the Club to settle every outstanding amount owed to him within 15

days upon receipt of said notice. Additionally, by means of the second part of the Default Notice the Player also summoned the Club to reinstate him in its first-team squad and to provide him with a car and a house within the following 72 hours. As a result, the Sole Arbitrator finds that the Default Notice contains two different legal grounds for the potential termination of the Employment Agreement with just cause; the first one was based on the overdue payments and therefore required a waiting period of 15 days while the second one, being an abusive conduct, although still required a waiting period to allow the Club to repair its conduct, was not subject to the mandatory 15 days but rather, to a reasonable period of time. Considering the seriousness of the conduct of the Club, the period of 72 hours was reasonable and sufficient to allow the Club to repair its conduct.

139. In consideration of the above, the Sole Arbitrator notes that as opposed to the situation treated in Art. 14*bis* FIFA RSTP (overdue payments), Article 14(2) FIFA RSTP does not provide for a specific deadline that needs to be respected by the affected party before the termination of an employment agreement under this particular provision. Nonetheless, cases such as the matter at hand are not unprecedent in the world of football; there were several cases where an employer demonstrated its clear lack of interest in the services of its employee by remaining silent towards his/her claims. According to the pertinent CAS jurisprudence on the issue *"*[…] *the silence exhibited by the club, repeatedly against the claims and warnings of the player, is in principle an admission of its responsibility, while not definitive, with special relevance in labor matters because it was related to one of the main obligations towards the player, which was to provide him with the agreed job. It is not usual that a company facing a claim of breach by an employee remains silent instead of making a statement denying the claims. Moreover, the lack of answer, prevented the player from acknowledging a real interest in his services, either as a change of mind or as an attempt to clarify the differences expressed by him, which induces to consider in principle the existence of a just cause on his side to consider the contract terminated due to the club's fault"* (TAS 2014/A/3900, par. 81). In line with the aforementioned, another CAS Panel concluded on a similar case that a football club is *"*[…] *a consolidated institution with a shaped administrative structure, with considerable financial resources and permanent in-house legal advisors which means that, when the club received the claims from the player it knew or should have known its potential legal consequences and despite it did nothing in this regard"* (CAS 2008/A/1715, par. 66).

140. The Sole Arbitrator adheres to the principles of the analysis adopted in the CAS jurisprudence reflected above. In view of this background and considering the fact that the Player respected the deadline of 72 hours set by means of the Default Notice before terminating the Employment Agreement, the Sole Arbitrator concludes that said termination is not to be deemed as premature but rather, legitimate and justified under the FIFA RSTP and the circumstances of this case.

141. It follows that the Employment Agreement was terminated with just cause in a timely manner as a result of the Club's ignoration of the Player's legitimate request to reinstate him in its first-team squad.

(iv) Which are the financial consequences of any of the findings under question (iii)?

142. In light of the valid termination of the Employment Agreement with *just cause* on behalf of the Player, the Sole Arbitrator will proceed his analysis by determining the financial consequences of said termination. In this respect, the Sole Arbitrator notes that Article 17 FIFA RSTP provides as follows:

> *"**Consequences of terminating a contract without just cause***
>
> *The following provisions apply if a contract is terminated without just cause:*
>
> *1.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.*
>
> *Bearing in mind the aforementioned principles, compensation due to a player shall be calculated as follows:*
>
> […]
>
> *ii. in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract".*

143. By virtue of the aforementioned provision, the party in breach i.e., the Club shall pay compensation to the affected party, the calculation of which is primarily to be premised on the residual value of the Employment Agreement. The Sole Arbitrator also abides by the pertinent CAS jurisprudence in this respect, according to which and in light of the principle of "positive interest", *"the harmed party should be restored to the position in which the same party would have been had the contract been properly fulfilled"* (CAS 2005/A/801; CAS 2006/A/1061; CAS 2006/A/1062; CAS 2008/A/1447; CAS 2012/A/2698; CAS 2014/A/3706).

144. In view of the abovementioned considerations, the Sole Arbitrator observes that for the period comprising between 9 August 2018 until 30 June 2019 (sporting season 2018/19), the Player would have earned the following amounts under the Employment Agreement: MAD 330,000

as fixed salary (30,000 x 11), plus MAD 1,640,000 as a *"performance bonus"* (550,000+550,000+540,000). Equally, for the term comprising between 1 July 2019 until 30 June 2020 (sporting season 2019/20) the Player would have earned: MAD 360,000 as fixed salary (30,000 x 12), plus MAD 1,640,000 as a *"performance bonus"* (550,000+550,000+540,000). Therefore, the residual value of the Employment Agreement until the end of its term is equal to (330,000+1,640,000+360,000+1,640,000=) MAD 3,970,000[7]. The Sole Arbitrator notes that the Player presented the amount of USD 417,762 being, according to his submissions, the currency equivalent of the compensation due to him pursuant to the pertinent request for relief. However, as the Employment Agreement stipulates all the amounts in Moroccan Dirhams and the payments to the Player were made in Moroccan Dirhams, the Sole Arbitrator finds that there is no reason to make the calculations in US$. Furthermore, if any amounts in other currencies are to be deducted in applying mitigation, these other amounts should be converted into Moroccan Dirhams and not the other way around.

145. The Sole Arbitrator also observes that during the sporting season 2018/19 the Player concluded an employment agreement with CCT pursuant to which he earned the total amount of USD 63,000. Further, the Player earned an additional amount of USD 74,800 during the sporting season 2019/20 pursuant to the employment agreement he concluded with the Bolivian football club *"Club Deportivo Y Cultural Sport Boys"*. By virtue of Article 17 FIFA RSTP, said amounts (the "Mitigated Compensation") shall be deducted from the compensation due to the Player for the premature termination of the Employment Agreement with *just cause*; These two amounts cumulatively, converted into Moroccan Dirhams based on the exchange rate at the date of the termination of the Employment Agreement, are equal to the amount of MAD 1,301,521.Therefore, the compensation that the Club would be obliged to pay to the Player is equal to MAD 3,970,000 – 1,301,521 = MAD 2,668,479.

146. Nevertheless, the Sole Arbitrator notes that pursuant to his prayers for relief, the Players requests to be awarded the total amount of USD 344,642 corresponding to the outstanding amounts contemplated above (i.e. MAD 610,954, par. 93 sub) and the compensation sought from the Club for the premature termination of the Employment Agreement with *"just cause"*. On the basis of the exchange rate at the date of the termination of the Employment Agreement, the aforementioned amount is equal to the amount of MAD 3,253,420. As a result, and according to the legal principle of *"ne ultra petita"* the actual compensation that the Player should be awarded is equal to the amount of MAD (3,253,420 – 610,954=) 2,642,466.

147. As to the *dies a quo* of the default interest rate, the Sole Arbitrator reiterates, as indicated above (par. 114-115), that interest is due on the day following the termination of the Employment Agreement. Consequently, the Sole Arbitrator concludes that the Player is entitled to receive

[7] The amount of the compensation due to the Player is calculated by the Sole Arbitrator on the basis of the provisions of the Employment Agreement. Whereas said calculation slightly deviates from the respective submissions of the Player, the final amount of the compensation does not exceed his pertinent prayer for relief and therefore, is compliant with the principle of *"ne ultra petita"*.

compensation for breach of contract in the amount of MAD 2,668,479 with interest at a rate of 5% *p.a.,* accruing as of 9 August 2018.

(v) The issue of sporting sanctions requested by the Club

148. In its prayers for relief the Club requests for sporting sanctions to be imposed on the Player. On the contrary, the Player does not seek for the imposition of sporting sanctions on the Club. In light of the aforementioned findings, the prayers for relief submitted by the Club in CAS 6417 are dismissed on their entirety, including the pertinent request for the imposition of sporting sanctions on the Player.

C. Conclusions

149. Based on the *foregoing*, the Sole Arbitrator finds that:

150. *The FIFA DRC was competent to decide upon the Player's claim against the Club.*

151. *The Player is entitled to receive an amount of outstanding remuneration from WAC in the amount of MAD 610,954 with interest at a rate of 5% per annum, accruing as of 9 August 2018.*

152. *The First Employment Agreement was terminated by the Player with just cause on a timely manner.*

153. *The Player is entitled to receive compensation for breach of contract from WAC in the amount of MAD 2,642,466 with interest at a rate of 5% p.a., accruing as of 9 August 2018.*

154. All other and further motions and prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 13 August 2019 by Mr. Alejandro Gabriel Quintana against the decision issued on 14 June 2019 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 14 June 2019 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is confirmed with the exception of:

   - Point 2 of the operative part of the decision rendered on 14 June 2019 by the Dispute Resolution Chamber of FIFA is amended as follows:

     Wydad Athletic Club is ordered to pay to Mr. Alejandro Gabriel Quintana the amount of MAD 610,954 (six hundred ten thousand nine hundred and fifty-four Moroccan Dirhams) with interest at a rate of 5% (five per cent) per annum, accruing as of 9 August 2018.

   - Point 4 of the operative of the decision rendered on 14 June 2019 by the Dispute Resolution Chamber of FIFA is cancelled and replaced as follows:

     Wydad Athletic is ordered to pay to Mr. Alejandro Gabriel Quintana the amount of MAD 2,642,466 (two million six hundred forty-two thousand four hundred and sixty-six Moroccan Dirhams) with interest at a rate of 5% (five per cent) per annum, accruing as of 9 August 2018.

3. The appeal filed on 15 August 2019 by Wydad Athletic Club against the decision issued on 14 June 2019 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is dismissed.

4. (…).

5. (…).

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