**Arbitration CAS 2014/A/3463 & 3464 Alexandria Union Club v. Juan José Sánchez Maqueda & Antonio Cazorla Reche, award of 26 August 2014**

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

*Football*
*Contracts of employment between a club and a coach and an assistant coach*
*Notion of just cause*
*Breach of contract by the club and just cause to terminate the contract by the coach/assistant coach*
*Compensation due to the employee in case of breach of contract by the club without just cause*
*Compensation due to the employer in case of unjustified failure to appear at the working place by the employee*

1. **According to Swiss law, both employer and employee may terminate the employment relationship with immediate effect at any time for just cause. Such a just cause exists whenever the terminating party can in good faith not be expected to continue the employment relationship. The definition of 'just cause', as well as the question and whether just cause in fact existed, shall be established in accordance with the merits of each particular case. As it is an exceptional measure, the immediate termination of a contract for just cause must be accepted only under a narrow set of circumstances. Only a particularly severe breach of the labour contract will result in the immediate dismissal of the employee, or, conversely, in the immediate abandonment of the employment position by the latter. In the presence of less serious infringement, an immediate termination is possible only if the party at fault persisted in its breach after being warned.**

2. **Under Swiss law, the employer has the obligation to protect the employee's personality. The employer has to provide the employees with the activity they have been employed for and for which they are qualified. A club that offers the head coach's position to someone else prevents the head coach to perform the task for which he was hired and, therefore, breaches the employment agreement unilaterally and prematurely, without just cause. As a result, the head coach has just cause to terminate his employment agreement with the club. On the other hand, an assistant coach hired as assistant of the head coach has no just cause to unilaterally and prematurely terminate his labour agreement with the employer in absence of proof that he was replaced with another assistant coach or that he was hired only to be the assistant of the particular head coach that was dismissed. In absence of indication that the club refused to provide him with the activity he had been employed for and that it breached its obligations toward him in a way so significant that it caused the confidence, which he had in future performance in accordance with his employment contract, to be lost, the assistant coach has no just cause to terminate the contract.**

**3. If the employer dismisses the employee in the absence of a just cause, the latter shall have a claim for compensation of what he would have earned if the employment relationship had been terminated by observing the notice period or until the expiration of the fixed agreement period. However, in case of *force majeure*, a party can be prevented from performing all or part of its contractual obligations. An event of *force majeure* is beyond the parties' control. The Egyptian civil war which put an end to the 2012/2013 season and which admittedly occurred on 1 April 2013 constitutes *force majeure.***

**4. Under Swiss las, in case of unjustified failure by the employee to appear at his working place, the employer shall have a claim for compensation equal to one quarter of the employee's monthly salary. Moreover, he shall be entitled to compensation for additional damages. The employer does not need to establish any effective damage to obtain the payment of the fixed compensation of one quarter of the employee's monthly salary. However, by means of legal action or debt enforcement proceedings, he needs to claim that compensation be paid within 30 days of the failure to appear at or the unjustified leaving of the working place, failing which its petition becomes time-barred. Should the employer wish to claim further damages exceeding one quarter of the employee's monthly salary, the peremptory time limit of 30 days does not apply but the employer needs to prove the existence of an actual damage.**

## I. PARTIES

1. Alexandria Union Club (hereinafter the "Appellant" or the "Club") is a football club with its registered office in Alexandria, Egypt. It is a member of the Egyptian Football Association, itself affiliated to the Fédération Internationale de Football Association (hereinafter "FIFA") since 1923.

2. Mr Juan José Sánchez Maqueda (hereinafter "Mr Maqueda" or together with Mr Antonio Cazorla Reche, the "Respondents") is of Spanish nationality and is a professional football coach.

3. Mr Antonio Cazorla Reche, (hereinafter "Mr Reche" or together with Mr Maqueda, the "Respondents") is of Spanish nationality and is a professional football coach.

## II. FACTUAL BACKGROUND

### II.1 Background facts

4. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings and evidence adduced. References to additional facts and allegations found in the Parties' written and oral submissions, pleadings and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has

considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he deems necessary to explain his reasoning and final decision.

### II.2 The contractual relationship between the Parties

5. On 1 July 2012, the Appellant and Mr Maqueda entered into a labour agreement, the main characteristics of which can be summarised as follows:

   - It is a fix-term agreement for one season, effective from 1 July 2010 until *"the end of the football season 2012/2013"*.

   - Among other obligations, Mr Maqueda committed himself to train the Appellant's first team.

   - In exchange for his services and according to Article 4 of the Labour Agreement, Mr Maqueda was entitled to a *"net total monthly salary of $ 31,650 USD, of which an upfront payment as a Contract Success gesture of $ 83,350 USD will be deducted and provided to [Mr Maqueda] upon the signing and effectiveness of this contract. Therefore the [Mr Maqueda] is to receive a $ 25,000 USD net salary due at the end of each calendar month during the term of this contract"*.

6. The same day, the Appellant also signed with Mr Reche a similar contract to the one passed with Mr Maqueda, save that Mr Reche was hired *"in his capacity as Assistant of the Head coach"* and was entitled to a *"net total monthly salary of $ 13,460 USD, of which an upfront payment as a Contract Success gesture of $ 41,600 USD will be deducted and provided to [him] upon the signing and effectiveness of this contract. Therefore [Mr Reche] is to receive a $ 10,000 USD net salary due at the end of each calendar month during the term of this contract"*.

7. It is undisputed that the Respondents received their "sign-on" fee (respectively USD 83,500 and USD 41,600) as well as their monthly wages for July, August, September and October 2012.

8. Before the end of the year 2012, the Respondents' labour agreement was prematurely terminated. In this regard, the Parties' submissions differ significantly as to the fact which lead to the actual end of their contractual relationship and as to who must bear responsibility for it:

   - <u>According to the Appellant</u>: Because of the political crisis in Egypt, the Appellant failed to pay in time the Respondents' wage for November. As a consequence, the Respondents refused to work, leaving the Appellant's first team without trainers in the wake of the beginning of the Egyptian League. The Appellant was therefore compelled to find another coach in the person of Mr Ahmed Sary, who accepted to *"take care of the team as a volunteer in this critical situation till the return back of the [Respondent and his assistant]"*. On 4 December 2012, the Appellant issued two cheques in relation with the payment of the November salaries but the Respondents refused them and insisted to be paid in cash. *"Since cash was not available at that time, the Club promised the [Respondents] to pay their salaries of November 2012 on the 15th of December 2012 and they friendly agreed. When the Club failed to pay the salary <u>in cash</u> on the 15th of December 2012, the coaches had a quarrel with the Club's Accounts Manager and had an*

*oral fight with Efat El Sadat, the then Chairman of the Board (…) [The Respondents] gave the Club three days to pay the salaries of both November and December in cash".* The Appellant was unable to respect this deadline. In any event, the Respondents had no just cause to unilaterally terminate their respective employment contract with immediate effect. The Appellant had always carried out its obligations timely and exhaustively, with the exception of the payment of the salaries for November 2012. The Respondents took advantage of the Club's first contractual failure, to try to create a misleading appearance of "just cause" for terminating their employment relationship and for providing legitimacy to the recent negotiations, which they were carrying out with another club.

- According to the Respondents: Because of the pressure from the fans as well as from some members of the Club's management, the Appellant wanted to bring an end to the employment relationship with the Respondents. The Club, therefore, agreed to pay to them a certain amount in compensation for the early termination of their respective labour agreement. A settlement was to be submitted by the Appellant for the Respondents' approval prior to Christmas. On 15 and 16 December 2012, the Appellant published on its website the decision of its board of directors to rescind the labour agreement with Mr Maqueda and to hire Mr Ahmed Sary as a new coach. This news received an important echo in the media. In such an uncomfortable context, the Respondents urged the Appellant to *"speed up with the wording of the termination contracts but the Club, once more, requested patience"*. On 17 December 2012, the Appellant published on its website another press release, showing the new coach training its first team.

9. On 18 December 2012, the Respondents filed a joint complaint before the local police accusing the Appellant of having hired another coach and, as a result, of having breached their respective employment agreement. In their statement to the police, the Respondents claimed that their employer failed to fulfil its contractual as well as its financial obligations towards them. According to the police report, the Respondents answered as follows to the questions put to them (as translated into English by the Respondents):

*"(…)*

*Q: What is your name?*

*A: [Mr Maqueda]*

*Q: What is your complaint?*

*A: I signed a contract with [the Appellant] to be the general coach of the First Football team since July 2012 till the end of the season. Yesterday, we found that another management is training the team officially without terminating our contract, so the club violated the contract and failed to fulfil its financial obligation toward us.*

*Q: When and where did that happen?*

*A: It happened yesterday in Alexandria Union Club. Now, they perform their training in Alexandria Stadium.*

*Q: What is the damage inflicted on you?*

*A: I did not receive my due payments from Alexandria Union Club. (…)*

*Q: What is the purpose of filing this report?*

*A: To take the necessary legal actions as a result of terminating the contract before its expiration date.*

*Q: Do you have anything else to say?*

*A: No (…).*

*Another claimant joined the report and stated the following:*

*Q: What is your name?*

*A: [Mr Reche].*

*Q: What is your complaint?*

*A: The same complaint of the first complainer, in my capacity as assistant coach. (…).*

*Q: Do you have anything else to say?*

*A: No".*

10. On 20 December 2012, the lawyer, who acted on behalf of the Respondents, sent a joint notification to the Appellant requesting payment of the instalments corresponding to the month of November and to the first half of December 2012, as well as of the balance (NB: remaining, unpaid sum) of the *"upfront payment"* mentioned under Article 4 of his clients' labour agreements. He insisted on the fact that late payment was a formal breach of the employment relationship. In particular, he contended that the *"Club has also incurred in a severe and flagrant violation of the Contracts consisting of the following: it is notorious and of a public domain – based on information provided by the media – that the Club has engaged two different persons to replace Mr. Maqueda and Mr. Cazorla and in order to become and play the role of the Club's Head Coach and Assistant respectively. This constitutes "de facto" a dismissal of Mr. Maqueda and Mr. Cazorla by not allowing them to perform their work and fulfil their task as contractually agreed. It means the most serious infringement of the Contracts that could occur* ***being "per se" a unilateral termination of the Contracts without just cause carried out by the Club****".* As a consequence, the Appellant was required to pay within seven days USD 250,000 in favour of Mr Maqueda and USD 103,000 in favour of Mr Reche. These amounts corresponded *"to the Monthly salaries, part of the Signing on Fee and Compensation described above".*

### II.3 Proceedings before the Single Judge of the FIFA Players' Status Committee

11. On 19 January 2013, the Respondents initiated separate proceedings with the Single Judge of the FIFA Players' Status Committee to order the Appellant to pay them the amounts indicated by their lawyer in his letter of 20 December 2012.

12. The Single Judge of the FIFA Players' Status Committee issued two decisions, one relating to Mr Maqueda's claim and another to Mr Reche's.

13. In its decision dated 28 August 2013 (*"case ref. 13-00715/cku"*), the Single Judge of the FIFA Players' Status Committee found that Mr Maqueda's position was supported by various press releases and articles recorded on file. In addition, the Single Judge of the FIFA Players' Status Committee also took into account the draft of a termination agreement, dated 25 November

2012 and filed by Mr Maqueda. This document was allegedly sent by the Appellant to Mr Maqueda and reflects the intention of the Club to make an offer to Mr Maqueda for an early buy-out of the labour agreement. In this regard, the Single Judge of the FIFA Players' Status Committee *"deemed that, by acting in this way, the [Club] had clearly demonstrated its intention to terminate the contract"*. As a result, the Single Judge of the FIFA Players' Status Committee came to the conclusion that the Appellant had terminated Mr Maqueda's labour agreement. He also addressed the issue of whether the Appellant had a just cause to terminate its employment relationship with the Coach and held that it did not file any evidence establishing some kind of professional misconduct on the part of Mr Maqueda. As a consequence, the Single Judge of the FIFA Players' Status Committee decided that Mr Maqueda was entitled to receive from the Appellant *"the remaining amount due in accordance with the contract, i.e. the sum of USD 175,000 corresponding to his salary between December 2012 and June 2013 (i.e. USD 25,000 x 7 months), as compensation for breach of contract"* and *"the amount of USD 25,000 as outstanding salary"* corresponding to the month of November 2012.

14. As a result, on 28 August 2013 and as regards Mr Maqueda's case, the Single Judge of the FIFA Players' Status Committee decided the following:

> *"(…)*
>
> 1. *The claim of (…) Juan José Sanchez Maqueda, is partially accepted.*
> 2. *(…) Alexandria Union Club, has to pay to (…) Juan José Sanchez Maqueda, the amount of USD 25,000 as outstanding salary as well as the amount of USD 175,000 as compensation for breach of contract,* ***within 30 days*** *as from the date of notification of this decision.*
> 3. *Within the same time limit, (…) Alexandria Union Club, has to pay to (…) Juan José Sanchez Maqueda, default interest at a rate of 5% per year on the following partial amounts, as follows:*
>
>    *- On USD 25,000 from 1 December 2012 until the effective date of payment;*
>
>    *- On USD 175,000 from 28 August 2013 until the effective date of payment.*
> 4. *Any further claims lodged by (…) Juan Jose Sanchez Maqueda, are rejected.*
> 5. *If the aforementioned amounts of USD 25,000 and USD 175,000, plus interest as established above, are not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
> 6. *The final costs of the proceedings in the amount of CHF 10,000 are to be paid by (…) Alexandria Union Club,* ***within 30 days*** *as from the date of notification of this decision, as follows: (…)".*

15. In another decision dated 28 August 2013 (*"case ref. 13-00716/cku"*), the Single Judge of the FIFA Players' Status Committee dealt with Mr Reche's claim against the Appellant. Its decision is merely a copy and paste from Mr Maqueda's. Only the name and the figures were changed.

16. As a result, on 28 August 2013 and as regards Mr Reche's case, the Single Judge of the FIFA Players' Status Committee decided the following:

> *"(…)*

1. *The claim of (…) Antonio Cazorla Reche, is partially accepted.*
2. *(…) Alexandria Union Club, has to pay to (…) Antonio Cazorla Reche, the amount of USD 10,000 as outstanding salary as well as the amount of USD 70,000 as compensation for breach of contract,* ***within 30 days*** *as from the date of notification of this decision.*
3. *Within the same time limit, (…) Alexandria Union Club, has to pay to (…) Antonio Cazorla Reche, default interest at a rate of 5% per year on the following partial amounts, as follows:*

   *- On USD 10,000 from 1 December 2012 until the effective date of payment;*

   *- On USD 70,000 from 28 August 2013 until the effective date of payment.*
4. *Any further claims lodged by (…) Antonio Cazorla Reche, are rejected.*
5. *If the aforementioned amounts of USD 10,000 and USD 70,000, plus interest as established above, are not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
6. *The final costs of the proceedings in the amount of CHF 3,000 are to be paid by (…) Alexandria Union Club,* ***within 30 days*** *as from the date of notification of this decision, as follows: (…)".*

17. On 21 November 2013, the Parties were notified of the decisions issued by the Single Judge of the FIFA Players' Status Committee (hereinafter the "Appealed Decisions").

## III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 5 December 2013, the Appellant filed a statement of appeal and an appeal brief with the Court of Arbitration for Sport (hereinafter "CAS") against each of the decisions issued by the Single Judge of the FIFA Players' Status Committee. The procedure related to Mr Maqueda was recorded under *CAS 2014/A/3463* and the one related to Mr Reche under *CAS 2014/A/3464*. In both proceedings, the Appellant submitted an application for the stay of the Appealed Decisions.

19. On 14 January 2014, the CAS Court Office acknowledged receipt of the Appellant's various briefs for each procedure initiated (*CAS 2014/A/3463* and *CAS 2014/A/3464*), and of the payment of the CAS Court Office fee. It also took note of the fact that the Appellant requested the case to be submitted to a sole arbitrator.

20. On 21 January 2014, the Respondents agreed to a Panel composed of a sole arbitrator and requested the time limit to file the answer to be fixed after the payment by the Appellant of its share of the advance of costs.

21. On 3 February 2014, FIFA confirmed to the CAS Court Office that it renounced its right to request its intervention in the present arbitration proceeding.

22. On 4 February 2014, the Appellant as well as the representative of the Respondents agreed that the same Sole Arbitrator be appointed in both procedures.

23. In two separate orders dated 4 February 2014, the President of the Appeals Arbitration Division of the CAS dismissed the Appellant's application for the stay of the Appealed Decisions and ruled that the *"costs of the present order shall be determined in the final award or in any other final disposition of this arbitration"*.

24. On 2 April 2014, the CAS Court Office acknowledged receipt of the Appellant's payment of its share of the advance of costs for both procedures.

25. On 14 April 2014, the Respondents filed their respective answers.

26. On 15 April 2014, the Parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held.

27. On 22, respectively on 27 April 2014, the Respondents and the Appellant confirmed that they wished for a hearing to be held.

28. On 25 April 2014, the CAS Court Office informed the Parties that the Panel to hear the two appeals had been constituted as follows: Sole Arbitrator: Mr Petros C. Mavroidis, Professor, Switzerland.

29. The Sole Arbitrator decided to hold a hearing, which was scheduled for 19 June 2014, with the agreement of all the Parties to the present proceedings.

30. Between 13 June and 1 July 2013, the Parties sent to the CAS Court Office a duly signed copy of their respective Order of Procedure.

31. The hearing was held on 19 June 2014 at the Hotel Lausanne Palace, in Lausanne Switzerland. The Sole Arbitrator was assisted by Mr Fabien Cagneux, Counsel to the CAS, and Mr Patrick Grandjean, attorney-at-law, who acted as *ad hoc* Clerk for this litigation.

32. The following persons attended the hearing:

    - The Appellant was represented by its Executive Manager, Mr Gasser Monir Rizk Shames and by Mr Karim Mohamed Aly Hussein Ahmed.

    - The Respondents were not present but were represented by their legal counsel, Mr Iñigo de Lacalle Baigorri.

33. At the outset of the hearing, the Parties confirmed that they did not have any objection as to the appointment of the Sole Arbitrator.

34. During the hearing, the Parties agreed on or confirmed the following points:

    - Procedure *CAS 2014/A/3463* and procedure *CAS 2014/A/3464* must be consolidated and the Sole Arbitrator shall render one common award.

- With respect to the applicable substantive law, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply to the extent warranted.

- In both procedures, the Appellant withdrew its request for disciplinary sanctions against each of the Respondents.

- The Parties will use their best efforts to resolve the dispute amicably on or before 30 June 2014.

35. After the Parties' closing arguments, the Sole Arbitrator closed the hearing and announced that, should the dispute not be resolved to the mutual satisfaction of the Parties, he would render his award in due course. At the conclusion of the hearing, the Parties confirmed that their right to be heard and to be treated fairly in the present proceedings before the Sole Arbitrator had been fully respected. Thus, they felt that due process had been observed.

36. On 1 July 2014, the Respondents informed the CAS Court Office that the Parties failed to reach an amicable settlement to their dispute.

## IV. SUBMISSIONS OF THE PARTIES

### *A. The Appeal*

37. The Appellant's requests for relief were identical in procedure *CAS 2014/A/3463* and in procedure *CAS 2014/A/3464* and were as follows;

> *"According to the above we do request:*
>
> *1) The effects of the mentioned decisions to stop immediately.*
>
> *2) To consider that the 2 coaches did breach their contract with our club as they left the team and Egypt without any notice and without any valid reason.*
>
> *3) To compensate the club about this unilateral breach of contract from the coaches side.*
>
> *4) To apply a sporting penalty towards the both coaches as they did left the club and breach the contract which lead the club to a very bad position at the Egyptian league.*
>
> *5) To apply a sporting penalty towards the both coaches as they did file a complaint at the police station which is against FIFA rules".*

38. During the hearing before the CAS, the Appellant confirmed that it withdrew its requests for relief n° 4) and 5).

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

- The Respondents had no just cause to unilaterally terminate their labour agreement with immediate effect. The Appellant had always carried out its obligations timely and exhaustively, with the exception of the payment of the salary for November 2012. The

Appellant's contractual failure was caused by the political crisis in Egypt. *"Several approaches were done with the two coaches to receive their dues but they didn't accept any"*.

- As of 2 December 2012, the Respondents refused to carry on with their work and hence left the Appellant's first team without any coach during *"the most important period in the preparation of the team before the kick off of the Egyptian competitions. The management was forced to search for a coach to train the team until the return back of the [Respondents] in order make them ready before the competitions"*.

- The Appellant has no official website. Hence, the Respondents' allegations according to which the Appellant published on its website statements concerning the termination of Mr Maqueda's labour agreement or the hiring of a new coach are simply false.

- The Appellant wanted to keep the Respondents in its staff throughout the 2012-2013 season. It tried several times to convince them to remain at their post.

- It is not disputed that a member of the Appellant's Board of Directors, Dr Hisham El Tayeb, published on his personal website statements calling for Mr Maqueda's dismissal. However, Dr Hisham El Tayeb was expressing his own views and was not acting on behalf of the Appellant. In this regard, it should be noted that the President of the Appellant's Board of Directors, Mr Efat El Sadat, made several statements *"expressing his ultimate support for [the Respondents] in their positions"*.

- The Appellant has never intended to prematurely end the Respondents' labour agreements and has never drafted any resolution contract, whereby it would have offered some kind of compensation to the Respondents for the early termination of their employment relationship. The draft of a termination agreement filed by the Respondents has never been issued by the Appellant.

- The Respondents took advantage of the Club's first contractual failure to try to create a misleading appearance of "just cause" for terminating their employment relationship and for providing legitimacy to the recent negotiations, which they were carrying out with another club. As a matter of fact, the Respondents were *"making serious negotiations with Al Zamalek Club on the same day he went to the police Station to file a complaint against [the Appellant]"*.

- *"It is worth mentioning here that resorting to Police is against FIFA regulations"*.

- All the evidence presented by the Respondents support exclusively Mr Maqueda's case and not Mr Reche's. None of the evidence, namely none of the press releases, make any mention of Mr Reche who did not establish in any manner that he had a just cause to terminate his employment relationship with the Appellant.

### *B. The Answers*

40. On 14 April 2014, Mr Maqueda filed an answer, with the following requests for relief:

*"We hereby request that the COURT OF ARBITRATION FOR SPORT deem this ANSWER TO THE APPEAL as filed on behalf of MR JUAN JOSE MAQUEDA SANCHEZ, together with the copies thereof and the documents which are annexed thereto, in order for the future Appeal Arbitration Panel to eventually deliver an Award, in light of the statements herein and any other evidence provided in the course of arbitration proceedings, whereby:*

*A.- Rejecting in full the appeal against the Decision issued by the Single Judge of the Players Status Committee with reference* ***13-00715 cku****.*

*B.- Accepting in full the Decision issued by the Single Judge of the Players Status Committee with reference* ***13-00715 cku****.*

*C.- The Club is ordered to pay all legal costs and other arbitration expenses".*

41. The same day, Mr Reche filed an identical answer with the same requests for relief, save that they relate to his personal claim against the Appellant and the *"Decision issued by the Single Judge of the Players Status Committee with reference* ***13-00716 cku****".*

42. The submissions of the Respondents may, in essence, be summarized as follows:

- The Appellant breached the labour agreements entered into with the Respondents without just cause.

- The Appellant claimed for the first time in its appeal brief that it is the Respondents who failed to fulfil their contractual obligations and that it tried on *"several occasions to persuade [them] from terminating [their] Contract"*. This assertion is not substantiated by any evidence. In particular, there is no written notification of the Club requesting the Respondents to carry on with their job or threatening them with disciplinary measures.

- On 25 November 2012, the Appellant made a written offer to the Respondents in order to prematurely terminate their respective labour agreement. This document establishes that the Appellant's intention was to put an end to its employment relationship with the Respondents.

- By appointing a new coach, the Appellant prevented the Respondents from exercising their professional activity and, in fact, dismissed them. In addition, *"the Club was in breach of the Contract as was not paying the salaries due and outstanding to the [Respondents]"*.

- *"The Club is now trying to argue that all the press releases and the media are not valid. The Club argues that they do not have an official web page. However, if the Club did not appoint a new coach,* ***WHY IN ALL THE PRESS AND IN THE MEDIA IN EGYPT APPEARS SUCH INFORMATION?****"* (Emphasis added by the Respondents). The new coach even gave a press conference before the Egyptian press at the Appellant's premises.

- The Respondents did not violate any FIFA regulations.

- The Respondents are entitled to the payment of their claim with 5 % interest *p.a.* as of 1 December 2012 as regards the unpaid wages for the month of November 2012 and as of

28 December 2012 as regards the compensation for the early termination of their respective labour agreement.

## V. ADMISSIBILITY

43. Both appeals are admissible as the Appellant submitted them within the deadline provided by Article R49 of the Code of Sports-related Arbitration (hereinafter "the Code") as well as by Article 67 para. 1 of the FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code.

## VI. JURISDICTION

44. The jurisdiction of CAS, which is not disputed, derives from Articles 66 *et seq*. of the FIFA Statutes and Article R47 of the Code. It is further confirmed by the orders of procedure duly signed by the Parties.

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

46. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

## VII. APPLICABLE LAW

47. Article R58 of the Code provides the following:

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

48. Pursuant to Article 66 para. 2 of the FIFA Statutes, *"[t]he provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

49. At the hearing before the Sole Arbitrator, the Parties agreed that, subject to the primacy of applicable FIFA's regulations, Swiss Law should apply to the extent warranted.

## VIII. JOINDER

50. The two appeal procedures (*CAS 2014/A/3463* and *CAS 2014/A/3464*) have been consolidated in accordance with Article R52 para. 4 of the Code and with the Parties' unanimous consent. Therefore, the Sole Arbitrator shall render one common award.

## VIII. MERITS

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

    A. Who terminated the employment relationship, unilaterally, prematurely and without a just cause?

    B. What is the compensation due by whom?

### A. Who terminated the employment relationship, unilaterally, prematurely and without a just cause?

52. On the one hand, the Appellant claimed that it had always carried out its obligations timely and exhaustively, with the exception of the payment of the salaries for November 2012. It alleged that the Respondents took advantage of the Club's first contractual failure, to try to create a misleading appearance of "just cause" for terminating their employment relationship in order to continue further negotiations with another club, interested in their services.

53. On the other hand, the Respondents contended that, for its own reasons, the Appellant wanted to bring an end to its employment relationship with them. It is their case that, before an agreement could be reached between the Parties on the terms of a mutual termination of the respective labour agreements, the Appellant ceased to pay the Respondents' salaries and hired a new head coach. According to them, under these circumstances, the Appellant had dismissed the Respondents without just cause.

54. According to Article 337, para. 1, first sentence, of the Swiss Code of Obligations ("CO"), *"Both employer and employee may terminate the employment relationship with immediate effect at any time for just cause"*. Such a just cause exists whenever the terminating party can in good faith not be expected to continue the employment relationship (Article 337 para. 2 CO). The definition of 'just cause', as well as the question and whether just cause in fact existed, shall be established in accordance with the merits of each particular case (ATF 127 III 153 consid. 1 a). As it is an exceptional measure, the immediate termination of a contract for just cause must be accepted only under a narrow set of circumstances (*ibidem*). Only a particularly severe breach of the labour contract will result in the immediate dismissal of the employee, or, conversely, in the immediate abandonment of the employment position by the latter. In the presence of less serious infringement, an immediate termination is possible only if the party at fault persisted in its breach after being warned (ATF 129 III 380 consid. 2.2, p. 382). The judging body determines at its discretion whether there is just cause (Article 337 para. 3 CO). Under normal circumstances, only a few weeks' delay in paying a salary would not justify the termination of an employment contract.

55. After careful analysis of the Respondents' respective labour agreement with the Appellant, regardless of the fact that the two contracts were signed simultaneously and with the same employer, the Sole Arbitrator came to the conclusion that Mr Reche's contract was not ancillary to Mr Maqueda's. Each of the Respondents signed the contract with the Club alone, and on his own behalf and the two contracts were not linked to each other whatsoever. Had for example,

one of the Respondents violated his obligations towards the Appellant, there is nothing to indicate that it would affect somehow the other Respondent's employment relationship. Conversely, in case the Club violated its obligations towards one of the two employees, nothing in the record suggests that it would ipso facto have violated its obligations towards the other employee.

56. In other words, Mr Maqueda's and Mr Reche's situation are independent from each other and must be assessed individually. The Respondents obviously agree with these findings as they both initiated separate proceedings with the Single Judge of the FIFA Players' Status Committee.

*1. Mr Maqueda's situation*

57. The following facts are undisputed:

- Mr Maqueda was hired to train the Appellant's first team in his capacity of head coach;
- the Appellant was unable to pay the salary of November 2012;
- at that moment, the political situation in Egypt was very unstable;
- Mr Maqueda stopped working for the Appellant as of early December 2012;
- the Appellant has never served a formal notice to Mr Maqueda to carry out his contractual obligations;
- the Appellant has not initiated any disciplinary proceedings against Mr Maqueda;
- a new head coach was hired in the middle of December 2012.

58. Mr Maqueda claims that it was the Parties' intention to mutually end their employment relationship. To support his allegation, Mr Maqueda submitted the draft of a termination agreement, dated 25 November 2012, printed on the Club's letterhead. This document did not carry any signature or stamp. The Appellant contests being the author of this draft, which allegedly came to its attention for the first time during the proceedings before the FIFA. The Club contends that because Mr Maqueda refused to work, it *"was forced to search for a coach to train the team until the return back of the [Respondents] in order make them ready before the competitions"*.

59. The legitimacy and the origin of the draft of the termination agreement are of no relevance. During the proceedings before the CAS, it had been confirmed that the compensation offered for the early termination of the employment agreement was not accepted, because it was considered inadequate by Mr Maqueda. As a consequence, from the moment Mr Maqueda turned the alleged offer down, the employment relationship with the Appellant was still in force and binding.

60. Under such circumstances, the question, which arises is whether Mr Maqueda was entitled to stop performing his contractual duties as of the beginning of December 2012. At that moment, his wages for November 2012 had not been paid. The Appellant put the blame on Mr Maqueda who, all of a sudden, required his salary to be paid in cash instead of by cheque, which was the payment method used until then. The Appellant alleged that, because of the Egyptian crisis, it

was impossible to find so much cash. The Sole Arbitrator regrets that Mr Maqueda was not present at the hearing before the CAS to tell his side of the story. He was however, represented by his lawyer, who provided his version of the facts as we have already recorded them *supra*.

61. The individual employment agreement is a contract whereby the worker 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 para. 1 CO). In case of non-payment of salaries, and as long as the employer is late in paying the outstanding wages, the employee can refuse to work. This results from the application by analogy of Article 82 CO, which provides that *"A party who wishes to demand performance of a bilateral contract by the other party must either have already performed himself or tender his performance, unless pursuant to the contents or the nature of the contract he is only required to perform later"*. If the employee's refusal to work is justified, the employer must still pay the wages of his employee (ATF 120 II 209 – JT 1995 I 367).

62. Based on the foregoing, Mr Maqueda was entitled to stop working as long as his salary for November 2012 remained unpaid and his behaviour does not constitute a just cause for the Appellant to unilaterally terminate the employment contract. In contrast, the non-payment or late payment of remuneration by an employer can constitute "just cause" for the employee to put a premature end to the labour agreement. This is particularly true if it is repeated. However, only a few weeks' delay in paying a salary would not justify the termination of an employment contract. In the present case, the only delayed payment was related to the salary of November 2012 and it was apparently caused by the Egyptian crisis.

63. Under these circumstances and until mid-December 2012, the Sole Arbitrator finds that the Appellant had no "just cause" to terminate its employment relationship with Mr Maqueda on grounds that the latter stopped carrying his work. Likewise, Mr Maqueda was not entitled to put a unilateral end to his labour agreement by using the argument that the Appellant failed to pay his salary for the previous month.

64. Mr Maqueda's position is also that he had a just cause to terminate his labour agreement, because the Appellant's board of directors decided to hire Mr Ahmed Sary as the new head coach. This allegation is established by the following documents:

- A copy of 3 pages taken from the website www.etthadawy.com, dated 15 December 2012 and translated by the Respondents as follows:

  - *"Effat Sadat decided Union Club Chairman appointed Ahmed Sari technical director for the team during the current period while keeping the rest of the members of the technical and administrative and medical previous.(…)"*

  - *"Union Club decided Spanish honor Jose Maqueda and compatriot Antonioa during training sessions Sunday at the Stade Alexandria. The Union Club has ended his contract with Macheda consensual Corpuscular due to inactivity in Egypt during the current period (…)"*. This article was accompanied by a photo of Mr Maqueda.

- *"Finally curtain came down on the circuit since story for quite some time and which was the continuation of Macheda with Union team or not? And finally ended this meeting Effat Sadat Pmakida and his assistant Antonio and translator Khaled Sarhan to end up meeting with the consent of Macheda to end his contract and accepted Sadat's offer by obtaining a sum of money estimated 430 thousand pounds and 185 thousand pounds to help noteworthy that many voices from within the Board of Directors has called and demanded earlier in the necessity of ending the contract Macheda to the futility of survival with freeze Corpuscular activity in Egypt"*

- A copy of 2 pages taken from an unidentified website, dated 15 December 2012 and translated by the Respondents as follows:

  - *"Contract Effat Sadat Chairman Club Ittihad meeting today with Spanish Juankhu Macheda coach for the first team and his assistant Antonio Catherola in the presence of Khaled Sarhan translator and to agree on the dissolution of the [illegible] the headquaters of the club contract amicably with the Chairman of the club Macheda terminate the contract in exchange for 250 thousand pounds in addition to one month's salary and an estimated "30 thousand dollars" offered Antonio 125 thousand pounds in addition to a month's salary Macheda rejected Sadat's offer and left the meeting angry, on the grounds that the Egyptian Federation did not issue a formal decision to cancel the league and thus terminate the contract will be part of the club's management (…) Sadat agreed with Macheda to hold a second hearing tomorrow in Cairo for a final agreement satisfactory to both parties and to end it officially"*

  - *"The Board decided Ittihad Club rescind a contract Spanish Juankhu Macheda coach for the first team and officially ending its relationship with the club in the fifteenth of December current administration of the club's desire to provide salary and his assistant Antonio after making sure not to set up the league championship season. For his part, Mustafa Hussein, a member of the Board of Directors that the decision to rescind a contract Macheda is the best in the current period and in the interest of the club, especially in light of the lack of clarity of vision for the start of the league. Hussein pointed out that the meeting brought together Sadat and the Spaniard agreeing to terminate the contract and settlement of financial dues by mutual consent, he said, adding that the club safe Athtml exchange salary Macheda and his assistant in the shadow of the financial crisis experienced by the club.*

- A one page undated document, the origin of which is unidentified, confirming that *"Wael Al-Rifai after a Board meeting this morning at the headquarters of the Club St.-Shatby Board finally agreed with the new coach who will succeed macheda (…). Wael said in remarks that macheda will Sunday bid farewell ceremony with the players in Alexandria (…) before leaving Egypt for his hometown Spain".*

- A copy of 5 pages taken from the website www.etthadawy.com, dated 16 December 2012 and translated by the Respondents as follows:

  - *"Formally ended the relationship between Juankhu Macheda artistic director of the Union Team and players reunited last meeting in training this afternoon. Macheda spoke with his players for the last period he spent with them and listed many pros during this period (…)".*

- *"Departure ceremony. Attended Union dot com ceremony departure for director Spaniard Macheda first team football and has witnessed the ceremony to attend a large number of fans Union, which cheered for Macheda and his assistant Antonio for long periods, which drove Macheda felt and fell back tears in front of everyone which everyone in a remarkable position.* (…)*".*

- *"A few hours and declare al Ittihad for the associate device Ahmed Sari, adopted a formal decision, he responsibility of the substantive Department for the first team football to succeed Spaniard Macheda (…)".*

- *"Missed Hany Sorour board member Ittihad Club for a farewell ceremony the Spaniard Juaju Macheda (…) Said Srour had intended to attend the sequel to his role a board member but a decision was made not to come after his meeting with Khaled Sarhan interpreter Macheda, who assured him the wrath Spanish him to attack the permanent and claim repeatedly need his departure stressing disappointment and anger Macheda him (…)".*

- *"Announced new coach of the Union, succeeding Spanish Macheda Captain Ahmed Sari apparatus Associate, which saw many changes, including the introduction of Captain Hany Ahmed assistant coach and dispensing position coach and chose abdul Salam Hassan coach of the guards (…)".*

- A copy of 3 pages taken from the website www.etthadawy.com, dated 17 December 2012, commenting the first training session with the new head coach, Mr Ahmed Sari. It was apparently attended by *"Samir Abdul Hamid, deputy president of the club and Hany Sorour, board member and Gasser Mounir general manager of the club".*

- A copy of several pages taken from the website www.etthadawy.com, dated 17 December 2012, referring to a press conference given by the new head coach.

- A copy of several pages taken from several unidentified websites, dated 18 December 2012 and relating Mr Maqueda's visit paid to the local police in order to file a complaint as regards the late payment of his wages. These articles were accompanied by photos of Mr Maqueda. At no moment do the articles mention Mr Reche.

- A copy of several pages taken from the website www.etthadawy.com, dated 18 December 2012 commenting on the dispute which arose between Mr Maqueda and the Appellant's President. Apparently, Mr Maqueda decided to turn to the police as soon as the Appellant's President broke the agreement reached earlier as regards the financial terms of the early termination of the employment relationship. At no moment do the articles mention Mr Reche.

- An announcement made by Dr Hisham Al-Tayeb, member of the Appellant's Board of Directors on the website www.etthadawy.com, dated 19 December 2012, criticizing the Appellant's President for hiring expensive coaches and for dismissing them without following the applicable procedures.

65. In spite of the uncertain source of some of the documents submitted by Mr Maqueda and their poor translation, the Sole Arbitrator finds the evidence to be sufficiently reliable to accept a)

that the Appellant and Mr Maqueda wanted to put an end to their employment relationship, b) but did not reach an agreement and that, in spite of this, c) the Appellant hired a new head coach as of 16 December 2012.

66. It is undisputed that Mr Maqueda was hired to be the Appellant's first team head coach. He held this position from the beginning of his labour agreement until mid-December 2012, when Mr Ahmed Sary replaced him.

67. Under Swiss law, the employer has the obligation to protect the employee's personality (Article 328 CO). 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 carrier 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 therefore not authorised to employ them at a different or less interesting position than the one they have been employed for (WYLER R., *Droit du Travail*, Stämpfli, Berne 2008, p. 320).

68. The Sole Arbitrator is of the view that Mr Maqueda was hired to be the head coach of the Appellant's first team, and had a right to be employed under these terms that had been agreed contractually between him and the Club anyway. The exclusion from this position and his *de facto* demotion, since a new coach was hired as of December 16, could have seriously prejudiced his career development.

69. By offering Mr Maqueda's position to Mr Ahmed Sary, the Appellant prevented Mr Maqueda to perform the task for which he was hired and, therefore, breached the employment agreement unilaterally and prematurely, without just cause. As a result, Mr Maqueda had now just cause to terminate his employment agreement with the Club.

*2. Mr Reche's situation*

70. Mr Reche's answer and supporting evidence are exactly the same as Mr Maqueda's, subject to the terms specific to him (in his answer, his name replaced Mr Maqueda's and the amounts claimed were adapted to his lower salary).

71. For the same reasons as the ones exposed for Mr Maqueda, until mid-December 2012, the Sole Arbitrator finds that the Appellant had no "just cause" to terminate its employment relationship with Mr Reche on grounds that the latter stopped carrying his work. Likewise, Mr Reche was not entitled to put a unilateral end to his labour agreement by using the argument that the Appellant failed to pay his salary for the previous month.

72. Regarding the events which occurred as of mid-December 2012 and their consequences, it appears that Mr Reche's position is quite different from Mr Maqueda's, in several aspects:

- Mr Reche was hired *"in his capacity as Assistant of the Head coach"*, whereas Mr Maqueda was hired as the head coach.

- It has not been established in any manner that Mr Reche was hired to be Mr Maqueda's assistant. In particular, it has not been proven that it was the Parties' intention to reach a package deal, whereby the fate of Mr Maqueda's contract was to be reflected upon Mr Reche's.

- Contrary to the situation observed with Mr Maqueda, it has not been established that the Appellant replaced Mr Reche with another assistant coach or that it was out of the question that he remained in his position, in spite of the presence of a new head coach.

73. Mr Reche's case is exclusively supported by the various press releases and copy of web pages mentioned *supra*, which mainly cover Mr Maqueda's departure and all but discuss Mr Reche's case. It can be concluded from those documents that Mr Reche could not reach an agreement with the Appellant on an early termination of his employment contract and that the new head coach had several assistants. However, nothing indicates that the Appellant refused to provide him with the activity he had been employed for (*i.e.* assistant of the head coach), breaching therefore his personality rights as safeguarded by Article 328 CO.

74. In other words, the Sole Arbitrator did not find any evidence on record, which allowed Mr Reche's lawyer to affirm, in his notification of 20 December 2012, that *"it is notorious and of a public domain – based on information provided by the media – that the Club has engaged two different persons to replace Mr. Maqueda and Mr. Cazorla and in order to become and play the role of the Club's Head Coach and Assistant respectively"*. In particular, Mr Reche has not demonstrated that the Appellant's breach of obligation was so significant that it caused the confidence, which he had in future performance in accordance with his employment contract, to be lost. This would have constituted a "just cause" for termination of the contract, provided that a warning had been given, which did not occur (CAS 2006/A/1180).

75. In other words, in mid-December 2012 and as far as Mr Reche is concerned, the Appellant had always carried out its obligations, with the exception of the payment of the salary for November 2013, which it fails to make timely and which does not constitute a "just cause".

76. In light of the above consideration, the Sole Arbitrator finds that Mr Reche did not have a just cause to unilaterally and prematurely terminate his labour agreement with the Appellant.

## B. What is the compensation due by whom?

77. Based on the foregoing considerations, it appears that the Appellant terminated Mr Maqueda's labour agreement without just cause, whereas Mr Reche did not have a valid reason to leave his working place.

### *1. Mr Maqueda's situation*

78. If the employer dismisses the employee in the absence of a just cause, the latter shall have a claim for compensation of what he would have earned if the employment relationship had been terminated by observing the notice period or until the expiration of the fixed agreement period (Article 337c para. 1 CO). This provision is mandatory as it cannot be derogated from by

agreement, by standard contract of work, or by collective agreement to the detriment of the employee (Article 362 para. 1 CO).

79. The labour agreement signed between the Appellant and Mr Maqueda was a fixed-term agreement, effective from 1 July 2010 until *"the end of the football season 2012/2013"*. However, at the hearing before the CAS, it was accepted that due to the exceptional circumstances relating to the Egyptian revolution, the 2012/2013 season ended in April 2013 and the results of the Egyptian League were cancelled. In this respect, it results from the evidence submitted by the Respondents that, in December 2012 already, the Club and Mr Maqueda accepted that the deteriorating condition of the Egyptian political situation was an issue and agreed to negotiate the terms of a mutual termination of their employment relationship.

80. The Sole Arbitrator finds that the Egyptian civil war is an event of *force majeure*, which is beyond the Parties' control, which the Parties could not have reasonably provided against before entering into the contract, which could not reasonably have been avoided or overcome, and which is not attributable to any of the Parties. Under these circumstances, the Sole Arbitrator finds that the events which put an end to the 2012/2013 season and which admittedly occurred on 1 April 2013, prevented the Appellant from performing all or part of its contractual obligations. As a result and as of 1 April 2013, the Appellant must be released from further performance of the obligations concerned.

81. Based on Article 337 c CO, Mr Maqueda must be awarded full salary for the months of November 2012 until April 2013, included.

82. According to Article 4 of his labour agreement, Mr Maqueda was entitled to a *"net total monthly salary of $ 31,650 USD, of which an upfront payment as a Contract Success gesture of $ 83,350 USD will be deducted and provided to [Mr Maqueda] upon the signing and effectiveness of this contract. Therefore the [Mr Maqueda] is to receive a $ 25,000 USD net salary due at the end of each calendar month during the term of this contract"*. In other words, he was entitled to a yearly salary of approximately USD 383,000 (12 x 31,650 or 83,350 + (12 x 25,000)).

83. Mr Maqueda should have received the following amounts:

| | |
|---|---|
| Salary for the month of July 2012 | USD 31,650.00 |
| Salary for the month of August 2012 | USD 31,650.00 |
| Salary for the month of September 2012 | USD 31,650.00 |
| Salary for the month of October 2012 | USD 31,650.00 |
| Salary for the month of November 2012 | USD 31,650.00 |
| Salary for the month of December 2012 | USD 31,650.00 |
| Salary for the month of January 2013 | USD 31,650.00 |
| Salary for the month of February 2013 | USD 31,650.00 |
| Salary for the month of March 2013 | USD 31,650.00 |
| Salary for the month of April 2013 | USD 31,650.00 |
| **Total** | **USD 316,500.00** |

84. At the moment of his unjustified dismissal, the following amounts were paid to Mr Maqueda:

| | |
|---|---|
| Upfront payment | USD 83,350.00 |
| Month of July | USD 25,000.00 |
| Month of August | USD 25,000.00 |
| Month of September | USD 25,000.00 |
| Month of October | USD 25,000.00 |
| **Total** | **USD 183,350.00** |

85. In view of the above, Mr Maqueda is entitled to the payment of **USD 133,150** (316,500 – 183,350).

86. The question then arises whether there is any reason to adjust the compensation to be awarded to Mr Maqueda. Pursuant to Article 337c para. 2 CO, the Judging body has to take into consideration the amount that Mr Maqueda has earned with another employment agreement or has intentionally omitted to earn during the period of the breached contract. At the hearing before the CAS, Mr Maqueda's representative confirmed that his client had actively looked for new contracts but only had informal negotiations, which did not lead to any concrete agreements. He affirmed that Mr Maqueda did not find a new employer or earned any amount during the litigious period.

87. In order to determine what amount Mr Maqueda has earned with another employment agreement or has intentionally omitted to earn during the period of the breached contract, the Sole Arbitrator has to take into consideration the individual circumstances of the case. The employer (*i.e.* the Appellant) bears the burden of proof (decisions of the Swiss Federal Court of 12 June 2001, 4C.100/2001 and of 24 January 2005, 4C.351/2004). As regards the burden of proof, it is the Appellant's duty to objectively demonstrate the existence of its rights (Art. 8 of the Swiss Civil Code). In the case at hand, the Appellant adduced no evidence at all. In its appeal brief, it relied on one newspaper article mentioning possible negotiations between a club and Mr Maqueda. This does not suffice to shift the burden of proof on the head coach.

88. It follows that there is no reason to adjust the compensation of USD 133,150 as determined here-above.

89. With respect to the payment of the compensation to which he is entitled, Mr Maqueda has requested the application of an interest rate of 5% *p.a.*, starting on 1 December 2012 as regards the unpaid salary for the month of November 2012 and on 28 December 2012 as regards the compensation for the early termination of his labour agreement.

90. Under Swiss law, unless otherwise provided for in the contract, the legal interest due for late payment is of 5% *p.a.* (Article 104 para. 1 CO).

91. Regarding the *dies a quo* for the interest:

- As regards the late payment of the salary for November 2012: the *dies a quo* for the interest correspond to the due date, *i.e.* 1 December 2012.

- As regards the compensation for unjustified dismissal: According to Article 339 para. 1 CO, all claims arising from the employment relationship fall due upon its termination. Even an unlawful, premature termination does put an end to the contractual relationship *ex nunc*. Therefore, as the termination of the Employment Agreement occurred on 20 December 2012, the claim of Mr Maqueda on compensation for premature termination without just cause became due on that date. This is consistent with CAS Jurisprudence (CAS 2008/A/1519-1520, par. 182 *et seq*.). However, in his answer, Mr Maqueda applied for the payment of interest as of 28 December 2012.

92. Based on the foregoing, the Sole Arbitrator finds that Mr Maqueda is entitled to the payment of USD 25,000 with 5 % interest *p.a.* as of 1 December 2012 until the effective date of payment and USD 108,150 (i.e. 133,150 – 25,000) with 5 % interest *p.a.* as of 28 December 2012.

*2. Mr Reche's situation*

93. Under Swiss law, Article 337d CO deals with the situation where the employee, without a valid reason, does not appear at his work place, or leaves it without notice. There is an unjustified failure to appear at the working place, when the employee is absent for several days and the employer can reasonably assume that it is not in the employee's intention to return and that his decision is final (ATF 108 II 301, consid. 3 b; decision of the Swiss Federal Court of 21 December 2006, 4C.339/2006, consid. 2.1; Wyler, op. cit., p. 499; Aubert, op. cit., ad art. 337d, N. 2, p. 1791).

94. In the present case, it is undisputed that, as of 20 December 2012, Me Reche did not have the intention to come back to the Appellant. At that moment, Mr Reche was entitled to his salary for November 2012 as well as for the twenty first days of December 2012.

95. Mr Reche was entitled to a *"net total monthly salary of $ 13,460 USD, of which an upfront payment as a Contract Success gesture of $ 41,600 USD will be deducted and provided to [him] upon the signing and effectiveness of [the contract]. Therefore [Mr Reche] is to receive a $ 10,000 USD net salary due at the end of each calendar month during the term of this contract"*. In other words, he was entitled to a yearly salary of approximately USD 161,000 (12 x 13,460 or 41,600 + (12 x 10,000)).

96. On 20 December 2012, Mr Reche should have received the following amounts:

| | |
|---|---|
| Salary for the month of July | USD 13,460.00 |
| Salary for the month of August | USD 13,460.00 |
| Salary for the month of September | USD 13,460.00 |
| Salary for the month of October | USD 13,460.00 |
| Salary for the month of November | USD 13,460.00 |
| Salary for the month of December (13,460: 30 x 20) | USD 8,973.40 |
| **Total** | **USD 76,273.40** |

97. At the same date, the following amounts were paid to Mr Reche:

| | |
|---|---|
| Upfront payment | USD 41,600.00 |
| Month of July | USD 10,000.00 |
| Month of August | USD 10,000.00 |
| Month of September | USD 10,000.00 |
| Month of October | USD 10,000.00 |
| **Total** | **USD 81,600.00** |

98. In the presence of the unjustified failure by the employee to appear at his working place, the employer shall have a claim for compensation equal to one quarter of the employee's monthly salary. Moreover, he shall be entitled to compensation for additional damages (Article 337d para. 1 CO).

99. The employer does not need to establish any effective damage to obtain the payment of the fixed compensation of one quarter of the employee's monthly salary. However, by means of legal action or debt enforcement proceedings, he needs to claim that compensation be paid within 30 days of the failure to appear at or the unjustified leaving of the working place, failing which its petition becomes time-barred (Article 337d para. 3 CO.). Should the employer wish to claim further damages exceeding one quarter of the employee's monthly salary, the peremptory time limit of Article 337d para. 3 CO does not apply but the employer needs to prove the existence of an actual damage (WYLER R., *ibidem*, p. 523).

100. In the present case, the Appellant asked the CAS *"To compensate the club about this unilateral breach of contract from the coaches side"*. This request for relief was submitted well after the time-limit laid down in Article 337d para. 3 CO. As a result, the fixed compensation of one quarter of Mr Reche's monthly salary cannot be awarded.

101. In addition, the only damage proven by the Appellant in the present case is the overpayment of salary to Mr Reche, which amounts to **USD 5,326.60** (81,600 - 76,273.40).

102. Based on the foregoing, the Sole Arbitrator finds that the Appellant is entitled to the payment of USD 5,326.60. No interest has been claimed for in the Appellant's written submissions. The payment of the amount of USD 5,326.60 is therefore awarded without interest.

## ON THESE GROUNDS

**The Court of Arbitration for Sport rules that:**

*CAS 2014/A/3463 Alexandria Union Club v. Juan José Sánchez Maqueda*

1. The appeal filed on 5 December 2013 by Alexandria Union Club against the decision (*"case ref. 13-00715/cku"*) of the Single Judge of the FIFA Players' Status Committee dated 28 August 2013 is partially upheld.

2. The decision (*"case ref. 13-00715/cku"*) of the Single Judge of the FIFA Players' Status Committee dated 28 August 2013 is partially reformed in the sense that Alexandria Union Club is ordered to pay to Mr Juan José Sánchez Maqueda an amount of USD 25,000 with 5 % interest *p.a.* as of 1 December 2012 and an amount of USD 133,150 with 5 % interest *p.a.* as of 28 December 2012.

3. (…).

4. (…).

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

*CAS 2014/A/3464 Alexandria Union Club v. Antonio Cazorla Reche*

1. The appeal filed on 5 December 2013 by Alexandria Union Club against the decision (*"case ref. 13-00716/cku"*) of the Single Judge of the FIFA Players' Status Committee dated 28 August 2013 is upheld.

2. The decision (*"case ref. 13-00716/cku"*) of the Single Judge of the FIFA Players' Status Committee dated 28 August 2013 is set aside.

3. Mr Antonio Cazorla Reche is ordered to pay to Alexandria Union Club an amount of USD 5,326.60.

4. (…).

5. (…).

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