



**Arbitration CAS 2015/A/3951 Al Ittihad Club v. Carlos Corberan & Al Nassr Riyadh, award of 27 August 2015**

Panel: Mr Hendrik Willem Kesler (the Netherlands), President; Mr Saleh Alobeidli (United Arab Emirates); Prof. Luigi Fumagalli (Italy)

*Football*

*Termination of an employment contract with a coach without just cause*

*Burden of proof*

**The burden of proof of showing that a “misrepresentation” occurred and that any such “misrepresentation” had a determinative effect on the decision of a party to enter into a settlement agreement rests with that party. The party, relying on an alleged “fraud”, must meet the onus of substantiating its allegations and must prove affirmatively the facts on which it relies with respect to that issue.**

**I. PARTIES**

1. Al Ittihad Saudi Football Club (hereinafter: the “Appellant” or “Al Ittihad”) is a football club with its registered office in Jeddah, Saudi Arabia. Al Ittihad is registered with the Saudi Arabian Football Federation (hereinafter: the “SAFF”), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: “FIFA”).
2. Mr Carlos Corberán Vallet (hereinafter: the “First Respondent” or the “Coach”) is a football coach of Spanish nationality.
3. Al Nassr Riyadh Football Club (hereinafter: the “Second Respondent” or “Al Nassr”) is a football club with its registered office in Riyadh, Saudi Arabia. Al Nassr is also registered with the SAFF.

**II. FACTUAL BACKGROUND**

**A. Background Facts**

4. Below is a summary of the main relevant facts, as established on the basis of the parties’ written submissions<sup>1</sup> and the evidence examined in the course of the present appeals arbitration

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<sup>1</sup> Several of the documents submitted by the parties and referred to in this award contain various misspellings: they

proceeding and during the hearing. This background is set out 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.

5. On 25 February 2012, Al Ittihad and the Coach concluded an employment contract as head coach for approximately one and a half football seasons, *i.e.* valid from 25 February 2012 until 30 June 2013.
6. On 1 August 2012, Al Ittihad and the Coach extended their employment relationship by concluding a new employment contract (hereinafter: the “Employment Contract”) for two football seasons, *i.e.* valid from 1 August 2012 until 30 June 2014.
7. In a letter of 25 February 2013 signed by its President at the time, Al Ittihad informed the Coach in writing that it had decided to terminate the Employment Contract with immediate effect. Such letter read as follows:

*“As verbally communicated to the professional Spanish football assistant coach Mr. Carlos Corberan Vallet, last Friday, 22 February 2013, by Mr. Adel Jamjom, Ittihad Club hereby dully represented by its President Eng. Mohammed Al Fayed, officially confirms its unilateral contractual termination of the employment contract signed with the aforementioned coach on 1<sup>st</sup> August 2012 (valid from such date until 30 June 2014), with immediate effects.*

*In light of the above, the parties are no longer contractually bound”.*

8. On 28 March 2013, Al Ittihad, represented by its President, Mr Mohammed Al Fayed, and the Coach concluded a settlement agreement (hereinafter: the “Settlement Agreement”), providing *inter alia* for the following:

#### I. OBJECT

*By means of the present [Settlement Agreement], the PARTIES acknowledge that [Al Ittihad] has unilaterally terminated their [Employment Contract] dated 1 August 2012 without just cause, having officially notified the [Coach] about such contractual termination on 25 February 2013.*

*Also, the PARTIES hereby agree to waive their eventual rights to claim any further financial compensation beyond the one provided in this [Settlement Agreement].*

#### II. COMPENSATION AMOUNT AND PAYMENT TERMS

*As compensation for its previously-mentioned unilateral contractual termination, [Al Ittihad] hereby freely and consciously agrees to pay to the [Coach], the total amount of US Dollars 200.022.00 (Two hundred thousand and twenty-two U.S. Dollars).*

*The abovementioned financial compensation shall be paid in 2 (two) installments, [sic] as follows:*

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are so many that the Panel, while quoting them, could not underscore them all with a “*sic*” or otherwise.

*The first installment, corresponding to 50 % (fifty percent) of the aforementioned total amount (i.e. US Dollars 100.011.00 (one hundred thousand and eleven U.S. dollars), shall be paid until 15th May 2013, at the latest.*

*The second installment, corresponding to the balance value of the aforementioned total amount (i.e. US Dollars 100.011.00 (one hundred thousand and eleven U.S. dollars), shall be paid until 15th November 2013, at the latest”.*

9. On 29 April 2013, the Coach concluded an employment contract as head coach with the U-19 team of Agrupación Deportiva Alcorcón, a football club with its registered office in Alcorcón, Spain, for two months, i.e. valid between 29 April 2013 and 30 June 2013
10. On 14 May 2014, the Coach concluded an employment contract with Al Nassr for two football seasons, i.e. valid from 10 June 2014 until 9 June 2016.
11. On 31 October 2014, Al Nassr terminated the employment contract with the Coach for reasons which have nothing to do with the issues in this appeal.

## **B. Proceedings before the Single Judge of the Players’ Status Committee of FIFA**

12. On 16 September 2013, the Coach lodged a claim against Al Ittihad with the Single Judge of the Players’ Status Committee of FIFA (hereinafter: the “Single Judge”), which was received by FIFA on 24 September 2013. The claim was supplemented on 23 May 2014, finally claiming a total amount of USD 200,022, plus interest and costs.
13. On 8 October 2013, FIFA informed Al Ittihad through the SAFF of the claim filed by the Coach. In the same way, FIFA informed Al Ittihad of the subsequent proceedings before the Single Judge. In spite of being provided with an opportunity to do so by FIFA, Al Ittihad did not submit any statement during the course of the proceedings and indeed appears to have taken no active part in them at all.
14. On 26 August 2014, the Single Judge rendered his decision (hereinafter: the “Appealed Decision”), with the following operative part:

*“1. The claim of the [Coach] is accepted.*

*2. [Al Ittihad] has to pay to the [Coach], within 30 days as from the date of notification of the present decision, the total amount of USD 200,022, plus interest as follows:*

- *5% per annum over the amount of USD 100,011 as from 2 October 2013 until the effective date of payment;*
- *5% per annum over the amount of USD 100,011 as from 23 May 2014 until the effective date of payment.*

*[...]”.*

15. On 4 February 2015, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:

- “7. To start with, the Single Judge took note that on 1 August 2012 the [Coach] and [Al Ittihad] concluded the contract valid until 30 June 2014.
8. Equally, the Single Judge noted that on 28 March 2013 the [Coach] and [Al Ittihad] concluded the agreement, under the terms of which [Al Ittihad] admitted having unilaterally terminated the contract on 25 February 2013 and confirmed owing to the [Coach] compensation for breach of contract for a total amount of USD 200,022 payable in two instalments.
9. In this respect, the Single Judge focussed his attention to the content of the agreement and emphasised that [Al Ittihad] and the [Coach] contractually agreed [...] that the latter would receive from [Al Ittihad] an amount of USD 200,022 payable in two instalments.
10. In continuation, the Single Judge pointed out that the [Coach] had originally lodged a complaint with FIFA against [Al Ittihad] on 2 October 2013<sup>2</sup> claiming the payment of the first two instalments agreed in the agreement. Moreover and since [Al Ittihad] allegedly did not comply with its contractual obligations, the Single Judge duly took note that the [Coach] had decided to amend his initial claim on 23 May 2014 requesting the payment of the total amount provided in the agreement, i.e. USD 200,022.
11. In this context, the Single Judge deemed appropriate to reiterate that, during the investigation of the matter at stake, [Al Ittihad] did not provide with [sic] its position to the claim lodged against it and, therefore, it has to be assumed that it did not contest any of the allegations or documentary evidence provided by the [Coach].
12. In view of all the above, the Single Judge decided that, in accordance with the general principle of *pacta sunt servanda* which in essence means that agreements must be respected by the parties in good faith, [Al Ittihad] must fulfil the obligation it voluntarily entered into with the [Coach] by means of the agreement signed between the parties, and therefore, [Al Ittihad] must pay to the [Coach] the compensation agreed upon in the agreement.
13. In addition, the Single Judge took note that the [Coach] had requested interest over the outstanding amounts. In this regard, the Single Judge deemed appropriate to grant interest at a rate of 5% per annum over the first two instalments (i.e. USD 100,011) as from the date of the initial claim, i.e. from 2 October 2013, until the effective date of payment as well as at a rate of 5% per annum over the last two instalments (USD 100,011) from the date of the amended claim, i.e. from 23 May 2014, until the effective date of payment.
14. In view of all the above-mentioned considerations, the Single Judge decided that the claim of the [Coach] is accepted and that [Al Ittihad] has to pay to the [Coach] the total amount of USD 200,022 as compensation, plus interest at a rate of 5% per annum over the amount of USD 100,011 as from 2 October 2013 until the effective date of payment as well as at a rate of 5% per annum over the amount of USD 100,011 as from 23 May 2014 until the effective date of payment”.

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<sup>2</sup> It appears from the case file of FIFA that the Coach filed his claim on 16 February 2013 and that this claim was received by FIFA on 24 February 2013.

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

16. On 25 February 2015, Al Ittihad lodged with the Court of Arbitration for Sport (hereinafter: the “CAS”) a Statement of Appeal against the Appealed Decision in accordance with Article R48 of the Code of Sports-related Arbitration (2013 edition) (hereinafter: the “CAS Code”). In this submission, Al Ittihad nominated Mr Saleh Alobeidli, Attorney-at-Law in Dubai, United Arab Emirates, as arbitrator.
17. The Statement of Appeal filed by Al Ittihad contained also an application for evidentiary measures, including a request for the production of documents by the Coach and Al Nassr.
18. Also on 25 February 2015, the CAS Court Office received another appeal filed by Al Ittihad against a decision rendered by the Single Judge in a further case involving Mr Raúl Caneda, the former head coach of Al Ittihad, and Al Nassr. Such appeal proceedings were registered as *CAS 2015/A/3950 Al Ittihad Club v. Raúl Caneda & Al-Nasr Riyadh*.
19. On 6, 8 and 10 March 2015 respectively, further to an inquiry from the CAS Court Office, Al Ittihad and Al Nassr objected to refer the cases referenced *CAS 2015/A/3950 Al Ittihad Club v. Raúl Caneda & Al-Nasr Riyadh* and *CAS 2015/A/3951 Al Ittihad Club v. Carlos Corberan & Al-Nasr Riyadh* to the same Panel. The Coach had no objection thereto.
20. On 10 March 2015, the CAS Court Office informed the parties that the two above-mentioned cases would be submitted to different Panels.
21. On 16 March 2015, Al Ittihad insisted in its request for the production of documents, and specifically sought a copy of the Settlement Agreement.
22. On 16 March 2015, the Coach nominated Prof. Luigi Fumagalli, Professor and Attorney-at-Law in Milan, Italy, as arbitrator.
23. On 17 March 2015, the CAS Court Office granted Al Nassr a deadline to advise the CAS Court Office whether it agreed with the nomination of Prof. Fumagalli and that, in the absence of any objection, it would be considered that it agreed thereto.
24. Also on 17 March 2015, the Coach provided the CAS Court Office with a copy of the Settlement Agreement requested by Al Ittihad.
25. On 20 March 2015, Al Ittihad filed its Appeal Brief in accordance with Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments and included the following requests for relief:
  - “1. To accept this appeal against the decision rendered by the FIFA PSC dated the 26th of August, 2014.
  2. To adopt an award annulling the Decision stating that:
    - a.1. Therefore the Respondent respectfully requests that the claim of the First Respondent is to be declared as inadmissible as assistants and/or physical trainers are not entitled to seek redress

*before FIFA Judicial Bodies.*

*In the unlikely event that the Panel does not accept this argument:*

- b.2. The First Respondent, in bad faith, breached the Initial Contract and the Contract and as a result the Club dismissed the First Respondent with just cause;*
  - b.3. The First Respondent fraudulently induced the Club to enter into the Settlement Agreement; and*
  - b.4. The Settlement Agreement is declared null and void by operation of articles 28 and 31 of the CO and that the Club is not responsible to pay to the First Respondent any compensation pursuant to the Initial Contract, the Contract or the Settlement Agreement.*
  - b.5. The Second Respondent induced the First Respondent to breach his contract with the Appellant so that it could procure his services.*
  - b.6. Both the First and Second Respondent are condemned to the payment of an amount of \$15,000 USD established in light of Article 9.1 of the Employment Contract.*
  - c.1. In the unlikely scenario that the Panel does not accept the arguments above, that it finds that as the First Respondent found employment with the Second Respondent, that the damages that the FIFA PSC has imposed are mitigated and lowered by the amount of the wages that the First Respondent was paid by the Second Respondent.*
- 3. Independently of the type of the decision to be issued, the Appellant requests the Panel:*
    - a. To fix a sum of 25,000 CHF to be paid by the Coach and the Second Respondent to the Appellant, to help the payment of its legal fees and costs.*
    - b. To condemn the Respondents to the payment of the whole CAS administration costs and the Arbitrators fees”.*
26. On 25 March 2015, since Al Nassr had not objected to the nomination of Prof. Fumagalli, the CAS Court Office informed the parties that it was considered that Al Nassr agreed to the joint nomination of Prof. Fumagalli.
  27. On 13 April 2015, the Coach filed his Answer in accordance with Article R55 of the CAS Code, with the following requests for relief:
    - “1. Reject the appeal filed by the Appellant, Al Ittihad FC, against the decision of the FIFA Players’ Status Committee on 26 August 2014 (reference nr. 13-02948/mbo), whose grounds were notified to the Parties on 4 February 2015.*
    - 2. Confirm the FIFA PSC decision in full and accordingly, to condemn Al Ittihad FC to pay Mr. Caneda as compensation for the unilateral termination without just cause in the amount of USD 200,022 (two hundred thousand and twenty-two USD), plus interests as follows:*

- 5% per annum over the amount of USD 100,011 as from 2 October 2013 until the effective date of payment;
- 5% per annum over the amount of USD 100,011 as from 23 May 2014 until the effective date of payment;

*As well as the CHF 4,000 granted by FIFA as costs of the proceedings before the Player's [sic] Status Committee;*

3. *Fix a minimum sum of 30,000 CHF to be paid by the Appellant as a contribution to the First Respondent's legal fees and costs.*
  4. *Condemn the Appellant to pay the entire amount of CAS administration and the Arbitrator fees”.*
28. On 23 March 2015, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings. In such letter FIFA however made the following statement:

*“[B]y the fact that [Al Ittihad] has not designated FIFA as a respondent to the present procedure, whereas one of its main contentions is related to an alleged incompetence of FIFA's decision-making body to pass a decision in connection with the matter having opposed the parties of the reference, any question related to the competence of the relevant FIFA's deciding body to pass a decision on the substance of such dispute may not be taken into consideration by the CAS and the specific Panel.*

*From a formal point of view, the competence-related aspect does not fall within the discretion of any deciding body anymore. A different interpretation would per se constitute a violation of FIFA's right to be heard.*

*In other words, the respective part of the challenged decision must be considered as having become final and binding in the meantime. [...]”.*

29. On 1 May 2015, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeal Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:

- Mr Hendrik Willem Kesler, Attorney-at-Law in Enschede, the Netherlands, as President;
- Mr Saleh Alobeidli, Attorney-at-Law in Dubai, United Arab Emirates<sup>3</sup>; and
- Prof. Luigi Fumagalli, Professor and Attorney-at-Law of Milan, Italy, as arbitrators

30. On 21 May 2015, Al Nassr filed its Answer in accordance with Article R55 of the CAS Code, with the following requests for relief:

- *“to Squash the nomination of Al Nassr Club as Second Respondent in this procedure as the the [sic] Second Respondent (i.e. hereafter “the Club”) has no standing to be sued in respect of the request filed by*

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<sup>3</sup> Due to an administrative oversight a different name was communicated to the parties, however, it is clear from the file that there is no confusion between the parties as to the constitution of the Panel.

*the Appellant, therefore, the appeal must be dismissed insofar.*

- *to Reject the Appeal of the appellant on the merits in its entirety.*
- *To Uphold the decision issued by FIFA in the entirety;*
- *To Order the Appellant to bear all the costs of the appeal procedure including the Respondent's legal fees amounting of CHF 12,000”.*

31. In its Answer, Al Nassr also submitted an application that the Panel order the joinder in the proceedings, pursuant to Article R41.2 of the CAS Code, of *“either the Saudi Arabia Olympic Committee [...] or the SAFF to provide the Panel with the submission of the pertinent documentation [...] in the purpose of squashing the false allegation of the Appellant”.*
32. On 28 and 30 May 2015 respectively, Al Ittihad requested a hearing to be held, whereas the Coach and Al Nassr informed the CAS Court Office that they did not deem it necessary for a hearing to be held.
33. On 10 June 2015, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (hereinafter: the “Order of Procedure”), which was accepted and countersigned by the parties.
34. On 12 June 2015, the CAS Court Office informed Al Nassr that the Panel had decided to dismiss its request for joinder pursuant to Article R41.2 of the CAS Code.
35. On 12, 16, and 24 June 2015 respectively, the Coach, Al Nassr and Al Ittihad returned duly signed copies of the Order of Procedure to the CAS Court Office.
36. On 15 June 2015, upon request of the President of the Panel pursuant to Article R57 in connection with Article R44.3 of the CAS Code, FIFA provided the CAS Court Office with a copy of the complete case file in the matter at hand.
37. On 8 July 2015, a hearing was held in Lausanne, Switzerland. At the outset of the hearing all parties confirmed that they did not have any objection to the constitution and composition of the Panel. In the same way, the parties agreed that Mr Marc Beaumont, arbitrator in *CAS 2015/A/3950 Al Ittihad Club v. Raúl Caneda & Al Nasr Riyadh*, could attend the hearing.
38. In addition to the Panel, to the aforesaid Mr Marc Beaumont, to Mr William Sternheimer, Managing Counsel & Head of Arbitration at CAS, and to Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:
  - a) For Al Ittihad:
    - 1) Mr Juan de Dios Crespo Pérez, Counsel;
    - 2) Mr Paolo Torchetti, Counsel;
    - 3) Mr Ehad Tariq Abuzareefah, Counsel

- b) For the Coach:
- 1) Mr Lucas Ferrer, Counsel;
  - 2) Mr Daniel Muñoz Sirera, Counsel;
  - 3) Mr Carlos Corberán, the Coach;
  - 4) Mr Raúl Caneda, the head coach;
  - 5) Mr Luis Llorente, Advisor for the Coach and the head coach
- c) For Al Nassr:
- 1) Mr Boughrara Khaled, Counsel, by Skype video-conference.
39. At the start of the hearing, all parties explicitly agreed that the hearing in the cases with the references *CAS 2015/A/3950 Al Ittihad Club v. Raúl Caneda & Al Nasr Riyadh* and *CAS 2015/A/3951 Al Ittihad Club v. Carlos Corberan & Al Nasr Riyadh* would be dealt with in one single hearing and that the hearing would thus be attended by four arbitrators, because two of the arbitrators (Mr Beaumont and Mr Alobeidli) were involved as an arbitrator in only one of the two consolidated cases (Mr Beaumont in *CAS 2015/A/3950 Al Ittihad Club v. Raúl Caneda & Al Nasr Riyadh* and Mr Alobeidli in *CAS 2015/A/3951 Al Ittihad Club v. Carlos Corberan & Al Nasr Riyadh*).
40. The parties were invited by the President of the Panel to clarify any distinguishing features between the two cases during the hearing and were informed that two separate awards would be issued by the two panels.
41. No witnesses or experts were heard. The parties were afforded ample opportunity to present their cases, submit their arguments and answer the questions posed by the Panel.
42. Before the hearing was concluded, all parties expressly confirmed: (i) that they did not have any objections about the procedure adopted by the Panel, particularly the fact that the two sets of proceedings were dealt with in one single hearing and (ii) that their right to be heard had been respected.
43. The Panel confirms that it carefully heard and took into account in its discussions and subsequent deliberations all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present award.

#### IV. SUBMISSIONS OF THE PARTIES

44. Al Ittihad's submissions<sup>4,5</sup>, in essence, may be summarised as follows:

- The Coach, together with the head coach in bad faith and by their behaviour, breached their employment contracts and, as a result, were dismissed with just cause by Al Ittihad.
- Article 13 of the Employment Contract determines that the Coach was only allowed to work for Al Ittihad and therefore violated the exclusivity clause as he intentionally sought other employment while exclusively engaged by Al Ittihad.
- The head coach intentionally acted in offensive ways with the purpose of inducing Al Ittihad to sack him and the Coach, in order to be able to seek alternative employment and to be paid by Al Ittihad at the same time.
- The Coach was required to observe and comply with all laws, customs and rules prevailing in the Kingdom of Saudi Arabia. The Coach, in working closely together with and relying on the head coach who publicly insulting members of Al Ittihad by calling them "cancer", by insinuating that they were involved in nefarious and surreptitious business and intentionally causing conflict with the players of the team, violated the customs of the Kingdom of Saudi Arabia. In the Kingdom of Saudi Arabia it is a major affront and insult to publicly attack superiors and co-workers. The Coach was sacked under the circumstance that Mr Caneda was no longer the head coach of Al Ittihad, and the breach of contract by the two, they were the culprit of odd and bad behaviour. The Coach agreed in article 9.1 of the Employment Contract that if the employment contract of the head coach would be terminated, his Employment Contract would be terminated automatically.
- The Coach fraudulently induced Al Ittihad to enter into the Settlement Agreement.
- While the Coach represented to Al Ittihad that he would not return to Saudi Arabia to coach for a rival of Al Ittihad, the Coach joined Al Nassr as its assistant coach on 2 May 2014<sup>6</sup>. Al Ittihad referred to Article 28 of the Swiss Code of Obligations in asserting that it is not bound by the Settlement Agreement as it was induced to enter into such

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<sup>4</sup> Al Ittihad initially argued that the former President of Al Ittihad was not authorised to conclude the Settlement Agreement with the Coach on behalf of Al Ittihad, but this argument and request for relief was explicitly withdrawn at the oral hearing. It had to be, because the President held office until 30 November 2013, some 8 months after the date of the Settlement Agreement. However, this argument was only withdrawn at the hearing before the Panel and the costs of resisting it fall to be dealt with in any event.

<sup>5</sup> Al Ittihad initially also argued that the Coach's claim was inadmissible as, according to FIFA jurisprudence, trainers/assistants are not able to seek redress before FIFA's judicial bodies and because the Coach is a physical trainer. However, also this argument was withdrawn at the hearing before the Panel and the costs of resisting it fall to be dealt with in any event.

<sup>6</sup> It is not clear to the Panel why Al Ittihad mentioned the date of 2 May 2014 in its submissions, the employment contract submitted by Al Nassr determines that it was concluded on 14 May 2014 and entered into force on 10 June 2014.

agreement by fraud and that the Settlement Agreement is voidable as such.

- Al Nassr induced the Coach to become its assistant coach and that Al Nassr shall therefore be jointly and severally liable for the damages caused to Al Ittihad. As a result, the Coach and Al Nassr are to pay USD 15,000 to Al Ittihad as compensation for the effective breach of the Employment Contract and “*the further inducement*”.

45. The Coach’s submissions, in essence, may be summarised as follows:

- The appeal filed by Al Ittihad was nothing but a dilatory tactic employed in order to further delay its undeniable payment obligations.
- The Coach and Al Ittihad freely entered into the Settlement Agreement. In accordance with the well-established principle of *pacta sunt servanda* and with reference to CAS jurisprudence, if a party concludes an agreement, that party must respect it, fulfil it and live up to the obligations it has accepted.
- Al Ittihad failed to substantiate the allegation that the Coach breached the Employment Contract. No evidence had been provided regarding any offensive acts of the Coach. In addition, no discussions took place between him and Al Nassr before the conclusion of the Settlement Agreement. These negotiations only started in May 2014 and it was unrealistic to assume that Al Nassr would have decided to hire the Coach 15 months in advance. Consequently, there was no link between the termination of the Employment Contract with Al Ittihad and the execution of a contract with Al Nassr. Furthermore, the Coach was hired as head coach of the U-19 team of Agrupación Deportiva Alcorcón, a football club with its registered office in Alcorcón, Spain, between 29 April 2013 and 30 June 2013 and this proves that Al Nassr never induced him to conclude an employment contract with it.
- As to Al Ittihad’s allegation that the Coach fraudulently induced Al Ittihad to conclude the Settlement Agreement, reference was made to several authorities regarding the concept of fraud in the inducement. The only allegation of inducement brought forward by Al Ittihad was that the Coach concluded an agreement with Al Nassr more than a year after the conclusion of the Settlement Agreement: here there was no causal link between any alleged wrongful act and the damage allegedly suffered.
- As to Al Ittihad’s request for damages in the amount of USD 15,000, Al Ittihad did not submit any claim in the proceedings before FIFA and was therefore precluded from claiming such an amount in the appeal proceedings before CAS. In addition, no claim could be brought because the parties settled their dispute regarding the Employment Contract by means of the Settlement Agreement and it was also not clear when and how the Coach would have breached the Employment Contract. Furthermore, the penalty set by Article 9.1 of the Employment Contract could not be imposed, as the Coach only concluded an Employment Contract with Al Nassr more than one year after the Employment Contract with Al Ittihad was terminated.

46. Al Nassr's submissions, in essence, may be summarised as follows:

- It was not called to participate in the proceedings initiated by the Coach against Al Ittihad before the FIFA PSC. The Appealed Decision was directed against Al Ittihad only and as such, Al Nassr had no standing to be sued in this procedure and was not a valid respondent.
- Furthermore, the unfounded reasoning of Al Ittihad was sustained by false evidence lacking in probative value, made only in order to attempt to escape from its duties and obligations, whereas the burden of proof to establish that the Coach breached the Employment Contract and in bad faith induced Al Ittihad to conclude a Settlement Agreement, lay with Al Ittihad.
- Al Ittihad's behaviour was manifestly unreasonable and constituted an improper use of the Law and an abuse of right in the form of *venire contra factum proprium*. Reference was made to CAS jurisprudence in this respect.
- Al Nassr was free to negotiate a contract with the Coach, as he was a free agent at the time. However, even if the Coach's Employment Contract with Al Ittihad had not been terminated prematurely, the Coach only concluded his employment contract with Al Nassr on 14 May 2014 and this contract was valid only as from 10 June 2014. As such, Al Nassr was not responsible for inducing the Coach to sign an employment contract with it.
- Furthermore, the Coach had not agreed that he would render his services exclusively to Al Ittihad and that preventing the Coach from finding new employment in Saudi Arabia infringed his personality rights and the principle of human dignity. The Coach was a victim of a breach of Article 8.1 and 8.2 of the European Convention on Human Rights, as the requested compensation would constitute an inadmissible impediment to his financial future; in particular, if it resulted in a prohibition on exercising a professional activity, that would constitute a breach of Swiss public policy.
- It was not liable to pay compensation to Al Ittihad as it did not induce the Coach to breach his Employment Contract with Al Ittihad and because no contractual relationship existed between the two clubs. Al Nassr never considered hiring a new coach before the end of the 2013/2014 football season.

## V. JURISDICTION

47. The jurisdiction of CAS, which is not disputed, derives from:

- (a) Article 67(1) of the FIFA Statutes (2014 edition) providing that: “[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”; and

(b) Article R47 of the CAS Code.

48. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.
49. It follows that CAS has jurisdiction to adjudicate on and decide the present dispute.

## **VI. ADMISSIBILITY**

50. The appeal was filed within the 21 days set by Article 67(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.
51. It follows that the appeal is admissible.

## **VII. APPLICABLE LAW**

52. Article R58 of the CAS 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

53. The Panel notes that article 66(2) of the FIFA Statutes stipulates 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”.*

54. The Panel observes that the parties agreed to the application of the various regulations of FIFA and that Swiss law is to be subsidiarily applied.
55. The Panel is therefore prepared to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

## **VIII. MERITS**

### **A. The Main Issues**

56. Al Ittihad challenges the Appealed Decision by submitting, in essence, that the Coach is not entitled to receive any payment under the Settlement Agreement because that Settlement Agreement is null and void and because the Coach breached the Employment Agreement. In Al Ittihad’s submission, therefore, the Coach should pay damages to Al Ittihad for fraudulent

misrepresentation and/or breach of contract. Al Nassr then, should be held jointly liable for such payment, having induced the Coach to breach his contractual obligations to Al Ittihad. The Coach and Al Nassr, on their side, deny any responsibility: the Coach insists that the Appealed Decision should be confirmed and Al Nassr maintains *inter alia* that it has no standing to be sued, as it was not involved in the proceedings before the Single Judge.

57. As a result of the above, the main issues to be resolved by the Panel are:
- i. Is the Settlement Agreement valid?
  - ii. If the Settlement Agreement is valid, did Al Ittihad comply with its obligations under the Settlement Agreement?
  - iii. Did the Coach terminate the Employment Contract without just cause?
  - iv. If so, what amount of compensation is Al Ittihad entitled to receive from the Coach?
  - v. If so, is Al Nassr jointly and severally liable?
58. In the evaluation of the foregoing issues, the Panel finds itself to be bound to apply the general rules on the burden of evidence to determine which party should bear the consequences of the failure to prove its allegations.
59. In fact, pursuant to Article 8 of the Swiss Civil Code:
- “Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu’elle allègue pour en déduire son droit”*  
[Freely translated into English: “Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right”].
60. Such principle applies also in CAS proceedings (see for instance CAS 96/159 & 166, published in Digest of CAS Awards II 1998-2000, pp. 434 ff.). As a result, in a CAS arbitration, any party wishing to prevail on a disputed issue must discharge its “burden of proof”, *i.e.* it must discharge the onus of substantiating its allegations and affirmatively to prove the facts on which it relies with respect to that issue.
- i. Is the Settlement Agreement valid?*
61. Al Ittihad maintains that the Settlement Agreement is null and void because the Coach fraudulently induced it to enter into the Settlement Agreement. More specifically, Al Ittihad argues that it understood that the Coach would not conclude a contract with any other club in Saudi Arabia, but, as asserted by counsel at the oral hearing of the appeal without any witness evidence on the point, the representatives of Al Ittihad forgot to put such a restraint clause in the Settlement Agreement. In Al Ittihad’s submission, as a result of such finding, the Appealed Decision, which enforced the Settlement Agreement, should be set aside.
62. The Panel emphasises that the burden of proof of showing that a “misrepresentation” occurred and that any such “misrepresentation” had a determinative effect on its decision to enter into the Settlement Agreement rests with Al Ittihad. Al Ittihad, relying on an alleged “fraud”, must meet the onus of substantiating its allegations and must prove affirmatively the facts on which

it relies with respect to that issue.

63. At the same time, the Panel remarks that no evidence at all was offered by Al Ittihad to substantiate its claim: no witness statement was filed, no witness was called, no document was relied upon and no provision in the Settlement Agreement was invoked. If it was so important to Al Ittihad that the Coach promised that he would not work for any other club in Saudi Arabia, the question arises why Al Ittihad, with all the resources of legal advice available to it, did not require this assurance to be stipulated expressly in the Settlement Agreement. Its answer to this question, made through counsel at the hearing, yet unsupported by any evidence, was that it forgot to do so. This is unimpressive and improbable in the view of the Panel. If the Coach offered the assurance that is alleged, that would surely have reminded Al Ittihad to insert some protective clause in the Settlement Agreement. The fact that it did not, strongly suggests that no such assurance was ever given by the Coach.
64. The Panel, therefore, cannot accept Al Ittihad's contention that it was induced (by the Coach and Al Nassr) to enter into the Settlement Agreement on the basis of the representation that the Coach would not work for another Saudi club. Even taken at its highest, the argument that Al Ittihad made some mistake in assuming that the Coach would not work for another Saudi club, or that it simply forgot to place a restraint clause in the Settlement Agreement comes nowhere near to proving a fraudulent (or any other form of) misrepresentation on the part of the Coach.
65. In addition, the Panel notes that nothing in any case prevented the Coach, after the termination of the Employment Contract and irrespective of the conclusion of the Settlement Agreement, from entering into a contract with another Saudi club – and particularly so, more than one year after the termination of the Employment Contract and the conclusion of the Settlement Agreement and after having been employed as head coach with the U-19 team of Agrupación Deportiva Alcorcón between 29 April 2013 and 30 June 2013.
66. The Panel observes that different from the proceedings in *CAS 2015/A/3950 Al Ittihad Club v. Raúl Caneda & Al Nasr Riyadh*, the Employment Contract does not contain a “non-compete” or a “restraint of trade” provision in the sense that the Coach would have to pay a penalty to Al Ittihad if he were to join a competitor of Al Ittihad after termination of the employment relationship. Article 13 of the Employment Contract however determines the following:

*“The [Coach] shall work solely for the Club or as authorized by the Club or as required under the Rules of the Saudi Arabian Football Federation (SAFF). The [Coach] undertakes to adhere to the Laws of the Game of Association Football in all matches in which it participates”.*
67. The Panel finds that this clause was only valid during the term of the employment relationship between the Coach and Al Ittihad. Nothing on file shows that the clause would remain applicable after the termination of the Employment Contract by Al Ittihad as no similar clause was implemented in the Settlement Agreement. More importantly, it is not clear from the content of the clause for which term the Coach would be prevented from seeking alternative employment and what the consequences of a breach of this clause would be.

68. Therefore, the Panel finds that Al Ittihad must have known full well that the Coach was free to seek employment at another club in Saudi Arabia and could not reasonably have assumed otherwise, despite what it claims now. For his part, the Coach had no *legal* reason to represent to Al Ittihad that he would not work for another club, so that the suggestion that he did so with fraudulent intent, is highly improbable.
  69. As a result, the Panel dismisses Al Ittihad's claim that the Settlement Agreement is null and void on the ground of fraudulent misrepresentation.
  70. The Panel notes that by the Settlement Agreement the parties validly settled any dispute they had with respect to the termination of the Employment Contract. Any dispute in that respect, and chiefly with regard to whether the Employment Contract was terminated by Al Ittihad with or without just cause, cannot be challenged in this arbitration.
  71. The Panel was impressed by the documentary evidence arising in the period May to July 2013 in which it is clear that Al Ittihad made various promises of payment to the Coach. On one occasion, it stated that it was awaiting some sponsorship money before being able to pay what was due under the Settlement Agreement. The Panel regards this evidence as a perfectly proper acknowledgment of Al Ittihad's liabilities under the Settlement Agreement, but as being wholly inconsistent with its current stance. There is no material evidence that was not available to Al Ittihad at this juncture, which might have led it to conduct itself differently.
  72. The Panel underlines and regards as significant that Al Ittihad did not raise any issue before the Single Judge, not only with regard to the alleged fraud, but also with respect to the existence of a just cause for termination of the Employment Contract and does not put forward any valid justification for the fact that it did not bring its claim for USD 15,000 against the Coach and Al Nassr in the proceedings before the Single Judge.
  73. As a result, all claims brought by Al Ittihad against the Coach and Al Nassr, seeking to obtain compensation for breach of contract or for inducement, are dismissed.
  74. The above conclusions make it irrelevant for the Panel to consider whether Al Nassr has standing to be sued in this arbitration to answer Al Ittihad's claim that it was induced by the Coach to enter (by misrepresentation) into the Settlement Agreement (and before that to cause the termination of the Employment Contract).
  75. Al Ittihad's claims are in any case to be dismissed.
- ii. Did Al Ittihad comply with its obligations under the Settlement Agreement?*
76. In view of the Panel's conclusion that the Coach did not induce Al Ittihad to enter into the Settlement Agreement by fraud, the Panel is prevented from assessing whether the Coach or Al Ittihad was responsible for the termination of the Employment Contract, since the Settlement Agreement unequivocally declared the following:

*"By means of the present [Settlement Agreement], the PARTIES acknowledge that [Al Ittihad] has*

*unilaterally terminated their [Employment Contract] dated 1 August 2012 without just cause, having officially notified the [Coach] about such contractual termination on 25 February 2013”.*

77. Consequently, the Panel finds that Al Ittihad failed to establish any reason to justify its failure to comply with the Settlement Agreement and that Al Ittihad shall pay the amounts due in accordance with the Settlement Agreement to the Coach.
78. In view of the above conclusions, the Panel finds that the other issues set out above (issues (iii), (iv) and (v) *supra*) do not fall to be considered.

## **B. Conclusion**

79. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that:
- i. Al Ittihad has failed to establish that the Settlement Agreement is invalid.
  - ii. Al Ittihad’s arguments in respect of its allegation that it terminated the Employment Contract with just cause must be dismissed; no compensation for breach of the Employment Contract can be awarded to Al Ittihad and Al Nassr cannot be held jointly (or otherwise) liable.
  - iii. Al Ittihad shall pay to the Coach the total amount of USD 200,022, plus interest as follows:
    - 5% interest *per annum* over the amount of USD 100,011 as from 2 October 2013 until the effective date of payment;
    - 5% interest *per annum* over the amount of USD 100,011 as from 23 May 2014 until the effective date of payment.
80. Any further claims or requests for relief are dismissed.

## **ON THESE GROUNDS**

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

1. The appeal filed on 25 February 2015 by Al Ittihad Saudi Football Club against the Decision issued on 26 August 2014 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is dismissed.
  2. The Decision of the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association issued on 26 August 2014 is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.