



**Arbitration CAS 2016/A/4705 AlJazira Football Sports Company v. Cardiff City Football Club & Fédération Internationale de Football Association (FIFA), award of 19 January 2017**

Panel: Mr Lars Hilliger (Denmark), President; Mr Michele Bernasconi (Switzerland); Mr Mark Hovell (United Kingdom)

*Football*

*Disciplinary sanction for overdue payables in the context of a loan agreement*

*Conditions for imposing a sanction for overdue payables*

*Interpretation of the FIFA regulations*

*Definition of “transfer agreement”*

1. For the FIFA Players Status Committee to have the legal grounds for imposing a sanction on a club for overdue payables, the club must have been found to have delayed a due payment to another club originating from i) a transfer agreement, ii) for more than 30 days without a *prima facie* contractual basis, and iii) the other club (creditor) must have put the club (debtor) in default in writing and have granted a deadline of at least ten days for the debtor to comply with its financial obligation.
2. Under Swiss law, the interpretation of the statutes and rules of a Swiss sports association has to be objective and always to start with the wording of the rule, which falls to be interpreted. The adjudicating body has to consider the meaning of the rule looking at the language used and the appropriate grammar and syntax. In its search, the adjudicating body has further to identify the intentions (objectively construed) of the association which drafted the rule, and such body may also take account of any relevant historical background which illuminates its derivation, as well as the entirely regulatory context in which the particular rule is located.
3. At no point in article 12bis of the FIFA Regulations on the Status and Transfer of Players (RSTP) does FIFA make any distinction between definitive transfers and temporary transfers, but only refers to transfer agreements. In compliance with the legal principle of *Ubi lex non distinguit, nec nos distinguere debemus* (where the law does not distinguish, neither ought we to distinguish), there are no reasonable grounds for assuming that payments under temporary transfer agreements/loan agreements should not be covered by article 12bis RSTP, which applies to all kinds of transfer agreements between two clubs. Furthermore, the FIFA Commentary on the Regulations for the Status and Transfer of Players states, *inter alia*, that “*Administratively, a loan is a transfer*”.

## 1. THE PARTIES

- 1.1 Al Jazira Football Sports Company (the “Appellant” or “Al Jazira FC”) is a football club from Abu Dhabi, affiliated with the United Arab Emirates Football Association, which in turn is a member of the Fédération Internationale de Football Association (“FIFA”).
- 1.2 Cardiff City Football Club (the “First Respondent” or “Cardiff FC”) is a Welsh football club affiliated with the English FA, which in turn is a member of FIFA.
- 1.3 FIFA (the “Second Respondent”) is the international governing body of football at worldwide level, with its registered offices in Zurich, Switzerland.

## 2. FACTUAL BACKGROUND

- 2.1 The following considerations set out below are a summary of the main relevant facts as established by the Panel on the basis of the decision rendered by the Single Judge of FIFA’s Players’ Status Committee (the “FIFA PSC”) on 26 March 2016 (the “Decision”), the written and oral submissions of the Parties and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.
- 2.2 On 5 January 2016, Cardiff FC and Al Jazira FC signed a loan agreement (the “Loan Agreement”) regarding the temporary transfer of the professional football player, Mr Kenwyne Jones (the “Player”) from Cardiff FC to Al Jazira FC from 5 January 2016 until 30 June 2016 (the “Loan Period”).
- 2.3 The Loan Agreement stated, *inter alia*, as follows:

*“5. During the Loan Period, AL-JAZIRA will be responsible for payment of wages, bonuses and other expenses of the Player in accordance with the contract agreed between the Player and AL-JAZIRA. For the avoidance of doubt, there shall be no obligation for CARDIFF to pay any of the Player’s basic weekly wage or other remuneration during the Loan Period. For the avoidance of doubt, CARDIFF will be responsible for payment of wages, bonuses and other expenses of the Player in accordance with the contract agreed between the Player and CARDIFF until 5 January 2016.*

*6. AL-JAZIRA agrees to pay CARDIFF the sum of £250,000 (only two hundred and fifty thousand pounds) by 10<sup>th</sup> February 2016. AL-JAZIRA will be responsible for any Solidarity Training Compensation payments due as a result of this international Loan.*

*7. In addition to the above, should AL-JAZIRA and the Player enter into an agreement for the payment of any appearance and/or other bonuses, these shall be entirely payable by AL-JAZIRA”.*

- 2.4 On 18 February 2016, and without having received any payments from Al Jazira FC pursuant to the Loan Agreement, Cardiff FC lodged a claim against Al Jazira FC before FIFA, requesting that Al Jazira FC be ordered to pay its overdue payables in order to remedy the default.

- 2.5 By correspondence dated 21 March 2016, Cardiff FC put Al Jazira FC in default of payment of the agreed amount of GBP 250,000, setting a ten-day time limit for Al Jazira FC to fulfil its financial obligations to Cardiff FC.
- 2.6 In reply to the claim, Al Jazira FC stated, *inter alia*, that it was facing financial difficulties, but that it was trying to settle the matter with Cardiff FC amicably. As such, Al Jazira FC rejected the claim. However, alternatively, in the event that FIFA should decide to accept the claim, Al Jazira FC proposed to proceed to the payment of the outstanding amount in several instalments.
- 2.7 The Single Judge of the FIFA Players' Status Committee (the "FIFA PSC") referred to article 3 paragraphs 2 and 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules") and confirmed that in accordance with article 23 paragraph 1 and paragraph 3 in conjunction with article 22(f) of the Regulations on the Status and Transfers of Players – 2015 edition (the "Regulations"), the Single Judge of the FIFA PSC was competent to deal with the matter.
- 2.8 With regard to the claim of Cardiff FC, the Single Judge of the FIFA PSC took particular note of the fact that, on 21 March 2016, Cardiff FC had put Al Jazira FC in default of the outstanding amount of GBP 250,000, setting a time limit of ten days in order to remedy the default, thus duly observing article 12bis paragraph 3 of the Regulations.
- 2.9 The Single Judge of the FIFA PSC furthermore took into account that Al Jazira FC did in fact acknowledge not having paid the overdue payables in the amount of GBP 250,000 to Cardiff FC pursuant to the Loan Agreement, which claim was substantiated by Cardiff FC.
- 2.10 On account of these considerations, the Single Judge of the FIFA PSC established that Al Jazira FC had failed to pay the outstanding amount of GBP 250,000 to Cardiff FC for more than 30 days without a *prima facie* contractual basis. Consequently, and in accordance with the general legal principle of *pacta sunt servanda*, Al Jazira FC was declared liable to pay to Cardiff FC overdue payables in the total amount of GBP 250,000.
- 2.11 Moreover, the Single Judge of the FIFA PSC made reference to article 12bis paragraph 2 of the Regulations, which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with article 12bis paragraph 4 of the Regulations.
- 2.12 In view of these facts, it was further highlighted that, on 27 April 2016, Al Jazira FC had already been found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis and without Al Jazira FC having responded to the relevant claim, as a result of which a sanction in the form of a warning had been imposed on Al Jazira FC by the Single Judge of the FIFA PSC.
- 2.13 On these grounds, and with reference to article 12bis paragraph 6 of the Regulations, which establishes that a repeated offence will be considered as an aggravating circumstance and lead to more severe penalty, a reprimand was imposed on Al Jazira FC.

2.14 Thus, on 26 March 2016, the FIFA PSC rendered the Decision and decided as follows:

1. *“The Claim of the Claimant, Cardiff City FC, is accepted.*
2. *The Respondent, Al Jazira FC, has to pay to the Claimant, Cardiff City FC, overdue payables in the amount of GBP 250,000 within 30 days as from the date of notification of this decision.*
3. *In the event that the amount due to the Claimant, Cardiff City FC, is not paid by the Respondent, Al Jazira FC, within the stated time limit, interest at the rate of 5 % p.a. will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
4. *A reprimand is imposed on the Respondent, Al Jazira FC.*
5. *The final costs of the proceedings in the amount of CHF 20,000 are to be paid by the Respondent, Al Jazira FC, within 30 days as from the date of notification of the present decision as follows,*
  - 5.1. *The amount of CHF 19,000 has to be paid to FIFA to the following bank account [...]*
  - 5.2. *The amount of CHF 1,000 has to be paid directly to the Claimant, Cardiff City FC.*
6. *The Claimant, Cardiff City FC, is directed to inform the Respondent, Al Jazira FC, immediately and directly of the account number to which the remittances under point 2. And 5.2. are to be made and to notify the Single Judge of every payment received”.*

2.15 On 9 June 2016, the grounds of the Decision were communicated to the Parties.

### **3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS**

- 3.1 On 29 June 2016, the Appellant filed its Statement of Appeal (in French) with the Court of Arbitration for Sport (the “CAS”) in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2016 edition) (the “Code”) against the Decision rendered by the FIFA PSC on 26 March 2016.
- 3.2 On 11 July 2016, the Appellant filed its Appeal Brief (in French) in accordance with Article R51 of the Code.
- 3.3 On 3 August 2016, in accordance with the Order of Language rendered by the President of the CAS Appeals Arbitration Division following the Respondents’ objections to French being the language of the proceedings, the Appellant filed translations into English of its Statement of Appeal and Appeal Brief.
- 3.4 On 6 October 2016, the Second Respondent filed its Answer in accordance with Article R55 of the Code.
- 3.5 The First Respondent did not file any answer.
- 3.4 By letter dated 16 September 2016, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, attorney-at-law, Copenhagen, Denmark (President of the Panel), Michele A.R. Bernasconi, attorney-at-law, Zurich, Switzerland (nominated by the Appellant), and Mark A. Hovell, solicitor, Manchester, United Kingdom (nominated by the Respondents).

3.5 By letter of 19 October 2016, the Parties were informed that the Panel had decided to hold a hearing in this matter.

3.6 All Parties duly signed and returned the Order of Procedure.

#### **4. HEARING**

4.1 On 13 December 2016, a hearing was held in Lausanne, Switzerland.

4.2 In addition to the Panel and the Deputy Secretary General of the CAS, Mr William Sternheimer, the following persons attended the hearing:

For the Second Respondent: Ms Sarah Solemale and Mr Mario Flores Chemor, legal counsel of the Players' Status Department.

Neither the Appellant nor the First Respondent were present at the hearing despite having been duly summoned by the CAS Court Office. In accordance with Article R57 of the Code, the Panel decided to proceed with the hearing and render this Award.

4.4 At the outset of the hearing, the Second Respondent confirmed that it had no objections to the constitution of the Panel.

4.5 Before and during the hearing, the Deputy Secretary General of the CAS emailed and called the mobile number and office number of the Appellant's counsel. Eventually, he received an e-mail answer from the Appellant's counsel, who stated that he had not been able to attend the hearing for personal reasons; the Appellant's counsel, however, did neither object to the holding of the hearing in his absence, nor request any suspension or postponement of the hearing and limited himself to urge the Panel to consider the Appellant's written submissions, when proceeding with the hearing and the procedure.

4.6 The Second Respondent was afforded ample opportunity to present its case, submit its arguments and answer the questions posed by the Panel. After the Second Respondent's final submissions, the Panel closed the hearing and reserved its final award. The Panel took into account in its subsequent deliberations all the evidence and arguments presented by the Parties although they may have not been expressly summarised in the present Award. Upon the closure of the hearing, the Second Respondent expressly stated that it had no objections in respect of its right to be heard and to have been treated fairly in these arbitration proceedings.

#### **5. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL**

5.1 Article R47 of the Code states as follows:

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

- 5.2 With respect to the Decision, the jurisdiction of the CAS derives from Article 58 of the FIFA Statutes (2015 edition) as it determines 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”.
- 5.3 In addition, no Party objected to the jurisdiction of the CAS, which was furthermore confirmed by the Parties signing the Order of Procedure.
- 5.3<sup>1</sup> The Decision with its grounds was notified to the Parties on 9 June 2016, and the Appellant filed its Statement of Appeal on 29 June 2016, i.e. within the statutory time limit set forth by the FIFA Statutes, which is not disputed.
- 5.4 It follows that the CAS has jurisdiction to decide on the Appeal and that the Appeal is admissible.
- 5.5 Under Article R57 of the Code, the Panel has full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the decision appealed against.

## 6. APPLICABLE LAW

- 6.1 Article R58 of the Code states as follows:

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

- 6.2 Article 66 paragraph 2 of the FIFA Statutes states as follows: *“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”.*
- 6.3 The Panel notes that the Parties did not make any submissions regarding the applicable law, thus de facto accepting the application by the FIFA PSC of the various regulations of FIFA and, in particular, the Regulations.

---

<sup>1</sup> [Numbering as in original award].

- 6.4 As such, the Panel is satisfied to apply primarily the various regulations of FIFA and, subsidiarily, Swiss law should the need arise to fill a possible gap in the rules and regulations of FIFA.
- 6.5 Finally, the Panel agrees with the FIFA PSC that the Regulations on the Status and Transfer of Players (2015 edition) are applicable to the present matter, in particular.

## 7. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

7.1.1 The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, has, however, carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

### 7.2 The Appellant

7.2.1 In its Appeal Brief, the Appellant requested the following relief from the CAS:

- *"To withdraw the decision, object to the present appeal, particularly because of the "contra legem" character of the disciplinary sanction imposed on Al Jazira FC by the Sole Judge of the Players' Status Committee.*
- *That it reject all claims made as a result by the Respondents against Al Jazira FC.*
- *That Cardiff City FC be obliged to reimburse Al Jazira FC's legal expenses of 20,000 CHF.*
- *That Cardiff City FC be obliged to pay all expenses, particularly the Court charged and arbitrators' fees paid by Al Jazira FC".*

7.2.2 In support of its requests for relief, the Appellant submitted, *inter alia*, as follows:

- a) No disciplinary sanctions should have been imposed on the Appellant in so far as article 12bis of the Regulations only applies in the case of overdue payments relating to transfer agreements and not to those relating to lending arrangements of professional players.
- b) The wording of article 12bis of the Regulations explicitly uses the wording "in transfer contracts", which is why the disciplinary sanctions laid down in paragraph 4 of article 12bis of the Regulations can only be applied in the case of late payments of the transfer fees in the strictest sense of the term, agreed between the clubs in question.
- c) No transfer agreement was ever concluded between the Appellant and the First Respondent since the Player was only loaned to the Appellant from the First Respondent according to a simple temporary transfer agreement/loan agreement.

### 7.3 The First Respondent

7.3.1 As already mentioned under para 3.5, the First Respondent never filed any answer within the specified deadline.

### 7.4 The Second Respondent

7.4.1 In its Answer, the Second Respondent requested:

- “1. That the CAS rejects the appeal at stake and confirms the presently challenged Decision passed by the Single Judge of the Players’ Status Committee on 26 May 2016 in its entirety.
2. That the CAS orders the Appellant to bear all costs of the present procedure.
3. That the CAS orders the Appellant to cover all legal expenses of FIFA related to the proceedings a hand”.

7.4.2 In support of its request for relief, the Second Respondent submitted, *inter alia*, as follows:

- a) First of all, the Appellant never contested that it had failed to pay the First Respondent the amount of GBP 250,000 due on 10 February 2016, corresponding to the loan fee for the loan of the Player as agreed upon by the two clubs in the Loan Agreement, thus having delayed a due payment for more than 30 days without a *prima facie* contractual basis.
- b) Secondly, the Appellant never contested having been put in default by the First Respondent by letter of 21 March 2016 for the said amount, setting a ten-day time limit to remedy the default in accordance with article 12bis of the Regulations.
- c) Accordingly, and in accordance with the general legal principle of *pacta sunt servanda*, the FIFA PSC was right in its Decision that the Appellant had overdue payables to the First Respondent in the amount of GBP 250,000.
- d) Based on that, and with reference to the Appellant’s submissions, the main issue for the Panel to decide is whether the FIFA PSC had the legal basis for imposing a reprimand on the Appellant as a sanction for breaching its obligation to pay the outstanding amount of GBP 250,000 to the First Respondent pursuant to the Loan Agreement.
- e) The Appellant submitted that there is no legal ground for imposing such a sanction on the Appellant, since article 12bis of the Regulation is only applicable to overdue payables originating from permanent transfer agreements between two clubs, while the said provision does not apply to, e.g., temporary transfer agreements/loan agreements between two clubs.

- f) Since the Appellant and the First Respondent only entered into a loan agreement regarding the Player, article 12bis of the Regulations, according to the Appellant, is not applicable to this case.
- g) However, the Appellant is completely wrong in this assessment, and the Appellant appears to be searching for invalid arguments allowing it to further delay the payment of the amount of GBP 250,000 it uncontestably still owes to the First Respondent, which should not be supported by the Panel.
- h) The mere aim of article 12bis of the Regulations is to establish a stronger system with regard to the duty to respect the financial contractual obligations of clubs towards players and other clubs by trying to ensure that clubs properly comply with their financial contractual obligations.
- i) Under Swiss law, and in accordance with CAS jurisprudence, the interpretation of the statutes and rules of a Swiss sports association like FIFA has to be objective and always start with the wording of the rule which is the issue of an interpretation dispute.
- j) By doing so, the Panel, among other things, has to identify the intentions (objectively construed) of the association which drafted the rule in question, just as the Panel must take into consideration the entire regulatory context in which the particular rule operates.
- k) When applying these rules of interpretation, initially it becomes clear that the wording of article 12bis of the Regulations does not make any distinction between definitive transfer agreements and temporary transfer agreements.
- l) On the contrary, paragraph 1 of article 12bis of the Regulations establishes that clubs need to comply with their financial obligations toward other clubs as per the terms stipulated in the transfer agreements concluded between them, i.e. all kinds of transfer agreements.
- m) Whenever FIFA wants to make distinctions in its regulations, this is done explicitly, which is not the case here.
- n) The Appellant has not submitted any single argument nor any evidence to support its submission that temporary transfer agreements should not be included in the word “transfer agreements” in paragraph 1 of the said provision.
- o) With reference to the main purpose of article 12bis of the Regulations, which is to ensure that clubs properly comply with their financial obligations, it becomes clear that the alleged interpretation of the said provision as submitted by the Appellant is in direct confrontation with the entire purpose of the said article and, therefore, not only wrong, but also absurd.

- p) Based on that, and in accordance with the legal principle of *Ubi lex non distinguit, nec nos distinguere debemus*, it is clear that article 12bis of the Regulations is also applicable to temporary transfer agreements between two clubs of different nationalities.
- q) As the Appellant indisputably has fulfilled the conditions that need to be fulfilled by a club to be in violation of article 12bis of the Regulations; i) the delay of a due payment for more than 30 days without a *prima facie* contractual basis, and ii) the club has been put in default by the creditor club in writing granting a deadline of at least ten days in order to remedy the default, the Decision by the FIFA PSC is rightful and fully justified and must be fully confirmed by the Panel.
- r) Finally, and taking the conduct of the Appellant into consideration, the Second Respondent exceptionally requested to be reimbursed for its expenses in connection with these proceedings, just as the Appellant should bear all the costs related hereto.

## 8. DISCUSSION ON THE MERITS

- 8.1 Initially, the Panel notes that it is undisputed that on 5 January 2016, the Appellant and the First Respondent signed the Loan Agreement regarding the temporary transfer of the Player from Cardiff FC to Al Jazira FC from 5 January 2016 until 30 June 2016. Pursuant to the Loan Agreement, Al Jazira FC had to pay to Cardiff FC the amount of GBP 250,000 as a loan fee, which fell due on 10 February 2016.
- 8.2 The FIFA PSC concluded in its Decision, *inter alia*, that “*Al Jazira FC, has to pay to the Claimant, Cardiff City FC, overdue payables in the amount of GBP 250,000 within 30 days as from the date of notification of this decision*”.
- 8.3 In its requests for relief, the Appellant requested the CAS, *inter alia*, to “*withdraw the decision, object to the present appeal, particularly because of the “contra legem” character of the disciplinary sanction imposed on Al Jazira FC by the Sole Judge of the Players’ Status Committee*”.
- 8.4 By requesting the CAS to withdraw the Decision in its entirety, the Appellant does in fact not only contest the sanction imposed on it by the FIFA PSC, but also contests the part of the Decision according to which the Appellant must pay the loan fee in the amount of GBP 250,000 to the First Respondent.
- 8.5 Based on the facts of the case and the Parties’ submissions, the Panel finds that it is up to the Appellant to discharge the burden of proof to establish that it has either fulfilled its payments obligation pursuant to the Loan Agreement or, for any other reason, is not obligated to pay the agreed loan fee to the First Respondent.
- 8.6 In doing so, the Panel adheres to the principle established by CAS jurisprudence that “*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue, In other words, the party which asserts facts to support its rights has the burden of establishing them* (..)

*The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence” (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46 and CAS 2009/A/1975, para. 71ff).*

- 8.7 However, the Panel finds that the Appellant has not adequately discharged the burden of proof to establish that it has either fulfilled its payment obligations pursuant to the Loan Agreement or that, for any other reason, it is not obligated to pay the agreed loan fee to the First Respondent. In fact, the Appellant never submitted any argument or evidence in that regard.
- 8.8 The Panel therefore, on the basis of the arguments and the evidence submitted, concludes that the Appellant is still in default with its payments to the First Respondent in the amount of GBP 250,000, corresponding to the agreed loan fee pursuant to the Loan Agreement. In accordance with the general legal principle of *pacta sunt servanda*, and in lack of any valid reason not to do so, the Appellant is therefore obligated to pay this amount to the First Respondent as an outstanding loan fee.
- 8.9 Furthermore, the Panel, again on the basis of the arguments and the evidence submitted, sees no reason to deviate from the Decision concerning the interest rate and therefore confirms that the First Respondent is entitled to receive interest at the rate of 5% p.a. of the above-mentioned due amount as from 26 April 2016 until the date of effective payment.
- 8.10 Based on that and on the Parties’ submissions and the facts of the case, the Panel finds that the main issue to be resolved by the Panel is whether the FIFA PSC had the legal basis in article 12bis of the Regulations to impose a reprimand on the Appellant for breaching its payments obligations to the First Respondent pursuant to the Loan Agreement.
- 8.11 To reach a decision on this issue, the Panel has conducted an in-depth analysis of the facts of the case and of the information and evidence gathered during the proceedings.
- 8.12 The Panel initially notes that the Appellant argues that no disciplinary sanctions should have been imposed on the Appellant insofar as article 12bis of the Regulations only applies to cases of overdue payments relating to transfer agreements and not to those relating to temporary transfers/lending arrangements of professional players.
- 8.13 The Second Respondent on its side argues that article 12bis of the Regulation is not only applicable to “final” transfer agreements but also, *inter alia*, to temporary transfer agreements/loan agreements.
- 8.14 Initially, the Panel notes that article 12bis of the Regulations states as follows:

***“Overdue payables***

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

2. *Any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned in accordance with paragraph 4 below.*
3. *In order for a club to be considered to have overdue payables in the sense of the present article, the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s).*
4. *Within the scope of their respective jurisdiction (cf. article 22 in conjunction with articles 23 and 24), the Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge may impose the following sanctions:*
  - a) *a warning;*
  - b) *a reprimand;*
  - c) *a fine;*
  - d) *a ban from registering any new players, either nationally or internationally, for one or two entire and consecutive registration periods;*
5. *The sanctions provided for in paragraph 4 above may be applied cumulatively.*
6. *A repeated offence will be considered as an aggravating circumstance and lead to more severe penalty.*
7. *The execution of the registration ban in accordance with paragraph 4 d) above may be suspended. By suspending the execution of a registration ban, the deciding body subjects the sanctioned club to a probationary period ranging from six months to two years.*
8. *If the club benefiting from a suspended registration ban commits another infringement during the probationary period, the suspension is automatically revoked and the registration ban executed; it is added to the sanction pronounced for the new infringement.*
9. *The terms of the present article are without prejudice to the application of further measures in accordance with article 17 in case of unilateral termination of the contractual relationship”.*

8.15 It follows that in order for the FIFA PSC to have the legal grounds for imposing a sanction on the Appellant, the following conditions must be fulfilled; the Appellant must have been found to have delayed a due payment to the First Respondent originating from i) a transfer agreement ii) for more than 30 days without a *prima facie* contractual basis, and iii) the First Appellant must have put the Appellant in default in writing and have granted a deadline of at least ten days for the Appellant to comply with its financial obligation.

8.16 The Panel notes that, as already stated in para 8.8 above, the Appellant is found to have delayed a due payment of GBP 250,000 to the First Respondent for more than 30 days without a *prima facie* contractual basis, and the Appellant never contested having been put in default in writing for the said amount by the First Respondent by letter of 21 March 2016, setting a ten-day time limit to remedy the default in accordance with article 12bis of the Regulations.

- 8.17 As such, the only remaining condition to be fulfilled in order for the FIFA PSC to have the legal grounds for imposing a sanction on the Appellant is that the delayed payment must originate from a “transfer agreement”.
- 8.18 Before starting the interpretation of the meaning of article 12bis of the Regulations, and in particular of the words “transfer agreements” in paragraph 1 of the said article, the Panel makes reference to the basic principles regarding the interpretation of the FIFA regulations as established by CAS jurisprudence.
- 8.19 In this respect, the Panel found in CAS 2012/A/2817 that *“Under Swiss law, the interpretation of the statutes and rules of a Swiss sports association has to be objective and always to start with the wording of the rule, which falls to be interpreted. The adjudicating body has to consider the meaning of the rule looking at the language used and the appropriate grammar and syntax. In its search, the adjudicating body has further to identify the intentions (objectively construed) of the association which drafted the rule, and such body may also take account of any relevant historical background which illuminates its derivation, as well as the entirety regulatory context in which the particular rule is located”*.
- 8.20 In applying these principles, the Panel initially notes that at no point in article 12bis of the Regulations does FIFA make any distinction between definitive transfers and temporary transfers, but only refers to transfer agreements.
- 8.21 The Panel further notes that the main purpose of article 12bis of the Regulations is to ensure that all clubs properly comply with their financial obligations towards players and other clubs where such obligations arise from either an employment agreement with a player or from an agreement with another club regarding a transfer of a player.
- 8.22 The Panel finds that the Appellant failed to submit any argument why such protection against a club’s breach of its financial obligations towards other clubs should not include the protection of payments to be made pursuant to temporary transfer agreements/loan agreements, but, according to the Appellant, only apply to definitive transfer agreement.
- 8.23 Based on the foregoing and in compliance with the legal principle of *Ubi lex non distinguit, nec nos distinguere debemus* (where the law does not distinguish, neither ought we to distinguish), the Panel finds there are no reasonable grounds for assuming that payments under temporary transfer agreements/loan agreements should not be covered by article 12bis of the Regulations, which – in the Panel’s view – applies to all kinds of transfer agreements between two clubs.
- 8.24 In that context, the Panel also refers to the FIFA Commentary on the Regulations for the Status and Transfer of Players (p. 31), which states, *inter alia*, that *“Administratively, a loan is a transfer”*.
- 8.25 Based on the above, the Panel finds that the FIFA PSC was correct in finding that the Appellant had delayed a due payment to the First Respondent originating from a transfer agreement for more than 30 days without a *prima facie* contractual basis, just as the First Appellant had put the

Appellant in default in writing by having granted a deadline of at least ten days for the Appellant to comply with its financial obligation.

- 8.26 Accordingly, the FIFA PSC had legal grounds for imposing a sanction on the Appellant in accordance with article 12bis of the Regulations.
- 8.27 Finally, taking into consideration the fact that the Appellant had already, on 27 April 2016, been found to have delayed payment for more than 30 days without a *prima facie* contractual basis, and thus having already been imposed a warning by the FIFA PSC, which is undisputed, the Panel finds that the reprimand imposed on the Appellant by the FIFA PSC in the Decision is not an excessive sanction.

## 9. SUMMARY

- 9.1 Based on the foregoing and after taking into consideration all the evidence produced and all arguments made, the Panel finds that the Appellant is still in default with its payments to the First Respondent in the amount of GBP 250,000, corresponding to the agreed loan fee pursuant to the Loan Agreement, and in view of these circumstances, and in accordance with the general legal principle of *pacta sunt servanda*, the Appellant is therefore obligated to pay this amount to the First Respondent.
- 9.2 Furthermore, the FIFA PSC had sufficiently legal grounds to impose a reprimand on the Appellant as a consequence of the above. In conclusion, the Appellant's Appeal is to be dismissed and the Decision confirmed.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules:

1. The appeal filed on 29 June 2016 by Al Jazira Football Sports Company against the decision rendered on 26 March 2016 by the Players' Status Committee of the Fédération Internationale de Football Association is dismissed.
2. The decision rendered on 26 March 2016 by the Players' Status Committee of the Fédération Internationale de Football Association is confirmed.
- (...)
5. All further and other requests for relief are dismissed.