Arbitration CAS 2017/A/5056 Ittihad FC v. James Troisi & Fédération Internationale de Football Association (FIFA) & CAS 2017/A/5069 James Troisi v. Ittihad FC, award of 23 November 2017 (operative part of 14 July 2017)

Panel: Mr Manfred Peter Nan (The Netherlands), President; Mr Rui Botica Santos (Portugal); Mr Mark Hovell (United Kingdom)

Football
Termination of the employment contract with just cause by the player
Contractual arrangements regarding just cause to terminate the employment contract
Sign-on lump sum as part of compensation in case of termination of employment contract
Consequences of a premature termination of an employment contract and Article 17(1) RSTP
Compensation for two consecutive employment contracts
Sporting sanctions under Article 17(4) RSTP
Repeated offender and Article 17(4) RSTP
Issuance of a warning under Article 17(4) RSTP
Discretion to reduce the sanction under Article 17(4) RSTP

1. **In principle, and given that the parties are free to arrange in the employment contract the method of compensation for breach of contract, nothing prevents the parties from also defining when and under which circumstances a party may terminate an employment contract "with just cause". However, if the provision foreseen by the parties constitutes a deviation from the general principles enshrined in the applicable regulations, such deviation may in principle not be potestative, *i.e.* the conditions for termination may not be unilaterally influenced by the party wishing to terminate the contract. In this context a certain level of disparity of termination rights has to be accepted as such. Instead, the question is how high the level of disparity may be: the limit of contractual freedom in this respect is formed by the prohibition of excessive self-commitment, as laid down in Article 27(2) of the Swiss Civil Code.**

2. **In circumstances where the employment contract between a player and a club foresees the payment of a lump sum to the player as a sign-on fee, but does not foresee that the player has to reimburse the respective amount (or parts thereof) if he does not finish the season with the club, in case the player terminates the contract with due cause before the end of the season and, as part of his compensation, claims payment of the (still outstanding) sign-on fee from the club, the club cannot claim a *pro rata* reduction of the respective sum.**

3. **Article 17(1) of the FIFA Regulations on the Status and Transfer of Players (RSTP) allows contractual parties to deviate from its application by determining so in their employment contract. At the same time Article 17(1) RSTP does not foresee that such contractual deviation is subject to certain requirements. Should however the wording of**

a compensation clause as well as the intention of the parties in drafting the respective clause be unintelligible, the compensation due for breach of contract shall be calculated based on Article 17(1) RSTP.

4. **In circumstances where a club and a player, on one and the same date conclude two employment contracts, one for each of two consecutive sporting seasons, any compensation due to the player because of termination with just cause during the period of the first employment contract is not only to be based on the first employment contract, but also on the second employment contract. This is because the second employment contract was signed on the same date as the first employment contract, and the club was therefore bound by it from that date.**

5. **The legal basis to impose sporting sanctions on clubs is clearly provided for in Article 17(4) RSTP. The mandatory prerequisite for imposing sporting sanctions is that the club breached an employment contract within the protected period. As such, the sanction resulting from the offence is predictable and the provision meets the requirement of a clear connection between the incriminated behaviour and the sanction. Furthermore, FIFA's policy to not impose sporting sanctions in every single case does not mean that it cannot impose them in other situations where the prerequisites of Article 17(4) RSTP are fulfilled. However there need to be certain aggravating factors in order to tip the scale towards imposing sporting sanctions, for example the fact that a club was held liable for breaching four employment contracts with players in a period of 24 months.**

6. **A club is considered repeated offender if it has been held liable on several occasions in the (recent) past for the early termination of employment contracts with players without just cause. A strict approach as regards Article 17(4) RSTP is necessary in order to guarantee a better enforcement of the contractual obligations assumed by clubs towards their players. The mere fact that there is no regulatory basis in the FIFA RSTP regarding the 'repeat offender' does not entail that no sporting sanctions can be imposed.**

7. **Even if in the context of Article 12bis RSTP it is apparently FIFA's practice to issue a warning prior to imposing sanctions, Article 17(4) RSTP does not require the issuance of a warning prior to the imposition of sporting sanctions.**

8. **Neither Article 17(4) RSTP nor the FIFA Commentary provide discretion as to the severity of the sporting sanctions to be imposed on a club. Therefore, the discretion of CAS panels to reduce a transfer ban imposed on the basis of Article 17(4) RSTP is limited to either confirming a two-period transfer ban imposed, or disposing of it entirely.**

I. PARTIES

1. Ittihad FC (the "Appellant/Counter-Respondent" or the "Club") is a football club with its registered office in Jeddah, Saudi Arabia. The Club is registered with the Saudi Arabian Football Federation (the "SAFF"), which in turn is affiliated to the Fédération Internationale de Football Association.

2. Mr James Troisi (the "Respondent/Counter-Appellant" or the "Player") is a professional football player of Australian nationality.

3. The Fédération Internationale de Football Association (the "Second Respondent" or "FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at a worldwide level. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

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 and oral submissions and the evidence examined in the course of the present appeal arbitration proceedings and the hearing. This background is made 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 31 August 2015, the Club and the Italian football club Juventus concluded an agreement (the "Loan Agreement") for the temporary transfer of the Player from Juventus to the Club until 30 June 2016.

6. On the same date, the Player and the Club entered into an employment contract (the "First Employment Contract"), valid from 31 August 2015 until 30 June 2016.

7. According to clause 2 of the First Employment Contract, the Club *"agrees that it will, on 1 July 2016, register (…) the player, with it on a permanent basis for an additional season, i.e. for season 2016/17"*.

8. According to clause 4 of the First Employment Contract, the Player was entitled to receive, *inter alia,* the following remuneration:

> *"1. Total Net Wage during the contract period an amount of* ***Euro 1,800,000/-*** *(One Million eight Hundred Thousand Euro Only) for the one football seasons (i.e. from 31st Aug 2015 till 30th June 2016), which will be paid as follows:*

- *An amount of* ***Euro 800,000/-*** *(Eight Hundred Thousand Euro Only) net of any taxes and/or retainers, if any, in a lump sum on or before the* ***20th Sept, 2015*** *after the Player passing the medical exam & arrive Jeddah.*

- *The remaining net amount of* ***Euro 1,000,000/-*** *(One Million Euro Only) shall be paid in (10) monthly equal instalments of* ***Euro 100,000/-*** *(One Hundred Thousand Euro net) by the end of each month as from the 31st September 2015, and the last payment at the end of June 2016. (…).*

<u>Non Payment:</u>

In the event that any sum due from the [Club] *to the* [Player] *under this Agreement is outstanding for more than 3 months following the due date for payment (for any reason), the* [Player] *may (without prejudice to his rights under this Agreement or otherwise at law) terminate this agreement immediately by giving written notice to the* [Club] *and the* [Club] *shall be liable to pay all amounts that would have been payable to the* [Player] *under this Agreement (but for the termination) within 14 days".*

9. In continuation, clause 10.4 and 15 of the First Employment Contract determine respectively the following:

"If the ***Player*** *terminating the contract with no just cause shall pay all amounts received from the* ***Club*** *as a penalty.*

(…)

This contract is binding to the two parties from the date of being signed, and shall not be effective before being approved by the Committee".

10. On the same date, the Player and the Club entered into another employment contract (the "Second Employment Contract"), valid from 1 July 2016 until 30 June 2017, which employment contract was also approved by the *"Committee"*.

11. According to clause 4 of the Second Employment Contract, the Player was entitled to receive, *inter alia,* the following remuneration:

"1. Total Net Wage during the contract period an amount of ***Euro 1,500,000/-*** *(One Million five Hundred Thousand Euro Only) for the one football seasons (i.e. from* ***01st July 2016*** *till* ***30th June 2017****), which will be paid as follows:*

- *An amount of* ***Euro 500,000/-*** *(Five Hundred Thousand Euro Only) net of any taxes and/or retainers, if any, in a lump sum on or before the* ***20th July, 2016****.*

- *The remaining net amount of* ***Euro 1,000,000/-*** *(One Million Euro Only) shall be paid in (12) monthly equal instalments of* ***Euro 83,333/-*** *(Eighty Three Thousand and Three*

> *Hundred Thirty Three Euro net) by the end of each month as from the end of* ***July 2016****, and the last payment at the end of* ***June 2017****. (…).*

> *In the event that any sum due from the* [Club] *to the* [Player] *under this Agreement is outstanding for more than 3 months following the due date for payment (for any reason), the* [Player] *may (without prejudice to his rights under this Agreement or otherwise at law) terminate this agreement immediately by giving written notice to the* [Club] *and the* [Club] *shall be liable to pay all amounts that would have been payable to the* [Player] *under this Agreement (but for the termination) within 14 days".*

12. Clause 10.4 and 15 of the Second Employment Contract are identical to the same numbered clauses in the First Employment Contract.

13. On 9 November 2015, the Player sent the Club a default letter referring to clause 4 of the First Employment Contract, requesting, *inter alia*, the immediate payment of the outstanding lump sum in the amount of EUR 800,000, due on 20 September 2015, and of a further payment of EUR 100,000, due by October 2015.

14. On 24 December 2015, the Player sent the Club a second default letter providing the Club a deadline of 7 days to pay him the outstanding lump sum amount of EUR 800,000.

15. On 30 December 2015, the Club replied that *"our sponsor will make a payment at the end of January 2016 and thus that the full amount of 800,000 Euros will be paid to Mr. Troisi on the 1st of February".*

16. On 1 January 2016, the Player sent a termination notice to the Club, informing it as follows:

> *"I refer to my letter dated 24 December 2015.*

> *The payment of €800,000 which was due to me on 20 September 2015 remains outstanding despite my repeated request for payment.*

> *Therefore, I write to inform you that pursuant to the "Non Payment" clause in my contracts dated 31 August 2015, one for the 2015/16 playing season and the other for the 2016/17 playing season, I am terminating both contracts with immediate effect".*

17. On 27 January 2016, the Player signed two employment contracts with the Chinese club Liaoning Football Club ("Liaoning"), the first employment contract (the "First Liaoning Contract") valid as from 27 January 2016 until 30 June 2016, according to which the Player was entitled to receive remuneration in the amount of USD 750,000, and the second employment contract (the "Second Liaoning Contract"), valid as from 1 July 2016 until 31 December 2016, according to which the Player was entitled to receive remuneration in the amount of USD 450,000.

18. On 22 February 2016, Liaoning, the Club and the Player signed an *"agreement relating to the transfer of James Troisi"* with the following relevant terms:

*"**Whereas:***

A. The Player's permanent registration is currently held by Juventus FC (…). The Player and Juventus are parties to an employment contract which expires on 30th June 2016 (…).

(…)

C. On 31st August 2015 Juventus and Ittihad entered into an agreement for the transfer of the registration of the Player to Ittihad on a temporary basis until 30 June 2016.

D. The parties have agreed that the Player's temporary registration will now be transferred directly from Ittihad to Liaoning.

The parties have agreed the following terms in respect of the transfer of the player's registration to Liaoning:

1 TRANSFER

(…)

1.7 On 1 July 2016 Ittihad shall release the Player's registration and do everything necessary to allow the Player to register as a permanent player for Liaoning.

(…).

5 NO WAIVER

5.1 Nothing in this agreement shall constitute any waiver of any right which any party may have against the others relating to:

(a) any previous transfers of the Player's registration (whether on a temporary or permanent basis); or

(b) The Player's employment with Ittihad".

19. On 26 July 2016, the Player and Liaoning terminated their contractual relationship and concluded a *"deed of settlement"* in which they agreed that the Player would be entitled to receive USD 525,000 as outstanding part of the First and Second Liaoning Contract, in addition to the salaries already paid by Liaoning Football Club to the Player in the amount of USD 525,000, constituting a total amount of USD 1,050,000.

20. On 1 August 2016, the Player signed an employment contract with the Australian club Melbourne Victory ("Melbourne"), valid as from 1 August 2016 until 31 May 2017, according to which the Player was entitled to receive the total amount of USD 280,000.

B. Proceedings before the Dispute Resolution Chamber of FIFA

21. On 21 April 2016, the Player lodged a claim with the FIFA Dispute Resolution Chamber (the "FIFA DRC") against the Club, claiming payment of the amount of EUR 3,100,000. In particular, the Player claimed:

    a. The residual value of the First Employment Contract, amounting to EUR 1,600,000;

    b. The full contractual value of the Second Contract, amounting to EUR 1,500,000;

    c. Interest at the appropriate rate and costs;

    d. Sporting sanctions to be imposed on the Club.

22. The Club, in spite of having been invited to do so, failed to respond to the Player's claim.

23. On 24 November 2016, the FIFA DRC rendered its decision (the "Appealed Decision"), with the following operative part:

    "1. The claim of the [Player] *is partially accepted.*

    2. The [Club] *has to pay to the* [Player], ***within 30 days*** *as from the date of notification of this decision, outstanding remuneration in the amount of EUR 1,000,000, plus 5% interest p.a. on said amount as from 21 April 2016 until the date of effective payment.*

    (…).

    6. The [Club] *shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision".*

24. On 15 March 2017, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:

    - *"*[…] *the DRC deemed it crucial to outline that it has remained uncontested that on the date of termination, i.e. 1 January 2016, the club failed to pay the player the sign-on-fee in the amount of EUR 800,000, which was due from 20 September 2015, as well as two monthly salaries in the amount of EUR 100,000 each, therefore leading to the total amount of EUR 1,000,000. Furthermore, the DRC stressed that it is also undisputed that the player, on 9 November 2015 and 24 December 2015, put the club in default in writing, asking for the payment of the outstanding amounts and then, on 1 January 2016, terminated the contract, after the sign-on-fee of EUR 800,000 was outstanding for more than three months.*

    - *On account of the aforementioned, the members of the Chamber concurred that the player had terminated the contract in accordance with art. 4 of the first contract and had, therefore, just cause to do so* […].

Consequently, the club is to be held liable for the early termination of the employment contract with just cause by the player.

- *Consequently, in accordance with the principle of pacta sunt servanda, the Chamber decided that the club is liable to pay the player the amount of EUR 1,000,000 as outstanding remuneration, corresponding to the sign-on fee as well as two monthly salaries".*

- With regard to the compensation, *"the Chamber established that the contract contains in article 4 a clause regarding the consequences of a unilateral termination of the contract by the player* […]. *In this respect, the Chamber considered that article 4 of the contract could not be applicable in the matter at hand, as it de facto prevents the player from requesting compensation for breach of contract to be paid by the club, in case of a termination of the contract by the player which is based on the contents of said clause. In such case, the player would potentially only be entitled to the amounts that would have been payable to him until the date of termination, and thus the amount the player is entitled to, is made dependent from the moment of termination of the contract. As a result, the Chamber concluded that the clause cannot be taken into consideration in the determination of the amount of compensation.*

- *As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations.*

- […] *the Chamber proceeded with the calculation of the monies payable to the player under the terms of the contract until 30 June 2016. In this respect, the Chamber wished to point out that at the date of termination of the contract, i.e. 1 January 2016, only the first contract was executed by the parties* […]. *Furthermore, the Chamber considered that the execution of the second contract would apparently only have started if both parties agreed to do so, which circumstance became impossible with the unilateral termination of the contracts on 1 January 2016. As a result the Chamber decided that only the residual value of the first contract shall be taken into consideration.*

- *Consequently, the Chamber concluded that the amount of EUR 600,000, i.e. the remuneration as from January 2016 until June 2016, serves as the basis for the determination of the amount of compensation for breach of contract.*

- *In continuation, the Chamber verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.*

- *Indeed, on 27 January 2016, the player found employment with the Chinese club, Liaoning Football Club. In accordance with the pertinent employment contract, valid until 30 June 2016, the player is entitled to receive a total remuneration of USD 750,000.*

- *Consequently,* […] *even though the club is considered liable for the breach of the relevant employment contract, the player did not suffer any financial loss from the violation of the contractual obligations by the club and, therefore, the Chamber decided that there is no amount that should be awarded to the player as compensation for breach of contract.*

- *In continuation, the Chamber focused its attention on the further consequences of the breach of contract in question and, in this respect, addressed the question of sporting sanctions in accordance with art. 17 par. 4 of the Regulations.*

- *In this respect, the Chamber took note that the breach of the employment contract by the club, and the termination of the contract by the player, had occurred on 1 January 2016, i.e. 4 months following the entry into force of the contract at the basis of the dispute. Therefore, the Chamber concluded that, irrespective of the player's age, such breach of contract by the club had occurred within the protected period.*

- *As a result, by virtue of art. 17 par. 4 of the Regulations and considering that the player had terminated the contract with the club with just cause and, consequently, the club was to be held liable for the early termination of the employment contract, the Chamber decided that the club shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.*

- *In this regard, the Chamber emphasized that apart from the club having clearly acted in breach of the contract within the protected period in the present matter, the club had also on several occasions in the recent past been held liable by the Chamber for the early termination of the employment contracts with the players De Souza Andrade (case ref. nr. 12-03024; decided on 18 December 2014), De Mattos Filho (case ref. nr. 15-00673; decided on 15 October 2015) and Orozco (case ref. nr. 16-00048; decided on 18 March 2016)".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 4 April 2017 and 5 April 2017 respectively, the Club and the Player lodged a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2017 edition) (the "CAS Code"). In their submissions, the Club requested for an Order for stay of execution and nominated Mr Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal, as arbitrator. The Player requested that the present case be submitted to a sole arbitrator.

26. On 13 April 2017, both the Club and the Player agreed with the consolidation of the two proceedings. Further the Player agreed with a three-member panel and nominated Mr Mark Hovell, Solicitor, Manchester, United Kingdom, as arbitrator.

27. On the same date, FIFA filed its answer to the request for stay of execution.

28. On 18 April 2017, FIFA informed the CAS Court Office that it had no objection to the consolidation of the two proceedings and that it did not object to the appointment of Mr Mark Hovell as arbitrator.

29. On the same date and further to the parties' agreement for consolidation of the proceedings in CAS 2017/A/5056 with the proceedings in CAS 2017/A/5069, the CAS Court Office - on behalf of the President of the Appeals Arbitration Division - informed the parties that the two proceedings would be consolidated, pursuant to Article R52 of the CAS Code.

30. Also on 18 April 2017, the Deputy President of the Appeals Arbitration Division of the CAS issued an Order dismissing the Club's request for a stay.

31. On 5 May 2017, the Club filed its Appeal Brief in accordance with Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. The Club challenged the Appealed Decision, submitting the following requests for relief:

> *"Prayer 1: The Appealed Decision shall be annulled.*
>
> *Subsidiary to Prayer 1:*
>
> *Prayer 1A: The Appealed Decision shall be partially annulled: Para. 6 of the Operative Part of the Appealed Decision shall be removed.*
>
> *Subsidiary to Prayer 1A:*
>
> *Prayer 1B: The Appealed Decision shall be partially annulled: Para. 6 of the Operative Part of the Appealed Decision shall be modified and a final period of grace shall be granted to Appellant.*
>
> *Subsidiary to Prayer 1B:*
>
> *Prayer 1C: The Appealed Decision shall be partially annulled: Para. 6 of the Operative Part of the Appealed Decision shall be modified and any sanction imposed on Appellant by Respondent 2 shall be significantly reduced and/or imposed only subject to a probationary period.*
>
> *Prayer 2: In any case, Respondent 1 and Respondent 2 shall bear the costs of the arbitration and Respondent 1 and Respondent 2 shall contribute to the legal fees incurred by Appellant at an amount of at least CHF 30,000".*

32. On the same date, the Player filed his Appeal Brief in accordance with Article R51 of the CAS Code. This document contained a statement of facts and legal arguments. The Player challenged the Appealed Decision, submitting the following requests for relief:

> *"a. Ittihad is ordered to pay Mr Troisi the sum of €3.1 Million (less the €200,000 which he received in salary from Ittihad but not subject to any offset of earnings after the termination date) being the agreed*

compensation "provided for in the contract" for termination of both the First and Second Contracts for just cause pursuant to Article 17 par. 1 of the RSTP (plus interest at the appropriate rate and costs);

b. *In the alternative (and without prejudice to the above), Ittihad is ordered to pay Mr Troisi the sum of €1.6 Million (less the €200,000 which he received in salary from Ittihad but not subject to any offset of future earnings) being the agreed compensation "provided for in the contract" for termination of the First Contract for just cause pursuant to Article 17 par. 1 of the RSTP and compensation calculated in accordance with Article 17 of the RSTP for losses arising from Ittihad's breach of the Second Contract (plus interest at the appropriate rate and costs); and*

c. *Ittihad is ordered to pay the costs of the CAS proceedings".*

33. On 18 May 2017, the Player requested the CAS Court Office *"that a hearing to determine this matter be listed for the earliest possible date in July"*.

34. On 19 May 2017, the Club requested *"that a Hearing should be held as early as possible and ideally in the first half of the month of July"*.

35. On 24 May 2017, in accordance with Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted by:

- Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as President;
- Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal, and
- Mr Mark Hovell, Solicitor in Manchester, United Kingdom, as arbitrators.

36. On 29 May 2017, and pursuant to Article R57 of the CAS Code, the CAS Court Office informed the parties that the Panel had decided to hold a hearing in this matter.

37. On 16 June 2017, the Player filed its Answer in respect of the Club's Appeal in accordance with Article R55 of the CAS Code. The Player submitted the following request for relief:

"the Appeal of Ittihad should be rejected and Ittihad should be ordered to pay Mr Troisi's legal costs (to be assessed) and the costs of the CAS proceedings in full".

38. On the same date, the Club filed its Answer in respect of the Player's Appeal in accordance with Article R55 of the CAS Code. The Club submitted the following requests for relief:

"1. The Appeal shall be rejected, insofar as it is admissible.

2. In any case, Appellant, James Troisi, shall bear the costs of the arbitration and shall contribute to the legal fees incurred by Ittihad FC at an amount of at least CHF 30,000".

39. On 28 June 2017, FIFA filed its Answer in respect of the Club's Appeal in accordance with Article R55 of the CAS Code. FIFA submitted the following requests for relief:

"1. That the CAS rejects the present appeal and confirms the presently challenged decision passed by the Dispute Resolution Chamber (…) on 24 November 2016 in its entirety.

2. That the CAS orders the Appellant to bear all the costs of the present procedure.

3. That the CAS orders the Appellant to cover all legal expenses of FIFA related to the proceedings at hand".

40. On 3 and 7 July 2017 respectively, FIFA, and the Player and the Club returned a duly signed copy of the Order of Procedure to the CAS Court Office.

41. On 12 July 2017, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, the parties confirmed not to have any objection as to the constitution and composition of the Panel.

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

a) For the Club:

1) Mr Ayman Alawad, Board member of the Club;

2) Dr Jan Kleiner, Counsel;

3) Mr Marc Cavaliero, Counsel.

b) For the Player:

1) Mr Richard Berry, Counsel;

2) Mr John Mehrzad, Counsel;

3) Mr Ashley Cukier, Counsel.

c) For FIFA:

1) Mrs Livia Silva Kägi, Legal Counsel FIFA Players' Status Department;

2) Mr Pascal Martens, Legal Counsel FIFA Players' Status Department.

43. During the hearing, and in reply to questions from the Panel, the Player produced an *"agreement relating to the transfer of James Troisi"* dated 22 February 2016, and a *"deed of settlement"* dated 26 July 2016, which documents were admitted to the file with the consent of the Club and FIFA. The parties had full opportunity to present their case, submit their arguments and answer the

questions posed by the members of the Panel. Further, the parties elaborated on their legal costs incurred in connection with these arbitration proceedings.

44. Before the hearing was concluded, the parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.

45. The Panel confirms that it carefully heard and took into account in its decision 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 arbitral award.

IV. SUBMISSIONS OF THE PARTIES

46. The Club's submissions in CAS 2017/A/5056 and in CAS 2017/A/5069, in essence, may be summarised as follows:

- As to the termination of the employment relationship, the Club submits that it *"was triggered by one sole reason: Appellant failed to make payment of a sign-on bonus on time"*. The Club regrets to have failed to make payment of the sign-on bonus in the amount of EUR 800,000, due to liquidity problems, but claims to have made offers and attempts to pay the amount on a later date, but unfortunately the Player insisted on the premature termination.

- The Club argues that *"the "non-payment clause" in item 4"* of the First Employment Contract is null and void, pursuant to Article 337 par. 2 of the Swiss Code of Obligations (the "SCO").

- The Club maintains that a premature, unilateral termination of an employment contract is admitted only very restrictively and only in case of *ultimo ratio*. The Club argues that the Player terminated the contract *"to seize the opportunity to sign a well-paid contract in China"*. As such, the premature termination of the First Employment Contract by the Player *"is not justified"* and without just cause.

- Subsidiary, the Club submits that the amount of EUR 800,000 must be reduced on a *pro rata* basis for the time the Player spent with the Club, which results in a reduction to EUR 320,000.

- As to the sporting sanctions, the Club argues that by imposing the most severe sanction available, the FIFA DRC misapplied Article 17 par. 4 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") and principles of Swiss law.

- The Club accentuates that *"the approach taken by the FIFA DRC violates the principles of legality, predictability and the principle of "in dubio contra preferentum"*, adding that the Appealed Decision *"also grossly violates the principle of equal treatment, since the Appellant was treated much more severely than other clubs in identical cases"*. The Club refers to an extensive and detailed analysis of decisions rendered by the FIFA DRC as from June 2014 onwards.

- The Club maintains that FIFA's practice is unclear and inconsistent, that the "repeated offender" criterion is irrelevant and that the imposed sanction is grossly and evidently disproportionate.

- The Club, referring to the *"gradual sanctioning mechanism"* of Article 12bis of the FIFA RSTP, accentuates that the FIFA DRC immediately and without any previous warning applied the most severe sanction available, instead of imposing a milder sanction, or granting a final period of grace or granting a probationary period, which appears to be standard practice of the FIFA DRC to ensure proportionality.

- In continuation, the Club submits that *"the so-called "change in practice" violates the principle of nulla poena sine lege, since the newly applied interpretation – or less flexible approach, as FIFA would like to call it – of art. 17 par. 4 RSTP is a clear result of a de facto practice only known by FIFA and was never communicated to the direct and indirect members of FIFA either in a general way or specifically in the context of the proceedings at stake"*.

- With regard to the Player's Appeal, the Club also argues that the First and Second Employment Contract are two distinct, separate employment contracts with different periods of validity, each with different terms and with specific, different clauses. As such, any possible termination of the First Employment Contract *"can only have financial consequences under this very contract. It does not entail any right for compensation or any other legal consequence on the basis of* [the Second Employment Contract], *the execution of which had not even begun"*.

- The Club submits that the interpretation given by the Player contravenes the principle of *venire contra factum proprium*.

- Further, the Club maintains that the 'non-payment clause' in the First Employment Contract does not constitute a liquidated damages clause and in any event does not refer to the value of the Second Employment Contract.

- Finally, the Club argues that, should *"the Panel consider that the Club breached* [the First Employment Contract]*, calculation of any compensation shall be determined in accordance with art. 17 RSTP, and any compensation can only be awarded under* [the First Employment Contract]*"*, adding that the Player, by signing a new employment contract of higher value with another club, *"mitigated – and actually, annulled – any possible damage due to the alleged breach of contract"*.

47. The Player's submissions in CAS 2017/A/5056 and in CAS 2017/A/5069, in essence, may be summarised as follows:

- The Player primarily maintains that the First and Second Employment Contract constitute one continuous agreement between himself and the Club and that the Non-Payment provision in clause 4 *"applied to the termination of both Contracts and had the effect of making all monies which would have been due to Mr Troisi under both Contracts (€ 3.1 Million – being the full amount due under both Contracts, less the € 200,000 which Mr Troisi received in salary from Ittihad) payable to Mr Troisi as a debt by Ittihad"*, which is also clear from the correspondence between the Club and the Player's Agent at the time the contracts were negotiated.

- As a consequence, the Player argues that *"the parties had agreed upon an amount of compensation payable in the event of a breach of contract. This contractual agreement must be applied and there is no need to refer to the further criteria in Article 17 par. 1 of the RSTP. This amount was not unreasonable or excessive and no future earnings on Mr Troisi's part should be set off against it"*.

- In the alternative, the Player maintains that his termination of the First Employment Contract *"through exercise of his rights under the Non-Payment Provision gives rise to a debt owed to him by Ittihad in the sum of € 1.6 million"*.

- In the further alternative, the Player maintains that he terminated the Second Employment Contract with just cause and therefore should be compensated for the termination of that contract in accordance with Article 17 of the FIFA RSTP.

- With regard to the Club's Appeal, the Player argues that *"the Non-Payment Provision does not derogate from the provisions of Article 337* [SCO] *and is not therefore void"*.

- The Player stresses that the parties had expressly agreed that, if a payment due to the Player *"was outstanding for more than 3 months, the Player may terminate the contract (…). In any event (…) the failure of Ittihad to make payment of the sign on bonus was sufficient to give Mr Troisi just cause to terminate the contract on any analysis"*.

- Furthermore, the Player asserts that there is no legal basis for a *pro rata* reduction of the lump sum as requested by the Club.

- With regard to the sporting sanctions, the Player submits that in accordance with Article 17 par. 4 of the FIFA RSTP, FIFA is under a duty to impose sporting sanctions as the conditions are satisfied.

48. FIFA's submissions in CAS 2017/A/5056, in essence, may be summarised as follows:

- FIFA fully endorses the Appealed Decision, adding that regarding the breach of contract *"the unilateral termination of the contract by the* [Player] *with just cause was completely compatible with the measure's nature of ultima ratio, in accordance with art. 4 of the contract as well as with art. 337 par. 2 of the* [S]*CO"*.

- With regard to the sporting sanctions, FIFA maintains that the FIFA DRC correctly applied Article 17 par. 4 of the FIFA RSTP, instead of Article 12bis of the FIFA RSTP as suggested by the Club, because Article 12bis of the FIFA RSTP *"could not have possibly been applied by the FIFA DRC to the case at hand, for both formal and material limitations (…)"*.

- In continuation, FIFA asserts that the imposition of a sporting sanction on the Club was not only *"perfectly predictable and legally foreseen as per art. 17 par. 4 of the Regulations, but also in view of the very clear and public transformation of the DRC jurisprudence in the past 3 years"*.

- FIFA submits that the FIFA DRC dealt with 1,216 cases between June 2014 and January 2017, *"and does not have the intention to paralyse the transfer market, by automatically and strictly applying art. 17 par. 4 of the Regulations. Thus, these sanctions are most of the times reserved for clubs which have shown a pattern of disrespect of their contractual obligations, as Ittihad FC"*.

- In addition, FIFA refers to 28 cases opened against the Club as from 2013, *"in which the Club was held liable of not having met its obligations as per the contracts it concluded or as per the FIFA Regulations"*. As such, FIFA maintains that the Appealed Decision is adequate, necessary and in accordance with the principle of proportionality.

V. JURISDICTION

49. Article R47 of the CAS Code reads as follows – as relevant:

> *"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 him prior to the appeal, in accordance with the statutes or regulations of that body.*
>
> […]*"*.

50. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) of the FIFA Statutes (edition 2016) 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"* and Article R47 of the CAS Code. Further, the uncontested jurisdiction of CAS is confirmed by the Order of Procedure duly signed by the parties.

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

VI. ADMISSIBILITY

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

53. It follows that the Appeals are admissible.

VII. APPLICABLE LAW

54. 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".*

55. The Club submits that *"CAS shall primarily apply the regulations of FIFA and, additionally, Swiss law"*. The Player submits that the present matter *"should be governed by the FIFA Regulations and to the event that the FIFA Regulations need to be interpreted or supplemented in any way, by Swiss law"*. FIFA did not explicitly provide its position on the applicable law.

56. The Panel observes that Article 57(2) of the FIFA Statutes (2016 edition) 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".*

57. As such, the Panel is satisfied to primarily apply the various regulations of FIFA and, subsidiarily, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

A. The Main Issues

58. As a result of the above, the main issues to be resolved by the Panel are:

    i. Was the employment relationship terminated with just cause by the Player?

    ii. What amount of outstanding remuneration is the Player entitled to receive from the Club?

iii. If the Player terminated the employment relationship with just cause, what amount of compensation for breach of contract is to be paid by the Club to the Player?

iv. If the Player terminated the employment relationship with just cause, did the FIFA DRC legitimately impose sporting sanctions on the Club?

v. If so, is the imposition of a two-period transfer ban on the Club warranted?

i. Was the employment relationship terminated with just cause by the Player?

59. The Panel notes that it remained undisputed between the parties that the Player unilaterally and prematurely terminated the employment relationship with the Club on 1 January 2016.

60. The Player maintains that he proceeded with the termination because the Club failed to pay him the lump sum sign-on fee of EUR 800,000 and two monthly salaries in the amount of EUR 100,000 each (totalling to an amount of EUR 1,000,000), despite the fact that the Player notified the Club of these overdue payables by letters dated 9 November 2015 and 24 December 2015.

61. It remained undisputed by the Club that it indeed did not pay such amounts, however the Club purports that it *"made offers and attempts to pay the sign-on bonus at a later point in time"*.

62. The Club contends that the threshold for existence of just cause was not met as the Club only failed to pay the sign-on fee in time. The Club argues that a premature, unilateral termination of an employment contract is admitted restrictively and the termination by the Player does not meet the *ultimo ratio* test. Furthermore, the Club refers to mandatory Swiss law, especially to Article 337(2) SCO, submitting that parties cannot define just cause in an employment contract. As a consequence, the Club maintains that the 'non-payment clause' in the First Employment Contract is null and void, and that the Player is responsible for the breach of contract.

63. As such, the first issue to be addressed in the present matter is whether the Player had just cause to terminate the employment relationship. The burden of proof in this respect lies with the Player.

64. The Panel observes that Article 14 of the FIFA RSTP determines the following:

> *"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause"*.

65. In continuation, the Panel observes that the Commentary to the FIFA RSTP provides guidance as to when a contract is terminated with just cause:

> *"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or*

should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally".

66. In this regard, the Panel notes that in CAS 2006/A/1180, a CAS panel stated the following:

"The RSTP 2001 do not define when there is "just cause" to terminate a contract. In its established legal practice, CAS has therefore referred to Swiss law in order to determine the purport of the term "just cause". Pursuant to this, an employment contract which has been concluded for a fixed term, can only be terminated prior to expiry of the term of the contract if there are "valid reasons" or if the parties reach mutual agreement on the end of the contract (see also ATF 110 I 167; WYLER R., Droit du travail, Berne 2002, p. 323 and STAEHELIN/VISCHER, Kommentar zum Schweizerischen Zivilgesetzbuch, Obligationenrecht, Teilband V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, marg. no. 17 ad Art. 334, p. 479). In this regard Art. 337 para. 2 of the Code of Obligations (CO) states – according to the translation into English by the Swiss-American Chamber of Commerce: "A valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship". According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (ATF 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa). Particular importance is thereby attached to the nature of the breach of obligation. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (ATF 101 Ia 545). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus (ATF 5 May 2003, 4C.67/2003 no. 2). According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit., p. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., op. cit., p. 364 and TERCIER P., op. cit., no. 3394, p. 495).

The non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated as in the present case - constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or

completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5 et seq.)" (CAS 2006/A/1180, para. 25-26 of the abstract published on the CAS website).

67. The Commentary to the FIFA RSTP specifically refers to the following example of a breach with just cause:

"Example 1: A player has not been paid his salary for over 3 months. Despite having informed the club of its default, the club does not settle the amount due. The player notifies the club that he will terminate the employment relationship with immediate effect. The fact that the player has not received his salary for such a long period of time entitles him to terminate the contract, particularly because persistent non-compliance with the financial terms of the contract could severely endanger the position and existence of the player concerned".

68. The Panel observes that the 'non-payment clause' in clause 4 of the First and Second Employment Contract provides, *inter alia*, as follows:

"In the event that any sum due from the [Club] *to the* [Player] *under this Agreement is outstanding for more than 3 months following the due date for payment (for any reason), the* [Player] *may (without prejudice to his rights under this agreement or otherwise at law) terminate this agreement immediately by giving written notice to the* [Club] *and the* [Club] *shall be liable to pay all amounts that would have been payable to the* [Player] *under this Agreement (but for the termination) within 14 days".*

69. As such, this provision – which entitles the Player to unilaterally terminate the employment relationship in case **any sum** is outstanding for more than 3 months following the due date for payment – is in full compliance with the principle enshrined in the Commentary to the FIFA RSTP that a player in principle has the right to terminate his employment contract if his remuneration has not been paid for a period of three months.

70. Indeed, the Panel finds that clause 4 of the First and Second Employment Contract is a contractual deviation from the standards set out in the FIFA RSTP. The validity of such contractual deviation and the limits to the validity has been addressed in CAS jurisprudence:

"Furthermore, the Sole Arbitrator considers this provision to be a deviation from the general principles enshrined in the FIFA Regulations. The Sole Arbitrator finds that, in principle, nothing prevents parties from defining when and under which circumstances a party may terminate the Employment Contract with just cause. For if the parties are free to arrange in the employment contract the method of compensation for breach of contract, then, in principle, the same must apply to specifying when there is "just cause" (CAS 2006/A/1180). Such deviation may in principle not be potestative, i.e. the conditions for termination may not be unilaterally influenced by the party wishing to terminate the contract (an example of a potestative clause would be the situation where a contract provides that it can be unilaterally terminated by the club if the player does not play in a certain percentage of matches, for the decision to field the player may be influenced by the

club). As maintained by a legal scholar, "[i]n relation to the substance of the unilateral option clause, parity of termination rights is no longer to be taken as a benchmark for public policy, since (as shown) a disparity of termination rights has to be accepted as such; instead the question to be answered here is how great the disparity may be. The limit of contractual freedom in this respect is formed by the prohibition of excessive self-commitment, as laid down in Swiss law, for example, at Art. 27(2) of the Swiss Civil Code", adding in a footnote that "[n]o person can alienate his personal liberty nor impose any restrictions on his own enjoyment thereof which are contrary to law and morality" (PORTMANN, Unilateral option clauses in Footballer's contracts of employment: An assessment from the perspective of International Sports Arbitration, ISLR 2007, p. 6-16)" (CAS 2015/A/4042, para. 68 of the abstract published on the CAS website).

71. The Panel agrees with this view and finds that, applying the above-mentioned test to the matter at hand, the 'non-payment clause' in clause 4 of the First and Second Employment Contract, determining that the Player is entitled to terminate the employment relationship unilaterally if the Club fails to comply with its financial obligations towards the Player for more than 3 months is not an excessive commitment from the side of the Club and is not invalid. On the contrary, the Panel considers such clause to be in accordance with Article 337 SCO and the principles enshrined in the Commentary to the FIFA RSTP.

72. In this respect, the Panel considers it important that the Player was entitled to his remuneration on the basis of the First Employment Contract and this specific contractual clause does not create new obligations for the Club. There is no indication whatsoever that the Club and the Player had unequal bargaining powers on the basis of which the Club was 'forced' to accept such clause. Under these circumstances, the Panel finds that the relevant clause does not constitute an excessive commitment from the side of the Club.

73. The Panel feels comforted in this conclusion by the decision of a previous CAS panel in CAS 2010/A/2202 where a clause determining that *"in the case of late payment of salary and/or bonuses and/or signing on fee, later than 45 days of the agreed date, by the club of the player, the player has to his choice, the right of a free transfer without any compensation payable to the club whatsoever"* was considered valid.

74. Even if the specific clause would be invalid, *quod non*, the Panel has no hesitation to consider the Club's failure to pay the Player the lump sum of EUR 800,000 sufficient reason to terminate the employment relationship on 1 January 2016.

75. The Panel observes that, immediately at the beginning of the employment relationship, the Club already failed to comply with its main contractual obligation towards the Player: the payment of remuneration in the form of a lump sum sign-on fee in the amount of EUR 800,000 that fell due on 20 September 2015, despite two notifications being sent by the Player. Since the Player was entitled to receive a total amount of EUR 1,800,000 over the course of the 2015/2016 sporting season, at the date of termination (*i.e.* 1 January 2016) the Player had only received 11% of his yearly salary (EUR 200,000 out of EUR 1,800,000), whereas, at that time, he was supposed to have received 55% (EUR 1,000,000 out of EUR 1,800,000).

76. The Panel has no hesitation in deciding that such violation of the payment obligations from the side of the Club legitimately entails a serious breach of confidence, entitling the Player to terminate the employment relationship with immediate effect.

77. Consequently, the Panel finds that the Player had just cause to terminate the employment relationship unilaterally and prematurely on 1 January 2016.

ii. What amount of outstanding remuneration is the Player entitled to receive from the Club?

78. Before addressing the consequences of the termination, the Panel is required to examine what amount of outstanding remuneration the Player is entitled to receive from the Club.

79. In this respect, the Panel considers that the Player claimed an amount of EUR 1,000,000 as outstanding remuneration in the proceedings before the FIFA DRC and that this amount was indeed awarded in the Appealed Decision.

80. The Panel notes that the Club did not challenge this specific finding of the FIFA DRC, but argued that the lump sum in the amount of EUR 800,000 should be reduced on a *pro rata* basis for the time the Player spent with the Club, reducing it to EUR 320,000.

81. The Panel observes that the lump sum in the amount of EUR 800,000 was unconditionally due on 20 September 2015. No provision contemplates that the Player would have to reimburse such amount to the Club in case he would not finish the season with the Club. As such, the Panel sees no reason to apply a *pro rata* reduction.

82. Since the Player had only received a total amount of EUR 200,000 from the Club until 1 January 2016 (*i.e.* the date of termination) related to the September and October 2015 salaries, whereas he was entitled to have received a sign on fee of EUR 800,000 and monthly salaries in the total amount of EUR 400,000 (EUR 100,000 regarding September-December 2015) at that time, the Panel finds that the Player is indeed entitled to receive an amount of EUR 1,000,000 as outstanding remuneration from the Club.

83. The Panel observes that the Player claims interest over the outstanding remuneration as from the due dates, without mentioning any specific rate.

84. Article 104(1) of the SCO provides as follows:

> *"A debtor in default on payment of a pecuniary debt must pay default interest of 5% per annum even where a lower rate of interest was stipulated by contract"*.

85. The Panel accepts that the Player is entitled to interest over his successful claims, at a rate of 5% *per annum*.

86. Article 102(2) of the SCO provides as follows:

> *"Where a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the obligor is automatically in default on expiry of the deadline"*.

87. The Panel finds that the interest shall only start to accrue as from the respective due dates of the sign-on fee and salaries pursuant to Article 102(2) SCO, as set out in the First Employment Contract.

88. Consequently, the Panel finds that the Player is entitled to receive outstanding remuneration from the Club in the amount of EUR 1,000,000, with interest accruing as follows:

- EUR 800,000, with 5% interest *p.a.* accruing as from 20 September 2015 until the date of effective payment;
- EUR 100,000, with 5% interest *p.a.* accruing as from 30 November 2015 until the date of effective payment;
- EUR 100,000, with 5% interest *p.a.* accruing as from 31 December 2015 until the date of effective payment.

iii. If the Player terminated the employment relationship with just cause, what amount of compensation for breach of contract is to be paid by the Club to the Player?

89. Having established that the Club is to be held liable for the early termination of the employment relationship and that the Player is entitled to receive his outstanding sign-on fee and salaries, the Panel will now proceed to assess the consequences of the Club's breach.

90. The Player maintains that the FIFA DRC wrongly concluded that it could not apply the compensation clause under the First and Second Employment Contract in view of the fact that this clause *de facto* prevents the Player from requesting compensation for breach of contract to be paid by the Club. Further, the Player disagrees with the FIFA DRC's consideration insofar as it was decided that only the residual value of the First Employment Contract could be taken into account. The Player challenges this part of the Appealed Decision because he is of the opinion that the liquidated damages clause agreed upon in the non-payment clause incorporated in clause 4 of the First and Second Employment Contract entitles him to the residual value of both the First and Second Employment Contract, which may not be subject to reduction, because the amount established would not be excessive. In case the parameters set out in Article 17(1) of the FIFA RSTP would be applicable, the Player maintains that still the remaining value of the First and Second Employment Contract should be taken into account.

91. The Club purports that the 'non-payment clause' in clause 4 of the First Employment Contract only refers to the First Employment Contract, is not clear and does not constitute a liquidated damages clause. The Club accentuates that any compensation could only be awarded under the

First Employment Contract in accordance with Article 17 of the FIFA RSTP. The Club stresses that the Player, by signing contracts with other clubs, completely annulled his damages.

92. In establishing the amount of compensation to be paid, the Panel observes that Article 17(1) of the FIFA RSTP determines the financial consequences of a premature termination of an employment contract:

> *"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".*

93. The Panel finds that Article 17(1) of the FIFA RSTP is clear in the sense that it allows contractual parties to deviate from the application of Article 17(1) of the FIFA RSTP by determining so in their employment contract. The Panel notes that Article 17(1) of the FIFA RSTP does not determine that such contractual deviation is subject to certain requirements.

94. The Panel observes that the 'non-payment clause' in clause 4 of the First Employment Contract (which corresponds with clause 4 of the Second Employment Contract) contains a provision regarding the consequences of a unilateral termination of the employment relationship, which determines the following:

> *"In the event that any sum due from the* [Club] *to the* [Player] *under this Agreement is outstanding for more than 3 months following the due date for payment (for any reason), the* [Player] *may (without prejudice to his rights under this Agreement or otherwise at law) terminate this agreement immediately by giving written notice to the* [Club] *and the* [Club] *shall be liable to pay all amounts that would have been payable to the* [Player] *under this Agreement (but for the termination) within 14 days".*

95. The Panel observes that an unofficial translation of Article 18(1) SCO determines the following regarding the evaluation of contractual provisions:

> *"When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".*

96. This principle has been applied in CAS jurisprudence as follows:

> *"The interpretation of a contractual provision in accordance with Article 18* [SCO] *aims at assessing the intention the parties had when they concluded the contract. On this basis, Swiss scholars (WIEGAND, in Basler Kommentar, No. 7 et seq., ad Art. 18 CO) and case law (decisions of the Federal Tribunal of 28*

September 1999, ATF 125 III 435, and of 6 March 2000, ATF 126 III 119) have indicated that the primary goal of interpretation is to ascertain the true common intentions (consensus) of the parties. Where a factual consensus cannot be proven, the declarations of the parties must be interpreted pursuant to the principle of good faith in the sense in which they could and should have been understood, taking into account the wording, the context as well as all circumstances" (CAS 2010/A/2098, §18).

97. Therefore the Panel has to explore the *"real and common intent"* of the parties, pursuant to the mentioned principles, beyond the literal meaning of the words used, in order to determine the implications of this clause, if any.

98. The Panel finds that the wording of clause 4 of the First and Second Employment Contract is ambiguous. Whereas the wording *"would have been payable"* appears to indicate that the Player's damages could also comprise income that the Player would have been entitled to should the Club not have breached the employment relationship, the wording *"but for the termination"* appears to suggest that such income could not be included in the Player's claim, as was also concluded by the FIFA DRC in the Appealed Decision.

99. In view of the unclear wording, and in the absence of any evidence being presented by the parties to prove the joint intention of the parties with this particular provision, the Panel finds that the Player should not be prevented from claiming compensation for damages incurred based on the remuneration that the Player was entitled to receive should the Club not have breached its obligations *vis-à-vis* the Player.

100. Since the wording as well as the intention of the parties with this contractual provision is unintelligible, the Panel does not find itself to be in a position to apply it and therefore opts to apply Article 17(1) FIFA RSTP in respect of the compensation for breach of contract to be awarded to the Player. If the parties had determined that the Player would have no duty to mitigate, then it would have been simple enough for the parties to have agreed to include that express wording in the First and Second Employment Contracts.

101. The Panel takes due note of previous CAS jurisprudence establishing that the purpose of Article 17(1) FIFA RSTP is basically nothing else than to reinforce contractual stability, *i.e.* to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (CAS 2008/A/1519-1520, para. 80, with further references to: CAS 2005/A/876, p. 17: *"*[…] *it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability'* […]*"*; CAS 2007/A/1358, para. 90; CAS 2007/A/1359, para. 92: *"*[…] *the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability* […]*"*; confirmed in CAS 2008/A/1568, para. 6.37).

102. In respect of the calculation of compensation in accordance with Article 17(1) FIFA RSTP and the application of the principle of "positive interest", the Panel follows the framework as set out by a previous CAS panel as follows:

"When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.

As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have if no breach had occurred.

The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see Streiff/von Kaenel, Arbeitsvertrag, Art. 337d N 6, and Staehelin, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also Wyler, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) (…).

The principle of the "positive interest" shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the player by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the player from a third party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including the specificity of sport, as foreseen in art. 17 FIFA Regulations" (CAS 2008/A/1519-1520, at §85 *et seq.*).

103. The Panel finds that the legal framework set out above and the principle of positive interest are applicable to the present case. Against this background, the Panel will proceed to assess the Player's objective damages, before applying its discretion in adjusting this total amount of objective damages to an appropriate amount, if deemed necessary.

104. In deciding the appropriate amount of compensation for breach of contract to be received by the Player, the Panel observes that the parties have diverging views as to whether this compensation is to be based only on the First Employment Contract or also on the basis of the Second Employment Contract.

105. The Panel observes that on 31 August 2015, the Player was loaned from Juventus to the Club until 30 June 2016. On the same date, the Club and the Player concluded two employment contracts for the consecutive sporting seasons 2015/2016 and 2016/2017. According to Article 2 of the First Employment Contract, the Club *"agrees that it will, on 1 July 2016, register (…) the player, with it on a permanent basis for an additional season i.e. for season 2016/2017".*

106. In continuation, the Panel observes that Article 15 of the Second Employment Contract provides that *"[t]his contract is binding to the two parties from the date of being signed, and shall not be effective before being approved by the Committee"*. It is not in dispute that the Second Employment Contract was approved by the *"Committee"*.

107. As such, different from the conclusion reached by the FIFA DRC in the Appealed Decision, the Panel does not consider it to be correct to restrict the compensation to the value of the First Employment Contract, as the validity of the Second Employment Contract is not conditional, *i.e.* it is not specifically determined that the provisions agreed upon in the Second Employment Contract are subject to the continuation of the employment relationship. Although it is true that the Player was only loaned to the Club by Juventus for one season (*i.e.* during the validity of the First Employment Contract), the validity of the Second Employment Contract was not made conditional upon the consent of Juventus to extend the loan period of the Player with the Club or the permanent transfer. The Club rather committed itself towards the Player to secure his services also for the next season. It is clear that this was also the Player's understanding from his termination letter dated 1 January 2016 where he invokes the non-payment clause in *"my contract**s** dated 31 August 2015, one for the 2015/16 playing season **and the other for the 2016/17 playing season**, I am **terminating both contracts** with immediate effect"* (emphasis added by the Panel), which remained undisputed by the Club at the time. Further, the Panel notes that at the hearing, the Player explained that he was not able to simply be transferred and to sign a 2 year employment contract with the Club, as Juventus were continuing to amortise his original transfer fee, so had put forward the concept of a loan to the Club, with an option thereafter.

108. As such, the Panel finds that, as the Second Employment Contract was signed on 31 August 2015 and approved by the *"Committee"*, the Club was bound by it and that the Player shall be compensated for his damages also in respect of the Second Employment Contract.

109. The starting point for the calculation of the damages incurred by the Player is therefore the remaining value of both the First and the Second Employment Contract as from the date of termination, which amounts to EUR 2,100,000 (EUR 600,000 for the remainder of the 2015/2016 sporting season and EUR 1,500,000 for the 2016/2017 sporting season).

110. As is customary under Article 17(1) FIFA RSTP and in accordance with the principle of positive interest, the Panel finds that the alternative income gathered by the Player with other clubs during the term that he was supposed to be registered with the Club under the First and Second Employment Contract, *i.e.* until 30 June 2017, should be deducted from this amount.

111. The Panel observes that it remained uncontested that the Player earned a total amount of USD 1,330,000 (USD 1,050,000 with Liaoning (USD 525,000 salaries paid during the employment relationship + USD 525,000 based on the *"deed of settlement"*), and USD 280,000 with Melbourne). As the Club did not contest the exchange rate advanced by the Player at the hearing, the Panel finds that the amount of USD 1,330,000 equals EUR 1,209,750,77.

Consequently, since the Player gathered an alternative income in the amount of EUR 1,209,750.77 over this period, the objective damages incurred by the Player in principle amount to EUR 890,249.23 (EUR 2,100,000 minus EUR 1,209,750.77).

112. Observing that a certain discretion has been granted to it to adjust the objective amount of damages by taking into account subjective factors in order to come to a fair amount of compensation for the party suffering from the breach of contract, the Panel finds that the amount of EUR 890,249.23 is indeed appropriate in the matter at hand and does not consider it necessary to either increase or decrease this amount.

113. Finally, the Panel observes that the Player requested interest over the amount of compensation, as from 15 January 2016, without mentioning any specific rate.

114. The Panel finds that the interest rate is indeed 5% *p.a.* pursuant to Article 104 SCO (cited above) and that, taking into account the Player's request and since clause 4 of the First and Second Employment Contract provide that all claims arising from the employment relationship shall become due upon 14 days after the termination of the contract, the compensation to which the Player is entitled became due on 15 January 2016.

115. Consequently, the Panel finds that the Player is entitled to compensation for breach of contract in the amount of EUR 890,249,23 from the Club, with interest at a rate of 5% *p.a.* accruing as from 15 January 2016, until the date of effective payment.

iv. If the Player terminated the employment relationship with just cause, did the FIFA DRC legitimately impose sporting sanctions on the Club?

116. The Club argues that FIFA's policy in this respect *"is random"* and that FIFA should have informed clubs regarding a stricter application of Article 17(4) of the FIFA RSTP.

117. FIFA maintains that a more strict application of Article 17(4) of the FIFA RSTP *"was deemed appropriate, particularly – but not only – in cases involving clubs that are repeatedly found to be in a situation of breach of contract without just cause, reaching the condition of 'repeated offenders'"*, stressing that the FIFA DRC applies the concept of the repeated offender already for three years, referring to 19 FIFA DRC decisions and 4 CAS awards dealing with the matter of the sanctioning of the 'repeated offender', from its very beginning in 2014 until today.

118. The main arguments invoked by FIFA in the present arbitration before CAS as to why the imposition of sporting sanctions on the Club is warranted, are the following:

- The Club's breach took place within the protected period;
- The Club did not defend itself in respect of the Player's claim before the FIFA DRC;

- The Club is repeatedly found to be in a situation of breach of contract without just cause, reaching the condition of 'repeated offender'.

119. Article 17(4) FIFA RSTP determines as follows:

"In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exception and the provisional measures stipulated in article 6 paragraph 1 of these regulations in order to register players at an earlier stage".

120. The term 'protected period' is defined as follows in no. 7 of the definitions of the FIFA RSTP:

"Protected period: a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional".

121. Article 2(3) of the FIFA Commentary on Article 17 FIFA RSTP determines the following:

"A club that breaches a contract with a player during the protected period risks being prohibited from registering new players, either domestically or internationally, for two registration periods following the contractual breach".

122. The Panel observes that it remained undisputed that the Club's breach took place within the protected period, as the employment relationship was breached four months following the entry into force of the First Employment Contract.

123. The Panel notes that, pursuant to the wording of Article 17(4) FIFA RSTP, in such situation sporting sanctions *"shall be imposed"*, *i.e.* FIFA is in principle obliged to do so.

124. The Panel however observes that the FIFA Commentary leaves a margin of discretion to the FIFA DRC as to whether or not to impose sporting sanctions as it determines that *"a club risks being prohibited from registering new players* […]*"*, *i.e.* such sanction is not imposed *ipso facto*. This is in accordance with FIFA's submissions in the present arbitration.

125. Insofar the Club argues that the FIFA DRC violated the Club's right to be heard because the Appealed Decision lacks (sufficient) reasoning, the Panel finds that this argument is to be dismissed because the Appealed Decision clearly refers not only the breach during the protected period, but also to other circumstances that were taken into account in its decision to impose sporting sanctions:

"[…] *[T]he Chamber emphasised that* ***apart from*** *the club having clearly acted in breach of the contract within the protected period in the present matter,* ***the club had also*** *on several occasions in the recent past been held liable by the Chamber for the early termination of the employment contracts with* [three other football players]*"* (para. II.32 of the Appealed Decision – emphasis added by the Panel).

126. The question is therefore whether the FIFA DRC could reasonably come to the conclusion that the imposition of sporting sanctions on the Club was appropriate in view of the specific facts of the case at hand and turns its attention to the question whether the FIFA DRC violated certain general legal principles, such as the principle of being bound by previous standard practice, the principle of legality, equal treatment, predictability and/or good governance by imposing the sporting sanctions on the Club.

127. The Panel observes that the following has been determined in CAS jurisprudence:

"As held by CAS case law in CAS 2008/A/1545 and CAS 2011/A/2670, the "principle of legality" ("principe de légalité") requires that offences and sanctions must be clearly and previously defined by law and must preclude the "adjustment" of existing rules to enable an application of them to situations or conduct that the legislator did not clearly intend to penalise. CAS awards have consistently held that sports organisations cannot impose sanctions without a proper legal or regulatory basis for them and that such sanctions must also be predictable ("predictability test"). This principle is further confirmed by CAS 2007/A/1363, which holds that the principle of legality and predictability of sanctions requires a clear connection between the incriminated behaviour and the sanction and calls for a narrow interpretation of the respective provision. Furthermore, an association may be estopped from invoking a certain rule or exercising such rule in a certain fashion if precedent representations induce a subordinate or member to believe something resulting in that person's reasonable and detrimental reliance on such belief ("estoppel by representation") (CAS OG 08/02). Finally, CAS case law (for example CAS 2007/A/1437 para. 8.1.8) has held that inconsistencies in the rules of a federation will be construed against the federation (contra proferentem principle)" (CAS 2011/A/2670, para. 8.13 of the abstract published on the CAS website).

128. The Panel finds that FIFA's policy to not necessarily impose sporting sanctions in case of a breach of contract during the protected period, since the decisions are rendered *ex officio* on a case by case basis, does not mean that FIFA cannot impose sporting sanctions in such situation. To the contrary, the legal basis to impose sporting sanctions in this kind of disputes as in the matter at hand, is clearly provided for in Article 17(4) of the FIFA RSTP. As such, the sanction resulting from the offence is predictable and the provision meets the requirement of a clear connection between the incriminated behaviour and the sanction. This should not lead to any controversy, as such policy does not prejudice the Club. FIFA's policy to not necessarily impose sporting sanctions in case of a breach of contract by a club during the protected period is in fact favourable to the Club.

129. Despite having referred to an extensive and detailed analysis of certain decisions rendered by the FIFA DRC as from June 2014 in this respect, the Panel finds that the Club did not succeed to convince the Panel that the FIFA DRC violated the principle of equal treatment. More

specifically, it does not appear that the FIFA DRC took more lenient measures in cases with similar circumstances. Although the FIFA DRC decisions in respect of Article 17(4) of the FIFA RSTP are rendered on a case by case basis, the Panel is of the opinion that there are no strong arguments brought forward by the Club to conclude that the FIFA DRC violated one of the above-mentioned principles to such an extent that the imposition of sporting sanctions is illegal.

130. As to FIFA's argument regarding the Club being a 'repeated offender', the Panel first of all observes that such policy has already been endorsed in CAS jurisprudence:

> "[…] *In the matter at stake the Appellant was not able to bring forward any convincing arguments to deviate from the Decision. To the contrary, the Appellant is a repeated offender, particularly due to the fact that it had been held liable on several occasions in the recent past by the DRC (and the CAS) for the early termination of the employment contracts with other players without just cause. In order to guarantee a better enforcement of the contractual obligation assumed by the Appellant towards its players, a strict approach is necessary. Therefore, the Sole Arbitrator confirms the Decision in application of the clear wording of Article 17 para. 4 RSTP"* (CAS 2015/A/4220, para. 87 of the abstract published on the CAS website).

131. The Panel observes that it remained uncontested by the Club that FIFA opened 28 cases against the Club as from 2013 (of which 14 cases currently pending at the Disciplinary Committee of FIFA), and that it was held liable by the FIFA DRC for the early termination of the employment contracts with three other players, of which one in the same year as the Appealed Decision was rendered:

- De Souza Andrade (case ref. nr. 12-03024, decided on 18 December 2014);
- De Mattos Filho (case ref. nr. 15-00673, decided on 15 October 2015);
- Orozco (case ref. nr. 16-00048; decided on 18 March 2016).

132. The mere fact that there is no regulatory basis in the FIFA RSTP for the imposition of sporting sanctions in case a club can be classified as a 'repeat offender', does not entail that no sporting sanctions can be imposed.

133. The mandatory prerequisite for imposing sporting sanctions is that the club breached the employment contract within the protected period. This prerequisite is complied with in the matter at hand. Now, it is admitted that FIFA does not always impose sporting sanctions in cases of breach within the protected period. Accordingly, there need to be certain aggravating factors in order to tip the scale towards imposing sporting sanctions.

134. The Panel finds that the mere fact that the Club was held liable for breaching four employment contracts with players between December 2014 and November 2016 is a very serious aggravating factor, which in addition to the mandatory prerequisite of breaching the employment relationship within the 'protected period', may legitimately lead the FIFA DRC to

impose sporting sanctions on the Club, regardless of whether the Club can be classified as a 'repeat offender'. For this reason the Panel does not consider the analogy drawn by the Club with the concept of 'repeat offender' in the context of Article 12bis FIFA RSTP applicable.

135. The exact definition and whether reference is made to the concept of 'repeat offender' is referred to in Article 17(4) FIFA RSTP is not decisive, because the Club knew that sporting sanctions could be imposed if it would breach an employment contract within the protected period and that additional circumstances could be taken into account by FIFA in determining whether such sporting sanction is warranted in a specific case.

136. In the absence of any clear and strong arguments submitted by the Club as to why FIFA's more strict approach would be unfair, the Panel sees no reason why such more strict approach should not be permitted, as the principle remains that, pursuant to Article 17(4) FIFA RSTP and the FIFA Commentary, sporting sanctions may be imposed if a club breaches an employment contract within the protected period and if certain aggravating circumstances are present.

137. The Panel finds that FIFA was not required to issue a warning to the Club that further violations would lead to the imposition of sporting sanctions, as is apparently FIFA's practice in respect of Article 12bis FIFA RSTP. Article 12bis FIFA RSTP is not applicable in the matter at hand and Article 17(4) FIFA RSTP does not require the issuance of a warning prior to the imposition of sporting sanctions, nor is the FIFA RSTP to apply other prerequisites or practices deriving from the application of Article 12bis FIFA RSTP.

138. Consequently, the Panel finds that the FIFA DRC legitimately imposed sporting sanctions on the Club.

v. Is the imposition of a two-period transfer ban on the Club warranted?

139. The Club argues that FIFA should have given a milder sanction, or should have granted a final period of grace or a probationary period, instead of imposing (without any previous warning) the two-period transfer ban, which is the most severe sanction available and therefore disproportionate; whereas FIFA maintain that it was not.

140. The Club argues that the imposition of sporting sanctions is not warranted because: i) FIFA should have applied its gradual sanctioning mechanism in accordance with Article 12bis of the FIFA RSTP; ii) FIFA never imposed a warning, but all of a sudden imposed the most severe sanction possible; iii) FIFA did not disclose to the Club that it intended to present to the FIFA DRC past decisions rendered against the Club; iv) the proactive attitude taken by the Club's new management to resolve all pending cases; and v) the comparison with other cases.

141. The Panel observes that CAS jurisprudence determines the following in respect of the discretion of CAS panels to reduce a transfer ban imposed on the basis of Article 17(4) FIFA RSTP:

"The Sole Arbitrator observes that article 17(4) of the FIFA Regulations does not provide the decision-making body with discretion as to the severity of the sporting sanctions to be imposed (and neither does the FIFA Commentary); this provision merely determines that if sporting sanctions are to be imposed on a club, these sporting sanctions shall consist of a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.

The Sole Arbitrator feels himself comforted in this conclusion by CAS case law determining that:

> *"Quant à la nature et la quotité de la sanction infligée, la Formation ne voit pas en quoi elle peut appliquer le principe de la proportionnalité, du moment qu'elle fait partie de règles codifiées concernant le jeu au sein même de l'association. Il appartiendrait à un ou des membre (s) de cette association, voire à l'association elle-même (ou à ses sections), de modifier une telle règle s'il devait être considéré qu'elle est par trop sévère ou qu'il lui manque la possibilité d'être nuancée. En d'autres termes, la Formation ne saurait se substituer au législateur dans l'application de la règle en cause" (CAS 2006/A/1154, §19).*

Which can be freely translated as follows:

> *"Concerning the nature and the extent of the inflicted sanction, the Panel does not see how it can apply the principle of proportionality, as long as it is part of the codified rules of the game of the association concerned. It would be up to one or more members of this association, or to the association itself (or to its departments), to change such a rule should it be considered as too severe or lack the possibility of a nuanced application. In other words, the Panel cannot replace the legislator in the application of the rule in question"* (CAS 2014/A/3765, para. 76-77 of the abstract published on the CAS website).

142. The Panel fully endorses the approach reflected in the above-mentioned CAS award and notes that there is no latitude to reduce a two-period transfer ban to a one-period transfer ban, or to impose any other milder sanction, or to grant a final period of grace or to grant a probationary period as argued by the Club. No *"gradual sanction system"* or the policy of issuing a warning prior to the imposition of sporting sanctions or to grant a final period of grace as is apparently customary in respect of Article 12bis FIFA RSTP exists in respect of Article 17(4) FIFA RSTP. The discretion of the Panel is thus limited to either confirming the two-period transfer ban or disposing of the transfer ban entirely.

143. The Panel does not at all deny that the imposition of sporting sanctions is a severe sanction and may indeed affect the competitiveness of the Club in comparison with other football clubs. Be this as it may, the Panel finds that the Club's breach of the employment relationship within the protected period and its repeated breaches of employment contracts with its players are also very serious matters and in the matter at hand prevails over the negative consequences the imposition of this ban may have on the Club.

144. Further, the Panel finds that Article 17(4) of the FIFA RSTP neither oblige FIFA to warn a club or to disclose that it intends to inform the FIFA DRC about past decisions rendered against the Club, nor should the change in the Club's management lead to a refrainment of the sanction.

145. In view of all the circumstances of the present case, particularly taking into account that the Club's breach of the employment relationship occurred within the 'protected period' and that this was the fourth time within three years that the FIFA DRC ruled against the Club in an employment-related dispute with a football player, the Panel finds that the imposition of a two-period transfer ban is indeed an appropriate sanction.

146. Consequently, the Panel finds that the imposition of a two-period transfer ban on the Club is warranted.

B. Conclusion

147. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that:

i. The employment relationship was terminated by the Player with just cause.

ii. The Player is entitled to receive outstanding remuneration from the Club in the total amount of EUR 1,000,000, with interest accruing as follows:

- EUR 800,000, with 5% interest *p.a.* accruing as from 20 September 2015 until the date of effective payment;
- EUR 100,000, with 5% interest *p.a.* accruing as from 30 November 2015 until the date of effective payment;
- EUR 100,000, with 5% interest *p.a.* accruing as from 31 December 2015 until the date of effective payment.

iii. The Player is entitled to receive compensation for breach of contract from the Club in the amount of EUR 890,249,23, with interest at a rate of 5% p.a. accruing as from 15 January 2016, until the date of effective payment.

iv. The FIFA DRC legitimately imposed sporting sanctions on the Club.

v. The imposition of a two-period transfer ban on the Club is warranted.

148. Any other and further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Ittihad FC on 4 April 2017 against the decision rendered on 24 November 2016 by the FIFA Dispute Resolution Chamber is dismissed.

2. The Appeal filed by Mr James Troisi on 5 April 2017 against the decision rendered on 24 November 2016 by the FIFA Dispute Resolution Chamber is partially upheld.

3. The decision rendered on 24 November 2016 by the FIFA Dispute Resolution Chamber is confirmed but for point 2 which is amended as follows:

   Ittihad FC has to pay to Mr James Troisi, within 30 days as from the date of notification of the present award, outstanding remuneration in an amount of EUR 800,000 with 5% interest p.a. as from 20 September 2015, EUR 100,000 with 5% interest p.a. as from 30 November 2015, EUR 100,000 with 5% interest p.a. from 31 December 2015, as well as compensation for breach of contract in an amount of EUR 890,249.23 with 5% interest p.a. as from 15 January 2016.

(…)

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