



Arbitration CAS 2018/A/5782 DNN Sports Management LDA v. Baniyas Football Sports Club Company, award of 28 February 2019

Panel: Mr Georg von Segesser (Switzerland), Sole Arbitrator

Football

Players' agent fee contained in an employment offer

Conditions for CAS to retain jurisdiction

Proper body of appeal against the decisions of the UAE FA's PSC

Obligation to allow a right of appeal in the AFC and FIFA Statutes

Exhaustion of the legal remedies available

- 1. If the parties have not concluded a specific arbitration agreement, CAS can only exercise jurisdiction if the statutes or regulations applicable to the case establish a right of appeal to CAS and the appellant has properly exhausted all legal remedies available to it before pursuing an appeal to CAS.**
- 2. The United Arab Emirates Football Association (UAE FA) Statutes and Regulations do not establish any right to appeal decisions of the Players' Status Committee (PSC) directly to CAS. The UAE FA Statutes and Regulations rather explicitly provide for the appeal of any decision of the PSC before the UAE FA's Arbitration Tribunal, whose award shall then be final and not subject to any further appeal.**
- 3. The AFC Statutes and FIFA Statutes do not establish a right to appeal decisions of the PSC directly to CAS. The AFC Statutes and FIFA Statutes do not contain any mandatory provision that obliges the UAE FA to allow a right of appeal from its decisions. The right to appeal to CAS must be expressly included in the statutes and regulations of the relevant national football association whose decision is subject to appeal, and not in the statutes or regulations of a federation of which the national association or federation is a member.**
- 4. According to the UAE FA Statutes and Regulations a decision of the PSC shall be appealed before the UAE FA Arbitration Tribunal, whose decision shall be final. If the appellant did not appeal the decision of the PSC before the UAE FA Arbitration Tribunal but rather lodged an appeal before CAS directly, it cannot be considered as having exhausted the legal remedies available to it prior to its appeal to CAS, and therefore has not satisfied the second condition of Article R47 of the CAS Code.**

I. THE PARTIES

1. DNN Sports Management LDA (“DNN”, “Claimant” or “Appellant”), is a Portuguese licensed football intermediary company located in Oporto, Portugal. The Appellant is the employer of Mr. Paulo Sergio Martinho Cabral (“Mr. Martinho”), who according to the Appellant acted on its behalf as an agent for J. (“Player”).
2. The Respondent, Baniyas Football Sports Club Company (“BFSCC” or “Respondent”, together with DNN, the “Parties”), is a football club in the United Arab Emirates (“UAE”) and, as such, a member of the UAE Football Association (“UAE FA”), which is a member of the Asian Football Confederation (“AFC”), which is, in turn, a member association of the Fédération Internationale de Football Association (“FIFA”).

II. DECISION UNDER APPEAL

3. According to the statement of appeal filed by the Appellant on 11 June 2018 (“Statement of Appeal”), the decision under appeal is the decision of the UAE FA’s Player Status Committee (“PSC”) dated 20 May 2018 denying the application of the Appellant for payment by the Respondent of USD 462’500.00 plus interest, and 15% of the value of any future transfer, on a permanent basis or on loan, of the Player to a third club during the Player’s contract period with the Respondent (“Decision under Appeal”).

III. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced from the documents submitted. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all of the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, in the present Award he shall refer only to the submissions and evidence he considers necessary to explain his reasoning.
5. The present proceedings relate to a claim brought by the Appellant against the Respondent based on an employment offer it alleges had been signed by the Respondent on 16 January 2017 (“Employment Offer”).
6. According to the Appellant, it acted as an intermediary for the employment of the Player by the Respondent. The Appellant maintains that at the time it was contacted by the Respondent in January 2017, the Player was under a contract with Shijiazhuang Ever Bright Football Club in China (“Shijiazhuang Ever Bright FC”) and that Shijiazhuang Ever Bright FC was willing to release the Player against the payment of USD 400’000.00. The Appellant contends that the Respondent agreed to the transfer of the Player and to the payment of the transfer fee of USD 400’000.00, plus a brokerage fee of 5% of the total value of the new contract with the Player. The Appellant alleges that with the Employment Offer the Respondent also agreed to

pay the Appellant 15% of the value of any future transfer, on a permanent basis or on loan, of the Player to a third club during the Player's contract period with the Respondent.

7. The Player received a contract for employment with the Respondent for one and a half seasons dated 18 January 2017, which was signed by the Player on 19 January 2017 ("Employment Agreement"). The Appellant argues that with the employment of the Player the terms of the Employment Offer gained full legal validity.
8. The Appellant maintains that when it went to collect the USD 462'500.00 it alleges was owed under the Employment Offer, the Respondent refused payment. It is the Respondent's position that prior to the present proceedings it never heard of the Appellant or seen the Employment Offer, and that no employee of the Respondent performed or signed the Employment Offer.
9. In October 2017, the Appellant submitted a claim before the UAE FA requesting the UAE FA to order the Respondent to pay USD 462'500.00. After the Appellant's acceptance of the Regulations governing the Implementation of the UAE FA Statutes on 3 January 2018, the UAE FA forwarded the claim to its PSC. The claim was lodged on 22 January 2018.
10. On 4 March 2018 the UAE FA informed the Appellant that the PSC requested proof of payment by the Appellant of USD 400'000.00 to Shijiazhuang Ever Bright FC.
11. On 8 March 2018, the Appellant replied to the UAE FA requesting a decision on its claim, arguing that its claim should be granted *ex parte* pursuant to the applicable regulations due to the lack of a timely reply by the Respondent.
12. On 11 March 2018, the UAE FA informed the Appellant that the PSC still insisted on receiving proof of payment of USD 400'000.00 to the Shijiazhuang Ever Bright FC by the Appellant and set a deadline of seven days for the Appellant to submit such proof.
13. On 15 March 2018, the Appellant rejected the PSC's request for proof of payment, invoking the regulations of the UAE FA, which according to the Appellant required that its claim be granted *ex parte* due to the absence of a reply by the Respondent.
14. On 12 April 2018, the Appellant again requested a decision from the UAE FA, and informed the UAE FA of its intention to bring the case to the attention of the AFC and FIFA.
15. On 20 May 2018, the UAE FA informed the Appellant of the PSC's decision to reject the Appellant's action on the ground that no evidence had been produced by the Appellant to prove that it had paid USD 400'000.00 to Shijiazhuang Ever Bright FC (i.e., the Decision under Appeal).
16. On 21 May 2018, the Appellant requested the PSC to provide a reasoned decision, including its reasons for rejecting the Appellant's claim for payment of USD 62'500.00, so that the Appellant could pursue an appeal of the PSC's decision before the Court for Arbitration for Sport ("CAS"). The Appellant maintains that it never received an answer to such request.

IV. THE PROCEEDINGS BEFORE CAS

17. On 11 June 2018, the Appellant submitted its Statement of Appeal with the CAS concerning the Decision under Appeal.
18. On 15 June 2018, the Appellant informed the CAS Court Office that its Statement of Appeal had to be considered as its Appeal Brief.
19. On 31 July 2018, the CAS appointed Dr Georg von Segesser as the sole arbitrator called to resolve the present dispute (“Sole Arbitrator”).
20. On 21 August 2018 the Respondent filed its Answer (“Answer”), which included its objections to the jurisdiction of the CAS.
21. On 3 September 2018, the CAS Court Office, on behalf of the Sole Arbitrator, invited the Appellant to file a submission on jurisdiction.
22. On 7 September 2018, the Appellant filed its Submission on Jurisdiction (“Submission on Jurisdiction”).
23. On 18 September 2018, the Respondent rejected the content of the Appellant’s submission on jurisdiction and requested that any documents submitted by the Appellant which do not pertain to jurisdiction be considered inadmissible.
24. On 21 September 2018, CAS Court Office advised the Parties of the Sole Arbitrator’s decision to bifurcate the proceedings and determine the issue of jurisdiction as a threshold manner. Furthermore, the CAS Court Office, on behalf of the Sole Arbitrator, invited the Parties to file within ten days the Statutes and Regulations of the UAE FA and their translations in English. Finally, CAS indicated that, in case of a positive decision on jurisdiction the Sole Arbitrator would address the Respondent’s objection as to the admissibility of certain documents filed by the Appellant as evidence attached to its Submission on Jurisdiction.
25. On 25 September 2018, the Appellant requested the Sole Arbitrator to clarify whether the order issued on 21 September 2018 had to be complied with *“by both Parties or only by the Respondent”*.
26. On 26 September 2018, the CAS Court Office, on behalf of the Sole Arbitrator, reminded the Appellant that it bore the burden of establishing jurisdiction and, consequently, of providing the CAS with all relevant documentation in support thereof, so that the order issued on 21 September applied to the Appellant as well.
27. By separate applications of 1 October 2018, both Parties requested extensions of the deadline to submit the Statutes and Regulations of the UAE FA and their translations in English.
28. On 2 October 2018, the CAS Court Office, on behalf of the Sole Arbitrator, granted an extension of thirty days for the Parties to provide original copies in Arabic and English translations of the Statutes and Regulations of the UAE FA.

29. On 30 October 2018, the Appellant wrote to CAS that it could not “*present CAS copy of the relevant Statutes and Regulations of the UAE FA regarding the year of 2017, because the UAE FA never answered to the claimant’s requests about those Statutes and Regulations, and as better alleged and proven above, more requesting CAS to judge the present case as the only independent and impartial arbitral tribunal. In the alternative, if this is not understood, which is neither conceived nor granted, then CAS shall consider only the Statutes and Regulations of the UAE FA together with the respondent club answer dated from 21.August.2018*”.
30. On 2 November 2018, the Respondent submitted copies of: the UAE FA Statutes; UAE FA Regulations on the Status and Transfer of Players; UAE FA Dispute Resolution Chamber Regulations; and UAE FA Arbitral Tribunal Regulations, and their translations in English. The Respondent wrote that should it be considered that the attached regulations have not been submitted within the granted time limit, the Respondent refers in full to the copy of the Statutes and Regulations of the UAE FA already provided in the Respondent’s Answer, “*as these are the exact same Regulations [the] Answer was based on*”.
31. On 2 November 2018, the CAS invited the Parties to inform the CAS of whether they prefer a hearing to be held on the issue of jurisdiction. In its correspondence of 2 November 2018 the Respondent requested that the issue of jurisdiction be decided on the sole basis of the written submissions. On 5 November 2018, the Appellant requested that a hearing be held on the issue of jurisdiction.
32. On 8 November 2018, the Appellant objected to the admissibility of the documents filed by the Respondent on 2 November 2018.
33. On 3 December 2018, the CAS informed the Parties that upon consideration of the Parties’ positions with respect to a hearing, the Sole Arbitrator deems himself sufficiently well-informed to decide the present case based solely on the Parties’ written submissions without the need to hold a hearing. The CAS also informed the Parties that the Sole Arbitrator has decided to declare admissible the documents filed by the Respondent on 2 November 2018 since they were timely filed.
34. On 6 December 2018, the CAS Court Office sent the Parties the Order of Procedure, which was returned signed by the Respondent only, on 13 December 2018.
35. On 10 December 2018, the Appellant submitted an unsolicited submission dated 8 December 2018 requesting the following:

“In these terms, the appellant requests the nullity of the decisions of the Sole Arbitrator passed on the correspondences dated 3.December.2018 and 6.December.2018 [sic], that are void and must be replaced by other decisions that considers:

a) not admissible the documents filed by the Respondent on 2.November.2018., since they were not obtained in the UAE FA with an impartial and fair way;

b) that the failure of the Appellant to file the copy of the said documents was dully [sic] justified,

c) that the Sole Arbitrator should have considered relevant the jurisdiction presented by the Appellant as the only independent and impartial member of the arbitral tribunal to decide the present case.

d) That only the Statutes and Regulations of the UAE FA filed with the respondent's club answer dated 21 August 2018 have to be considered in the present case;

e) That it is necessary to hold a hearing on the issue of jurisdiction to discuss all the facts and legal arguments to the issue of jurisdiction, as well as to produce and analyze the proofs presented by the parties on the issue of jurisdiction, amly [sic] the testimony of Mr. Pedro Martinho Cabral;

f) That the rejection of an oral presentation disrespects the right of the Appellant to be heard and it can not [sic] be considered that without the oral presentation the Sole Arbitrator is sufficiently well informed to decide this matter”.

36. On 18 December 2018, the CAS Court Office advised the Parties that the Sole Arbitrator had decided to address the procedural objections raised by the Appellant on 10 December 2018, to the extent they are relevant, , in the present award on jurisdiction (see below para. 57).

V. THE PARTIES' SUBMISSIONS ON JURISDICTION

A. The Respondent

37. The Respondent contests the jurisdiction of the CAS to hear the present dispute. The Respondent argues that the CAS is only competent to hear appeals when the following two requirements under Articles R27 and R47 of the Code of Sports-related Arbitration (the “Code”) are jointly met:
- The statutes or regulations of the federation / association expressly provide so or if the parties have concluded a specific arbitration agreement; and
 - The parties have exhausted all legal remedies available prior to the appeal.
38. Concerning the first requirement under Articles R27 and R47 of the Code, the Respondent considers it undisputed that the Parties did not conclude a specific arbitration agreement.
39. Furthermore, citing Article 124 of the UAE FA Statutes, the Respondent argues that the statutes and regulations of UAE FA do not recognize the CAS as an appeals arbitration body, but rather designate an internal dispute resolution chamber as the first instance and an arbitration body (“UAE FA Arbitration Tribunal”) as the second instance.
40. The Respondent further argues that decisions of the PSC may be appealed before the UAE FA Arbitration Tribunal pursuant to Article 4(1)(d) of the UAE FA Regulations on the Status and Transfer of Players.
41. On this basis, the Respondent finds it irrefutable that decisions of the PSC have to be appealed before the UAE FA Arbitration Tribunal and not before the CAS.

42. The Respondent adds that Articles 7(3) and 50 of the Regulations governing the UAE FA Arbitration Tribunal (“UAE FA Arbitration Tribunal Regulations”) explicitly provide for the UAE FA Arbitration Tribunal’s final and not appealable jurisdiction over “*decisions issued by the [...] Status and Transfer of Players Committee*”, i.e. the PSC.
43. Based on the above, and referring to CAS jurisprudence (CAS 2008/A/1503), the Respondent concludes that the first requirement for CAS jurisdiction, namely its provision in the relevant association’s statutes and regulations, is not met and that, therefore, CAS lacks jurisdiction to hear the present appeal.
44. As to the second requirement for CAS jurisdiction concerning the exhaustion of all legal remedies available prior to an appeal to CAS, the Respondent cites the above-mentioned provisions to argue that the Appellant should have addressed its appeal against the PSC’s decision of 20 May 2018 to the UAE FA Arbitration Tribunal, and that since the Appellant did not, it therefore did not exhaust all available remedies. Thus, the Respondent concludes that the second requirement for CAS jurisdiction is also not met.
45. With regard to the Appellant’s argument that the AFC Statutes provide for CAS arbitration in the case at hand, the Respondent refers to CAS 2005/A/952 and CAS 2018/A/5516, to support its view that the right to appeal to CAS has to be expressly included in the statutes and regulations of the relevant national football association whose decision is subject to appeal and not in the statutes or regulations of a federation of which the national association or federation is a member.
46. Furthermore, the Respondent also argues that the Claimant’s appeal should be dismissed due to the fact that the Decision under Appeal lacks reasoning, which prevents the Respondent from presenting its defense.
47. In its Answer the Respondent requests as follows:

*“In view of all the above-mentioned factual and legal arguments, **BANIYAS FOOTBALL SPORTS COMPANY LLC**, hereby kindly requests the Court of Arbitration for Sports to:*

1. *Decide that the Court of Arbitration for Sport has no jurisdiction to hear and decide the appeal filed by **DNN SPORTS MANAGEMENT LDA** against the decision rendered by the Players’ Status Committee of the United Arab Emirates Football Association on 20 May 2018 and as such, dismiss the appeal in full.*
2. *Alternatively, dismiss the appeal filed by **DNN SPORTS MANAGEMENT LDA** in full, as it has no standing to sue and confirm the decision rendered by the Players’ Status Committee of the United Arab Emirates Football Association on 20 May 2018;*
3. *On the second alternative, only on the event that the above requests are rejected, dismiss **DNN SPORTS MANAGEMENT LDA** appeal in full and confirm decision rendered by the Players’ Status Committee of the United Arab Emirates Football Association on 20 May 2018.*

4. To condemn **DNN SPORTS MANAGEMENT LDA** to pay the whole CAS administration and the Arbitrator fees.
5. Fix a sum of 50,000 CHF to be paid by the Appellant as a contribution to the Respondent's legal fees and costs".

B. The Appellant

48. The Appellant argues that based on provisions in the UAE FA Statutes, the AFC Statutes, and the FIFA Statutes, the Decision under Appeal is a "*final decision*" that can be appealed exclusively before CAS. The Appellant also argues that it has "*exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body*", as required in Article R47 of the Code.
49. In particular, the Appellant also emphasizes that, based on Article 124 of the UAE FA Statutes, the Decision under Appeal is final. The Appellant cites Articles 127 and 128 of the UAE FA Statutes in order to argue that the statutes provide the possibility to appeal the decisions rendered by the PSC to the CAS. Furthermore, the Appellant cites as a basis for its jurisdiction Article 126 of the UAE FA Statutes, which in its view grants FIFA or AFC jurisdiction over international disputes.
50. The Appellant relies on Articles 61, 62 and 65 of the AFC Statutes to argue that the UAE FA is required to recognize CAS jurisdiction and ensure that "*their member, affiliated Leagues, Clubs, Players and Officials comply with the decisions passed by CAS*" and that "[*t*]he same obligations shall apply to Intermediaries and licensed match agents". According to the Appellant, the AFC Statutes "*recognizes [CAS] to resolve disputes between the AFC and the other Confederations, Member Associations, Leagues, Clubs, Players, Officials, Intermediaries and licensed match agents*" and contains the member associations' agreement to also recognize CAS and ensure that their members comply with CAS decisions.
51. Furthermore, according to the Appellant, CAS's jurisdiction over international disputes derives from Articles 57 and 58 of the FIFA Statutes.
52. In response to the Respondent's argument that Article 124 of the UAE FA Statutes provides for the exclusive jurisdiction of the UAE FA Arbitration Tribunal for cases such as the present one, the Appellant emphasizes the international nature of the present dispute and concludes that UAE FA Arbitration Tribunal only has jurisdiction over national disputes and, therefore, not over the present one.
53. In addition, the Appellant argues that (i) Article 4(1) of the UAE FA Regulations on the Status and Transfer of Players does not provide for the exclusive jurisdiction of the UAE FA Arbitration Tribunal, (ii) the actual existence of UAE FA Arbitration Tribunal is not established, and (iii) that the lack of a reasoned decision detailing the way to appeal the decision is further confirmation that no other instance was available to the Appellant but an appeal to the CAS.

54. In response to the Respondent's contention that the Appellant did not exhaust all available legal remedies, the Appellant counters that neither the UAE FA Arbitration Tribunal nor any specific body of FIFA or AFC was competent to rule on the present dispute and that, therefore, the Appellant had exhausted all legal remedies, leaving the only option of an appeal of the Decision under Appeal before the CAS.

55. In its Statement of Appeal the Appellant's requests as follows:

"We demand the lifting of the wrong decision of the Decision of the United Arab Emirates Football Federation Player's Status Committee, passed on 20.05.2018, on the application made by DNN Sports Company for the payment of 462.500,00 USD by the Respondent to the Claimant as responsibility of the club arising the Employment Offer signed by the parties in 16/01/2017, more the legal interest since the date of interpellation until full payment, about that amount, and still for the payment of 15% of the value of a future sale or loan of the player to a third club, during the contract period with Baniyas club, and that was REFUSED.

And so the application made by DNN, LDA has to be totally ACCEPTED, and the respondent club condemned to the payment of the total amount of 462.500,00 USD (four hundred and sixty thousand and five hundred US Dollars), more interest since the interpellation date until full payment about that amount, and to be condemned to pay 15% of the value of a future sale or loan of the player to a third club, during the contract period with Baniyas club, and all as fixed on the Employment Offer signed, more interests about this amount until full payment, according to the FIFA and UAEEFA PSC regulations, taking into account The Swiss Code of Obligations".

56. In its Submission on Jurisdiction the Appellant's requests as follows:

"i) The CAS to consider its competence and jurisdiction to decide the present case, and that the appeal presented proceeds its regular and subsequent terms according with the Appeals arbitration rules, and until a final decision;

ii) That the Sole Arbitrator, according to R56 of the CAS Code, allows the addition of new arguments and documental evidence, on the basis of exceptional circumstances, as the appellant has now been confronted for the first time, with new factual and legal claims, produced by the appellant [sic];

iii) That the Sole Arbitrator notify, according to R56 of the Code Sports-related Arbitration (the "Code"), the UAEEFA to present the applicable regulations, translated into English, in order to CAS be aware that the club is required to pay the full amount of what was requested on the basis of exceptional circumstances, since UAEEFA has never commented on the comminatory effect that the appellant always claimed and invoked in its favor;

iv) The Respondent is condemn [sic] in disrespect of good-faith, so the Respondent has to be condemn [sic] in acting without good-faith and in a monetary sanction.

v) That be held a hearing in this matter, in order to the witness be heard to all the facts alleged by the appellant, since the witness has direct knowledge of everything;

vi) The Appellant requests that at the end of the proceedings the arbitral award shall include a compensation for the Appellant's legal fees and other expenses incurred in connection with the proceedings and in particular the costs with its attorney-at-law and witness, according, among other, Article 64.4 of the Code".

VI. THE SOLE ARBITRATOR'S DECISIONS ON PRELIMINARY PROCEDURAL MATTERS

57. The Appellant disputes whether the copies of the Statutes and Regulations of the UAE FA filed by the Respondent on 2 November 2018 fell within the thirty-day extension granted on 2 October 2018. The Sole Arbitrator's ruling of 3 December 2018 stands and the documents in question continue to form part of the record. Notwithstanding the forgoing, the Sole Arbitrator does not consider the documents filed by the Respondent on 2 November 2018 to be relevant to his decision. The Sole Arbitrator relies on the versions of the Statutes and Regulations of the UAE FA, and English translations thereof, that have been filed with the Respondent's Answer dated 21 August 2018, as said documents have been relied upon and accepted by both sides in these proceedings.
58. As to the issue of a hearing, with his decision of 21 September 2018 the Sole Arbitrator bifurcated the proceedings in order to address as a preliminary matter the question of jurisdiction. Thus, only if the Sole Arbitrator were to find there to be jurisdiction to appeal to CAS would he then move on to decide the merits of the case. The question of whether CAS has jurisdiction over the present dispute is legal and not factual as the Appellant does not allege that an arbitration agreement providing for CAS jurisdiction was agreed between the Appellant and the Respondent, but rather that the statutes and regulations of the sports-related bodies in question provide for an appeal to CAS. The Sole Arbitrator hereby reconfirms his decision of 3 December 2018 that he is sufficiently well-informed to decide this case based solely on the Parties' written submissions without the need to hold a hearing on jurisdiction.
59. Insofar as the Appellant's further requests as contained in its unsolicited submission of 10 December 2018 are relevant and material to the Sole Arbitrator's decision on jurisdiction they are dealt with in the following section on Jurisdiction

VII. APPLICABLE LAW

60. Regarding the applicable law, Article R58 of the Code states: *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.
61. The Decision under Appeal has been rendered by the UAE FA's PSC. As the Employment Offer does not contain a choice of law clause, the Statutes and Regulations of the UAE FA are applicable in this case and the Sole Arbitrator's jurisdiction must be examined under such regulations.

VIII. RELEVANT LEGAL PROVISIONS

62. Article R27 of the Code provides:

“These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings).

Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport”.

63. Article R47 of the Code provides:

“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”.

64. Article 4 of the UAE FA Regulations on the Status and Transfer of Players provides:

“1. The Committee shall be competent to:

a. Apply the provisions concerning the conditions and transfer of players, except in relation to contractual disputes between clubs and players, and compensation for training and solidarity contributions from the clubs of UAE FA and making decisions thereon.

b. Protect minor players and to take decisions in accordance with the provisions of the Regulations and the decisions of which are subject to challenge.

c. Consider all matters relating to recording, re-entry and taking decisions in accordance with the provisions of the Regulations and the decisions of which are subject to challenge.

d. Adjudicate on all disputes related to clubs, coaches, their assistant, technical and medical bodies, and those to which intermediaries are a party

e. Decisions of the Players’ Status Committee and Dispute Resolution Chamber in this regard shall be of a preliminary nature and subject to appeal before the Arbitration Tribunal in accordance with the procedures for submitting the appeal provided for in the appeal Regulations.

2. The Chairman of the Committee shall determine the body which has the jurisdiction to consider the dispute when the jurisdiction is not clear between Players’ Status Committee and Dispute Resolution Chamber”

(translation provided by the Respondent as Exhibit 6 to the Answer).

65. Article 7(3) of the UAE FA Arbitration Tribunal Regulations provides:

“Panel jurisdiction shall be as follows:

- 1. To decide the disputes arising between parties who agree upon arbitration and considering requests of reconciliation.*
- 2. To decide the disputes among Federation, its Board, committees, members, players, intermediaries or authorities a party therein which such disputes don't fall under the jurisdiction of judicial committees or arbitration authorities.*
- 3. It has the jurisdiction to decide an appeals [sic] against decisions issued by Dispute Resolution Chamber and the Status and Transfer of Players committee.*
- 4. To decide cassation challenges instituted against Federation appeals committee until such time Emirates Sports Arbitration Center takes over its assignments and mandates”*

(translation provided by the Respondent as Exhibit 7 to the Answer).

66. Article 50 of the UAE FA Arbitration Tribunal Regulations provides:

“Arbitration resolution shall be conclusive and may not be appealed”

(translation provided by the Respondent as Exhibit 7 to the Answer).

IX. THE SOLE ARBITRATOR'S FINDINGS ON JURISDICTION

67. Having carefully considered the Parties' submissions as well as the evidence filed by the Parties (insofar as it is relevant to the issue of jurisdiction) the Sole Arbitrator concludes that the CAS does not have jurisdiction to hear and determine the appeal filed by the Appellant against the Respondent.

68. Pursuant to Article R47 of the Code, the CAS only has jurisdiction in respect of the Appellant's appeal: “[i]f 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”.

69. In the present case, the Appellant does not suggest that the parties have concluded a specific arbitration agreement. Therefore, CAS could only exercise jurisdiction in respect of the Appellant's appeal if the statutes or regulations applicable to the present case establish a right of appeal to CAS *and* the Appellant has properly exhausted all legal remedies available to it before pursuing an appeal to CAS.

70. As to the first condition, the provisions of the UAE FA Statutes are clear that the PSC shall have jurisdiction to “[a]djudicate on all dispute related to clubs, coaches, their assistant, technical and medical bodies, and those to which intermediaries are a party” (Article 4(d) of the UAE FA Statutes;

Exhibit 6 to Answer). As the Appellant is an alleged intermediary who raises a claim against the Respondent, a club within the UAE FA federation, the Appellant's dispute was forwarded by the UAE FA to the PSC.

71. The UAE FA Statutes provide that any decision of the PSC *"shall be of a preliminary nature and subject to appeal before the Arbitration Tribunal in accordance with the procedures for submitting the appeal provided for in the appeal Regulations"* (Article 4(e) of the UAE FA Statutes; Exhibit 6 to Answer). Indeed, the UAE FA Arbitration Tribunal Regulations confirm that the UAE FA Arbitration Tribunal *"has the jurisdiction to decide an appeals [sic] against decisions issued by [...] the Status and Transfer of Players Committee"* (Article 7(3) of the UAE FA Arbitration Tribunal Regulations; Exhibit 7 to Answer) and that any award rendered by such arbitral body is *"conclusive and may not be appealed"* (Article 50 of the UAE FA Arbitration Tribunal Regulations; Exhibit 7 to Answer).
72. In light of the foregoing, the Sole Arbitrator finds that the UAE FA Statutes and Regulations do not establish any right to appeal decisions of the PSC directly to CAS. The UAE FA Statutes and Regulations rather explicitly provide for the appeal of any decision of the PSC before the UAE FA's Arbitration Tribunal, whose award shall then be final and not subject to any further appeal.
73. Furthermore, the AFC Statutes and FIFA Statutes – to the extent they are applicable to the present dispute – similarly do not establish a right to appeal decisions of the PSC directly to CAS. The AFC Statutes and FIFA Statutes do not contain any mandatory provision that obliges the UAE FA to allow a right of appeal from its decisions. As confirmed in *Ashley Cole v FAPL*: *"the CAS jurisprudence suggests that if the FIFA Statutes did compel the Respondent to provide for a right of appeal from its decisions, no right of appeal to the CAS would exist until the Respondent had made provision for this right in its statutes or regulations"* (CAS 2005/A/952, para. 10).
74. The right to appeal to CAS must be expressly included in the statutes and regulations of the relevant national football association whose decision is subject to appeal, which in the present case is the UAE FA, and not in the statutes or regulations of a federation of which the national association or federation is a member (CAS 2005/A/952 and CAS 2018/A/5516).
75. The provisions of the AFC Statutes and FIFA Statutes cited by the Appellant speak to the general recognition of CAS and its decisions and do not independently grant a right of appeal of a PSC decision, and the UAE FA statutes and regulations, which is the federation whose body rendered the Decision under Appeal, do not expressly recognize the competence and jurisdiction of the CAS.
76. Furthermore, even if the first condition of Article R47 of the Code would be considered as fulfilled, which it is not, in the present case the Appellant cannot be considered as having exhausted the legal remedies available to it prior to its appeal to CAS, thereby satisfying the second condition of Article R47 of the Code. According to the UAE FA Statutes and Regulations a decision of the PSC shall be appealed before the UAE FA Arbitration Tribunal, whose decision shall be final (Article 4(e) of the UAE FA Statutes; Exhibit 6 to Answer; Articles 7(3) and 50 of the UAE FA Arbitration Tribunal Regulations; Exhibit 7 to Answer).

In the present case it is undisputed that the Appellant did not appeal the decision of 20 May 2018 of the PSC before the UAE FA Arbitration Tribunal but rather lodged an appeal before CAS directly.

77. Based on the above considerations the Sole Arbitrator finds that the CAS does not have jurisdiction in this appeal and that asserting CAS jurisdiction in this case would be a violation of the fundamental principle of consent upon which the legitimacy of the CAS rests.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport does not have jurisdiction to hear the appeal filed on 11 June 2018 by DNN, LDA, against Baniyas Football Sports Club Company.
2. (...).
3. (...).
4. All other motions or prayers for relief are dismissed.