Arbitration CAS 2017/A/5228 [Club A.] v. [Player X.] & [Club B.]

Panel: Mr Ivaylo Dermendjiev (Bulgaria), President; Mr Jan Räker (Germany); Mr Stuart McInnes (United Kingdom)

Football
Termination of the employment contract with just cause by the player
Definition of just cause to terminate a contract of employment
Qualification of contractual down payments
Breach of contractual financial obligations as ground for termination of contract with just cause
Warning of termination of contract
Calculation of the amount of compensation for damages based on the 'positive interest' principle

1. **Only a material breach of an employment contract can possibly be considered as just cause for its termination. A material breach occurs when the main terms and conditions under which the employment contract was entered into are no longer implemented. The circumstances must be such that, according to the rule of good faith, the party terminating the employment relationship cannot be required to continue it.**

2. **Proper qualification of the nature of contractual down payments is decisive in the purpose of calculating a player's income and therefore the seriousness of a club's breach of its obligation to pay him the salaries owed in a timely manner. Down payments can be agreed either to compensate a player for his signature alone, or to compensate a player for his services under the employment contract. An amount paid under an employment contract usually rewards a player for his services, unless sufficient evidence suggests that it is meant to reward the conclusion of the employment contract itself. The wording of a contract is thus of the essence and additional information can be taken into account in the analysis, for instance the fact that a transfer fee was also paid to a player's former club.**

3. **A breach of its contractual obligation by a club to make payment of salary and of other benefits to a player falls within the definition of just cause. Whether a player falls into financial difficulty by reason of the late/non-payment is irrelevant. However, the aggrieved party's situation must be of a certain level of seriousness, which involves considerations as to the quantum of the outstanding remuneration and as to the duration in time of the wrongful behaviour. In a case where the violation of an employment contract is more severe in one of these two dimensions than in the other, it is the adjudicating body's task to evaluate on the merits whether or not the violation's lesser significance in one dimension leads to a conclusion that the violation is in its overall significance not serious enough to render the existence of the employment relationship meaningless in light of the good faith considerations.**

4. For a party to be allowed to validly terminate an employment contract, it must have warned the other party of such possibility, in order for the latter to have had the chance, if it deemed the complaint to be legitimate, to comply with its obligations. Statements in such a warning letter that the aggrieved party reserves all its rights or that it will lodge a claim before the competent court to resolve the dispute if the requested payment is not made are to be interpreted as warnings of termination of the contract.

5. The principle of positive interest (or "expectation 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 a club. In this context, a CAS panel should not satisfy itself in assessing the damage suffered by a player by only calculating the net difference between the remuneration due under the existing contract and the remuneration he received from a third party. Rather, a CAS panel 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 of the FIFA Regulations on the Status and Transfer of Players. The fact that a CAS panel establishing the amount of compensation due has a considerable scope of discretion has been accepted both in legal doctrine and CAS jurisprudence. However, the calculation made shall be not only just and fair, but also transparent and comprehensible.

I. PARTIES

1. [Club A.] (the "Appellant" or the "Club") is a professional football club based in […], Saudi Arabia. The Club is affiliated to the Saudi Arabian Football Federation ("SAFF") which, in turn, is a member of the Fédération Internationale de Football Association ("FIFA").

2. [Player X.] (the "First Respondent" or the "Player") is a professional football player of Romanian nationality, born on […].

3. [Club B.] (the "Second Respondent" or "[Club B.]") is a professional football club based in […], Israel, affiliated to the Israel Football Association ("IFA") which, in turn, is a member of FIFA.

4. The Appellant, the First Respondent and the Second Respondent are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. 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 Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings,

it refers in its Award only to the submissions, pleadings and evidence it considers necessary to explain its reasoning.

6. On 6 June 2014, the Club and the Player concluded an employment contract with a three-year term valid as from 20 June 2014 until 19 June 2017 (the "Employment Contract").

7. The Parties to the Employment Contract agreed to the following remuneration mechanism:

*"**Article Four: First Party's Obligations to the Second Party:***

The Period from 20/06/2014 to 19/06/2015

1. The First Party shall pay a monthly salary of Fifty Thousand Euros (50,000 EUR) to the Second Party at the end of each month.

2. The first party shall pay a down payment of Four Hundred Thousand Euros net (400,000 EUR) upon signing this contract.

The Period from 20/06/2015 to 19/06/2016

1. The First Party shall pay a monthly salary of Fifty Thousand Euros (50,000 EUR) to the Second Party at the end of each month.

2. The first party shall pay a down payment of Five Hundred Thousand Euros net (500,000 EUR) on 01/07/2015.

The Period from 20/06/2016 to 19/06/2017

1. The First Party shall pay a monthly salary of fifty eight thousand, three hundred thirty three Euros (58,333 EUR) to the Second Party at the end of each month.

*2. The First Party shall **Provide** to the Second Party an accommodation in a complex. The electricity, water paid by the First Party during the validity of this Contract.*

*3. The First Party shall **Provide** to the Second Party an adequate transportation during the validity of this Contract.*

4. The first party shall pay a down payment of Five Hundred Thousand Euros net (500,000 EUR) on 01/07/2016".

8. Furthermore, according to Article 6 of the Employment Contract *"Regular Payment of Salary & Termination of Contract"*, the Club was not entitled to delay the payment of the Player's salary.

9. The Club made the first *"down payment"* of EUR 400,000. The Player participated in the regular training process and games of the Club and was, at first, receiving his monthly remuneration.

10. In October 2014, [Club A.] reached the […], which the Club lost […] against […]. Allegedly, this loss led to the premature release of the Club's manager, [Manager X.], who is also of Romanian nationality and who it is claimed initially insisted on signing the Player.

11. From October 2014 onwards, the Player no longer received his monthly salaries, until and including, the month of January 2015.

12. During the winter transfer window of season 2014/2015 and after the Club and [Manager X.] parted ways, the Club wanted to sign the […] football player [Z.], which however due to the applicable foreign players' quota in the Club's squad, was only possible if another foreign player was first de-registered. The Club decided that the Player should leave the Club in order to accommodate the signing of [Player Z.] and accordingly urged the Player to leave. The Player gave his consent to leave *inter alia* dependent on the full payment of the four aforementioned monthly salaries, which were still outstanding at that time, and which he then received before leaving the Club.

13. On 15 February 2015, the Club, the Player, and [Club C.], a Romanian football club ("[Club C.]"), entered into a Loan Agreement (the "Loan Agreement") whereby the Player was transferred on loan for the period of 15 February 2015 until 30 May 2015.

14. According to Article 4 of the Loan Agreement, [Club C.] agreed to pay *"basic wages"* to the Player for the duration of the loan, while [Club A.] agreed to pay the Player the monthly salary as per the Employment Contract during the term of the loan, namely for the months February, March, April, and May 2015.

15. On 5 May 2015, the Club received a letter from a Romanian attorney, [Attorney X.], acting on behalf of the Player, claiming that the Player had not received the monthly remuneration of February, March and April 2015 in a total amount of EUR 150,000. The Club was invited to fulfil its contractual obligations and pay the abovementioned sum to the Player, within three days receipt of the notice, *"otherwise, we will have to call upon the competent sports courts in resolving this dispute, and we will make every effort to obliged you to pay the amount of* EUR *150,000 and the damage caused by the delay in payment of all expenses and a possible trial"*.

16. On 14 May 2015, [Law office X.] on behalf of the Player allegedly sent the Club by fax a *"3rd Notice of Breach of Contract"*. According to the text of the letter adduced in evidence, [Club A.] was thereby informed that it was in breach of Article 4 of the Employment Contract in not paying three monthly salaries to the Player and that the well-established FIFA and CAS jurisprudence led to the conclusion that such conduct should be considered a breach of the contract *"giving the right to the Player to terminate the contract at the cost and responsibility of the Club"*. The letter gave a deadline until 17 May 2015 for the Club to resolve the situation and to pay the outstanding salaries to the Player or, if not, the Employment Contract would be considered terminated, thus forcing the Player to lodge a claim against the Club before FIFA. The Appellant disputes the receipt of the aforementioned notice as well as the authenticity of the confirmatory fax report attesting that the letter had been sent to the Club.

17. On 21 May 2015, [Law office X.], on behalf, of the Player sent a *"Letter Before Action"* informing the Club that the Player considered the Employment Contract terminated for non-payment of salaries due. The Club was further informed of the Player's intention to file a claim against the Club for the residual value of the Employment Contract plus compensation for damages and the interest accrued as well as a claim for the unpaid salaries.

18. On 19 June 2015, having finished his loan with [Club C.], the Player signed a contract with the Second Respondent with an effective date of 1 June 2015 until 31 May 2018. According to the terms and conditions of the contract, the Player was to receive a gross annual basic salary in the NIS equivalent to the following amounts in Euro: for the 2015/2016 season a sum equivalent to EUR 220,000, for the 2016/2017 season a sum equivalent to EUR 240,000, and for the 2017/2018 season a sum equivalent to EUR 260,000.

19. In addition to these sums, the Player was to receive a signing fee in gross amount in NIS equivalent to EUR 100,000 and various bonuses dependent on the Player's and the team's performance.

20. On 28 December 2015, the Player was transferred from the Second Respondent to [Club D.], a Romanian Football Club ("[Club D.]") for a transfer fee in the sum of EUR 263,158. The Player's gross monthly salary with [Club D.] was in the amount of 86,835 lei, equal to EUR 15,000.

III. THE FIFA PROCEEDINGS

21. On 23 May 2015, the Player lodged a complaint before the FIFA Dispute Resolution Chamber ("DRC") for breach of contract, requesting the following amounts plus 5 % interest as from the due date of each payment:

    - EUR 2,550,000 as the residual value of the Employment Contract from February 2015 to June 2017;

    - EUR 2,300,000 as sporting damages, equivalent to two seasons under the Employment Contract;

    - EUR 200,000 as reputational damages related to the Appellant's behaviour.

22. The Player also requested the imposition of sporting sanctions on the Club as well as legal costs.

23. In order to substantiate its claims, the Player pointed out that, pursuant to the *pacta sunt servanda* principle, the obligations deriving from contracts validly entered into, must be executed pursuant to the contractual terms. Accordingly, pursuant to Article 14 of the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP"), a contract might be terminated by either party without consequences of any kind where there was just cause. In this case, the just cause

as defined in Article 14 FIFA RSTP should be linked to the notion of "good reason" within the meaning of Article 337 (2) of the Swiss Code of Obligations ("SCO").

24. Hence, according to the jurisprudence of the Swiss Federal Tribunal, an employment contract might be terminated immediately for good reason when the main terms and conditions under which it was entered into were no longer implemented and the circumstances were such, that under the rules of good faith, the party terminating the relationship could not be required to continue it. In light of the fact that the Player did not receive payments for the months while he was on a loan to [Club C.], regardless of the several reminders, the Player terminated the Employment Contract for good reason allowing him to claim compensation.

25. Apart from denying its alleged liability to pay the claimed amounts to the Player, the Club lodged a counterclaim before FIFA, on 14 July 2015, for breach and termination of contract without just cause against the Player and his then club, the Second Respondent. The Club claimed compensation in the following amounts:

- EUR 2,352,777.77 as lost value of the Player's services during the unexpired time of the unlawfully terminated contract;

- EUR 1,805,555.56 as non-amortized fees and expenses incurred by [Club A.] to hire the Player, calculated over 11 months out of 36-month term of the Contract based on:

  - EUR 2,500,000 as transfer fee paid to the Player's former club [Club D.];

  - EUR 100,000 as commission paid to the Claimant's agent, [Agent X.];

- EUR 550,000 under the concept of specificity of sports and breach during the protected period corresponding to the average of six monthly salaries;

- EUR 2,000,000 as replacement costs corresponding to the transfer compensation paid to the Portuguese football club […] in consideration of the acquisition of the Brazilian player […] during the summer transfer window of 2015.

26. From the total amount of compensation claimed under the counterclaim by the Club, the latter conceded that an amount of EUR 139,789.94 should be deducted as outstanding remuneration under the Contract.

27. On 19 January 2017, the DRC issued its decision, the grounds of which were finally communicated to the Parties on 12 June 2017 (the "Appealed Decision"). The DRC partially accepted the Player's claim and ordered the Club to pay the Player outstanding remuneration in the amount of EUR 150,000 and compensation for breach of contract in the amount of EUR 901,665 plus 5% interest *p.a.* as of 23 May 2015. Any further claims lodged by the Player were rejected. The operative part of the Appealed Decision reads as follows:

> *"1. The claim of the Claimant / Counter-Respondent,* [Player X.]*, is partially accepted.*

2. The counter-claim of the Respondent / Counter-Claimant, [Club A.]*, is rejected.*

3. The Respondent / Counter-Claimant has to pay to the Claimant / Counter-Respondent, ***within 30 days*** *as from the date of notification of this decision, outstanding remuneration in the amount of EUR 150,000 plus 5% interest p.a. until the date of effective payment as follows:*

a. 5% p.a. as of March 2015 on the amount of EUR 50,000;

b. 5% p.a. as of 1 April 2015 on the amount of EUR 50,000;

c. 5% p.a. as of 16 May 2015 on the amount of EUR 50,000;

4. The Respondent has to pay to the Claimant, ***within 30 days*** *as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 901,665, plus 5% interest p.a. as of 23 May 2015 until the date of effective payment.*

5. In the event that the amounts foreseen in points II.3 and III.4 plus interest are not paid within the stated time limits by the Respondent / Counter-Claimant, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

6. Any further claim lodged by the Claimant / Counter-Respondent is rejected.

7. The Claimant / Counter-Respondent is directed to inform the Respondent / Counter-Claimant immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received".

28. In support of its decision as to the substance of the dispute, the DRC made the following considerations in section II of the Appealed Decision:

"13. With regard to the Respondent / Counter-Claimant's allegations pertaining to the loan agreement with [Club C.] *in order to justify the default of payment of the Claimant / Counter-Respondent's salary, the DRC found it fit to recall the contents of art. 4 of the loan agreement, according to which the Respondent / Counter-Claimant accepted to pay the Claimant / Counter-Respondent's salary as per the contract during the loan period, in addition to* [Club C.] *paying "basic wages" to the Claimant / Counter-Respondent.*

14. On account of the above, the DRC was eager to underline that the Respondent / Counter-Claimant was still contractually bound to the Claimant / Counter-Respondent during the loan period and thus had to proceed with the payment of his monthly salary of EUR 50,000 in accordance with the contract during that period, regardless of any additional payment covered by [Club C.].

15. Therefore and referring to art. 12 par 3 of the Procedural Rules, the DRC concluded that the Respondent / Counter-Claimant did not submit any conclusive argument and/or evidence justifying the non-payment of the Claimant / Counter-Respondent' salary from February to April 2015. The Chamber thus concurred that the Respondent / Counter-Claimant failed to comply with its financial obligations towards the Claimant

/ Counter-Respondent as per the contract and concluded that the Claimant / Counter Respondent had a just cause to unilaterally terminate the contractual relationship with the Respondent / Counter-Claimant on 21 May 2015.

16. Consequently, the DRC established that the Respondent / Counter-Claimant was to be held liable for the early termination of the employment contract with just cause by the Claimant / Counter-Respondent on 21 May 201 and, thus, the Respondent / Counter-Claimant's counterclaim is rejected.

17. Having established that the Respondent is to be held liable for early termination of the contract with just cause by the Claimant / Counter-Respondent, the DRC focussed its attention on the consequences of such termination. Taking into consideration art. 17 par. 1 of the Regulations, the DRC decided that the Claimant / Counter-Respondent is entitled to receive an amount of money from the Respondent / Counter-Claimant as compensation for the termination of the contract with just cause, in addition to any outstanding payments on the basis of the relevant employment contract.

(…)

23. As a consequence, the members of the Chamber determined that the amount of compensation payable by the Claimant / Counter Respondent to the Respondent / Counter-Claimant had to be assessed in the application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.

24. Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the Respondent / Counter-Claimant under the term of the employment contract as from its date of termination with just cause by the Respondent / Counter-Claimant until original date of expiry. The DRC thus concluded that the Respondent / Counter-Claimant would have received EUR 2,399,996 as total guaranteed salary if the contract had been executed until June 2017. Consequently, the Chamber concluded that the amount of EUR 2,399,996 serves as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.

25. In continuation, the Chamber verified as to whether the Respondent / Counter-Claimant 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 Respondent / Counter-Claimant's general obligation to mitigate his damages.

26. In this regard, the members of the Chamber recalled that, on 19 June 2015, the Claimant / Counter-Respondent concluded an employment contract with [Club B.] *valid as of 1 June 2015 until 31 May 2018. Pursuant to the said contract, the Claimant / Counter-Respondent was entitled to a sign-on fee of EUR 100,000 as well as a total salary of EUR 220,000 for the season 2015-2016, EUR 240,000 for the season of 2016-2017 and EUR 260,000 for the season 2017-2018. The Chamber took into account that, on 8 December 2015, the Claimant/Counter-Respondent signed an employment contract with* [Club D.]

valid as of 12 January 2016 until 31 December 2017, according to which the Claimant / Counter-Respondent was entitled to EUR 15,000 per month.

27. On the account of the above, and in due consideration of the Claimant / Counter-Respondent's obligation to mitigate his damages, the DRC decided in this specific case that the amount to compensate the damages suffered by the Claimant / Counter-Respondent would be EUR 901,665, which it considered reasonable and proportionate".

29. The DRC rejected all other claims lodged by the Player and rejected the counterclaim of the Club.

30. The grounds of the Appealed Decision were notified to the Parties on 12 June 2017.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

31. On 3 July 2017, the Appellant filed its statement of appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code"). With its statement of appeal, the Appellant nominated Mr Jan Räker as an arbitrator.

32. By letter dated 8 August 2017, Mr […], allegedly acting on behalf of the liquidators of [Club B.] Company Ltd, the company which owned and operated the Second Respondent, requested that the proceedings be dismissed with regard to the Second Respondent since the club was in liquidation in Israel.

33. On 15 August 2017, the First Respondent and the Second Respondent jointly nominated Mr Stuart McInnes as an arbitrator.

34. On 18 August 2017, the Appellant filed its appeal brief.

35. On 8 September 2017, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division and pursuant to Article R54 of the CAS Code, informed the Parties that the Panel to hear this appeal was constituted as follows:

President: Mr Ivaylo Dermendjiev, Attorney-at-law in Sofia, Bulgaria

Arbitrators: Mr Jan Räker, Attorney-at-law, Stuttgart, Germany

Mr Stuart McInnes, Solicitor, London, United Kingdom

36. On 14 September 2017, the Second Respondent filed its answer to the appeal.

37. On 27 September 2017, after an exchange of submissions by the Parties on the Second Respondent's request for dismissal of the proceedings, the Parties were informed by the CAS that the Panel had considered the request and determined that it would resolve the issue as a

threshold matter. In this regard, the Second Respondent was invited to answer within seven days a list of 27 questions regarding the merits of its request.

38. On 29 September 2017, the First Respondent filed his answer to the appeal.

39. On 18 October 2017, the legal representative of the Second Respondent, Mr Gayer, informed the Panel and the CAS that the Second Respondent wished to withdraw the arguments made in the letter dated 8 August 2017 and, thus, effectively withdrew its request for dismissal of the proceedings with regard to the Second Respondent.

40. On 16, 18 and 21 February 2018, the First Respondent, Second Respondent and the Appellant, respectively, signed the Order of Procedure.

41. A hearing was convened and held on 9 March 2018. The Panel was assisted at the hearing by Mr Brent Nowicki, Managing Counsel. The following persons attended the hearing:

   i. for the Appellant: Mr Marcos Motta and Mr Stefano Malvestio - Counsel and Mr […], Players' Status Department, [Club A.];

   ii. for the First Respondent: [Player X.] (in person); Mr Alexandre Zen-Ruffinen – Counsel, Mr Olivier Droz-dit-Busset – Counsel (trainee); Mrs [X.] - Player's wife;

   iii. for the Second Respondent: Mr Joseph Gayer - Counsel;

   iv. as a witness, named by the First Respondent: [Agent X.] – former Player's agent of the First Respondent;

42. The Parties were given the opportunity to present their cases, to make their submissions and arguments, to examine the witnesses and to answer questions posed by the Panel. Upon closing the hearing, the Parties expressly stated that they had no objections in relation to their right to be heard and that they had been treated equally in these arbitration proceedings.

V. POSITIONS OF THE PARTIES

43. The following outline of the Parties' positions is illustrative only and does not necessarily encompass every contention put forward by the Parties. The Panel, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the Parties and the evidence produced by them, even if there is no specific reference to those submissions or evidence in the following summary.

A. The Appellant

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

- For most of his career, prior to joining [Club A.], the Player primarily played for Romanian clubs. During the seasons 2012/2013 and 2013/2014 when the Player played for [Club D.] he was coached by [Manager X.]. Upon assuming a post as a head-coach of [Club A.], [Manager X.] requested that the Club hire the Player;

- This was finalized on 4 June 2014 when the Player was transferred for a sum of EUR 2,500,000 from [Club D.], with a lucrative commission paid to the Player's agent, who also happened to be the wife of [Manager X.];

- The Player was offered generous financial terms equating to EUR 1,000,000 for the first season, EUR 1,100,000 for the second season, and EUR 1,200,000 for the third season plus accommodation, adequate transportation, and eight round-trip flight tickets to Bucharest per year;

- [Club A.] fulfilled its monetary obligations towards the Player until February 2015, by payment of EUR 768,334. The Club qualified to the […] but lost to […]. The Player participated in both matches;

- At the beginning of the 2015 season, the parties to the Employment Contract agreed that the Player would be loaned to a club in his home country, Romania. The Player received the opportunity to move back to his own country, to play in a club where he had previously been successful, and to earn more money without relinquishing the financial benefits of his Employment Contract with the Appellant, that guaranteed him extremely high amounts of money for a player of his level;

- The Appellant admits that the payment of the salaries due in February, March and April 2015 was not made within the end of each respective month. Such default however, should be considered in light of the fact that the Club already paid 83.67 % of the total amount due for the first season having made the down payment of EUR 400,000. In addition, the Player was also receiving EUR 10,000 per month and accommodation from [Club C.] while on loan;

- Further, the Appellant disputes the fact that it received the letter allegedly sent by [Law office X.] on 14 May 2015, giving notice of the delay in payments and warning that the Player would terminate the contract in the event of non-payment by 18 May 2015. The Club asserted that the Player had failed to initially adduce the alleged fax report confirming transmission of the letter until the second round of submissions in the FIFA proceedings and submitted that the fax message was not received by the Club.

45. On the merits, the Appellant submits the following:

- That it is the Loan Agreement rather than the Employment Contract which was in force when the Player purported to terminate the Employment Contract as the Parties suspended the validity of the Employment Contract until 30 May 2015. The fact that the Appellant committed to continue paying the Player EUR 50,000 during the loan period

constituted an agreement of the Parties under the Loan Agreement and not under the Employment Contract. This was made clear by [Club A.] in a letter sent to the Player on 12 February 2015 in which the Club informed him that:

> *"For the avoidance of any doubt,* [Club A.] *agrees to pay you the salaries of February 2015, March 2015, and May 2015 only during the Loan Period with said club. The other conditions and terms of the "Employment Contract for Non-Saudi Player" shall not be valid during the loan".*

- As is confirmed by the FIFA Commentary to RSTP, during the period a player is on loan, the effects of the employment contract with the club of origin are suspended. [Club A.] thus argues that by failing to complete the payments in a timely manner, the Club actually breached the Loan Agreement rather than the Employment Contract. The Player was thus obliged to seek remedies under the Loan Agreement and was not entitled to terminate the Employment Contract;

- The down payment is not in the nature of a signing-on fee, but represents a payment for future services such as playing, training, *etc.*, whereas, a signing–on fee is a one-off payment in exchange for entering into contract. The player's contract provides a substantial annual advance payment of remuneration meaning that the player was in effect pre-paid in advance for his activities throughout the following season thereby creating a significant advantage that was overlooked by the DRC. The down payment also represents a significant financial investment on the Club's part which demonstrates its strong commitment towards the Player. This should be taken into account of when considering the just cause requirements under Swiss law, which requires consideration of the overall circumstances of the case;

- The Appellant's breaches are not sufficient to justify termination of the contract. According to the case law of the Swiss Federal Tribunal, the breach of the obligation must be such that it causes the confidence of one party in the future performance of the obligation of the other party, to be lost (ATF, 2 February 2001, 4C.240/2000 no. 3b aa; ATF 127 III 351);

- That despite not having paid the Player's salary for three consecutive months, such confidence could not have reasonably been lost, as the Player had significant guarantees by virtue of the advance payment. Bearing in mind the average monthly salary of the player of EUR 83,333.33, the outstanding amounts are in effect less than two monthly salaries and having regard to the FIFA and CAS jurisprudence, this is not just cause for termination of an employment relationship;

- While being loaned to [Club C.], the Player benefited from the basic wage income provided by the Romanian club in the amount of EUR 10,000 per month plus accommodation, therefore making his financial situation more than comfortable. This, according to the Appellant, amounts to bad-faith conduct on behalf of the Player;

- A comparison of the present factual background with that in CAS 2015/A/4039, where the delay in payment was allegedly longer and the amount outstanding was higher, the panel in that case concluded that the player had no just cause to terminate the contract. The DRC therefore completely failed to recognize these considerations and disregarded the fact that the real loss suffered by the Player from [Club A.]'s delay in payment was negligible;

- The conditions provided to the Player by [Club A.] are exceptional in comparison with his later employment history. According to the Swiss Federal Tribunal and CAS jurisprudence, just cause only exists where an employee cannot be expected to continue his employment relationship. In the instant case, where a Player whose true market value in salary varies between EUR 10,000 and 20,000 a month, purported to terminate a contract under which he had been paid EUR 768,000, merely for a temporary delay on behalf of the Club, is unreasonable and cannot be considered as just cause;

- That according to CAS jurisprudence, a contract should be terminated only as a last resort and after all less severe measures have been exhausted. Such less severe measures were indeed available to the Player to which recourse had not been undertaken prior to the purported termination. A claim under art. 12bis of the FIFA RSTP, for instance, could have been lodged. In fact, [Attorney X.]'s letter of 5 May 2015 which warns that *"otherwise, we will have to call upon the competent sports courts in resolving this dispute and (…) obliged you to pay the amount of EUR 150,000 and the damage caused by the delay"* could indeed be considered as a notice as required under art. 12-bis FIFA RSTP;

- That the real reason behind the Player's termination was that he was seeking to create a conflict with the Club to avoid returning to Saudi Arabia and to remain in Romania due to his lack of interest in continuing his career in [Club A.]. The Club, on its part, fully intended to include the Player in its future training programme and have him return from loan, following the summer holiday granted to all players of [Club A.], which were due to end 10 days after the purported termination date;

- The Player acted in bad faith in falsifying a document whereby he purported to terminate the services of his agent. The Appellant asserts that the letter was fabricated, to be included in the FIFA proceedings, to the detriment of the Club. This is evidenced by the fact that it is written in English when both the Player and the agent are Romanian. Although the apparent purpose of the letter is to terminate [Agent X.]'s powers as an agent, in the course of the subsequent arbitration proceedings, the Player requested the CAS Court Office to send correspondence to his "football agent", [Agent X.]. Such unscrupulous behaviour should be taken into account in the assessment of the overall circumstances of the present matter;

- With regard to claims for compensation due to the termination with no just cause, the Appellant refers to Article 17 FIFA RSTP according to which in all cases, the party in breach shall pay compensation which shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria;

- Based on the foregoing rule, the Appellant claims for the fees and expenses paid or incurred by the Club (amortized over the term of the contract) and replacement costs. As the Player terminated the contract upon the expiration of 11 months out of total 36 months lifetime of the employment relationship, the amortized value corresponds to EUR 794,444.44, leaving an unamortized balance equal to EUR 1,805,555.56, to be compensated by the Player, plus legal interest at five percent annum, as per Swiss law, starting from the date when the payment became due until the date of effective payment;

- Pursuant to Article 17.2 FIFA RSTP, the Player and the Second Respondent shall be jointly and severally liable for the payment of the compensation claimed by the Club. Additionally, the Player and Second Respondent shall bear the costs and fees incurred by the Club in these arbitration proceedings which, due to the impossibility to be foreseen, shall be determined *ex aequo et bono*;

- That as to the outstanding amounts due to the Player, the remuneration shall be calculated on a *pro rata* basis, bearing in mind the advance payment already made. Thus, by deducting the amounts paid in advance, the remuneration owed by the Appellant amounts to EUR 121,455.94, but since the Player unlawfully terminated the Employment Contract without just cause, he shall not be awarded any compensation. The Appellant relies on Article 44 SCO in this regard.

46. In its prayers for relief, the Appellant requests the CAS to rule as follows:

"I. The present appeal shall be upheld in totum;

II. The Appealed Decision be set aside;

III. Grant the evidentiary proceedings requested in this Appeal Brief;

IV. Consider First Respondent liable for breach without just cause of the Employment Contract;

V. Order First Respondent to pay to Appellant EUR 1,805,555.56 (one million eight hundred five thousand fifty five Euros and fifty six cents) as compensation;

VI. From the total amount of compensation that the First Respondent shall be order to pay, EUR 121,455.94 (one hundred twenty one thousand four hundred fifty five Euros and ninety four cents) shall be deducted in his favour as outstanding payables;

VII. Order that Second Respondent be held joint and severally liable for the payment of compensation as provided above;

VIII. Determine the imposition of an interest rate of 5% (five per cent) p.a. over entire amount requested starting to count from 21 May 2015 until effective payment;

IX. Alternatively, in the event that this Panel shall find that the Player terminated contract with just cause, reduce the amount of compensation to a maximum of EUR *121,455.94 (one hundred twenty one thousand four hundred fifty five Euros and ninety four cents);*

X. Order that Respondents reimburse the Appellant for legal expenses in an amount to be determined ex aequo et bono, added to any and all FIFA and CAS administrative, and procedural costs, already incurred or eventually incurred, by the Appellant".

B. The First Respondent

47. The First Respondent's submissions, in essence, may be summarized as follows:

- The Appellant's submission as to the burden of proof with regard to the receipt of the notifications for non-performance is disputed. The Appellant has not proven that it did not receive the fax report, dated 14 May 2015, submitted by the First Respondent during the FIFA DRC proceedings. According to Swiss jurisprudence, it is presumed that a shipment to which notification is provided would necessarily contain the notification in question. While the First Respondent admits that this presumption could be refuted with strict proof, it submits that the Appellant has failed to do so;

- The First Respondent maintains that he terminated the Employment Contract with just cause. Referring to the FIFA RSTP Commentary, as well as CAS jurisprudence, (CAS 2006/A/1062; CAS 2008/A/1447), the First Respondent submits that termination with just cause shall be likened to the notion of "good reason" specified in Art. 337 (2) of the SCO. It is further argued that a good reason for termination of an employment contract, according to the Swiss Federal Tribunal, exists where the main terms and conditions under which the contract was entered into, are no longer performed and the party terminating the employment relationship cannot, as per the rules of good faith, be required to continue it;

- A refusal to pay all or part of the salary may be deemed a good reason. Moreover, according to CAS case law (CAS/2006/A/1180), it is the employer's main obligation towards the employee to pay his salary. It is, thus, irrelevant whether the non-performance of its payment obligation causes the employee to fall into financial difficulty. The only relevant criterion is whether the breach of the obligation is such that it causes the confidence of the terminating party in future performance to be lost;

- Given that the Player:

    1. was replaced with another player, namely [Player Z.] and was no longer in [Club A.]'s tactical plans;

    2. was offered to various clubs on a free loan basis;

    3. remained unpaid despite the several invitations;

4. was never contacted by the Appellant to discuss his return to the Club,

it is submitted that the Player was justified in losing confidence in the Appellant's will to continue the performance of the Employment Contract;

- As to the Appellant's argument that the Employment Contract was suspended during the term of the Player's loan to [Club C.], the First Respondent's position is that the main obligation of the Club to pay the Player's salary remained in force under the Employment Contract, which was not suspended during the term of the loan. In the First Respondent's submission, an *addendum* to the contact was required in order to suspend its effects and such was never entered into;

- Referring to the Commentary of FIFA RSTP, the First Respondent admits that the Regulations specify that the effects of the employment contract with the club of origin are suspended during a loan period, but that it is also permissible under the Regulations for the club of origin to continue to pay the player's salary during the loan period. Hence, it is submitted that the correct interpretation of the Commentary is that the employment contract is to be considered suspended during the term of the loan, unless the club of origin agrees to pay the player's salaries;

- Accordingly, the Employment Contract, or at least the Appellant's main obligation to pay the Player's salary, was not suspended and remained in force during the term of the loan to [Club C.]. Therefore, the Club's failure to pay the Player's salary constituted non-performance of the Employment Contract rather than of the Loan Agreement and gave right to the Player to terminate its employment relationship with [Club A.] with just cause;

- That the Appellant's argument that the Club was never formally notified of the Player's intention to terminate the Employment Contract is devoid of merits. As already noted, the just cause corresponds to the principle of "just motifs" within the meaning of Article 337 SCO. According to the Swiss jurisprudence, if despite the existence of a clear formal notice, the employer refuses to pay the salary due, the employee may terminate the contract with immediate effect;

- That CAS case law confirms that a player has to satisfy two conditions in order to establish a just cause to terminate an employment contract with a club:

  - First, the outstanding payments must not be trivial or insubstantial. In this regard, useful guidance is provided by the Commentary to FIFA RSTP which makes clear that non-payment is sufficiently serious to trigger termination with just cause, if it involves outstanding payments for more than three months, which is satisfied *in casu* as the Player was not paid the salaries for February, March, and April 2015 amounting to EUR 150,000;

- Second, the player must warn the club that it is in breach of contract by failing to pay his wages and a termination is being considered in case of a continued non-performance. [Club A.] was notified several times for its failure to pay but those notices remained unanswered. The Appellant's silence is an indication of bad faith on its part.

48. In his prayers for relief, the First Respondent requests the CAS to issue an award in the following terms:

"Mainly

1. Consider this Appeal withdrawn should the Appellant failed to comply with the CAS letter of September 5th 2017.

Alternatively

2. Reject the Appeal in its entirety;

3. Confirm the FIFA DRC decision;

In any case

4. Order the Appellant to bear all procedural costs related to these proceedings;

5. Order the Appellant to participate to the First Respondent's legal costs estimated at USD 15,000".

C. The Second Respondent

49. The Second Respondent's submissions, in essence, may be summarized as follows:

- With regard to jurisdiction, the Second Respondent initially claimed that the company which owns and operates [Club B.] – [Club B.] Company Ltd – is currently subject to pending liquidation proceedings and, therefore, the claim against it should not be continued. Furthermore, it is argued that the appeal was submitted belatedly and it should be dismissed outright;

- As established by the exhibited decision of the […] District Court, the Israeli Club is insolvent and has been subject to liquidation proceedings as of 12 December 2016, with Liquidators appointed. In consequence according to Israeli law, which shall be applicable to the present proceedings, the proceedings should be stayed pursuant to Article 267 of the Companies Ordinance which stipulates that once a liquidation order has been issued no proceedings against the company shall continue or commence without permission of the Israeli Insolvency Court. The Second Respondent points out that the same outcome will be reached even if the Panel was to apply Swiss law;

- Moreover, the participation of the Second Respondent in the proceedings before CAS will infringe the principle of equal treatment of creditors' by favouring [Club A.], and in addition, will breach Article 107(b) FDC which contains an express exception in case a club is declared bankrupt. For these reasons, the proceedings shall be closed with respect to the Second Respondent;

- By letter dated 18 October 2017 addressed to the Panel, the Second Respondent withdrew its arguments with regard to the insolvency proceedings of the Israeli Club and thus effectively withdrew the objections with regard to the Second Respondent's standing and the Panel's jurisdiction in this regard;

- Alternatively, even if the Panel is to decide on the merits, it would be greatly unfair to hold the Second Respondent liable to pay compensation to the Appellant without it benefitting from the Player's monetary compensation awarded by the DRC;

- Furthermore, the Appellant did not suffer any damage arising out of the Player's termination of contract. Article 17 FIFA RSTP prescribes compensation for a club only in circumstances where the club wishes to continue to make use of the player's services. This not the case, as the Appellant demonstrated its lack of willingness to have the Player back.

50. In its prayers for relief, the Second Respondent requests CAS to rule as follows:

"9.1. In light of all of the above, the honourable CAS is requested to dismiss and reject the appeal submitted by the Appellant.

9.2. In addition, the honourable CAS is requested to order that the Appellant bear the payment of the costs of these proceedings".

VI. JURISDICTION OF THE CAS

51. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the 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".

52. The jurisdiction of the CAS, which is not disputed by any of the Parties and was confirmed by their signatures of the Order of Procedure, derives from Article 58 of the FIFA Statutes (edition 2016, in force as of 26 April 2016). The provisions of the FIFA Statutes that are relevant to that effect in these proceedings are the following:

Article 57 *"Court of Arbitration for Sport (CAS)":*

"1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents.

2. 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".

Article 58 *"Jurisdiction of CAS":*

"1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question.

2. Recourse may only be made to CAS after all other internal channels have been exhausted.

3. CAS, however, does not deal with appeals arising from: a) violations of the Laws of the Game; b) suspensions of up to four matches or up to three months (with the exception of doping decisions); c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an association or confederation may be made.

4. The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect".

53. It follows that the CAS has jurisdiction to decide this dispute.

VII. ADMISSIBILITY

54. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".

55. The grounds of the Appealed Decision were notified to the Parties on 12 June 2017. The statement of appeal was filed on 3 July 2017 and, thus, within the deadline of twenty-one days set in Article R49 of the Code and in Article 58.1 of the FIFA Statutes referred to in the Appealed Decision itself.

56. No further recourse against the Appealed Decision is available within the structure of FIFA. Consequently and in accordance with the aforementioned Article 47 of the Code, the internal legal remedies have been exhausted.

57. Initially, the admissibility of the Appellant's claims against the Second Respondent – [Club B.] – was disputed on the basis of the fact that the company that owns and operates the club – [Club B.] Company Ltd – underwent insolvency proceedings and is in liquidation. Accordingly,

it was claimed under the applicable Israeli law that all proceedings against the Second Respondent should be discontinued which would otherwise be a violation of the equal treatment of all creditors (*paripassu*) principle.

58. The situation was further complicated by the fact that the assets of [Club B.] Company Ltd were sold to a new owner – [Company Y.]. Thus, an issue arose with regard to the identity of the Second Respondent.

59. A considerable part of the appellate proceedings was initially devoted to the foregoing issues relating to the Second Respondent's identity and the issue of jurisdiction over this party and its standing to be sued. The Parties and the Panel dedicated much time and effort in dealing with the various arguments and questions relating to the true and proper identity of the Second Defendant in light of the liquidation of [Club B.] Company Ltd and the transfer of assets to its successor, [Company Y.], the requirements of the Israeli law with regard to pending court and arbitration proceedings against a football club and, ultimately, its capacity to participate as a respondent in the present proceedings. The Panel does not find it necessary to reproduce these procedural developments here.

60. As already noted above, by way of a letter sent to the Panel on 18 October 2018, the Second Respondent's representative – Mr Joseph Gayer, who had meanwhile also been appointed by [Company Y.] – in the name of either and both companies withdrew the arguments with regard to the insolvency proceedings affecting the Israeli club and thus effectively withdrew the objections with regard to the Second Respondent's standing to be sued and the Panel's jurisdiction in this regard and signed the Order of Procedure.

61. Consequently, in light of the said signature of the Order of Procedure, which contains an express agreement to the jurisdiction of CAS, the Panel decides not to address the issues regarding the admissibility of the appeal against the Second Respondent which have now become moot.

62. Accordingly, the appeal filed by the Club is admissible.

VIII. APPLICABLE LAW

63. Article R58 of the Code provides as follows:

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

64. The matter at stake relates to an appeal against a FIFA decision and reference must hence be made to Article 57.2 of the FIFA Statutes which provides that:

"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".

65. In the Employment Contract, the Club and the Player made specific references to the FIFA regulations and to the FIFA RSTP in particular.

66. The Parties expressly agreed in their respective submissions that, for the resolution of the dispute, the Panel shall apply primarily the FIFA RSTP.

67. Therefore, the FIFA rules and regulations shall be applied primarily. Swiss law applies subsidiarily to the merits of the dispute.

68. In the present case, the *"applicable regulations"* for the purposes of Article R58 of the Code are, indisputably, the FIFA RSTP (in the edition applicable *ratione temporis* to the facts of the case), which must be primarily applied, because the appeal is directed against a decision issued by FIFA, which was passed applying FIFA RSTP. More precisely, the Panel agrees with the DRC that the regulations concerned are particularly the RSTP, edition 2015, considering that the matter was brought to FIFA on 23 May 2015.

69. As the present dispute concerns in essence employment matters regarding the termination of the Employment Contract and its consequences, such as compensation, the following particular rules of the RSTP are applicable:

*"**Article 13: Respect of contract***

A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.

Article 14: Terminating a contract with just cause

A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) in the case of just cause.

(…)

Article 16: Restriction on terminating a contract during the season

A contract cannot be unilaterally terminated during the course of a season.

Article 17: Consequences of terminating a contract without just cause

The following provisions apply if a contract is terminated without just cause:

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annex 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".

IX. MERITS

A. Scope of the Panel's review on the merits

70. The core principle applicable by CAS in appeals proceedings in terms of the scope of review is the *de novo* principle arising from Article R57 of the Code. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

B. Issues for review

71. Based on the Parties' submissions, the issues for determination are the following:

    a) Was the termination of the Employment Contract made by the Player with just cause?

    b) Depending on the answer to *(a)* above, what are the legal consequences of the termination of the Employment Contract with just cause?

    c) Depending on the answers to *(a)* and *(b)* above, were outstanding amounts and compensation for breach of contract determined correctly in the Appealed Decision?

a) Was the termination of the Employment Contract by the Player with just cause?

72. The central issue to be determined in the present matter is which party was in breach of the Employment Contract and thus whether the Player unilaterally terminated the Employment Contract without just cause or, alternatively, whether the Club breached the Employment Contract, thereby entitling the Player to unilaterally terminate the contract with just cause.

73. It is noted by the Panel that the RSTP does not provide the definition of "just cause".

74. The Commentary on the RSTP states the following with regard to the concept of "just cause":

"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. 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 over 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" (RSTP Commentary, N2 to Article 14).

75. Furthermore, the Commentary on the RSTP specifically provides the example of non-payment of players' salaries under an employment contract as a ground for terminating the said contract with just cause by the player. In this regard, the Commentary states:

> *"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 noncompliance with the financial terms of the contract could severely endanger the position and existence of the player concerned"*.

76. The CAS has had the opportunity of specifying in its jurisprudence that while the FIFA rules do not define the concept of "just cause", reference should be made to the law subsidiarily applicable, *i.e.* Swiss law (CAS 2006/A/1062; CAS 2008/A/1447; CAS 2013/A/3091, 3092 & 3093; CAS 2012/A/2698).

77. Article 337 (2) SCO (references to SCO below are according to the translation by the Swiss-American Chamber of Commerce) provides that *"a valid reason is considered to be, in particular, any circumstance under which, if existing, the terminating party can in good faith not to be expected to continue the employment relationship"*. The concept of "just cause" as defined in Article 14 RSTP must therefore be likened to that of "valid reason" within the meaning of Article 337 (2) SCO.

78. It is generally accepted in most legal systems that an employment contract which has been concluded for a fixed term, can only be unilaterally terminated, prior to expiry of the term of the contract, if there is good cause or a valid reason. This would be any situation, in the presence of which the party terminating the contract cannot in good faith be expected to continue the employment relationship.

79. For example, a grave breach of duty by the employee or the employer would constitute a good cause. The existence of a valid reason may be admitted when the essential conditions, of an objective or personal nature, under which the contract was concluded, are no longer present. Only a breach which is of a certain severity justifies termination of a contract. In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the Parties such as serious breach of confidence. According to the practice of the Swiss Federal Tribunal, an employment contract may be terminated immediately for good reason when the main terms and conditions, under which it was entered into are no longer implemented and the party terminating the employment relationship cannot be required to continue it (ATF 101 Ia 545; Judgment 4C.240/2000of 2 February 2002; Judgment 4C.67/2003 of 5 May 2003; WYLER R., *Droit du travail*, Berne 2002, p. 364; TERCIER P., *Les contrats spéciaux*, Zurich 2003, N3402, p. 496).

80. According to CAS case law, only a "material breach" of a contract can possibly be considered as "just cause" for termination without consequences of any kind (CAS 2006/A/1062; CAS

2006/A/1180; CAS 2007/A/1210; CAS 2006/A/1100; CAS 2013/A/3091, 3092 & 3093). A material breach occurs *"when the main terms and conditions, under which it was entered into are no longer implemented. The circumstances must be such that, according to the rule of good faith, the party terminating the employment relationship cannot be required to continue it"* (CAS 2013/A/3091, 3092 & 3093; CAS 2012/A/2698).

81. Likewise, in the case CAS 2013/A/3237, the concept of "just cause" has been identified as *"the prevailing situation, in the presence of which the injured party cannot in good faith be expected to continue the employment relationship (…) Moreover, the unilateral termination of the contract is accepted when the essential conditions under which the contract was concluded are no longer present"*.

82. The CAS jurisprudence reiterates the conclusion reached by the Commentary on the RSTP, that the monetary obligations towards the player represents an essential condition under an employment contract, of which violation of a sufficient gravity gives the player just cause to terminate the employment relationship. As stated in CAS 2013/A/3237, *"a breach of the contractual obligation by the Respondent to make payment of salary and other benefits to the Appellant, falls within the definition of "just cause""*.

83. The Panel is of the opinion that the Parties are not in dispute with regard to the above-mentioned underlying legal principles as to what constitutes just cause for termination of an employment contract between a football player and a football club. However, it recognises that it is severely disputed whether the conditions elaborated on in the applicable law are met *in casu*.

84. Applying the above principles, the Panel must establish if, in light of the particular circumstances of the case, the Player had just cause to unilaterally terminate the Employment Contract. In performing this exercise, the Panel has to establish, in particular, whether the Club committed any of the alleged contractual breaches, as claimed by the Player, and whether any of these breaches justified his termination.

85. The Panel also wishes to reiterate that, according to all applicable sources, namely FIFA regulations, CAS jurisprudence on its application and Swiss law as applied by the Swiss Federal Tribunal, each case revolves around its own particularities and the determination of the existence of just cause for termination is to be made primarily in light of the specifics of the relevant factual and legal circumstances of the case. Hence, the Panel possesses a certain level of discretion to assess the facts of this case on the basis of the applicable abstract legal principles and, ultimately, to determine whether the termination is justified or not.

(i) Did the Club default on payments due to the Player for the months of February, March and April 2015?

86. It is not in dispute between the Parties that the Player's remuneration due for the months of February, March and April 2015, or in particular three monthly payments of EUR 50,000 each or EUR 150,000 in total, were not paid, although they were due to be paid. In fact, the Appellant admits that it did not make these payments and never tried to argue that it had valid reason to do so. Hence, the Panel concludes that the Club defaulted on payments due to the Player for the months of February, March and April 2015.

(ii) Was the Appellant's default justified? Defences advanced by the Club.

87. The Appellant maintains that the default in payment is *in casu* minor and in no way reaches the necessary threshold to permit the Player to unilaterally terminate the Employment Contract with just cause. In this regard, the Club advances a couple of defences.

88. First, according to the Appellant, the down payments due to be made pursuant to Article 4 of the Contract of Employment for the years 20/06/2014 - 19/06/2015, 20/06/2015 - 19/06/2016 and 20/06/2016 - 19/06/2017 are different in nature to a signing-on fee and should be taken into account in the true calculation of the monthly salaries in the respective years. It should also be recognised that the Club made the first advance payment, in the amount of EUR 400,000, in accordance with Article 4 of the Employment Contract. The Appellant thus argues that, if the down payments are to be pro-rated on a monthly basis throughout the term of the Employment Contract, the actual monthly remuneration received by the Player would be EUR 83,333 and it follows that if this methodology is applied, the outstanding payment in respect of the months of February, March and April 2015 represents less than two monthly salaries.

89. It is acknowledged that the financial structure of the Employment Contract includes a considerable down payment in the beginning of each season which is made to secure the provision of the Player's professional services during the respective season. In this sense, the Player received the considerable amount of EUR 400,000 in the beginning of his first season with the Club.

90. The Panel analyzed the nature of the down payments. Such payments can be agreed either to compensate a player for his signature alone, *i.e.* to reimburse him for the creation of a transfer right in favour of the club, or to compensate the player for his services under the employment contract. In its analysis, the Panel considered that amount paid under an employment contract will usually reward the employee for his services, unless sufficient evidence suggests that such amount is meant to reward the conclusion of the employment contract itself. In the case at hand, no such evidence exists. The Appellant paid a significant transfer fee to the former club of the First Respondent to obtain his services and no stipulation in the employment contract between the Appellant and the First Respondent suggests that the down payments were intended to reward the conclusion of the employment contract itself. Furthermore, the witness testified credibly that the down payments were demanded by her in favour of the First Respondent in light of the bad reputation of football clubs from Saudi Arabia with respect to the timely payment of player salaries. Accordingly, the Panel concludes that the agreed down payments are to be considered as payments made in return for the services of the player in this case. Accordingly, the amount overdue to the First Respondent does indeed not constitute an amount that is equivalent to a quarter of this annual wages, as it is usually the case if three monthly salaries are overdue. The Panel does, however, hold that this does not automatically mean that the severity of the Appellants violation of the employment contract was insufficient to constitute just cause for termination.

91. As was held in CAS 2007/A/1352, *"[i]n order for the Sole Arbitrator to consider that there is a just cause, the concerned party's situation must be of a certain level of seriousness"*. The rationale behind the requirement for default on at least three monthly remunerations, in order to give rise to the

right of termination of the employment contract for just cause as developed in the FIFA and CAS jurisprudence, is to establish exactly such level of seriousness. It has, however, two dimensions. First, it guarantees that only breaches, which involve sufficiently serious non-payments in size, justify a last resort measure such as breaking of the contractual link. However, second, this requirement also reflects the seriousness of the breach in light of its duration in time. In cases, in which the violation of the employment contract is more severe in one of these two dimensions than in the other, such as this one, it is the Panel's task to evaluate on the merits of the individual case, whether or not the violation's lesser significance in one dimension leads to the conclusion that the violation is in its overall significance not grave enough to render the existence of the employment relationship meaningless in light of the good faith considerations.

92. In its evaluation of this question, the Panel takes into account the other circumstances of the case, in particular, the following ones:

- The unpaid salaries in the months February to April 2015 were not the first case of violations of the employment contract by the Appellant. Before the First Respondent left the club on loan in February 2015, he had been left unpaid by the Appellant for four consecutive months. This overdue amount was paid to the First Respondent only in connection with his loan transfer away from the club. The Panel therefore notes that this circumstance could reasonably and severely impair a player's confidence in his club's future compliance with its obligations;

- The Appellant actively requested the First Respondent to leave the club in February 2015 because it wanted to sign [Player Z.] but could only do so if one of the other foreign players left the Club. It was the First Respondent who was in these circumstances deemed surplus to requirements by the Appellant. It seems that after [Manager X.] ceased to be head coach of [Club A.], the Player was no longer within the plans of the Club's training staff. This was confirmed and also affirmed in degree by the fact that the First Respondent was offered to receive his full salary during the loan term. The Panel takes the view that such offer is a strong indication that a club considers the services of a player as entirely dispensable, as it would rather not have the player than have him for the same amount of money. If a club does not even try to minimize its economic loss by setting off the player's salary at his loan club, this may well demonstrate that it considers discharging the player as the single most important issue. In the absence of any indication to the contrary, and no such indication was detectable for the Panel, such pressure and such offer could reasonably and severely impair a player's confidence in his club's willingness to continue the employment relationship upon the termination of the loan. It could further reasonably lead to a player's assumption that any default on the club's payment obligations is to be understood as an expression of the aforementioned.

- The Appellant did at no point, between the start of the loan and the termination of the employment contract by the First Respondent, get in touch with him, be it about the First Respondent's claims for the payment of his monthly salaries or about the future of the First Respondent upon the imminent termination of the loan period in June 2015. The Club neither made any excuse, justification or other attempt to explain or justify the non-

payment of the outstanding sums due. Nor did the club get in touch with the Player to confirm payment of such amounts at any specific or unspecific later point in time. Nor did the club get in touch with the Player to discuss his sporting future at the Club after the expiry of the loan term. The Panel therefore notes that, while there is no legal obligation to communicate, this circumstance could in connection with the aforementioned further circumstances reasonably and severely impair a player's confidence in both the Club's future compliance with economic obligations and the Club's willingness to continue the employment relationship upon the termination of the loan.

93. Having made these observations, the Panel is satisfied that the combination of the three additional circumstances, the earlier severe delays, the pressure to leave the Club irrespective of cost and the entire lack of communication with the Player even in light of payment defaults and the imminent completion of the loan term, is sufficient to render the lack of the current violation's lesser significance in size, as insignificant for the First Respondent's reasonable expectations about the Appellant's willingness to comply with all agreed obligations.

94. The Panel further notes that, except for prescription periods, there is no specific rule providing when at the latest the aggrieved party must file a termination notice following the breach of contract. Although just cause in cases regarding delayed salaries is determined on a case by case basis, there is CAS jurisprudence to the effect that a party that has not been paid its salary for more than three months generally has just cause to terminate the contract (CAS 2014/A/3584, at paragraph 87).

95. In relation with the present matter, the Panel, however, consulted other CAS jurisprudence which has also considered that continuous breaches by the employer of its duty to comply with its financial commitments towards the player can constitute just cause for termination.

96. In the landmark case CAS 2006/A/1180, the panel ruled: *"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 the 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.)".*

97. In light of the above, the Panel holds that non-payment of salaries in the present case is not insubstantial and thus the *"substantiality"* condition for terminating the Employment Contract with just cause is met.

98. This leads the Panel to the second defence advanced by the Appellant. The latter claims that the Player did not fulfil the requirement to give proper warning of his intention to terminate the Employment Contract. In this regard, in the Appellant's view, the first letter of 5 May 2015 sent by [Attorney X.] did not go any further than requesting payment of the outstanding amounts and informing that he would address the competent sports courts requesting the fulfilment of the Club's obligations. No possible termination was mentioned. Furthermore, the Appellant claims to not have received the notification that the Player alleges to have sent on 15 May 2015 (dated 14 May 2015). The Appellant claims that the fax report provided by the First Respondent during the FIFA proceedings was fabricated and cannot prove that any fax message and even less so, one of the alleged content was ever sent.

99. As regards the second prerequisite, the Panel recalls that, as the CAS jurisprudence has declared, *"for a party to be allowed to validly terminate an employment contract, it must have warned the other party, in order for the latter to have had the chance, if it deemed that the complaint to be legitimate, to comply with its obligations"* (CAS 2013/A/3091-3093). According to the same line of reasoning, CAS jurisprudence has consistently held that *"a party will only be able to establish a just cause to terminate the employment contract if it had previously warned the other party of its unacceptable conduct or attitude"* (CAS 2013/A/3237; CAS 2013/A/3091, 3092 & 3093).

100. Therefore, before proceeding with the termination, it is advisable, depending on the circumstances, for the aggrieved party to send a notice to the breaching party asking it to desist from its wrongful acts. Indeed, the Sole Arbitrator in CAS 2014/A/3460 held (at para. 63) that *"[a]lthough the need to send notices is not mandatory in all cases and is established on a case by case basis, CAS Sole Arbitrators have regarded notices as a vital step which could possibly have played a role in bringing an end to an unexplained breach or series of breaches, particularly where the breach or breaches in question has not yet reached a fundamentally unacceptable level and/or unduly prejudiced the non-breaching party to the extent that the latter cannot be reasonably expected to continue the contract"*.

101. As regards the first letter sent on behalf of the Player, by [Attorney X.] on 5 May 2015, the Panel wishes to recall that the letter contained the following statement: *"Considering all these aspects, we ask you kindly to fulfil your contractual obligations and to pay EUR 150.000 to our client,* [Player X.]*, within 3 days of receipt of this notice, otherwise, we will have to call upon the competent sports courts in resolving this dispute, and we will make every effort obliged you to pay the amount of EUR 150,000 and the damage caused by the delay in payment of all expenses and a possible trial"*.

102. While this language is not as specific with regard to the Player's intention to break-up the employment relationship in case of non-payment as one would ideally consider a proper warning for termination to be, the Panel considers that it should have been taken as an indication by the Club that the Player was dissatisfied with the default and intended to undertake enforcement measures to protect his legal rights and interests. The Appellant is deemed to be a sophisticated entity – a professional football club – which deals with employment relationships

with players on a daily basis and should have knowledge of the practical implications of the industry, its regulation and how such situations tend to develop. It was thus not entirely unpredictable that the Player would consider termination of the Employment Contract if the Club continued its practice of failure to performing its primary contractual obligation, namely payment of salaries.

103. Turning to the CAS jurisprudence for further guidance on this issue, the Panel refers to the arbitral award in CAS/2015/A/4055 where the respective player stated in his letters that he reserved his legal rights and this was interpreted as a kind of a threat to terminate the contract. The panel in that case determined that: *"In this connection the Panel points out that the - often repeated – announcement "we declare that our client reserves all relative legal rights" whilst citing the contractual provision (for the first time in the letter of January 13, 2014, see above para. 13) constitutes a kind of threat of termination within the meaning of a warning"* (para. 130). Likewise, in the present case, the warning that the matter would be brought for determination by the *"competent sports courts in resolving this dispute"* unless payment is made, without explicit restriction to financial claims, although only such were expressly mentioned, should have signalled to the Club that such sports courts (*e.g.* the FIFA DRC) might be seized with a dispute involving the termination of the employment contract and the consequences thereof.

104. The Panel, therefore, takes the view that a professional and well organised football club should be aware that the termination of the employment contract might be imminent in the event that a notice that requests the payment of overdue salaries in a significant amount is received. If such club would, upon the receipt of a letter that does not contain an explicit termination warning within due time, reply to the player to the effect that it is credibly demonstrated that within a reasonable specific period of time all overdue amounts will be settled, it could well be conceived that such club may reasonably expect the player not to terminate the contract before the expiry of such period, unless a further notice containing an explicit warning was issued by the player. However, in the case at hand the Appellant did not reply to the letter sent by the First Respondent in any way.

105. As to the dispute regarding whether the Appellant received the second notice allegedly sent on 15 May 2015 and dated 14 May 2015, the Player provided a fax log as evidence, which demonstrates that a fax message containing two pages was sent on 15 May at 12:17 AM to the fax number of the Club which message was processed evidenced by the Status Result "OK". The Appellant vigorously disputes the authenticity of the provided evidence and strongly submits that it did not receive the notice sent by [Law office X.], on behalf of the Player containing express warning of termination.

106. Notwithstanding the above uncertainties and without needing to discuss the proper evaluation of this issue in line with the applicable rules of proof, having reviewed the evidentiary material separately and in its entirety, the Panel is satisfied that the Player fulfilled the second requirement of giving due notice in order to terminate Employment Contract with just cause. The notice sent on 5 May 2015 should have had the effect of warning the Club that the Player was taking the situation with the non-payment seriously and considering his future action in defence of his rights, including the right to terminate the contract for just cause.

107. For the reasons set out above, the Panel is satisfied that the Appellant had been warned of a possible termination of the Employment Contract.

108. The Panel is also reluctant to accept the submission advanced by the Appellant that the Employment Contract, being effectively suspended during the term of the Loan Agreement with [Club C.], could not be terminated and that the Player should have sought remedies under the Loan Agreement. The Parties, including the Appellant, specifically agreed to keep the provisions of the Employment Contract with regard to the Player's remuneration in force during the loan period. As these provisions were in force, it would have been entirely devoid of any logic to determine that the Player could not have sought remedies for breaches of those provisions under the Employment Contract. Furthermore, to terminate the Loan Agreement would not provide for any substantive remedies for the Player and would leave the Player without the intended protection of the RSTP and would undermine the principle of *pacta sunt servanda*. Therefore, this submission is also rejected.

109. As set out above, the Panel finds that both prerequisites for the early termination with "just cause" of the Employment Contract because of the Appellant's failure to pay the due salaries are satisfied: *(i)* the unpaid amount due by the Club was, under the specific circumstances of the case, not *"insubstantial"* or completely secondary; and *(ii)* the Player gave a warning, drawing the Club's attention to the fact that its conduct was not in accordance with the Employment Contract.

110. In the present case, the Panel is therefore of the opinion that the Player established the existence of a just cause and for all the reasons set out above, the Panel concludes that the Employment Contract was unilaterally terminated by the Player with just cause.

b) What are the legal consequences of termination of the Employment Contract with just cause?

111. Having established that the Club is to be held liable for the early unilateral termination of the Employment Contract by the Player, the Panel will now proceed to assess the legal consequences of the termination.

112. The Panel observes that Article 14 of the RSTP reads as follows:

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

113. Although the Panel has established that the Player had just cause to terminate his Employment Contracts with the Club, this provision does not specifically determine that the Player is entitled to any compensation for breach of contract by the Club.

114. The Panel, however, is satisfied that the Player is, in principle, entitled to outstanding payments and compensation because of the breach of the Employment Contracts by the Club. In this

respect, the Panel makes reference to the Commentary to the RSTP (the "FIFA Commentary"). According to Article 14 (5) and (6) of the FIFA Commentary, a party *"responsible for and at the origin of the termination of the contract is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed"*. Accordingly, although it was the Player who terminated the Employment Contract by filing a claim against the Club with FIFA, the Club was at the origin of the termination of the Employment Contracts and is thus liable to pay compensation for damages suffered by the Player as a consequence of the early termination.

115. The Panel observes that Article 17.1 of the RSTP determines the financial consequences of a premature termination of a contract:

> *"The following provisions apply if a contract is terminated without just cause:*
>
> *1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annex 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".*

116. According to the Commentary to FIFA RSTP,

> *"1. Contractual breaches, whether inside or outside theprotected period, give rise to compensation. The compensation amount is calculated in accordance with objective criteria. The Regulations provide for some criteria that can be taken into account to establish compensation:*
>
> > *a) the remuneration and other benefits due to the player under theexisting contract and/or the new contract,*
> >
> > *b) the time remaining on the existing contract up to a maximum of five years.*
>
> *(…)*
>
> *2. Claims for compensation can be brought before the DRC, which, as well as the above objective criteria, takes into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport, when establishing the compensation amount due"* (Footnotes omitted).

117. As the Employment Contract does not contain any contractual provisions determining the consequences of a possible unilateral breach by the Club, the Panel will apply Article 17 of the RSTP and notes that there is ample jurisprudence of CAS on the issue of breach of contract. The vast majority of this jurisprudence establishes that the purpose of Article 17 of the RSTP is basically nothing more 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 2012/A/2874, §128, CAS 2012/A/2932, §84; CAS 2008/A/1519-1520, §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, §90; CAS 2007/A/1359, §92: *"the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability"*, confirmed in CAS 2008/A/1568, §6.37).

118. Therefore, in the present case of premature termination of the Employment Contract the breaching party (the Club) shall owe compensation to the Player.

c) Were outstanding amounts and compensation for breach of contract determined correctly in the Appealed Decision?

(i) Outstanding remuneration

119. The Panel notes that, as already observed, there is no dispute between the Parties as regards to the outstanding amount under the Employment Contract, namely the monthly salaries due to the Player for the months of February, March, and April 2015 each in the amount of EUR 50,000. The DRC determined that the Appellant shall pay these amounts plus 5% *p.a.* interest. This decision of the DRC in this respect must be upheld.

(ii) Compensation

120. By way of reference to the CAS jurisprudence with regard to the calculation of compensation for premature termination of an employment contract, the Panel finds guidance in CAS 2004/A/587, where with respect to the calculation of compensation for a breach of contract committed by a club, the panel applied Swiss law as the law of the country where the association taking the decision was domiciled (art. R58 of the Code). The panel applied, in particular, art. 337c (1) of the SCO. Accordingly, the compensation due to the player corresponded to the salary for the remaining duration of the contract, taking into account the player's obligation to mitigate the damages. The damages caused by the breach of contract consisted of the loss of all benefits, provided they were stipulated in the employment contract. Furthermore, there was also the possibility of awarding additional compensation. This additional compensation may, however, not surpass the amount of six monthly salaries (cf. art. 337c (3) SCO).

121. As to the application of Art. 17 FIFA RSTP and the principle of "positive interest", the Panel wishes also to take note of the explanation thereof by a previous CAS Sole Arbitrator:

> *"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 [had] *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 A., ZürcherKommentar, Art. 337d N 11 – both authors with further references; see also WYLER R., 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 (cf. CAS 2008/A/1519-1520, at §80 et seq.)".

122. The Panel finds that the legal framework set out above and the principle of positive interest are also applicable to the present case. The principle of the so-called positive interest (or "expectation interest") aims 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 recognized by various legal systems and aims at setting the injured party to the original state it would have if no breach had occurred. The positive damages of the employee are the salaries and other material income that he would have had if the contract would have been performed until its natural expiration. Therefore, in the case of termination of the Employment Contract for just cause by the Player, the latter would be entitled to the entire income until the expiration of the fixed duration of the Employment Contract (and not only until the termination) less any amount received from a third party.

123. According to the CAS jurisprudence (CAS 2008/A/1447, para. 30; CAS 2008/A/1518, para. 71), Article 17.1 RSTP closely follows Article 337c SCO, which grants as compensation to the party not being in breach of the contract an amount corresponding to all claims arising out of the employment relationship, reduced by everything *"which he saved as a consequence of the termination of the employment relationship and which he earned or intentionally failed to earn through other work"*(see CAS 2006/A/1180, para. 41). The Panel therefore has to compare two financial situations in order to determine the compensation: the Player's hypothetical financial situation without the Appellant's breach of contract and his financial situation following the breach of contract by the Appellant.

124. Indeed, the Panel notes that there is a consensus in the CAS jurisprudence as to the application of the "positive interest" principle approach followed in the case of CAS 2008/A/1519 & 1520, and applied in CAS 2009/A/1880 & 1881. The Panel agrees with such approach and emphasises that the application of the criteria indicated by Article 17.1 RSTP should *"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"* (CAS 2008/A/1519 & 1520, § 86).

125. For such purposes, it is this Panel's role to consider each of the criteria within Article 17.1 RSTP and any other objective criteria, in light of the specific facts of this case and to determine how much weight, if any at all, to apply to each in determining the amount of compensation due in this particular case. It is also the Panel's role to ensure that *"the calculation made (…) shall be not only just and fair, but also transparent and comprehensible"* (CAS 2008/A/1519 & 1520, § 89), with a view to putting the injured party in the position it would have been in, had no breach occurred.

126. In this case, however, in which a breach by the Club (and not by the Player) is involved, the "remuneration factor", together with "the time remaining on the existing contract" plays a major role. In addition, the salaries and other benefits earned by the player in question under any new contract signed (also to mitigate the damages sustained) have to be taken into account by way of deduction from the amount the player can claim.

127. Against this background, the Panel must determine the amount due. The Panel observes that the DRC awarded the amount of USD 901,665 to the Player as compensation for the breach of contract by the Club as well as 5% interest *per annum* as of 23 May 2015 until the date of effective payment.

128. The DRC granted compensation on the basis of the remaining duration of the Employment Contract, had there been no breach by the Appellant. The DRC determined the amount that the Player would have received had the employment relationship continued until the end of the lifetime of the Employment Contract, *i.e.* a total of EUR 2,399,996. From this amount, the DRC deducted the income the Player was entitled to receive from its subsequent employers – [Club B.] and [Club D.].

129. The Panel shares the view of the DRC that in the present case it is reasonable to take into due consideration, on the one side, the amount of the salary to be received by the Player for the remaining duration of the Contract and, on the other side, to deduct the amounts earned by the Player from his new clubs. The basis for calculating the compensation granted to the Player seems therefore to be neither arbitrary nor unreasonable, as claimed by the Appellant.

130. The remaining payments under the Employment Contract, following the termination of 22 May 2015, include 2 salaries for 2014/2015 season (May and June 2015) (2 months x EUR 50,000), 12 salaries for the season 2015/2016 (July 2015 to June 2016) plus one down payment for the respective season (12 months x 50,000 + EUR 500,000), and 12 salaries for the season 2016/2017 (July 2016 to June 2017) plus one down payment for the respective season (12 salaries x EUR 58,333 + EUR 500,000). Hence, the amount that the Player would have received

had the Contract not been terminated has correctly been determined by the DRC to be in the amount of EUR 2,399,996.

131. The Panel recalls that, on 19 June 2015, having finished its loan period at [Club C.], the Player signed a contract with the Second Respondent with an effective date 1 June 2015 until 31 May 2018. According to the terms and conditions of the contract, the Player was to receive a gross annual basic salary in NIS equivalent to the following amounts in Euro: for the 2015/2016 season a sum equivalent to EUR 220,000, for the 2016/2017 season a sum equivalent to EUR 240,000, and for the 2017/2018 season a sum equivalent to EUR 260,000. In addition to these amounts, the Player was to receive a signing fee in a gross amount in NIS equivalent to EUR 100,000 and various bonuses dependent on the Player's and team's performance.

132. On 28 December 2015, the Player was transferred from the Second Respondent to [Club D.] against a transfer fee in the amount of EUR 263,158. The Player's gross monthly salary with [Club D.] was in the amount of 86,835 lei with the equivalent of EUR 15,000. The Panel was further provided with a Certificate issued by [Club D.] certifying the remuneration provided to the Player during his stay with the club. According to this certificate, dated 9 March 2018, the Player received a net monthly amount of EUR 15,000 from the club starting from 12 January 2016. Additionally, the Player received bonuses in the amount of EUR 15,000 during 2016/2017 season and, for the participation in the […] in the amount of EUR 40,000 during 2017/2018 season. The total amount received by the Player from [Club D.] is EUR 444,613.90.

133. According to generally accepted principles of the law of damages and also of labour law (*cf.* Article 337c of the SCO and Article 17.1 of the RSTP), any amounts which the Player earned must be deducted from the compensation. The Panel, therefore, finds that the remuneration the Player earned with the Second Respondent and [Club D.] during the remaining contractual term of the Employment Contract should be deducted from the amount the Player would have earned with the Club should the Club have properly performed the Employment Contract.

134. In conclusion, the compensation for termination of the Employment Contract for just cause shall be calculated as from the amount that the Player should have received during the lifetime of the terminated Employment Contract, namely the amount of EUR 2,399,996 the following amounts are deducted: EUR 100,000 sign-on fee provided by the Second Respondent plus EUR 110,000 (half of the annual remuneration for the 2016/2017 season as the Player was transferred to [Club D.] during the winter transfer window) plus EUR 444,613.90 received by the latter club.

135. Evidently, the amount reached by this model of calculation exceeds the compensation awarded by the FIFA DRC by a margin. The Panel, however, can only guess how the DRC reached this exact number, as the reasoning of the Appealed Decision in this part does not contain any details and/or argumentation in this regard. It is therefore impossible to understand how the DRC arrived at the conclusion that a compensation of EUR 901,665 is reasonable and proportionate.

136. Nevertheless, the Panel determines that it is not empowered to award a higher compensation than the compensation specified in the FIFA DRC decision. Although the Panel has the power to review the appealed decision *de novo*, the scope of the appeal shall be limited to the Parties' submissions and, ultimately, requests for relief. In this regard, the First Respondent did not appeal the findings of the DRC as to the amount of compensation ordered by the DRC and no such request is to be found in its request for relief. Therefore, the Panel is bound to respect the scope of the appeal as determined by the Parties. Otherwise, the award would be *ultra petita* and subject to further review. Hence, the Panel shall uphold the DRC decision in this part as well.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by [Club A.] on 3 July 2017 against the decision issued by the FIFA Dispute Resolution Chamber on 19 January 2017 is dismissed.

2. The appealed decision issued by the FIFA Dispute Resolution Chamber on 19 January 2017 is upheld.

3. (…).

4. (…).

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