



Arbitration CAS 2017/A/5336 Al Nassr Saudi Club v. FC Twente 65, award of 25 May 2018

Panel: Mr Fabio Iudica (Italy), Sole Arbitrator

Football

Transfer

Conditions for the production of documents

Common and specific rules of third party's intervention/joinder

Burden of proof

1. According to art. R44.3 of the CAS Code, “[a] party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant”. Unsubstantiated requests shall henceforth be rejected.
2. According to art. R41.4 of the CAS Code (“*Joint Provisions on Joinder and Intervention*”), a third party may only participate in arbitration proceedings if it is bound by the arbitration agreement or if it and the other parties agree in writing. The participation of a third party in the arbitration may only occur as a consequence of a request by a respondent (cf. art. R41.2 “*Joinder*”) or as a result of a spontaneous intervention of the third party wishing to participate as a party to the arbitration (cf. art. R41.3 “*Intervention*”). Additional specific conditions regulating the aforementioned mechanisms are set forth in said art. R41.2 and R41.3, respectively.
3. The CAS Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Any party wishing to prevail on a disputed issue must discharge its burden of proof. The two requisites included in the concept of ‘burden of proof’ are (i) the ‘burden of persuasion’ and (ii) the ‘burden of production of the proof’. In order to fulfil its burden of proof, a party must, therefore, provide a CAS panel with all relevant evidence that it holds, and, with reference thereto, convince the panel that the facts it pleads are true, accurate and produce the consequences envisaged by such party. Only when these requirements are complied with has said party fulfilled its burden and has the burden of proof been transferred to the other party.

I. INTRODUCTION

1. This appeal is brought by Al Nassr Saudi Club against the decision rendered by the Single Judge of the Players’ Status Committee (the “PSC”) of the Fédération Internationale de Football Association (“FIFA”) on 8 May 2017 (the “Appealed Decision”), with regard to a contractual

dispute arisen between Al Nassr Saudi Club and FC Twente 65, in relation with the transfer of the player Y.

II. PARTIES

2. Al Nassr Saudi Club (the “Appellant” or “Al Nassr”) is a professional football club, based in Riyadh, Saudi Arabia, competing in the Saudi Professional League and affiliated with the Saudi Arabia Football Federation, which in turn is affiliated with FIFA.
3. FC Twente 65 (the “Respondent” or “Twente”) is a professional football club based in Enschede, The Netherlands, competing in the Eredivisie and affiliated with the Koninklijke Nederlandse Voetbal Bond, which in turn is affiliated with FIFA.

(The Appellant and the Respondent are hereinafter jointly referred to as the “Parties”).

III. FACTUAL BACKGROUND AND FIFA PROCEEDINGS

4. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions on the file and relevant documentation produced in this appeal as well as on the Appealed Decision. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this award only to the submissions and evidence he considers necessary to explain his reasoning.
5. On 22 August 2015, the Appellant and the Respondent concluded an agreement for the permanent transfer of the player Y (the “Player”) from Twente to Al Nassr (the “Transfer Agreement”).
6. According to Article 1 of the Transfer Agreement, the Parties agreed that Al Nassr would pay an amount of EUR 1,200,000 net and exclusive of all taxes as compensation for the premature termination of the employment contract between the Player and Twente, payable in two equal instalments as follows:
 - EUR 600,000 net and exclusive of all taxes before 30 September 2015;
 - EUR 600,000 net and exclusive of all taxes before 1 March 2016.
7. Pursuant to the same provision, the Parties also stipulated that in case of late payment, Al Nassr would be fined EUR 200,000 for each late instalment.
8. On 2 September 2015, Twente addressed an invoice to Al Nassr, requesting payment of the first instalment in view of the deadline of 30 September 2015.

9. On 27 December 2015, Al Nassr informed Twente that it could not comply with its financial obligations and proposed to settle the matter by paying either “EUR 500,000 by way of a monthly repayments of EUR 100,000 as of 15 January 2015, or in the alternative, EUR 400,000 payable in one instalment by no later 15 January 2015”.
10. Twente replied that it did not agree with Al Nassr’s proposal and requested full payment of the first instalment, as well as the amount of EUR 200,000 as penalty due under the Transfer Agreement, within the deadline of 10 days.
11. On 9 February 2016, Twente lodged a claim before FIFA against Al Nassr, complaining about the default of payment of the first instalment of the transfer fee, which fell due on 30 September 2015. Therefore, Twente requested that Al Nassr be condemned to pay the amount of EUR 600,000 as outstanding first instalment of the transfer fee, in addition to EUR 200,000 as penalty, as agreed under the Transfer Agreement, as well as 5% interest.
12. In its reply, Al Nassr requested to dismiss Twente’s claim. It first objected to the validity of the Transfer Agreement, as to the form, as well as to its authenticity, with regard to the alleged lack of representation on the side of Twente. With regard to the substance, Al Nassr argued that, in the real intention of the Parties, the transfer fee was limited to only one instalment of EUR 600,000, while the reference to a second instalment was erroneous and, moreover, the penalty clause was disproportional and excessive.
13. In its replica, Twente insisted that the Transfer Agreement was validly signed and binding and that, moreover, the stipulation concerning the transfer fee was unequivocal, contrary to Al Nassr’s allegation. In this respect, Twente pointed out that Al Nassr itself, in a correspondence to Twente dated 8 November 2015, had admitted being in default of payment of the “first” instalment, thus indirectly implying the existence of a second instalment.
14. On 4 November 2016, Twente updated its claim, adding request of payment of the second instalment in the amount of EUR 600,000 which had fallen due in the meantime, as well as the penalty fee of EUR 200,000 on the second instalment, and interest at the rate of 5%.
15. Finally, Al Nassr contested Twente’s replica, and, nonetheless, it hinted at the possibility of an amicable settlement by paying Twente the sole amount of EUR 800,000 which it considered as being an equitable amount.
16. On 8 May 2017, the Single Judge of the FIFA PSC rendered the Appealed Decision, the operative part of which reads as follows:
 - “1. *The claim of the Claimant, FC Twente 65, is admissible.*
 2. *The claim of the Claimant, FC Twente 65, is partially accepted.*
 3. *The Respondent, Al Nassr, has to pay to the Claimant, FC Twente 65, within 30 days as from the date of notification of this decision, the outstanding amount of EUR 1,200,000.*

4. *The Respondent, Al Nassr, has to pay to the Claimant, FC Twente 65, within 30 days as from the date of notification of this decision, the amount of EUR 250,000 as penalty.*
 5. *In the event that the amounts foreseen above are not paid within the stated time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limits and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
 6. *Any other claims lodged by the Claimant, FC Twente 65, are rejected”.*
17. The grounds of the Appealed Decision were served by facsimile to the Parties on 24 August 2017.

IV. GROUNDS OF THE APPEALED DECISION

18. The grounds of the Appealed Decision can be summarized as follows.
19. As a preliminary point, the Single Judge of the PSC established that, as the relevant claim by Twente was lodged on 9 February 2016, the 2015 edition of the Rules Governing the Procedures of the Player’s Status Committee and the Dispute Resolution Chamber (the “Procedural Rules”) as well as the 2015 edition of the Regulations on the Status and Transfer of Players (the “Regulations”) were applicable to the matter at hand.
20. As a consequence, the Single Judge confirmed that, on the basis of article 3, para. 1 and para. 2 of the Procedural Rules, in connection with article 23, para. 1 and para. 3, as well as article 22 lit. f) of the Regulations, he was competent to deal with the present matter, since it concerns a dispute between clubs affiliated with two different associations.
21. With regard to the objections raised by Al Nassr in relation to the compliance of the Procedural Rules, the Single Judge considered that the Parties had been duly notified of the closure of the investigation-phase and that the present dispute had been rightfully submitted for consideration and decision by the FIFA administration.
22. Moreover, as to the alleged lack of *locus standi* on the side of Twente, as well as the alleged absence of the power of representation of the signatories of the Transfer Agreement on behalf of Twente, the Single Judge considered that Al Nassr did not provide any conclusive evidence in support of the mentioned allegations which were therefore rejected.
23. With regard to the merits of the case, in view of the fact that Al Nassr did not provide any valid argument which would justify the non-payment of the agreed transfer compensation, the Single Judge concluded that Al Nassr failed to respect the terms of the Transfer Agreement.
24. As a first consequence, the Single Judge established that Al Nassr had to pay to Twente the amount of EUR 1,200,000 as outstanding fee for the transfer of the Player.

25. In relation to the request for the penalty fee in the amount of EUR 400,000, the Single Judge considered it to be disproportionate and excessive, in accordance with its well-established jurisprudence, and decided to reduce it to the amount of EUR 250,000.
26. The Single Judge also decided to reject Twente's claim relating to 5% interest as the Parties did not seem to have contractually agreed upon a default interest in addition to the aforementioned penalty fee.

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 11 September 2017, the Appellant filed its statement of appeal with the Court of Arbitration for Sport (the "CAS") against Twente with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration, Edition 2017 (the "CAS Code"), requesting that the present matter be submitted to a Sole Arbitrator. The Appellant also requested that the time limit to file the appeal brief be suspended, pending a decision on a request for the production of documents. Moreover, the Appellant demanded the CAS to invite the "intermediary", Mr Moussa Rahal, to intervene in these proceedings.
28. On 29 September 2017, the CAS Court Office invited the Respondent to state whether it agreed with the Appellant's request for suspension of the time limit to file its appeal brief and informed the Parties that, in the meantime, the relevant time limit for the Appellant was suspended until further notice. Moreover, the Appellant was invited to identify the "intermediary" with regard to its request for intervention and to provide an address/contact details in connection thereto.
29. On 9 October 2017, the Respondent informed the CAS Court Office that it agreed with the appointment of a Sole Arbitrator.
30. On the same day, upon request by the CAS Court Office in this respect, the Appellant informed that it had no objection that its statement of appeal and respective enclosures were disclosed to Mr Moussa Rahal, in relation with its request for his intervention in the present proceedings.
31. On 12 October 2017, the Respondent informed the CAS Court Office that it did not agree with the suspension of the time limit for the Appellant to file its appeal brief.
32. On 13 October 2017, the CAS Court Office notified *via* e-mail Mr Moussa Rahal of the appeal proceedings filed by Al Nassr against Twente with respect to the Appealed Decision, enclosing a copy of the statement of appeal filed by Al Nassr.
33. On the same day, the CAS Court Office informed the Parties that the President of the Appeals Arbitration Division had decided, pursuant to Article R32 of the CAS Code, to reject the Appellant's request that the time limit to file its appeal brief be suspended and that, therefore, the relevant deadline would resume immediately.

34. On 20 October 2017, the Appellant requested a five-day extension of the time limit to file its appeal brief, or alternatively, that its statement of appeal be considered as appeal brief, in accordance with Article R51 of the CAS Code.
35. On 23 October 2017, the CAS Court Office informed the Parties that the Appellant's request for an extension of the time limit to file its appeal brief had been granted.
36. On 28 October 2017, the Appellant informed the CAS Court Office that its statement of appeal was to be considered as the appeal brief.
37. On 20 November 2017, the Respondent filed its answer according to Article R55 of the CAS Code.
38. On 21 November 2017, the CAS Court Office requested the Parties to state, by 28 November 2017, whether they preferred a hearing to be held in the present matter, or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.
39. On 22 November 2017, the Respondent informed the CAS Court Office that it did not consider a hearing to be necessary in the present proceedings.
40. On the same day, the Appellant requested to the CAS Court Office a 5-day extension in order to submit its position with regard to the possibility that a hearing be held, in the present matter; which request was granted on 23 November 2017.
41. On 28 November 2017, the Appellant informed the CAS Court Office that it preferred that a hearing be held in the present matter.
42. On 30 November 2017, the CAS Court Office informed the Parties that Mr Fabio Iudica, attorney-at-law in Milan, Italy, had been appointed as Sole Arbitrator to decide the present matter.
43. On 8 December 2017, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in the present case.
44. On 14 December 2017, after various proposals to the Parties by the CAS Court Office in order to schedule a hearing at the CAS headquarter in Lausanne, the Appellant finally informed the CAS Court Office that, in consideration of the unavailability of its counsel on all the proposed dates, due to prior commitments, its request for a hearing was withdrawn.
45. On 18 December 2017, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to issue an award based solely on the Parties' written submissions, pursuant to Article R57 of the CAS Code.
46. On 25 January 2018, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration.

47. On 22 January 2018, the CAS Court Office forwarded copy of the Order of Procedure to the Parties. The Order of Procedure was returned duly signed by the Respondent on 23 January 2018 and by the Appellant on 2 February 2018.
48. Mr Moussa Rahal failed to file an application for his intervention in the present proceedings according to Article R 41.3 of the CAS Code nor did he reply to the communication sent to him by the CAS Court Office *via* e-mail on 13 October 2017.

VI. SUBMISSIONS OF THE PARTIES

49. The following outline is a summary of the Parties' arguments and submissions which the Sole Arbitrator considers relevant to decide the present dispute and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in the following summary. The Parties' written and oral submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's submissions and requests for relief

50. The Appellant's submissions in his statement of appeal/appeal brief may be summarized as follows.
51. Preliminarily, the Appellant requested the CAS to order the Respondent to produce the "*confidential agreement made by and between Twente and the Player's agent, Mr Moussa Rahal and which are in the possession, custody or control of the Respondent upon whom the request is served pursuant to R44.3 of the CAS Code*".
52. Basically, the Appellant argued that the compensation actually agreed upon by the Parties for the transfer of the Player was different from the amount indicated in the Transfer Agreement.
53. In fact, according to the Appellant, based on the abovementioned "confidential agreement" allegedly signed by Twente with the Player's agent, the transfer fee payable under the Transfer Agreement amounted to only USD 800,000 (and not EUR 1,200.000), while USD 400,000 represented the commission due to the Player's agent.
54. As a consequence, the Transfer Agreement resulted in an unjust enrichment for the benefit of Twente, in violation of article 7, para. 4 (Payment to intermediaries) and article 6 para. 1 (Disclosure and publication) of the FIFA Regulations on Working with Intermediaries (the "Regulations on Intermediaries").
55. Moreover, such "confidential agreement" contravenes the provision of article 20, para. 1 about conflict of interests and 5 of the Regulations on Intermediaries as well as article 19 para. 4, according to which payment shall be made exclusively by the client of the player's agent, directly to the player's agent.

56. The Appellant maintained that the intermediary “*made a secret profit with the cooperative of the Respondent from a transfer contract and negotiations with the player, neither the intermediary, nor the Respondent did declare interests that may conflict with the interests of the Appellant to profit an undue breaching thus the FIFA Rules and the Principle of Good faith which prevent other party from being unjustly enriched for to get an undue advantage at the expense of the Appellant*”.
57. In this context, the Appellant also requested the CAS to cause the alleged intermediary to intervene in the present proceedings, relying on Article R41.3 of the CAS Code.
58. In its statement of appeal/appeal brief, the Appellant submitted the following requests for relief:
- a. To declare the jurisdiction over the present dispute.*
 - b. To accept this appeal and annul the appealed Decision adopted by FIFA on 8 May 2017.*
 - c. To issue a new decision establishing that 800,000 USD is the fair amount of transfer fee due to FC Twente 65.*
 - d. To squash the warded [sic] penalty fee in the amount of USD 250,000.00 as it is not applicable in this dispute due the lack of responsibility of the Appellant regarding the delay of payment of the transfer fee.*
 - e. To declare the sum of 15,000 CHF awarded by FIFA to be paid by the Respondent as FIFA costs of the Proceedings; and*
 - f. To condemn the Respondent to the payment of the whole Cas administration costs and the Arbitrators fee, as well as the legal fees and other expenses incurred by Al Nassr Saudi Club in connection with the present arbitration procedure”.*

B. The Respondent’s submissions and requests for relief

59. The position of the Respondent is set forth in its answer and can be summarized as follows.
60. All the arrangements between the Parties regarding the transfer of the Player are included in the Transfer Agreement which, among other things, stipulates a transfer compensation of EUR 1,200,000, payable in two instalments of EUR 600,000 each. Moreover, the Transfer Agreement clearly establishes that in case of late payment of any of the instalment due (respectively by 30 September 2015 and 1 March 2016) a penalty fee would be due by the Appellant in the amount of EUR 200,000 for each late payment.
61. In view of the abovementioned arrangements, it is also equally clear that the Appellant completely failed to pay any of the instalments of the transfer fee.
62. As a consequence of the Appellant’s failure to comply with the obligations deriving from the Transfer Agreement, the FIFA PSC rightfully upheld the claim lodged by Twente (although in part, as regards the penalty fee).

63. On the other hand, the appeal filed by Al Nassr against the appeal decision is unfounded as its arguments are irrelevant and hardly comprehensible.
64. In fact, it is not clear what the Appellant argued regarding the “unjust enrichment” allegedly related to the payment of the Player’s agent’s fee and, in any event, such allegation is irrelevant in view of the Transfer Agreement which is a valid and binding contract between the Parties.
65. In addition, Al Nassr did not provide any evidence in support of the “unjust enrichment” allegation or in support of any alleged damage incurred by the same Al Nassr as a consequence thereof.
66. In any case, the Respondent contended that any reference made by Al Nassr with respect to the agent involved in the transfer, if any, or with respect to any payment of the agent’s fee as well as any reference to FIFA Regulations on Intermediaries, does not in any way involve the validity of the Transfer Agreement.
67. In fact, any of the alleged violations pointed out by Al Nassr with regard to the FIFA Regulations on Intermediaries would rather concern disciplinary matters and would not affect the financial obligations undertaken by Al Nassr towards Twente under the Transfer Agreement.
68. As a consequence, since Al Nassr failed to demonstrate the “relevance” of the evidence on which it intended to rely, pursuant to the provision of Article R44.3 of the CAS Code, the Respondent objected to the Appellant’s request for production of the agreement allegedly concluded between Twente and the Player’s agent, as well as to the request for intervention of the Player’s agent himself.
69. With regard to the Appellant’s request to “squash” the penalty fee, the Respondent argued that it was undisputed that Al Nassr completely failed to pay the outstanding instalments and therefore, that it had to bear the relevant consequences according to article 1.1 of the Transfer Agreement.
70. In conclusion, the Respondent requested the Sole Arbitrator to dismiss the appeal lodged by Al Nassr and to confirm the Appealed Decision, and also to determine the exact amount of interests due by Al Nassr, based on the Appealed Decision.
71. In its answer, the Respondent submitted the following requests for relief:
 - “- To dismiss the appeal of Al Nassr and confirm the decision of the FIFA PSC dated 8 May 2017.
 - To determine the amount of interest due by Al Nassr to FC Twente on the day of the award of CAS and to confirm every day that this amount has not been paid, the amount increases by the interest rate of 5% p.a.

- *To convict Al Nassr in the costs of this arbitration and to convict Al Nassr in a compensation of the legal costs of FC Twente of at least CHF 10,000 or any other amount that CAS considers reasonable”.*

VII. JURISDICTION

72. Article R47 of the CAS Code provides as follows:

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

- 73. The Appellant relies on Article 58 para. 1 of the FIFA Statutes as conferring jurisdiction to the CAS.
- 74. The jurisdiction of the CAS was not contested by the Respondent.
- 75. The signature of the Order of Procedure confirmed that the jurisdiction of the CAS in the present case was not disputed.
- 76. Accordingly, the Sole Arbitrator is satisfied that CAS has jurisdiction to hear the present case.
- 77. Under Article R57 of the CAS Code, the Sole Arbitrator has the full power to review the facts and the law and may issue a new decision which replaces the decision appealed or annul the challenged decision and/or refer the case back to the previous instance.

VIII. ADMISSIBILITY OF THE APPEAL

- 78. According to Article 58 para. 1 of the FIFA Statutes: *“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.*
- 79. The Sole Arbitrator notes that the FIFA PSC rendered the Appealed Decision on 8 May 2017 and that the grounds of the Appealed Decision were notified to the Parties on 24 August 2017. Considering that the Appellant filed its statement of appeal on 11 September 2017, *i.e.* within the deadline of 21 days set in the FIFA Statutes, the Sole Arbitrator is satisfied that the present appeal was filed timely and is therefore admissible.

IX. APPLICABLE LAW

80. Article R58 of the CAS Code provides the following:

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

81. Article 57 para. 2 of the FIFA Statutes provides as follows:

“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

82. The Sole Arbitrator notes that the Appellant agreed to rely on Article R58 of the CAS Code while the Respondent did not make any reference to the law applicable to the present proceedings.

83. In addition, the Sole Arbitrator reminds that according to CAS jurisprudence, in case of appeals against decisions issued by FIFA, as is the present case, there is a tacit and indirect choice of law, in accordance with Article R58 of the CAS Code and Article 57 para. 2 of the FIFA Statutes, so that the dispute shall be decided according to the laws and Regulations of FIFA and, complementarily, Swiss law as the law of the country where FIFA is domiciled (CAS 2007/A/1269; CAS 2008/A/1351; CAS 2008/A/1534).

84. In consideration of the above and pursuant to Article R58 of the CAS Code, the Sole Arbitrator holds that the present dispute shall be decided principally according to FIFA Regulations, with Swiss law applying subsidiarily.

85. With regard to the applicability *rationae temporis* of the relevant FIFA Regulations, the Sole Arbitrator holds that the present case is governed by the 2015 edition, given that the Player lodged his claim with FIFA on 9 February 2016.

X. LEGAL ANALYSIS

A. Preliminary issues

86. Before addressing the merits of the present case, the Sole Arbitrator preliminarily notes that in its statement of appeal, the Appellant submitted the following requests, which shall be decided first:

- a. To order the Respondent to produce the *“confidential agreement made by and between the Respondent and the player’s agent Mr Moussa Rabal”*, pursuant to Article R44.3 of the CAS Code;
- b. To invite the Player’s agent to intervene in the present proceedings, in accordance with Article R41.3 of the CAS Code.

87. With regard to the request for production of evidence, the Sole Arbitrator reminds that according to Article R44.3 of the CAS Code, *“The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant”*.
88. The Sole Arbitrator observes that in its statement of appeal, the Appellant suggests that the transfer fee indicated in the Transfer Agreement (*i.e.* EUR 1,200,000) was different from the one actually agreed upon by the Parties, since a significant part of such compensation (*i.e.* allegedly amounting to USD 400,000) corresponded to the Player’s agent fee, thus constituting an unjust enrichment for the benefit of Twente to the detriment of Al Nassr.
89. Besides the fact that the relevant arguments put forward by the Appellant are confusing and ambiguous, the Sole Arbitrator observes that the alleged facts are not even demonstrated nor corroborated by any other circumstances in which the relevant confidential arrangement would have allegedly taken place. Therefore, the Sole Arbitrator believes that the request for production is solely based on the Appellant’s assertions.
90. In particular, the Sole Arbitrator considers that the Appellant failed to establish that a) contrary to the provisions of the Transfer Agreement, the Parties had actually agreed on a transfer fee in the amount of USD 800,000; b) that Twente concluded an agreement with the intermediary for the transfer of the Player; c) that a consistent part of the transfer fee set forth under the Transfer Agreement (*i.e.* USD 400,000) represented the commission for the Player’s agent.
91. In any event, the Appellant completely failed to provide any possible sign of the existence of the alleged *“confidential agreement made by and between the Respondent and the player’s agent”*.
92. Moreover, it is the opinion of the Sole Arbitrator that the existence of the alleged confidential agreement, as represented by the Appellant in its submissions to the CAS, would not affect the validity of the Transfer Agreement and the Appellant’s obligation to pay the transfer fee envisaged therein, in the absence of any other circumstances to the contrary.
93. In view of the foregoing, the Sole Arbitrator decided to reject the Appellant’s request for production, in the absence of the prerequisites set forth under Article R44.3 of the CAS Code.
94. Likewise, the Sole Arbitrator believes that the Appellant’s request that the intermediary be invited to intervene in the present proceedings does not comply with the conditions set forth by the CAS Code for the participation of a third party in the arbitration proceedings before the CAS.
95. As a general rule, the Sole Arbitrator observes that according to Article R41.4, *“A third party may only participate in the arbitration if it is bound by the arbitration agreement or if it and the other parties agree in writing”*.
96. More specifically, the participation of a third party may only occur as a consequence of the request by a Respondent, according to Article R41.2 (Joinder), or as a result of a spontaneous

intervention of the third party wishing to participate in the proceedings, according to and under the conditions set forth by Article R41.3 of the CAS Code.

97. The Sole Arbitrator notes that Mr Moussa Rahal was notified by the CAS Court Office of the appeal filed by Al Nassr by e-mail letter on 13 October 2017, and that he was informed of the possibility to participate in the present arbitration proceedings in accordance with the applicable provisions of the CAS Code.
98. Since the CAS Court Office did not receive any application by Mr Moussa Rahal with the purpose of his intervention, in accordance with Article R41.3, the Sole Arbitrator considers that the conditions for his participation in these proceedings were not met.

B. Merits of the appeal

99. By addressing the merits of the present case, the Sole Arbitrator observes that the following facts are undisputed: a) that the Transfer Agreement was concluded between the Parties; b) that the Player was duly transferred from Twente to Al Nassr in accordance with the Transfer Agreement; c) that Al Nassr did not pay any amount to Twente as compensation for the Player's transfer.
100. What is disputed in the present case is the amount payable by the Appellant to the Respondent as compensation for the Player's transfer, as well as the obligation of the Appellant to pay any penalty fee.
101. On the one side, the Appellant argues that, irrespective of the amount indicated in the Transfer Agreement (*i.e.* EUR 1,200,000, payable in two equal instalments of EUR 600,000 each), only USD 800,000 actually related to the compensation for the Player's transfer, while USD 400,000 represented the commission payable to the Player's agent. As a consequence, according to the Appellant's submissions, the Respondent would only be entitled to receive USD 800,000, since the remaining amount of USD 400,000 would constitute an unjust enrichment and undue advantage to the benefit of the Respondent. Moreover, the Appellant rejects the applicability of the penalty to the present case, due to the lack of any responsibility on its side, regarding the delay of payment of the transfer fee.
102. On the other side, the Respondent claims that the Parties concluded a valid agreement under which the Appellant was obliged to pay to the Respondent an amount of EUR 1,200,000; that the Transfer Agreement is unequivocal as to the amount of the transfer compensation and that the "unjust enrichment" allegedly related to the payment of the Player's agent's fee is completely baseless and irrelevant in view of the Transfer Agreement which is a valid and binding contract between the Parties. Besides, the Respondent argued that, any reference made by Al Nassr with respect to the agent involved in the transfer, if any, or with respect to any payment of the agent's fee as well as any reference to FIFA Regulations on Intermediaries, does not in any way involve the validity of the Transfer Agreement. Moreover, since the Appellant was in default of paying the entire amount of the transfer fee, the penalty fee was also due, as well as interests on the outstanding amounts.

103. In view of the opposing arguments above, the Sole Arbitrator observes that under the stipulations of the Transfer Agreement, Al Nassr accepted to pay to Twente “*an amount of EUR 1,200,000 net and exclusive of all taxes as compensation for the premature termination of the employment contract between [the Player] and FC Twente and the transfer of [the Player] from FC Twente to ANFC [the Appellant]*”. The Sole Arbitrator notes that the relevant wording is clear and unequivocal.
104. In this context, it was the burden of the Appellant to provide convincing evidence that, notwithstanding the clear wording above, the Parties had actually agreed on a different amount, and namely, that the real transfer compensation only amounted to USD 800,000.
105. On the contrary, all the Appellant’s allegations on this point are vague and totally unsupported.
106. In fact, the allegation that, based on a hypothetical confidential agreement between the Respondent and the Player’s agent, Twente was only entitled to receive USD 800,000 as transfer fee, finds no supporting element in the Transfer Agreement or in any other document in the file, and, on the other side, the Appellant totally failed to offer any single fact or document that could demonstrate the contrary.
107. In addition, the Sole Arbitrator also points out that the Appellant deliberately withdrew its request that a hearing be held in the present proceedings, thus renouncing the possibility to call any witness to be heard by the CAS in order to prove its arguments regarding the real amount of the transfer fee.
108. In this respect, the Sole Arbitrator confirms the principle established by CAS jurisprudence that “*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (...). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*” (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).

And furthermore, “*According to the general rules and principles of law, facts pleaded have to be proven by those who plead them, i.e. the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proven by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code: <Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact>.*

It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites include the concept of ‘burden of proof’ are (i) the ‘burden of persuasion’ and (ii) the ‘burden of production of the proof’. In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the

consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party” (CAS 2015/A/3909; CAS 2007/A/1380, with further references to CAS 2005/A/968 and CAS 2004/A/730).

109. Moreover, even assuming that the alleged “confidential agreement” was concluded between the Respondent and the Player’s agent, and that the Player’s agent was entitled to a fee of USD 400,000 (which facts have remained unproven), there is still no evidence of the fact that the transfer compensation agreed by the Parties was different from the one set forth under the Transfer Agreement.
110. Therefore, the request by the Appellant to reduce the amount payable to the Respondent as transfer fee under the Transfer Agreement shall be rejected.
111. With regard to the penalty set forth under clause 1.1 of the Transfer Agreement in case of late payment, the Sole Arbitrator first notes that the Appellant acknowledged not having paid any amount to the Respondent as transfer compensation. Secondly, the Appellant failed to submit any valid argument supporting the exclusion of such penalty fee, merely asserting its lack of responsibility for the delay of payment, without offering any evidence or any reasons thereof.
112. As a consequence, the Appellant’s request to “squash” the penalty fee established by the FIFA PSC is unwarranted and shall also be dismissed.
113. In view of all the foregoing, the Sole Arbitrator believes that the Appealed Decision is well-founded and shall be entirely upheld.
114. Furthermore, the Sole Arbitrator notes that the Respondent filed the following request for relief: *“To determine the amount of interest due by Al Nassr to FC Twente on the day of the award of CAS and to confirm that every day that this amount has not been paid, the amount increases by the rate of 5% p.a.”*
115. It is the Sole Arbitrator’s understanding of the above-referenced request that the Respondent is seeking confirmation that, in case the Appellant’s appeal was to be dismissed, this would imply that interests awarded by FIFA over the unpaid amounts would continue to accrue until effective payment. The Sole Arbitrator confirms that according to the Appealed Decision, Twente is entitled to receive interests at the rate of 5% p.a. to be calculated on the amount of EUR 1,200,000 and EUR 250,000 respectively, starting from 30 days after notification of the Appealed Decision, until the day of effective payment.
116. To the extent that by means of the relief described in paragraph 114 the Respondent could have been seeking for compound interest (interest over interest) from the date of the present award in case of late payment (which the Sole Arbitrator understands is not the case), the Sole Arbitrator observes that this would have effectively amounted to a counterclaim. Considering that, pursuant to the CAS Code, counterclaims are no longer admissible in appeals proceedings (a separate appeal must be filed), in case the Respondent intended to request for compound interest, this claim would in any event have to be considered inadmissible.

117. All other motions or requests for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Al Nassr Saudi Club against the decision rendered by the FIFA Single Judge of the Players' Status Committee on 8 May 2017 is rejected.
2. The decision rendered by the FIFA Single Judge of the Players' Status Committee on 8 May 2017 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.