



Arbitration CAS 2018/A/5680 Al Sharjah Football Club v. Fellype Gabriel de Mello & Sociedade Esportiva Palmeiras, award of 13 February 2019

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

Football

Termination of contract with just cause

Power of attorney

In the absence of proof that a rule to the contrary is applicable, a lawyer does not require a power of attorney to represent his client and to issue valid letters on his behalf. If art. 9 para. 1 lit. b) of the FIFA's Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber requires that lawyers present a power of attorney to act before them, no such requirement exists in many jurisdictions around the world and rather there will be a retainer agreement between a client and its lawyer.

I. PARTIES

1. Al Sharjah Football Club (the "Club" or the "Appellant") is a professional football club with its registered office in Sharjah, United Arab Emirates (the "UAE"). The Club is a member of the United Arab Emirates Football Association (the "UAEFA"), which in turn is affiliated to Fédération Internationale de Football Association ("FIFA").
2. Fellype Gabriel de Mello (the "Player" or the "First Respondent") is a professional football player born in Brazil on 6 December 1985 and currently playing for Boavista Sport Club.
3. Sociedade Esportiva Palmeiras ("Palmeiras" or the "Second Respondent") is a professional football club with its registered office in Sao Paulo, Brazil. The Second Respondent is affiliated to the Brazilian Football Confederation (the "CBF"), which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 22 June 2013, the Club agreed the transfer of the Player from the Brazilian club, Botafogo de Futebol e Regatas, and subsequently the Player and the Club concluded, on the same day, an employment contract (the “Contract”) valid as from 1 July 2013 until 30 June 2016.
6. According to article 2.1 of the Contract, the Player was entitled to the following remuneration:
 - a) USD 1,350,000 net for the first year of the Contract payable as follows:
 - “ Amount of 350,000 USD Provider contract becomes payable after registration in the UAE Football Association.
 - Amount of 1,000,000 USD paid as monthly salary (83,333 USD per month)”;
 - b) USD 1,300,000 net for the second year of the Contract payable as follows:
 - “ Amount of 300,000 USD Provider contract.
 - Amount of 1,000,000 USD paid as monthly salary (83,333 USD per month)”;
 - c) USD 1,300,000 net for the third year of the Contract payable as follows:
 - “ Amount of 300,000 USD Provider contract.
 - Amount of 1,000,000 USD paid as monthly salary (83,333 USD per month)”.
7. In accordance with article 2.2 of the Contract, the Club had to provide the Player with “5 star accommodation including water & elec”.
8. Moreover, article 2.4 of the Contract established that the Player was entitled to “six air ticket business class roundtrip (Rio de Janeiro - Dubai - Rio de Janeiro) per year”.
9. Furthermore, article 2.5 of the Contract stated that the Club had to provide the Player with “necessary health care in government hospitals in addition of health and accidents insurance” and article 2.6 indicated that the Club should provide the Player “at its own expenses, the necessary treatment for the player if he is injured as result of or practicing his sport in favour of the club during the period of his contract. The Player shall continue to receive his monthly salary until it is established that he is unable to continue playing by a medical report issued by the medical committee established by the Emirates Football Association, as stipulated in paragraph (b) of Article (4) of the regulations related to contracting with foreign players”. Moreover, article 3.8 stated that the Player was “[n]ot to leave the state without having a written permission from the chairman of the club or the CEO or any official representative thereof”.
10. At some stage in August 2014, the Player sustained an injury while playing a friendly match for the Club against Al-Arabi Sports Club, as a consequence of which, he had surgery on 28 August 2014.

11. On 19 August 2014, the Club signed a replacement player [...] for the Player on loan from Al Nasr Football Club, for a loan fee of USD 1m plus any outstanding salaries owed to him by Al Nasr Football Club.
12. On 6 March 2015, the Player signed a power of attorney in favour of his lawyer (the “PoA”).
13. On 6 March 2015, the Player, through his lawyer, put the Club in default for failing to pay his salaries for December 2014 and January and February 2015 as well as medical expenses, accommodation and flight tickets for the total amount of USD 338,086. In his default notice, the Player informed the Club that, should they not pay him the requested amount within five business days, he would terminate the Contract. The Player states that the PoA accompanied this letter, the Club denies this.
14. On 11 March 2015, the Club offered a settlement proposal to the Player’s lawyer which involved paying only USD 304,752, in five instalments.
15. Also on 11 March 2015, the Player’s lawyer sent an email to the Club’s lawyer in reply. In this email, the Player requested that he be paid the full outstanding amount in three instalments as well as the authorisation from the Club to finish his medical treatment in Brazil *“until he is fully recovered from his injury, as well to negotiate a temporary transfer agreement until December 31st 2015”*.
16. On 13 March 2015, the Club’s lawyers replied to the Player’s lawyer informing him that it would pay a total amount of USD 304,752 in three instalments and that it would provide the necessary medical treatment to the Player in the UAE. Moreover, the Club expressed that it would be *“happy to conclude a loan agreement with club in Brazil at any sooner time”*.
17. On the same day, the Player’s lawyer replied to the Club’s lawyer insisting on the payment of the amount of USD 338,086 and on finishing his medical treatment in Brazil. The lawyer also reminded the Club that the deadline set to bring the payments up to date expired that day.
18. On 15 March 2015, the Player left the UAE without authorization from the Club.
19. On 16 March 2015, the Player’s lawyer wrote to the Club and terminated the Contract in writing due to the non-payment of the outstanding remuneration.
20. On 19 March 2015, the Club wrote to the Player’s lawyer objecting to the termination of the Contract and underlying having requested his bank details so as to make payment of the outstanding remuneration. In this correspondence, the Club informed the Player *“that failure to return to Sharjah within the next 10 days shall automatically cause the termination of the employment agreement for just cause”*. The Player denied ever receiving this letter.
21. On 27 March 2015, the Player lodged a claim in front of the FIFA Dispute Resolution Chamber (the “FIFA DRC”) against the Club for breach of contract requesting the total amount of USD 1,667,970 plus 5% interest as of each due date, according to the following breakdown:

- USD 250,000 as outstanding salaries corresponding to unpaid monthly salaries of December 2014 and January and February 2015;
 - USD 55,539 for accommodation expenses;
 - USD 13,375 for flight tickets;
 - USD 15,728 for medical expenses;
 - USD 1,333,328 as compensation for breach of contract corresponding to the residual amount of the Contract.
22. On 1 April 2015, the Club wrote to the Player to terminate the Contract as the Player had not returned to the Club within the given deadline.
23. On 13 May 2015, the Player signed a new employment agreement with Palmeiras, valid as from 25 May 2015 until 31 May 2017, according to which he was entitled to a monthly remuneration of BRL 120,000.
24. On 19 May 2016, the Player signed a new employment agreement with Club de Regatas Vasco da Gama, valid as from 19 May 2016 until 31 December 2016, according to which he was entitled to a monthly remuneration of BRL 50,000.
25. On 30 June 2017, the FIFA Dispute Resolution Chamber (“DRC”) issued a decision in this case partially accepting the claim of the Player (the “Appealed Decision”) as follows:
1. *The claim of the Claimant/ Counter-Respondent, Fellype Gabriel de Mello is partially accepted.*
 2. *The counterclaim of the Respondent/ Counter-Claimant, Al-Sharjah FC, 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 USD 334,641 plus 5% interest p.a. until the date of effective payment as follows:*
 - a. *5% p.a. as of 1 January 2015 on the amount of USD 83,333;*
 - b. *5% p.a. as of 1 February 2015 on the amount of USD 83,333;*
 - c. *5% p.a. as of 1 March 2015 on the amount of USD 83,333;*
 - d. *5% p.a. as of 27 March 2015 on the amount of USD 84,642.*
 4. *The Respondent/ Counter-Claimant has to pay to the Claimant/ Counter-Respondent, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of USD 924,028 plus 5% interest p.a. on said amount as from 27 March 2015 until the date of effective payment.*

5. *If the aforementioned sums plus interest are not paid by the Respondent/Counter-Claimant within the stated time limits, 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”.*
26. On 21 March 2018, the FIFA DRC notified the grounds of the Appealed Decision to the Parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 11 April 2018, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “CAS Code”), the Club filed a Statement of Appeal against the Player and Palmeiras challenging the Appealed Decision at the Court of Arbitration for Sport (the “CAS”). The matter was given the reference CAS 2018/A/5680.
28. On 20 April 2018, pursuant to Article R51 of the CAS Code, the Club submitted its Appeal Brief with the CAS. The Appeal Brief contained the following prayers for relief:

“The Appellant respectfully requests the Court of Arbitration for Sports to accept the appeal filed by Sharjah against the Decision of the FIFA DRC passed on 30 June 2017 and, consequently rule that:

- A. *the appeal is admissible;*
 - B. *the decision of FIFA DRC is set aside;*
 - C. *the Player has breached the Contract;*
 - D. *the Player and Palmeiras are jointly liable to compensate Sharjah FC in the amount of USD 215,887 (two hundred fifteen thousand eight hundred eighty seven US dollars), or in the other amount that may be deemed appropriate in consideration of the development of the case, plus interest of 5% from 1 April 2015;*
 - E. *the Player and Palmeiras are jointly liable to bear all costs and expenses relating to these arbitration proceedings and the proceedings before the FIFA DRC, including the reimbursement of the Appellant’s legal fees and costs”.*
29. On 17 May 2018, pursuant to Article R55 of the CAS Code, the Player submitted his Answer to the CAS Court Office, with the following prayers for relief:

“the Player herein humbly requests the Appeal to be rejected by the panel and consequently, the decision passed by the FIFA DRC to be entirely upheld.

As a result of the rejection/ dismissal of the Appeal, the Player also requests the Appellant to be ordered to bear alone all I [sic] the costs of the proceedings and to reimburse the Player with all expenses/ costs related to the present matter, including legal fees, estimated in USD 10,000”.

30. Also on 17 May 2018, pursuant to Article R55 of the CAS Code, Palmeiras submitted its Answer to the CAS Court Office, with the following prayers for relief:

“In view of the foregoing, Palmeiras respectfully request the honourable Panel the following relief:

- (i) To enforce CAS’ jurisdiction as competent to rule on the matter;*
- (ii) To dismiss the Appeal in full;*
- (iii) Alternatively and in case the above is not rendered by the Hon. Panel, to hold Palmeiras exempt of any liability concerning the termination of the Employment Agreement;*
- (iv) Alternatively and in case the above is not rendered by the Hon. Panel, to award compensation to be paid by Palmeiras based on parameters previously presented throughout this Answer*
- (v) In any event, to rule Al Sharjah responsible for all arbitration costs;*
- (vi) In any event, to order Al Sharjah to pay a contribution towards the legal costs and expenses incurred by Palmeiras in connection with the arbitration in the amount of 10% of the total amount claimed by the Appellant, or other amount the Hon. Panel deems adequate”.*

31. On 28 May 2018, Palmeiras confirmed that it did not consider a hearing to be necessary in this matter.
32. On 29 May 2018, the Player concurred with Palmeiras and confirmed that he did not consider a hearing to be necessary in this matter.
33. On 31 May 2018, the Club confirmed that it did consider a hearing to be necessary in this matter.
34. On 13 June 2018, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to this case was constituted as follows:

President: Mr. Mark Hovell, Solicitor in Manchester, United Kingdom;

Arbitrators: Mr. Manfred Nan, Attorney-at-law in Arnhem, the Netherlands
Mr. Rui Botica Santos, Attorney-at-law in Lisbon, Portugal

35. On 26 June 2018, the CAS Court Office, pursuant to Article R57 of the CAS Code, informed the Parties that the Panel had decided to hold a hearing in this matter.
36. On 9 July 2018 and further to a request from the Panel, FIFA produced its complete file related to the present procedure, this file was duly forwarded to the Parties.
37. On 29 August 2018, the CAS Court Office sent the Order of Procedure to the Parties.
38. On 29 August 2018, Palmeiras duly signed and returned the Order of Procedure.
39. On 3 September 2018, the Club duly signed and returned the Order of Procedure.
40. On 5 September 2018, the Player duly signed and returned the Order of Procedure.

IV. HEARING

41. The hearing was held on 26 September 2018 in Lausanne, Switzerland. In addition to the Panel and CAS Counsel, Mrs Pauline Pellaux, the following persons attended the hearing:

Club: Mr Stefano La Porta, legal counsel;

Player: The Player himself, Mr Luiz Felipe Guimaraes Santoro, legal counsel, and Mr Claudinei Nunes da Silva, Interpreter;

Palmeiras: Mr Alexandre Miranda, legal counsel.

42. The Parties had the opportunity to present their factual and legal arguments, as well as to answer the Panel's questions. At the end of the hearing, all Parties confirmed that their respective rights to be heard and to be treated equally had been respected in the present proceedings. The Panel has carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the Parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.

V. THE PARTIES' SUBMISSIONS

43. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Club's Submissions

In summary, the Club submitted the following in support of its Appeal:

1. *The Alleged Termination of the Contract*

44. The Club submitted that in the first instance the Player did not validly terminate the Contract and gave three “concurrent reasons” to substantiate this assertion as follows:

- A. the termination letter sent to the Club was not signed by the Player nor by a duly authorized representative of his;*
- B. the Player did not grant Sharjah a suitable term to cure the default;*
- C. the termination was notified in bad faith, while the parties were finalizing the last details of an amicable settlement and after that the Player had left the Emirates without the authorization of Sharjah and without any justification”.*

2. *The lack of the PoA*

45. The Club submitted that the letter dated 16 March 2015 which, according to the Player, caused the termination of the Contract, was not signed by the Player nor on his behalf by someone with any PoA signed by him.
46. The Club stated that “as a matter of fact, only with the statement of claim before FIFA DRC of 27 March 2015 was, for the first time, a power attorney, allegedly signed on 5 March 2015, enclosed”. Further, the Club submitted that “such power of attorney, however, does not give any certainty as to the fact that the legal counsel of the Player did have the power to terminate the Contract on behalf of his client when he did so: first of all due to the content of the PoA; secondly because of the validity of the instrument vis-à-vis third parties”.
47. Furthermore, the Club submitted that “no power of substantive nature, such as that to terminate the Contract, were granted to the lawyer” and that “it is clear that the document does not give any certainty as to the date of signature, because it was not issued by or in front of a Notary or a public officer, nor was a copy of it sent to Sharjah together with the termination notice. Not even reference to the PoA was made in the termination notice. Consequently, there are simply no elements to prove the authenticity of this document and/or to cause effects vis-à-vis third parties. At this regard, it must be noted that, during the proceedings at FIFA, the Club has immediately raised objections against the substantial and formal features of the document”.
48. The Club concluded on this point with the following, “Hence, the conclusions of the appealed decision that “the power of attorney granted by the Claimant / Counter – Respondent to his legal representative bears the date of the Claimant / Counter – Respondent’s letter of termination”, must be set aside, because it did not take into due consideration the certainty of the date, the effects vis-à-vis third parties and the analysis of its content”.

3. *Inappropriate time limit to pay given by the Player and Player’s bad faith*

49. The Club submitted that the deadline of 5 business days contained in the letter dated 6 March 2015, which was not signed by the Player nor on his behalf by someone with any PoA signed by him, to pay all outstanding sums to the Player was not reasonable or fair and was in any event “overcome by the settlement negotiations that followed”.

50. The Club cited Art. 12bis of the FIFA Regulations on the Status and Transfer of Players (April 2015 Edition) (the “FIFA RSTP”) and argued that a deadline of at least ten days to remedy non-payment of salary as per the regulations is in contrast with the 5 business days deadline issued by the Player.
51. Further, the Club cited Art. 107.1 of the Swiss Code of Obligations (the “CO”) which provides for an “*appropriate time limit*” in these circumstances. The Club also cited the FIFA DRC decision Ref. No. 0613151a (of 28 June 2013) where a 3 day deadline was not considered appropriate. The Club also looked to consolidate their arguments by citing the awards *CAS 2014/A/3584* and *CAS 2006/A/1180* which refer to the nature of the warning to put the other party in default and the principle of good faith in doing so.
52. Furthermore, in support of its claim that the Player acted in bad faith, the Club cited Art. 2 of the Swiss Civil Code (the “CC”) according to which: “*Every person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations*”. In this regard the Club submitted that while the term “*of unreasonable duration*” was still running, the Club was indeed in negotiations with the Player to iron out any outstanding matters and they believed that progress was being made and an “*amicable agreement only needed to be finalised*”.
53. Finally, the Club cited the CAS jurisprudence in the award *CAS 2014/A/3626*. In this award the CAS panel stated that “*valid reasons (or “just cause”) for the termination of an employment contract between a club and a football player are considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship (article 337 para. 2 Code of Obligations). (...) the existence of such circumstances is decided by the judge in his own discretion (article 337 para. 3 Code of Obligations)*”.
54. In light of all of the above, the Club concluded that “*the Player, in the case at hand, clearly had no valid reasons to terminate the Contract and when he did it, he acted in bad faith*”.

4. The Player’s breach

55. The Club submitted that when “*the Player left the UAE on 15 March 2015 with no authorisation*” this put him in breach of contract and entitled them to terminate the Contract, as the Club did on 1 April 2015. Therefore, Art. 13 & 14 of the FIFA RSTP apply as the Player terminated the Contract unilaterally without just cause.
56. In the light of the above, the Club submitted that Art. 17 of the FIFA RSTP would come into play as follows:

“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 Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract,*

compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period”.

57. The Club submitted that in line with the principle of “*positive interest*”, the damages to be liquidated according to Art. 17 of the FIFA RSTP must put the injured party in the same position that it would have been in if the contract had been performed properly.
58. Further, the Club submitted that “*in the specific case, the principle of “positive interest” can be applied by primarily taking into consideration the amount of the unamortized fees and expenses paid by the Club to register the Player for three years. This amount is USD 215,887 (i.e. two thirds of USD 323,830, paid by the Club to the Brazilian club Botafogo for the transfer of the Player)*”.
59. The Club also submitted that as a result of the Player breaching the Contract after only one of the three years of its duration, the breach occurred in the “*protective period*” and consequently and in line with CAS jurisprudence and the cited award, (CAS 2009/A/1880 and CAS 2009/A/1881) this constitutes an “*aggravating factor when assessing the compensation due*”.
60. Finally, the Club submitted that “*in all cases, interests of 5% from 1 April 2015 (i.e. the date of the termination letter sent by the Club) shall apply on the amount liquidated to the Club*”.
61. The Club concluded with a reference to Art. 17(3) of the FIFA RSTP, which deals with the imposition of sporting sanctions when a player is found to have breached his contract during the protected period, requesting the Panel to issue a ban upon the Player.

5. Palmeiras’ Liability

62. The Club submitted that liability in these circumstances according to Art. 17(2) of the FIFA RSTP and the jurisprudence of the CAS and the FIFA DRC extends to the Player’s new club irrespective of whether the contractual breach was induced by the said club. The Club went on to state as follows, “*liability under article 17.2 of the FIFA RSTP is of an objective nature and does not require that the new club be considered as co-responsible of the player’s breach. As long as a club can be identified as the “new club” of the player, joint liability can be established*”.
63. In conclusion, the Club submitted that in light of the above, “*Palmeiras is to be found jointly liable with the Player for the unjustified unilateral termination of the Player and, hence, for the payment of any compensation due to Sharjah as a consequence of such unilateral termination of the Contract*”. In addition, the Club again asked for sporting sanctions to be issued against Palmeiras, pursuant to Art. 17.4 of the FIFA RSTP.

B. The Player's Submissions

In summary, the Player submitted the following in support of his Answer to the Appeal of the Club:

1. The facts that led the Player to file a claim against the Appellant before FIFA

64. The Player submitted that after playing for more than a year and being one of the most valuable and important players during the 2013/2014 season he suffered a severe injury in a friendly match against the Qatari club, Al-Arabi Sports Club. What followed was the non-payment of his salary without any notice or "*legal or contractual basis*".
65. Further, the Player submitted that the Club failed to pay his salary for December 2014 and January and February 2015. The Club also failed to comply with other contractual obligations including accommodation and utility costs, flight costs and health care and medical costs pursuant to articles 2.2, 2.4, 2.5 and 2.6 of the Contract.
66. Consequently, the Player put the Club in default and requested the payment of the outstanding amount of USD 338,086 within 5 business days as of receipt of the notification, subject to the termination of the Contract. This was received by the Club on the same day (6 March 2015). This correspondence was sent by his authorised lawyer, pursuant to the PoA which was sent to the Club with the letter of default.
67. After the 5 days on 11 March 2015, the Club offered a settlement proposal to the Player's lawyer which involved paying only USD 304,752 instead of the full amount of USD 338,086. This payment was to be in five instalments. The Player replied on the same day insisting that he would only accept the full amount and payment should not exceed three instalments. A further condition was that he could finish his medical treatment in Brazil since he was bearing all these costs. On 13 March 2015, the Club replied and did not deviate from its previous offer. They also refused the Player's request to continue his recovery back home in Brazil. This correspondence concluded with the Player again reiterating his position as per the 11 March 2015 email. He received no response and according to the Player, it was clear that "*the parties have reached an impasse and that the negotiations would no longer move forward*".
68. Finally, the Player submitted that 10 days had passed from the default notice on 6 March 2015 before he finally notified the Club and terminated the Contract with just cause according to Art. 17 of the FIFA RSTP on 16 March 2015.

2. Response to the Club's arguments

i. Alleged lack of PoA

69. The Player submitted that the Club's claims in relation to this particular matter were false. In fact, the PoA did accompany the default communication of 6 March 2015. Further, the Player submitted that Mr. Rui Fernando Almeida Dias dos Santos Junior (one of the attorneys listed

in the PoA) signed all communications including the default notice and the notice of termination of the Contract and the claim filed before the FIFA DRC.

70. As to the claim by the Club that the PoA lacked validity because it was not issued in front of a notary or a public offer, the Player rejected this on the grounds that under Brazilian law and FIFA and CAS regulations this is not required. The Player concluded on this point that *“the appellant failed to demonstrate any illegality concerning the power of attorney granted by the Player”* and therefore, *“shall be disregarded and, thus, the decision passed by the FIFA DRC shall be entirely upheld”*.

ii. Alleged inappropriate time limit

71. The Player submitted that *“the Appellant was undoubtedly granted with more than enough time to cure the default”* and stressed that *“the Appellant had 10 days to regularize the default”*.

72. Further, the Player submitted that cases cited by the Club (FIFA DRC Ref. No. 0613151a and CAS 2006/A/1180) even support the Player’s position.

73. Finally, on this point the Player concluded *“it is indisputable and unquestionable that the Appellant had enough time to remedy the default”*.

iii. Alleged bad faith

74. The Player submitted that on this point the Club could not be more wrong. In support of this assertion the Player submitted that he was patient and only acted after three months had elapsed without pay. He then gave the Club a further 10 days to remedy this breach but to no avail as negotiations proved fruitless and had ceased by the time the notice of termination occurred. Therefore, there was no bad faith on the part of the Player.

iv. The Club’s letter of 19 March 2015

75. The Player submitted that he never received this letter. Further, the Player submitted that the supposed cheque allegedly enclosed to the letter only amounted to USD 277,352. The Player concluded on this point that in any event this shows that no settlement was reached by the parties (the Player had made it clear he would only settle for the total amount outstanding and not a lesser amount) and that the Player behaved in accordance with the principle of good faith.

v. The Counterclaim of the Appellant

76. The Player submitted that as established by FIFA Regulations, he firstly waited to complete 3 consecutive months without pay before sending the default notice and then gave the Club another 10 days to act. The failure by the Club to remedy the breach gave rise to the Player finally invoking Art. 14 of the FIFA RSTP and *“rightfully”* terminating the Contract with just cause.

77. In complete contrast to the Club's position, the Player concluded on this point that "*as opposed to what has been alleged by the Appellant, there is no irregularity or illegality in the actions taken by the Player, since he has always acted in full compliance with the terms and conditions of the Foreign Player Contract and applicable regulations*". Consequently, if he was complying fully with the FIFA Regulations any counterclaim must fail.

C. Palmeiras' Submissions

In summary, Palmeiras submitted the following in support of its Answer to the Appeal of the Club:

78. Palmeiras submitted that they were not the only club interested in signing the Player after the termination of the Contract with the Club. Palmeiras pointed to the Player receiving medical treatment from Brazilian club Vasco da Gama with a view to them signing him. However, this did not materialise as the parties could not agree personal terms. In light of this, Palmeiras maintained that there was no agreement prior to the Player's termination with the Club as it can be seen that another club was close to signing him.
79. Further, Palmeiras reiterated that it was only after the termination of the Contract that they approached the Player.

Grounds for termination of the Contract

i. As to just cause

80. Palmeiras submitted that it is clear that the Club did not meet its contractual obligations to the Player in terms of salary, medical costs and costs in relation to accommodation and flight tickets. Further, the Player put the Club in default for such breaches which were not remedied. Palmeiras also pointed out that the Club is a major Asian club and as such it is not credible to argue that the reason the Player's salary was not paid on time was because there were problems opening a bank account. Palmeiras went on to say that "*all the necessary measures to ensure the Player was timely paid*" should have been adopted.
81. Palmeiras concluded on this point by stating "*as per the evidence provided by all parties, it is possible to infer that the termination of the Employment Agreement was made with just cause, which leads to the conclusion that no compensation is owed to Al Sharjah by Palmeiras*".

ii. As to the PoA

82. Palmeiras submitted that it was only when the Player terminated the Contract that the Club raised the issue relating to the PoA. They stated that during negotiations they never questioned the legal capacity of the Player's lawyers to act on his behalf and as such this contradictory position is clearly bad faith by the Club.

83. Further, Palmeiras cited the Rules governing the Procedures of the FIFA Players' Status Committee and the FIFA DRC (the "Procedural Rules") highlighting that *"the only condition precedent for a power of attorney is that it is made in written form, pursuant to Article 6.2"*.
84. In any event, the PoA granted by the Player bore the same date as the letter terminating the Contract, was duly signed by the Player, bore the place and date where it was signed and grants *ad judicia et extra* powers to the appointed attorneys. Palmeiras therefore concluded by stating: *"Accordingly, the power of attorney is valid and any argument to the contrary shall be set aside"*.
- iii. *As to the time limit for payments*
85. Palmeiras also cited the awards *CAS 2006/A/1180* and *CAS 2014/A/3584* to make the point that a warning had to be given before terminating a contract for just cause. This was unquestionably the case in this matter giving the Club 5 business days and overall, after further correspondence from the Player on 11 March 2015, *"at least 9 regular days"* to cure the breach.
86. Palmeiras concluded on this point that the Club used a *"smokescreen"* in its submissions about the *"power of attorney"* and *"lack of reasonable time"* in order to try *"to deviate the Hon. Panel from the fact that Al Sharjah breached its contract with the Player"* and accordingly, *"they should be disregarded in full"*.
- iv. *The clear absence of inducement by Palmeiras*
87. Palmeiras argued that an inducement *"is an influence that causes and encourages a conduct"* as stated in the award *CAS 2007/A/1358*.
88. Further, *"the inducing party must: (i) have an intention to induce a breach of the contract (...) and (ii) actually realize that it will have this effect and it does not matter if the inducing party ought reasonably to have this realization"* (as per LEWIS/TAYLOR, Sport: law and Practice, 2nd Edition, Tottel publishing 2008, p. 701).
89. Palmeiras also referred to Articles 17(4) and 17(5) of the FIFA RSTP, which details the consequences of terminating a contract without just cause as follows:
- "4. *In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach (...).*
5. *Any person subject to the FIFA Statutes and regulations who acts in a manner designed to induce a breach of contract between a professional and a club in order to facilitate the transfer of the player shall be sanctioned"*.
90. Palmeiras submitted that despite the presumption which is firmly set aside in light of the evidence *"at no time any contact approach or proposal was made to the Player by Palmeiras while the Player was under contract with Al Sharjah"*. Further, Palmeiras submitted that *"the characterization of an*

inducement to breach a contract lies both on the inducing party's intention of preventing the contracted player from carrying out the performance of his contract and taking direct action to induce non-performance by such player. None of these circumstances were met".

91. Palmeiras also referred to the award *CAS 2005/A/916* to contrast their behaviour to that of AS Roma in that case and submitted that *"at no time Palmeiras took "direct action" to effectively induce the Player to terminate his contract"*.
92. Palmeiras also cited the awards *CAS 2005/A/902* and *CAS 2005/A/903*; and *TAS 2004/A/708*, *TAS 2004/A/709* and *TAS 2004/A/713* to emphasise the point that whereby AS Roma effectively took action and induced the player in that case to breach his contract, by means of presenting an offer – demonstrating previous interest – and signing a contract afterwards. This cannot be said of Palmeiras in the present case.
93. Palmeiras went on to say that *"Palmeiras never engaged in any action capable of inducing the Player to terminate the Employment Agreement and all communication between Palmeiras and the Player started after such termination had occurred: no contract offer or any other exchange of information happened before 16 March 2015"*.
94. To further emphasise this point, Palmeiras also cited the awards *CAS 2007/A/1358*, *CAS 2013/A/3365* and *CAS 2013/A/3366* highlighting that *"CAS jurisprudence has repeatedly pointed out that the absence of a conduct by a club cannot suppose that such club has induced a player to breach a contract"*.
95. Palmeiras referred to para. 71 in the award *CAS 2007/A/1358* which states *"[a]s AFC Rapid has rebutted the presumption to which it was subject and given the lack of inducement of the breach of contract by the Player, there is no reason to impose any sporting sanctions against Rapid, as was correctly decided by the DRC"*. Palmeiras submitted that the present case is analogous to this in that *"the Player chose, alone, to terminate the Employment Agreement, engaging talks with Palmeiras only after that: moreover, Palmeiras was never involved in the termination of the employment relationship between Al Sharjah and the Player"*.
96. Palmeiras also made the point that the remuneration of the Player would earn with them was less than the Player would have received at the Club, further highlighting the lack of premeditation in what transpired.
97. Finally on this point, Palmeiras cited the Procedural Rules and in particular Article 12.3 as well as Article 8 of the CC. Art. 12.3 of the Procedural Rules states that *"Any party claiming a right on the basis of an alleged fact carries the burden of proof"* and Art. 8 of the CC states that *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from the facts"*. In this regard Palmeiras submitted that *"Al Sharjah has failed to present any evidence of the alleged inducement by Palmeiras"* and therefore the above burden has not been met.
98. Palmeiras concluded by requesting that the Panel *"recognize Palmeiras' absence of liability in connection to the early termination of the Employment Agreement, and thus set aside in full the appeal filed by Al Sharjah"*.

v. Alternatively – Compensation parameters

99. Palmeiras submitted that in the event that the Panel finds in favour of the Club, their request for compensation “*has no legal basis*”. Palmeiras stated that the calculation presented by the Club “*is a clear attempt of Al Sharjah to enrich itself unlawfully, which cannot be tolerated under general principles of Law and accordingly to Swiss Law, especially section three of the Swiss Code of Obligations*”.
100. Palmeiras took exception to the Club’s approach in this regard citing the award *CAS 2009/A/1880 & 1881* which make clear that “*at no time such legal disposition calls for all criteria to be considered as a whole*”.
101. Further, “*Art. 17.1 does not require the judging authority – be the DRC or the CAS – to necessarily evaluate and give weight to any and all factors listed therein. Depending on the particular circumstances of each case and on the submissions of the parties, any of those factors may be relevant or irrelevant to the final decision, influencing or not the discretionary assessment of the compensation due*”.
102. Palmeiras stated that secondly, the figures indicated by the Club were essentially wrong based on the criterion presented by them. Whereas the Club sought to claim USD 215,887 applying its own criteria it should be USD 138,105 (transfer value of USD 323,830 amortized by 465 days until the termination of the Employment Agreement).
103. Palmeiras concluded with reference to the *Webster* case (*CAS 2007/A/1298 & 1299 & 1300*) and further reiterated that in keeping with this judgement “*no regulation within the FIFA or Swiss law system allows a party to unlawfully enrich itself*”.
104. Finally, Palmeiras submitted that all arbitration costs be borne by the Appellant pursuant to Article 173 of the CO and Article R64.5 of the CAS Code. In a similar vein Palmeiras also requested that pursuant to Article R64.5 of the CAS Code the Club be ordered to pay a contribution towards the legal expenses and other expenses incurred by them in connection with these proceedings as well as those before the FIFA DRC equating to 10% of the total amount claimed by the Club, or such other amount as the Panel deems adequate.

VI. JURISDICTION

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

“An appeal against a 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”.

106. The jurisdiction of the CAS, which is not disputed, derives from Article 67.1 of the FIFA Statutes (2015 edition) as it determines that:

“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”.

107. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the Parties.
108. It follows that the CAS has jurisdiction to decide on the present dispute.

VII. ADMISSIBILITY

109. The Statement of Appeal, which was filed on 11 April 2018, complied with the requirements of Articles R47, R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee.
110. It follows that the Appeal is admissible.

VIII. APPLICABLE LAW

111. 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

112. Article 57(2) of the FIFA Statutes provides the following:

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

113. The Parties submitted that the applicable regulations are those of FIFA, with Swiss law applying subsidiarily.
114. The Panel considered whether Brazilian law would be applicable to the PoA, but noted that none of the Parties provided the Panel with citations or extracts of Brazilian law, accordingly, the Panel is satisfied that the applicable law in this appeal is the various FIFA Statutes and Regulations, with Swiss law applying on a subsidiary basis.

IX. MERITS

A. The main issues

115. The Panel notes that the main issues before it are:

- i. Which Party breached the Contract and was this with or without just cause?
- ii. Was effective notice given?
- iii. What are the financial and/or sporting implications of the breach, if any?
- iv. What is the position of Palmeiras?

The Panel will consider each of these in turn.

i. Which Party breached the Contract and was this with or without just cause?

116. The Panel noted that there was no real dispute between the Club and the Player regarding how the Contract operated between them when the Player got injured and required an operation and when he left the UAE to return to Brazil permanently on 15 March 2015. The Club did not pay the Player his wages for December 2014, nor January or February 2015. The Player claimed additional sums were due to him for his accommodation and reimbursement for flights he'd taken and medical bills he'd paid himself in Brazil. These latter amounts were disputed by the Club - not that he was entitled to reimbursements, but the amounts claimed.
117. The Club argued that these were not sufficient to provide the Player with just cause and (in addition to the fact that the Club also disputed the validity of the notice given by the Player) it submitted that it was the one to terminate the Contract, with just cause on 1 April 2015. The Player argued that the Contract had already been terminated by that date.
118. The Panel notes that the Contract was terminated on 16 March 2015 by the Player. Whether he had just cause or not was the issue at hand. The answer to that is two-fold. Did the Player have grounds to terminate the Contract and then, did he terminate it properly. This latter issue will be examined below.
119. As for the grounds to terminate, the Panel can put to one side any arguments over reimbursements of expenses and the like. There were 3 monthly salaries due and owing to the Player by the Club at the time of termination. The Parties have advanced a number of CAS awards in the matter at hand, these consistently demonstrate that such behaviour by a club is deemed as providing a player with just cause to end his playing agreement. However, what staggered the Panel was the fact that the Club had taken out a policy of insurance to cover the possibility of the Player getting injured, so the insurance company would provide the money to pay his wages. In the case at hand, the Club decided to pay a fee to bring in another player and used the insurance monies to pay for that new player and simply stopped paying the Player.

120. The Panel notes from the cited jurisprudence that before a player acts upon such breach by a club, he should give appropriate warnings or notice.

ii. Was effective notice given?

121. The Panel notes that the Club challenged the effectiveness of the notice given by the Player in a number of ways: (1) that the PoA was either defective and/or insufficient for the Player's lawyer to terminate the Contract; (2) the period of notice was too short; and/or (3) the Player acted in bad faith, as the Club had anticipated that the settlement talks would conclude successfully.

122. There is no dispute that the PoA was entered into between the Player and his lawyers. However, the Club claimed that they only saw it after the Player had turned to FIFA (so after the Player's lawyer had sent the termination letter), alleging that he did not have any PoA at the termination date and that the PoA was later back-dated to 6 March 2015. The Club also claimed that the PoA was not drafted sufficiently wide enough to empower the lawyer to terminate the Contract. The Club submitted that lawyers can't terminate contracts on their own. If the negotiations had been allowed to conclude, there may have been a settlement agreement, for example. No lawyer would sign this for a player, it would always be the player that signs such a document.

123. The Panel notes that the PoA is dated 6 March 2015 and says, in part:

*“granting them the powers of ad judicia at extra clause and those necessary to represent the **GRANTOR** as plaintiff or defendant; to admit, to acknowledge the validity of the request to compromise, waive and withdraw; to receive; to give release, and sign commitment; to delegate all or part of the powers granted; and to do everything that may be necessary for the true and faithful performance of this power of attorney, specially to defend **GRANTOR's** interests under the procedures before FIFA, the Court of Arbitration for Sports and football clubs, regarding the Foreign Player Contract entered by and between the **GRANTOR** and Sharjah Football Club in June 22 2013”.*

124. The Panel notes that the Player states this was attached to the first notice given on 6 March 2015, however the Club denies this. The Panel noted from the FIFA file, the letter of 6 March 2015 was attached, without exhibits, as an exhibit itself to the Player's Claim before FIFA and the PoA was a separate exhibit to the Claim. The Player also submitted that the phrase *“as well as the enclosed notification”* in the covering email his lawyer sent to the Club with the letter apparently demonstrated that the PoA was enclosed. However, it could be that the email was simply referring to the letter being enclosed. Ultimately, the Panel was not able to determine when the PoA was sent to the Club.

125. That said, the Panel does not believe that the receipt of the PoA is critical. The Club did not produce any legal authority or rule of law (be it in Switzerland or Brazil) that demonstrated that a lawyer requires a power of attorney to represent a footballer. The Panel is aware of FIFA's Procedural Rules, which state a power of attorney is required before it, however, the issue at hand relates to the correspondence the lawyer was sending to the Club before the FIFA procedure commenced. Indeed, in many jurisdictions around the world, no such requirement exists, rather there will be a standard retainer (contract) between the client and the lawyer. The

Player was clear at the hearing that he instructed the lawyer to represent him and was aware of the correspondence passing between the lawyer and the Club.

126. Further, the Panel notes that the Club had no issue in corresponding with the lawyer between 6 and 16 March 2015 or thereafter. In conclusion, the Panel determines that the lawyer was entitled to correspond on behalf of the Player and to issue a valid termination letter on his behalf on 16 March 2015.
127. The second issue raised by the Club is the length of the notice. The Club states that it was given just 5 days, however, the Player points out that there were 10 days between the first notice and eventually terminating the Contract. The Player also stated at the hearing that he complained orally to the Club before involving his lawyers.
128. The Panel notes the Club's reference to both Article 12bis and 14bis of the FIFA RSTP. Neither provision is relevant to the dispute at hand (and indeed, Article 14bis has only been in existence since 1 June 2018), but the Panel notes the point that FIFA is expecting a warning of 10 or 15 days with overdue payables. However, the Club relied upon certain CAS awards where the period of notice was less than 10 days, such as *CAS 2006/A/1180*. The Panel determined in the case at hand that a sufficient period of notice was given to the Club to pay the sums due. At the very least, it should have used the insurance pay-out to pay the 3 months' wages.
129. The final issue regarding the notice was whether one would be acting in bad faith if they commenced negotiations, but then terminated the contract when those negotiations were practically concluded.
130. The Panel noted that the Club and the Player did attempt to negotiate a settlement to the dispute once the notice had been given. However, they did not seem particularly close to a settlement. There were still issues on the amount the Club felt was due, the instalments for making payments had not been agreed, nor was it agreed where the Player could be treated for his ongoing injury. The Panel actually noted a sign of good faith by the Player's lawyer. When he went back to the Club's lawyers with his view on these 3 issues on 13 March 2015, he reminded them that the 5 days' notice period would expire that very day. The Club ignored that fact and had not responded by 16 March (3 days later), so the Player terminated the Contract. The Player gave the Club a second chance, which it failed to take. That is not bad faith and the Panel sees no reason for the Player's actions to invalidate his notice. He had just cause to terminate the Contract and he did just that after giving valid and appropriate notice to the Club, which it failed to act upon. Accordingly and in summary, the Panel concludes that the Player had just cause to terminate the Contract, and the Club were therefore in breach of contract without just cause.

iii. What are the financial and/or sporting implications of the breach?

131. The Panel noted that the Club did not plead in the alternative, nor produce any new evidence that, should the Panel determine that the Player had just cause to terminate the Contract (as it has), the amounts awarded by FIFA should in some way be reduced. Whilst at the hearing, it submitted that both contracts the Player entered into after his time at the Club (with Palmeiras

and Vasco da Gama) should be taken into account, it appears to the Panel that the FIFA DRC was aware of both of these new contracts.

132. The Panel sees no reason to depart from the calculation made by the FIFA DRC in the Appealed Decision.
133. Following the determination above that the Player had just cause to terminate the Contract, the Club's requests for sporting sanctions against the Player are rejected too.

iv. What is the position of Palmeiras?

134. The Panel notes that it has already determined that the Player terminated the Contract with just cause, as such, Palmeiras has no responsibility under Article 17 of the RSTP and all the Club's prayers for relief against it are therefore rejected.

B. Conclusion

135. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel finds that:
 - a) The Club's appeal is dismissed in its entirety;
 - b) The Appealed Decision is confirmed; and
 - c) All other claims or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 11 April 2018 by Al Sharjah Football Club against the decision rendered by the FIFA Dispute Resolution Chamber on 30 June 2017 is dismissed.
2. The decision rendered by the FIFA Dispute Resolution Chamber on 30 June 2017 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.