



Arbitration CAS 2018/A/5774 Shabab Al Ahli Dubai Club v. Jociel Ferreira da Silva, award of 15 November 2018

Panel: Prof. Petros Mavroidis (Greece), Sole Arbitrator

Football

Termination of the employment contract

Need to specify a request for relief

Burden of proof regarding a club's payment obligation towards a player

Right to be heard and de novo hearing

1. Requests for relief must be specified with enough precision in order for the Respondent to reply accurately to all parts of the claim. They must be worded in such a way that the appellate authority may, where appropriate, incorporate them to the operative part of its own decision without modification. If the main requests for relief contained in the appeal brief are too vague, the adjudication body could be exposed to award more or something else than what is sought, in violation of the principle *ne eat iudex ultra petita partium*.
2. The concept of the “burden of proof” consists of two requisites: (a) the “burden of persuasion” and (b) the “burden of production of the proof”. In order to fulfil the burden of proof, the relevant party must provide the panel with all relevant evidence that it holds, and with reference thereto, convince the panel that the facts that it pleads are true, accurate and produce the consequences envisaged by that 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. In this regard, a club that, apart from its own words, did not supply any actual evidence which could release it from its payment obligations towards the player has not fulfilled its burden especially where the player was able to demonstrate that the appellant was the legal successor of his previous employer and the appellant club was not able to counter such demonstration.
3. In its capacity of legal successor of the previous club of the player, the appellant club is the successor of all the notifications sent by FIFA during the proceedings before it. If the club did not establish that it was not aware of the proceedings before FIFA but chose not to act upon the player's claim filed before FIFA, the club cannot reasonably claim that its right to be heard was not respected. In any event, in light of its *de novo* competence pursuant to Article R57 of the CAS Code, which grants a CAS panel the power to review both the facts and the law, any possible prejudice suffered by the club before FIFA can be cured by virtue of an appeal to CAS, in which the club is eventually granted a full right to be heard.

I. PARTIES

4. Shabab Al Ahli Dubai Club is a football club with its registered office in Dubai, United Arab Emirates (“UAE”). It is a member of the United Arab Emirates Football Association (“UAEFA”), itself affiliated with the Fédération Internationale de Football Association (hereinafter “FIFA”) since 1974.
5. Mr Jociel Ferreira da Silva (the “Player”) is a professional football player of Brazilian nationality.

II. FACTUAL BACKGROUND

A. Background facts

6. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions and evidence adduced. References to additional facts and allegations found in the Parties’ written submissions and evidence will be made, where relevant, in connection with the legal analysis that follows. 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 his Award only to the submissions and evidence he deems necessary to explain his reasoning.

B. The employment contract signed by the Player

7. On 3 August 2013, the Player entered into an employment contract with Al Ahli Football Club, a football club with its registered office in Dubai, UAE. This contract was a fix-term agreement, valid from 7 August 2013 until 6 June 2016 (the “Employment Contract”).
8. According to Article 3 of the Employment Contract, the Player was entitled to receive, inter alia, a monthly salary of USD 100,000, to be paid “*at the end of each Gregorian month*”, as well as the following amounts as sign-on fees:
 - USD 500,000, due on 1 March 2014;
 - USD 500,000, due on 1 June 2014;
 - USD 500,000, due on 1 March 2015;
 - USD 500,000, due on 1 June 2015;
 - USD 500,000, due on 1 March 2016;
 - USD 500,000, due on 1 June 2016.
9. On 30 May 2016, the Player and Al Ahli Football Club signed a Termination Agreement, whereby they agreed to put an immediate end to their employment relationship (the “Termination Agreement”). This document provides, so far as relevant to the dispute, as follows:

“(…)

4. *The Player declares that he has received all financial dues and salaries until the date of signature of this Agreement, The Player waives the others amount concerning the others seasons provide by the Employment Agreement.*
5. *The Al Ahli Club is totally acquitted from any more financial obligation related to the Player in accordance to the contract that was signed between the Al Ahli Club and the Player on the date 05-08-2013.*
6. *Thus with the signature of this Termination Agreement, all duties and financial obligations owed by either party to the other shall be deemed to have been fulfilled and neither party shall have any financial or judicial claims against the other in relation to the Employment Agreement.*

Dispute Settlement and Applicable Law

7. *The present Agreement is governed by the FIFA regulations.*
8. *Any dispute arising out of, or related to the present Agreement shall exclusively be referred to the FIFA competent bodies”.*

C. The Proceedings before the FIFA Dispute Resolution Chamber

10. On 3 February 2017, the Player lodged a claim before FIFA against Al Ahli Football Club, requesting that the club be ordered to pay in his favour the total amount of AED 10,561,936.68 as outstanding remuneration, “*due upon execution of the termination agreement*”. Furthermore, the Player requested 5% interest *p.a.* on the amount of AED 10,561,936.68 as from 30 June 2016 until the date of effective payment, as well as a penalty of 10% of the amounts due “*as compensation for the bad faith and the financial losses brought to the Player due to the continued default*”.
11. In its decision dated 15 February 2018 (the “*Appealed Decision*”), the FIFA Dispute Resolution Chamber (the “*DRC*”) considered that the following facts had been established:

“(…)

6. *In his claim, the player explains that ‘as a compensation for signing the termination agreement and releasing Al Ahli from its future financial obligations’, he received a bank check dated 30 June 2016 for the amount of AED 10,528,452 from the club, ‘to complete the payment of several past amounts due in connection with the employment agreement’. In this respect, the player submitted a picture of said check, holding the player’s and the club’s name and mentioning the total value of AED 10,528,452.*
7. *Furthermore, the player explains that the club acknowledged its debt towards the Brazilian Tax Office, by means of a letter dated 26 July 2017 submitted by the player and bearing the club’s letterhead and signed by its sports director, with the following holdings: ‘Al Ahli declares that the amount of AED 10,528,452 regards the reminiscent amount of ‘Jociel de Silva Ciel’ employment agreement which finished on 30 May 2016’.*
8. *Moreover, the player states that on 30 June 2016, he tried to cash the check, but was informed by the bank ‘Emirates NBD’ that the account ‘was frozen and without accounts’ and submitted a copy of said declaration of the Emirates NBD dated 2 July 2016.*

9. *Subsequently, the player explains that he negotiated with the club on an amicable solution, as the club held that due to financial reasons, it could only comply with its entire financial obligations on 15 September 2016 at the earliest. On 2 July 2016, the player and the club agreed upon a solution, whereby the player would receive 5 different bank checks, in the total amount of AED 10,561,936.68, to be paid as follows:*
- *AED 561,936.68 on 20 August 2016;*
 - *AED 2,765,312.50 on 15 September 2016;*
 - *AED 367,500 on 15 September 2016;*
 - *AED 3,192,187.50 on 15 September 2016;*
 - *AED 3,675,000 on 15 September 2016.*
10. *Furthermore, the player explains that the difference in the amounts of AED 10,528,452 and the amount of AED 10,561,936.68 'pertains to an amount previously retained by the club in connection with the player's former car, which have then already been returned to Ahli'.*
11. *In addition, the player argues that the club informed him a couple of days before 20 August 2016, the day on which the first check would have been due, that he had to wait until 15 September 2016, 'to present the five checks all together'. The player further explains that on 15 September 2016, when he tried to cash the five checks, he was again informed by the bank that the checks had 'bounced back'.*
12. *After having put the club in default on 26 September 2016, proving a 10 days' deadline to pay the amount of AED 10,561,936.68, the player holds that he did not receive said payment, however only a couple of 'promises' from the club's financial manager that the club 'would pay next week'. Only on 16 December 2016, he received an answer in writing from the club, which document was submitted by the player to FIFA, in which the club requested the player to return the checks and to grant a new deadline until 31 January 2017 to pay the amount of "AED 10,528,452".*
13. *Moreover, the player again put the club in default on 26 December 2016, granting a new deadline for the club to pay the amount of AED 10,561,936.68, however to no avail. Also, when the player tried to cash the checks again on 11 January 2017, the checks were again refused by the bank 'because the signatory was not authorised'".*
12. The DRC observed that Al Ahli Football Club did not reply to the claim filed by the Player before FIFA and, therefore, considered that it had accepted the Player's allegations as being true. In addition, the DRC noted that the Player and Al Ahli Football Club did not agree in writing upon an alleged payment of a compensation following the signature of the Termination Agreement. However, it found that the Player had substantiated his allegations by submitting several documents, which convincingly demonstrated that the club acknowledged the existence of a debt to him in the amount of AED 10,528,452.
13. The DRC rejected the Player's request for a penalty of 10% of the amount to be awarded as the Player failed to submit any evidence that he was entitled to such an additional payment or that such a penalty had been contractually agreed upon between the Parties.
14. As a consequence, by the Appealed Decision, the DRC decided the following:

“(…)

1. *The claim of the Claimant, Jociel Ferreira da Silva, is partially accepted.*
2. *The Respondent, Shabab Al Ahli Dubai Club (formerly known as Al Ahli Football Club), has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, the amount of Emirati Dirham (AED) 10,528,452, plus 5% interest p.a. as from 30 June 2016 until the date of effective payment.*
3. *In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA’s Disciplinary Committee for consideration and a formal decision.*
4. *Any further claim lodged by the Claimant is rejected.*
5. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
6. *The Claimant is ordered to return to the Respondent, within 30 days as from the date of notification of this decision, the following cheques:*
 - *the cheque amounting to AED 10,528,452 and dated 30 June 2016;*
 - *the cheque amounting to AED 561,936.68 and dated 20 August 2016;*
 - *the cheque amounting to AED 2,765,312.50 and dated 15 September 2016;*
 - *the cheque amounting to AED 367,500 and dated 15 September 2016;*
 - *the cheque amounting to AED 3,192,187.50 and dated 15 September 2016;*
 - *the cheque amounting to AED 3,675,000 and dated 15 September 2016”.*
15. It is undisputed that the DRC did not specifically address the issue of whether Shabab Al Ahli Dubai Club is the same entity as Al Ahli Football Club or whether it is its legal successor. It is only in the front page and in the operative part of its Appealed Decision that the DRC referred to Shabab Al Ahli Dubai Club as being “*formerly known as Al Ahli Football Club*” without further explanation.
16. On 14 May 2018, the Parties were notified of the Appealed Decision.

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 4 June 2018, Shabab Al Ahli Dubai Club filed a statement of appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). The appeal was directed against the Appealed Decision. In its statement of appeal, Shabab Al Ahli Dubai Club requested that this procedure be referred to a Sole Arbitrator and suggested Mr Jirayr Habibian to be appointed for this purpose.
18. On 11 June 2018, the Player accepted the application of Shabab Al Ahli Dubai Club for a Sole Arbitrator, but did not agree with the nomination of Mr Jirayr Habibian.

19. On 12 June 2018, the CAS Court Office observed that the Parties agreed to refer the matter to a Sole Arbitrator and informed them that the latter would be appointed by the President of the CAS Appeals Arbitration Division or her Deputy.
20. On 14 June 2018, Shabab Al Ahli Dubai Club filed its appeal brief in accordance with Article R51 of the Code.
21. On 18 June 2018, the Player filed an application for a 5-day extension of his deadline to file his answer, which was granted the following day by the CAS Court Office on behalf of the Secretary General, pursuant to Article R32 of the Code.
22. On 3 July 2018, the CAS Court Office advised the Parties that the President of the CAS Appeals Arbitration Division had appointed Mr Petros C. Mavroidis, Professor, Commugny, Switzerland, as Sole Arbitrator.
23. On 4 July 2018, the Parties were advised that Mr Patrick Grandjean, Attorney-at-law, Lausanne, Switzerland had been appointed as ad hoc clerk in this procedure.
24. On 13 July 2018, the Player filed his answer in accordance with Article R55 of the Code.
25. In reply to the request of the CAS Court Office, the Player and Shabab Al Ahli Dubai Club confirmed on 20 and 23 July 2018, respectively, that they preferred for the matter to be decided solely on the basis of the Parties' written submissions. However, Shabab Al Ahli Dubai Club requested a second round of submissions, to which the Respondent objected. The application at issue was eventually denied.
26. On 31 July 2018, on behalf of the Sole Arbitrator, the CAS Court Office submitted to the Parties a series of questions, to which they answered (in writing) in a timely manner.
27. The same day, the CAS Court Office advised the Parties that the Sole Arbitrator deemed himself sufficiently well-informed to decide on the dispute without the need to hold a hearing.
28. On 2 October 2018, the CAS Court Office sent the parties the Order of procedure which was returned duly signed by the Respondent and the Appellant on 2 and 8 October 2018, respectively.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

29. In its appeal brief, Shabab Al Ahli Dubai Club submitted the following requests for relief:

“(…)

i) To confirm CAS has jurisdiction over the present dispute;

ii) *To admit the Appeal of Shabab Al Ahli Dubai Club against the decision adopted by FIFA on 15 February 2018 (ref. No. 17-00264/pam);*

On a subsidiary basis

iii) *In the unlikely event of prayers b), c) and d) above being denied, declare the impossibility for the Appellant to comply with the FIFA decision involved by the Respondent's conduct contra the FIFA decision;*

In any and all the above-mentioned cases

iv) *To order the Respondent, Jociel Ferreira da Silva, to bear in full the costs of this arbitration proceeding;*

v) *To order the Respondent, Jociel Ferreira da Silva, to bear the legal costs and expenses borne by the Appellant, Shabab Al Ahli Dubai Club, in relation to this appeal, in an amount to be determined at the discretion of the Sole Arbitrator;*

vi) *Grant any other relief or orders it deems reasonable and fit to the case at stake”.*

30. The submissions of Shabab Al Ahli Dubai Club, in essence, may be summarized as follows:

- Shabab Al Ahli Dubai Club and Al Ahli Football Club are two different legal entities. The first club is not the legal successor of the second. The Appealed Decision was passed against the wrong party, as the Player was only contractually bound to Al Ahli Football Club.
- Shabab Al Ahli Dubai Club is the new corporate name of Al Shabab Arabi Dubai FC, which has nothing to do with Al Ahli Football Club.
- Shabab Al Ahli Dubai Club is now the new employer of several players formally registered with Al Shabab Arabi Dubai FC. Its logo and name have common features with the ones of Al Shabab Arabi Dubai FC and its team is using the facilities and structures of Al Shabab Arabi Dubai FC. Both clubs share the same colour and have the same history as *“the year of Shabab Al Ahli's creation is the same as the old club Shabab Al Arabi, that is on 1958 (see Exhibit SA_6 the logos of both Clubs)”*.
- The Player has not filed any document establishing that Shabab Al Ahli Dubai Club contractually agreed to become liable to all the creditors of Al Ahli Football Club, in particular to the Player.
- Shabab Al Ahli Dubai Club was not a party to the proceedings before the DRC. It was therefore deprived of its right to be heard.
- The Player failed to comply with paragraph 6 of the operative part of the Appealed Decision. *“His conduct contra the FIFA decision involves the impossibility for [Shabab Al Ahli Dubai Club] to comply with the FIFA decision”*.

B. The Respondent

31. The Player submitted the following requests for relief:

“the Respondent hereby requests this honorable Court to:

- a) Accept and receive this Answer;*
- b) Fully reject the request for relief placed by [Shabab Al Ahli Dubai Club] in its Appeal Brief;*
- c) Uphold the FIFA Decision;*
- d) Condemn [Shabab Al Ahli Dubai Club] to bear all the costs associated with the present procedure and, due to its blatant bad faith, contribute with CHF 15,000 (fifteen thousand Swiss Francs) towards the [Player's] legal costs and expenses; and*
- e) Make all documents and information pertaining to this case public and available upon issuance of the award”.*

32. The Player's submissions, in essence, may be summarized as follows:

- On 15 May 2017, Shabab Al Ahli Dubai Club, Al Shabab Arabi Dubai FC and Al Ahli Football Club merged into one entity following a *“decree of His Highness Sheik Mohamed Bin Rashid, Vice President and Prime Minister of the United Arab Emirates and Ruler of Dubai”*. As a consequence, Shabab Al Ahli Dubai Club is the legal successor of Al Ahli Football Club.
- The fact that Shabab Al Ahli Dubai Club is the legal successor of Al Ahli Football Club is substantiated by the following evidence:
 - The official website of Shabab Al Ahli Dubai Club expressly confirms that this club is the result of the merger of *“Al Shabab Al Arabi Club, Al Ahli Club & Dubai Club into one entity called 'Shabab Al Ahli Dubai FC”*.
 - The FIFA Transfer Matching system (“FIFA TMS”) *“shows that [Shabab Al Ahli Dubai Club] is the legal (and federative/sportive/historic) successor of Ahli”*. According to the TMS, the address, phone and fax numbers of Shabab Al Ahli Dubai Club are identical to those used by Al Ahli Football Club until the merger.
 - The home matches of Shabab Al Ahli Dubai Club are played in Rashid Stadium, which was the stadium of Al Ahli Football Club until the merger.
 - The official website of the Arabian Gulf League has replaced Al Ahli Football Club by Shabab Al Ahli Dubai Club *“in the standings regarding the championships disputed before the relevant merging”*.
 - A visit paid to the official Facebook page of Al Ahli Football Club will be automatically redirected to the official webpage of Shabab Al Ahli Dubai Club.
 - The merger of Shabab Al Ahli Dubai Club, Al Shabab Arabi Dubai FC and Al Ahli Football Club has been reported in numerous press articles.
 - In its appeal brief, Shabab Al Ahli Dubai Club claims to be the new employer of several players formally registered with Al Shabab Arabi Dubai FC. However, it omitted to say that it is also the new employer of sixteen former players of Al Ahli Football Club.
 - In its own name, Shabab Al Ahli Dubai Club incorporates the name of Al Ahli Football Club.

- *“Even the former logo of Ahli is considerably more akin to the logo of Shabab Al Ahli than the one presented by the Appellant in the Appeal Brief”.*
- *“In another clear demonstration of bad faith of [Shabab Al Ahli Dubai Club], it alleges that the color of [its] kit is green and similar to Al Shabab Al Arabi Club's kit. However, the reality is that the [home kit of Shabab Al Ahli Dubai Club] (number one jersey) is **red**, just like it was when [Shabab Al Ahli Dubai Club] was known as Ahli”.*
- The current fax number used by Shabab Al Ahli Dubai Club is the one used by FIFA during the proceedings before the DRC. Under these circumstances, Shabab Al Ahli Dubai Club was well-aware of the existence of the claim lodged by the Player with FIFA.
- Shabab Al Ahli Dubai Club received all the correspondence sent by FIFA in the course of the procedure before the DRC and chose to remain silent. As a consequence, Shabab Al Ahli Dubai Club cannot claim that its right to be heard was breached and its arguments and requests based on the supposed violation of the due process must be completely dismissed.
- In view of the bad faith of Shabab Al Ahli Dubai Club, the Player cannot take the chance to comply with paragraph 6 of the operative part of the Appealed Decision and to return the cheques to the club before being paid. *“[In] the worse-case scenario, should this Court had declared itself incompetent to deal with this case for whatever reason, [the Player] could be obliged to present a lawsuit against Shabab Al Ahli Dubai Club before the Emirati courts to enforce the cheques, in which case the presentation of the cheques would be mandatory”.*
- Shabab Al Ahli Dubai Club should be sanctioned *“to the fullest financial extension possible due to its blatant bad faith and disrespect to the Player, FIFA, the CAS and the due process of law, to inhibit further similar behaviour by [Shabab Al Ahli Dubai Club] and his representative in the future”.*

V. JURISDICTION

33. The jurisdiction of the CAS, which is not disputed, derives from Articles 57 *et seq.* of the applicable FIFA Statutes and Article R47 of the Code. It is further confirmed by the order of procedure duly signed by the Parties.
34. It follows that the CAS has jurisdiction to decide on the present dispute.
35. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

VI. APPLICABLE LAW

36. Article R58 of the 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”.

37. Pursuant to Article 57 para. 2 of the applicable FIFA Statutes, “[t]he 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”.
38. As a result, and in light of the foregoing, subject to the primacy of the applicable FIFA regulations, Swiss Law shall apply complementarily, whenever warranted.

VII. ADMISSIBILITY

39. The appeal is admissible as Shabab Al Ahli Dubai Club submitted it within the deadline provided by Article R49 of the Code as well as by Article 58 para. 1 of the applicable FIFA Statutes. It complies with all the other requirements set forth by Articles R48 and R51 of the Code.

VIII. MERITS

40. In view of the outcome of the present proceedings, and of the fact that the appeal must be dismissed for the reasons exposed hereafter, the Sole Arbitrator refrained from resolving how to interpret the ambiguous requests for relief of Shabab Al Ahli Dubai Club.
41. As a matter of fact, in its main requests for relief, Shabab Al Ahli Dubai Club is asking from the CAS “i) To confirm [that it] has jurisdiction over the present dispute; ii) To admit the Appeal of Shabab Al Ahli Dubai Club against the decision adopted by FIFA on 15 February 2018 (ref. No.17-00264/pam)”. None of the prayers of Shabab Al Ahli Dubai Club addresses the question of what the Sole Arbitrator is actually expected to do with the Appealed Decision.
42. Requests for relief must be specified with enough precision in order for the Respondent to reply accurately to all parts of the claim. They must be worded in such a way that the appellate authority may, where appropriate, incorporate them to the operative part of its own decision without modification (ATF 137 III 617 consid. 4.2 et 4.3 p. 618). In the present case, the main requests for relief contained in the appeal brief of Shabab Al Ahli Dubai Club are so vague that the Sole Arbitrator could be exposed to award more or something else than what it sought, in violation of the principle *ne eat index ultra petita partium*.
43. It must also be observed that, at no moment, did Shabab Al Ahli Dubai Club try to contest the existence or the extent of the Player's claim. Its position is simply that it cannot be held liable for the payment of the amount allocated by the DRC to the Player. Hence, it appears that the only point of contention between the Parties is whether Shabab Al Ahli Dubai Club is to be considered as the Player's debtor for the sum awarded in the Appealed Decision.
44. In this respect, on the one hand, Shabab Al Ahli Dubai Club asserts that the Appealed Decision was passed against the wrong party, as the Player was only contractually bound to Al Ahli

Football Club. It claims to be a different legal entity from Al Ahli Football Club and, therefore, cannot be held liable for this club's contractual commitments. In addition, it contends that its right to be heard was violated because it was not invited to state its position before the Appealed Decision was rendered.

45. On the other hand, it is the Player's view that Shabab Al Ahli Dubai Club is the legal successor of Al Ahli Football Club and, consequently, the appeal brought before the CAS is unfounded and must be dismissed.
46. In view of the above considerations, the issues to be resolved by the Sole Arbitrator are the following:
 - Is Shabab Al Ahli Dubai Club the legal successor of Al Ahli Football Club?
 - If Shabab Al Ahli Dubai Club is the legal successor of Al Ahli Football Club, has its right to be heard before the DRC been infringed?
 - Is there any other reason to annul the Appealed Decision?

A. Is Shabab Al Ahli Dubai Club the legal successor of Al Ahli Football Club?

47. According to Article 12 para. 3 of the applicable FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, *"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof. During the proceedings, the parties shall submit all relevant facts and evidence of which they are aware at that time, or of which they should have been aware if they had exercised due care"*.
48. In the same way, Article 8 of the Swiss Civil Code provides *"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"*.
49. Furthermore, and pursuant to the well-established jurisprudence of the CAS, the concept of the "burden of proof" consists of two requisites: (a) the "burden of persuasion" and (b) the "burden of production of the proof". In order to fulfil the burden of proof, the relevant party must provide the Sole Arbitrator with all relevant evidence that it holds, and with reference thereto, convince the Sole Arbitrator that the facts that it pleads are true, accurate and produce the consequences envisaged by that 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 (see cases CAS 2016/A/4580 para. 91, CAS 2013/A/3207 para. 51 and CAS 2009/A/1909, para. 23).
50. In the present case, Shabab Al Ahli Dubai Club offered a little more than a denial to establish that it is not the legal successor of Al Ahli Football Club:
 - A paper copy of the "Wyscout" webpage of nine players, whereby it appears that they were last registered with "Al Shabab" or moved from "Al Shabab" to "Shabab Al Ahli Dubai Club".

- A copy of the respective logos of Shabab Al Ahli Dubai Club and of Al Shabab Al Arabi Dubai FC.
 - A "Photo of the Shabab Al Ahli's match in the Arabian Gulf League". This black and white picture of an unidentified player is supposed to prove that "The colour of [Shabab Al Ahli Dubai Club's] is the same green" as the team's colour of Al Shabab Al Arabi Dubai FC.
 - A copy of a document entitled "Commercial Register" apparently issued by the Government of Dubai, printed on 6 December 2017, valid until 14 December 2018, delivered to Shabab Al Ahli Dubai Club, listing a number of instructions related to the manner of operating its commercial activity. Shabab Al Ahli Dubai Club emphasizes that this document makes no reference to Al Ahli Football Club.
51. On the basis of the above documents, Shabab Al Ahli Dubai Club is of the opinion that it has irrefutably established that "**Al Shabab Al Arabi Dubai and Shabab Al Ahli Dubai are the same identity** (same roster of players, championship, name, history, logo and colours) and, thus, that it does not have any connection with the Club Al Ahli FC".
52. Conversely, the Player submitted ample documentary evidence that Shabab Al Ahli Dubai Club is, indeed, the legal successor of Al Ahli Football Club:
- The Appealed Decision identifies Shabab Al Ahli Dubai Club as the successor of Al Ahli Football Club. The DRC refers to Shabab Al Ahli Dubai Club as "formally known as Al Ahli Football Club".
 - Three extracts from the FIFA TMS related to Shabab Al Ahli Dubai Club at three different periods of time:
 - 11.09.2014: Name: Al Ahli Football Club
 - 11.10.2017: Name: Shabab Al Ahli Dubai FC
 - 01.02.2018: Name: Shabab Al Ahli Dubai FC
 - For the rest, on the three extracts, the association (UAE), the PO Box (1551), the City (Dubai), the Country (UAE), the national ID (6), the training category (4), the phone and the fax numbers are the same. On the two first excerpts, the email address is identical (fikry@alahliclub.ae), before it was changed into m.zafralla@shababalahli.se.
 - A print screen of the official webpage of Shabab Al Ahli Dubai Club, whereby the following is stated:

"We are Shabab Al Ahli Dubai FC on 15th May 2017 His Highness Sheik Mohamed Bin Rashid, Vice President & Prime Minister of the UAE & ruler of Dubai decreed the merging of Al Shabab Al Arabi Club, Al Ahli Club & Dubai Club into one entity called "Shabab Al Ahli Dubai FC". The Club was founded 1958' 59 years ago as AL AHLI club.

In September 2017 The Professional League Committee "PLC" agreed to grant Shabab Al Ahli Dubai FC the right to place two stars over the club logo on the jersey the team will wear in this season's matches after the adoption of the three tournaments achieved by Al Shabab Al Arabi Club to add to the seven

championships achieved by Al Ahli Club to become the number of championships that achieved by Shabab Al Ahli Dubai FC to 10”.

- Documents proving that, before the merger, Al-Rashid stadium was the home stadium of Al Ahli Football Club and became the home stadium of Shabab Al Ahli Dubai Club after the merger.
 - Four press articles published in regional media:
 - *“His Highness Sheik Mohamed Bin Rashid Al Maktoum, Vice-President and Prime Minister of the UAE and Ruler of Dubai, has ordered the merger of Al Shabab Al Arabi Club, Dubai Sports and Cultural Club and Al Ahli Sporting Club into a single entity called Shabab Al Ahli Dubai Club. (...) As part of the new decision, the assets, properties and financial resources allocated to the three teams by the government of Dubai will be transferred to the new entity”* (Khaleej Times, article dated 16 May 2017).
 - The order of His Highness Sheik Mohamed Bin Rashid Al Maktoum is also confirmed in an article issued on 16 May 2017 by “Gulf News”, which added that *“A high committee has been formed to oversee the merger under the chairmanship of Khalifa Saef Sulaiman, and an investment company, chaired by Hesham Abdullah Al Qasim, will be formed to manage and combine the assets of all three clubs (...). The UAE Football Association called a meeting to discuss the implication the decree would have on the 14-team Arabian Gulf League, which could become a 12-team league from next season”.*
 - The above articles were completed by a press report published on 16 May 2017 in “The National”, which confirms that *“The three clubs had been expected to compete separately in next season's Arabian Gulf League (AGL), but will now be known as Shabab Al Ahli Dubai Club, with assets and properties of the trio transferred to the single entity with immediate effect (...). A supreme committee was formed to oversee the merger process under the chairmanship of Khalifa Saeed Sulaiman, president of the interim committee overseeing Ahli since the beginning of this year (...) According to the decision, all assets and investments of the three clubs will be managed by an asset management and investment company formed under the leadership of Hisham Abdullah Al Qassim”.*
53. The Sole Arbitrator finds the (scarce) evidence presented by Shabab Al Ahli Dubai Club very unconvincing and certainly not capable of establishing that *“it does not have any connection with the Club Al Ahli FC”*:
- The fact that Shabab Al Ahli Dubai Club registered nine former players of Al Shabab Al Arabi FC does not rule out the possibility that Shabab Al Ahli Dubai Club also registered former players of Al Ahli Football Club. In this regard, the Player filed excerpts from *“www.transfermarkt.co.uk”*, establishing that sixteen former players of Al Ahli Football Club are currently registered with Shabab Al Ahli Dubai Club.
 - Is also unpersuasive the point made by Shabab Al Ahli Dubai Club relating to the alleged similarities between its name and the one of Al Shabab Al Arabi FC. As put forward by the Player, the name of Shabab **Al Ahli** Dubai Club incorporates the name of **Al Ahli** Football Club.

- The same can be said with the respective logo, colour, history and Jersey of the teams of Al Shabab Al Arabi Dubai and of Shabab Al Ahli Dubai Club, which allegedly present similarities with each other. This evidence does not bring any significant information about the existence and/or extent of the litigious merger.
 - Finally, Shabab Al Ahli Dubai Club underlines that the document entitled "*Commercial Register*" makes no reference to Al Ahli Football Club. It must be observed that it also does not mention Al Shabab Al Arabi Dubai. Hence, the point that the Appellant is trying to make with this evidence is not clear and certainly not conclusive.
54. Most importantly, the Sole Arbitrator observes that Shabab Al Ahli Dubai Club did not bring any documentary evidence which could call into question or undermine the Player's assertions, in particular those supported by Shabab Al Ahli Dubai Club's own website, by the press articles or by the extracts of the FIFA TMS. Unlike the Player, Shabab Al Ahli Dubai Club possesses inside information related to its undisputed merger with Al Shabab Arabi Dubai FC. It could have easily filed all the relevant contracts, meeting minutes of the committee overseeing the merger process and/or confirmations from the competent governmental authority or the "*investment company formed under the leadership of Hisham Abdullah Al Qassim*" in order to prove its point, *i.e.* the said merger did not include Al Ahli Football Club or its contractual commitments.
55. The Sole Arbitrator concludes that, apart from its own words, Shabab Al Ahli Dubai Club did not supply any actual evidence, which could release it from its payment obligations towards the Player. In particular, the Sole Arbitrator finds that the Player was able to demonstrate that the Appellant is the legal successor of Al Ahli Football Club and the Appellant was not able to counter such demonstration.
- B. If Shabab Al Ahli Dubai Club is the legal successor of Al Ahli Football Club, has its right to be heard before the DRC been infringed?**
56. Shabab Al Ahli Dubai Club claims that it was not a party to the proceedings before the DRC. It contends that, until it was notified of the Appealed Decision, it was not aware of the existence of such proceedings, as it had never received any correspondence or notification in this regard from FIFA. It is of the view that it was therefore deprived of its right to be heard.
57. For the reasons exposed above, it has been established that Shabab Al Ahli Dubai Club is the legal successor of Al Ahli Football Club. In this capacity, it was the recipient of all the notifications sent by FIFA during the proceedings before the DRC. In particular, on 28 March 2017 and via a facsimile sent to its current fax number, FIFA has informed Shabab Al Ahli Dubai Club of the claim lodged by the Player and invited it to provide its response, which it failed to do within the prescribed deadline.
58. Under these circumstances, the Sole Arbitrator finds that Shabab Al Ahli Dubai Club did not establish that it was not aware of the proceedings before the DRC and concludes that the club chose not to act upon the Player's claim filed before FIFA. As a consequence, Shabab Al Ahli Dubai Club cannot reasonably claim that its right to be heard was not respected.

59. In any event, in light of his *de novo* competence pursuant to Article R57 of the Code, which grants the Sole Arbitrator the power to review both the facts and the law, and CAS jurisprudence, any possible prejudice suffered by Shabab Al Ahli Dubai Club before the DRC can be cured by virtue of this appeal, in which the club was eventually granted a full right to be heard in the present proceedings (CAS 2013/A/3139 para. 39 and references, CAS 2008/A/1574, para. 19).
60. On this basis, the Sole Arbitrator concludes that the challenge of Shabab Al Ahli Dubai Club to the Appeal Decision based on alleged violations of its right to be heard must be dismissed.

C. Is there any other reason to annul the Appealed Decision?

61. Shabab Al Ahli Dubai Club claims that the Player failed to comply with paragraph 6 of the operative part of the Appealed Decision. *“His conduct contra the FIFA decision involves the impossibility for [Shabab Al Ahli Dubai Club] to comply with the FIFA decision”*.
62. Shabab Al Ahli Dubai Club does not explain why the Player's refusal to return the cheques makes it impossible for it to pay the sum awarded in the Appealed Decision. Much more, the club does not offer any indication as to how the Player's refusal to return the cheques can impact the validity of the Appealed Decision or lead to its cancelation.
63. It must also be observed that the Appealed Decision does not make the payment of the awarded amount conditional upon the Player's return of the cheques. On the contrary, the Parties to the proceedings before the DRC are invited to comply with their respective obligations within the same time period. It does not require them to act simultaneously or in a specific order.
64. For all these reasons, the Sole Arbitrator holds that the allegations of Shabab Al Ahli Dubai Club related to the Player's refusal to return the cheques, must be dismissed without further considerations.

D. Conclusions

65. In light of the foregoing, the Sole Arbitrator finds that the appeal must be dismissed and that the Appealed Decision must be upheld in its entirety.
66. This conclusion makes it unnecessary for the Sole Arbitrator to consider the other requests and submissions submitted by the Parties. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 4 June 2018 by Shabab Al Ahli Dubai Club against the decision issued on 15 February 2018 by the FIFA Dispute Resolution Chamber is dismissed.
2. The decision issued on 15 February 2018 by the FIFA Dispute Resolution Chamber is confirmed.
- (...)
5. All other motions or prayers for relief are dismissed.