



**Arbitrations CAS 2020/A/6899 Cádiz FC & Mamadou Mbaye v. Fédération Internationale de Football Association (FIFA) & Watford FC & CAS 2020/A/6930 Watford FC v. Cádiz FC & Mamadou Mbaye, award of 1 July 2021**

Panel: Mr Manfred Nan (The Netherlands), President; Prof. Gustavo Albano Abreu (Argentina); Mr Efraim Barak (Israel)

*Football*

*Claim regarding compensation for breach of contract in relation to an ITC request*

*Correct provision applicable to the dispute and jurisdiction of FIFA*

*Accuracy of TMS*

1. As opposed to the majority of proceedings related to an alleged breach of an employment contract, where the competence of the FIFA Dispute Resolution Chamber (DRC) derives from Article 22(b) of the FIFA Regulations on the Status and Transfer of Players (RSTP) in conjunction with the relevant employment contract, the competence of the FIFA DRC in a dispute stemming from a claim concerning an ITC request derives from Article 22(a) FIFA RSTP. Unlike Article 22(b) FIFA RSTP, Article 22(a) FIFA RSTP does not allow deviation from the default competence of the FIFA DRC, i.e. the discretion to refer employment-related disputes to national arbitration tribunals is restricted if the dispute concerns a claim related to an ITC request.
2. It is not surprising that TMS is not always accurate, because TMS operates on the basis of the information provided to it by the relevant parties and cannot be “blamed” for not recording information that assumingly was never in its possession.

**I. PARTIES**

1. Cádiz Club de Fútbol (“Cádiz”) is a football club with its registered office in Cádiz, Spain. Cádiz is registered with the Royal Spanish Football Federation (*Real Federación Española de Fútbol* – the “RFEF”), which in turn is affiliated with the *Fédération Internationale de Football Association* (“FIFA”).
2. Mr Mamadou M’Baye (the “Player”) is a professional football player of Senegalese nationality.
3. FIFA is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental federations, national associations, clubs, officials and football players worldwide.

4. Watford Football Club (“Watford”) is a football club with its registered office in Watford, United Kingdom. Watford is registered with the English Football Association (the “FA”), which in turn is also affiliated with FIFA.
5. Cádiz, the Player, FIFA and Watford are hereinafter jointly referred to as the “Parties”.

## II. FACTUAL BACKGROUND

### A. Background Facts

6. Below is a summary of the main relevant facts, as established on the basis of the Parties’ written and oral submissions, and the evidence examined in the course of the present appeal arbitration proceedings and during the hearing. This background is set out for the sole purpose of providing a synopsis of the matter in dispute.
7. In the summer of 2017, Cádiz and the Player signed an employment contract for a period of one season, i.e. valid until 30 June 2018 (the “First Cádiz Contract”).
8. According to Watford, on 13 July 2018, after expiry of the First Cádiz Contract, the Player signed a “Premier League Contract” with Watford (the “Watford Contract”), for a period of three sporting seasons, i.e. valid from 13 July 2018 until 30 June 2021.
9. The Player disputes having signed the Watford Contract.
10. On 13 July 2018, Mr Erdem Veral, Watford’s Legal Counsel, sent an email to Mr Enrique Labrador (the capacity of Mr Labrador is disputed – whereas Watford maintains that he was the Player’s agent, this is disputed by the Player) with the following content:

*“Te pasamos todos los documentos hemos preparado que tienen que ser firmado por parte del jugador. Necesitaríamos también la copia de su pasaporte para completar su registraci3n con nuestro club.*

*Por otro lado tambi3n en respecto al registro del jugador en la federaci3n Inglesa, se necesita una carta emitida por Cádiz CF simplemente indicando como lo siguiente: i. el jugador es completamente libre; ii. su contrato con Cádiz CF se ha terminado con tal fecha; iii. su traspaso al Watford no contiene ning3n pago de traspaso.*

*Por cualquier cosa, no dudes en contactarnos por favor”.*

Freely translated in English:

*“We pass you all the documents we have prepared that have to be signed by the player. We will also need a copy of his passport to complete his registration with our club.*

*On the other hand, also in regard to the player's registration with the English federation, a letter issued by Cádiz CF is needed simply stating the following: i. the player is completely free; ii. his contract with Cádiz CF has ended by that date; iii. his transfer to Watford does not contain a transfer fee.*

*For anything, please do not hesitate to contact us”.*

11. The following is mentioned in the signature of Mr Veral’s email:

*“Contracting with WFC: Please note that no employee or agent is authorised to conclude any binding agreement with a value in excess of £10,000 on behalf of WFC with another party, whether by email or otherwise, unless authorised in writing by the Chief Executive Officer and/or the Chairman. Please note that certain employees of WFC have the title of “director”, but are not corporate directors of WFC. WFC will not be bound by or liable for any agreements that have not been properly approved by the Chief Executive Officer and/or Chairman” (emphasis in original).*

12. On 17 July 2018, Mr Labrador replied to Mr Veral’s email dated 13 July 2018, with Ms Gayle Vowels, Watford’s Football Secretary, in copy, with the following content:

*“Adjunto contratos firmados a falta de la carta del Cádiz”.*

Freely translated in English:

*“I attach signed contracts in the absence of the letter from Cádiz”.*

13. Mr Labrador’s email does not contain a copy of the Player’s passport, nor a letter from Cádiz. His email contains four attachments, of which only three were submitted into evidence in these proceedings by Watford:

- i) An “*Intermediary Declaration Form – Nil Return*”, allegedly signed by the Player (which is disputed by the Player), confirming, *inter alia*, that he “*has not used the services of an intermediary in relation to the above Transaction*” and that he “*has not made, and will not make, any payment to any Intermediaries in relation to the above Transaction, either directly or indirectly*”.
- ii) A document entitled “*Proof signed by player that there is no TPO of the player’s economic rights*”, allegedly signed by the Player (which is disputed by the Player).
- iii) A document entitled “*Schedule 2 Supplemental Provisions and Employment Rights Act 1996*” (“*Schedule 2*”), allegedly signed by the Player (which is disputed by the Player), containing details on the remuneration and bonuses to be received. The document further details that the Player signed in the presence of Mr Enrique Labrador.

14. It is undisputed that Watford never had any direct contact with the Player prior to or during the alleged execution of the Watford Contract. It is also undisputed that the Player never travelled to England to undergo a medical examination or to otherwise execute the Employment Contract. Watford never paid the Player any salary.

15. No evidence of communication between representatives of Watford and Mr Labrador from either before or after the above-mentioned exchange of emails between Mr Veral and Mr Labrador has been presented.
16. On 27 July 2018, the transfer of the Player to Watford was registered in FIFA's Transfer Matching System ("TMS").
17. On 22 August 2018, Watford and the French professional football club ES Troyes Aube Champagne ("Troyes") reached an agreement for the Player to be loaned to Troyes. The Player allegedly signed the relevant agreement (the "Troyes Loan Agreement"), but the loan was never registered into TMS and the Player never played any match for Troyes. The Player disputes having signed the Troyes Loan Agreement.
18. On 18 January 2019, Watford, Troyes and, allegedly, the Player terminated the Troyes Loan Agreement. The Player disputes having signed this agreement.
19. On 23 January 2019, Watford and the Croatian football club NK Inter Zapresic ("Zapresic") concluded a loan agreement pursuant to which the Player was loaned by Watford to Zapresic from 23 January 2019 until 30 June 2019 (the "Zapresic Loan Agreement"), allegedly countersigned by the Player. The Player disputes having signed this agreement.
20. On the same date, 23 January 2019, Watford and the Player allegedly signed an agreement, temporarily suspending the Watford Contract for the duration of the loan period with Zapresic (the "Suspension Letter"). The Player disputes having signed this agreement.
21. On 4 February 2019, the transfer of the Player to Zapresic was registered in TMS with the instruction "[en]gage free of payment on loan".
22. On 30 June 2019, Zapresic issued two signed documents related to the Player with the following content, which the Player and Cádiz assert was sent to Cádiz in August 2019:

***"PROOF OF LAST CONTRACT END DATE "The contract with the former club has expired"***, confirming that *"the employment contract between [Zapresic] and [the Player] has expired on 30.06.2019"*.

And:

***"PROOF SIGNED BY FORMER CLUB That there is no TPO of the player's economic rights"***, confirming that it *"has not entered into an agreement with a third party (defined as any party other than the two clubs transferring the player or any previous club with which the player has been registered) regarding the [Player's] economic rights"* (emphasis in original).

23. On 5 July 2019, Watford entered a transfer instruction into TMS under the type "return from loan", in order to obtain the return of the International Transfer Certificate ("ITC") of the Player from the Croatian Football Federation ("CFF") to the FA.

24. On 7 August 2019, Watford alleges that it sent an email to the Player, informing him as follows:

*“We write to remind you that the letter which you signed prior to going on loan to [Zapresic] (attached as Appendix 1 to this letter for your reference) merely suspended the Contract for the period that you were on loan last season and that, following on from this:*

- i. the Contract remains in full force and effect; and*
- ii. your registration is still held by Watford.*

*As you will be aware the loan with [Zapresic] has now expired and we would therefore be grateful if you and/or your representative could urgently make contact with [...], to discuss the next stages of your development”.*

25. The Player denies having received the aforementioned email and denies that the email address used belongs to him.
26. On 12 August 2019, Cádiz entered a transfer instruction into TMS under the type “engage out of contract free of payment”, in order to obtain the Player’s ITC from the CFF to the RFEF.
27. On 13 August 2019, the Player signed an employment contract with Cádiz (the “Second Cádiz Contract”), for a period of two sporting seasons, i.e. valid until 30 June 2021.
28. On the same date, 13 August 2019, the ITC was delivered by the CFF to the RFEF and the transfer of the Player to Cádiz was registered in TMS.
29. Later that day, Watford informed Cádiz that the Player was still registered with Watford.
30. On 16, 18 and 20 August 2019 respectively, Watford offered the Player on loan and free of charge to Cádiz.
31. On 22 August 2019, the CFF requested through TMS that the pending transfer of the Player back to Watford be cancelled, as the ITC had already been delivered to the RFEF for his registration with Cádiz.

## **B. Proceedings before the Dispute Resolution Chamber of FIFA**

32. On 2 October 2019 (amended on 21 October 2019), Watford lodged a claim against the Player and Cádiz with the Dispute Resolution Chamber of FIFA (the “FIFA DRC”), claiming payment of the amount of GBP 1,186,400 from the Player as compensation for breach of contract, considering Cádiz jointly and severally liable for the payment of compensation, and requesting sporting sanctions to be imposed on the Player and Cádiz.

33. In reply to Watford's claim, the Player submitted that his signature on the Watford Contract was forged and that the FIFA DRC was not competent. On a subsidiary basis, the Player lodged a counterclaim against Watford, claiming to be entitled to the amount of GBP 25,318.39 as outstanding remuneration and requested sporting sanctions to be imposed on Watford.
34. On 25 February 2020, the FIFA DRC rendered its decision (the "Appealed Decision"), with the following operative part:
1. *The claim of [Watford] is partially accepted.*
  2. *The [Player] has to pay to [Watford] **within 30 days** as from the date of notification of the present decision, compensation for breach of contract in the amount of GBP 26,834, plus 5% p.a. as from 2 October 2019 until the date of effective payment.*
  3. *[Cádiz] is jointly and severally liable for the payment of the aforementioned compensation.*
- [...]
5. *Any further claim lodged by [Watford] is rejected.*
- [...]
7. *The counterclaim of the [Player] is rejected.*
  8. *A restriction of four months on his eligibility to play in official matches is imposed on the [Player].*  
[...].
  9. *[Cádiz], shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision".*
35. On 5 March 2020, the grounds of the Appealed Decision were communicated to the Parties, determining, *inter alia*, the following:
- *Regarding its competence, the FIFA DRC decided that "considering the absence of a clear and unequivocal jurisdiction clause and in compliance with its own well-established jurisprudence, the members of the Chamber agreed that the DRC is competent to decide on the claim at hand.*
  - *In addition, the Chamber referred to art. 22. Lit. a) of the Regulations, according to which FIFA is competent to hear disputes between clubs and players in relation to the maintenance of contractual stability, where there has been an International Transfer Certificate (ITC) request and a claim from an interested party in relation to said ITC request, in particular, inter alia, regarding compensation for breach of contract.*

- *In view of the above, the members of the Chamber pointed out that the case at hand is related to the move of a player and his subsequent registration with a club belonging to a different association and connected to an ITC request. The foregoing fact was, in the Chamber's view, the basis on which it could be established that the Dispute Resolution Chamber shall be competent to adjudicate on the matter at hand as to the substance.*
- *In view of all the above, the Chamber established that the player's objection to the competence of FIFA to deal with the present matter has to be rejected and that the Dispute Resolution Chamber is competent, on the basis of art. 22 (a) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance.*
- *Finally, and for the sake of completeness, the DRC also highlighted that, pursuant to Clause 9 of Schedule 2 of the [Watford Contract], "in the event of an unlawful breach by the player of this Agreement the player and the club acknowledge and agree that the market value of the player at the time of such unlawful breach, as determined by the [FIFA DRC] shall be used". Consequently, the Chamber understood that its competence to deal with the matter also derives from said provision.*
- *[...] "With regard to the existence of an employment relationship between the player and Watford, the DRC referred to the following evidence: (1) the registration of the player with Watford on 27 July 2018, as indicated in the TMS; (2) the employment contract dated 13 July 2018 provided by Watford; and (3) the document provided by Watford, dated 23 January 2019, by means of which Watford and the player allegedly agreed to temporarily suspend the employment contract signed between Watford and the player for the duration of the loan of the player with Zapresic.*
- *Having said this, the members of the DRC turned their attention to the "graphotechnical report" provided by the player. In this regard the Chamber unanimously agreed that although the value of such a document cannot be entirely disregarded it has, however, a limited importance, to the extent that it cannot constitute the decisive element in the midst of conflicting evidence, being a document commissioned by a party interested in the outcome of the proceedings. All things considered, therefore, the DRC determined that the player failed to provide convincing evidence that could demonstrate that he never concluded any employment relationship with Watford of any kind.*
- *In light of the above, the DRC unanimously established that the player was registered with Watford on 27 July 2018, and that the parties had concluded an employment contract. As such, the Chamber further determined that the conditions as stipulated in the employment contract provided by Watford are valid and correct, including the duration of the employment contract, as well as the financial conditions stipulated therein.*
- *In continuation, "the Chamber determined that (1) the player had a valid employment contract with Watford; (2) he was transferred on loan to Zapresic and; (3) following his loan, the player was obligated to return to Watford.*
- *[...] "Nonetheless, due to the fact that, instead of returning to Watford, the player signed an employment contract with Cádiz on 13 August 2019, the Chamber came to the unanimous conclusion*

*that the player de facto unilaterally terminated the employment with Watford on 13 August 2019. Consequently, the DRC turned to the question of whether the player had a just cause to terminate the contract with Watford”.*

- *[...] “The Chamber concluded that by means of its clear attempts to deregister the player, and by warning Cádiz that the player still had a valid employment contract, Watford demonstrated that it was interested in continuing the employment relationship with the player.*
- *In continuation, the Chamber analysed the player’s argument who, inter alia, held that he had not received any remuneration from Watford since July 2018. By way of reminder, the DRC recalled that this alleged outstanding remuneration was requested by the player from Watford by way of his counterclaim.*
- *In this regard, the Chamber was quick to point out that the player had not provided any evidence, such as default letters, that could demonstrate that Watford had failed to pay him any remuneration. What is more, as per the DRC, the player did not terminate the employment contract with Watford due to outstanding remuneration, but rather because he registered with Cádiz under the alleged assumption that he was a free agent.*
- *On account of the above, the Chamber came to the firm conclusion that the arguments of the player could not be upheld. As such, the DRC decided to reject the player’s counterclaim in full. Furthermore, the Chamber decided that, by signing an employment contract with Cádiz, the player terminated the employment contract with Watford without just cause on 13 August 2019”.*
- *[...] In order to estimate the amount of compensation due to [Watford] in the present case, the members of the Chamber first turned their attention to the financial terms of the former contract and the new contract, the value of which constitutes an essential criterion in the calculation of the amount of compensation in accordance with art. 17 par.1 of the Regulations. The members of the Chamber deemed it important to emphasise that the relevant compensation should be calculated based on the average fixed annual remuneration, i.e. excluding any conditional or performance related payment, agreed by the player with his former club and his new club, as well as considering the period of time remaining on the contract signed between the player and the former club.*
- *Bearing in mind the foregoing, the Chamber proceeded with the calculation of the fixed annual remuneration payable to the player under the terms of the [Watford Contract], i.e. an annual remuneration of GBP 36,000.*
- *In continuation, the DRC equally took note of the player’s annual remuneration under the terms of his employment contract with his new club, i.e. Cádiz, and determined that this remuneration corresponded to approximately GBP 19,167.*
- *Taking into account the above, the Chamber concluded that the player’s average remuneration amounted to GBP 26,834.*

- *On account of the above, and taking into account all the aforementioned objective elements in the matter at hand, the DRC decided that the total amount of GBP 26,834 was to be considered a reasonable and justified amount to be paid as compensation for breach of contract in the case at hand”.*
- *[...] Furthermore, the Chamber decided that, in accordance with art. 17 par. 2 of the Regulations, Cádiz shall be jointly and severally liable for the payment of the aforementioned amount of compensation”.*
- *[...] [T]he DRC pointed out that the player, whose date of birth is 28 June 1998, was 20 years of age when he signed his employment contract with Watford on 13 July 2018, entailing that the unilateral termination of the contract occurred within the applicable protected period.*
- *With regard to art. 17 par. 3 of the Regulations, the Chamber emphasised that a suspension of four months on a player’s eligibility to participate in official matches is the minimum sporting sanction that can be imposed for breach of contract during the protected period.*
- *Consequently, taking into account the circumstances surrounding the present matter, the DRC decided that, by virtue of art. 17 par. 3 of the Regulations, the player is to be sanctioned with a restriction of four months on his eligibility to participate in official matches”.*
- *[...] [T]aking into account that Cádiz was warned by Watford, the Chamber was of the firm opinion that Cádiz did not exert due diligence regarding the player’s contractual availability when signing the employment contract with the player.*
- *In light of the aforementioned, and given that Cádiz did not provide any convincing explanation as to its possible non-involvement in the player’s decision to unilaterally terminate his employment contract with Watford, the DRC had no option other than to conclude that Cádiz had not been able to reverse the presumption contained in art. 17 par. 4 of the Regulations and that, accordingly, the latter had induced the player to unilaterally terminate his employment contract with Watford.*
- *In view of the above, the Chamber decided that, in accordance with art. 17 par. 4 of the Regulations, Cádiz shall be banned from registering any new players, either nationally or internationally, for the two entire and consecutive registration periods following the notification of the present decision. Cádiz shall be able to register new players, either nationally and internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, Cádiz may not make use of the exception and the provisional measures stipulated in art. 6 par. 1 of the Regulations in order to register players at an earlier stage.*
- *The dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claims lodged by Watford and the player are rejected”.*

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

36. On 30 March 2020, Cádiz and the Player lodged a joint Statement of Appeal against the Appealed Decision with the Court of Arbitration for Sport (the “CAS”) in accordance with Article R48 of the Code of Sports-related Arbitration (2020 edition) (the “Code”). The appeal was directed against FIFA and Watford. In this submission, Cádiz and the Player requested for a stay of the Appealed Decision, and nominated Mr Miguel Cardenal Carro, Attorney-at-Law in Madrid, Spain, as arbitrator, and proposed that Spanish be the language of this proceeding or that, in the alternative, the proceeding be bilingual, i.e. conducted in Spanish and English. The case was initiated on 2 April 2020 under the case reference number CAS 2020/A/6899.
37. On 6 April 2020, FIFA informed the CAS Court Office that it objected to Spanish being the language of the proceedings, but agreed that the proceedings be conducted bilingually, with English being the primary language.
38. On 8 April 2020, Watford informed the CAS Court office that it would not object to the procedure being handled in a bilingual manner, with English being the primary language.
39. On 9 April 2020, the CAS Court Office informed the Parties *“that the official language of the proceedings is English, but that further to the Parties’ agreement, the procedure will also be conducted in a bilingual (English/Spanish) manner, i.e. documents in Spanish will not necessarily need to be accompanied by English translations, without prejudice to any subsequent requests in this regard from the Panel, once it is constituted”*.
40. On 13 April 2020, Watford submitted its position with regard to Cádiz’ and the Player’s joint request for a stay of the Appealed Decision, requesting that it be dismissed and informing the CAS Court Office that Watford and FIFA had agreed to nominate Mr Efraim Barak, Attorney-at-Law, Tel Aviv, Israel, as arbitrator.
41. On 14 April 2020, FIFA informed the CAS Court Office that although it considered Cádiz’ and the Player’s request for a stay of the Appealed Decision unfounded, FIFA did not object to it, and also confirmed that it did not oppose the nomination of Mr Barak as arbitrator.
42. On the same date, Watford lodged a Statement of Appeal with the CAS Court Office against the Appealed Decision in accordance with Article R48 of the Code. Watford’s appeal was directed against both Cádiz and the Player. In this submission, Watford nominated Mr Efraim Barak, Attorney-at-Law, Tel Aviv, Israel, as arbitrator. The case was initiated on 17 April 2020 under the case reference number CAS 2020/A/6930.
43. On 17 April 2020, the CAS Court Office invited the Parties to agree to consolidate CAS 2020/A/6899 and CAS 2020/A/6930 further to Article R52 of the Code.

44. On 21 April 2020, the Parties were provided with a disclosure made further to Article R33 of the Code by Mr Efraim Barak, which none of the Parties subsequently challenged under Article R34 of the Code.
45. On 23 April 2020, the Parties were provided with a disclosure made further to Article R33 of the Code by Mr Miguel Cardenal Carro.
46. On 24 April 2020, Cádiz and the Player filed a joint Appeal Brief in CAS 2020/A/6899, as did Watford in CAS 2020/A/6930, in accordance with Article R51 of the Code.
47. On 27 April 2020, the CAS Court Office informed the Parties *inter alia* that in light of the Parties' previously communicated agreement and on behalf of the President of the Appeals Arbitration Division, the two proceedings were consolidated in accordance with Article R52 of the Code. Further, it was confirmed that the proceedings in CAS 2020/A/6930 would be subject to the same agreement on language as in CAS 2020/A/6899.
48. On 28 April 2020, Watford requested that Mr Miguel Cardenal Carro decline his appointment as arbitrator.
49. On 5 May 2020, the application for a stay of the Appealed Decision was granted by the Deputy President of the Appeals Arbitration Division.
50. On 11 May 2020, Mr Miguel Cardenal Carro declined his nomination as arbitrator.
51. On 21 May 2020, Cádiz and the Player jointly nominated Mr Gustavo Abreu, Professor of Law in Buenos Aires, Argentina, as arbitrator.
52. On 29 May, 9 July and 27 July 2020 respectively, Watford, Cádiz and the Player, and FIFA filed their Answers, in accordance with Article R55 of the Code. FIFA's Answer included a request for production of documents address to Cádiz and the Player, concerning the Troyes Loan Agreement, the termination thereof and the Player's employment contract with Troyes.
53. On 31 July, 3 August and 6 August 2020 respectively, Watford and Cádiz and the Player expressly requested that a hearing be held, whereas FIFA indicated that it did not deem it necessary for a hearing to be held.
54. On 19 August 2020, the Parties were informed that the President of the CAS Appeals Arbitration Division had appointed as President of the Panel Mr Manfred Nan, Attorney-at-law in Arnhem, the Netherlands, who had provided with a disclosure made further to Article R33 of the Code to the Parties, which none of the Parties subsequently challenged under Article R34 of the Code.
55. On 1 September 2020, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeal Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

- President: Mr Manfred Nan, Attorney-at-Law in Arnhem, The Netherlands;
  - Co-Arbitrator: Mr Efraim Barak, Attorney-at-Law in Tel Aviv, Israel; and
  - Co-Arbitrator: Mr Gustavo Abreu, Law Professor in Buenos Aires, Argentina.
56. On 16 September 2020, the CAS Court Office informed the Parties that the Panel had requested FIFA to provide a copy of its file related to the present proceedings. The Parties were further informed that, should they would like to refer the Panel to any specific document from the FIFA file, it was requested to submit a “*FIFA File Referrals List*”, indicating that the Panel would not allow any referrals to documents or arguments not contained in such lists.
57. On 21 September 2020, FIFA provided the CAS Court Office with a copy of its file related to the present matter.
58. On 25 September 2020, the CAS Court Office informed the Parties that in accordance with Article R44.3 of the Code, the Panel had granted FIFA’s request to order Watford and the Player to provide the Troyes Loan Agreement, the termination thereof and the Player’s employment contract with Troyes.
59. On 28 September 2020, Watford provided the CAS Court Office with a copy of the Troyes Loan Agreement.
60. On 8 October 2020, upon request of the Panel, Watford provided the CAS Court Office with a “*FIFA File Referrals List*”, referring to the documents from the FIFA proceedings on which they intended to rely during the present proceedings, and also separately referring to an alleged confirmation that the Player signed the Suspension Letter and that the Player had knowledge of his contracts both with Watford as well as his loan to Zapresic.
61. On 9 October 2020, the Player informed the CAS Court Office that he was not in possession of the Troyes Loan Agreement, any documents pertaining to the termination thereof or his employment contract with Troyes.
62. On the same date, 9 October 2020, Cádiz and the Player requested the CAS Court Office to order FIFA to produce a copy of the entire file of the disciplinary proceedings opened against the CFF and Zapresic and, alternatively, to order FIFA to provide information about the state of such disciplinary proceedings.
63. On 19 October 2020, Watford objected to the joint request for production of documents filed by Cádiz and the Player.
64. On the same date, 19 October 2020, FIFA informed the CAS Court Office that it had noted that the termination of the Troyes Loan Agreement was indirectly filed by Cádiz with its calligraphic report of 25 November 2019 in the proceedings before the FIFA DRC. FIFA indicated that, based on the documents provided, it was of the view that the Player was loaned from Watford to Troyes and that the Player was therefore under a valid contract with Watford

prior to that loan. FIFA also indicated that no disciplinary proceedings had been initiated against the CFF and/or Zapresic.

65. On 4 November 2020, Cádiz and the Player indicated that, notwithstanding the information provided by FIFA on 19 October 2020, they maintained their request for production of documents because they considered such information to be in contradiction to FIFA's letter dated 16 October 2019, by means of which it had indicated that the matter would be forwarded to the correct internal bodies within FIFA.
66. On 6 November 2020, Cádiz and the Player informed the CAS Court Office that the Player did not recognise the signature on the Troyes Loan Agreement and submitted a new graphological report pertaining to the disputed signature on the Troyes Loan Agreement.
67. On 10 November 2020, Watford requested the CAS Court Office to disregard Cádiz' and the Player's joint letter dated 6 November 2020 and submitted a picture of the Player and Mr Quique Pina (who was, according to Watford, the Player's agent at the time), allegedly taken when the Player signed the Troyes Loan Agreement.
68. On 12 November 2020, FIFA objected to the admissibility of the new evidence filed by Cádiz and the Player on 6 November 2020, adding that Cádiz' and the Player's evidentiary request dated 9 October 2020 was moot and had to be rejected.
69. On 17 November 2020, further to FIFA's letter dated 12 November 2020, Cádiz and the Player withdrew their request for production of documents. Cádiz and the Player also indicated that the Troyes Loan Agreement was a new document in the file and that it should therefore have the right to challenge it. Cádiz and the Player also objected to the admissibility of the picture submitted by Watford on 10 November 2020, adding that the contract being signed in the picture is not the Troyes Loan Agreement.
70. On 18 November 2020, Watford objected to the admissibility of Cádiz' and the Player's joint letter of 17 November 2020.
71. On 4 December 2020, the CAS Court Office informed the Parties that, further to Article R56 of the Code, the Panel had decided to admit the following documents to the file:
  - i) the copy of the Troyes Loan Agreement submitted by Watford on 28 September 2020;
  - ii) the Graphological Report submitted by Cádiz and the Player on 6 November 2020;
  - iii) a picture of the Player and Mr Pina submitted by Watford on 10 November 2020.
72. On 10 December 2020, FIFA, Cádiz and the Player returned duly signed copies of the Order of Procedure to the CAS Court Office.
73. On 10 and 14 December 2020 respectively, following a request from the Panel, Cádiz and the Player submitted the Player's witness statement provided at the Cádiz Preliminary

Investigating Court and English translations of the three Expert reports relied on by them as exhibits to their written submissions.

74. On 15 December 2020, Watford returned a duly signed copy of the Order of Procedure to the CAS Court Office.
75. On 16 December 2020, a hearing was held via video-conference further to Articles R44.2 and R57 of the Code. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the Panel.
76. In addition to the Panel, and Ms Kendra Magraw, CAS Counsel, the following persons attended the hearing:

For Cádiz and the Player:

- Mr Manuel Vizcaíno Fernández, President of Cádiz;
- Mr Mamadou Mbaye, the Player;
- Mr Josep Vandellós Alamilla, Counsel;
- Mr Álvaro Marco Asencio, Counsel;
- Mr Carlos Garcia Villarta, Counsel;
- Ms Mónica Gálvez Alfonso, Counsel;
- Mr Gavin Powell, Interpreter;
- Mr Pape Mbaye, Witness;
- Mr David Navarro Jodar, Witness;
- Mr Fidel Pasadas Martínez, Expert.

For Watford:

- Mr George Pennington, Head of Legal of Watford;
- Mr Juan de Dios Crespo Pérez, Counsel;
- Mr Ivan Bykovskiy, Counsel.

For FIFA:

- Mr Miguel Liétard Fernández-Palacios, FIFA Director of Litigation;
- Mr Jaime Cambreleng, FIFA Head of Litigation;
- Mr Saverio Paolo Spera, FIFA Senior Legal Counsel.

77. The Panel heard witness evidence from the Player, Mr Pape Mbaye (the Player's Uncle and current intermediary), Mr David Navarro Jodar (the Sports Manager of Cádiz), and Mr George Pennington (Head of Legal of Watford), as well as from Mr Fidel Pasadas Martínez as handwriting expert.

78. The witnesses and the expert were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. All Parties and the Panel had the opportunity to examine and cross-examine the witnesses and the expert. The Parties then had ample opportunity to present their cases, submit their arguments and answer the questions posed by the Members of the Panel.
79. Before the hearing was concluded, all Parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.
80. On 22 December 2020, Cádiz and the Player requested a copy of the hearing recordings and requested to introduce the arbitral award issued in CAS 2015/A/3953 into evidence.
81. On 23 December 2020, the CAS Court Office informed the Parties that the hearing recording was irreversibly damaged and could not be transmitted to the Parties.
82. On 30 December 2020, Watford informed the CAS Court Office that it did not object to the arbitral award issued in CAS 2015/A/3953 being admitted into evidence. FIFA did not provide any comments in this regard.
83. On 20 January 2021, the CAS Court Office informed the Parties that, in the absence of any objections, the arbitral award issued in CAS 2015/A/3953 was admitted into evidence.
84. The Panel confirms that it carefully took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present Award.

#### **IV. SUBMISSIONS OF THE PARTIES**

##### **A. CAS 2020/A/6899**

##### ***i. Cádiz and the Player***

85. The joint submissions of Cádiz and the Player, in essence, may be summarised as follows:
- The Player relies on three Graphological Expert Reports of Mr Posadas, and submits that the Watford Contract is null and void as *“the contract was not signed by the Player, the signatures of the player (allegedly) being contained in it being false”*.
  - *“[T]he Player did not sign and did not know about the existence of the [Watford Contract], the [Troyes Loan Agreement] and the [Suspension Letter] in which allegedly the Player acknowledged the loan to [Zapresic]”*.

- “[T]he Player did not sign and did not know about the existence of [...] documents that apparently were used to register the Player before The FA”.
- The Player did not meet the requirements to be employed in the United Kingdom since he had never been in the territory of the United Kingdom.
- There has not been any employment relationship between the Player and Watford as Watford never paid any remuneration, nor did Watford give the Player any instructions related to participation in a training session or match, or to undergo a medical examination. In fact, the Player never consented to any relationship with Watford and never met a representative of Watford.
- *“In the event that it is considered that the Player and [Watford] signed a valid employment contract, [Cádiz and the Player] consider that according to the [Watford Contract] and to the FIFA RSTP, FIFA was not competent to deal with the matter”.* In this regard, Cádiz and the Player argue that the dispute in relation to the ITC request was not in accordance with Article 22(a) of the FIFA Regulations on Status and Transfer of Players (the “FIFA RSTP”), and that *“any joint and harmonic interpretation of the clauses of the [Watford Contract] addresses to the unequivocal conclusion that both parties agreed that the disputes arising from the [Watford Contract], including the termination of the contract by any of the parties, would be submitted to the Premier League bodies and the English Courts”.*
- *“Alternatively, in the event that it is considered that the Player and [Watford] signed a valid employment contract, quod non, the Player would have been entitled to terminate it with just cause [...]”,* because of Watford’s abusive conduct, outstanding salaries and for sporting just cause (Articles 14 and 15 FIFA RSTP).
- The abusive conduct *“would consist in not registering the Player before the transfer window established to Premier League was closed; this is, before 8 August 2019. In order to be able to register the Player in the 2019/2020 season, the allegedly lender club (i.e. Watford) was obliged to request the return of the loan of the ITC from the CFF before the transfer window of the Premier League was closed, and that date was the 8 August 2019. According to the FIFA RSTP, the immediate consequence of not completing the return of the ITC is the impossibility for the Player of being registered to participate in official matches of the Premier League, which would have constituted an abusive conduct that prevented the Player from developing his duties as a professional football Player”.*
- *“Alternatively, in the event that it is considered that the [Watford Contract] is valid (quod non) and that the Player terminated the contract without just cause (quod non), [Watford] is not entitled to receive any compensation for such termination”.*
- The Appealed Decision violates the principle of “positive interest” and leads to an unfair enrichment of Watford.

- Cádiz is not jointly and severally liable for the payment of any compensation, as the CFF registered the Player on a permanent basis and not on loan and Cádiz applied a high degree of diligence relying on the data contained in the ITC, as well as relying on the information provided by the CFF and Zapresic, which was the Player's former club. Cádiz took all necessary steps in order to verify the Player's contractual situation (verifying the free agent status of the Player), acting with full diligence, and it never induced the Player to breach the Watford Contract.
- No sanctions should be imposed on the Player, taking into account his young age, that he was not assisted by any agent until summer 2019, that Watford never contacted the Player, because the Player did not know about the existence of the Watford Contract and because the Player does not speak English.
- Finally, the sanction imposed on Cádiz is disproportionate and should be reduced because the Player is not an established player, because Cádiz has never been sanctioned or even investigated for acts of the same or similar nature and because the severity of the sanction is not in line with the compensation recognized by the FIFA DRC to Watford (GBP 26,834).

86. On this basis, Cádiz and the Player submit the following prayers for relief:

- “1. To set aside the decision of the FIFA DRC dated 25 February 2020 and declare that the appealed decision is null and void;*
- 2. In the event that the Panel considers that the Watford FC contract was valid and in force, to declare that:*
  - 2.1. The Player did not terminate the Watford FC contract without just cause and set aside the appealed decision declaring it null and void.*
  - 2.2. Alternatively, in the event that the Panel considers that the Player terminated the Watford FC contract without just cause:*
    - 2.2.1. To declare that Watford FC is not entitled to any compensation;*
    - 2.2.2. In any case, to set aside the sporting sanctions imposed on the Player and on Cádiz CF and declare the sporting sanctions null and void;*
      - 2.2.2.1. Alternatively, in the event that the Panel considers that Cádiz CF must be sanctioned, to reduce the sporting sanctions imposed to Cádiz CF to one transfer window;*
- 3. In any case, to order [Watford and FIFA] to pay the entire costs of the present arbitration, if any;*

4. *In any case, to order [Watford and FIFA] to pay the entire costs for [Cádiz and the Player] legal representation and assistance as well as other costs incurred by [Cádiz and the Player] in connection with this arbitration in the amount of 20.000 € (10.000 € per appellant)”.*

**ii. FIFA**

87. FIFA provided the following summary of its submissions in its Answer:

- It is worth noting that the Player expressly admitted having been hired by Watford FC during his deposition in a criminal court of Cádiz. In fact, he also admitted at that time to having been loaned to Troyes and then to Zapresic. It is striking that, although he denies having signed the Watford Contract and even the Troyes Loan Agreement, the Player admitted to these facts under oath in a criminal court. More relevantly, the circumstantial evidence all leads to confirming the following sequence of events in 2018-2019:
  - i. After the expiry of his first employment contract with Cádiz on 30 June 2018, the Player signed the Watford Contract on 13 July 2018.
  - ii. On 22 August 2018, the Player agreed to be loaned to Troyes, signing the relevant loan agreement along with Watford FC and Troyes. This led to the suspension of the Watford Contract.
  - iii. On 19 January 2019, the parties to the Troyes Loan Agreement mutually agreed to its termination.
  - iv. On 23 January 2019, the Player entered into the Zapresic Loan Agreement and subsequent employment with Zapresic valid until 30 June 2019.
- Although disputing the signature on the documents, the above timeline is supported *inter alia* by the Player’s own admission to both the Cádiz Criminal Court and in subsequent media statements. It will be demonstrated further in this Answer that there can be no doubt that the Player was employed with Watford FC as from 13 July 2018.
- The next issue raised by Cádiz and the Player, subsidiary to the foregoing, is the jurisdiction of the FIFA DRC (or lack thereof, according to Cádiz and the Player). Cádiz and the Player claim that the FIFA DRC was not competent to deal with the present dispute, in light of the wording of the Watford Contract. However, not only does the Watford Contract not foresee the exclusive jurisdiction of any specific body (only the non-exclusive competence of the English labour courts), but in fact the arbitration tribunal that Cádiz and the Player wrongly believe to be competent does not comply with the exception to Article 22(b) FIFA RSTP (i.e. it is not an independent and impartial tribunal guaranteeing fair proceedings or compliance with the principles of parity and equal representation, among others).

- The FIFA DRC was therefore competent to deal with the matter-at-hand.
- In addition to the above complaints, Cádiz and the Player then contest the contractual breach by the Player, by claiming, in a nutshell, that he had (or would have had) just cause to terminate the Watford Contract. According to FIFA, this simplistic approach is simply not supported by any evidence whatsoever, and appears to be a desperate attempt to justify the Player's early termination of the Watford Contract. Indeed, even from the sequence of events described above, it is clear that the Player agreed to be (and was) loaned to Troyes and to Zapsesic. As a result, not only was the Watford Contract suspended during that period, but the Player could not expect to be paid any amounts by Watford FC or to play matches with that club during that time. He therefore had neither just cause nor sporting just cause to terminate his employment, and in any event never complied with the requirement to give notice to Watford FC on those alleged breaches which he (now) alleges.
- The more relevant part of the appeal insofar as Cádiz is concerned is its joint and several liability for the payment of compensation to Watford FC, as well as the sporting sanctions imposed on both Cádiz and the Player.
- Although Cádiz and the Player claim that Cádiz acted diligently and did not induce the Player's breach, the circumstances of the case point to the contrary. Not only was Cádiz aware that the Player had signed with Watford FC after he left Cádiz at the end of June 2018 (Cádiz had to confirm that the Player was no longer under contract in the framework of the ITC request from the FA), but it was also informed of this circumstance by Watford FC after the Player had signed the Cádiz Contract in August 2019. Even being cognizant of the Player's breach of the Watford Contract, Cádiz did not take any steps to assist in remedying the breach, for example by accepting to have the Player under a loan agreement with Watford FC.
- In sum, it will be proven that all of the circumstances of this case point to the Player having breached (and thus terminated) the Watford Contract without just cause during the protected period by signing the Cádiz Contract while the former was still in force. The legal consequence is that Cádiz and the Player shall pay compensation to Watford FC, as well as serve the relevant sporting sanctions.

88. On this basis, FIFA submits the following prayers for relief:

- “(a) reject[] the reliefs sought by the Appellants;*
- (b) confirm[] the Appealed Decision;*
- (c) order[] the Appellants to bear the full costs of these arbitration proceedings; and*
- (d) order[] the Appellants to make a contribution to FIFA's legal costs”.*

**iii. Watford**

89. The submissions of Watford, in essence, may be summarised as follows:

- The FIFA DRC was competent to rule over the present dispute, which dispute “*fits perfectly into Article 18 of the [Watford Contract]*”, and all conditions to apply Article 22(a) FIFA RSTP “*are present in the case*”.
- The documentation provided by Cádiz and the Player “*should have limited consideration while establishing the fact of the Player’s breach and Cádiz inducement*”, as the Player under oath in front of the judicial authority of Spain expressly confirmed that he had signed the Watford Contract and the Troyes Loan Agreement.
- The Player terminated the Watford Contract without just cause, by “*silently escaping to Spain [...] entering into a simultaneous employment contract with Cádiz*”.
- Article 14 FIFA RSTP has not been violated. “[T]here was no situation when the Player could lose any confidence in the future performance of the [Watford Contract]. [...] The Player have never addressed to [Watford] any formal notice about outstanding salaries, nor invoked the cause of non-payment of salaries as the reason for premature termination”.
- Article 15 FIFA RSTP is not applicable either, as Watford “*was never put in default of payment, there was no claim from the Player to release him based on the “sporting just cause”*”.
- Watford is entitled to compensation for breach of contract as it was deprived of the services of the Player who still had two years of employment left under the Watford Contract and in good faith offered Cádiz and the Player to agree on a loan for one season, to settle the dispute, which proposal was declined.
- There are sufficient reasons to apply Article 17(2) FIFA RSTP, as “*there was a breach of contract without just cause, through inducement by [Cádiz], unjust enrichment and a violation of pacta sunt servanda and contractual stability*”.
- Cádiz did not act with due diligence, as it must have been aware that on 6 August 2019, several days before the Player signed the Cádiz Contract, Watford was mentioned as the Player’s previous club on a website that publishes news exclusively about Cádiz.
- The sanctions imposed on Cádiz and the Player are proportional and legal.

90. On this basis, Watford submits the following prayers for relief:

- “1. To dismiss the Appeal Brief of the Appellants, Cádiz CF and Mr. Mamadou M’Baye in full.
2. To uphold the arguments set up in this submission together with the respective Appeal Brief of Watford FC in the procedure CAS 2020/A/6930 and to conclude that Mr Mamadou M’Baye terminated

*the Employment Contract with Watford FC without just cause due to the breach of such contract by the latter who shall pay to Watford FC the compensation for such breach.*

3. *To state that Mr. Mamadou M'Baye has the amount of £, 1,186,400 (One million one hundred eighty-six thousand four hundred pound) with its interest starting from the date of the breach of the employment contract, i.e. from 13 of August 2019 until the effective date of payment.*
4. *To state the Cádiz CF is jointly and severally liable for the payment of such compensation awarded in favor of Watford FC.*
5. *To state that remaining paragraphs of the Appealed Decision, being the application of sporting sanctions to both Appellants remain in force.*
6. *To condemn the Appellants to the payment of the whole CAS administration costs and the Arbitrators' fees.*
7. *To oblige the Appellants to reimburse to Watford FC its legal fees of CHF 20.000”.*

## **B. CAS 2020/A/6930**

### ***i. Watford***

91. The submissions of Watford, in essence, may be summarised as follows:

- The compensation awarded in the Appealed Decision “*does not represent the true amount of losses incurred as the consequence of the breach of the Player*”.
- When Watford contacted Cádiz and Zapresic during the 2019 summer registration period in order to secure the Player’s return to Watford: Cádiz did not reply to all letters and emails sent by Watford; Zapresic did not issue the ITC instruction; and the Player did not cooperate to complete the TMS process.
- Based on the first criterion pursuant to Article 17(1) FIFA RSTP, the compensation amounts to GBP 186,400, which is calculated based on the annual salary of GBP 67,200 and annual bonuses of GBP 26,000, multiplied by two entire sporting seasons remaining under the Watford Contract, without any deduction based on the Player’s salary at Cádiz.
- Further, Article 9 of Schedule 2 to the Second Cádiz Contract is paramount for the application of the criterion of the specificity of sport through the application of the “*cláusula de rescisión*” under Spanish legislation (Article 15 and 16 of the Royal Decree 1006/1985), being the amount which a Spanish club considers appropriate in order to protect itself from the termination of the contract by a player, which is understood as

the amount of the “market value” of the Player in Spain, which in any case is not less than GBP 1,000,000.

- *“Should the esteemed members of the Panel consider that the criterion based on the “clausula de rescission” [sic] does not apply to the case at hand, it is without any doubts that the compensation that should be awarded to [Watford] is not only based on the concept of the remaining salary under the contract. [...] The criterion of the “market value” and the loss of the Player’s services should have been necessarily applied by the FIFA DRC as Watford effectively counted on the services of the Player, who at the moment of the termination of the contract was 21 years old and still had the employment contract **for two entire sporting seasons** (i.e. signed only one year ago, it was under protected period). Thus, by prematurely terminating and leaving Watford, the Player deprived Watford of any potential profit that could have been obtained out of the future transfer of the Player”.*
- An analysis of the transfer fees indicated on the portal of Transfermarkt.com of players acting in the same football division as the Player at Cádiz in the season 2019-2020 leads to the same calculation of the amount of compensation Watford is entitled to.

92. On this basis, Watford submits the following prayers for relief:

1. *To adopt an award to modify the decision appealed.*
2. *To uphold this Appeal Brief on the arguments mentioned herein and to conclude that the Respondent, Mr. Mamadou M’Baye terminated the Employment contract with Watford FC without just cause due to the breach of such contract by the latter who shall pay to Watford the compensation for such breach.*
3. *To state that Mr. Mamadou M’Baye has the amount of £ 1,186,400 (One million one hundred eighty-six thousand four hundred pound) with its interest starting from the date of the breach of the employment contract, i.e. from 13 of August 2019 until the effective date of payment.*
4. *To state the Cádiz CF is jointly and severally liable for the payment of such compensation awarded in favor of Watford FC.*
5. *To state that remaining paragraphs of the Appealed decision, being the application of sporting sanctions to both respondents, remain in force.*
6. *To condemn the Respondents to the payment of the whole CAS administration costs and the Arbitrators’ fees.*
7. *To oblige the Respondents to reimburse the Appellant his legal fees of CHF 20.000”.*

**ii. Cádiz and the Player**

93. Cádiz and the Player’s joint submissions, in essence, may be summarised as follows:

- The calculation of compensation for breach of contract by Watford violates the principle of “positive interest”, which dictates that the damaged party must be reinstated in the same position as it had prior to the premature termination of the contract.
- It would be unjust enrichment if Watford would be entitled to receive compensation *“for a Player in whom said club did not spend any amount of money (they did not pay a transfer fee nor invested any amount of money in his training or accommodation or any other expenses), did not fulfil its obligation of paying the outstanding salaries to [the Player] and did not register the Player in the Premier League before the transfer window was closed”*.
- Watford never made any payment to the Player, and the Watford Contract even did not provide for any payment method to the Player.
- The annual base salary in the Watford Contract is GBP 36,000, and not GBP 67,200 per season as argued by Watford. The amount of GBP 67,200 would only be payable in case the Player would have played 5 matches in the Premier League, but Watford failed to register the Player before the transfer window’s deadline in the Premier League, i.e. on 8 August 2019. The same counts for the additional amount of GBP 26,000 per year wrongly claimed by Watford, as this amount corresponds to the variable amount triggered in the event that the Player would have participated in a total of 35 Premier League matches, which was obviously not possible because Watford failed to register the Player in time.
- The alleged market value of the Player in the minimum amount of GBP 1,000,000, as argued by Watford, must be rejected, as it is not supported by any evidence, and is only based on Spanish law, which is not part of the applicable law to this dispute, and a web page, which is not an official website for valuing or economically assessing players.
- Buy-out clauses cannot be taken into account to fix the market value of the Player.
- *“[T]he determination of the value of the Player must be done bearing in mind the value calculated by Watford itself in summer 2019. Thus, the player was offered on loan to [Cádiz] by e-mail on 16 August 2019, valuing the Player with the amount of 0 “zero” euros, and the offer was rated as fair and reasonable [...]”*.
- Watford did not incur any expenses when allegedly hiring the Player as: the Player was a free agent; the Player never played for Watford; Watford never paid any remuneration to the Player; the value of the alleged loan to Zapresic was EUR 0; and the Player – being a defender – only played 7 out of 28 matches (of which only 2 matches were played in full) with Cádiz in the Second Division “B”.

- The Player never played for nor was called up by Watford. The Player could never meet any of the internal requirements in the United Kingdom including obtaining a work permit, since he has never been on UK territory. As Watford failed to complete the return of the ITC before 8 August 2019, it was prevented from registering and fielding the Player in the Premier League but forced to pay the Player's salary.
  - As such, Watford was never interested in enjoying the Player's services and did not suffer any damages from losing the Player's services. On the contrary, it financially benefited, having eluded paying the Player's wages.
  - Watford did not provide any evidence of the alleged damages suffered in relation to the principle of equity and justice.
  - “[T]he recognition on any compensation in favor of Watford would generate an unfair enrichment for said club, hence no amounts have to be recognized in their favor”.
94. On this basis, Cádiz and the Player submit the following requests for relief:
- “1. To reject the Appeal lodged by Watford FC.
  2. To uphold the appeal of Cádiz CF and the Player against the decision of the FIFA DRC dated 25 February 2020 and grant the prayers for relief contained in the Appeal Brief of 23 April 2020.
  3. In any case, to order Watford FC to pay the entire costs of the present arbitration, if any;
  4. In any case, to order the Watford FC to pay the entire costs for the Appellant's legal representation and assistance as well as other costs incurred by the Appellant in connection with this arbitration in the amount of 40.000 €:
    - CAS 2020/A/6899 Cádiz FC & Mamadou Mbaye v. FIFA & Watford FC: 10.000 € per appellant.
    - CAS 2020/A/6930 Watford FC v. Mamadou Mbaye & Cádiz FC: 10.000 € per respondent”.

## V. JURISDICTION

95. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) of the FIFA Statutes (2019 edition) as it determines that “[a]ppeals 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” and Article R47 of the Code, which provides:

“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a

*specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.*

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

#### **VI. ADMISSIBILITY**

98. The appeals were filed within the 21 days set by Article 67(1) of the FIFA Statutes. The appeals comply with all other requirements of Article R48 of the Code, including the payment of the respective CAS Court Office fee.
99. It follows that the appeals are admissible.

#### **VII. APPLICABLE LAW**

100. 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

101. The Parties are of the opinion that the various regulations of FIFA and, additionally, Swiss law, shall apply to the merits of this dispute, with the exception of Watford, which submits that the damages incurred as a consequence of the Player’s breach of the Watford Contract are to be based on the buy-out clause in the Second Cádiz Contract in accordance with Articles 15 and 16 of the Spanish Royal Decree 1006/1985.
102. The Panel is satisfied to accept the primary application of the various regulations of FIFA, in particular the November 2019 edition of the FIFA Rules Governing the Procedures before the FIFA Players’ Status Committee and the FIFA Disputes Resolution Chamber (the “FIFA Procedural Rules”), as well as the October 2019 edition of the FIFA RSTP, and the subsidiary application of Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA. Watford’s reliance on Spanish law will be addressed below if and when this discussion is relevant.

## VIII. MERITS

### A. The Main Issues

103. The main issues to be resolved by the Panel are:

- i. Was the FIFA DRC competent to deal with this matter?
- ii. If so, did the Player and Watford conclude the Watford Contract?
- iii. If so, did the Player terminate the Watford Contract without just cause?
- iv. If so, what are the consequences thereof?
- v. Is Cádiz jointly and severally liable?
- vi. Are any sporting sanctions to be imposed on the Player and/or Cádiz?
- vii. If so, are the sporting sanctions imposed by the FIFA DRC proportionate?

#### *i. Was the FIFA DRC competent to deal with this matter?*

104. The Panel observes that the jurisdiction of the FIFA DRC is disputed by Cádiz and the Player. The Panel can only address the substance of the present dispute if it considers that the FIFA DRC was indeed competent. If the Panel considers that the FIFA DRC was not competent, the Panel can only annul the Appealed Decision on such basis, without assessing the substance of the dispute.

105. The Panel notes that the FIFA DRC considered itself competent, primarily based on the following reasoning:

*“In addition, the Chamber referred to art. 22. Lit. a) of the Regulations, according to which FIFA is competent to hear disputes between clubs and players in relation to the maintenance of contractual stability, where there has been an International Transfer Certificate (ITC) request and a claim from an interested party in relation to said ITC request, in particular, inter alia, regarding compensation for breach of contract.*

*In view of the above, the members of the Chamber pointed out that the case at hand is related to the move of a player and his subsequent registration with a club belonging to a different association and connected to an ITC request. The foregoing fact was, in the Chamber’s view, the basis on which it could be established that the Dispute Resolution Chamber shall be competent to adjudicate on the matter at hand as to the substance.*

*In view of all the above, the Chamber established that the player’s objection to the competence of FIFA to deal with the present matter has to be rejected and that the Dispute Resolution Chamber is competent, on the basis of art. 22 (a) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance”.*

106. Article 22(a) and (b) FIFA RSTP provide as follows:

*“Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:*

- a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;*
- b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs”.*

107. The Panel notes that, as opposed to the majority of proceedings related to an alleged breach of an employment contract, where the competence of the FIFA DRC derives from Article 22(b) FIFA RSTP in conjunction with the relevant employment contract, the competence of the FIFA DRC in the matter-at-hand primarily derives from Article 22(a) FIFA RSTP. Accordingly, the FIFA DRC considered itself competent not only on the basis of the Watford Contract and Article 22(b) FIFA RSTP, but primarily based on Article 22(a) FIFA RSTP.
108. The Panel finds that this assessment of the FIFA DRC was correct, i.e. the dispute in the matter-at-hand derives from a claim concerning an ITC request.
109. Unlike Article 22(b) FIFA RSTP, Article 22(a) FIFA RSTP does not allow deviation from the default competence of the FIFA DRC, i.e. the discretion to refer employment-related disputes to national arbitration tribunals is restricted if the dispute concerns a claim related to an ITC request.
110. The Panel finds that Watford’s claim is indeed related to an ITC request, as it needs to be assessed whether the Player was contractually required to return to Watford after the loan with Zapresic expired, or whether he was a free agent. This is, *inter alia*, related to the question of whether the Player was registered with Zapresic on loan or on a permanent basis.
111. In addition to the Panel’s above finding that it is satisfied that the FIFA DRC correctly assumed jurisdiction, the Panel also finds that the Watford Contract does not contain a clear reference to another dispute resolution body different from the FIFA DRC.
112. The FIFA Commentary contains the following footnote with respect to Article 22(b) FIFA RSTP:

*“A clear reference to the competence of the national arbitration tribunal has to be included in the employment contract. In particular, the player needs to be aware at the moment of signing the contract that the parties shall be submitting potential disputes related to their employment relationship to this body”.*

113. The Panel observes that such requirement is uncontroversial in CAS jurisprudence, as numerous CAS panels have applied the same prerequisite:

*“[T]he Sole Arbitrator is of the opinion that Clause VII of the Contract, by making reference to three different arbitration bodies (within the FRF, the LPF and the AJF), without any criterion of selection, does not correspond to the standards of certainty and clarity required by FIFA for a valid and enforceable arbitration clause. In light of the foregoing, any further consideration with regard to the minimum procedural standards for the arbitration tribunal to meet is therefore unnecessary” (CAS 2014/A/3854, para. 103 of the abstract published on the CAS website).*

*“[T]he parties did not explicitly determine that a certain national body was competent to examine any contractual disputes to the exclusion of the competence of all other bodies which might be invoked. To the contrary, the clauses merely mention multiple alternatives, including a specific reference to the competence of FIFA” (CAS 2014/A/3864, para. 72 of the abstract published on the CAS website).*

114. The Panel took note of the various choice of forum clauses in the Watford Contract.
115. Besides references to the *“procedures applicable pursuant to the League Rules”* (Clauses 10.3 and 11.2 Watford Contract), the *“Employment Tribunal”* (Clause 19.1 Watford Contract) and the *“non exclusive jurisdiction of the English Courts”* (Clause 22 Watford Contract), Clause 9 of Schedule 2 to the Watford Contract refers specifically to the FIFA DRC (as well as the FIFA RSTP). The latter provision provides as follows:

*“In the event of an unlawful breach by the Player of this Agreement the Player and the Club acknowledge and agree that the market value of the Player at the time of such unlawful breach, as determined by the Dispute Resolution Chamber of FIFA, shall be used (in addition to the existing criteria as set out at Article 17 of the December 2004 FIFA Regulations for the Status and Transfer of Players) (as amended) when calculating the compensation due and payable by the Player to the Club for the Player’s unlawful breach of Agreement. [...]”.*

116. Since the FIFA DRC was seized to adjudicate and decide on the matter-at-hand on the basis of a claim filed by Watford, claiming that the Player had unlawfully breached the Watford Contract, entitling Watford to compensation for breach of contract, the Panel finds that Clause 9 of Schedule 2 Watford Contract is applicable.
117. This clause clearly refers to the competence of the FIFA DRC. Accordingly, the Panel finds that, regardless of the potentially contradictory applicability of the aforementioned clauses in the Watford Contract referring to fora other than the FIFA DRC, the Panel finds that it can in any event not be said that there is a clear deviation from the default competence of the FIFA DRC on the basis of Article 22(b) FIFA RSTP.

118. Consequently, also on this basis, the Panel finds that the FIFA DRC correctly assumed jurisdiction over the matter-at-hand.

*ii. If so, did the Player and Watford conclude the Watford Contract?*

119. The Panel observes that whereas the core of the present proceedings is about whether the Player was required to return to Watford after his tenure with Zapresic, in order to decide this issue, the Panel is obviously required to assess whether the Player was bound to Watford in the first place. If this is not the case, the Player was clearly not required to return to Watford.

120. Whereas the Player denies having signed the Watford Contract including its Schedule 2, Watford and FIFA argue that the Player did sign the Watford Contract and its Schedule 2.

121. Entering into this analysis, the Panel first of all considers it necessary to determine that the burden of proof to establish the contractual link between Watford and the Player lies with Watford, since Watford is the party claiming compensation on the basis of an alleged breach of the Watford Contract by the Player.

122. The main evidence relied on by Watford in this respect is the Watford Contract itself, as this document was purportedly signed by the Player.

*1) The negotiations concerning the Watford Contract*

123. Before addressing the Player's argument that he did not sign the Watford Contract and that the signature affixed to it is a forgery, the Panel finds that there are a couple of observations to be made with respect to the purported conclusion of the Watford Contract that are worthwhile addressing.

124. First of all, it is undisputed that the Player never travelled to the United Kingdom to conclude the Watford Contract. The Player did not undergo any medical examination. There was never any direct contact between the Player and Watford. The Panel considers this to be quite unusual and Watford did not provide any explanation for this course of events.

125. The evidence relied upon by Watford are two emails, one from its internal legal counsel to Mr Labrador and the other Mr Labrador's reply thereto, purportedly resulting in the execution of the Watford Contract.

126. The Panel finds that the evidence presented by Watford to prove and explain how the Watford Contract allegedly came about was extremely limited. The Panel would have expected Watford to establish in some detail how it came into contact with the Player and/or Mr Labrador, how the negotiations were conducted, etc.

127. Above all, the Panel considers it problematic that Mr Labrador and Ms Vowels were not called as witnesses, while Watford relies on Mr Labrador's correspondence with Mr Veral in arguing

that the Player had indeed signed the Watford Contract. Since the Player denies that Mr Labrador was his intermediary, which allegation is corroborated by the “*Intermediary Declaration Form – Nil Return*”, the Panel finds that it was for Watford to bring this witness and not for the Player. Since Ms Vowels, *inter alia*, signed Schedule 2 and the Watford Contract on behalf of Watford, also her attendance would have been helpful to clarify certain factual issues.

128. Indeed, the “*Intermediary Declaration Form – Nil Return*”, attached to Mr Labrador’s email dated 17 July 2018 to Mr Veral, allegedly signed by the Player (which is disputed by the Player), confirms, *inter alia*, that the Player “*has not used the services of an intermediary in relation to the above Transaction*” and that he “*has not made, and will not make, any payment to any Intermediaries in relation to the above Transaction, either directly or indirectly*”.
  129. Accordingly, even though the Player disputes having signed this form, Watford should have acquired the understanding from the documents submitted by Mr Labrador that the Player was not represented by an intermediary, and thus, that Mr Labrador did not act on behalf of or for the Player.
  130. The Panel finds that this is also underpinned by Mr David Navarro Jodar, Sports Manager of Cádiz, who stated, *inter alia*, that Mr Labrador did not represent the Player, but that he was Cádiz’ lawyer who was working closely with Mr Pina, the Director of Cádiz until January 2018, and had a close relationship with the owner of Watford.
  131. For the above reasons, the Panel is not prepared to accept that the Player was represented by Mr Labrador, or by anyone else.
  132. The Panel finds it problematic that a reputed club like Watford relied on a single email of a third person in taking for granted that the Player signed the Watford Contract, without having had any direct contact with the Player himself, while it should have understood that the Player was not represented by an intermediary.
  133. What is more, based on the evidence presented by Watford, Mr Labrador’s email dated 17 July 2018 contains only three attachments, including a signature of Schedule 2, but the Watford Contract itself was not part of the attachments presented (cf. Exhibit 3 to Watford’s Appeal Brief).
  134. Accordingly, there is no clear and reliable evidence presented by Watford as to how and when it received a signed copy of the Watford Contract from the Player.
- 2) *The integrity of the signature affixed to the Watford Contract by Ms Vowels*
135. The signed copy of Schedule 2 attached to Mr Labrador’s email dated 17 July 2018, shows, *inter alia*, as follows:

**SIGNED BY THE PLAYER**

Player signature:..... 

in the presence of: ENRIQUE LABRADOR

Witness signature:..... 

Witness name GAYLE VOWELS

Witness address: c/o WATFORD FC, VICARAGE ROAD STADIUM, WATFORD, WD18 0ER

Witness occupation: SECRETARY

136. Accordingly, the Player purportedly affixed his signature to this document, with Mr Labrador as a witness.

137. No initials or paraphs are affixed to the other pages of Schedule 2.

138. In fact, the signature page is a separate sheet of paper from which it cannot be concluded to which document it belongs. The Panel considers this odd, also because the last line of the previous page states as follows:

*“14. Any other provision:”*

139. This suggests that more text forming part of Schedule 2 should follow on the next sheet of paper, but this is not the case. Instead, the next text that follows is “*SIGNED BY THE PLAYER*” and the signature purportedly affixed by the Player as depicted above in paragraph 135.

140. The signature page of the Watford Contract relied upon by Watford shows as follows:

**SIGNED BY THE PLAYER**

Player signature:..... 

in the presence of: 

Witness signature:.....

Witness name GAYLE VOWELS

Witness address: c/o WATFORD FC, VICARAGE ROAD STADIUM, WATFORD, WD18 0ER

Witness occupation: SECRETARY

141. The Panel finds that a few factual conclusions can be drawn from this: i) the printed text of the signature page of Schedule 2 and of the Watford Contract are identical; ii) the Player’s handwritten signature of Schedule 2 and of the Watford Contract are identical; iii) whereas the dotted line after the text “*Witness signature:*” is intact on the signature page of Schedule 2, the dotted line on the signature page of the Watford Contract is interrupted; iv) the part where the dotted line is interrupted on the signature page of the Watford Contract is exactly the part where Mr Labrador’s signature on the signature page of Schedule 2 was affixed (i.e. the 9 dots

preceding Mr Labrador's signature are visible on both signature pages, whereas there are 74 dots behind Mr Labrador's signature and the interrupted dotted line contains 72 dots after the interruption); and v) Ms Vowels' signature is affixed to the signature page on a blank area and on the place where the dotted line is interrupted.

142. Based on the above observations the Panel has serious concerns about the integrity of the signature page of the Watford Contract signed by Ms Vowels. The Panel finds that the most likely scenario is that someone deleted Mr Labrador's signature from the signature page of Schedule 2 and subsequently used it as the signature page of the Watford Contract to be signed by Ms Vowels. Other scenarios would not explain why the purported signature of the Player would be identical on both documents.
143. In any event, it is undisputed that Ms Vowels did not witness the Player affixing his signature to the Watford Contract as it is undisputed that the Player never met any representative of Watford.
144. Further, the fact that Watford did not call Ms Vowels as a witness despite her alleged involvement in the negotiations with the Player and/or Mr Labrador weaken Watford's case. This is all the more important considering the facts that: (a) Watford was expected to try and rebut an expert opinion regarding the Player's signature, an issue that will be dealt in detail in paragraphs 151-158 *infra*; and (b) in this case the Panel is dealing with the reasonable expected testimony of an official of Watford and still Watford decided not to bring the witness.
145. To be clear, the Panel does not maintain that Ms Vowels falsified the Watford Contract. Although it appears that Mr Labrador's signature was deleted and replaced by Ms Vowels' signature, it is not clear to the Panel who might have done this. What is important to the Panel is that this is one of the reasons why the Panel has considerable doubts as to the integrity of the Watford Contract and the circumstances under which it was signed as a whole.

3) *Watford's execution of the Watford Contract*

146. Further, even if Mr Labrador's email dated 17 July 2018 did contain a copy of the Watford Contract with a genuine signature of the Player, no evidence has been presented by Watford to prove if and when the Watford Contract was executed by its CEO and/or Chairman, and if and when returned to the Player.
147. The Panel considers this relevant because the signature of Mr Veral's email dated 13 July 2018 contains the following text:

***“Contracting with WFC:** Please note that no employee or agent is authorised to conclude any binding agreement with a value in excess of £10,000 on behalf of WFC with another party, whether by email or otherwise, unless authorised in writing by the Chief Executive Officer and/or the Chairman. Please note that certain employees of WFC have the title of “director”, but are not corporate directors of WFC. WFC*

*will not be bound by or liable for any agreements that have not been properly approved by the Chief Executive Officer and/or Chairman” (emphasis in original).*

148. Accordingly, based on the information presented by Watford itself to the Player, the Watford Contract would not be valid unless authorised in writing by its CEO and/or Chairman, while the version presented to the Player and/or Mr Labrador by Mr Veral could not have been signed by Watford’s CEO and/or Chairman, because the copy returned by Mr Labrador only contained signatures of Mr Labrador and, purportedly, the Player. Watford also did not present any documentary evidence suggesting that Mr Veral was authorised to conclude the Watford Contract on Watford’s behalf.
149. There is no evidence on file suggesting that Watford at a later stage provided Mr Labrador and/or the Player with a copy of the Watford Contract signed by its CEO and/or Chairman.
- 4) *The integrity of the signature purportedly affixed to the Watford Contract by the Player*
150. Turning now to the authenticity of the Player’s signature on the Watford Contract, the Panel notes that the Player presented three Graphological Expert Reports of Mr Posadas Martinez.
151. In a report dated 25 November 2019, Mr Posadas Martinez concluded as follows with regard to the questioned signatures on the last page of the Watford Contract, the Suspension Letter, the Zapresic Loan Agreement and the termination of the Troyes Loan Agreement:

**“Conclusions**

*The questioned signatures do not present the main handwriting habits that define the unquestioned signatures and are inherent in the way the author of the unquestioned signatures signs. In addition, the first three questioned signatures [signatures on each page of the Zapresic Loan Agreement] are clearly photomechanical simulations.*

**Opinion**

*For the reasons given herein above, the undersigned expert submits the following opinion:*

*In the light of the results yielded by the comparative analysis system and on the basis of the significant differences we have identified among the specimens, we conclude that **the signatures on the documents submitted for our examination do not belong to [the Player]**” (emphasis in original).*

152. In a report dated 13 February 2020, the following conclusions were drawn with respect to the questioned signatures on the last page of Schedule 2 to the Watford Contract, the FA “Intermediary Declaration Form” dated 13 July 2018, and the “Proof signed by player that there is no TPO of the player’s economic rights” dated 12 July 2018:

**“Conclusions**

*The questioned signatures do not present the main handwriting habits that define the unquestioned signatures and are inherent in the way the author of the unquestioned signatures signs. Furthermore, the questioned signatures display a changing, uneven structure that suggests constant improvisation in their writing, which is typical of freehand simulations.*

**Opinion**

*For the reasons given herein above, the undersigned expert submits the following opinion:*

*In the light of the results yielded by the comparative analysis system and on the basis of the significant differences we have identified among the specimens, we conclude that **the signatures on the documents submitted for our examination do not belong to [the Player]**” (emphasis in original).*

153. Finally, in a report dated 5 November 2020, the following was concluded with regard to the questioned signature on the last page of the Troyes Loan Agreement:

**“Conclusions**

*The questioned signature does not present the main handwriting habits that define the unquestioned signatures and are inherent in the way the author of the unquestioned signatures signs. It also shows a contrivance of line, being written slowly and uncertainly at several points. All these features are clear signs of forgery.*

**Opinion**

*For the reasons given herein above, the undersigned expert submits the following opinion:*

*In the light of the results yielded by the comparative analysis system and on the basis of the significant differences we have identified among the specimens, we conclude that **the signature on the documents submitted for our examination does not belong to [the Player]**” (emphasis in original).*

154. The Panel was informed about Mr Fidel Pasadas Martinez’ professional background, his qualifications and experience as a handwriting expert. Further, he explained his technical method of examination and stated that although he only had copies of the questioned documents to examine, it was his professional opinion that the hypothesis that the Player had signed the questioned documents was not supported by the evidence of handwriting that he had examined. On the contrary, Mr Martinez stressed that in his professional opinion, he had no doubt that the Player did not sign the documents.
155. The Panel considered the Graphological Reports and his evidence provided at the hearing generally credible. The Panel is not persuaded by the content of the Expert Reports to such

an extent that these would form a stand-alone reason to conclude that the signature purportedly affixed to the Watford Contract by the Player was false, because the Panel finds that the Expert Reports at times lacked the nuance and diligence required for such examination in a situation where only copies of the relevant documents were available and because the Graphological Reports were commissioned unilaterally by the Player. However, the Graphological Reports strongly point towards the conclusion that the Player's signatures on several documents have been forged.

156. The Panel finds that the Expert Reports should also be afforded considerable weight because the evidence remained uncontested, i.e. Watford did not commission a graphological expert to examine the relevant signature and did not ask the Panel for an independent graphological expert to be commissioned. The simple assertion of Watford that the Graphological Reports are simply wrong without any evidence being presented to back this up is entirely unconvincing.
  157. Even if the signature affixed to the Watford Contract was the Player's, the above-mentioned observations with respect to the signature page of Schedule 2 and of the Watford Contract raise doubts as to what the Player believed he was signing. Did he only accept the salary offer included in Schedule 2, did he sign the Watford Contract as a whole, or did he maybe sign an entirely unrelated document that was later added to Schedule 2 and/or to the Watford Contract. Nobody from Watford witnessed the Player signing the Watford Contract.
- 5) *The Player's registration in TMS*
158. The mere fact that, according to TMS, the Player was registered with Watford on a permanent basis and that he was loaned to Zapresic is not considered decisive by the Panel, as the Player was not involved in this registration process. This process was handled by Watford and Zapresic, and was probably largely based on the Watford Contract and the Zapresic Loan Agreement, both of which are considered to be of doubtful integrity by the Panel (as to the Zapresic Loan Agreement see paragraph 173-175 *infra*).
  159. The Panel further notes that TMS is not always accurate, as all Parties, including FIFA, appear to agree that the Player was employed by Troyes for some time, be it on a temporary basis under the Troyes Loan Agreement (which the Player says he never signed) or on a permanent basis, while this was never recorded in TMS. The Panel does not consider this to be strange, because TMS operates on the basis of the information provided to it by the relevant parties and cannot be "blamed" for not recording information that assumingly was never in its possession.

6) *The Player's testimony before the Cádiz Preliminary Investigating Court Number 1*

160. Watford and FIFA also rely on the testimony of the Player before the Cádiz Preliminary Investigating Court Number 1, where the following testimony was recorded (as translated into English from the original document in Spanish):

*“ASKED if he knows the other persons implicated in the events under investigation and if he is a relative or friend or in any sort of relationship with any of them, he STATES: That he is a player for Cádiz Club de Fútbol.*

*ASKED ABOUT THE EVENTS AT ISSUE IN THE CASE: HE STATES : DOES he recognise any signature as his in the document on page 117 (employment contract dated 15/08/17), he states that the signature resembles his but is not his as for the one on page 119 he is convinced that it is his and the one on sheet 118 he recognises as his. That the one on sheet 117 he finally recognises as his own.*

*As for the persons who were present when he signed the contract, he states THAT HE WAS in a Senegalese club and when he signed the contract there was a person who belonged to that club and this person accompanied him to Spain and when he signed the contract that Senegalese person SOHIBOU was there, Enrique Labrador who used to work for the club but no longer worked there then, that when he signed the president was not there, that the persons who were there were Sobibou and Enrique Labrador.*

*In answer to the private prosecution's questions about the part played by Quique Pina in the contract he states THAT Quique Pina bought him so he could come here to play. That previously he signed a four-year contract with Uruguay and here one with Cádiz as a player on loan but he was never in Uruguay. In order to come to Spain the person who contacted the witness states [sic] that he was in a club in Senegal, he had an agent named Benjamin Bonifaz, that he is white and works for the club in Senegal. Then Benjamin showed him that contract in Senegal on his mobile before coming to Spain. That when he came to Spain in Cádiz he was in contact with Benjamin his agent who talked with Enrique and with Quique. That he had signed the contracts with Uruguay but came directly to Cádiz. That in the contracts with Uruguay only Enrique Labrador was present. That in the end he did not go play in Uruguay because they told him to go directly to Cádiz, that when that year with Cádiz was over he should have gone to Uruguay. That he does not know why he did not go to Uruguay. That in 2017-2018 he played for Cádiz and in the next season, 2018-2019, he spent the first four months injured, that they sent him to Elche but he did not play and then he went to Troyes in France, that he was sent to both teams by Quique Pina, then he went to Croatia but before he went Quique called the athletic director [and told him] that he spoke very good English but the witness does not speak English at all and he also told him he was fine, that he was training well, but he was not fine, he was still injured. That when he reached the airport in Croatia, he signed the contract at the airport. Before going to Croatia, since he was injured, a doctor from Murcia recommended by Quique administered infiltration treatment. That when he signed the contract in the airport in Croatia he trained for five days and afterwards they told him to go back to Senegal but they did not give him a contract. He went to Senegal to obtain a six-month visa. Before going to Croatia he had signed a contract with the English team Watford and Quique said that later he would*

*be lent to Croatia. That when he signed the contract with Watford he had not been paid for a year. Did Enrique Pina or Enrique Labrador ask him for a large sum of money for the contract, he states that he did not sign the Murcia contract but they told him that if he signed the Murcia contract they would give him, the witness, €5000.*

*About whether he had any relationship with Cádiz's president Manuel Vázquez in any of the contracts, he states that his agent is the one who talked to Manuel Vázquez: the agent is named PAPE MBAYE.*

*[...] he states THAT he signed all contracts [...].*

161. At the hearing before the Panel, the Player testified as to what had happened in his recollection. He testified, *inter alia*, that he followed Mr Pina's instructions, that he had never been to the United Kingdom, that he never met someone from Watford, that he never signed the Watford Contract and that he had never seen the Watford Contract.
162. The Player further testified, *inter alia*, that Mr Pina and Mr Labrador worked together and that he met Mr Labrador when he was registered with Cádiz, that his current agent is Mr Pape M'Baye and that Mr Labrador had never been his agent. The Player indicated that, before he joined Zapresic, Mr Pina told him that he had a contract with Watford, but that he did not follow up on this because he had not seen anything from Watford. He had never received any salary from Watford. The Player alleges that he followed Mr Pina's instructions ("*he forced me to do things*").
163. The exact context in which the Player provided the above testimony before the Spanish courts is not clear, but it does appear from the Player's testimony that it concerned criminal proceedings against, *inter alia*, Mr Pina and Mr Labrador. The Panel is reluctant to interpret the Player's written witness statement literally because it is not a *verbatim* witness statement, but a third-party summary.
164. The Panel finds that it is somewhat unclear from the transcript whether the Player testified that he had signed a contract with Watford, or whether "*Quique*" (i.e. Mr Pina) had told him that this was the case.
165. For this reason, and paying of course full respect to the Spanish system of recording testimonies before a Spanish Court, with regard to any inconsistencies between the Player's testimony before the Spanish Court (as recorded by a third party) and his testimony before CAS, the Panel prefers to rely on the testimony of the Player before this Panel, because this enabled the Panel to benefit from a direct impression of the testimony that allows the Panel to assess his credibility directly by itself. The Player was extensively examined by the Parties and the members of the Panel, and he was confronted with multiple questions related to the alleged signing of the Watford Contract. The Panel finds that the Player's testimony should be afforded more evidentiary weight than the written extract of the Player's statement before the Spanish Court.

166. What is more, the Panel finds that the elements in the Player's two testimonies that may appear contradictory at first sight, can in fact largely be reconciled in that it appears that the Player, in his state of mind before the Spanish Court, stated that he had signed a contract with Watford because Mr Pina told him that he had, without specifically admitting that he had signed the Watford Contract.
167. Insofar FIFA argues that the Player's admission that he was under contract with Troyes is in contradiction with the Graphological Report dated 25 November 2019, the Panel finds that this is not necessarily the case. Article 4 of the Troyes Loan Agreement provides, *inter alia*, that "TROYES takes the responsibility to reach an agreement with the PLAYER, and to undersign with him a separate employment contract valid until 30 June 2019". The Panel infers from this that the Player may have been employed by Troyes on the basis of an employment contract, without having knowledge of either the Troyes Loan Agreement or the termination thereof.
168. Although the Panel finds that the Player should have been more proactive in following up on an indication from someone within his sphere of influence that he had purportedly concluded an employment contract with Watford, the Panel ultimately considers such testimony a credible explanation and that the Player's testimony before the Spanish Court does not establish that the Player had signed the Watford Contract.
7. *Subsequent ratification of the Watford Contract*
169. Watford and FIFA also argue that the existence and binding nature of the Watford Contract is proven by means of subsequent agreements concluded by the Player. In this respect, they primarily rely on the Troyes Loan Agreement and the Suspension Letter, by means of which the Watford Contract was suspended during the Player's loan with Zapresic.
170. First of all, the Panel notes that Mr Posadas Martinez concluded in his Graphological Reports that also the signatures affixed to these agreements "**do not belong to [the Player]**" (emphasis in original).
171. Furthermore, the Panel notes that the evidence put forward by Watford in this respect is also very limited. Watford does not explain in any detail how the Troyes Loan Agreement came about. Indeed, Watford did not provide any communication with Troyes concerning the conclusion of the Troyes Loan Agreement and no witnesses in this respect were called. What is more, the Player's loan with Troyes also has some extraordinary features. The Player's loan period with Troyes was never registered in TMS, the Player never played any match for Troyes and he never received salary from Troyes.
172. Also with respect to the Player's purported loan to Zapresic no evidence was presented by Watford explaining how such loan came about. There is no paper trail of the Suspension Letter being provided to the Player. The Player also did not speak English and it was not established how and if the content of the Suspension Letter was explained to the Player and when the Player allegedly returned a signed copy of the Suspension Letter to Watford.

173. The Zapresic Loan Agreement contains three signatures allegedly signed by the Player, but the expert clarified in his Graphological Report dated 25 November 2019 that these signatures “*are without a doubt photomechanical simulations. All three signatures are identical. They do not display the graphic variability that all true signatures inevitably present. In short, the fact that **no two signatures are exactly the same** and furthermore the fact that the document is a photocopy both point to the conclusion that these signatures are not authentic*” (emphasis in original).
174. The Zapresic Loan Agreement (as well as the Suspension Letter and the Troyes Loan Agreement) have been signed by Mr Scott Duxbury on behalf of Watford, but exactly as was the case with the missing testimony of Ms Vowels also in this case, when a crucial evidentiary issue was at stake, the best possible witness was not called by Watford to explain the facts surrounding the Suspension Letter and the loan agreements.
175. The Panel considers it important that Watford did not call Mr Scott Duxbury as a witness, while this was the person that signed all the aforementioned documents relating to Troyes and Zapresic on behalf of Watford and could have explained more about the context in which all this occurred.
176. If anything, the Panel finds that the above confirms a trend of dubious agreements being concluded surrounding the Player without a paper trail being established explaining the extraordinary features surrounding such dealings.
8. *Final considerations*
177. Having considered all the elements set out above, and realising that one should tread carefully in determining that a signature has been forged, the Panel ultimately comes to the conclusion that it is simply not convinced to any level of satisfaction, not even on a balance of probabilities, that the Player committed himself to the Watford Contract.
178. There are too many elements present that make the entire situation somewhat dubious. The Panel could not determine the party responsible for this or other person involved in the negotiations between the Player and Watford, nor does it have to.
179. What matters legally for this case is that Watford simply failed to satisfy its burden of proof to establish that the Player was bound to the Watford Contract, i.e. it provided scant evidence of a paper trail concerning the most relevant documents and did not call the persons directly involved as witnesses. The only witness called by Watford was Mr Pennington, Watford’s current Head of Legal, but he was not personally involved in the arrangements purportedly made.
180. In contrast to the lack of evidence presented by Watford, the Panel notes that Cádiz and the Player did call all the relevant people involved as witnesses. In this respect, the Panel considered the testimony of Mr David Navarro Jodar, working with Cádiz when the Player concluded the Second Cádiz Contract. He testified that there was no opposition from the

TMS system with regard to the registration of the Player with Cádiz. He testified that he was not aware that the Player and Watford had a contract and that both Zapresic as well as the Player had confirmed that the Player was a free agent. The Panel has no reason to doubt about the veracity of such witness statement.

181. The Panel finds that Watford's email to the Player dated 7 August 2019 does not make this any different. The Player denied that the relevant email address was his and Watford failed to prove how it obtained such email address or that it had communicated with the Player through such email address before. The Panel is therefore not convinced that said email ever reached the Player. In any event, even if the email had reached the Player, this does not suddenly result in a contractual commitment if there was none before.

## **B. Conclusion**

182. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that the Player was not bound by the Watford Contract and that he was therefore a free agent at the end of his tenure with Zapresic, as a consequence of which he was free to sign the Second Cádiz Contract without breaching the Watford Contract.
183. As a result, the Panel does not have to address the other issues set out in paragraph 103 above.
184. Consequently, the Appealed Decision is to be set aside in its entirety.
185. Any other or further claims or requests for relief are dismissed.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 30 March 2020 by Cádiz FC and Mamadou M'Baye against the decision issued on 25 February 2020 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is upheld.
2. The appeal filed on 14 April 2020 by Watford FC against the decision issued on 25 February 2020 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is dismissed.

3. The decision issued on 25 February 2020 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is set aside.
4. (...).
5. (...).
6. (...).
7. (...).
8. All other and further motions or requests for relief are dismissed.