Arbitration CAS 2020/A/6961 Football Club Buriram United v. Modibo Maiga, award of 21 May 2021

Panel: Mr Bernhard Welten (Switzerland), Sole Arbitrator

Football
Termination of the employment contract without just cause
Applicable law when interpreting Art. 17 RSTP
Prohibition of waiver of claims
Nullity of a clause that derogates to Article 337c para. 1 of the SCO to the detriment of the player

1. **As the FIFA Regulations on the Status and Transfer of Players (RSTP) is drafted under Swiss law and Article 57 para. 2 of the FIFA Statutes further states that Swiss law is applicable on a subsidiary basis, interpretation of provisions of the RSTP, for instance Article 17 para. 1, shall be based on Swiss law. If the contract in discussion is an employment contract, specific provisions of employment law in the Swiss Code of Obligations (SCO) have to be checked for possible limitations, especially Swiss employment law, which contains many provisions that are mandatory and binding, and, therefore, parties cannot deviate or circumvent such provisions.**

2. **Article 341 of the SCO states that during the employment relationship and for one month after its end, an employee may not waive claims arising from mandatory provisions of law or the mandatory provisions of a collective employment contract.**

3. **According to Article 337c para. 1 of the SCO, if the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration. This provision is mandatory and binding on the contractual parties and no derogation from this provision to the detriment of the employee is allowed as stated in Article 362 para. 1 of the SCO. According to Article 362 para. 2 of the SCO, *"Any agreement or clause of a standard employment contract or collective employment contract that derogates from the aforementioned provisions to the detriment of the employee is void"*. Article 337c para. 1 of the SCO therefore forms the legal boundary within which the Parties have to stay when deviating from Article 17 para. 1 of the FIFA RSTP. Accordingly, a clause in the employment contract that sets the compensation due to a player in case of termination by the club to less than what the player would have received for the rest of the contractual period is void, as it breaches the mandatory and binding Article 337c para. 1 of the SCO.**

I. PARTIES

1. Buriram United Football Club (the "Appellant" or the "Club"), is a professional football club with its registered seat in Buriram, Thailand. The Club currently plays in the Thai League, the top football league in Thailand. It is a member of the Football Association of Thailand (the "FAT") which in turn is affiliated with the Asian Football Confederation (the "AFC") and the Fédération Internationale de Football Association ("FIFA").

2. Mr Modibo Maiga (the "Respondent" or the "Player"), born on 3 September 1987, is a Malian professional football player, who formerly played for the Club. He has been without a club since April 2019.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established by the Sole Arbitrator on the basis of the Parties' written and oral submissions, and the exhibits produced during these proceedings and statements made during the hearing. Additional facts and allegations found in the Parties' submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered carefully all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this award refers only to the submissions and evidence considered necessary to explain its reasoning.

A. Facts

4. On 3 December 2018, the Club offered the Player an employment agreement for the time period of 10 December 2018 until 30 November 2019. As a monthly salary, an amount of USD 30,000 net was offered. The Player returned a signed contract by email of 18 December 2018, but renegotiated the terms thereafter.

5. On 4 January 2019, the Parties signed an employment contract (the "Employment Contract") for the time period of 1 January 2019 until 30 November 2019.

6. Based on Clauses 1 to 4 of the Employment Contract, the Player was inter alia entitled to:

   a. USD 32,727 net per month to be paid on the last business day of each month;

   b. Thai Baht (THB) 500 (approximately USD 16) per training day or match day;

   c. Match win incentives at the Club's sole discretion, defined as follows:

Details	1st Match Win Pack A	2nd Match Win Pack B	3rd Match Win Pack C	From 4th Match onwards until the end of season 2020
	Bonus will be calculated by result and score (rate/goal)	Bonus will be calculated by result and score (rate/goal)	Bonus will be calculated by result and score (rate/goal)	Bonus will be calculated by result and score (rate/goal)
First eleven players	THB 6,000	THB 12,000	THB 18,000	Maximum of match win bonus calculation rate is Pack C
Reserve players played in the match	THB 3,500	THB 7,000	THB 10,500	
Reserve players did not play in the match	THB 2,000	THB 4,000	THB 6,000	

"1. In case of "Equal or Lost", the next match win bonus will be recalculated and based on Pack A and run by results and score made.

2. Bonus will be paid in Thai Baht currency".

7. The Employment Contract further included an "Addendum of Employment Contract" (the "Addendum") based on which the Player was further entitled to:

"a. USD 70,000 net in January 2019.

b. USD 70,000 net in July 2019.

c. USD 50,000 net (fifty Thousand U.S. Dollar net) will be paid if Athlete participate[s in] *more than 25 games in Thai League season 2019.*

d. USD 50,000 net (fifty Thousand U.S. Dollar net) will be paid if Athlete score[s] *more than accumulated of 25 goals in Thai League season 2019 and AFC Champions League 2019".*

8. Clause 6 of the Employment Contract provides:

"If the Club terminates the contract without just cause it shall pay a compensation of two months' worth of salary to the Player.

The Player who has terminated his contract without just cause shall in all cases pay a compensation of four months' worth of salary to the Club".

9. On 2 April 2019, the Club terminated the Employment Contract with the Player in writing with immediate effect. It stated:

"1. By way of compensation for the early termination and in accordance with article 6 of the Contract and your

employment with the Club, the Club shall pay to you a once-only net sum of 60.000,00 USD ("the Termination Payment") within 5 April 2019 in full and final settlement of any and all sums due to you of any nature both now and in the future whatsoever pursuant to or arising from your employment with the Club or its termination.

2. Save for the Termination Payment you shall be entitled to no further sums from the Club, including but without limitation any sums in respect of remuneration, signing-on fees, bonuses, or any other sums due pursuant to the employment-agreement or any applicable bonus schedule".

The Club requested the Player to countersign this letter to show his agreement.

10. On 4 April 2019, the Club informed the Player in writing that since he is no longer affiliated with the Club, therefore he is considered a third party who is not allowed on the Club grounds anymore.

11. On 9 April 2019, the Player replied to the Club's written termination and disagreed with the terms proposed by the Club in its termination notice of 2 April 2019. The Player stated that Clause 6 of the Employment Contract is null and void, and requested the payment of the remaining value of the Employment Contract in the amount of USD 205,025 plus 5% interest.

12. On 2 May 2019, not having received any reply from the Club, the Player sent a reminder to the Club regarding the payment of USD 205,025 plus 5% interest and set a deadline of 12 May 2019 to receive the payment.

13. On 12 May 2019, the Club replied to the Player and contested his allegations, pointing out to the Player's duty under the principle of *"pacta sunt servanda"*.

B. Proceeding before the FIFA Dispute Resolution Chamber

14. On 23 July 2019, the Player filed a claim against the Club in front of the FIFA Dispute Resolution Chamber (the "FIFA DRC"), requesting the payment of USD 276,942 as compensation as well as sporting sanctions against the Club.

15. On 5 October 2019, the Club filed its answer to the Player's claim of 23 July 2019.

16. On 2 December 2019, the FIFA DRC informed the Parties that the investigation-phase of the present matter was closed and requested an update of the Player's employment situation from of 2 April 2019 until 30 November 2019.

17. On 13 December 2019, the Player replied that unfortunately and despite his multiple efforts, he was not able to enter into any new employment relationship with another club during the period of 2 April 2019 until 30 November 2019.

18. On 17 January 2020, the FIFA DRC took its decision, which partially accepted the Player's claim and ordered the Club to pay to the Player USD 271,816, while dismissing the Player's request for sporting sanctions against the Club.

19. On 27 January 2020, the Parties received the FIFA DRC decision and the Club requested on the same day the grounds of this decision.

20. On 23 March 2020, the FIFA DRC notified the reasoning of its decision of 17 January 2020 to the Parties (the "Appealed Decision").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 9 April 2020, the Club filed its Statement of Appeal (the "Appeal") against the Player in relation to the Appealed Decision before the Court of Arbitration for Sport ("CAS"), pursuant to Article R47 *et seq* of the Code of Sports-related Arbitration (2019 edition) (the "Code") and requested that the matter be submitted to a sole arbitrator.

22. On 22 April 2020, the Player requested that a three-member panel decide this case instead of a sole arbitrator.

23. On 23 April 2020, the CAS Court Office informed the Parties, in light of their disagreement concerning the number of arbitrators, that the President of the CAS Appeals Arbitration Division, or her Deputy, would decide on the number of arbitrators further to Article R50 of the Code.

24. On 30 April 2020, the CAS Court Office informed the Parties that pursuant to Article R50 of the Code, the Deputy President of the CAS Appeals Arbitration Division had decided to submit the present case to a sole arbitrator.

25. Also on 30 April 2020, FIFA informed the CAS Court Office that it renounced to its right to request to intervene in the present arbitration proceedings further to Article R41.3 of the Code and provided a clean copy of the Appealed Decision.

26. On 13 May 2020, after an extension, the Club filed its Appeal Brief pursuant to Article R51 of the Code.

27. On 19 May 2020, the CAS Court Office set a deadline of until 8 June 2020 for the Player to file his Answer pursuant to Article R55 of the Code.

28. On 8 June 2020, the CAS Court Office informed the Parties that, pursuant to Article R54 of the Code, the Deputy President of the CAS Appeals Arbitration Division had appointed Mr Bernhard Welten, Attorney-at-law in Bern, Switzerland, as Sole Arbitrator to decide this case.

29. On 28 June 2020, after an extension, the Player filed his Answer pursuant to Article R55 of the Code.

30. On 24 July 2020, after consulting the Parties, both of whom stated that their preference was for an in-person hearing, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this case further to Article R57 of the Code on 11 September 2020 in Lausanne, while noting that the Sole Arbitrator reserved the right, depending on the evolution

of the COVID-19 pandemic, to eventually hold the hearing by video-conference further to Articles R44.2 and R57 of the Code.

31. On 14 August 2020, FIFA sent the FIFA DRC file for this case as requested by the Sole Arbitrator.

32. On 18 August 2020, the CAS Court Office informed the Parties that the Sole Arbitrator had decided, after consulting the Parties and in light of the evolution of the COVID-19 pandemic, to hold the hearing via video-conference further to Articles R44.2 and R57 of the Code.

33. On 31 August 2020, the Player signed the Order of Procedure.

34. On 4 September 2020, the Club signed the Order of Procedure.

35. On 11 September 2020, the hearing was held by video-conference. At the outset of the hearing, all Parties confirmed not to have any objection as to the constitution and composition of the Sole Arbitrator.

36. In addition to the Sole Arbitrator and Ms Kendra Magraw, CAS Counsel, the following persons attended the hearing:

    a) For the Club:

        1) Mr Menno Teunissen, Counsel;
        2) Mr Thomas Spee, Counsel.

    b) For the Player:

        1) Mr Modibo Miaga, Respondent;
        2) Mr Juan Alejandro Campos Herrera, Counsel;
        3) Mr Ramón Fernández, Counsel.

37. No witnesses or experts were heard. Both Parties had full opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.

38. Before the hearing was concluded, both Parties stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

39. In the following summaries, the Sole Arbitrator will not include every argument put forward to support the Parties' prayers for relief. Nevertheless, the Sole Arbitrator has carefully considered and taken into account all of the evidence and arguments submitted by the Parties, but limits his explicit references to those arguments that are necessary in order to explain his decision.

A. The Appellant's Submissions and Requests for Relief

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

- The Parties agreed based on negotiations and their free will to Clause 6 of the Employment Contract. Therefore, the interpretation given to this clause by the FIFA DRC is wrong. The Parties even agreed twice on the same clause, first on 3 December 2018 and then on 4 January 2019, when the renegotiated contract was signed by the Player.

- The Employment Contract was valid and binding: Article 17 of the FIFA Regulations on the Statutes and Transfer of Players ("FIFA RSTP") grants the autonomy to the Parties to agree on the financial consequences for an early termination of the contract. In January 2019 the negotiations were done by the Player's agent.

- Clause 6 of the Employment Contract is a liquidated damages clause and governed by Article 160 of the Swiss Code of Obligations ("SCO"). Article 17 of the FIFA RSTP grants the Parties the right to agree on such a compensation clause in a contract. There is long-standing CAS jurisprudence supporting the application of liquidated damages clauses in employment contracts, such as e.g. *CAS 2008/A/1519 & 1520* and *CAS 2016/A/4826*.

- Clause 6 of the Employment Contract grants the Club as well as the Player the right to unilaterally terminate the Employment Contract without just cause by paying the agreed compensation. This clause is valid and enforceable, even if the liquidated damages agreed upon are different for the Player and the Club. Regarding validity, reference is made to *CAS 2013/A/3411*.

- Liquidated damages clauses do not need to be reciprocal in order to be valid, as CAS jurisprudence confirms. Article 17 para. 1 of the FIFA RSTP gives the parties the right to agree on the consequences in a contract and, therefore, to deviate from this provision.

- In case the agreed compensation to be paid by the Club is considered to be too low, the principles of freedom of contract and reasonableness shall be applied to confirm the liquidated damages agreed to in Clause 6 of the Employment Contract. The final compensation to be paid to the Player cannot be higher than the maximum compensation which would have been received by the Club up on a similar termination without just cause by the Player.

41. In its prayers for relief, the Appellant requests as follows:

"1. Declare this Appeal admissible;

2. Annul the decision under Appeal rendered by the FIFA Dispute Resolution Chamber on 17 January 2020;

3. Declare that the termination clause (Article 6) of the Contract was valid under the FIFA regulations and/or Swiss law;

4. *Confirm that the Appellant had to pay a compensation equal to two (2) months of salary (65.454,00 USD) upon the termination;*

5. *Confirm that Appellant paid the amount of 60.000,00 USD upon termination;*

6. *Order the Appellant to pay the residual amount of 5.454,00 USD.*

7. ***Absolutely subsidiary:*** *Order Appellant to the payment of a maximum of 4-months worth of salary compensation with reduction of the payments upon termination;*

IN ANY EVENT TO:

8. *Order the Respondent to bear the costs of proceedings before the Court of Arbitration for Sport;*

9. *Order the reimbursement of the CAS Court Office fee paid by the Appellant (1.000, 00 CHF).*

10. *Award a contribution to be established at its discretion to cover the legal fees and expenses of the Appellant"* (emphasis in original).

B. The Respondent's Submissions and Requests for Relief

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

- It is uncontested that the Club terminated the Employment Contract with its letter of 2 April 2019 without just cause and with immediate effect. This termination was confirmed by the Club's letter of 4 April 2019. The Club never gave any warning to the Player before terminating the Employment Contract, and it never gave any reasons for this termination.

- Based on the CAS jurisprudence, an immediate termination of an employment contract is only possible as *ultima ratio* where there is a serious breach (*CAS 2013/A/3123* and *CAS 2009/A/1956*). In the case-at-hand, however, there is no just cause given which would allow the Club to terminate the Employment Contract early.

- The FIFA DRC correctly held that the Club is liable for the early termination of the Employment Contract and, therefore, the Club has to bear the consequences.

- Clause 6 of the Employment Contract is null and void. The Club knew that its early termination of the Employment Contract would cause damages to the Player. Article 100 para. 1 of the SCO forbids agreements that seek to limit the amount of damages when there is intent or gross negligence. The Club acted with bad faith and *dolus*. Further, Clause 6 of the Employment Contract is very imbalanced and disproportionate and, therefore, abusively protecting the Club. To be valid, a liquidated damages clause under Swiss law has to be fair, just, balanced and proportionate. To assess if there is a disparity, the full relationship between the contracting parties has to be looked at, not only the penalty clause.

- Clause 5 of the Employment Contract lists reasons when the contract may be terminated with just cause. However, most of the provisions contained in Clause 5 of the Employment Contract are contrary to the principle of contractual stability. This further confirms that the Employment Contract's clauses are mainly drafted in favor of the Club.

- It was only after three months of the start of the employment relationship that the Club unilaterally terminated the Employment Contract during the protected period and in the middle of the season. The FIFA DRC correctly decided that Clause 6 of the Employment Contract does not grant the same rights to the Club and the Player. The amount allegedly agreed by the Parties under Clause 6 of the Employment Contract is simply abusive and unrealistic.

- Based on CAS jurisprudence, contractual provisions granting the right to unilaterally terminate the contract are considered null and void if they are non-reciprocal and disproportionate (*CAS 2014/A/3707* and *CAS 2016/A/4875*).

- Article 335a of the SCO states that the notice period must be the same for employer and employee. Clause 6 of the Employment Contract contravenes Article 335a of the SCO as it does not respect the requirement for formal parity of the Parties. Therefore, Clause 6 of the Employment Contract violates Article 335a of the SCO, and is null and void.

- The Player cannot be considered as a top-tier player and, therefore, he did not have the negotiation power the Club alleges that he did. To the contrary, the Club was in a stronger position and included provisions in the Employment Contract which are mainly in its favor. Therefore, it cannot be said that the Employment Contract was freely negotiated.

- The Club did not pay any transfer fee for hiring the Player; he was a free agent. Further, the Club terminated the Employment Contract without just cause, thus damaging the Player's career as he was not able to find new employment. Accordingly, the Player suffers financial damage and from depression, which prevented him even from playing for his national team at the Africa Cup of Nations.

- In sum, Clause 6 of the Employment Contract is null and void, and the Appealed Decision was correct in granting the Player an amount of USD 271,816. The FIFA DRC did not take into consideration the training/match day bonus of USD 4,420, but the Player decided not to appeal the Appealed Decision in this regard.

43. In his prayers for relief, the Respondent requests as follows:

"i. ***To reject the appeal*** *filed by* ***BURIRAM UNITED FOOTBALL CLUB*** *in full.*

ii. ***To uphold the FIFA DRC decision*** *dated 17 January 2020 grounds of which were notified to the Parties on 23 March 2020* ***in full****.*

iii. *To order the Club* ***BURIRAM UNITED FOOTBALL CLUB*** *to pay the amount of* ***271,816 USD (Two hundred seventy-one thousand eight houndred sixteen USD)*** *to the* ***Mr.***

MODIBO MAIGA *as Compensation for the Termination of the Employment Contract without just cause.*

iv. To condemn ***BURIRAM UNITED FOOTBALL CLUB*** *to pay the whole CAS administration and Arbitrator Fees*

v. Fix a minimum fee of CHF 20,000 to be paid by the ***BURIRAM UNITED FOOTBALL CLUB*** *to* ***MR. MODIBO MAIGA*** *as contribution to its legal fees and costs"* (emphasis in original).

V. JURISDICTION

44. Article R47 of the Code states:

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

45. The Appellant relies on Article 58 of the FIFA Statutes, Article 24 para. 2 of the FIFA RSTP and Article R47 of the Code in order to justify the jurisdiction of the CAS.

46. The Respondent confirmed CAS jurisdiction in referring to Article 57 para. 1 of the FIFA Statutes and Article R47 of the Code in his Answer. Further, both Parties confirmed CAS jurisdiction by signing the Order of Procedure.

47. The Sole Arbitrator agrees with the Parties that CAS has jurisdiction in this case based on Article 58 of the FIFA Statutes and Article R47 of the Code.

VI. ADMISSIBILITY

48. The Parties received the Appealed Decision on 23 March 2020. Based on Article 58 para. 1 of the FIFA Statutes and Article R49 of the Code, an appeal must be filed within 21 days of receipt of the decision in question.

49. It is uncontested that the Appeal was filed on 9 April 2020 and, therefore, within 21 days of receipt of the Appealed Decision. Therefore, the Appeal is admissible.

VII. APPLICABLE LAW

50. Article 57 para. 2 of the FIFA Statutes states as follows:

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

51. Article R58 of the Code provides as follows:

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

52. The Parties, in their written submissions, concurred that primarily the FIFA Regulations should be applied and, subsidiarily, Swiss law.

53. In light of the above, the Sole Arbitrator confirms that the law applicable to the present case is primarily the FIFA Regulations and, subsidiarily, Swiss law.

VIII. MERITS

54. In the case-at-hand, it is uncontested that the Club terminated the Employment Contract with the Player on 2 April 2019 without just cause. In its termination letter, the Club only referred to Clause 6 of the Employment Contract and did not give any other reason for ending the employment relationship. The dispute between the Parties is about the validity of this Clause 6 of the Employment Contract, as well as the consequences of the Club's termination of the Employment Contract without just cause. Therefore, the Sole Arbitrator will first look at Article 17 of the FIFA RSTP and the possibility for the Parties to deviate from such article. Second, the Sole Arbitrator will assess whether Clause 6 of the Employment Contract falls under Article 17 of the FIFA RSTP. The Sole Arbitrator must also decide on the nature of this Clause 6 of the Employment Contract, before looking at possible legal barriers in Swiss law and their influence on the validity of Clause 6 of the Employment Contract.

A. Article 17 of the FIFA RSTP

55. The basic rule applicable in a case of termination of an employment contract without just cause is Article 17 of the FIFA RSTP:

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

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of Article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the Player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

Bearing in mind the beforementioned principles, compensation due to a player shall be calculated as follows:

i. in case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was

prematurely terminated;

ii. in case the player signed a new contract by the time of the decision […]

iii. Collective bargaining agreements validly negotiated by employers' and employees' representatives at the domestic level in accordance with national law may deviate from the principles stipulated in the points i. and ii. above. The terms of such an agreement shall prevail.

2. Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.

3. […]

4. In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exception and the provisional measures stipulated in article 6 paragraph 1 of these regulations in order to register players at an earlier stage.

5. […]".

56. Clause 6 of the Employment Contract, which has to be assessed, states as follows:

"If the Club terminates the contract without just cause it shall pay a compensation of two months' worth of salary to the Player.

The Player who has terminated his contract without just cause shall in all cases pay a compensation of four months' worth of salary to the Club.

This clause has no impact on the working of article 5 of this agreement whereas the club remains to have the right to terminate this contract and, also thereby, Player's employment with the Club, upon notice to the Player in case of just cause without payment of any compensation".

57. In the case-at-hand, the Club terminated the Employment Contract without just cause as stated before. Therefore, Article 17 para. 2 of the FIFA RSTP, which leaves the possibility for the Parties to agree on a so-called *"buyout clause"*, is not relevant.

58. Article 17 para. 1 of the FIFA RSTP states, in relation to the definition of how compensation shall be calculated, that *"[…] unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria […]"*. The FIFA Commentary to Article 17 of the FIFA RSTP refers in para. 3 only to buyout clauses relating to Article 17 para. 2 of the FIFA RSTP, which may be agreed

between the parties. No statement is made, however, regarding the parties' agreement of the calculation of compensation as mentioned in Article 17 para. 1 of the FIFA RSTP. The Sole Arbitrator notes that the wording of this clause relates somehow to the way that compensation shall be calculated. This means that in case the parties do not agree on how such compensation shall be calculated, the criteria mentioned in the FIFA RSTP shall be applicable. No explicit reference is made to a liquidated damages clause, which could be agreed on by the parties.

59. The Sole Arbitrator is of the opinion that Article 17 para. 1 of the FIFA RSTP grants the parties generally a possibility to agree on the criteria to be applicable to calculate compensation in case of termination of a contract without just cause. Such a provision will be considered as liquidated damages clause. The wording of Clause 6 of the Employment Contract generally corresponds to such liquidated damages clause at first glance.

60. The Sole Arbitrator further takes into consideration CAS jurisprudence establishing that the purpose of Article 17 para. 1 of the FIFA RSTP is to reinforce contractual stability, i.e. strengthen the principle of *pacta sunt servanda* in the rule of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (*CAS 2018/A/6017*, para. 125 with further references to: *CAS 2005/A/876*; *CAS 2007/A/1358*; *CAS 2007/A/1359*; *CAS 2008/A/1519-1520*; and *CAS 2008/A/1568*).

B. Assessment of Clause 6 of the Employment Contract

61. Even if Article 17 para. 1 of the FIFA RSTP grants the possibility to the Parties to agree on a liquidated damages clause, the FIFA DRC stated in the Appealed Decision, para. 17:

"After a careful analysis of the abovementioned provision, the members of the Chamber agreed that said article does not grant the same rights to the Claimant and the Respondent. In other words, as per the Chamber, article 6 of the contract was considered to not be balanced to the equal repartition of the rights of the parties. Thus, given that said provision is clearly to the benefit of the Respondent, the DRC decided not to take it into consideration in the determination of the amount of compensation".

62. Clause 6 of the Employment Contract limits the damages to be paid by the Club for its termination of the contract without just cause to compensation *"of two months' worth of salary"*. Had it not been terminated, the Employment Contract would, however, still continue for a period of roughly eight months, until 30 November 2019. This means that in applying Clause 6 of the Employment Contract, the Player would lose around six months' salary. If such a waiver is possible under the FIFA RSTP, such is not explicitly stated. In the Sole Arbitrator's view, Article 17 para. 1 of the FIFA RSTP is not clear regarding the possibility for the Parties to agree on a provision like the one agreed to in Clause 6 of the Employment Contract; therefore, such provision in the FIFA RSTP needs to be interpreted. As the FIFA RSTP is drafted under Swiss law and Article 57 para. 2 of the FIFA Statutes further states that Swiss law is applicable on a subsidiary basis, such interpretation shall be done based on Swiss law.

63. The Sole Arbitrator must, therefore, apply Swiss law when interpreting Article 17 para. 1 of the FIFA RSTP. Such interpretation does include any restriction stated by Swiss law regarding the

possibility given in Article 17 para. 1 of the FIFA RSTP to agree in a contract between the parties. The contract in discussion is an employment contract, which means that specific provisions of employment law in the SCO have to be checked for possible limitations, especially Swiss employment law, which contains many provisions that are mandatory and binding, and, therefore, parties cannot deviate or circumvent such provisions. The Sole Arbitrator sees mainly two provisions which could be of importance in the case-at-hand.

64. First, Article 341 of the SCO states that during the employment relationship and for one month after its end, an employee may not waive claims arising from mandatory provisions of law or the mandatory provisions of a collective employment contract. Second, Article 337c para. 1 of the SCO states:

"Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration".

65. Article 337c para. 1 of the SCO is mandatory and binding on the contractual parties and no derogation from this provision to the detriment of the employee is allowed as stated in Article 362 para. 1 of the SCO. The legal consequences under Swiss law when derogating from the provision stated in Article 337c para. 1 of the SCO are defined in Article 362 para. 2 of the SCO: *"Any agreement or clause of a standard employment contract or collective employment contract that derogates from the aforementioned provisions to the detriment of the employee is void".*

66. In the case-at-hand, Article 337c para. 1 of the SCO forms the legal boundary – as Article 362 of the SCO states that this provision is mandatory and binding on the parties of an employment contract –, within which the Parties have to stay when deviating from Article 17 para. 1 of the FIFA RSTP. As Article 337c para. 1 of the SCO is a mandatory provision under Swiss law, therefore, it cannot be waived by the Parties.

67. Clause 6 of the Employment Contract defines the compensation due to the Player in case the Club terminates the contract without just cause in the amount of two months' salary. This is obviously a derogation to the detriment of the employee, i.e. the Player in the case-at-hand. Without such limitation, the Player would receive the salary for the rest of the contractual period, which would be roughly eight months. Therefore, in applying Swiss law subsidiarily, the Sole Arbitrator has no other choice then to declare Clause 6 of the Employment Contract to be void, as it breaches the mandatory and binding Article 337c para. 1 of the SCO.

68. Further, Clause 6 of the Employment Contract could as well be seen as a termination clause. It was Clause 6 of the Employment Contract that gave the Club the possibility to terminate the Employment Contract early. In its termination notice, the Club only referred to Clause 6 of the Employment Contract, without giving any reason.

69. As the Sole Arbitrator has decided that Clause 6 of the Employment Contract is void, there is no further need to examine this provision in more depth or especially to assess whether it is in compliance with mandatory Swiss law as a termination clause.

C. Consequences

70. As stated before, the consequences of the termination of an employment contract without just cause is governed by Article 17 para. 1 of the FIFA RSTP. Therefore, the Club, which terminated the Employment Contract with the Player without just cause, has to pay compensation for its breach. The calculation of such compensation starts with the remuneration and other benefits due to the Player under the Employment Contract.

71. The Employment Contract was a limited duration contract, with its term set to expire on 30 November 2019. The monthly salary was agreed to be USD 32,727 net. It is further uncontested that the Club terminated the Employment Contract with its letter of 2 April 2019. Therefore, the remuneration under the existing contract shall be calculated for the time period of 3 April 2019 until 30 November 2019. The Player requested in front of the FIFA DRC an amount of USD 276,942 as compensation. According to the Player's calculation, the total value of the employment was USD 504,417, consisting of:

- 11 monthly salary payments of USD 32,727,
- THB 500 per training/match date, totaling USD 4,420 in 47 weeks;
- USD 70,000 to be received in January 2019; and
- USD 70,000 to be received in July 2019.

72. As the Player already received a total amount of USD 228,181, including USD 60,000 as stipulated in the Club's termination letter, the remaining value of the contract is a total of USD 276,236. To this amount, the Player added THB 22,500 (approximately USD 706) of match bonuses, thus getting the claimed amount of USD 276,942.

73. The FIFA DRC started its calculation based on this requested amount of USD 276,942 and deducted the match bonus payments of USD 706, as well as the payments per training/match corresponding to a total of USD 4,420. Therefore, the FIFA DRC reached an amount to be due to the Player of USD 271,816.

74. As the Player stated in his Answer and as it was confirmed during the hearing, he did not find new employment after having received the early termination from the Club.

75. The FIFA DRC did not deduct any further amount and did not mention any other objective criteria to possibly further reduce the compensation due to the Player. The Club did not allege any criteria for reducing the compensation as calculated by the FIFA DRC in applying Article 17 of the FIFA RSTP, except for the calculation based on Clause 6 of the Employment Contract. The Sole Arbitrator does also not see any further criteria to reduce the compensation granted by the FIFA DRC of USD 271,816. The Sole Arbitrator thus agrees that in application of Article 17 para. 1 of the FIFA RSTP, this amount calculated by the FIFA DRC is certainly due to the Player as compensation for the early termination by the Club.

76. In summary, the Sole Arbitrator holds that based on the subsidiarily applicable Swiss law, Article

337c para. 1 of the SCO in combination with Article 362 para. 1 of the SCO, Clause 6 of the Employment Contract is to be considered as void. Therefore, the compensation for the Club's termination of the Employment Contract without just cause must be calculated in accordance with Article 17 para. 1 of the FIFA RSTP. The result reached by the FIFA DRC of compensation in the amount of USD 271,816 is, therefore, correct. Consequently, the Sole Arbitrator confirms the Appealed Decision and with this fully rejects the Appeal.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Football Club Buriram United against Modibo Maiga in relation to the decision of the FIFA Dispute Resolution Chamber of 17 January 2020 is rejected.

2. The decision of the FIFA Dispute Resolution Chamber of 17 January 2020 is upheld.

3. (…).

4. (…).

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