Arbitration CAS 2020/A/7196 AEL Podosfairo Dimosia LTD v. Dossa Momade Omar Hassamo Junior, award of 19 January 2023

Panel: Mr Gareth Farrelly (United Kingdom), Sole Arbitrator

Football
Termination of contract
Time limit applicable to one's submission of a counterclaim before the FIFA DRC
Substantiated request to FIFA to be granted an extension of time limit to submit one's position
Exception of the CBAs validly negotiated at domestic level in accordance with national law
Recognition and binding effect of grace periods contained in CBAs

1. **According to art. 9 (3) of the FIFA Rules Governing the Procedures of the Players' Status Committee (PSC) and the DRC, *"in case the* [party opposing to a claim lodged against it] *wishes to lodge a counter-claim, it shall submit within the same time limit applicable to the reply its petition containing all the elements described"* in art. 9 (1) of the aforementioned rules.**

2. **According to art. 16 (11) of the FIFA Rules Governing the Procedures of the PSC and the DRC, *"[i]f a substantiated request is submitted before the time limit expires, an extension of ten days may be granted, but only once".***

3. **According to art. 14bis (3) of the FIFA Regulations on the Status and Transfer of Players (RSTP), *"[c]ollective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in paragraphs 1 and 2* [of art. 14bis of the RSTP]*. The terms of such an agreement shall prevail".***

4. **According to art. 18 (6) of the FIFA RSTP, *"[c]ontractual clauses granting the club additional time to pay to the professional amounts that have fallen due under the terms of the contract (so-called "grace periods") shall not be recognised. Grace periods contained in collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law shall, however, be legally binding and recognised. Contracts existing at the time of this provision coming into force* [1 June 2019] *shall not be affected by this prohibition".***

I. PARTIES

1. AEL Podosfairo Dimosia LTD (the "Appellant" or the "Club"), which is understood to be the registered company name of AEL Limassol FC, a Cypriot football club, which currently plays in the first division of the Cyprus Football Association ("CFA"), with which it is affiliated. The CFA is affiliated with the Fédération Internationale de Football Association ("FIFA").

2. Mr Dossa Momade Omar Hassamo Junior (the "Respondent" or the "Player") is a professional football player of Portuguese nationality.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings, and evidence adduced in these proceedings. References to additional facts and allegations found in the Parties' written submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence it deems necessary to explain its reasoning.

A. Facts

4. On 28 May 2019, an employment contract was concluded between the Club and the Player (the "First Employment Contract") for the 2019/2020 as well as the 2020/2021 football seasons, with a termination date of 31 May 2021 (although this is referred to as the First Employment Contract for the purposes of this Award, the Parties had already signed at least one contract for previous seasons, including the 2018/2019 football season – referred to as the "Previous Employment Contract" as and where applicable).

5. According to Clause 1(3)(1) of the First Employment Contract, the Club should have paid the Player a total salary of EUR 100,000 net for the 2019/2020 football season. This was to be paid in ten equal instalments (of EUR 10,000 net) commencing on 31 August 2019 and on the final day of every month until 31 May 2020.

6. In addition, the Player should have been paid the amount of EUR 100,000 net for the 2020/2021 football season, payable in 10 equal monthly instalments of EUR 10,000 net commencing on 31 August 2020 until the end of the football season, *i.e.* 31 May 2021. The monthly payment of the Player's salary was payable at the end of each month in accordance with the First Employment Contract.

7. Also on 28 May 2019, the Parties agreed to sign a Protocol Agreement, in order to settle the amount of EUR 65,000, which was outstanding from the 2018/2019 season in relation to the Player's Previous Employment Contract. This amount concerned outstanding bonuses due to the Player, based on the previous employment relationship. It was agreed that the said amount

would be paid in ten monthly instalments of EUR 6,500 commencing on 31 August 2019 until 31 May 2020.

8. On 29 May 2019, the Parties signed a separate, additional employment agreement (the "Additional Employment Contract"), *inter alia*, the terms of which were:

   - The Player would be entitled to the amount of EUR 25,000 net if the Club won the Cyprus Championship;

   - The amount of EUR 15,000 net if the Club won the Cypriot Cup;

   Or

   - EUR 15,000 net if the Club participated in European Competitions;

   - One return plane ticket for the Player, his wife and child; and

   - The use of a car.

9. In accordance with Clause 2.1 of the First Employment Contract, the provisions of a Standard Employment Agreement negotiated between the CFA and the Cyprus Football Players Association ("PASP") regulate the First Employment Contract between the Parties. In accordance with Clause 2.2 of the First Employment Contract - *"The terms of the standard employment contract constitute an integral part of the present contract having full and direct implementation"*.

10. In accordance with Clause 2.3 of the First Employment Contract – *"in case of conflict, the terms of the standard employment agreement shall take precedence over the terms of the present contract"*.

11. The Parties signed the Standard Employment Agreement, which was attached as an appendix to the First Employment Contract regulating the Parties' employment relationship in accordance with Cypriot national law and the CFA's Regulations.

12. On 19 August 2019, the Player had been paid by the Club the amount of EUR 5,000, as an advance of his salary for the month of August 2019.

13. On 23 August 2019, the Club paid the instalment of EUR 6,500 to the Player as agreed under the terms of the Protocol Agreement.

14. On 30 September 2019, the Club paid the remaining amount of EUR 5,000 as settlement of the outstanding salary for August 2019.

15. On 7 November 2019, the Player sent a notice to the Club through his legal representative in relation to his unpaid salaries for the months of September 2019 and October 2019, putting the Club in default for a period of 15 days in accordance with Article 12bis and Article 14bis of the FIFA Regulations on the Status and Transfer of Players ("RSTP").

16. Furthermore, also on 7 November 2019, the Player put the Club in default, with the same notice period of 15 days, in relation to the outstanding amounts concerning the Protocol Agreement, *i.e.* for each payment since August 2019.

17. On 24 November 2019, the Player unilaterally terminated the First Employment Contract with the Club because of the non-payment of the salaries for September 2019 and October 2019.

18. On 26 November 2019, the Club paid the Player his salaries for the outstanding months of September 2019 and October 2019.

19. On the same date, the Club also paid the Player the instalment of EUR 6,500 for the month of September 2019, as per the terms of the Protocol Agreement.

B. The Proceedings before of the FIFA Dispute Resolution Chamber

20. On 25 December 2019, the Player lodged a claim against the Club in front of the FIFA Dispute Resolution Chamber ("DRC") claiming the outstanding amount of the Protocol Agreement and also compensation for termination of the First Employment Contract with just cause in accordance with Article 17 of the FIFA RSTP.

21. The claim of the Player was notified to the Club on 21 January 2020 with FIFA inviting the Club to submit its position in relation to the Player's case on 10 February 2020. In the FIFA DRC proceeding, the Club was identified as AEL Limassol as the respondent.

22. On 10 February 2020, the Club requested an extension to submit its response.

23. On 11 February 2020, FIFA informed the Club that the Club's request for an extension had been rejected and that the investigation stage of the case was now closed.

24. However, on the same date, the Club filed a new (parallel) claim against the Player, regarding the same facts and contracts that are at the basis of the present dispute.

25. On 12 February 2020, the Club responded to the FIFA letter dated 11 February 2020 requesting that FIFA reconsider its decision and permit the Club to partake in the proceedings.

26. Again, on the same date, FIFA responded stating that no further submissions would be admitted to the file.

27. On 14 February 2020, the Club replied to FIFA submitting its defence and a counterclaim against the Player.

28. On 18 February 220, Mrs Vanessa Plavjanikova, FIFA Counsel, who had previously informed the Parties that the investigation phase of the case had been closed, invited the Player to submit

his observations in relation to the Club's submissions, to be submitted no later than 28 February 2020.

29. On this date, FIFA informed the Club that it would be up to the FIFA DRC to decide on the admissibility of the Club's 14 February 2020 submission.

30. On 11 March 2020, FIFA came back to the Parties, answering a request for an extension from the Player's lawyer, informing the Parties that the letter of 18 February 2020 had been sent in error, and invited the Parties to disregard such correspondence. FIFA submitted the case to the FIFA DRC without taking into consideration the position of the Club.

31. On 8 May 2020, the FIFA DRC issued its decision (the "Appealed Decision") without having considered the Club's position, which included the following in the operative part:

> *"1. The claim of the Claimant, Dossa Momade Omar Hassamo Junior* [the Player]*, is partially accepted.*
>
> *2. The* [Club]*, has to pay to the* [Player] *the amount of EUR 222,000, plus interest at the rate of 5% p.a. as follows:*
>
> - *on the amount of EUR 52,000 as from 1 October 2019 until the date of effective payment;*
> - *on the amount of EUR 170,000 as from 25 December 2019 until the date of effective payment.*
>
> *3. Any further claim lodged by the* [Player] *is rejected".*

32. The grounds of the Appealed Decision were notified to the Parties on 9 June 2020.

C. The Decision of the FIFA Dispute Resolution Chamber

33. With regard to the Club's position, the FIFA DRC took note that on 21 January 2020, FIFA invited the Club to provide its position on the matter by 10 February 2020, and that on 10 February 2020, *i.e.* the date of the deadline, the Club filed an unsubstantiated request for a deadline extension.

34. Furthermore, the FIFA DRC took into account that on 11 February 2020, the FIFA Administration, both (a) informed the Club that it could not grant the requested deadline extension and (b) closed the investigation phase of the matter, and that on the same date, the Club filed a new (parallel) claim against the Player, regarding the same facts and contracts that are at the basis of the present dispute.

35. In this regard, the FIFA DRC recalled the contents of Article 16 (11) of the FIFA Procedural Rules, according to which deadline extensions may be awarded only once, provided a substantiated request is submitted before the expiry of the original deadline.

36. The FIFA DRC then turned its attention to the contents of the Club's correspondence of 10 February 2020, and observed that the Club requested a deadline extension, but failed to motivate, *i.e.* substantiate, why it merited such an extension. In other words, the Club limited itself to merely referencing Article 16 (11) of the FIFA Procedural Rules.

37. The FIFA DRC found that merely referencing Article 16 (11) of the FIFA Procedural Rules is not enough, and that the party in question must, even if briefly, motivate such request. In the FIFA DRC's view, awarding the Club a deadline extension in the case at hand would be to accept a *"loop"* argument, whereby a party is granted a deadline extension due to the mere fact that the applicable rules allow deadline extensions to be granted. The FIFA DRC emphasised that such an interpretation, as proposed by the Club, was in sheer contradiction with the clear and unequivocal contents of Article 16 (11) of the FIFA Procedural Rules, according to which parties must substantiate their deadline extension requests.

38. Accordingly, the FIFA DRC concluded that the FIFA Administration acted correctly on the basis of Article 9 (3) of the FIFA Procedural Rules by closing the investigation phase of the matter, as the Club had failed both to adequately request a deadline extension and to file its position. In addition, the FIFA DRC noted that the parallel claim filed by the Club against the Player on 11 February 2020 was nothing more than a counterclaim, which should have been filed within the same time limit applicable to the response in line with Article 9 (3) of the FIFA Procedural Rules.

39. As such, the FIFA DRC concluded that the Club's parallel claim was to be considered as an attempt to circumvent the FIFA Procedural Rules, and as it was not timely filed, it could not be taken into account. Likewise, the FIFA DRC emphasised that the same conclusion must apply to the submission filed by the Club on 14 February 2020, which was filed late and thus could not be considered, as per Article 9 (3) and (4) of the FIFA Procedural Rules.

40. Consequently, the FIFA DRC decided that the Club, for its part, failed to present its response to the claim of the Player, in spite of having been invited to do so. In this way, the FIFA DRC considered that the Club renounced its right to defence and thus accepted the allegations of the Player.

41. Furthermore, as a consequence of the aforementioned consideration, the FIFA DRC concurred that, in accordance with Article 9 (3) of the FIFA Procedural Rules, the FIFA DRC was to make its decision upon the basis of the documents on file; in other words, upon the statements and documents presented by the Player.

42. With regard to the substantive issues, at the time of the termination of the First Employment Contract, the total amount of EUR 59,742 was yet to be paid by the Club. The FIFA DRC observed that the Player granted the Club in writing, on 7 November 2019, a deadline of 15 days to cure its default.

43. It was undisputed that the Club had failed to pay the Player his salaries of September 2019 and October 2019 in line with the First Employment Contract, as well as the amounts due under the Protocol Agreement, which had matured early in line with the acceleration clause therein.

44. The FIFA DRC, on taking into account the facts of the case, and the longstanding jurisprudence in this respect, as well as the contents of Article 14bis of the FIFA Regulations, decided that the Player had just cause to unilaterally terminate the First Employment Contract on 24 November 2019 and that the Club was to be held liable for the early termination of the First Employment Contract with just cause by the Player.

45. In this regard, the FIFA DRC recalled that the Club paid the Player EUR 26,500 two days after the termination of the First Employment Contract by the Player and considered that such late payment could not change the legal stance of the Player *vis-à-vis* the termination; the FIFA DRC concluded that payment could only affect the Player's right to terminate the contract, had payment been made before, and not after, the termination of the contract took place. The FIFA DRC did however highlight that the payments made would be taken into account for the calculation of the outstanding remuneration due to the Player.

46. The FIFA DRC also observed that the outstanding remuneration at the time of termination was equivalent to two salary payments under the First Employment Contract, *i.e.* September 2019 and October 2019, amounting to EUR 20,000, plus EUR 58,000 corresponding to payments owed under the Protocol Agreement. From such sum, the EUR 26,500 that was paid by the Club to the Player on 26 November 2019 should be deducted.

47. In accordance with the general legal principle of *pacta sunta servanda*, the FIFA DRC decided that the Club was liable to pay the Player the amounts which were outstanding under the First Employment Contract and the Protocol Agreement at the time of the termination, *i.e.* EUR 52,000.

48. In addition, and taking into account the request of the Player and the constant practice of the FIFA DRC, the FIFA DRC decided to award the Player interest at the rate of 5% on the outstanding amount of EUR 52,000 as of 1 October 2019 until the date of effective payment.

49. The FIFA DRC then focussed its attention on the calculation of the amount of compensation for the breach of contract. Article 17 (1) of the FIFA RSTP sets out that the amount of compensation that shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, specifically, the remuneration and other benefits due to the player under the existing contract and/or the new contract, and depending on whether the contractual breach falls within the protected period.

50. With regard to this provision and the case at hand, the FIFA DRC held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the Parties had beforehand agreed upon an amount in the event of a breach of contract.

In this regard, the FIFA DRC established that no such compensation clause was included in the First Employment Contract.

51. Therefore, the FIFA DRC determined that the amount of compensation payable by the Club to the Player had to be assessed in application of the other parameters set out in Article 17 (1) of the FIFA RSTP. The FIFA DRC recalled that said provision provided for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable, meaning, other objective criteria may be taken into account at the discretion of the deciding body.

52. The FIFA DRC then turned its attention to the remuneration and other benefits due to the Player under the First Employment Contract, which criterion was considered to be essential. The FIFA DRC deemed it important to emphasise that the wording of Article 17 (1) of the FIFA RSTP allowed the FIFA DRC to take into account both the existing contract and any new contract in the calculation of the amount of compensation.

53. The FIFA DRC then went on to calculate the monies payable to the Player under the terms of the First Employment Contract as from its date of termination with just cause until the date that it was set to end, *i.e.* 24 November 2019, until 31 May 2021, and concluded that the Player would have received in total EUR 170,000 as remuneration had the First Employment Contract been executed until its expiry date. Consequently, the FIFA DRC concluded that the amount of EUR 170,000 served as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.

54. The FIFA DRC then verified whether the Player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income, and recalled that the Player did not sign any new contracts within the relevant period.

55. The FIFA DRC concluded that, having taken into account all of the relevant considerations and the specificities of this case, the FIFA DRC decided to partially accept the Player's claim and concluded that the Club must pay the amount of EUR 170,000 as compensation for breach of contract.

56. The Club was ordered to pay the Player EUR 220,000, plus interest at the rate of 5% *p.a.* on the amount of EUR 52,000 as from 1 October 2019 until the date of effective payment, and also on the amount of EUR 170,000 as from 25 December 2019 until the date of effective payment.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

57. On 22 June 2020, the Club filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS") in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (2019 edition) (the "Code"). The Player was named as a Respondent. In the Statement of Appeal, the Appellant requested that the dispute be referred to a sole arbitrator.

58. On 30 June 2020, the Respondent stated *inter alia* that it did not agree to refer the dispute to a sole arbitrator.

59. On 2 July 2020, the Respondent informed the CAS Court Office that he did not intend to pay his share of the advance of costs for this proceeding.

60. On 6 July 2020, FIFA renounced its right to intervene in the arbitration, further to Article R41.3 of the Code.

61. On 13 July 2020, after having been granted an extension further to Article R32 of the Code, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.

62. Also on 13 July 2020, the Parties were informed that the Deputy President of the CAS Appeals Arbitration Division, having considered the positions of the Parties and the circumstances of the case, had decided to refer the dispute to a sole arbitrator further to Article R50 of the Code.

63. On 25 August 2020, in accordance with Articles R50 and R54 of the Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that Mr Gareth Farrelly, Solicitor in Liverpool, United Kingdom, had been appointed as the Sole Arbitrator in this proceeding.

64. On 10 October 2020, after having been granted several extensions further to Article R32 of the Code, the Respondent filed his Answer in accordance with Article R55 of the Code.

65. There was further correspondence between the CAS Court Office and the Parties concerning the COVID-19 pandemic, the health and wellbeing of those involved, the restriction of travel at this time, and subsequent extensions for the filing of evidence.

66. On 14 October 2020, the Parties were informed that the Sole Arbitrator had decided to hold a hearing by video conference in accordance with Articles R44.2 and R57 of the Code.

67. On 23 October 2020, both the Appellant and Respondent signed and returned the Order of Procedure in this appeal.

68. On 8 December 2020, a hearing was held by video-conference. At the outset of the hearing, all Parties confirmed that they had no objection as to the constitution and composition of the Panel.

69. The following persons attended the hearing, in addition to the Sole Arbitrator and Mrs Kendra Magraw, CAS Counsel:

- For the Appellant:
    - Mr Christoforos Florou, Lawyer;

- Mr Lysandros Lysandrou, Lawyer;
- Mr Demetrios Giannelis, Ex-Technical Manager of the Club.

- For the Respondent:
  - Mr Sami Dinç, Counsel;
  - Mr Dossa Momade Omar Hassamo Junior, Respondent.

70. During the hearing, the Parties had the opportunity to present their cases, submit their arguments and answer all the questions posed by the Sole Arbitrator. At the end of the hearing, the Parties and their counsel expressly declared that they did not have any objections with respect to the procedure adopted by the Sole Arbitrator and that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

71. This section of the Award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant

72. In its Statement of Appeal and Appeal Brief, the Appellant submitted the following requests for relief:

"The Appellant respectfully requests the Court of Arbitration for Sport to rule as follows:

i) The decision awarded to the Respondent is erroneous and therefore the FIFA DRC's decision shall be dismissed and withdrawn.

ii) The FIFA DRC should accept the defence and counterclaim of the Appellant as being admissible.

iii) The FIFA DRC wrongly concluded that the Appellant renounced its right to a defence and thus accepted the allegations of the Respondent.

iv) The decision that the employment agreement was terminated without just cause by the Respondent and therefore the FIFA DRC's conclusions are erroneous and without legal basis.

v) The decision that the Respondent shall bear the cost of the FIFA and the cost of the present arbitration procedure.

vi) The decision that the Respondent pay the legal fees and/or real expenses of the Appellant's legal representatives in relation to the procedure in front of CAS

vii) The decision that the Appellant is entitled to a counterclaim and in particular the Appellant shall be awarded by the Respondent the amount of €170,000 as compensation for the termination of the contract without just cause by the Respondent or any fair compensation in accordance with Article 17 of the FIFA RSTP, plus legal interest".

73. The detailed submissions of the Club, in essence, sought to address these issues:

i. Did the Appellant renounce its right to a defence in the FIFA DRC proceeding and thus accept the allegations of the Respondent?

ii. Is the CAS competent to consider the Appellant's position since the FIFA DRC did not take the Club's position into account in the Appealed Decision?

iii. Should the legal issues of the First Employment Contract and the Protocol Agreement be considered in totality or separately?

iv. Did the Respondent terminate the contractual relationship between the Parties with or without just cause?

74. The Appellant's positions on the above issues will be summarized in turn.

i. Did the Appellant renounce its right to a defence in the FIFA DRC proceeding and thus accept the allegations of the Respondent?

- The FIFA DRC concluded that the Club had failed to present its response to the Player's claim within the deadline provided and for this reason the Club had renounced its right to defend the claim. This conclusion breached the essential human rights of the Appellant and its right to a fair trial. FIFA had given the Club until 10 February 2020 to submit its position. The Club requested an extension on this date. However, FIFA responded on 11 February 2020 stating that the extension had not been granted. This response came after the deadline, without providing the Appellant with at least one day to submit its defence.

- The Club had requested an extension through its lawyers as they had done in other FIFA cases and therefore there was a legitimate expectation that an extension would be granted for at least one day. A previous letter from FIFA clearly stated that an *"extension is automatically extended for ten (10) additional days in accordance with Article 16 par 11 of the Procedural Rules".*

- It was submitted that the Club had submitted its defence and counterclaim within the ten days provided for within Article 16 (11) of the FIFA Procedural Rules. Consequently, the

FIFA DRC decision on this matter was unreasonable and contravened the Appellant's right to a fair trial.

ii. Is the CAS competent to consider the Appellant's position considering the FIFA DRC did not take the Club's position into account in the Appealed Decision?

- It is the Appellant's position that even if the FIFA DRC decision is admissible in relation to the points raised above, and even if the Appellant renounced its right to defend the claim, it is submitted that the CAS is entitled to consider the facts of the case, even if any such arguments were not a part of the previous case file, as CAS has full power to review the facts and the law.

- In accordance with Article R57 (1) of the Code:

  "The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. The President of the Panel may request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal. Upon transfer of the CAS file to the Panel, the President of the Panel shall issue directions in connection with the hearing for the examination of the parties, the witnesses and the experts, as well as for the oral arguments".

- In CAS 2019/A/6367, it was held, *inter alia*, that *"According to Article 57(1) of the CAS Code, CAS proceedings are de novo proceedings. Consequently, the Parties – in principle – are not restricted when filing their legal and factual submission before the CAS. Therefore, a new submission or a new document shall be admitted in the CAS proceedings even if it was not part of the case file before the previous instances".*

- In CAS 2015/A/3993, the panel took the same position, stating:

  "5.10 Furthermore, it is important to note that, according to R57 para. 3 of the CAS Code, the Panel has a discretionary option, not an obligation, to exclude such evidence presented by a party.

  5.11 The Appellant submitted that since, in the absence of a hearing before the FIFA DRC, the Appellant was unable to dispute elements which he did not think had to be debated, the submissions of new evidence and arguments before CAS should not be deemed inadmissible (in particular, bearing in mind the indisputable nature of the evidence and arguments in question).

  5.12 First of all, the Panel notes that Article 57 para. 1 of the CAS Code gives the Panel full power to review the facts and the law and to issue a de novo decision superseding, entirely or partially, the decision appealed against.

  5.13 This means that the Panel, within certain limits, is allowed to admit, inter alia, new evidence and new legal arguments.

5.14 However, also in accordance with R57 para. 3 of the Code, "The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the appealed decision"".

iii. Should the legal issue of the First Employment Contract and the Protocol Agreement be considered in totality or separately?

- It was submitted that the legal issues arising from the Protocol Agreement should be considered separately, that the Protocol Agreement constituted a separate agreement from the First Employment Contract. Any breach of the Protocol Agreement does not affect the provisions of the Parties' employment relationship as defined in the First Employment Contract.

- Furthermore, it was averred that the First Employment Contract specifically provided through its terms and conditions, the circumstances under which the First Employment Contract could be terminated. The Appellant had fully complied with these contractual obligations.

- In addition, the Protocol Agreement did not provide the right for the Respondent to terminate the First Employment Contract, and therefore he was not entitled to terminate the First Employment Contract with just cause. It was submitted that the termination letter submitted on 24 November 2019 was terminating only the First Employment Contract and not the Protocol Agreement.

- If this was accepted to be the case, the Respondent would then be liable for the early termination of the First Employment Contract without just cause. This would mean that the Appellant would then be entitled to compensation. Article 17 (1) of the FIFA RSTP provided guidance as to how this compensation would be calculated. The First Employment Contract did not specifically provide for compensation to be payable in the event of a breach of contract. Any amount of compensation was to be determined with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, 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, and depending on whether the contractual breach falls within the protected period.

- On this non-exhaustive criteria, and previous jurisprudence, it was submitted that the amount of compensation the Appellant is entitled to is the remaining remuneration under the First Employment Contract.

iv. Did the Respondent terminate the contractual relationship between the Parties with or without just cause?

- The Appellant submitted that the Respondent terminated the First Employment Contract without just cause. The unilateral termination was based on Article 14bis of the FIFA RSTP.

- The Appellant's position was that the termination of the First Employment Contract was made against the provisions set out in the Standard Employment Agreement, therefore the termination was made without just cause. In particular, Article 9 of the Standard Employment Agreement signed between the Parties stated:

  "9.2 The Player shall be entitled to terminate the Employment Agreement in writing to the Club if the Club:

  9.2.1 Shall be guilty of serious or persistent breach of the terms and conditions of this Contract,

  9.2.2 Fails to pay any due payables or other benefits, allowances or bonuses to the Player within 30 days since the date that the Club has been put in default in writing by the Player".

- It was submitted that this provision had been negotiated and agreed between the CFA and the PASP (*i.e.* the Cyprus Football Players' Association, a member of FIFPro). In accordance with Article 14bis (3) of the FIFA RSTP, *"the terms of such an agreement shall prevail"*.

- With regard to the present case, and applying Article 9.2.2 of the Standard Employment Agreement, the Respondent was required to put the Appellant on notice for a period of 30 days. The Respondent would only be entitled to unilaterally terminate the First Employment Contract if the Appellant failed to pay the outstanding salaries within the deadline of 30 days.

- In this case, the Respondent had put the Appellant in default on 7 November 2019. He terminated the First Employment Contract on 24 November 2019. This was 18 days after the default notice had been sent, and therefore the deadline provided for in the Standard Employment Agreement had not expired.

- On 26 November 2019, the Appellant paid the outstanding salaries to the Respondent.

B. The Respondent

75. In his Answer, the Respondent submitted the following requests for relief:

i) "To reject the allegations of the Appellant;

ii) To reject the counterclaim of the Appellant;

iii) To ratify the decision of the FIFA Dispute Resolution Chamber, dated 8 May 2020;

iv) To state that the Appellant is responsible for the payment of the whole CAS administration costs and the Arbitrator fees; and

v) To condemn the Appellant to pay the legal fees in the amount of CHF20,000 and other expenses of the First Respondent [sic] *in connection with proceedings".*

76. The submissions of the Respondent, in essence, sought to address the Appellant's case as follows:

- The default notice was sent to the Appellant on 7 November 2019. The Club was given a final payment term of 15 days in line with the mandatory provision of Article 14bis of the FIFA RSTP. The Appellant neither made any payment nor provided any answer to the Respondent within the given term and the Respondent had no other remedy but to unilaterally terminate his employment relationship with the Appellant on 24 November 2019, after waiting 18 days following the default notice.

- It was evident that the termination was in line with the provisions set out in the FIFA RSTP. As of the date of the default notice, 7 November 2019, there was a debt corresponding to 2-months of salary payments (in the amount of EUR 20,000) arising from the First Employment Contract and in addition to this amount, the accelerated debt of EUR 58,500 arising from the Protocol Agreement which was also overdue.

- The Respondent waited until the end of the given time limit of 15 days to terminate the First Employment Contract, and in fact longer, waiting until the 24 November 2019. On this date, the Respondent unilaterally terminated his employment relationship with the Appellant based on both the non-payment of the overdue payables and the silence of the Appellant.

- The Respondent submitted that the Appellant did not dispute any of these facts. Rather, the Appellant alleged that Article 9.2.2 of the Standard Employment Agreement had to be considered in relation to the termination ceremony of the Respondent which regulates a 30-day notice before a possible unilateral termination based on non-payment.

- The Respondent strongly objects to this position taken by the Appellant, based on Article 14bis (2) and Article 18 (6) of the FIFA RSTP which state as follows:

  - Article 14bis (2) of the FIFA RSTP:

    "2. In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that ***he has put the debtor club in default in writing and has granted a***

deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). *Alternative provisions in contracts existing at the time of this provision coming into force may be considered"* (emphasis added by Respondent).

- Article 18 (6) of the FIFA RSTP:

"6. ***Contractual clauses granting the club additional time to pay to the professional amounts that have fallen due under the terms of the contract (so-called "grace periods") shall not be recognised***. *Grace periods contained in collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law shall, however, be legally binding and recognised. Contracts existing at the time of this provision coming into force shall not be affected by this prohibition"* (emphasis added by Respondent).

- It was submitted that Articles 14bis (2) and 18 (6) of the FIFA RSTP clearly define that the time that a player has to allow a club to cure its non-payment is limited to 15 days in order to deem that the player has just cause to terminate the employment relationship. In addition to this, and even more importantly, any provision which seeks to extend this period shall not be valid at all. Therefore, Article 9.2.2 of the Standard Employment Agreement shall not be recognised and the valid rule to be implemented on the present dispute is Article 14bis of the FIFA RSTP.

- With regard to the Appellant's submissions that the FIFA Regulations are not applicable, both its responses before FIFA DRC and CAS are based on the FIFA Regulations and law. The only issue that the Appellant alleges is different than the provisions of FIFA Regulations is the time limit which has to be given before a unilateral termination based on the non-payment of wages, which the Appellant argues is 30 days instead of 15 days. In essence, the application of the national provisions contradicts the mandatory provisions of FIFA RSTP. Therefore, it should not be applicable.

- The FIFA DRC has previously decided on this particular point. In decision No. 03170536-*e*, it was stated that:

"20. (…) the Chamber wished to point out, as a principle, that when deciding a dispute before the DRC, FIFA's regulations prevail over any national law chosen by the parties. In this regard, the Chamber emphasised that the main objective of the FIFA regulations is to create a standard set of rules to which all the actors within the football community are subject and can rely on. This objective would not be achievable if the DRC would have to apply the national law of a specific party on every dispute brought to it. In this respect, the DRC wished to point out that it is in the interest of football that a player's remuneration is based on uniform criteria rather than on provisions of national law that may vary considerably from country to country. Therefore, the Chamber deemed that it is not appropriate to this case to apply specific aspects of a particular law but rather the Regulations on the Status and Transfer of Players, general principles of law, and, where existing, the Chamber's well-established jurisprudence".

- The Respondent argued that, as determined in the decision cited above, if there were no mandatory rules of FIFA, then different law and regulations would be implemented in every dispute and there would be no standard and uniform implementation in football. This would create chaos and unlawful exploitation of the rights of the football players.

- It is telling that the Appellant never provided any explanation, response, payment or reminder to the Respondent following the receipt of the default notice sent on 7 November 2019 until the termination date of 24 November 2019, which corresponds to 18 days. There was no response. This demonstrates that the Appellant is only fishing and insincere in its allegations. A party that was interested in fulfilling its contractual obligations would clearly be in contact with the counter party and seek to express itself and its position. On 27 November 2019, the Appellant did send a letter. This was after the payment of the outstanding two-month salaries on 26 November 2019, which did not affect the Respondent's termination of the First Employment Contract that had taken place on 24 November 2019.

- With regard to the overdue amounts and compensation, the Respondent submitted that the calculations had been undertaken correctly by the FIFA DRC. In accordance with Article 17 of FIFA RSTP, the residual value of the contract has to be decided in full in cases where the terminating party does not sign a new contract. Article 17 of the FIFA RSTP states:

  "Article 17 – Consequences of terminating a contract without just cause

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

  1. *In all cases, the party in breach shall pay compensation (…). Bearing in mind the aforementioned 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, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three months salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract".*

- Finally, the Respondent submitted that the payments arising out of the Protocol Agreement are also a part of the employment relationship between the Parties and the

obligations arising from the Protocol Agreement are also a part of the trust between the Parties. It is clear that the financial obligations towards the Respondent arising from both the First Employment Contract and the Protocol Agreement, which were signed on the very same day, have to be considered during the evaluation of the termination. Conversely, Article 8 of the Protocol Agreement refers to the laws and regulations of FIFA as well as the appointment of FIFA and CAS as the judicial bodies. On this basis, the two agreements could not be considered as separate in any way.

V. JURISDICTION

77. Article R47 of the Code provides as follows:

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

78. The jurisdiction of CAS derives from Article 58.1 of the FIFA Statutes, which reads:

> *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".*

79. The jurisdiction of the CAS, which is not disputed, derives from the Articles 57 *et seq.* of the applicable FIFA Statutes and Article R47 of the Code. It is further confirmed by the Order of Procedure duly signed by the Parties.

80. It follows that the CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

81. Article R49 of the Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".*

82. Article 58 of the FIFA Statutes provides a time limit of 21 days after notification to lodge an appeal against a decision adopted by one of FIFA's legal bodies, such as the FIFA DRC.

83. The 8 May 2020 Appealed Decision was notified with grounds on 9 June 2020. The Appellant filed its Statement of Appeal on 22 June 2020, within the 21-day deadline allotted under the aforementioned provisions.

84. Thus, the Sole Arbitrator finds that the appeal is admissible as the Club submitted it within the deadline provided by Article R49 of the Code as well as by Article 58 (1) of the applicable FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code, including the payment of the CAS Court Office fee.

VII. APPLICABLE LAW

85. Article R58 of the Code provides the following:

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

86. Pursuant to Article 57 (2) of the applicable FIFA Statutes, *"[t]he provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

87. Clause 2.1 of the First Employment Contract provides that the First Employment Contract is regulated by the provisions of the Standard Employment Agreement as had been agreed between the CFA and PASP, which in turn is codified in Annex 1 of the CFA Registration and Transfer of Player Regulations. The Appellant submitted that the Standard Employment Agreement be applied given that the dispute concerned an employment agreement concluded in Cyprus under the CFA's Regulations and the Parties were registered with the CFA during the period of the employment relationship.

88. As a result, in light of the foregoing, the Sole Arbitrator finds that the FIFA Regulations shall apply primarily, and that Swiss law shall apply subsidiarily, whenever warranted. The Sole Arbitrator will also take into consideration the relevant national rules and regulations where applicable.

89. Given the facts of the cases, the 2019 edition of the FIFA RSTP shall apply to these proceedings, as well as the 2019 version of the FIFA Procedural Rules.

VIII. MERITS

90. As a preliminary issue, the Sole Arbitrator notes that this case was brought by AEL Podosfairo Dimosia LTD against the Appealed Decision in which AEL Limassol was identified the respondent. It is the Sole Arbitrator's understanding that AEL Podosfairo Dimosia LTD is the

registered company name of AEL Limassol. Neither of the Parties have made submissions with respect to these names, and the evidentiary documents submitted in this case contain both names. Accordingly, the Sole Arbitrator finds that the Parties agree that AEL Podosfairo Dimosia LTD is the registered company of AEL Limassol.

91. Next, before turning to the relevant issues in these cases, the Sole Arbitrator recalls the following:

92. The Sole Arbitrator notes that Article 8 of the Swiss Civil Code ("SCC") states that *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*.

93. The Sole Arbitrator recalls that under Article R57 of the Code, the Sole Arbitrator is to undertake a *de novo* review. The Sole Arbitrator notes that in its request for relief, the Appellant did not request that the Sole Arbitrator remand the case back to the FIFA DRC.

94. It is the Appellant's position that the FIFA DRC made its decision without giving the Appellant the right to provide its position in front of the relevant body. The Appellant does not challenge the jurisdiction of the FIFA DRC or the applicability of the relevant FIFA Regulations. However, the Appellant failed to follow those very Regulations regarding the correct procedural steps when dealing with this matter. In addition, it was the Appellant's submission that the FIFA DRC had wrongly concluded that the Appellant had renounced its right to a defence and thus accepted the allegations of the Respondent.

95. The Appellant further submitted that the FIFA DRC had failed to consider the real facts of the matter and the terms of the Parties' employment relationship. This extended to concluding that the Protocol Agreement and the First Employment Contract were one agreement, without any grounds or explanation as to how this conclusion was arrived at.

96. Bearing the above in mind, the main issues to be resolved by the Sole Arbitrator are:

    A. Were there procedural defects at the FIFA level?

    B. Are the Protocol Agreement and the First Employment Contract to be considered as one agreement?

    C. Was the Respondent's termination of the First Employment Contract with just cause?

    D. Conclusions

97. The Sole Arbitrator will address these issues in turn.

A. Were there procedural defects at the FIFA level?

98. The Appellant argues that the FIFA DRC erred by not permitting the Club to file its Response and counterclaim in the FIFA DRC proceedings, and incorrectly concluded that the Club had renounced its right to a defence and issued the Appealed Decision only on the basis of the Player's written submissions.

99. In this regard, it is recalled that Article 9 paragraph 3 of the FIFA Procedural Rules sets out that:

> *"Once the petition is complete, it shall be sent to the opposing party or the person affected by the petition with a time limit for a statement or reply. If no statement or reply is received before the time limit expires, a decision shall be taken upon the basis of the documents already on file. Submissions received outside the time limit shall not be taken into account. The parties shall present all the facts and legal arguments together with all the evidence upon which they intend to rely, in the original language, and, if applicable, translated into one of the official FIFA languages. In case the opposing party wishes to lodge a counter-claim, it shall submit within the same time limit applicable to the reply its petition containing all the elements described in paragraph 1 above. There will only be a second exchange of correspondence in exceptional cases".*

100. It is difficult to reconcile the Appellant's position with regard to FIFA. The Club was aware that the Respondent had lodged a claim against it on 25 December 2019 in front of the FIFA DRC. The Club was notified of the claim on 21 January 2020 and FIFA invited the Appellant to submit its position in relation to the Respondent's case by 10 February 2020. On this date, the Appellant's representatives contacted the FIFA Administration and requested an extension of its deadline to submit its response. This request was based on Article 16 (11) of the FIFA Procedural Rules.

101. On 11 February 2020, FIFA responded that the Club's request for an extension had been rejected and that the investigation stage of the case was closed. With respect to the Appellant's correspondence dated 10 February 2020, by which it requested an extension of the time limit to submit its response, the FIFA DRC highlighted that this request had not been substantiated, as required by the relevant rule, *i.e.* Article 16 (11) of the FIFA Procedural Rules. FIFA noted that, in accordance with Article 16 (11) of the FIFA Procedural Rules, an extension of a deadline may be granted only once, if a substantiated request is submitted before the time limit expires. FIFA further drew the Appellant's attention to FIFA Circular No 1694 dated 30 October 2019, which provided a detailed presentation of the several amendments to the FIFA Procedural Rules, including the relevant Article, which entered into force on 1 November 2019.

102. The Sole Arbitrator finds that the Appellant was aware of the proceedings as of 21 January 2020. The Club provided a response to FIFA on the 10 February 2020 requesting an extension, but in no way sought to substantiate its response. It is not for the Sole Arbitrator to comment on the reasons for doing so. The Club stated in this respect that in previous circumstances, and correspondence with FIFA, extensions had been granted. However, the Sole Arbitrator considers this, if accurate, to be irrelevant to the case at hand. Each case will be determined on its own particular facts, and the substantiated grounds for any extension. The FIFA Procedural Rules clearly set out the position with regard to requesting a deadline. The Appellant's

representatives did not offer a substantiated response as to why an extension was required. Furthermore, it had ample time to request an extension in advance of the deadline. It failed to do so.

103. It is not accepted that FIFA did not give the Appellant the right to provide its position in relation to the claim. Furthermore, it is not accepted that the human rights of the Appellant were in any way breached. The Appellant failed to provide any substantive reason that a deadline should be provided, as required under the applicable rules. This was despite having been notified of the claim and the date for filing a response. It is not sufficient for a party to rely on a particular provision of the FIFA Procedural Rules that permits an extension to be granted, without satisfying the specific requirements of that provision that a party is seeking to rely on. Thus, the FIFA DRC was correct in its determination, which it had the sole discretion to make.

104. The Sole Arbitrator also notes that there is no requirement in the FIFA Procedural Rules, nor was the Appellant able to cite one, that provides that if an extension request is sought on the final day of a deadline, and such request is refused for any reason, that the requesting party is nonetheless entitled to an additional "courtesy" day to file their submission all the same. Again, the Appellant could have requested an extension in advance of the deadline expiration, but chose to wait until the final day, and accordingly took a risk that its request would be denied. Therefore, the Sole Arbitrator does not find that the FIFA DRC erred in not according the Appellant an extra day to file its responsive submission after having denied the Appellant's request for an extension.

105. In seeking to recover its position, the Appellant then sought to file a counterclaim, which it submitted on 14 February 2020. This counterclaim should have been filed within the same time limit applicable to the reply, *i.e.* 10 February 2020. The FIFA DRC ruled that this claim was nothing more than an attempt to circumvent the FIFA Procedural Rules, as it had not been timely filed. The Sole Arbitrator agrees that it is difficult to see it any other way.

106. At all material times, the Appellant was aware of the claim and the procedural steps with regard to requesting an extension and filing a response and/or counterclaim. The Appellant failed to follow these prescribed procedural steps correctly. Therefore, the FIFA Administration correctly closed the investigation phase of the matter. Furthermore, the FIFA DRC was entitled to deny the extension request, and accordingly to adjudicate on this matter based on the documentation and correspondence submitted by the Respondent.

107. Accordingly, the Sole Arbitrator finds that the FIFA DRC did not err in denying the Club's request for an extension to file its Response or admitting the Respondent's counterclaim, and that the FIFA DRC correctly proceeded to issue the Appealed Decision on the basis on the Parties' submissions that had been timely and correctly filed in accordance with the FIFA Procedural Rules. The Appellant's due process rights were not violated.

108. For the avoidance of doubt, the Sole Arbitrator notes that, in line with consistent CAS jurisprudence on this issue, any procedural defect at the FIFA level, if one were to have occurred which is not the case here, are cured by *de novo* procedures at CAS.

B. Are the Protocol Agreement and the First Employment Contract to be considered as one agreement?

109. The Appellant's further submissions were twofold. Firstly, it was averred that the legal issues regarding the First Employment Contract and Protocol Agreement should be treated separately.

110. Secondly, it was submitted that the Respondent was not entitled to terminate the First Employment Contract entered into on 28 May 2019 with just cause (or in other words, that the Respondent terminated the First Employment Contract without just cause because he did not provide the Club with the proper notice period of 30-days further to the Standard Employment Agreement to cure the outstanding salary payments).

111. On 7 November 2019, the Respondent had notified the Appellant, in writing, that in the event that the outstanding monies were not paid within the prescribed time limit of 15 days, he would be terminating the First Employment Contract.

112. It is not in dispute that the Appellant had failed to pay the Respondent his salaries for the months of September 2019 and October 2019 in line with the First Employment Contract. Furthermore, the Appellant had failed to pay the Respondent the amounts due under the Protocol Agreement. The Protocol Agreement had been negotiated and entered into in order to settle the amount of EUR 65,000 which was outstanding under the Respondent's Previous Employment Contract from the 2018/2019 season. In essence, this arrangement was required to assist the Appellant with its licensing application, given that any outstanding debts would result in the application for the new season being rejected. It was fundamental that the Respondent agree to such an arrangement. The Respondent will no doubt have taken legal advice as to his position before agreeing to the Protocol Agreement.

113. Clause 8 of the Protocol Agreement states that *"This Protocol shall be governed by the laws and regulations of FIFA. FIFA shall have exclusive jurisdiction of all disputes arising from this Protocol, its execution and its interpretation, with the right of appeal to the Court of Arbitration for Sports (CAS) in Lausanne/Switzerland. The language of the arbitration shall be in English and Swiss Law shall apply"*.

114. Clause 5 of the Protocol Agreement is clear; *"In the case that the Appellant did not pay an instalment in full, on the due dates set out in the Protocol Agreement, an acceleration clause entered into force and all the remaining instalments became immediately due and payable without the need for any notice, notification and/or court intervention"*. The Appellant was aware of this provision when it entered into the Protocol Agreement. It was imperative that the Appellant secure the Respondent's agreement in order to secure its licence for the following season. There was no ambiguity as to its meaning. This was drafted, no doubt, to protect the Respondent against the very incident that occurred, namely the Appellant failing to pay monies due. However, this was a separate agreement relating solely to monies owed under the Previous Employment Contract dated 9 August 2016. The Appellant failed to pay the instalments in full on the due dates as set out in the Protocol Agreement. Therefore, the remaining instalments automatically became due and payable.

115. Clause 7 of the Protocol Agreement stated that this agreement was signed as a full and final payment of bonus payments due to the Respondent for the previous football season 2018/2019.

116. Whilst an acceleration clause was included in the Protocol Agreement for a failure to pay on the agreed dates, there was no termination clause.

117. The Sole Arbitrator considers that the First Employment Contract and the Protocol Agreement are separate agreements. The Protocol Agreement related to monies outstanding from the 2018/2019 football season. The Respondent agreed to the terms set out in the Protocol Agreement. Whilst it was imperative for the Appellant that this be agreed in order to secure its licence for the upcoming season, it was a separate agreement to the First Employment Contract negotiated and agreed by the Respondent.

118. Due to the failure of the Appellant to pay the instalments under the Protocol Agreement on the due dates, that being 30 September 2019 and 31 September 2019, the Respondent is entitled to receive the full amount due under the Protocol Agreement, *i.e.* EUR 52,000.00.

119. In addition, the Respondent is granted interest of 5% *per annum* per Article 104 of the Swiss Code of Obligations, as of 1 October 2019, that being the date on which the remaining payments became payable, until the date of effective payment.

C. Was the Respondent's termination of the First Employment Contract with just cause?

120. In turning to the key issue, whether the Respondent terminated the First Employment Contract with or without just cause, the Appellant seeks to rely on Article 14bis of the FIFA RSTP. The Appellant claims that the termination of the First Employment Contract was made without just cause.

121. Article 14bis of the FIFA RSTP states that:

> *"1. In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to comply with its financial obligation(s). Alternative provisions in existence at the time of this provision coming into force may be considered.*
>
> *2. For any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered. Delayed payment of an amount which is equal to at least two months shall also be deemed a just cause for the player to terminate his contract, subject to him complying with the notice of termination as per paragraph 1 above.*
>
> *3. Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in paragraphs 1 and 2 above. The terms of such an agreement shall prevail".*

122. The Appellant claims that under the terms of Article 9.2.2 of the Standard Employment Agreement, the Respondent was only entitled to terminate the First Employment Contract in

the event that the Club *"failed to pay any due payables or other benefits, allowances or bonuses due to the Player within 30 days since the date that the Club had been put in default in writing by the Player"*.

123. Article 14bis (1)-(2) of the FIFA RSTP clearly sets out the position with regard to outstanding salaries and the procedure to be followed for termination of a contract due to such unpaid salaries. It is not disputed that the Respondent followed the procedure under Article 14 (bis) of the FIFA RSTP. In fact, the Respondent waited 18 days before terminating the contract, as opposed to the 15 days required under Article 14bis (1) of the FIFA RSTP. The Respondent further relies on Article 18 (6) of the FIFA RSTP which states that: *"Contractual clauses granting the club additional time to pay to the professional amounts that have fallen due under the terms of the contract (so-called "grace periods") shall not be recognised. Grace periods contained in collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law shall, however, be legally binding and recognised. Contracts existing at the time of this provision coming into force shall not be affected by this prohibition"*.

124. However, the Respondent failed to acknowledge or address Article 14bis (3) of the FIFA RSTP. For completeness, paragraph 3 states: *"Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in paragraphs 1 and 2 above. The terms of such an agreement shall prevail"*.

125. Clause 2.1 of the First Employment Contract states *"The present contract is regulated by the provisions of the Standard Employment Contract, as these have been agreed between the Cyprus Football Association (CFA) and the Cyprus Footballers' Union (PASP) and as these provisions have been codified in Annex 1 of the CFA Registration and Transfer of Players Regulations"*. The Standard Employment Agreement is thus a collective bargaining agreement for the purposes of Article 14bis (3) of the FIFA RSTP.

126. Clause 2.2 of the First Employment Contract states that *"the terms of the Standard Employment Contract constitute an integral part of the present contract having full and direct implementation"*. With regard to the termination of the contract, the Standard Employment Contract sets out the provisions by which the Player shall be entitled to terminate the Employment Agreement in writing to the Club, as follows:

> *"9.2 The Player shall be entitled to terminate the Employment Agreement in writing to the Club if the Club:*
>
> *9.2.1 Shall be guilty of serious or persistent breach of the terms and conditions of this Contract,*
>
> *9.2.2 Fails to pay any due payables or other benefits, allowances or bonuses to the Player within 30 days since the date that the Club has been put in default in writing by the Player"*.

127. It is evident that the Respondent seeks to rely on Article 14bis (1) and (2) and Article 18 (6) of the FIFA RSTP. However, both of these provisions, namely Article 14bis paragraph (3) and Article 18 (6), make reference to collective bargaining agreements. It is specifically stated that collectively 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 paragraph (1) and (2) of Article 14bis of the FIFA RSTP, *i.e.* the terms of such a collective bargaining agreement shall prevail over the terms of the FIFA RSTP.

128. Furthermore, in Article 18 (6) of the FIFA RSTP, collective bargaining agreements are again mentioned in relation to grace periods, stating that agreements validly negotiated by employers' and employees' representatives at the domestic level in accordance with national law shall, however, be legally binding and recognised.

129. It is the Appellant's position that the Respondent terminated the First Employment Contract without just cause. This was due to the fact that Article 9.2.2 of the Standard Employment Agreement required that the Respondent put the Appellant on notice for a period of 30 days. The Respondent would only be entitled to unilaterally terminate the First Employment Contract if the Appellant failed to pay the outstanding salaries within the deadline of 30 days. In this case, the Respondent put the Appellant in default on 7 November 2019. At no time during this period did the Appellant acknowledge this notice or seek to engage with the Respondent, who terminated the First Employment Contract on 24 November 2019. This was 18 days after the default notice had been sent to the Club, therefore the 30-day deadline provided for in Clause 9.2.2 of the Standard Employment Agreement had not expired.

130. The Sole Arbitrator notes that the Standard Employment Agreement had been negotiated and agreed between the CFA and the PASP. Article 9.2.2 of the Standard Employment Agreement required the Respondent to give 30 days notice to the Appellant before he would be entitled to terminate the First Employment Contract, which he failed to do. He was thus not entitled to terminate the First Employment Contract at that time with just cause. In accordance with Article 14bis (3) of the FIFA RSTP, *"the terms of such an* [collective bargaining] *agreement shall prevail"*. Again, the Standard Employment Agreement was incorporated into the First Employment Contract, the latter which was signed by the Respondent. He would no doubt have taken advice on the specific terms of the First Employment Contract and the Standard Employment Agreement – this is all the more true since the First Employment Contract is barely more than two pages long. The Respondent had been with the Appellant for a number of years and had signed a number of employment agreements prior to signing the First Employment Contract.

131. Furthermore, on 26 November 2019, the Appellant paid the outstanding salaries to the Respondent. This payment was within the 30-day notice period, since the Respondent had put the Appellant in default on 7 November 2019. Therefore, further to the terms of Clause 9.2.2 of the Standard Employment Agreement, the Respondent was not entitled to terminate the First Employment Contract with just cause as the Appellant had paid the outstanding salaries within 30 days.

132. In light of the foregoing, the Sole Arbitrator rules that the Appellant is entitled to compensation for the Respondent's termination of the First Employment Contract without just cause. In this respect, the Sole Arbitrator notes that neither the First Employment Contract nor the Standard Employment Agreement contain provisions that address compensation in the event of termination without just cause by any party.

133. Therefore, in order to calculate the compensation owed by the Respondent to the Appellant, the Sole Arbitrator turns to Article 17 paragraph 1 of the FIFA RSTP, which sets provides as follows:

> *"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 aforementioned 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, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract.*
>
> *iii. Collective bargaining agreements validly negotiated by employers' and employees' representatives at 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".*

134. The Sole Arbitrator has considered a number of the non-exhaustive factors set out in Article 17 (1) of the FIFA RSTP. The Sole Arbitrator is aware that the Respondent has not signed with another club since terminating the First Employment Contract with the Appellant. The Respondent was with the Club for a number of years, captaining the side and also winning honours. It is noted that the Appellant did not pay the Respondent's salaries on time. The Appellant also failed to pay the instalments as due to the Respondent under the Protocol Agreement, which is difficult to reconcile given that the Protocol Agreement, by its very nature, concerned a failure on the part of the Appellant to pay the Respondent monies due to him under the Previous Employment Contract. The full amount under the Protocol Agreement immediately became due because of this breach. The acceleration clause in the Protocol

Agreement was no doubt negotiated and agreed based on the previous conduct of the Appellant. Furthermore, the Appellant failed to engage with the Respondent in any meaningful way and ignored any and all correspondence from the Respondent's representatives. It cannot be said that the Appellant has acted in good faith with respect to the payments at issue in this arbitral proceeding, or as well it seems with respect to previous salary payments.

135. Whilst in no way condoning the conduct of the Appellant, this does not negate the terms of the First Employment Contract, which incorporates the terms of the Standard Employment Agreement, including that relating to the 30-day notice period agreed between the CFA and the PASP, which therefore trumps the notice period in the FIFA RSTP per the terms of Article 14 (3) of the FIFA RSTP. The Respondent or his representatives have failed to address this issue and Article 14 (3) of the FIFA RSTP is clear. 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 paragraphs 1 and 2 of Article 14bis of the FIFA RSTP. The terms of such a collective bargaining agreement shall prevail.

136. Therefore, the Sole Arbitrator determines that the termination of the First Employment Contract by the Respondent did not comply with the applicable terms of the Standard Employment Agreement. As per Article 17 paragraph 1 (i) of the FIFA RSTP, the Appellant is entitled to receive the entire remaining value of the First Employment Contract, from the date of termination of 24 November 2019 until its natural expiration date 31 May 2021, *i.e.* EUR 170,000.00.

137. Furthermore, the Appellant's interest claims of 5% are granted from the date of termination, that being 24 November 2019, until the date of effective payment.

D. Conclusions

138. This case has by no means been straightforward. For the reasons set out above, it is not accepted that the FIFA DRC wrongly concluded that the Appellant renounced its right to defend the claim. The Appellant failed to follow the correct procedural steps. It is also not accepted that FIFA in any way violated the due process rights of the Appellant. The Appellant had ample opportunity to address the initial claim lodged before the FIFA DRC and failed to do so. The FIFA DRC, in accordance with the FIFA Procedural Rules, issued the Appealed Decision upon the basis of the documents on file, that being the statements and documentation submitted by the Respondent. In any event, any grievance in relation to the FIFA DRC proceedings would be cured by the *de novo* review undertaken in this CAS appeal. The Sole Arbitrator has had the benefit of comprehensive submissions from both Parties.

139. With regard to the substantive issues, it has been determined that the Protocol Agreement and the First Employment Agreement were separate agreements. Due to the Appellant's failure to make the payments as required under the Protocol Agreement, and specifically, Clause 3 of the Protocol Agreement, the acceleration clause automatically entered into force and all of the remaining instalments became immediately due and payable. The Respondent is entitled to

receive from the Appellant the full amount plus interest due under the Protocol Agreement, *i.e.* EUR 52,000.00 plus 5% interest as of 1 October 2019 until the date of effective payment.

140. The key issue of this dispute relates to the termination of the First Employment Contract, and the default period and the notice required to be given. Article 14bis of the FIFA RSTP deals with this issue. On 7 November 2019, the Respondent put the Appellant in default and requested payment for the full amount of the Protocol Agreement and the two outstanding salaries due under the First Employment Contract at that time, setting a time limit of 15 days to remedy the default. The Appellant did not respond to the Respondent's 7 November 2019 correspondence, despite the fact that the Respondent continued to train and play. On 24 November 2019, *i.e.* 18 days after putting the Appellant in default, the Respondent terminated the First Employment Contract in writing with immediate effect. In so doing, the Respondent sought to rely on Article 14bis of the FIFA RSTP, specifically paragraph (1) and (2), which provides that a player can terminate a contract with just cause if two monthly salary payments are unpaid and the club is given a period of 15-days to make the payment.

141. However, the Respondent failed to take into account that Clause 2.1 of the First Employment Contract states that the First Employment Contract is regulated by the provisions of the Standard Employment Contract, the provisions of which have been codified in Annex 1 of the CFA Regulations and Transfer of Players Regulations. The Standard Employment Agreement, critically Article 9.2.2 thereof, which is validly negotiated between the employers' and employees' representatives at the domestic level, in accordance with national law, did in fact contain a provision that deviates from the principles stipulated in paragraphs 1 and 2 of Article 14bis of the FIFA RSTP. According to Article 14bis of the FIFA RSTP, in such circumstances, the terms of such a collective bargaining agreement shall prevail. Under the terms of the Standard Employment Agreement, the Respondent was not entitled to terminate the First Employment Contract unless the Club had failed to pay the outstanding salary payments after a notice period of 30 days. However, as per the terms of the Standard Employment Agreement, the Appellant did pay the outstanding amounts due to the Respondent within 30 days, and thus just cause for the Respondent to terminate the First Employment Contract could not be established.

142. Therefore, in light of the above, the Sole Arbitrator determines that the appeal must be partially upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by AEL Podosfairo Dimosia LTD against the decision issued by the FIFA Dispute Resolution Chambers on 8 May 2020 is partially upheld.

2. The decision issued by the FIFA Dispute Resolution Chamber on 8 May 2020 is set aside with regard to paragraph 2, which is replaced as follows by this arbitral Award:

   - *"AEL Podosfairo Dimosia LTD (AEL Limassol) shall pay Dossa Momade Omar Hassamo Junior EUR 52,000.00 (fifty-two thousand Euros) corresponding to the amount due under the Protocol Agreement plus interest of 5% per annum as from 1 October 2019 until the date of effective payment.*

   - *Dossa Momade Omar Hassamo Junior shall pay AEL Podosfairo Dimosia LTD (AEL Limassol) EUR 170,000.00 (one hundred and seventy thousand Euros) corresponding to the remaining value of the 28 May 2019 employment contract plus interest of 5% per annum as from 24 November 2019 until the date of effective payment".*

3. (…).

4. (…).

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