Arbitration CAS 2021/A/7815 Shiza Yahya & Simba SC v. Pharco FC, award of 10 May 2022

Panel: Mr Manfred Nan (The Netherlands), Sole Arbitrator

Football
Termination of the employment contract without just cause by the player
Issuance of a default notice as mandatory prerequisite for terminating an employment contract
Blank employment contract
List of criteria of Art. 17 para. 1 RSTP
Costs saved
Lost earnings
Specificity of sport
Joint liability of the new club

1. **For a party to be allowed to validly terminate an employment contract with immediate effect, it must have warned the other party, in order for the latter to have the chance, if it deemed the complaint legitimate, to comply with its obligations.**

2. **A player signing a blank employment contract, allegedly to be later filled out by the club with terms in accordance with a previous offer, gives the club a free pass to fill out the terms of the employment to their liking and takes the risk that the terms will be less favourable than those set forth in the offer.**

3. **The list of criteria set out in Article 17(1) of the FIFA Regulations on the Status and Transfer of Players (RSTP) is illustrative and not exhaustive. Other objective factors can and should be considered, such as the loss of a possible transfer fee and the replacement costs, provided that there exists a logical nexus between the breach and loss claimed. In the analysis of the relevant criteria, the order by which those criteria are set forth by Article 17(1) FIFA RSTP is irrelevant and need not be exactly followed by the judging body. It is for the judging authority to carefully assess, on a case-by-case basis, all the factors and determine how much weight, if any, each of them should carry in calculating compensation. While each of them may be relevant, any of them may be decisive on the facts of a particular case. While the judging authority has a "wide margin of appreciation" or a "considerable scope of discretion", it must not set the amount of compensation in a fully arbitrary way, but rather in a fair and comprehensible manner. At the same time, as the CAS Code sets forth an adversarial rather than inquisitorial system of arbitral justice, a CAS panel has no duty to analyse and give weight to any specific factor if the parties do not actively substantiate their allegations with evidence and arguments based on such factor.**

4. **If the former club did not attribute any meaningful value to the player's services at the time of the breach, the remaining value of the employment contract appears to**

be costs saved by the former club, rather than a basis to determine the damages incurred by the former club due to the player's early termination of the employment contract.

5. The loss of a transfer fee can be considered as a compensable damage provided that there is a necessary logical nexus between the breach of contract and the lost opportunity to realize that profit. However, there must be evidence that the non-breaching club actually suffered such a lost opportunity.

6. The "specificity of sport" is not an additional head of compensation, nor a criterion allowing to decide *ex aequo et bono*, but a correcting factor which allows a CAS panel to take into consideration other objective elements (chiefly of sporting nature) which are not envisaged under the other criteria of Article 17 FIFA RSTP.

7. Article 17(2) FIFA RSTP requires that the new club, so long as it is identified as such, be held jointly and severally liable with the player for the payment of any compensation awarded against the player under Article 17(1) FIFA RSTP, regardless of whether there is evidence that it was involved in or induced the player to breach his contract, unless there are truly exceptional circumstances. If the new club wants to exclude any risk of signing an employment contract with a player that may be registered with another club, it should seek to obtain assurances from the former club directly, or seek guidance from the relevant national football associations.

I. PARTIES

1. Mr Shiza Ramadhani Yahya (the "First Appellant" or the "Player") is a professional football player of Tanzanian nationality.

2. Simba Sports Club Company Limited (the "Second Appellant" or "Simba") is a professional football club with its registered office in Dar es Salaam, Tanzania. Simba is currently competing in the *Ligi kuu Bara*, which is the highest league in professional football in Tanzania, and is registered with the Tanzanian Football Federation (the "TFF"), which in turn is affiliated to the *Fédération Internationale de Football Association* ("FIFA").

3. Pharco Football Club (the "Respondent" or "Pharco") is a professional football club with its registered office in Alexandria, Egypt. The Club is currently competing in the Premier League, which is the highest league in professional football in Egypt, and is registered with the Egyptian Football Association (the "EFA"), which in turn is also affiliated to FIFA.

4. The Player and Simba are hereinafter jointly referred to as the "Appellants", and together with Pharco as the "Parties".

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the written and oral submissions of the Parties, and the evidence examined in the course of the proceedings and at the hearing. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal analysis.

A. Background Facts

4. On 29 January 2019, Pharco offered the Player, who was under contract with Simba, an employment contract for four and a half seasons, including the following conditions (the "Offer"):

> *"- The player will be loaned to Enppi FC – in the Egyptian premier league – for one season and half.*
>
> *- The player salary with Enppi FC as following:*
>
> *- 45,000$ for season 2018/2019.*
>
> *- 90,000$ for season 2019/2020.*
>
> *- Ennpi FC will provide the player with accommodation.*
>
> *- The player salary for the rest seasons as following:-*
>
> *- 95,000$ for season 2020/2021.*
>
> *- 100,000$ for season 2021/2022.*
>
> *- 105,000$ for season 2022/2023.* […]*".*

5. On the same date, Pharco, Simba and the Player concluded a transfer agreement (the "Transfer Agreement"), whereby Simba agreed to transfer the Player to Pharco against payment of USD 85,000 with the Player's consent.

6. On 30 January 2019, according to the Player, he signed a blank copy of an employment contract without financial details, whereas, according to Pharco, the Player signed an employment contract with financial details (the "Employment Contract"), valid as from the second half of the 2018/19 season until the end of the 2022/23 football season, according to which the Player was entitled to the following remuneration:

- Egyptian pounds ("EGP") 80,000 for the season 2018/2019, payable in 4 instalments;
- EGP 100,000 for the season 2019/2020, payable in 12 instalments;

- EGP 120,000 for the season 2020/2021, payable in 12 instalments;
- EGP 140,000 for the season 2021/2022, payable in 12 instalments;
- EGP 160,000 for the season 2022/2023, payable in 12 instalments.

5. Immediately upon registration with Pharco, the Player was loaned for the second half of the 2018/19 season to Ennpi FC, also playing in the Premier League, and from September to December 2019, the Player was loaned to Alexandria Sporting Club, at that moment in time a club competing at the third highest league in professional football in Egypt.

6. On 15 January 2020, the Player informed FIFA by letter as follows:

> *"RE: TERMINATION OF CONTRACT DUE TO FAILURE OF PAYING SEVEN MONTHS SALARY*
>
> *The heading above is concerned.*
>
> *I would like to inform you that, I was registered as a player to Pharco FC of Egypt for 4 years from 2019 to 2022 but they never pay me a signing fee nor salary. They did not pay me salary or Seven months (7) now. They signed me various dubious contracts with Arabic language that I don't understand without even giving me a copy.*
>
> *I would like to request your good office to help me on solving this issue so that I can proceed with my career of playing football. I need to go back to my former club Simba Sports Club of Tanzania so that I can continue with my carrier".*

7. On 20 January 2020, the Player and Simba concluded an employment contract, valid as from the date of signing until 30 June 2020, by means of which the Player was entitled to a monthly salary of USD 2,000 plus a signing fee of USD 10,000 as well as a commission fee of USD 5,000.

B. Proceedings before the FIFA Dispute Resolution Chamber

15. On 29 April 2020, Pharco lodged a claim with the FIFA Dispute Resolution Chamber (the "FIFA DRC") against the Appellants for breach of the Employment Contract, arguing that the Appellants concluded an employment contract whilst the Player was still under contract with Pharco, requesting USD 500,000 *"as compensation for the unilateral termination without a legitimate reason with a 5% delay fine from the date of the decision"*, as well as the imposition of sporting sanctions on the Appellants.

16. The Appellants did not provide an answer to Pharco's claim.

17. On 24 November 2020, the FIFA DRC rendered its decision (the "Appealed Decision"), with the following operative part:

> *"1. The claim of* [Pharco] *is partially accepted.*

2. *The* [Player] *has to pay to* [Pharco]*, the following amount:*

   1. *USD 127,000 as compensation for breach of contract without just cause plus 5% interest p.a. as from 24 November 2020 until the date of effective payment.*

3. [Simba]*, is jointly and severally liable for the payment to* [Pharco] *of the amount mentioned in point 2. above.*

4. *Any further claims of* [Pharco] *are rejected.*

5. [Pharco] *is directed to immediately and directly inform the Respondents of the relevant bank account to which the* [Appellants] *must pay the due amount.*

6. *The* [Appellants] *shall provide evidence of payment of the due amount in accordance with this decision to* […]*, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).*

7. *In the event that the amount due, plus interest as established above is not paid by* [the Appellants] *within 45 days, as from the notification by* [Pharco]*of the relevant bank details to the* [Appellants]*, the following consequences shall arise:*

   1. *The* [Player] *shall be restricted from playing in official matches up until the due amount is paid, and for the maximum duration of six months.*

      [Simba] *shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned bans will be lifted immediately and prior to their complete serving, once the due amount is paid. (cf. art. 24bis of the Regulations on the Status and Transfer of Players).*

   2. *In the event that the payable amount as per in this decision is still not paid by the end of the bans imposed on the* [Appellants]*, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee".*

22. On 5 March 2021, the grounds of the Appealed Decision were communicated to the Parties determining, *inter alia*, the following:

- *"[T]he Chamber acknowledged that, on 29 January 2019,* [Pharco] *and* [Simba] *signed a transfer agreement, according to which* [Simba] *transferred the* [Player] *to* [Pharco] *against the payment of USD 85,000.*

- *In this respect, Chamber further acknowledged that, on 30 January 2019,* [Pharco] *and the* [Player] *signed an employment agreement by means of which* [Pharco] *offered the* [Player] *a 4 seasons contract, starting from the beginning of the 2018/2019 season until the end of the 2022/2023 season, according to which the* [Player] *was entitled to the following remuneration:*

  – *EGP 80,000 for the season 2018/2019, payable in 4 instalments;*

- *EGP 100,000 for the season 2019/2020, payable in 12 instalments;*
- *EGP 120,000 for the season 2020/2021, payable in 12 instalments;*
- *EGP 140,000 for the season 2021/2022, payable in 12 instalments;*
- *EGP 160,000 for the season 2022/2023, payable in 12 instalments.*

- *Moreover, the Chamber took note that, according to* [Pharco]*, the* [Player] *and* [Simba] *breached art. 17 of the Regulations as they concluded an employment contract whilst the* [Player] *was still under contract with* [Pharco].

- *In this regard, the DRC noted that according to the information contained in the TMS, on 20 January 2020, the* [Player] *and* [Simba] *concluded an employment contract valid as from the date of signature until 30 June 2020, by means of which* [Simba] *undertook to pay the* [Player] *a monthly salary of USD 2,000 plus a signing fee of USD 10,000 as well as a commission fee of USD 5,000.*

- *Having recalled the above, the DRC judge observed that,* [Pharco]*, in his claim, requested compensation for breach of contract in the total amount of USD 500,000 plus 5% interest p.a. as of the date of the decision as well as the imposition of sporting sanctions on the Respondents.*

- *The DRC judge further noted that despite having been invited to do so, the* [Player] *and* [Simba] *did not submit an answer to the claim. By not presenting their position to the claim, the DRC was of the opinion that the Respondents renounced their right of defence and, thus, accepted the allegations of* [Pharco].

- *Furthermore, as a consequence of the aforementioned consideration, the Chamber concurred that in accordance with art. 9 par. 3 of the Procedural Rules, he shall take a decision upon the basis of the documentation already on file; in other words, upon the statements and documents presented by* [Pharco].

- *With the above in mind, the DRC considered that it had remained uncontested that while the* [Player] *was under contract with* [Pharco]*, in January 2020, he left* [Pharco] *and went to* [Simba].

- *Taking all of the above into account, the Chamber held that the* [Player] *had failed to prove that* [Pharco] *authorised him to leave the club and subsequently sign an employment contract with a new club. As a consequence thereof, the Chamber concluded that the* [Player] *had breached the* [Employment Contract] *without just cause in January 2020, by leaving* [Pharco]. *What is more, the Chamber deemed that the* [Player] *did not provide any valid reason which could justify the termination of the* [Employment Contract].

- *On account of the above, the DRC was of the view that the* [Player] *unilaterally terminated the* [Employment Contract] *without any valid reason and, consequently, is to be held liable for the early termination of the* [Employment Contract] *without just cause.*

- *Bearing in mind the previous considerations, the Chamber went on to deal with the consequences of the early termination of the* [Employment Contract] *without just cause by the* [Player].

- *As a consequence of the aforementioned conclusion, the DRC established that, in accordance with art. 17 par. 1 of the Regulations, the* [Player] *is liable to pay compensation to* [Pharco]. *Furthermore, in accordance with the unambiguous contents of art. 17 par. 2 of the Regulations, the Chamber established that the new club, i.e.* [Simba]*, shall be jointly and severally liable for the payment of such compensation. In this respect, the Chamber was nonetheless eager to point out that the joint liability of the new club is independent from the question as to whether the new club has induced the contractual breach. This conclusion is in line with the well-established jurisprudence of the Chamber and has been repeatedly confirmed by the CAS.*

- *Notwithstanding the aforementioned, the Chamber recalled that according to art. 17 par. 4 sent. 2 of the Regulations, 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.*

- *In this context, the Chamber focused on the primacy of the principle of the maintenance of contractual stability, which represents a central element of the Regulations.*

- *According to the documentation provided by* [Pharco]*, it appears that in accordance with the* [Employment Contract], *its remaining value would be equal to EGP 466,666.66, approx. USD 29,000 (corresponding to the months as of February 2020 until May 2020 plus seasons 2020/2021, 2021/2022 and 2022/2023 = 40 months).*

- *On the other hand, the value of the new employment contract, concluded between the* [Player] *and* [Simba]*, which was apparently in force until 30 June 2020, had a total value of USD 27,000 (2,000*6, plus 10,000 plus 5,000).*

- *Accordingly, under the aforementioned employment contracts with said clubs, the* [Player] *was to receive the approximate average income of USD 62,000, i.e. USD 29,000 + USD 95,000 (USD 2,000*40 months + 15,000) / 2).*

- *In view of all of the above, the Chamber concluded that bearing in mind art. 17 par. 1 of the Regulations, after having duly taken into account the specificities of the present case, the compensation considering the* [Player's] *both existing contract and any new contract amounts to USD 62,000, which is the average between the amounts the* [Player] *is entitled to both under the* [Employment Contract] *and new employment agreement with* [Simba]*, a sum the Chamber found to be fair and proportionate. For the sake of completeness, the Chamber wished to clarify that in order to properly calculate the aforementioned average it was necessary to consider the amounts due to the* [Player] *under the* [Simba] *employment agreement for the same period of time remaining in the* [Employment Contract]. *In other words, the DRC clarified that in order to properly calculate the average of the amounts due to the* [Player] *under both the former and the new contract, it had to (fictionally) match the period of the* [Simba] *agreement to match the original term of the* [Employment Contract].

- *The members of the Chamber then turned to the criterion relating to the fees and expenses paid or incurred by* [Pharco] *in accordance with art. 17 par. 1 of the* Regulations. *The Chamber recalled that* [Pharco] *argued that a transfer compensation of USD 85,000 had been paid by* [Pharco] *to* [Simba]*, documentation of which has been presented by* [Pharco] *and was confirmed by the information available in the TMS.*

- *The Chamber deemed that the unamortized transfer fee incurred by* [Pharco] *fits into the description of article 17 par. 1 of the* Regulations *referring to the fees and expenses paid or incurred by the former club (amortised over the term of the contract), and therefore could be considered as part of the compensation to be granted. Said unamortized transfer fee corresponds to USD 65,000, i.e. 40 months remaining out of the total originally agreed under the contract. 31. Therefore, the DRC found that the amount of USD 65,000 was to be taken in consideration as expenses incurred by* [Pharco] *in accordance with art. 17 par. 1 of the* Regulations *in the calculation of the relevant compensation to be paid to* [Pharco].

- *On account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the* [Player] *must pay the amount of USD 127,000 (i.e. USD 62,000 plus USD 65,000) to* [Pharco] *as compensation for breach of contract without just cause. Furthermore,* [Simba] *is jointly and severally liable for the payment of the relevant compensation.*

- *Bearing in mind the above, the Chamber decided that, in the event that the* [Player] *and* [Simba] *do not pay the amounts due to* [Pharco] *within 45 days as from the moment in which* [Pharco]*, following the notification of the present decision, communicates the relevant bank details to the* [Player] *and* [Simba]*, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on* [Simba] *and a restriction on playing in official matches up to a maximum of six months shall be effective on the* [Player]*, in accordance with art. 24bis par. 2 and 4 of the* Regulations.

- *The DRC recalled that the above-mentioned bans will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24bis par. 3 of the* Regulations*".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 25 March 2021, the Player and Simba filed a joint Statement of Appeal, amended on 26 March 2021, with the Court of Arbitration for Sport ("CAS") against the Appealed Decision, in accordance with Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In this submission, the Appellants named Pharco as the sole respondent, and, *inter alia*, requested the production by FIFA of a copy of its complete case file related to the Appealed Decision. The Appellants also nominated an arbitrator.

24. On 30 March and 7 April 2021, the Appellants requested the CAS Court Office to submit the present procedure to a sole arbitrator, should Pharco not pay its share of the advance of costs.

25. On 8 April 2021, upon being invited by the CAS Court Office to express its position in this regard, FIFA renounced its right to request its possible intervention in the present arbitration proceedings.

26. On 5 May 2021, the CAS Court Office informed the Parties that Pharco's time limit to pay the advance of costs was expired and that no such payment was made. Further, Pharco was invited to inform the CAS Court Office by 10 May 2021, whether it agrees to the appointment of a sole arbitrator, and that in the absence of an answer or in case of disagreement, it will be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide the issue.

27. On 10 May 2021, and absent any reply from Pharco regarding the Appellants' request to submit the matter to a sole arbitrator, the CAS Court Office informed the Parties that, pursuant to Article R50 of the CAS Code, the President of the CAS Appeals Arbitration Division decided to submit the present case to a sole arbitrator.

28. On 19 May 2021, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

    Sole Arbitrator: Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands

29. On the same date, the CAS Office, on behalf of the Sole Arbitrator, pursuant to Article R57 of the CAS Code, invited FIFA to provide a copy of the complete case file related to the Appealed Decision.

30. On 25 May 2021, FIFA provided the CAS Court Office with the complete case file related to the Appealed Decision.

31. On 14 June 2021, and after having been granted several extensions, the Appellants filed their joint Appeal Brief, in accordance with Article R51 of the CAS Code.

32. On 2 July 2021, Pharco filed its Answer, in accordance with Article R55 of the CAS Code.

33. On 12 July 2021, upon being invited to express their positions in this respect, the Appellants indicated their preference for a hearing to be held in this matter, whereas Pharco did not provide its position.

34. On 26 July 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter, which would be held via video-conference.

35. On 30 August 2021, the Parties returned duly signed copies of the Order of Procedure to the CAS Court Office.

36. On 1 October 2021, a hearing was held via video-conference. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the arbitral tribunal.

37. In addition to the Sole Arbitrator and Ms Delphine Deschenaux-Rochat, CAS Counsel, the following persons attended the hearing:

For the Appellants:

- Mr Juan de Dios Crespo Pérez, Counsel;
- Mr Gytis Rackauskas, Counsel.

For the Respondent:

- Mr Nehad Hagag, Counsel;
- Mr Amr Bergas, Pharco's CEO;
- Mr Yahya Muhammad, Interpreter.

38. No witnesses or experts were called to be heard. The Sole Arbitrator did however hear evidence from Mr Amr Bergas, Pharco's CEO.

39. The Parties had full opportunity to present their cases, submit their arguments and answer the questions posed by the Sole Arbitrator.

40. Before the hearing was concluded, all Parties expressly 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.

41. On 25 October 2021, following a discussion at the hearing and a deadline granted by the Sole Arbitrator for the Parties to potentially settle their dispute, the CAS Court Office informed the Parties that the Sole Arbitrator would render an Award as the Parties had not reached an amicable agreement.

40. The Sole Arbitrator confirms that he carefully took into account in his decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present Award.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Appellants

50. The Appellants' joint submissions, in essence, may be summarised as follows:

- The Appellants were not able to submit their reply to Pharco's claim before the FIFA DRC, as they never received a copy of the claim or any other related information (it was only sent to the email address of Simba, which had been non-

operative since July 2020; the Player was never notified personally). As a result, the Appellants became aware of the proceedings before the FIFA DRC only after the latter had issued the Appealed Decision. Therefore, the Appellants never renounced their right to legal defence, but could not have executed it due to unexpected technical flaws.

- After signing the Transfer Agreement, the Player signed a blank version of the Employment Contract and Pharco ensured the Appellants that the terms of the Employment Contract would fully correspond to the content of the Offer, which Offer was the condition precedent for the Appellants to agree to the transfer. However, the terms of the Employment Contract are not even close to the Offer.

- Considering the above and the *de novo* scope of the proceedings before CAS, Pharco should be condemned to pay compensation because the Player only signed with Simba after he terminated the Employment Contract with Pharco with just cause, because *"*[Pharco] *attempted to deceive the Player, as it modified the agreed terms of his employment contract without having received its consent. Obviously, by "creating" the new terms of the employment contract without having previously agreed it with the Player,* [Pharco] *acted in ultimately bad faith. This is even truer, considering the fact, that* [Pharco] *never paid the Player any salary since the beginning of the contractual relationship among parties. As a result, at the moment of the termination of the employment contract, the Player was not paid any salary for a period of more than seven months. As it is clear out of the conduct of* [Pharco]*, the latter did not even intend to comply with its obligations towards the Player, as it provided a false version of the employment contract for the deciding authority, thus attempting to escape its obligations".*

- The Player only accepted Pharco's Offer, subject to the essential condition that the Player would be loaned to Enppi FC – in the Egyptian premier league – for a season and a half. However, Pharco cancelled the Player's loan to Enppi FC only after half of the season and later did not provide the Player any sufficient training. Moreover, after having cancelled the loan without any legitimate reason, Pharco did not give the Player the possibility to compete with his teammates in official matches.

- After having returned from Enppi FC, the Player was informed that he could not train with Pharco, as they did not see him in the future plans of the club, and requested him to leave to a third division club in Egypt, Alexandria Sporting Club, severely violating his rights and breaching their contractual obligations deriving out of the Employment Contract (specified in the Offer), to loan the Player to an Egyptian Premier League club for a season and a half.

- Furthermore, Pharco failed to comply with the financial conditions of the Employment Contract, which finally left the Player fully unpaid for a period of more than seven months, thus being more than sufficient reason for the Player to terminate the Employment Contract prematurely with just cause.

- This is even more true as the Club has not sent any notice to the Player or taken any measure whatsoever when the Player left Egypt and signed with Simba on 20 January

2020. After this date, Pharco has never contacted (or tried to contact) the Player in order to ask him to carry out his work. At no moment, Pharco tried to contact the Player in order to find a solution or to give any directions to the latter.

- As a result, Pharco severely violated the Player's personality rights. Pharco never paid any salary to the Player, breaching the Employment Contract during the protected period. Accordingly, the residual value of the Employment Contract is EUR 435,000, which amount shall be considered as the appropriate compensation for the unilateral termination of the Employment Contract with just cause by the Player.

- Alternatively, any compensation payable by the Player to Pharco could not be higher than USD 40,322, as any higher amount would lead to unjustified enrichment of Pharco.

51. On this basis, the Appellants submit the following prayers for relief:

"1. to accept this appeal against the decision of the Fédération Internationale de Football Association Dispute Resolution Chamber with a reference number 20-00676, passed in Zurich on the 24th of November 2020 and notified with grounds to the Parties on the 5th of March 2021;

2. to annul the Decision challenged, pursuant to the provisions of Article 57 of CAS Code, and issue a new decision, replacing the Decision, in the following terms:

(i) to dismiss the Claim of Pharco FC;

(ii) to determine that the Player terminated his Employment Contract with Pharco FC with just cause, as of the 15th of January 2020;

(iii) to condemn Pharco FC to pay in favour of the Player:

- *the compensation for violation of his personality rights (which also resulted in the breach of the Employment Contract) in the amount of USD 435,000/- (four hundred thirty five thousand American Dollars); and*

- *the corresponding interest at the rate of five percent (5%) per annum applicable to any amount granted as from the 15th of January 2020 until the date of effective payment;*

<u>Alternatively</u>, only in case the requests above would not be granted:

(iv) to dismiss the Claim of Pharco FC;

(v) To determine that the Player terminated his Employment Contract with Pharco FC with just cause as of the 15th of January 2020; and

(vi) to refer the case back to the previous instance exclusively in part related to determination of the consequences of the termination of the Employment Contract with just cause by the Player;

Alternatively, only in case the requests above would not be granted:

(vii) to reduce the compensation payable by the Player and Simba SC to Pharco FC;

In any case:

(viii) to fix a sum to be paid by the Respondent, in order to contribute to the payment of the Appellants' legal fees and costs in the amount of CHF 15,000/- (fifteen thousand Swiss francs);

(ix) to condemn the Respondent to the payment of the whole CAS administration costs and arbitrators' fees - if any; and

(x) to determine any other relief the Sole Arbitrator may deem appropriate" (emphasis in original).

B. The Respondent

52. Pharco's submissions are as follows:

- *"The* [Player] *is registered in* [Pharco] *season 2018/2019 on 29.01.2019 after demanding his international ID Card from* [Simba].
- *The* [Player] *loaned to ENPPI SC during the winter transfer market in Season 2018/2019 until the end of the season of 2019/2020 through one season and Half.*
- *By the end of season 2018/2019, the loan of the* [Player] *was ended as well as he returned back to* [Pharco] *due to that (the coach of ENPPI SC informed us that the* [Player] *is not qualified enough). The* [Player] *returned again to join first team squad for* [Pharco] *in the beginning of the season 2019 / 2020, He participated in the preparation to the season 2019/2020 (The coach of the first team of* [Pharco] *Team inform us that the* [Player] *is not qualified enough to join the first team squad).*
- *The* [Player] *is loaned to Sporting club until the end of the season 2019/2020, where sporting club was included in the clubs which participate in these seasons of 2019/2020 in the Egyptian Premier League – Third Division. The Team succeed to go up to the Egyptian Premier League – Second Division at the end of the Season of 2019 – 2020.*
- *The* [Player] *signed on the contract in both language (Arabic and English), while both contracts were attested from the* [EFA]. *The played* [sic] *were informed more than one time to receive the original copy from the* [EFA].

- *Upon signing on the contract to join* [Simba] *on 15.01.2020, The International ID Card Request was sent from the* [TFF] *to the* [EFA] *to receive the player international ID Card. The* [EFA] *replied that* [Player] *has a valid contract with his first Club (*[Pharco]*).*

- *The Player stayed in Alexandria since the time of his loan to Sporting Club, this residence were at the expenses of Pharco FC in Tulip Hotel in Borg El Arab, taking into consideration the* [Player's] *condition, where he live as a stranger in different country far from his original country.*

- [Pharco] *shall bear a part of the player contract with* [Pharco] *for the season 2019-2020, However the amount of the* [Player] *to Sporting club equal 25,000 EGP (Only Twenty Five Thousand Egyptian Pound) on 30.09.2019 (the time of his signature on the loan letter to Sporting Club, as well as another amount was given to the* [Player] *equal 25,000 (Only Twenty Five Egyptian Thousand) on 30.12.2019.*

- *There is also another amount of due amount of money, the* [Player] *took from* [Pharco] *as a loan were not settled yet.*

- *the* [Player] *was feeling happy at the time of his playing in Sporting Club as well as he is happy with his presence at* [Pharco] *walls after his returning back from the loan of Enppi Club and his regularity with the preparation period with the first team".*

53. In its written submissions, Pharco did not submit any prayers for relief. Nevertheless, at the hearing, Pharco requested the Sole Arbitrator to reject the appeal and to confirm the Appealed Decision.

V. JURISDICTION

54. The jurisdiction of CAS derives from Article 58(1) FIFA Statutes (June 2019 Edition), as it determines that *"[a]ppeals 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"* and Article R47 CAS Code. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by the Parties.

55. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

56. The appeal was filed within the deadline of 21 days set by Article 58(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

57. It follows that the appeal is admissible.

VII. APPLICABLE LAW

58. The Appellants submit that, in accordance with Article R58 CAS Code and Article 57(2) FIFA Statutes, the CAS should apply the various regulations of FIFA and, additionally, Swiss law.

59. Pharco did not submit any position in respect of the law to be applied.

60. Article R58 CAS 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

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

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

62. The Sole Arbitrator finds that the regulations of FIFA are primarily applicable, in particular the FIFA Regulations on the Status and Transfer of Player (edition June 2019 – the "FIFA RSTP") and, if necessary, additionally, Swiss law.

VIII. MERITS

A. The Main Issues

63. The main issues to be resolved by the Sole Arbitrator are:

i. When was the Employment Contract terminated and by whom?

ii. Was there just cause for the termination of the Employment Contract?

iii. What are the consequences thereof?

i. When was the Employment Contract terminated and by whom?

64. The Sole Arbitrator notes that there is no termination letter on file, by means of which either the Player or Pharco terminated the Employment Contract. It is nonetheless clear that the employment relationship between the Player and Pharco came to an end.

65. The Player maintains that he terminated the Employment Contract by means of a termination letter dated 15 January 2020.

66. The Sole Arbitrator finds that the Player's letter dated 15 January 2020 is not a termination letter, as it was not addressed to Pharco, but to FIFA. There is no evidence on file based on which it can be concluded that the Player's letter was brought to the attention of Pharco at the relevant moment in time.

67. Nonetheless, the Sole Arbitrator finds that the Employment Contract was implicitly terminated by the Player by signing a new employment contract with Simba while his Employment Contract with Pharco had not yet expired.

68. Article 5(2) FIFA RSTP provides as follows:

> *"A player may only be registered with one club at a time".*

69. Furthermore, Article 18(5) FIFA RSTP provides as follows:

> *"If a professional enters into more than one contract covering the same period, the provisions set forth in Chapter IV shall apply".*

70. Chapter IV of the FIFA RSTP comprises Articles 13 until 18 FIFA RSTP, dealing with the termination of employment contracts.

71. The Player does not deny to have concluded an employment contract with Simba on 20 January 2020, but he maintains that he was entitled to do so, because he had just cause to terminate his Employment Contract with Pharco.

72. The arguments of the Player with respect to the termination of his Employment Contract with Pharco will be addressed in more detail below, but the Sole Arbitrator finds that the above reasoning warrants the conclusion that the Employment Contract was implicitly terminated by the Player on 20 January 2020 by signing an employment contract with Simba on such date.

ii. Did the Player terminate the Employment Contract with or without just cause?

73. Given that the Player is held to have terminated the Employment Contract with Pharco on 20 January 2020, the Player carries the burden of proof to establish that he had just cause to do so at such moment in time.

74. In this respect, the Sole Arbitrator considers it relevant which arguments the Player invoked in his letter dated 15 January 2020, even if such letter was not delivered to Pharco, as it is contemporaneous evidence of the Player's position at the relevant point in time.

75. The Player's letter dated 15 January 2020 provides, *inter alia*, as follows:

> *"I would like to inform you that, I was registered as a player to Pharco FC of Egypt for 4 years from 2019 to 2022 but they never pay me a signing fee nor salary. They did not pay me salary or Seven*

months (7) now. They signed me various dubious contracts with Arabic language that I don't understand without even giving me a copy.

I would like to request your good office to help me on solving this issue so that I can proceed with my career of playing football. I need to go back to my former club Simba Sports Club of Tanzania that I can continue with my carrier".

76. The Sole Arbitrator finds that three reasons for termination can be derived from this letter:

1. Pharco's failure to pay salary to the Player for 7 months;

2. Pharco's signing of *"various dubious contracts with Arabic language"* with him that he did not understand;

3. A pressing need for the Player to return to Simba.

77. Before addressing these arguments in turn below, the Sole Arbitrator wishes to set out the relevant regulatory framework against which the Player's allegations are to be assessed.

a. The applicable regulatory framework

78. Article 14 FIFA RSTP provides as follows:

"1. A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.

2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause".

79. Article 14bis(1) FIFA RSTP provides the following:

"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".

80. The Sole Arbitrator observes that the FIFA Commentary on the Regulations for the Status and Transfer of Players (edition 2005 - the "2005 Commentary") provides general guidance as to when an employment contract is terminated with just cause in the context of Article 14(1) FIFA RSTP:

"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a

long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally".

81. This view is not fundamentally different from the interpretation set forth in the recently issued FIFA Commentary on the Regulations on the Status and Transfer of Players (edition 2021 – the "2021 Commentary"), which provides, *inter alia*, as follows:

"Whether there is just cause for the early termination of a contract signed between a professional player and a club must be assessed in consideration of all the specific circumstances of the individual case.

[…]

In several awards, CAS has drawn a parallel between the concept of "just cause" as defined in article 14 of the Regulations and the concept of "good cause" in article 337(2) of the Swiss Code of Obligations (SCO). Good cause (and thus just cause) to lawfully terminate an employment contract exists when the fundamental terms and conditions which formed the basis of the contractual arrangement are no longer respected by one of the parties.

When required to assess whether a valid reason existed for a unilateral contract termination, the following principles should be applied, while considering the specific circumstances of each individual matter:

- *Only a sufficiently serious breach of contractual obligations by one party to the contract qualifies as just cause of the other party to terminate the contract.*

- *In principle, the breach is considered sufficiently serious when there are objective circumstances that would render it unreasonable to expect the employment relationship between the parties to continue, such as a serious breach of trust.*

- *The termination of a contract should always be an action of last resort (an "ultima ratio" action)".*

82. In this regard, the Sole Arbitrator also notes that in *CAS 2006/A/1180*, a CAS panel stated the following:

"The RSTP 2001 do not define when there is "just cause" to terminate a contract. In its established legal practice, CAS has therefore referred to Swiss law in order to determine the purport of the term "just cause". Pursuant to this, an employment contract which has been concluded for a fixed term, can only be terminated prior to expiry of the term of the contract if there are "valid reasons" or if the parties reach mutual agreement on the end of the contract (see also ATF 110 I 167; WYLER R., Droit du travail, Berne 2002, p. 323 and STAEHELIN/VISCHER, Kommentar zum Schweizerischen Zivilgesetzbuch, Obligationenrecht, Teilband V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, marg. no. 17 ad Art. 334, p. 479). In this regard Art. 337 para. 2 of the Code of Obligations (CO) states – according to the translation into English by the Swiss-American Chamber of Commerce: "A valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship". According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (ATF 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa). Particular importance is thereby

> *attached to the nature of the breach of obligation. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (ATF 101 Ia 545). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus (ATF 5 May 2003, 4C.67/2003 no. 2). According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit., p. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., op. cit., p. 364 and TERCIER P., op. cit., no. 3394, p. 495)"* (CAS 2006/A/1180, para. 25 of the abstract published on the CAS website).

83. The Sole Arbitrator fully adheres to such legal framework, which is still applied in recent CAS jurisprudence (cf. CAS 2019/A/6171 & 6175, para. 93; CAS 2017/A/5312, para. 82; CAS 2016/A/4846, para. 175 of the abstract published on the CAS website), and will therefore examine whether Pharco's conduct was of such a nature that the Player could no longer be reasonably expected to continue the employment relationship with Pharco.

b. Pharco's alleged failure to pay salary to the Player

84. The Sole Arbitrator notes that it remained undisputed that the Player was out on loan with Alexandria Sporting Club from September to December 2019. On this basis, it is to be presumed that Alexandria Sporting Club was required to pay salary to the Player during the period of the loan rather than Pharco. This is acknowledged by the Player insofar as he indicated in his written submission that *"the agreed salary of the Player was not paid by Alexandria Sporting Club"* and confirmed by Pharco's statement that it had no overdue salaries towards the Player.

85. While Pharco appears to maintain that it paid several amounts to the Player, it did not provide evidence of any such payments. However, the Sole Arbitrator ultimately does not consider this to be pertinent, because he finds that the Player in any event did not establish that he was entitled to seven months' salary from Pharco at the time of termination.

86. The Player also did not provide evidence of having issued a default notice to Pharco with respect to the alleged outstanding salary. As highlighted in Article 14bis(1) FIFA RSTP, issuing a default notice is a mandatory prerequisite for terminating an employment contract for outstanding salaries. In the absence of a default notice, Pharco was not provided with an opportunity to cure its alleged default. This is especially relevant in this case, given that it was apparently the primary responsibility of Alexandria Sporting Club to pay the Player's salary, and not of Pharco.

87. The Sole Arbitrator also observes that in principle, according to CAS jurisprudence, and in accordance with Swiss law (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446), for a party to be allowed to validly terminate an employment contract with immediate effect, it must have warned the other party, in order for the latter to have the chance, if it deemed the complaint legitimate, to comply with its obligations (CAS 2018/A/6029, para. 98, from the abstract as published on the CAS website, with further references to CAS 2016/A/4884; CAS 2015/A/4327; CAS 2013/A/3091, 3092 & 3093; CAS 2013/A/3398; ATF 121 III 467, consid. 4d).

88. Consequently, the Sole Arbitrator finds that the alleged outstanding salaries did not provide just cause to the Player to terminate the Employment Contract.

c. Pharco's signing of "various dubious contracts with Arabic language" with the Player that he did not understand

89. The Sole Arbitrator finds that the Player's reasoning in this respect is somewhat unclear. The Sole Arbitrator understands the core of the Player's argument to be that he signed a blank employment contract, that Pharco promised the Player that it would fill out the terms in accordance with the terms of the Offer, but that Pharco did not keep its promise and filled out terms that were less favourable to the Player and did not register the Employment Contract with the EFA.

90. This, however, does not explain why the Player referred to *"dubious contracts with Arabic language"* in his termination letter.

91. Pharco, by means of the testimony of Mr Bergas, Pharco's CEO, at the hearing, denied that the Player signed a blank employment contract.

92. The Sole Arbitrator finds that the Player in any event did not prove that he was somehow pressured or tricked into signing a blank employment contract, as a consequence of which it is to be assumed that he did so voluntarily.

93. The Player's accusation that Pharco forged the Employment Contract by adding financial terms that were not in accordance with the Offer and their alleged oral agreement requires evidence. Forgery is a serious allegation with potential criminal law repercussions.

94. However, even accepting the Player's argument that he signed a blank employment contract, in doing so, he gave Pharco a free pass to fill out the terms of the employment to their liking and, in the absence of evidence that the terms would reflect the terms set forth in the Offer, took the risk for granted that the terms would be less favourable than those set forth in the Offer.

95. The Player maintains that he was not provided with a copy of the Employment Contract, but there is also no evidence on file establishing that the Player asked Pharco for a copy.

96. As to the Player's argument that the Employment Contract was never registered with the EFA, this allegation cannot be correct, as, when Simba applied for an ITC from the EFA, the EFA objected by arguing that the Player was still registered with the EFA. Accordingly, the Player's Employment Contract had apparently been registered with the EFA by Pharco.

97. The Sole Arbitrator notes that, according to the Player, the value of the Offer of USD 435,000 differs significantly from the value of the Employment Contract of EGP 600,000 (approx. USD 38,000) and that the Player would never have accepted such 90% reduction in salary within one day.

98. However, the Sole Arbitrator does not accept that Pharco offered the Player a salary of USD 435,000 in its Offer, but finds that the confusion derives from Pharco's use of the symbol "$" in the Offer, without explicitly defining which currency the symbol represents. Whereas the Player interprets this as a symbol for United States Dollar (USD), Pharco interprets it as a symbol for Egyptian Pounds (EGP).

99. The Sole Arbitrator finds that it would make sense if Pharco's financial offer of EGP 435,000 would be increased to EGP 600,000 the next day and that this would explain the confusion, whereas it would indeed be very odd for the Player to relinquish 90% of the Offer presented to him.

100. The Sole Arbitrator further notes that in the Transfer Agreement between Pharco and Simba explicit reference is made to "USD" and "United States Dollars".

101. Furthermore, the Sole Arbitrator notes that the Player's monthly salary with Simba is only USD 2,000 per month, i.e. USD 24,000 per year, which is in conformity with a value of the Employment Contract of EGP 600,000, while it would stand in stark contrast with a salary of USD 435,000 over a 4,5 year period with Pharco.

102. A salary of USD 435,000 over a 4,5 year period also appears to be very high in comparison with the transfer fee of USD 85,000 paid by Pharco to Simba for the services of the Player.

103. Also, whereas the Offer refers only to the symbol "$", the Transfer Agreement between Pharco and Simba, which was undisputedly concluded in USD refers specifically to "Dollars".

104. In any event, the Sole Arbitrator finds that there is insufficient evidence to determine that the Player did not voluntarily accept the terms of the Employment Contract, which contract specifically refers to salary being paid in Egyptian Pounds, which was apparently never objected to by the Player.

105. The Player relies on a photo allegedly taken by his former agent to corroborate the fact that he signed a blank employment contract. Accordingly, this agent attended the signing ceremony and could have testified about what had happened that day, but the Player did not call him as a witness. In fact, the Player himself also did not attend the hearing and therefore did not confirm the allegations made in his written submissions in testimony

before the Sole Arbitrator. In a situation where it is the word of the Player against the word of Mr Bergas of Pharco, who testified that the Player did not sign a blank employment contract, but only the official Employment Contract, and that the photo relied on by the Player was not taken at the premises of Pharco, the absence of any witnesses on the Player's side does not speak in his favour.

106. In any event, given that upon conclusion of the Employment Contract, the Player was immediately loaned to Ennpi FC for the second half of the 2018/19 season, and to Alexandria Sporting Club from September to December 2019, the Player effectively never played for Pharco and it is not clear whether Pharco was ever required to pay salary to the Player. Accordingly, it is not established that the Player ever suffered any negative consequences from the alleged forgery of the Employment Contract.

107. Furthermore, and most relevant of all, the Player maintains in his written submission that Pharco had not adopted the financial terms set out in the Offer in the Employment Contract and that this *"became evident only after having analysed the copy of the* [Employment Contract]*, provided by* [Pharco] *before the FIFA DRC"*. Accordingly, the Player found out that he had allegedly been deceived by Pharco only after he had already terminated the Employment Contract, as a consequence of which such alleged deception could not have been the reason of his termination.

108. Finally, insofar the Player maintains that the Offer was the relevant binding agreement between him and Pharco rather than the Employment Contract, because the former allegedly already contained all the *essentialia negotii* of the employment relationship, this argument is to be dismissed because the Offer was novated by the Employment Contract, as a consequence of which any potential binding legal force of the Offer was lost once the Player and Pharco agreed on the terms of the Employment Contract. In any event, in view of the above reasoning, the Sole Arbitrator finds that it appears that the value of the Employment Contract was higher than the value of the Offer so that the Player is not prejudiced by the Sole Arbitrator's conclusion that the Offer is not the agreement governing the employment relationship between the Player and Pharco.

109. Consequently, the Sole Arbitrator finds that the alleged signing of *"various contracts with Arabic language"* with the Player that he did not understand did not provide just cause to the Player to terminate the Employment Contract.

d. A pressing need for the Player to return to Simba

110. As to the third reason invoked by the Player to legitimise the termination of the Employment Contract, the Sole Arbitrator finds that the Player failed to establish why there was a pressing need for him to return to Simba, and even less why this should allow him to terminate the Employment Contract with Pharco.

111. Based on the principle of *pacta sunt servanda*, the Player was bound by the terms of the Employment Contract and thereby committed himself to Pharco.

112. Consequently, the Sole Arbitrator finds that the Player did not establish a pressing need for him to return to Simba and why this would allow him to terminate the Employment Contract.

e. Violation of the Player's personality rights

113. While the Player's termination letter only referred to the aforementioned reasons to justify his termination of the Employment Contract, in the proceedings before the FIFA DRC and in the present proceedings before CAS, the Player invokes additional arguments as to why he was allowed to terminate the Employment Contract, related to his personality rights.

114. The Sole Arbitrator finds it doubtful whether such arguments are admissible, because the termination letter should in principle set out the reasons for termination.

115. This notwithstanding, and given that the termination letter was not effective anyway because it was never served on Pharco, the Sole Arbitrator addresses the additional arguments invoked by the Player as well.

116. The Player argues that, while Pharco was obliged to loan him to Enppi, the loan was prematurely cancelled by Pharco without any grounds, the Player was forced to go on loan to a third division club in Egypt, and Pharco never offered the Player to train and play with its squad, playing in the second division in Egypt.

117. The Sole Arbitrator notes that there is no evidence on record suggesting that the Player ever complained about the early termination of his loan to Enppi, that this in any event occurred at the end of the 2018/19 season, but that the Player only terminated his Employment Contract on 20 January 2020, i.e. six months later. The Sole Arbitrator finds that this is clearly insufficient to establish that the Player had just cause to terminate the Employment Contract. The termination of the loan was also primarily an issue in the contractual relationship between Enppi and the Player, not between Pharco and the Player. Furthermore, the Player's argument that the loan to Enppi for one season and a half was an essential condition of his Employment Contract is to be dismissed, as Pharco by no means guaranteed that this loan period was guaranteed and that the Player would otherwise be entitled to terminate their employment relationship.

118. The Player also failed to prove that he was *"forced"* to go on loan to Alexandria Sporting Club. The Sole Arbitrator would at the very least expect the Player to testify about the alleged circumstances under which this took place, but the Player did not. In the absence of such evidence it is to be assumed that the Player voluntarily consented to being loaned to Alexandria Sporting Club.

119. Even if Pharco did not offer the Player to train and play with its first team, which is not evidenced in the first place, had the Player felt that he was entitled to participate, he should at least have issued a default notice prior to terminating his Employment Contract.

120. Consequently, also the aforementioned reasons are insufficient to conclude that the Player had just cause to terminate his Employment Contract.

f. Conclusion

121. Consequently, the Sole Arbitrator finds that the Player did not have just cause to terminate the Employment Contract on 20 January 2020.

122. As a consequence of such finding, and insofar as the Appellants' request that the proceedings be referred back to the FIFA DRC to determine the compensation to be paid in case the Player had just cause to terminate the Employment Contract or that the Player's claim for compensation for breach of contract by Pharco is inadmissible, such requests are moot as the Sole Arbitrator finds that the Player did not have just cause and is therefore in any event not entitled to receive compensation for breach of contract from Pharco.

iii. What are the consequences thereof?

123. The Player argues that Pharco was not interested in the Player and never contacted him or requested him to come back during and after his loan periods, and therefore, any compensation payable by the Player to Pharco could not be higher than USD 40,322, as any higher amount would lead to an unjust enrichment of Pharco, whereas Pharco fully agrees with the amount awarded to it by means of the Appealed Decision.

124. As the Sole Arbitrator finds that the Player had no just cause to terminate the Contract with Pharco, the Sole Arbitrator must now address the financial consequences of such termination.

a. Criteria set out in Article 17(1) FIFA RSTP and in CAS jurisprudence

125. In accordance with CAS jurisprudence, a party who terminates a contract with just cause pursuant to Article 14 FIFA RSTP is entitled to compensation from the breaching party pursuant to Article 17(1) RSTP, which determines the financial consequences of a premature termination of a contract (see e.g. CAS 2017/A/5180 at para. 84, CAS 2012/A/3033 at para. 72).

126. Article 17(1) FIFA RSTP provides as follows:

> *"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".*

127. As repeatedly confirmed by CAS, the list of criteria set out in Article 17(1) FIFA RSTP is illustrative and not exhaustive. Other objective factors can and should be considered, such as the loss of a possible transfer fee and the replacement costs, provided that there exists a logical nexus between the breach and loss claimed (CAS 2010/A/2145, 2146 & 2147, at para. 66; see also CAS 2008/A/1519 & 1520 and CAS 2009/A/1880 & 1881). CAS precedents also indicate that, in the analysis of the relevant criteria, the order by which those criteria are set forth by Article 17(1) FIFA RSTP is irrelevant and need not be exactly followed by the judging body (see CAS 2009/A/1880 & 1881 at para. 79).

128. The Sole Arbitrator further observes that, according to CAS jurisprudence, it is for the judging authority to carefully assess, on a case-by-case basis, all the factors and determine how much weight, if any, each of them should carry in calculating compensation under Article 17(1) FIFA RSTP (CAS 2008/A/1519 & 1520, at paras. 77 and 89; CAS 2010/A/2145, 2146, & 2147, at paras. 74 and 86). In particular, CAS precedents indicate that while each of the factors set out in Article 17(1) FIFA RSTP or in CAS jurisprudence may be relevant, any of them may be decisive on the facts of a particular case (CAS 2009/A/1880 & 1881, at para. 77). According to said CAS case law, while the judging authority has a *"wide margin of appreciation"* or a *"considerable scope of discretion"*, it must not set the amount of compensation in a fully arbitrary way, but rather in a fair and comprehensible manner (CAS 2009/A/1880 & 1881, at paras. 76 and 77; CAS 2008/A/1519 & 1520, at paras. 87 and 89). At the same time, as the CAS Code sets forth an adversarial rather than inquisitorial system of arbitral justice, a CAS panel has no duty to analyse and give weight to any specific factor listed in Article 17(1) FIFA RSTP or set out in the CAS jurisprudence if the parties do not actively substantiate their allegations with evidence and arguments based on such factor (CAS 2009/A/1880 & 1881, at para. 78).

129. The Sole Arbitrator also observes that there is an established consensus in CAS jurisprudence that the *"positive interest"* principle must apply in calculating compensation for an unjustified, unilateral termination of a contract under Article 17(1) FIFA RSTP (it has been applied, among other cases, in CAS 2008/A/1519 & 1520, CAS 2009/A/1880 & 1881, CAS 2013/A/3411, and CAS 2015/A/4046 & 4047). As aptly stated by another CAS panel, *"given that the compensation to be granted derives from a breach or unjustified termination of a valid contract, it will be guided in calculating the compensation due by the principle of the so-called 'positive interest' or 'expectation interest'… [and] accordingly… determin[e] an amount which shall basically put the injured party in the position that the same party would have had if no contractual breach had occurred"* (CAS 2009/A/1880 & 1881, at para. 80).

b. Application of Article 17(1) FIFA RSTP

ba. No liquidated damages clause

130. In accordance with Article 17(1) FIFA RSTP, the Sole Arbitrator must preliminarily verify whether there is any provision in the Employment Contract setting out a specific amount of liquidated damages for breach of contact.

131. The Sole Arbitrator observes that no such liquidated damages clause is incorporated in the Employment Contract. Therefore, the Sole Arbitrator moves on to determine the factors to be taken into account to calculate any compensation due by the Player to Pharco in accordance with Article 17(1) FIFA RSTP.

bb. Value of the Player's services: the remuneration under the Employment Contract and the subsequent employment contracts

132. One of the factors under Article 17(1) FIFA RSTP is the "remuneration element" which gives an indication of the value of the Player's services to Pharco.

133. With regard to this point, the Sole Arbitrator notes that:

i. under the Employment Contract, at the time of its termination, the Player was entitled to receive from Pharco until the end of the 2022/23 season the amount of EGP 466,666,66, which amount corresponds to approximately USD 29,000 as determined by the FIFA DRC, which remained undisputed by the Parties;

ii. under the employment contract of the Player with Simba, the Player was to receive, as from 20 January 2020 until 30 June 2020, a signing fee of USD 10,000, a commission fee of USD 5,000, and a monthly salary of USD 2,000, corresponding to USD 27,000 in total.

134. In this respect, the Sole Arbitrator observes that apparently, immediately after concluding the Employment Contract, the Player was loaned to Enppi FC, as stipulated in the Offer. Then the Player's loan period with Ennpi FC was apparently prematurely terminated for unknown reasons, albeit at the hearing Pharco argued that Ennpi FC *"submitted a claim"* because the Player was absent from training, following which the Player, after a short period at Pharco – during which Pharco's coach allegedly reported that the Player was not well qualified for playing at Pharco's level – apparently was loaned to the then third division club Alexandria Sporting Club, which loan was apparently also terminated prematurely.

135. Then, shortly afterwards, the Player signed a new employment contract with Simba, the club who transferred the Player to Pharco only a year before.

136. The Sole Arbitrator finds that this sequence of events indicates that the value of the Player's services, at least as far as Pharco was concerned, had declined somewhat since the start of the Employment Contract.

137. The decline in the value of the Player's services is also reflected in what happened after the premature termination of the loan at Ennpi FC. In fact, after the Player returned to Pharco, the Player's value, in both economic and sporting terms, continued to drop, as may be inferred from the fact that the Player resorted to play for a third-division club, as Pharco's coach reported that the Player was not qualified to play with Pharco's team in the Egyptian Premier League. On this basis, the Sole Arbitrator considers that the Player's value at the time of the termination had dropped even more.

138. However, the amounts due to the Player under his employment contract with Simba after termination of the Employment Contract increased, which suggests an increase of the Player's market value.

139. Aside from the aforementioned elements, the Sole Arbitrator observes that Pharco does not appear to have attributed much value to the Player's services at the time of the Player's termination. This is demonstrated by Pharco's lack of interest in the Player from a sporting perspective. In fact, Pharco showed little or no interest in the Player by placing him out on loan to the third division club, Alexandria Sporting Club, taking no action to ensure that it was protecting its investment, which, as the Sole Arbitrator sees it, implies that the value of the Player, for Pharco, had significantly declined.

140. Pharco also did not provide any evidence of requesting the Player to report himself to the club's premises for training, not even when the Player signed an employment contract with Simba. Pharco's claim before the FIFA DRC is the only evidence on record demonstrating an interest in the Player's services, or at least in receiving compensation for the absence of the Player's services.

141. Consequently, the Sole Arbitrator finds that Pharco did not attribute any meaningful value to the Player's services at the time of the breach. On this basis, the remaining value of the Employment Contract were costs saved by Pharco, rather than a basis to determine the damages incurred by Pharco due to the Player's early termination of the Employment Contract.

bc. Any lost earning

142. Another factor to be potentially considered is any loss that Pharco may have suffered because of the Player's breach of contract, derived from its inability to secure a transfer fee for the Player. Serious offers received from third parties may give an indication of the market value of the Player's services.

143. While the CAS, in line with Swiss employment law on loss of earnings, has held that the loss of a transfer fee can indeed be considered as a compensable damage provided that there is a necessary logical nexus between the breach of contract and the lost opportunity to realize that profit, there must be evidence that the non-breaching club actually suffered such a lost opportunity (see CAS 2018/A/5607 & 5608 at para. 115).

144. The Sole Arbitrator finds that there is no such evidence on file. No offers to acquire the services of the Player have been submitted into evidence, not any other evidence of interest in the Player's services.

145. In light of the foregoing, the Sole Arbitrator finds that there is no lost earning to take into account in the present case.

bd. Fees and expenses paid or incurred by Pharco

146. Another factor potentially to be considered are the "acquisition costs", i.e. the expenses paid or incurred by Pharco for acquiring the Player's services, as amortized over the term of the Employment Contract. The remaining unamortized portion of such costs, in fact, may potentially be considered as a loss, caused by the early termination of the Employment Contract without just cause by the Player, regardless of Pharco's interest in the Player's services at the time of the contractual breach.

147. The Sole Arbitrator observes that Pharco paid a transfer fee of USD 85,000 to Simba to acquire the services of the Player. Since the Employment Contract was valid for a period of four and a half years from 30 January 2019 until the end of the 2022/23 season, the amount paid must be considered as amortized in equal portions over that four and a half-year term. This linear amortization means that USD 65,000 (as determined by the FIFA DRC and not disputed by the Parties) remained unamortized when the Employment Contract was terminated after nearly one year after its entry into force.

148. While the Sole Arbitrator finds that Pharco was not particularly interested in the Player's services at the time of the breach, this does not change the fact that it invested the aforementioned sum and made a loss on such investment, at least partially due to the Player's breach of the Employment Contract.

149. While there are multiple ways to determine the amount of compensation to be paid, considering the specific circumstances of the present case and the evidence on record, the Sole Arbitrator finds it reasonable and fair that this amount, i.e. USD 65,000, is to be considered as damages incurred by Pharco as a consequence of the Player's breach of the Employment Contract.

be. The costs saved: the Player's remuneration under the Contract

150. The residual value of the Contract at the time of the termination was EGP 466,666,66 in total, which amount, as indicated *supra*, roughly corresponds to USD 29,000.

151. However, in accordance with CAS jurisprudence, and most definitely when one considers the factual background leading to the termination of the Employment Contract, the residual value of the Employment Contract at the time of breach, *in casu,* may be considered as an expense saved, which may be deducted from the objective amount of damages incurred by Pharco (CAS 2018/A/5607 & 5608 at para. 140; CAS 2008/A/1519-1520, at paras. 123-124; CAS 2009/A/1880 & 1881, at para. 102).

152. In the circumstances of the present case, the Sole Arbitrator considers it reasonable and fair that an amount of USD 29,000 is deducted from the aforementioned amount of damages of USD 65,000.

bf. The specificity of sport

153. The "specificity of sport" is not an additional head of compensation, nor a criterion allowing to decide *ex aequo et bono*, but a correcting factor which allows the Sole Arbitrator to take into consideration other objective elements (chiefly of sporting nature) which are not envisaged under the other criteria of Article 17 FIFA RSTP.

154. However, the Sole Arbitrator sees no reason to use the "specificity of sport" as a correcting factor in the matter at hand, particularly also considering Pharco's limited interest in the Player's sporting services.

155. While the Employment Contract was terminated by the Player within the "protected period", the Sole Arbitrator finds that Pharco's damages would be recovered if it would receive compensation for breach of contract in the amount of USD 36,000 (i.e. USD 65,000 minus USD 29,000).

bg. The joint liability of Simba

156. Finally, the Sole Arbitrator notes that Simba – during the hearing – argued that it should not be held jointly and severally liable for any compensation awarded to Pharco, because it did not induce the Player into prematurely terminating his employment relationship with Pharco, as it allegedly believed that the Player was a free agent. Therefore, Pharco's claim came out of the blue and Simba cannot be sanctioned for that.

157. The Sole Arbitrator observes that Article 17(2) FIFA RSTP provides as follows:

> *"If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment".*

158. CAS jurisprudence has repeatedly confirmed that Article 17(2) FIFA RSTP requires that the new club, so long as it is identified as such, be held jointly and severally liable with the player for the payment of any compensation awarded against the player under Article 17(1) FIFA RSTP, regardless of whether there is evidence that it was involved in or induced the player to breach his contract (e.g. CAS 2015/A/3953 & 3954, at para. 52; CAS 2014/A/3852, at paras. 110 to 114; CAS 2013/A/3149, at para. 99; CAS 2013/A/3411, at para. 125), unless there are truly exceptional circumstances (e.g. CAS 2017/A/4977).

159. Such truly exceptional circumstances do not exist in the present matter, because the Sole Arbitrator concurs with Pharco that Simba should have known that the Player was still under contract with Pharco due to the Transfer Agreement signed on 29 January 2019 and Pharco's knowledge of the Offer to the Player to sign an employment contract for the duration of four and a half years.

160. Under these circumstances, if Simba had wanted to exclude any risk of signing an employment contract with a player that may be registered with another club, it should have sought to obtain assurances from Pharco directly, or seek guidance from the relevant

national football associations prior to signing an employment contract with the Player, which it failed to do.

161. Consequently, the Sole Arbitrator finds that Simba is jointly and severally liable with the Player to pay compensation for breach of contract to Pharco.

bh. Conclusion

162. In view of all the above, the Sole Arbitrator considers it reasonable and fair that the Player and Simba are jointly and severally liable to pay the amount of USD 36,000 to Pharco as compensation for the Player's breach of the Employment Contract, plus 5% interest *per annum*, as from 24 November 2020 until the date of effective payment.

B. Conclusion

163. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that:

i) The Player terminated the Employment Contract without just cause;
ii) The Player and Simba are jointly and severally liable to pay compensation for breach of the Employment Contract to Pharco in the amount of USD 36,000, plus interest.

164. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 25 March 2021 by Mr Shiza Ramadhani Yahya and Simba Sports Club Company Limited against the decision issued on 24 November 2020 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 24 November 20210 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is confirmed, save for point no. 2 of the operative part, which shall read as follows:

Mr Shiza Ramadhani Yahya has to pay to Pharco FC the amount of USD 36,000 (thirty-six thousand US dollars) as compensation for breach of contract without just cause, plus 5% interest per annum on said amount as from 24 November 2020 until the date of effective payment.

3. (…).

4. (…).

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