



**Arbitration CAS 2021/A/7851 Mohamed Naoufel Khacef v. Fédération Internationale de Football Association (FIFA) & CAS 2021/A/7905 CD Tondela Futebol v. FIFA, award of 11 February 2022**

Panel: Mr Manfred Nan (The Netherlands), President; Mr Jordi López Batet (Spain); Mr Lars Hilliger (Denmark)

*Football*

*Sporting sanctions for termination of the employment contract without just cause by the player*

*CAS power of review*

*Force majeure*

*Just cause to terminate the contract*

*Extension of the protected period*

*FIFA's discretion to impose sporting sanctions pursuant to Articles 17(3) and 17(4) FIFA RSTP*

*Difference in the legal approach between Article 17(3) and 17(4) FIFA RSTP*

*Proportionality of the sporting sanctions*

1. In a context in which a decision appealed before the CAS has both a contractual and disciplinary hybrid nature, the CAS' power of review does not extend to the contractual aspect of a dispute that is *res judicata i.e.* that became final and binding between the parties following the first instance decision taken by the FIFA Dispute Resolution Chamber (DRC) acting in its adjudicatory capacity in a so-called horizontal dispute. Conversely, the CAS' power of review covers the vertical aspect of the dispute *i.e.* the request regarding the disciplinary aspect of the dispute. Such request is directed against the disciplinary function of the FIFA which is therefore the only entity with standing to be sued in this respect.
2. For *force majeure* to exist, there must be an objective (rather than a personal) impediment, beyond the control of the obliged party, that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible. This definition must be narrowly interpreted because, as a justification for non-performance, it represents an exception to the fundamental obligation of *pacta sunt servanda*. In this respect, the FIFA COVID Guidelines related to *force majeure* are of no help to a player alleging force majeure as a justification to terminate his employment contract, as these rules only refer to "*unilateral variations to existing employment agreements*", and do not apply to unilateral termination.
3. Except for Article 14bis and Article 15 of the FIFA Regulations on the Status and Transfer of Players (RSTP), the concept of "just cause" is not defined in the FIFA RSTP. Under Swiss law, just cause exists whenever the terminating party can in good faith not be expected to continue the employment relationship (Article 337 para. 2 CO). The definition of just cause, as well as the question whether just cause in fact

existed, shall be established in accordance with the merits of each particular case. In this respect, a temporary (worldwide) suspension of competition and the alleged impossibility of the player to go back to his country of residence, both due to the COVID-19 outbreak, do not justify the termination of the employment contract with the club, all the more where no evidence was presented that the club failed to comply with its contractual obligations thus excluding the application of article 14bis FIFA RSTP.

4. The valid extension of the contract of employment results in a new “*protected period*” starting as from the date of signing the extension, not as from the date the original contract expires. In this respect, the registration of an employment contract (or its extension or amendment) is not a legal prerequisite for its validity.
5. There is a well-accepted and consistent practice of the FIFA DRC, not to apply automatically sporting sanctions as per Articles 17(3) and 17(4) FIFA RSTP, but to leave it to the free discretion of the FIFA DRC to evaluate the particular and specific circumstances on a case-by-case basis.
6. There is a difference in the legal approach between Article 17(3) and 17(4) FIFA RSTP. On the basis of Article 17(3) FIFA RSTP, sporting sanctions are in principle to be imposed, without any specific reference to a possibility to escape the imposition of sporting sanctions if the mentioned prerequisites are met. However, Article 17(4) FIFA RSTP contains a rebuttable presumption that a club signing a professional induced the player to breach his contract with his old club. The rebuttable presumption of Article 17(4) FIFA RSTP cannot be escaped by merely relying on the statements of the player and the player’s agent, at least not to escape the sporting sanctions imposed on it by the FIFA DRC. It is the new club duty to verify the player’s contractual status with the old club, the failure of which exposes itself to the risk of sporting sanctions.
7. Articles 17(3) and (4) FIFA RSTP merely determine that if sporting sanctions are to be imposed on a player and/or a club, these sporting sanctions shall consist of a minimum of a four month-restriction on playing official matches, and a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods, respectively. There is, in principle, no discretion for the decision-making body to go below this minimum sanctions. Likewise, CAS panels, in principle, cannot reduce the sanction if they are of the view that the imposition of the sanction is warranted.

## I. THE PARTIES

1. Mr Mohamed Naoufel Khacef (the “First Appellant” or the “Player”) is a professional football player of Algerian nationality. He is currently registered with CD Tondela Futebol.
2. CD Tondela Futebol (the “Second Appellant” or “Tondela”) is a football club with its registered office in Tondela, Portugal, currently participating in the Liga NOS, the top tier in Portuguese professional football. Tondela is registered with the Portuguese Football Federation (the *Federação Portuguesa de Futebol* – the “FPF”), which in turn is registered with the *Fédération Internationale de Football Association*.
3. The *Fédération Internationale de Football Association* (the “Respondent” or “FIFA”) is an association incorporated under Swiss law with its registered office in Zurich, Switzerland. FIFA is the governing body of international football. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.
4. The Player and Tondela are hereinafter jointly referred to as the “Appellants” and jointly with FIFA as the “Parties”.

## II. INTRODUCTION

5. The present appeal arbitration procedure concerns a dispute between, on the one hand, the Player and his current club Tondela and, on the other hand, FIFA, related to sporting sanctions imposed on the Player and Tondela by FIFA.
6. Following an employment-related dispute between the Player and his former club *Club Nasr Athlétique Hussein Day*, a professional football club based in Hussein Day, Algeria (“Club Nasr”), the FIFA Dispute Resolution Chamber (the “FIFA DRC”) ordered the Player to pay Club Nasr EUR 160,000 as compensation for breach of contract without just cause, considering Tondela jointly and severally liable for the payment of this amount. Furthermore, the FIFA DRC imposed a restriction of four months on the Player’s eligibility to play in official matches, and a ban on Tondela from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods.
7. The Appellants lodged an appeal against the FIFA DRC’s decision (the “Appealed Decision”), challenging the sporting sanctions imposed on them, but not the finding that they are jointly and severally liable to pay an amount of EUR 160,000 to Club Nasr, which amount was eventually paid.

### III. FACTUAL BACKGROUND

#### A. Background Facts

8. Below is a summary of the main relevant facts, as established on the basis of the Parties' written and oral submissions, and the evidence examined in the course of the present appeal arbitration proceedings and during the hearing. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
9. On 1 July 2016, the Player and Club Nasr signed an employment contract, valid until the end of June 2021 (the "Contract").
10. On 24 November 2019, the Contract was amended, increasing the Player's salaries.
11. On 30 January 2020, the Contract was extended until 30 June 2022.
12. On the same date, the Player, Club Nasr and the French club *Girondins de Bordeaux* ("Bordeaux") signed a "*contrat de mutation temporaire avec option d'achat*" for the loan of the Player from Club Nasr to Bordeaux until 30 June 2020.
13. Between 18 and 19 August 2020, Club Nasr and Tondela negotiated the potential permanent transfer of the Player to Tondela, as follows:
- On 18 August 2020, Tondela offered Club Nasr EUR 200,000 to acquire the Player's services;
  - On the same date, Club Nasr counter-proposed an amount of EUR 300,000 for the definitive transfer of the Player;
  - On 19 August 2020, Tondela reiterated its offer of EUR 200,000, but with amended payment terms;
  - On the same date, Club Nasr counter-proposed the amount of EUR 250,000 for the transfer of the Player.
14. On 20 August 2020, the Player terminated the Contract for the following grounds:
- "Currently, the Player, after having completed his loan period with [Bordeaux], is in Europe, unable to return to Algeria due to the closure of borders for the measures adopted by the existence of the pandemic.*
- In addition, the competition in Algeria is currently suspended, without there being any possibility of resumption of the competition nor guarantees so that the Players can carry out their activity with the minimum conditions of safety and health.*

*In this situation and taking into account that the Player will not be able to develop his activity as a footballer in Algeria, by means of this communication and on behalf of the [Player], I inform you the unilateral termination of the employment contract signed with [Club Nasr] on July 1, 2016 with immediate effect and due to the existence of force majeure”.*

15. On 1 September 2020, the Player and Tondela signed an employment agreement valid until 30 June 2022. No transfer agreement was concluded between Tondela and Club Nasr.

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

16. On 22 September 2020, Club Nasr filed a claim against the Player and Tondela before the FIFA DRC for breach of contract and requested to be awarded compensation for breach of contract in an amount of EUR 300,000 from the Appellants jointly and additionally EUR 50,000 from Tondela as compensation for “*serious prejudice caused*”. Club Nasr also requested sporting sanctions to be imposed on the Appellants on the basis of the FIFA Regulations on the Status and Transfer of Players (the “FIFA RSTP” or the “Regulations”).
17. The Appellants requested the FIFA DRC to dismiss Club Nasr’s claim.
18. On 25 March 2021, the FIFA DRC rendered the Appealed Decision, deciding, *inter alia*, as follows:
  - “1. *The claim of [Club Nasr] is admissible.*
  2. *The claim of [Club Nasr] is partially accepted.*
  3. *The [Player] has to pay to [Club Nasr], **within 30 days** as from the date of notification of this decision, EUR 160,000 as compensation for breach of contract without just cause plus 5% interest p.a. as from 22 September 2020 until the date of effective payment.*
  4. *[Tondela] is jointly and severally liable for the payment of the compensation mentioned under point 3 above.*
  5. *Any further claims of [Club Nasr] are rejected.*
  6. *[Club Nasr] is directed to immediately and directly inform the [Player] and [Tondela] of the relevant bank account to which the [Player] and [Tondela] must pay the due amount.*
  7. *The [Player] and [Tondela] 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).*

8. *If the aforementioned sum plus interest is not paid within the above-mentioned time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and a formal decision.*
  9. *A restriction of four months on his eligibility to play in official matches is imposed on the [Player]. This sanction applies with immediate effect as of the date of notification of the present decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs.*
  10. *[Tondela] shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.*
  11. *This decision is rendered without costs” (emphasis in original).*
19. On 1 April 2021, the grounds of the Appealed Decision were notified to the Parties, determining, *inter alia*, the following:
- *With regard to the termination of the Contract by the Player, “the Chamber deemed that the arguments raised by the Player in the termination notice refer mainly to the “impossibility of developing his career in Algeria due to the suspension of the competition” and existence of force majeure due to the difficult sanitary situation in the country. The Chamber emphasised that this argumentation cannot be followed, as [Club Nasr] has no influence on the points raised by the Player nor the Player has informed [Club Nasr] of any contractual breach. The DRC found in this respect that accepting this argument would put an unacceptable burden on [Club Nasr], as the Contract was terminated for circumstances beyond [Club Nasr’s] control or influence”.*
  - *Furthermore, the FIFA COVID-19 Guidelines do not declare that the COVID-19 outbreak was a force majeure situation, and these guidelines are only intended to assist and provide guidance on unilateral alteration of contracts and as such “do not apply to assess unilateral terminations of existing employment contracts”.*
  - *Moreover, “the Chamber turn [sic] to the undisputed fact that the Contract was amended by means of the First Amendment which took place in November 2019 and by the Second Amendment on 30 January 2020. If the argumentation from the Player regarding the invalidity of the extension was to be accepted, it would lead to the outcome that employment relationships between players and clubs could never exceed five years, which is not the case. Moreover, art. 17.3 of the Regulations clearly state that: “The protected period starts again when, while renewing the contract, the duration of the previous contract is extended”.*
  - *Therefore, “the Chamber concluded that the Player did not have just cause to terminate the contract. What is more, the Chamber confirmed that the breach took place within the protected period”.*

- With regard to the unjustified breach of contract by the Player during the protected period, *“the Chamber turned its attention to art. 17 par. 1 of the Regulations, according to which the Player is liable to pay compensation to [Club Nasr]. Furthermore, pursuant to the unambiguous contents of art. 17 par. 2 of the Regulations, the Chamber established that the Player’s new club, i.e. Tondela, shall be jointly and severally liable for the payment of compensation. In this respect, the Chamber was eager to point out that the joint liability of the Player’s new club is independent from the question as to whether the new club has committed an inducement to contractual breach or any other kind of involvement by the new club. This conclusion is in line with the jurisprudence of the DRC, which has been repeatedly confirmed by the Court of Arbitration for Sport (“CAS”). Notwithstanding the above, the Chamber recalled that in accordance with art. 17 par. 2 of the Regulations, it should be assumed that, unless otherwise proven, any club that signs a contract with a professional player who has terminated his/her contract without just cause has induced the player to terminate such contract”*.
- With regard to the calculation of the compensation on the basis of Article 17(1) of the FIFA RSTP, *“[t]he Chamber turned to Clause 3 of the First Amendment which stated that the compensation payable to [Club Nasr] in the event of breach of contract by the Player at DZD 28,000,000. However, after careful consideration of the wording of the clause, the Chamber came to the conclusion that the clause is not reciprocal and thus, has to be disregarded by the DRC. The DRC confirmed that such assessment was in line with the longstanding jurisprudence of the Chamber”*.
- With regard to the calculation of the compensation on the basis of Article 17(1) of the FIFA RSTP, the majority of the FIFA DRC considered that the average between the Contract and the new employment contract of the Player with Tondela, amounting to EUR 102,360, *“does not reflect fairly the circumstances surrounding the case at stake”*, and decided *“that in virtue of art. 17.1 of the Regulations and the application of the principle of specificity of sport, the aforementioned amount should be increased to EUR 160,000, which the majority of the Chamber understood to be a fair, proportionate and reasonable compensation in the case at hand. [...] Furthermore, Tondela is jointly and severally liable for the payment of the relevant compensation”*.
- With regard to the sporting sanctions to be imposed on the Player in accordance with Article 17(3) FIFA RSTP, *“the Chamber emphasised that a suspension of four months on a player’s eligibility to participate in official matches is the minimum sporting sanction that can be imposed for breach of contract during the protected period. This sanction, according to the explicit wording of the relevant provision, can be extended in case of aggravating circumstances. In other words, the Regulations intend to guarantee a restriction on the player’s eligibility of four months as the minimum sanction. Therefore, the relevant provision does not provide for a possibility to the deciding body to reduce the sanction under the fixed minimum duration in case of mitigating circumstances. Consequently, taking into account the circumstances surrounding the present matter, the Chamber decided that, by virtue of art. 17 par. 3 of the Regulations, the [Player] had to be sanctioned with a restriction of four months on his eligibility to participate in official matches”*.
- Finally, with regard to the sporting sanctions to be imposed on the Player’s new club, Tondela, in accordance with Article 17(4) FIFA RSTP, the FIFA DRC noted that

Tondela “*must be considered to have induced the Player to unilaterally terminate his contract with [Club Nasr] without just cause during the protected period, and therefore shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. In this respect, the Chamber recalled that, in accordance with art. 17 par. 4 of the Regulations, it shall be presumed, unless established to the contrary, that any club signing a professional player who has terminated his previous contract without just cause has induced that professional to commit a breach. Consequently, the Chamber pointed out that the party that is presumed to have induced the player to commit a breach carries the burden of proof to demonstrate the contrary. In light of the aforementioned and given the circumstances at hand, and in particular the fact that Tondela was negotiating beforehand a transfer of the [Player], entailing that it was since before the termination of the contract in the players’ services [sic], the DRC had no option other than to conclude that Tondela had not been able to reverse the presumption contained in art. 17 par. 4 of the Regulations and that, accordingly, the latter had induced the [Player] to unilaterally terminate his employment contract with the [Club Nasr]. In view of the above, the Chamber decided that in accordance with art. 17 par. 4 of the Regulations, Tondela shall be banned from registering any new players, either nationally or internationally, for the two entire and consecutive registration periods following the notification of the present decision. [...]*”

- *Hence, the members of the Chamber decided that the Player shall be banned from playing in official matches for a period of four-months and Tondela shall be banned from registering new players, either nationally or internationally, for two entire and consecutive registration periods”.*

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

20. On 8 April 2021, the Player filed a request for urgent provisional measures with the Court of Arbitration for Sport (the “CAS”), requesting a stay of execution of the sporting sanctions imposed on the Player as per the Appealed Decision. The Player requested that the stay of execution be granted “*upon mere presentation of this application*”, i.e. *ex parte*, in view of the alleged utmost urgency.
21. On 9 April 2021, the Deputy President of the Appeals Arbitration Division ruled, *ex parte*, as follows:
- “1. *The application for urgent provisional measures filed by [the Player] on 8 April 2021 in the matter CAS 2021/A/7851 Mohamed Naoufel Khacef v. Fédération Internationale de Football Association (FIFA) & Club Nasr Athlétique Hussein Dey is rejected.*
  2. *The costs of this Order shall be determined in the final award or in any other final disposition of this arbitration”.*
22. On 21 April 2021, the Player filed a Statement of Appeal with CAS in accordance with Article R48 of the CAS Code of Sports-related Arbitration (2021 edition) (the “CAS Code”), naming only FIFA as respondent. In this submission, the Player filed a renewed application for a stay of execution of the Appealed Decision –requesting expressly that it be “*solved by the President of*



*the Panel*” – and nominated Mr Jordi López Batet, Attorney-at-Law in Barcelona, Spain, as arbitrator.

23. Also on 21 April 2021, Tondela filed a Statement of Appeal with CAS in accordance with Article R48 of the CAS Code, naming only FIFA as respondent. In this submission, Tondela filed an application for a stay of execution of the Appealed Decision and nominated Mr Jordi López Batet, Attorney-at-Law in Barcelona, Spain, as arbitrator.
24. On 22 April 2021, the reasoned Order on request for a stay, dated 9 April 2021, was notified to the Player and FIFA.
25. On the same day, the Player filed “*a complementary allegation to be included in the request for provisional measures*”.
26. On 29 April 2021, the CAS Court Office informed the Player and FIFA that an appeal had been filed by Tondela against the Appealed Decision (including a request for a stay), registered as *CAS 2021/A/7905 CD Tondela Futbol v. Fédération Internationale de Football Association (FIFA)*, inviting both Parties to inform the CAS Court Office whether they would agree to consolidate that procedure with the proceedings registered as *CAS 2021/A/7905*.
27. Also on 29 April 2021, the CAS Court Office informed Tondela and FIFA that an appeal had been filed by the Player against the Appealed Decision (including a request for a stay), registered as *CAS 2021/A/7851 Mohamed Naoufel Khacef v. Fédération Internationale de Football Association (FIFA)*, inviting both Parties to inform the CAS Court Office whether they would agree to consolidate that procedure with the proceedings registered as *CAS 2021/A/7851*.
28. On the same day, FIFA filed its respective submissions on the applications for a stay of execution of the Appealed Decision filed by the Appellants, requesting such applications to be dismissed.
29. On 3 May 2021, the CAS Court Office informed the Parties, on behalf of the President of the Appeals Arbitration Division and in view of the Parties’ agreement thereto, that the proceedings were consolidated within the meaning of Article R52.5 of the CAS Code.
30. On 6 May 2021, FIFA nominated Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark, as arbitrator.
31. On 11 May 2021, the Player and Tondela filed their respective Appeal Briefs in accordance with Article R51 CAS Code. In its Appeal Brief, Tondela requested for the following evidentiary measures from the Panel:

*“The Appellant herein requests that the panel issues an order to the Algerian Football Federation in order to confirm whether the alleged employment contract extension signed on 30.01.2020 (“AVENANT au Contrat initial”), supposedly valid through 30.06.2022, was ever registered.*

*In case the said contract extension was indeed registered, the Algerian Football Federation should be ordered to provide to the panel the corresponding evidence of such registration, including the respective date.*

*The submission of this information is important for the present case because it may support the Appellants submission that the said contractual extension is null and void.*

*The Appellant herein requests that the panel issues an order to the FIFA TMS administrator to provide relevant evidence from the TMS in order to confirm the available information at the time the Player has been signed by the Appellant, regarding the term of the employment contract between the Player and [Club Nasr].*

*The submission of this information is important for the present case because it may support the Appellants submission that the existing available information on the term of the employment contract between the Player and [Club Nasr] was 30 June 2021”.*

32. On 4 June 2021, FIFA filed its joint Answer in both proceedings, in accordance with Article R55 of the CAS Code.
33. On 9 June 2021, pursuant to Article R54 CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the arbitration tribunal appointed to decide the present matter was constituted as follows:
- President: Mr Manfred Nan, Attorney-at-Law, Arnhem, the Netherlands
- Arbitrators: Mr Jordi López Batet, Attorney-at-Law, Barcelona, Spain
- Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark
34. On 10 June 2021, the Player and Tondela indicated their preference for a hearing to be held, whereas FIFA indicated that it preferred that an award be rendered on the basis of the Parties’ written submissions alone.
35. On the same day, FIFA informed the CAS Court Office that, with regard to Tondela, it did “not oppose the stay of the execution of the sporting sanction contained in the *Appealed Decision*”.
36. On 14 June 2021, the Player requested FIFA to reconsider its position regarding his request for a stay in light of FIFA’s letter dated 10 June 2021 with regard to Tondela’s request for a stay.
37. On 15 June 2021, the CAS Court Office, on behalf of the Panel, provided the Parties with the following procedural instructions – as relevant:

“1. *The Player’s request for a stay*

*I acknowledge receipt of the Player’s letter of 14 June 2021. In view of such letter and of the position expressed by FIFA on 11 June 2021, **FIFA is invited to indicate, by email on or before 21***

***June 2021***, whether it would also accept to grant a stay of the execution of the sanctions imposed against the Player.

2. Documents on file

*The Panel notes that many exhibits have been submitted in French and Portuguese without an English translation and that some extracts had been freely translated in English within the Player's Appeal Brief.*

*In light of the above and of Article R29 of the CAS Code, **the Parties** are invited to submit, **within a week**, the English translation of any extract, together with the relevant context, of any exhibits submitted in another language than English upon which they intend to rely, failing which the Panel may disregard such exhibits.*

3. The Club's request for production of documents

*The Panel has taken due note of the Club's evidentiary requests formulated under section VII of its Appeal Brief [...]: (i) to order the Algerian Football Federation to confirm whether the alleged employment contract extension signed on 30 January 2020 was ever registered, and in the affirmative, to provide the Panel with the relevant evidence and (ii) to order the FIFA TMS administrator to provide evidence from TMS (at the time the Club signed the Player) regarding the term of the employment contract between the Player and his former club [Club Nasr].*

*Since neither the fact that the extension of the contract was not registered nor the fact that the Player was contractually bound with [Club Nasr] on 20 August 2020, which, according to FIFA, would be the relevant date, is contested, the Panel deems that the requested documents are not relevant and thus has decided to dismiss these requests for production in application of Article R44.3 para. 1 of the CAS Code.*

[...]

4. Player's witnesses from [Club Nasr]

*The Panel notes that the Player intends to call two players, currently playing with [Club Nasr] [...], but does not want to disclose their names prior to the hearing "[t]o avoid problems with their club [Club Nasr]".*

*In light of FIFA's comments on this issue [...], of article R51 of the CAS Code, of the confidentiality of the proceedings and of the fact that [Club Nasr] is not a party to these proceedings, the Player is invited to provide the CAS Court Office with the name of these two witnesses by email on or before 21 June 2021.*

*The other parties are further invited not to disclose this information which shall remain confidential and could only be published in the award to be issued.*

[...]” (emphasis in original).

38. On 21 June 2021, FIFA informed the CAS Court Office that it continued “*to oppose the stay of the execution requested by the Player*”.
39. On 22 and 23 June 2021 respectively, and in reply to the CAS Court Office letter dated 15 June 2021, the Player and Tondela filed English translations of documents they intend to rely on.
40. On 29 June 2021, the CAS Court Office informed the Parties that “*in view of [FIFA’s] agreement, on behalf of the Panel, [Tondela’s] request for a stay is granted. Accordingly, the appealed decision, insofar as it bans [Tondela] from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods, cannot be enforced pending the above-mentioned CAS procedure*”.
41. On 1 July 2021, FIFA reiterated its request as formulated in its Answer that the Player’s indication of the two unidentified witnesses be dismissed for not being compliant with Article R51 CAS Code.
42. On 2 July 2021, in view of the Parties’ availabilities, the CAS Court Office informed them that the hearing would be held on 22 September 2021.
43. On 22 July 2021, on behalf of the Panel, the CAS Court Office provided the Parties with the Order on the Player’s renewed request for provisional measures, by means of which the Player’s application was granted and the restriction of four months of eligibility to play in official matches imposed on the Player stayed.
44. On the same date, the Player informed the CAS Court Office that he would provide the names and contact details of the two unidentified players called as witnesses “*next week at the latest*”.
45. On 26 July 2021, FIFA reiterated its concerns related to the Player’s unidentified witnesses and objected to the Player’s intention to rely on his counsel’s services as both counsel and translator from French and Spanish respectively into English at the hearing.
46. On 27 July 2021, on behalf of the Panel, the CAS Court Office informed the Parties that the Player’s counsel would not be allowed to act as an interpreter at the hearing, inviting the Player to provide the name of an uninterested and independent interpreter, and his/her contact details, at his earliest convenience. Furthermore, the Parties were informed that FIFA’s request that the Player’s belated indication of the two unidentified witnesses be declared inadmissible was denied, given that the hearing was scheduled for 22 September 2021 and the Player indicated to provide the names and contact details of these two unidentified witnesses in the course of this week. In this regard, the Panel reserved the possibility to review its decision should the names and contact details of such witnesses not be provided within the timeframe indicated by the Player.

47. On 29 July 2021, the Player requested the Panel to reconsider its decision not to allow the Player's counsel to act as interpreter at the hearing.
48. On 4 August 2021, FIFA maintained its request for the Player's interpreter to be independent from the Parties.
49. On 11 August 2021, the CAS Court Office informed the Parties that the Panel denied the Player's request for reconsideration of its decision not to allow the Player's counsel to act as interpreter at the hearing.
50. On 30 August, 1 and 2 September 2021 respectively, the Player, FIFA and Tondela returned duly signed copies of the Order of Procedure to the CAS Court Office.
51. On 3 September 2021, on behalf of the Panel, the CAS Court Office informed the Parties that, in light of the COVID-19 situation, the hearing scheduled for 22 September 2021 would take place by video-conference in accordance with Article R44.2 in conjunction with Article R57 of the CAS Code and para. 9 of the Order of Procedure. Furthermore, the Parties were informed that, as the Player did not provide the CAS Court Office with the names and contact details of the two unidentified witnesses in the course of the week of 26 July 2021, as indicated in his letter dated 22 July 2021, the Panel assumed that the Player had decided not to call them.
52. On 22 September 2021, a hearing was held via video-conference further to Articles R44.2 and R57 of the CAS Code. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the Panel.
53. In addition to the Panel, Ms Delphine Deschenaux-Rochat, in the course of the day substituted by Ms Andrea Sherpa-Zimmermann, both CAS Counsel (and three interns), the following persons attended the hearing:

For the Player:

- 1) Mr Mohamed Naoufel Khacef, the Player;
- 2) Mr Alberto Ruiz de Aguiar Díaz-Obregón, Counsel;
- 3) Mr Botond Pinter, Counsel.

For Tondela:

- 1) Mr Fernando Veiga Gomez, Counsel;
- 2) Mr Alexandre Miguel Mestre, Counsel.

For FIFA:

- 1) Mr Saverio Paolo Spera, Legal Counsel;
- 2) Mr Jaime Cambreleng Contreras, Head of Litigation.

54. The Appellants used the services of Ms Eva Gomes Paz and Ms Sofia Norton as interpreters.
55. The Panel heard evidence from the following persons:
- 1) Mr Mohamed Naoufel Khacef, the Player;
  - 2) Ms Raquel Herraiz del Moral, the Player's intermediary, witness called by both Appellants;
  - 3) Mr Francisco Martin Ayestarán Barandiarán, alias 'Paco Ayestarán', Tondela's Head Coach, witness called by Tondela;
  - 4) Mr Luis Manual Neto Agostinho, Tondela's former Sports Director, witness called by Tondela;
  - 5) Mr Nicola Ventra, Tondela's Chief Operating Officer, witness called by Tondela.
56. The witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. All Parties and the Panel had the opportunity to examine and cross-examine the witnesses. The Parties then had ample opportunity to present their cases, submit their arguments and answer the questions posed by the members of the Panel.
57. Before the hearing was concluded, all Parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.
58. The Panel confirms that it carefully took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present Award.

## **V. THE PARTIES' POSITIONS**

### **A. The First Appellant**

59. The Player's submissions, in essence, may be summarised as follows:
- After the loan-period at Bordeaux, the Player wanted to stay in Europe "*and not return to a country where the health and working conditions would be much worse*".
  - After negotiations between Club Nasr and Tondela were finished without result, and the Player was informed "*by his former team mates that if he returned to Algeria he would neither play football in the medium term, nor would he receive any salary from [Club Nasr]*", he "*took the decision to terminate the Contract invoking the concurrence of force majeure*".
  - The premature termination of the Contract was with just cause due to reasons of *force majeure* and because Club Nasr stopped paying his wages. He could not have played with Club Nasr since the competitions in Algeria were suspended until November 2020. During that time, the Player also could not have returned to Algeria since the country

closed its borders including to its own citizens. Only limited repatriation flights were organised, under strict conditions. Besides, Club Nasr stopped paying its players “since the outbreak of the pandemic until the restart of the competition in November”. His career would have clearly suffered if he had not terminated the Contract. Therefore, there was a case of *force majeure* allowing him to terminate the Contract with just cause.

- The Player has no knowledge he signed an extension of the Contract in January 2020.
- Be this as it may, the “*extension signed on January 2020 is not valid, at least, for the three following reasons:*”
  - *A mere extension is not a renewal and would circumvent the maximum length of contracts established in FIFA regulations and limited to five years (Article 18.2 of FIFA RSTP).*
  - *The non-registration of the extension before Algerian Federation/Ligue and the legal consequences from the lack of registration.*
  - *Non validity of the extension under articles 21 and 28 of Swiss Code of Obligations”.*
- The extension of the Contract was not a renewal, and as such, the termination did not occur during the “protected period”.
- An extension limited to increase the initial contractual period, without giving any advantage whatsoever for the Player, is creating a clear unbalance for the latter and cannot be qualified as a proper renewal.
- An extension as such, circumvents the maximum length established in the FIFA Regulations because, in fact, the extension is not a new contract and thus, the Contract in total and by means of such extension, has a duration of six years.
- Moreover, in accordance with Clause 8 of the Contract the extension is null and void as it was never registered. “*The wording of the [Contract], (**under penalty of nullity and must be sent imperatively to the Professional Football League for registration**), leaves truly clear the parties’ intention to establish the nullity of any subsequent amendment if it were not registered” (emphasis in original).*
- In addition, the Player was “*tricked into signing the extension of the [Contract] with the argument that such extension was necessary to complete the loan to [Bordeaux]*”, which is in violation of Articles 21 and 29 SCO.

60. On this basis, the Player filed the following requests for relief:

- “ *To uphold the present appeal, and to set aside the restriction of four months on player’s eligibility to play in official matches.*

- *To fix a sum of 5,000 CHF to be paid by the Respondent to the Appellant, to contribute to the payment of his legal fees and advance of costs”.*

## **B. The Second Appellant**

61. Tondela’s submissions, in essence, may be summarised as follows:

- The extension of the Contract on 30 January 2020 is null and void for lack of registration with the Algerian Football Federation (the *Fédération Algérienne de Football* – the “FAF”) as required by Article 8 of the Contract.
- If the Contract would have been breached by the Player, this breach was outside the “protected period”, and therefore no sporting sanctions could have been imposed.
- The awarded compensation has been paid to Club Nasr.
- Tondela did not induce the Player to terminate the employment relationship with Club Nasr, which is confirmed by Club Nasr and will be confirmed by the called witnesses.
- The Player was presented to Tondela *“as a player that although had a contract with [Club Nasr], had valid reasons to terminate his [Contract] with just cause as he could not return to Algeria to play football”*.
- After Tondela’s offer was rejected by Club Nasr on 19 August 2020, Tondela decided not to carry on with the transfer of the Player.
- The Player’s decision on 20 August 2020 to terminate his Contract with Club Nasr was an exclusive, personal decision of the Player alone, advised by his representatives.
- Only in the end of August 2020, the Player’s intermediaries contacted Tondela again and presented him as a “free agent” which resulted in signing an employment contract on 1 September 2020.
- Tondela had no knowledge of the alleged extension of the Contract. Based on the information disclosed by the Player, by the intermediaries and the Player’s lawyer, the existing Contract and the TMS information providing that the Contract ended on 30 June 2021, it was clear that *“the Player was outside the protected period”*.
- The Player terminated his Contract with Club Nasr with just cause due to *force majeure*.
- The extension of the Contract for one year cannot be legally qualified as a proper renewal, circumventing the maximum length of 5 years established in the FIFA RSTP.



- The imposition of sporting sanctions is not necessarily warranted in each and every case, and the sanction should not have been imposed on the Appellants. In any case, the sanction under Article 17(4) FIFA RSTP is clearly disproportionate. Tondela is not a repeated offender, and would suffer huge financial damages (at least EUR 9,500,000) and sporting damages (relegation) in case of a two-period transfer ban, which would be completely disproportionate towards the value of the Player and the amount of compensation (EUR 160,000) the FIFA DRC awarded to Club Nasr.

62. On this basis, Tondela filed the following request for relief:

- “1) *The Appellant reiterates its previous submission already made to the Panel to uphold the request for provisional measures, issuing an order of suspension of the ban imposed on the Appellant from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.*
- 2) *Furthermore, the Appellant reiterates its request – pursuant to Articles R48, R49 and R57 of the Code – on the annulment of the decision issued by the FIFA DRC passed on 25 March 2021 that declared that the Appellant shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods, and the issuance of a new Decision in what concerns the sanctions against the Appellant.*
- 3) *Finally, the Appellant hereby also reiterates its request that FIFA be ordered to pay all the costs of the present procedure, including all the amounts incurred with lawyer fees related with the present procedure”.*

### **C. The Respondent**

63. FIFA’s submissions, in essence, may be summarised as follows:

- The analysis of the existence of a just cause is not dependent on the agreement of the involved parties to the employment dispute, but it is the sole prerogative of the competent deciding body. Nonetheless, in the absence of Club Nasr, which is the only party with standing to defend such issue, the CAS Panel is no longer entitled to analyse this issue which now falls outside of the scope of this appeals procedure.
- The evidence on file shows that the Player was employed by Club Nasr when he terminated the Contract on 20 August 2020 and that – prior to that moment – he never complained about any wrongdoings from the side of Club Nasr, such as missed payments of wages.
- The FIFA COVID-19 Guidelines only refer to “*unilateral variations to existing employment agreements*” with respect to *force majeure* and do not apply to unilateral terminations like the one at stake. Furthermore, the Player terminated the Contract the day after Club Nasr delivered another counter-proposal to Tondela, which was refused, thereby bringing the negotiations to an end.

- The Player himself acknowledged in his submission that behind the termination was the desire to keep playing in Europe after the loan to Bordeaux rather than having to go back to an “*unattractive alternative*”.
- With the foregoing in mind, there is no doubt that the Player committed a breach of the FIFA RSTP the moment he terminated the Contract that expired on 30 June 2022 to join Tondela on 1 September 2020.
- The consequences of breaching an employment contract without just cause are clearly defined in Article 17 FIFA RSTP. In casu, the Player is clearly bound to pay compensation to Nasr. The Player’s obligation to pay compensation, however, has not been contested. As a matter of fact, it has been already performed by Tondela.
- Moreover, according to Article 17(3) FIFA RSTP, due to the renewal of the Contract, the “protected period” started running again, with the consequence that the Player was within this “protected period” when he terminated the Contract. Therefore, he shall be suspended from participating in official matches for 4 months.
- As a corollary, since Tondela has been incapable of rebutting the presumption contained in Article 17(4) FIFA RSTP concerning its inducement to the Player’s breach of the Contract, it shall be sanctioned with a registration ban for 2 consecutive periods.
- As these are statutory disciplinary measures, there is no room to modulate them and therefore the Appealed Decision must be upheld.

64. On this basis, FIFA filed the following requests for relief:

- “(a) rejecting the reliefs sought by the Appellants;*
- (b) confirming the Appealed Decision;*
- (c) ordering the Appellants to bear the full costs of these arbitration proceedings”.*

## **VI. JURISDICTION**

65. The jurisdiction of CAS, which is not disputed, derives from Articles 58(1) FIFA Statutes 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 notification of the decision in question” and Article R47 of the CAS Code.
66. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.

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

## VII. ADMISSIBILITY

68. The Appealed Decision was notified to the Player on 1 April 2021 and the Appellants' Statements of Appeal were lodged on 21 April 2021, i.e. within the statutory time limit of 21 days, set forth in Article 58(1) of the FIFA Statutes, which is not disputed.

69. Furthermore, the Statements of Appeal and the Appeal Briefs complied with all the requirements of Article R48 and R51 of the CAS Code.

70. It follows that the appeals are admissible.

## VIII. APPLICABLE LAW

71. Tondela cites Article R58 CAS Code and Article 66(2) FIFA Statutes and refers in its submissions to the FIFA RSTP. The Player did not provide his position on the applicable law but refers in his submissions to the FIFA RSTP and Swiss law.

72. FIFA submits that, according to Article R58 of the CAS Code in conjunction with Article 57(2) of the FIFA Statutes, CAS shall primarily apply the various regulations of FIFA, in particular the FIFA Statutes and the FIFA RSTP, and, additionally, Swiss law should the need arise to fill a possible gap in the FIFA Regulations.

73. Article R58 of the CAS Code provides the following:

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

74. Article 57(2) FIFA Statutes (September 2020 edition) stipulates as follows and does not materially differ from the content of Article 66(2) FIFA Statutes (April 2015 edition) relied upon by Tondela:

*“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”.*

75. The Panel finds that the various regulations of FIFA are primarily applicable, in particular the FIFA RSTP (August 2020 edition), and is satisfied to accept the subsidiary application of Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

## IX. MERITS

### A. The Main Issues

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

- (i) Is the finding of breach of contract within the protected period in the Appealed Decision *res judicata*?
- (ii) Is the imposition of sporting sanctions on the Player and Tondela warranted in this specific case?
- (iii) If so, are the sanctions imposed on the Appellants disproportionate?

#### **(i) *Is the finding of breach of contract within the protected period in the Appealed Decision res judicata?***

77. FIFA argues that, as the present appeals have been lodged by the Appellants solely against FIFA and solely with the objective of eliminating the sporting sanctions imposed on them, the matter concerning the termination of the Contract without just cause has become final and binding.

78. In particular, FIFA submits that the determination of the absence of just cause pertains exclusively to the competent body deciding the dispute, i.e. the FIFA DRC in first instance (and CAS on appeal should the necessary requirements have been met). It is not up to the parties to a dispute to agree whether there was just cause or not. In any event, according to FIFA, in the absence of the only possible counterparty to the horizontal dispute, i.e. Club Nasr, such element of the dispute cannot be challenged. Whether the Player had just cause to terminate the Contract with Club Nasr is part of the horizontal dispute which cannot be discussed in the absence of Club Nasr in the present proceedings, as Club Nasr was "*the (sole) party having standing to be sued*".

79. The Panel observes that both the Player and Tondela explicitly submitted that the appeals are only directed against the sporting sanctions imposed on them and that in fact the amount of compensation awarded to Club Nasr in the Appealed Decision has been paid to Club Nasr already.

80. As such, the Panel observes that the Appealed Decision has a hybrid character.

81. On the one hand, the FIFA DRC acted in its adjudicatory capacity, insofar as it decided the contractual dispute between Club Nasr and the Appellants, i.e. by deciding that the Player terminated the Contract without just cause, and that therefore the Player (with Tondela jointly liable) had to pay EUR 160,000 to Club Nasr, which is a so-called horizontal dispute. As such, the standing to be sued rests with Club Nasr as the entity that avails itself of the binding effect

of the decision with regard to the payment by the Player and Tondela of EUR 160,000. As Club Nasr is not a party to the present appeal arbitration proceedings before CAS, the Appellants' payment obligation to Club Nasr has become final and binding and cannot be reversed.

82. On the other hand, the FIFA DRC also assumed a disciplinary role by imposing sporting sanctions on the Player and Tondela, which is a so-called vertical dispute. The Appellants' request to cancel the sporting sanctions imposed on them is directed against the disciplinary function of the FIFA DRC and therefore the only entity with standing to be sued in this respect is FIFA. FIFA decided to impose sporting sanctions on the Appellants based on the finding that the Player breached the Contract within the "protected period". As such, the Panel finds that the issue whether the Player breached the Contract, and if so, whether this breach occurred within the "protected period" can be subject of this Panel's scrutiny, but only with respect to the question whether the sporting sanctions are imposed in accordance with the applicable regulations. Any other solution would mean that the Appellants would have been required to direct their appeals, the scope of which is limited to the disciplinary sanctions, also against Club Nasr, which has no standing to be sued regarding the imposed sporting sanctions.
83. Consequently, the finding of breach of contract within the "protected period" in the Appealed Decision related to the vertical dispute (the disciplinary issue) is not *res judicata*.

**(ii) *Is the imposition of sporting sanctions on the Player and Tondela warranted in this specific case?***

*a. The legal basis for imposing sporting sanctions*

84. The legal basis invoked by the FIFA DRC to impose sporting sanctions on the Appellants is set forth in Article 17(3) and (4) of the FIFA RSTP, which respectively provide as follows:

*"In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period. This sanction shall be a four-month restriction on playing in official matches. In the case of aggravating circumstances, the restriction shall last six months. These sporting sanctions shall take effect immediately once the player has been notified of the relevant decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs. This suspension of the sporting sanctions shall, however, not be applicable if the player is an established member of the representative team of the association he is eligible to represent, and the association concerned is participating in the final competition of an international tournament in the period between the last match and the first match of the next season. Unilateral breach without just cause or sporting just cause after the protected period shall not result in sporting sanctions. Disciplinary measures may, however, be imposed outside the protected period for failure to give notice of termination within 15 days of the last official match of the season (including national cups) of the club with which the player is registered. The protected period starts again when, while renewing the contract, the duration of the previous contract is extended".*

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

85. The Panel now turns to the question of whether the prerequisites for imposing sporting sanctions on the Appellants were complied with. In this regard, and as a starting point, the Panel shall assess whether the Player indeed terminated the Contract without just cause, whether such termination was within the protected period, before determining whether the imposition of sporting sanctions on the Appellant was justified.

b. *Did the Player terminate the Contract without just cause?*

86. According to Article 14 FIFA RSTP, “[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”.

87. Article 14bis FIFA RSTP provides as follows:

*“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”.*

88. Except for Article 14bis and Article 15 FIFA RSTP (terminating a contract for sporting just cause), the concept of “just cause” is not defined in the FIFA RSTP. However, it has often been analysed by CAS panels, relying on Swiss law and in particular on the SCO. It is now well-established CAS jurisprudence that:

*“Under Swiss law, such a ‘just cause’ exists whenever the terminating party can in good faith not be expected to continue the employment relationship (Article 337 para. 2 CO). The definition of ‘just cause’, as well as the question whether ‘just cause’ in fact existed, shall be established in accordance with the merits of each particular case (ATF III 153 consid. 1 a). As it is an exceptional measure, the immediate termination of a contract for ‘just cause’ must be accepted only under a narrow set of circumstances (ibidem). Only a particularly severe breach of the labour contract will result in the immediate dismissal of the employee, or conversely, in the immediate abandonment of the employment position by the latter. In the presence of less serious infringement, an immediate termination is possibly only if the party at fault persisted in its breach after being warned (ATF 129 III 380 consid. 2.2, p. 382). The judging body determines at its discretion whether there is ‘just cause’*

(Article 337 para. 3 CO). As a result, only a violation of a certain severity justifies the early termination of a contract; and a breach is sufficiently severe only if it excludes the reasonable expectation of a continuation of the employment relationship” (see CAS 2015/A/4046 & 4047, at para. 98, referring to Article 337 para. 2 CO; see also CAS 2014/A/3463 & 3464, CAS 2008/A/1447 and CAS 2006/A/1180 at para. 25).

89. In light of this jurisprudence, the Panel must determine whether the grounds relied on by the Player for terminating the Contract were so severe that the Player could not have reasonably been expected to continue the employment relationship with Club Nasr.
90. The Player relies heavily on the COVID-19 pandemic, arguing that the competitions were suspended in Algeria, that he was prevented from going back to Algeria, and that he therefore could not develop his career. In fact, the Player invokes the principle of *force majeure*.
91. The Panel notes that the Appellants claim that the Player lawfully terminated the Contract with Club Nasr on 20 August 2020 because: (i) since August 2020 football competitions in Algeria had been suspended due to the outbreak of the COVID-19 pandemic and that it was thus impossible for him to continue developing his career; (ii) Algerian citizens abroad had allegedly been prevented from returning to their home country due to the COVID-19 pandemic and (iii) Club Nasr’s players had allegedly not been paid salary since the outbreak of the COVID-19 pandemic.
92. First of all, the Panel notes that no evidence was provided that the Player put Club Nasr in default for allegedly not paying his salaries. As such, Article 14bis FIFA RSTP is not applicable.
93. The Player had also only recently ended his loan period with Bordeaux, i.e. at the end of the 2019/2010 season, which club had assumed Club Nasr’s duty of paying salary to the Player during the loan. Accordingly, Club Nasr’s duty to pay salary to the Player under the Contract only resumed as from 1 July 2020, while the Player already terminated the Contract on 20 August 2020. Accordingly, at the moment of termination only one month of salary may have been outstanding, which – even if the Player had issued a default notice, which he did not – would in principle not be enough to constitute a just cause for termination according to Article 14bis FIFA RSTP.
94. The allegation that other players registered with Club Nasr were not paid salary remained unsubstantiated by evidence. Even if it were true that other players had not been paid their salary, this does not necessarily mean that the Player would not be paid his salary. In any event, besides testifying that other players told him that Club Nasr did not pay their salary, such allegation was not substantiated with any evidence.
95. For *force majeure* to exist, there must be an objective (rather than a personal) impediment, beyond the control of the obliged party, that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible. This definition must be narrowly

interpreted because, as a justification for non-performance, it represents an exception to the fundamental obligation of *pacta sunt servanda* (see CAS 2018/A/5607 and CAS 2018/A/5779, as published on the CAS website)..

96. Further, the FIFA COVID Guidelines related to *force majeure* are of no help to the Player, as these rules only refer to “*unilateral variations to existing employment agreements*”, and do not apply to unilateral terminations like the one at stake.
97. The Panel finds that a temporary (worldwide) suspension of competition and the alleged impossibility of the Player to go back to Algeria, both due to the COVID-19 outbreak, do not justify the termination of the Contract. The Player confirmed at the hearing that he did not register for repatriation and that he wanted his career to proceed in Europe. Ms Raquel Herraiz del Moral (the “Player’s Agent”) confirmed at the hearing that the Player did not want to go back to Algeria. He was frustrated and desperate because, due to COVID-19, the competition was suspended and he would not be paid his salaries, destroying his career dreams. In line with this, the Agent also confirmed at the hearing that she supported him in this decision and as such contacted different clubs and conducted negotiations for a transfer of the Player to a European club. After these negotiations failed, the Player terminated the Contract, although no evidence was presented that Club Nasr failed to comply with any of its contractual obligations.
98. While the Panel appreciates that the Player may have envisaged a career with a European club, he had voluntarily committed himself to the Contract with Club Nasr and such contractual commitment is in principle to be respected; *pacta sunt servanda*. The mere fact that competitions were suspended, was not unique for Algeria and does not necessarily mean that Club Nasr would not be able to comply with its contractual obligations vis-à-vis the Player in terms of paying salary.
99. In light of the above, the Panel has no hesitation to conclude that the Player terminated the Contract without just cause.

c. *Did the termination of the Contract take place within the “protected period”?*

100. In continuation, the Panel turns its attention to the question whether the Player terminated the Contract during the “protected period”.

101. The term “protected period” is defined as follows in the FIFA RSTP:

*“Protected period: a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional”.*



102. The Appellants argue that the Contract was not validly renewed on 30 January 2020. In fact, the Appellants maintain that the extension of the Contract is (i) voidable, pursuant to Article 21 and 28 SCO, as the Player was tricked into signing the alleged extension when he was on his own and under pressure at the last moment, giving Club Nasr an unfair advantage by greatly increasing his market value, while the Player got nothing. Club Nasr also lied to the Player that it was necessary to sign the document to accomplish the loan with Bordeaux, as the Player had no intention at all to extend the Contract; (ii) null, as any amendment of the Contract must be registered with the FAF and/or the Professional Football League to be valid, and Club Nasr failed to do this in violation of Clause 8 of the Contract and the principle of *pacta sunt servanda*; (iii) not valid, as the unilateral extension was not reciprocal, and only to the benefit of Club Nasr; (iv) a circumvention of the maximum length of contracts established in Article 18(2) FIFA RSTP. Even if the amendment would be valid, it violates the rationale of the “protected period”, and in accordance with the Commentary on Article 17(3) FIFA RSTP, the alleged renewal comes only into play on 1 July 2021.
103. FIFA argues that the Player signed the Contract with Club Nasr, valid as from 1 July 2016 until the end of June 2021. After having signed a first amendment to the Contract increasing the Player’s salary on 24 November 2019, a further amendment to the Contract was concluded on 30 January 2020, whereby the duration of the Contract was extended until 30 June 2022. According to FIFA, by doing so, the Parties also determined the starting of a new “protected period”. In this sense, Article 17(3) FIFA RSTP could not be clearer: “[the] *protected period starts again when, while renewing the contract, the duration of the previous contract is extended*”. Further, Article 18(2) FIFA RSTP does not prohibit renewing an employment contract by means of an extension, it only provides that the maximum length of a contract cannot exceed 5 years.
104. The Panel observes that the Player, on 30 January 2020, signed a one-page document in the Player’s native language (which document is nearly identical to the amendment of the Contract dated 29 November 2019 by means of which the Player’s salaries increased, which amendment the Player apparently understood and considered as valid) and finds that he must have been aware that he signed an extension of his employment relationship which was related to the loan agreement signed by the Player, Club Nasr and Bordeaux on the same date. The Player’s statement that he did not know what he was signing is considered implausible by the Panel. There is no evidence on file suggesting that the Player’s signature was forged, that he was tricked into signing, or that Club Nasr lied to the Player or committed fraud or exercised undue pressure on the Player. To the contrary, at the hearing, the Player testified that he earned around EUR 1,000 monthly at Club Nasr, and around EUR 9,000 monthly at Bordeaux, confirming that the deal was of considerable benefit to him. If Club Nasr made the loan agreement with Bordeaux conditional upon the Player extending his Contract, they were in their right to do so and the Player was in his right to refuse, but he accepted, as a consequence of which he must accept the consequences of having agreed to the extension of the Contract. In addition, the Panel does not share the Player’s contention that the extension was for the benefit of the Club only and that this alleged “lack of reciprocity” invalidates it for that reason, as the contractual extension implied reciprocal obligations -those foreseen in the Contract- for both parties for 1 extra year.

105. The Panel finds the extension a renewal of the Contract, and concurs with FIFA that the rationale behind Article 18(2) FIFA RSTP is to limit the maximum duration of a one-off contract to five years, not to prohibit a player from extending his employment relationship during or upon expiry of this term. The interpretation invoked by the Appellants makes no sense, as it would entail that football players, including for example minors, would be prohibited from being registered for the same football club for an overall period of more than five years.
106. In continuation, the Panel observes that both the extension of the Contract dated 30 January 2020 and a previous amendment of the Contract dated 24 November 2019 whereby the Player's salary was doubled, are not registered with the FAF and/or the Professional Football League.
107. Although Clause 8 of the Contract (in its undisputed free translation) provides that “[u]nder penalty of nullity, any modification of this contract must give rise to the establishment of an amendment drawn up in the same form as the initial contract and registered at the head office of the Professional Football League within five (05) days within its signature”, the Panel finds that the fact that the extension (as was the amendment dated 30 January 2020) was not registered with FAF and/or the Professional Football League does not make it invalid, not only because the registration of an employment contract (or its extension or amendment) is not a legal prerequisite for its validity, but also because the Player accepted (and benefited from) the effects of the previous (and also not registered) amendment of the Contract of 24 November 2019 without any complaint (in other words, sustaining the contrary would imply *venire contra factum proprium* for the Player, which is not admissible).
108. Article 17(3) FIFA RSTP provides that the “*protected period starts again when, while renewing the contract, the previous contract is extended*”.
109. The rationale of this provision pursuant to the explanatory note in the Commentary to the FIFA Regulations on the Status and Transfer of Players (the “FIFA Commentary”) is that “*when parties agree to extend the duration of an employment relationship, they do so to have longer contractual stability and it is usually linked to an improvement in the financial terms of the contract in favour of the player. The major amendments in the contract, replacing certain terms of the existing contract, have the same consequences as if the parties had signed a new agreement. Consequently, when a contract is extended, the protected period starts again*”.
110. The Panel finds that the extension of the Contract concluded on 30 January 2020 was validly entered into, which means that a new “protected period” started as from the date of signing the extension, not as from the date the original contract expires. The fact that the financial terms of the Contract itself were not amended is neither decisive nor relevant in this regard, given that it is reasonable and logical to believe, in the Panel's view, that the extension was linked to the agreement to loan the Player to Bordeaux, granting the Player a 9 times higher salary for the loan period at Bordeaux. The extension of the Contract also provided the Player with more financial stability, as it insured him of an additional year of salary from Club Nasr.

111. In light of the above, the Panel finds that the Player's termination of the Contract without just cause clearly occurred during the "protected period".

*d. Conclusion with respect to the Player*

112. Based on the wording of Article 17(3) FIFA RSTP, and since the Panel finds that the Player terminated the Contract without just cause during the "protected period", the Panel further finds that the FIFA DRC was, in principle, in its right to impose sporting sanctions on the Player.

113. However, FIFA acknowledges that the imposition of sporting sanctions on a player and a club in accordance with Articles 17(3) and 17(4) FIFA RSTP respectively, is not mandatory, adding that the FIFA DRC in this case correctly decided to impose sporting sanctions on both the Player and Tondela because the Player unduly breached the Contract of which Tondela clearly profited.

114. The Panel is satisfied that there is a well-accepted and consistent practice of the FIFA DRC, as explained by FIFA in its submissions, not to apply automatically a sanction as per Articles 17(3) and 17(4) FIFA RSTP, but to leave it to the free discretion of the FIFA DRC to evaluate the particular and specific circumstances on a case-by-case basis.

115. In view of the above, the Panel finds that the legal basis for the imposition of sporting sanctions by the FIFA DRC is clear, but that the imposition of sporting sanctions is not necessarily warranted in each and every case.

116. Hence, the Panel turns its attention to the particular and specific circumstances, which led to the imposition of sporting sanctions in the Appealed Decision.

117. With respect to the Player, FIFA argues that "[d]riven by his wish to join a European club regardless of his ongoing contractual obligations, the Player willingly and deliberately terminated his employment with [Club Nasr], following the latter's refusal to accept the transfer fee offered by Tondela. It should also be kept in mind that the Player never claimed any disrespect of the [Contract] by [Club Nasr]. In this context, the lure of money might have played a decisive role. It is not a mystery that the Player enormously benefitted economically from his termination of the [Contract] with [Club Nasr], as his remuneration with Tondela was thirteen times higher than the one he received from [Club Nasr]. Against this background, FIFA fails to see any clear or strong arguments to deviate from the wording of Article 17(3) RSTP. On the contrary, FIFA firmly holds that the Appellants' stance was rather disrespectful of any rule safeguarding the principle of *pacta sunt servanda*".

118. The Panel agrees with FIFA's position with respect to the imposition of sporting sanctions on the Player. In the matter at hand, there are no circumstances that would allow the Panel to deviate from the general rule set forth in Article 17(3) FIFA RSTP that sporting sanctions are to be imposed in case of a breach of contract within the protected period. Despite having extended the term of his Contract recently, i.e. within the "protected period", the Player

terminated the Contract and shortly afterwards concluded a lucrative employment contract with Tondela. While the Player understandably wanted to improve his financial situation by signing for Tondela, he could not do so at the expense of his contractual commitment with Club Nasr.

119. Consequently, the Panel finds that the FIFA DRC rightly sanctioned the Player on the basis of Article 17(3) FIFA RSTP.

*e. Conclusion with respect to Tondela*

120. The Panel notes that there is a difference in the legal approach between Article 17(3) and 17(4) FIFA RSTP. On the basis of Article 17(3) FIFA RSTP, sporting sanctions are in principle to be imposed, without any specific reference to a possibility to escape the imposition of sporting sanctions if the mentioned prerequisites are met. However, Article 17(4) FIFA RSTP contains a rebuttable presumption that Tondela induced the Player to breach his Contract with Club Nasr:

*“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”.*

121. Tondela maintains that no sanction should be imposed on it as it did not induce the Player to breach the Contract with Club Nasr.
122. FIFA submits in this respect that *“Article 17(4) RSTP can be implemented as soon as it is established that a new club has signed a professional player who has terminated his contract with his previous club without just cause during the protected period. It is then up to the new club to rebut said presumption by providing evidence to the contrary”.*
123. The Panel finds that Tondela failed in rebutting this presumption.
124. More specifically, the Panel finds that the sequence of events is quite telling and justify the sporting sanctions imposed on Tondela by means of the Appealed Decision:
- i) On 18 August 2020, Tondela delivered a formal offer to Club Nasr to acquire the Player’s services in the amount of EUR 200,000.
  - ii) On 19 August 2020, following Club Nasr’s counter-proposed in the amount of EUR 300,000 for the transfer of the Player’s services, Tondela provided Club Nasr with another formal offer in the same amount as the first offer, but with amended payment terms, which was followed by another counter-proposal from Club Nasr for an amount of EUR 250,000.
  - iii) On 20 August 2020, the Player terminated the Contract with Club Nasr.

- iv) On 1 September 2020, the Player signed an employment contract with Tondela.
125. The Panel finds that it can be inferred from this timeline that Tondela played an important role in the Player's decision to terminate his Contract with Club Nasr.
126. A potential reason for not imposing sporting sanctions would be, for example, a situation where Tondela would have been able to establish that it only came into contact with the Player after the termination. However, in a situation where Tondela was already in contact with the Player prior to the termination, in particular in a situation where Tondela and Club Nasr could not find an agreement in their negotiations and where Tondela and the Player concluded an employment contract only 11 days after the negotiations between Tondela and Club Nasr broke down, the Panel finds that it cannot be considered that Tondela rebutted the presumption that it induced the Player to breach his Contract with Club Nasr.
127. According to the testimonies given at the hearing, especially from the Player's Agent and Tondela's Head Coach, it became clear to the Panel that Tondela was interested in hiring the Player, before but also after the Player terminated his Contract with Club Nasr.
128. The Panel also finds that Tondela presented insufficient evidence for its allegation that the Player had already decided to terminate his Contract in June 2020, before having made any contact with Tondela. The Player and the Player's Agent testified this, but neither the Player nor Tondela produced any written evidence of contacts made with other clubs to join him in June, July and/or August 2020, which should exist if their allegations were true.
129. The Panel further finds that Tondela exercised insufficient due diligence when concluding the employment contract with the Player. It merely relied on the information provided by the Player and the Player's Agent, whom suggested that the Player had just cause to terminate his Contract with Club Nasr and that any termination of the Player, in any event, fell outside the "protected period". The Panel finds that Tondela cannot escape the rebuttable presumption of Article 17(4) FIFA RSTP by merely relying on the statements of the Player and the Player's Agent, at least not to escape the sporting sanctions imposed on it by the FIFA DRC. Even if Mr Luis Manuel Neto Agostinho testified that Tondela verified the Player's contractual status not only by way of the Player's termination letter and the Contract, but also in FIFA TMS and noted that the Player's Contract was due to expire at the end of June 2021 (i.e. the extension of 30 January 2020 had not been processed), the Panel finds that in the specific circumstances of the case at hand, in which a previous negotiation between the clubs to transfer the Player had taken place Tondela should have verified the Player's contractual status with Club Nasr, which it failed to do and thus exposed itself to the risk of sporting sanctions being imposed on it.
130. Even if Tondela could have legitimately understood that the Player was outside the "protected period", still it should have abstained from behaving the way it did. Clubs are not free to induce players to breach their contract if the player concerned is outside the "protected period". Tondela may well have estimated that the amount of compensation to be paid for

breach of contract (EUR 160,000) was lower than the transfer fee demanded by Club Nasr in the negotiations (EUR 250,000), which eventually indeed turned out to be the case, but part of the equation was also that such behaviour exposed Tondela to the risk of sporting sanctions being imposed on it. Tondela willingly exposed itself to such risk.

131. The Panel concurs with FIFA that both the Player and Tondela willingly took the risk of having to pay compensation to Club Nasr and of sporting sanctions being imposed on them by terminating the Contract, and by signing the Player respectively. The Panel finds that, in general, this kind of situations should be avoided as they undermine the principle of contractual stability. As such, a strict application of this rule is considered justified in the present case.
132. Consequently, the Panel finds that the FIFA DRC rightly sanctioned Tondela on the basis of Article 17(4) FIFA RSTP.

**(iii) *If so, are the sporting sanctions imposed on the Player and/or Tondela disproportionate?***

133. The Panel now turns its attention to the question whether imposing a four month-restriction on playing in official matches on the Player, and imposing a ban from registering any new players, either nationally or internationally, for the following two entire and consecutive registration periods on Tondela is disproportionate.
134. The Panel observes that the Appellants submit that these measures are disproportionate, whereas FIFA maintains that the measures are justified, and that there is no room to speak about proportionality of the sanction as the FIFA DRC does not exercise any discretion when imposing these sanctions.
135. The Panel observes that Articles 17(3) and (4) FIFA RSTP merely determine that if sporting sanctions are to be imposed on a player and/or a club, these sporting sanctions shall consist of a minimum of a four month-restriction on playing official matches, and a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods, respectively. There is, in principle, no discretion for the decision-making body to go below this minimum sanctions.
136. The Panel finds that such approach is not unreasonable and notes that it has been supported in CAS jurisprudence:

*“Quant à la nature et la quotité de la sanction infligée, la Formation ne voit pas en quoi elle peut appliquer le principe de la proportionnalité, du moment qu’elle fait partie de règles codifiées concernant le jeu au sein même de l’association. Il appartiendrait à un ou des membre (s) de cette association, voire à l’association elle-même (ou à ses sections), de modifier une telle règle s’il devait être considéré qu’elle est par trop sévère ou qu’il lui manque la possibilité d’être nuancée. En d’autres termes, la Formation ne saurait se substituer au législateur*

*dans l'application de la règle en cause*" (CAS 2006/A/1154, para. 13 of the abstract published on the CAS website).

Which can be freely translated as follows:

*"Concerning the nature and the extent of the inflicted sanction, the Panel does not see how it can apply the principle of proportionality, as long as it is part of the codified rules of the game of the association concerned. It would be up to one or more members of this association, or to the association itself (or to its departments), to change such a rule should it be considered as too severe or lack the possibility of a nuanced application. In other words, the Panel cannot replace the legislator in the application of the rule in question".*

137. In addition, the Panel concurs with another CAS panel, considering that the sanctions mentioned in Article 17(3) and (4) FIFA RSTP are minimum sanctions under the relevant provisions, which means that the Panel, in principle, cannot reduce the sanction if it is of the view that the imposition of the sanction is warranted (CAS 2020/A/6796, paras. 136 and 161 of the abstract published on the CAS website).
138. Regardless of the Panel's conclusion that it has no discretion to impose sporting sanctions less severe than the ones prescribed by Articles 17(3) and (4) FIFA RSTP, the Panel also has no hesitation to consider that the sporting sanctions imposed on the Player and Tondela are reasonable and proportionate, taking into account the specific circumstances of this matter.
139. For the sake of completeness, with regard to some allegations made by Tondela concerning an alleged disproportion of the sanction imposed, the Panel notes the following:
  - The mere fact that Tondela is not a repeat offender is not a reason to reduce the sporting sanctions imposed, because it is the minimum sanction set forth by Article 17(4) FIFA RSTP. Furthermore, the Panel finds that being a first offender is usually not a mitigating factor. Rather, committing an offence for a second time is an aggravating factor.
  - A transfer ban may affect a club's competitiveness on the field of play, but this does not mean or entail the immediate production of unbearable damages to the club. In any case, Tondela failed to substantiate its allegation that it would suffer financial damages in an amount of EUR 9,500,000 as a result of the two-period transfer ban, which is already sufficient reason for the Panel to dismiss this argument.
  - Tondela also failed to prove that the imposition of the two-period transfer ban would have the immediate consequence that it would be relegated. Such argument is quite far-fetched. Tondela can continue to participate on the field of play as it used to, but it is only prevented from acquiring new players.
140. Finally, the Panel also does not consider the sporting sanctions imposed on Tondela disproportionate in view of the amount of compensation for breach of contract to be paid. It is more the principle that clubs should be careful in not inducing, or avoiding the impression

that they induced, a player to breach his contract that is at stake, rather than a sanction based on the amount of damages caused.

141. In light of the above, the Panel finds that the sporting sanctions imposed on the Player and Tondela are not disproportionate.
142. Consequently, the Panel is satisfied to confirm the sanctions imposed on both Appellants in the Appealed Decision.

## **B. Conclusion**

143. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel finds that:
- (i) The finding of breach of contract within the protected period in the Appealed Decision related to the vertical dispute (the disciplinary issues) is not *res judicata*.
  - (ii) The imposition of sporting sanctions on both the Player and Tondela is warranted.
  - (iii) The sporting sanctions imposed on the Player and Tondela in the Appealed Decision are not disproportionate.
144. All other and further claims or requests for relief are dismissed.

## **ON THESE GROUNDS**

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

1. The appeal filed on 21 April 2021 by Mr Mohamed Naoufel Khacef against the decision issued on 25 March 2021 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is dismissed.
  2. The appeal filed on 21 April 2021 by CD Tondela Futebol against the decision issued on 25 March 2021 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is dismissed.
  3. The decision issued on 25 March 2021 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is confirmed.
- (...)
6. All other and further motions or requests for relief are dismissed.