



Arbitration CAS 2022/A/9282 Al Batin Club v. Mohamed Rayhi & Fédération Internationale de Football Association (FIFA), award of 29 March 2023

Panel: Mr Patrick Grandjean (Switzerland), Sole Arbitrator

Football

Breach of a contract of employment entered into between a player and a club

*Respect of the terms of the contract pursuant to the principle *pacta sunt servanda**

Interest rate in case of late payment

Disciplinary sanction imposed on a defaulting club as per Article 12bis FIFA RSTP

Proportionality of the sanction and principle of the association's autonomy

1. According to the principle *pacta sunt servanda*, the terms of the contract must in principle be respected. However, the contract can be amended by the judge when the circumstances under which it was concluded have changed to such an extent that the continuation of the contract cannot be required. Such an intervention by the judge must remain an exception and is acceptable only if subsequent, unforeseen and inevitable circumstances result in an obvious disproportion between performance and consideration that would make one party's insistence on its claim seem abusive. Where the employment relationship between the club and the player has not been terminated or expired before its contractually agreed term and was not somehow null or void, there is no reason to deviate from the clear terms of the employment contract and the player is entitled to the payment of his wages.
2. The payment of default interest is not governed by FIFA Regulations. If it is provided in the contract, the contract should be respected. If it is not provided in the contract, it must be assessed according to Swiss law. The *dies a quo* of the default interest set by the FIFA Dispute Resolution Chamber (DRC) as from the first day following the end of each month for which the salary was outstanding that is agreed by the player and FIFA must be confirmed.
3. For Article 12bis of the FIFA Regulations on the Status and Transfer of Players (RSTP) entitled "*Overdue payables*" to be applicable, several cumulative requirements must be met i.e. (i) the sum involved must have been overdue for at least 30 days; (ii) once this period has elapsed, the creditor must proceed to provide the debtor club with written notice that it is in default, and (iii) the notice must set a deadline of at least a further 10 days for the debtor club to comply with its financial obligations. Effectively, therefore, the debt must ultimately be at least 40 days (30 days overdue plus 10 days for compliance) overdue before an article 12bis claim can be lodged. If all the cumulative requirements set out in Article 12bis RSTP are met, the provision is applicable and the DRC has the authority to impose a disciplinary sanction on the club in default. In

accordance with Article 12bis par. 6 RSTP, a more severe penalty can be imposed on a “repeat offender” as this is an aggravating circumstance.

4. According to the principle of the association’s autonomy, under Swiss law, the right of associations to impose sanctions or disciplinary measures on clubs is the expression of the freedom of associations to regulate themselves. Under these circumstances, significant deference must be given to the autonomy of the sporting association, the decision of which must be subject to review only in cases of arbitrariness, misuse of discretionary power, discrimination, breach of any relevant mandatory legal principle or if the decision entails a violation of the federation’s own statutes and rules.

I. PARTIES

1. Al Batin Football Club (the “Club”) is a football club with its registered office in Hafar Al-Batin, Saudi Arabia. It is a member of the Saudi Arabian Football Federation (“SAFF”), itself affiliated with the Fédération Internationale de Football Association.
2. Mohamed Rayhi is a Dutch professional football player, born on 1 July 1994 (the “Player”).
3. The Fédération Internationale de Football Association (“FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.
4. The Player and FIFA will be jointly referred to as the “Respondents”.

II. FACTUAL BACKGROUND

A. Background facts

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

B. The relationship between the Club and the Player

6. On 1 October 2020, the Club and the Player signed an employment contract (the “Employment Contract”). The main characteristics of this document can be summarised as follows:

- It is a fix-term agreement effective as from 30 September 2020 until 30 June 2022.
- Its Clause 4 reads as follows, where pertinent:

“1- the parties agreed that the total value of the contract is (1.155.000 Euro) [...].

2- The total amount of the contract shall be divided on the 2 contractual years as follows:

a) In the first-year season 2020/2021, the [Club] agreed to pay to the [Player] the total value of (605.000. euro) [...]

b) In the second-year season 2021/2022, the parties agreed that the total value is (550.000 euros) [...] divided as salaries on the 12 months of the second season (45,833 euros × 12 months) Due at the end of each month starting from July 2021.

- *In the event [the Club] fails to comply with the payment of any of the aforementioned instalment within the agreed deadline, [the Player] will send a 15-days default notice to [the Club]. In the event [the Club] does not comply with said payment within the 15 days deadline granted, default interest at a rate of 5% per annum will apply as from the agreed deadline until the effective date of payment. [...]*

All amounts provided are understood to be net of all types of taxes, withholdings, income and payments on account, rates and / or any present or future tax that will be applicable to said income in KSA, in such a way that [the Club] undertakes to pay [the Player] the corresponding gross amount at all times so that the liquid amounts committed to [the Player] in each case are reached”.

- Clause 9 of the Employment Contract, entitled “Settlement of Disputes”, states the following:

“1- The parties shall seek solving their disputes on enforcement of the contract by amicable ways.

2- This Contract shall be governed by and construed in accordance with the FIFA Regulations. Any dispute arising out of or in connection with this Agreement shall be subject to the jurisdiction of the FIFA and on appeal (or in the event that FIFA declines jurisdiction) to the CAS to be finally settled in accordance with the rules of the Code of Sports Related Arbitration, which rules are hereby deemed incorporated. The FIFA and the CAS shall determine the dispute in accordance with the FIFA Regulations. The CAS proceedings shall be held in the English language”.

7. It is undisputed that the Player’s wages were paid until March 2022.

8. On 5 July 2022, the Player’s representative put the Club on notice to pay EUR 137,499, corresponding to unpaid wages for the months of April, May and June 2022 (3 x EUR 45,833 = EUR 137,499). He “[granted] the Club a deadline of 15 (fifteen) days to fully comply with its financial obligations”.

C. The Proceedings before the FIFA Dispute Resolution Chamber

9. On 12 August 2022, the Player lodged a claim before the FIFA Dispute Resolution Chamber (the “DRC”) against the Club, requesting the following:

“[...]”

2. *To order the [Club] to pay the [Player] the overdue salaries in the total amount of EUR 137,499 Euros net [...].*
3. *To order the [Club] to pay the [Player] the agreed penalty at a rate of 5% per annum of the overdue amounts as of the date of default until the full payment under Item 4 to the relevant employment contract*
4. *To order the [Club] to pay the [Player] a legal interest at the rate of 5% per annum of the overdue amounts, as of the date of default until the effective payment”.*

10. On 11 September 2022, the Club submitted its reply to the claim, whereby it acknowledged its debt towards the Player. However, the Club argued that the applicable interest should start to accrue as from “*the date of the judgement*”.

11. In a decision dated 13 October 2022, the DRC partially accepted the Player’s claim based upon the following considerations:

- The Club acknowledged that it was liable to pay to the Player EUR 137,499. This amount corresponds to the outstanding salaries for the months of April, May and June 2022 and has never been remitted to the Player. This amount “*should be awarded in line with the general legal principle pacta sunt servanda*”.
- “*In addition, taking into consideration the player’s request as well as the constant practice of the DRC in this regard, the latter decided to award the player interest at the rate of 5% p.a. on the outstanding amounts as from each respective due date (i.e. the first day of each subsequent month) until the date of effective payment*”.
- Contrary to the Player’s assertion, the Employment Contract does not contain a penalty clause requiring the Club to pay a compensation of 5% *per annum* of the outstanding amounts.
- The requirements of Article 12bis of the applicable Regulations on the Status and transfer of Players (“RSTP”) were met, giving the DRC the “*competence to impose sanctions on the club. On account of the above and bearing in mind that the club is a repeat offender, the DRC decided to impose a fine on the club in accordance with article 12bis par. 4 lit. c) [RSTP]. [...] Furthermore, the DRC regarded a fine amounting to USD 25,000 as appropriate and hence decided to impose said fine on the club. [...] In this connection, the Chamber wished to highlight that a repeated offence will be considered as an aggravating circumstance and lead to more severe penalty in accordance with article 12bis par. 6 [RSTP]*”.

12. As a result, on 13 October 2022, the DRC issued the following decision (with emphasis):

“[...]”

1. *The claim of the [Player] is partially accepted.*
2. *The [Club] has to pay to the [Player] the following amount(s):*
 - *EUR 45,833 net as outstanding remuneration plus 5% interest p.a. as from 1 May 2022 until the date of effective payment;*
 - *EUR 45,833 net as outstanding remuneration plus 5% interest p.a. as from 1 June 2022 until the date of effective payment; and*
 - *EUR 45,833 net as outstanding remuneration plus 5% interest p.a. as from 1 July 2022 until the date of effective payment.*
3. *Any further claims of the [Player] are rejected.*
4. *Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.*
5. *Pursuant to art. 24 [RSTP], if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:*
 1. *The [Club] shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods*
 2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*
6. *The consequences **shall only be enforced at the request of the [Player]** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*
7. *The [Club] is ordered to pay a fine of **USD 25,000** to FIFA **within 30 days** of the notification of this decision. [...]*
8. *This decision is rendered without costs”.*

13. On 1 November 2022, the Club and the Player were notified of the decision issued by the DRC (the “Appealed Decision”).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 22 November 2022, the Club lodged its Statement of Appeal with the Court of Arbitration for Sport (“CAS”) against the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”).
15. On 23 November 2022, the CAS Court Office acknowledged receipt of the Club’s Statement of Appeal and of its payment of the CAS Court Office fee. It invited the Respondents to comment within five days on the Club’s request to refer the present matter to a sole arbitrator. With this respect, the Respondents’ attention was drawn to the fact that in the absence of an

answer or in case of disagreement, it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide the issue, taking into account the circumstances of the case, in accordance with Article R50 of the Code. The Respondents were also required to state within three days whether they accepted the Club's petition for a 10-day extension of its deadline to file its Appeal Brief.

16. Whereas the Player did not answer to the letter of the CAS Court Office of 23 November 2022, on 24 November 2022, FIFA informed the CAS Court Office that it did not object to the Club's application for an extension of the deadline to file its Appeal Brief and agreed to refer the present matter to a sole arbitrator, "*as long as he/she is selected from the football list*".
17. On 7 December 2022, the CAS Court Office informed the Parties that the Club's time to file its Appeal Brief was extended by 10 days and that the President of the CAS Appeals Arbitration Division had decided to refer the present matter to a sole arbitrator.
18. On 16 December 2022, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had appointed Mr Patrick Grandjean, Attorney-at-law, Belmont, Switzerland as Sole Arbitrator.
19. On 22 December 2022 and within the extended time-limit, the Club filed its Appeal Brief in accordance with Article R51 of the Code.
20. On 23 January 2023, the Player filed his Answer in accordance with Article R55 CAS Code.
21. On 6 February 2023 and within the extended time-limit, FIFA filed its Answer in accordance with Article R55 CAS Code.
22. On 7 February 2023, the CAS Court Office invited the Parties to state by 14 February 2023 whether their preference was for a hearing to be held in the present matter.
23. Within the granted deadline, the Respondents confirmed to the CAS Court Office that they preferred for the matter to be decided solely on the basis of the Parties' written submissions, whereas the Club requested that a hearing to be held.
24. On 20 February 2023, the CAS Court Office informed the Parties that the Sole Arbitrator had decided not to hold a hearing and sent them the Order of Procedure which was returned duly signed by the Respondents on 20 February 2023 and by the Club on 27 February 2023, without reserves.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

25. In its Statement of Appeal, the Club submitted the following requests for relief (with emphasis):

"The [Club] requests the Honorable Panel, as follows:

1. *To accept this appeal against the Decision of the FIFA decision that was passed in Zurich on the 13 October 2022 and notified to the parties with Grounds on 01 November 2022.*
2. ***To adopt an award annulling said decision and declaring that:***
 - 2.1. *The First Respondent isn't entitled to any amounts;*
 - 2.2. *To annul and cancel the Second Respondent's imposed fine of USD 25,000.*
 - 2.3. *To condemn the First Respondent to the payment of the whole CAS administration costs and the Arbitrator's fees.*
 - 2.4. *Awarding any such other relief as the Panel may deem necessary or appropriate".*

26. The submissions of the Club are reported below:

- *"[The] factual background of the case at stake is exceptionally straightforward".*
- *"It is undisputed that the Club paid to the Player all his financial dues until the end of March 2021 / 22. [...] As a gesture of the Club's good faith and intention to keep its relationship with the Player good and respectful until the very end, the club admits to pay him the 3 months installment (April, May, June)".*
- *"[In] case the court admitted the 5% interest, we claim that the due date takes consideration from the date of the judgment".*

27. No other submissions have been made by the Club in its Appeal Brief.

B. The Respondents

a) The Player

28. The Player submitted the following requests for relief:

"In light of the above, the Player herein respectfully requests the Court of Arbitration for Sport to rule as follows:

1. *To dismiss the Appeal filed by the Club against the Player & FIFA with respect to the Decision passed by the Dispute Resolution Chamber of the FIFA Football Tribunal on the 13th of October 2022 with the reference No. FPSD-7047, communicated to the Parties with grounds on the 1st of November 2022;*
2. *To confirm the Decision passed by the Dispute Resolution Chamber of the FIFA Football Tribunal on the 13th of October 2022 with the reference No. FPSD-7047, communicated to the Parties with grounds on the 1st of November 2022;*
3. *To condemn the Appellant to the payment of the whole CAS administration cost and the Arbitrators fees; and*
4. *To fix a sum of 20,000 CHF to be paid by the Appellant to the Player to help the payment of his legal fees covering the costs of its legal representation in front of the Court of Arbitration for Sport".*

29. The submissions of the Player, in essence, may be summarized as follows:

- In these arbitral proceedings, the Club has admitted that it had to pay EUR 137,499 to the Player and failed to submit any argument seeking to reduce the fine imposed upon it by the DRC. In these circumstances, it is clear that the only reason for the appeal is to delay the execution of the Appealed Decision.
- The Club has acted in a similar way in at least one other case.
- The Club failed to comply with its financial obligations towards the Player, in breach of the Employment Contract and of the *pacta sunt servanda* principle, recognized by the well-established jurisprudence of the CAS as well as of the DRC and implemented in Article 12bis RSTP.
- The Player has put the Club on notice to pay his outstanding wages in accordance with the terms of the Employment Contract and of Article 12bis RSTP. *“Consequently, the Player is entitled to receive from the Club the outstanding salaries (overdue payables) plus corresponding default interest”*, which begins to accrue from the first day following the end of each month for which the salary fell due.
- The fine imposed upon the Club is a direct consequence of its failure to comply with the Employment Contract. *“In the case at hand, the sanction imposed on the Appellant is neither evidently, nor grossly disproportionate to the offence of the Club, who failed to comply with its financial obligations towards the Player. Moreover, the Club is a constant offender, as established by the FIFA DRC (and not challenged by the Club)”*.

b) FIFA

30. FIFA submitted the following requests for relief:

“Based on the foregoing, FIFA respectfully requests CAS to issue an award on the merits:

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

31. The submissions of FIFA, in essence, may be summarized as follows:

- The Club’s line of defence is contradictory and difficult to follow as, on the one hand, it *“admits to pay [the Player] the 3 months installment (April, May, June)”* but, on the other hand, it requests the CAS to establish that the Player *“isn’t entitled to any amounts”*.
- In view of the Club's acknowledgement of its debt and the absence of any argument or evidence that the Player is not entitled to his wages, the Club is liable for the payment of the amounts set out in the Appealed Decision.

- *“According to FIFA and CAS jurisprudence (based on Swiss law), when a deadline for performance of the obligation has been set by agreement, the obligor is automatically in default after such deadline expires. Therefore, the default interest shall be accrued from the day after the instalment became due”.* The DRC correctly held that the calculation of the contractually agreed interest payment of 5% must be made from the day following the due date of each unpaid monthly salary.
- The Club simply asks the CAS to *“annul and cancel the [...] imposed fine of USD 25,000”*, without supporting its request with any argument or evidence. In the case at hand, the requirements of Article 12bis RSTP were met and the DRC correctly imposed a disciplinary sanction upon the Club in accordance with the terms of Article 12bis (4) RSTP. The DRC has full discretion to impose one of the sanctions provided for in this provision and, considering the specific circumstances of the matter at hand, it rightfully decided to impose a fine of USD 25,000.
- The sanction imposed upon the Club is proportionate and justified in light of the Club’s failure to comply with its financial obligations towards the Player. *“The [Club] has not contested the proportionality of the fine and, therefore, it shall be confirmed by the Sole Arbitrator”.* *“Moreover, [...] the fine imposed on the [Club] is also adequate considering that the Club is a repeated offender (a fact not contested by the [Club]), which is an aggravating circumstance and leads to a more severe penalty under Article 12bis (6) RSTP”.*

V. JURISDICTION

32. The jurisdiction of the CAS, which is not disputed, derives from Articles 56 et seq. of the applicable FIFA Statutes and Article R47 of the Code. It is further confirmed by Clause 9 of the Employment Contract as well as by the Order of Procedure duly signed by the Parties.
33. It follows that the CAS has jurisdiction to decide on the present dispute.
34. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

VI. ADMISSIBILITY

35. The appeal is admissible as the Club submitted it within the deadline provided by Article R49 of the Code as well as by Article 57 (1) of the applicable FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code.

VII. APPLICABLE LAW

36. Article R58 of the Code provides the following:

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

37. Pursuant to Article 56 (2) of the applicable FIFA Statutes, “[t]he provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.
38. In accordance with Clause 9 (2) of the Employment Contract, “This Contract shall be governed by and construed in accordance with the FIFA Regulations. [...] The FIFA and the CAS shall determine the dispute in accordance with the FIFA Regulations”.
39. As a result and in light of the foregoing, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply complementarily, whenever warranted.
40. The present case was submitted to FIFA on 12 August 2022, *i.e.* after 31 March 2022 and 1 July 2022, which are the dates when the FIFA Statutes, edition May 2022, and the RSTP, edition July 2022, came into force.
41. These are the editions of the rules and regulations, which the Sole Arbitrator will rely on to adjudicate this case.

VIII. MERITS

42. The peculiarity of the case lies in the fact that the Club has challenged the findings of the Appealed Decision with very few reasoned arguments, made contradictory submissions and adduced little evidence in support of its position.
43. On the basis of the Club's requests for relief, the issues to be decided by the Sole Arbitrator are:
 - A. Is the Player entitled to the payment of wages for the months of April, May and June 2022 and, if yes, what amount is due?
 - B. What is the applicable interest rate in case of late payment and when does interest begin to accrue?
 - C. Is there any reason to rescind or reduce the disciplinary sanction imposed by the DRC on the Club?
44. The Sole Arbitrator will address these issues in turn below.

A. Is the Player entitled to the payment of wages for the months of April, May and June 2022 and, if yes, what amount is due?

45. In the event of a dispute, the judge is bound by the contract validly entered into by the parties, even if he finds the result surprising or shocking (TERCIER/PICHONNAZ, *Le droit des obligations*, 6th ed. N° 1011, p. 236). He will primarily seek to enforce the parties' intention and make sure not to substitute his own views for that of the parties' (ATF 133 III 201 consid. 5.2 and 5.4). According to the principle *pacta sunt servanda*, the terms of the contract must in principle be respected. However, the contract can be amended by the judge when the circumstances under which it was concluded have changed to such an extent that the continuation of the contract cannot be required. Such an intervention by the judge must remain an exception and is acceptable only if subsequent, unforeseen and inevitable circumstances result in an obvious disproportion between performance and consideration that would make one party's insistence on its claim seem abusive (WINIGER B., in *Commentaire Romand*, 2nd ed., no 193 ad Art. 18 CO and references, p. 175).
46. On 12 August 2022, the Player lodged a claim before FIFA requesting from the DRC to order the Club to pay in his favour an amount of EUR 137,499, corresponding to the aggregate of the monthly salaries for April, May and June 2022.
47. In the present case, the Club and the Player were bound by a fix-term Employment Contract, valid as from as from 30 September 2020 until 30 June 2022. Pursuant to Clause 4 of this document, they agreed that *"In the second-year season 2021/2022, [...] the total value is (550.000 euros) [...] divided as salaries on the 12 months of the second season (45,833 euros x 12 months) Due at the end of each month starting from July 2021"*. According to this provision, these amounts *"are understood to be net"*.
48. It is not disputed that after March 2022, the Club stopped paying the Player his wages. None of the Parties has alleged or even suggested that the employment relationship between the Club and the Player had been terminated or expired before its contractually agreed term or that it was somehow null or void. On the contrary, before the DRC as well as before the CAS, the Club expressly confirmed that it *"admits to pay [the Player] the 3 months installment (April, May, June)"*.
49. In these circumstances, the Sole Arbitrator does not see any reason to deviate from the clear terms of the Employment Contract and concludes that the Player is entitled to the payment of his wages for the months of April, May and June 2022. Bearing in mind that the contractually agreed monthly salary is EUR 45,833, the Club is liable to pay to the Player EUR 137,499 (= 3 x EUR 45,833).

B. What is the applicable interest rate in case of late payment and when does interest begin to accrue?

50. In its Appeal Brief, the Club submitted that *"in case the court admitted the 5% interest, we claim that the due date takes consideration from the date of the judgment"*. It filed the very same submission before

the DRC. It is therefore not clear what “*judgment*” the Club actually refers to. Is it the date of notification of the Appealed Decision, or of the award to be issued by the CAS? In any event, the Club has not explained on what basis the interest should accrue as from “*the date of the judgement*”.

51. With respect to the payment of default interest, the question is not governed by FIFA Regulations and, if needed, must therefore be assessed according to Swiss law.
52. However, in the case at hand and pursuant to Clause 4 of the Employment Contract, the Club and the Player have expressly agreed that “[i]n the event [the Club] fails to comply with the payment of any of the aforementioned instalment within the agreed deadline, [the Player] will send a 15-days default notice to [the Club]. In the event [the Club] does not comply with said payment within the 15 days deadline granted, default interest at a rate of 5% per annum will apply as from the agreed deadline until the effective date of payment”.
53. Furthermore and in accordance with the same provision of the Employment Contract, it was agreed that the due date for the payment of each monthly salary was “*at the end of each month*”.
54. The system of interest payments agreed upon by the Club and the Player is similar to that implemented in Swiss law, the relevant provisions of which are the following:

“Article 73 of the Swiss Code of Obligations (“CO”)

¹ Where an obligation involves the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5% per annum.

² Public law provisions governing abusive interest charges are not affected.

Article 104 CO

¹ A debtor in default on payment of a pecuniary debt must pay default interest of 5% per annum even where a lower rate of interest was stipulated by contract.

² Where the contract envisages a rate of interest higher than 5%, whether directly or by agreement of a periodic bank commission, such higher rate of interest may also be applied while the debtor remains in default”.

55. It is undisputed that the Player put the Club in default of payment of EUR 137,499 net for the salaries of April, May, and June 2022, setting a 15-day deadline to comply with its financial obligations. The requirements of Clause 4 of the Employment Contract were met and a “*default interest at a rate of 5% per annum will apply as from the agreed deadline*”, i.e. “*as from the end of each month*”.
56. The DRC awarded the Player interest at the rate of 5% *per annum* on the outstanding amounts as from the first day following the end of each month for which the salary was outstanding. However and given the wording of Clause 4 of the Employment Contract, it is questionable whether the default interest should start to accrue as from the end of each month for which the salary is outstanding (“*default interest [...] will apply as from the agreed deadline*”; i.e. the end of the month). This interpretation of Clause 4 would be less favourable to the Club as it would set the *dies a quo* of the default interest one day earlier than the one determined in the Appealed

Decision. However, this issue can remain unresolved as it could only be addressed in the presence of a counterclaim, which none of the Respondents has filed. On the contrary, the Player as well as FIFA agreed with the *dies a quo* set by the DRC, the decision of which must therefore be confirmed in this respect.

C. Is there any reason to rescind or reduce the disciplinary sanction imposed by the DRC on the Club?

57. The DRC fined the Club USD 25,000 for non-payment of the Player's wages.

58. In its Appeal Brief, the Club requests from the CAS "To cancel the FIFA's imposed fine of USD 25,000". However, in its written submissions the Club did not advance and argue any reasons justifying a partial or total reduction of the sanction imposed on it by the DRC: the Club's submission are completely silent in this respect.

59. Article 12 bis RSTP states the following:

"12bis Overdue payables

1.

Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements.

2.

Any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned in accordance with paragraph 4 below.

3.

In order for a club to be considered to have overdue payables in the sense of the present article, the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s).

4.

Within the scope of its jurisdiction (cf. article 22 to 24), the Football Tribunal may impose the following sanctions:

a) a warning;

b) a reprimand;

c) a fine;

d) a ban from registering any new players, either nationally or internationally, for one or two entire and consecutive registration periods.

5.

The sanctions provided for in paragraph 4 above may be applied cumulatively.

6.

A repeated offence will be considered an aggravating circumstance and lead to a more severe penalty. [...]”.

60. As put forward by the FIFA Commentary on the Regulations on the Status and Transfer of Players, Edition 2021 (the “FIFA Commentary”), this provision is one of the measures foreseen by the RSTP to protect contractual stability between professional players and clubs. For Article 12bis RSTP to be applicable, several cumulative requirements must be met: *“The sum involved must have been overdue for at least 30 days. Once this period has elapsed, the creditor must proceed to provide the debtor club with written notice that it is in default. The only requirements pertaining to this notice are that the payment must be 30 days overdue before it can be issued, and that the notice must set a deadline of at least a further 10 days for the debtor club to comply with its financial obligations. Only once notification and the extended deadline have been served on the debtor club will the creditor club or player be owed payables that are overdue within the meaning of the article. Effectively, therefore, the debt must ultimately be at least 40 days (30 days overdue plus 10 days for compliance) overdue before an article 12bis claim can be lodged”* (FIFA Commentary, ad Art. 12bis, lit. d).
61. In the present case, it is undisputed that the Club failed to pay the Player the salaries for April, May and June 2022. On 5 July 2022, the Player put the Club in default of payment of EUR 137,499, corresponding to his unpaid wages and “[granted] *the Club a deadline of 15 (fifteen) days to fully comply with its financial obligations*”. The Player lodged his claim before the DRC on 12 August 2022.
62. Based on the foregoing, the Sole Arbitrator finds that all the cumulative requirements set out in Article 12bis RSTP were met. This provision is therefore applicable and gives the DRC the authority to impose a disciplinary sanction on the Club. In its Appealed Decision, the DRC considered that the Club was a “repeat offender”, which was an aggravating circumstance, leading to a more severe penalty in accordance with Article 12bis par. 6 RSTP. Under the specific circumstances of the case, the DRC found that a fine amounting to USD 25,000 was appropriate.
63. It must be observed that, neither in its Statement of Appeal nor in its Appeal Brief, the Club has challenged the findings of the DRC that it was a “repeat offender” or that the fine was proportionate or justified.
64. According to the principle of the association’s autonomy, under Swiss law, the right of associations to impose sanctions or disciplinary measures on clubs is the expression of the freedom of associations and federations to regulate themselves (CAS 2019/A/6278 para. 46; CAS 2008/A/1583 & 1584 para. 41 and references; CAS 2005/C/976 & 986, para. 125). Under these circumstances, significant deference must be given to the autonomy of the sporting association, the decision of which must be subject to review only in cases such as arbitrariness, misuse of discretionary power, discrimination, breach of any relevant mandatory legal principle or if the decision entails a violation of the federation’s own statutes and rules (among several cases CAS 2020/A/7090; CAS 2018/A/5888). The Sole Arbitrator concurs with the finding of another CAS Panel according to which “[a] mere disagreement of CAS panels with the level of sanction(s) imposed does not suffice, in and of itself, to undo a decision of disciplinary nature. CAS panels must satisfy

themselves that the sanction(s) are evidently and grossly disproportionate to the offence, before proceeding to rescind the sanction(s) imposed” (CAS 2019/A/6345 as quoted in CAS Bulletin 2022/02 p. 41).

65. In the matter at hand, the Sole Arbitrator finds that the Appealed Decision was neither abusive nor arbitrary, nor does he find that the DRC exceeded the margin of discretion accorded to it by the applicable regulations. At no moment has the Club claimed or established the contrary.
66. Under these circumstances, the Sole Arbitrator sees no reason to rescind or reduce the disciplinary sanction imposed by the DRC on the Club.

D. Conclusion

67. In light of the foregoing considerations, the Sole Arbitrator comes to the conclusion that the appeal of the Club must be dismissed and the Appealed Decision must be upheld in its entirety.
68. The above findings make it unnecessary for the Sole Arbitrator to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Al Batin Football Club against the decision issued by the FIFA Dispute Resolution Chamber on 13 October 2022 is dismissed.
2. The decision issued by the FIFA Dispute Resolution Chamber on 13 October 2022 is upheld.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.