Arbitration CAS 2013/A/3436 UMM Salal Sport Club v. Mario Melchiot, award of 23 December 2014

Panel: Mr Ian Forrester QC (United Kingdom), President; Mr Bernard Hanotiau (Belgium); Prof. Michael Geistlinger (Austria)

Football
Termination of employment contract
Validity of player's employment contract with a club not depending on continuous health status of player
No unilateral termination nor termination with just cause of employment contract of professional football player who becomes permanently unable to play professional football
No just cause for termination of employment contract
Scope of review of the CAS

1. **It can be clearly concluded from article 18 (4) of the Regulations on the Status and Transfer of Players ("RSTP") that the validity of an employment contract cannot be made subject to a player passing a continually successful medical examination. Hence, a club is prohibited from inserting an express provision to this effect into the employment contract with a player, from subsequently reading a provision of this kind into the employment contract or from claiming that the player's subsequent negative medical status entitles it to terminate the contract. As a result, the FIFA regime places clubs under a duty to undertake all necessary research regarding the health of a player they intend to contract. A player must undergo any medical examinations requested by a club in the course of the employment negotiations and must also supply that club with all the necessary information and documents to facilitate any inquiries by the club as regards his medical status.**

2. **Article 18 (4) RSTP does not directly address the situation of a player who is injured or unwell during the course of his employment. Nevertheless, the rationale underlying article 18 (4) RSTP is relevant throughout the employment relationship between a club and a player. Therefore, an employment contract cannot either terminate automatically or be terminated unilaterally with just cause on the basis that a player is found, after the contract of employment has been signed, permanently unable to continue his professional career. Neither does the employment relationship end because of a serious injury, or incapacity - irrespective of the origin or source of such event - nor do the duties of the parties end upon such an event. Rather clubs may choose to take out insurance in relation to unforeseeable situations relating to a player's health, precisely because of the risk of injury inherent in the professional life of a valuable player. The fact that a club may not terminate an employment agreement prematurely with just cause due to the subsequent emergence of a medical condition or serious injury of a player is irrespective of whether such condition was detectable prior to the conclusion of the agreement or only arose at a later stage. Under such circumstances the contract can, in**

accordance with article 13 RSTP, only be terminated upon expiry of the agreed term or by mutual agreement of the parties.

3. **An absence of 5 days by a professional football player from his club/his obligations, even if supported by documentary evidence, cannot be considered a just cause to terminate a contract, particularly not without any previous warning. Only a breach or misconduct which is of a certain severity justifies termination of a contract without prior warning, a premature termination of an employment contract can always only be an *ultima ratio*.**

4. **The competence of the CAS extends only so far as the scope of the appellant's pleas. If a respondent requests in its answer that the CAS makes a *de novo* ruling and awards more than the amount of compensation awarded by the first instance body, that request must be deemed as a counterclaim and accordingly must be found inadmissible in light of the amendment to the 2010 CAS Code providing that counterclaims are not admissible anymore. In the absence of a cross-appeal, and even if the CAS panel deems the amount of compensation due to the respondent to be higher than the amount awarded by the first instance body, only that latter amount can thus be awarded.**

I. THE PARTIES

1. UMM Salal Sport Club (hereinafter the "Appellant" or the "Club") is a professional Football Club located in Doha, Qatar, and registered with the Qatari Football Association.

2. Mr. Mario Dino Patrick Melchiot (hereinafter the "Respondent" or the "Player") is a former Dutch professional football player who entered into an employment contract with the Appellant on 25 June 2010 for the period 1 July 2010 until 31 May 2012 (hereinafter the "Contract").

II. FACTUAL BACKGROUND

3. The background facts stated below are a summary of the main relevant facts, as established on the basis of the parties' written submissions and the evidence examined in the course of the proceedings. The Panel has also considered facts that emerged from the examination carried out by the FIFA DRC. In this Award, the Panel refers to the submissions and evidence it considers necessary to explain its reasoning.

4. Throughout his career, the Player had a heart condition which manifested itself in an abnormal electrocardiogram. Nevertheless he has played for several internationally-renowned clubs, such as AFC Ajax Amsterdam, Chelsea FC, Birmingham FC, Stade Rennes and Wigan Athletic. At the hearing before the CAS, the Player's agent, Mr. Sigi Lens, stated that throughout his seventeen (17) years negotiating on behalf of the Player, he informed every club of his heart condition. The Player further alleged that, following the extensive, pre-contractual medical

examinations carried out by his former clubs, a club never refrained from signing him due to his medical condition.

5. Although only one set of medical tests had always been sufficient to give him the "all-clear" and sign the contract, in the present case, the Player underwent two medical examinations at the request of the Appellant prior to entering into the Contract; one in Qatar on 25 May 2010 and one in London on 27 May 2010.

6. According to the report of the first set of tests carried out in Qatar, the findings of the echocardiographic test were *"consistent with a(n) athletic training"* and the findings of the stress test showed the Player operated within normal stress levels.

7. According to the report of the second set of tests carried out in London, the Player *"showed no signs of cardiomyopathy per se. The limited amount of fibrosis is consistent with a previous episode of myocarditis"*. Overall, as the Player stated, the tests showed that he had no severe abnormalities and was not prevented from playing professional football due to his heart condition or any other health concerns.

8. In addition to undergoing these tests, the Player alleged – albeit without providing evidence to support his contention and contrary to what was suggested on behalf of the Appellant – that he provided his complete medical dossier to the Club. At the hearing before the CAS, the Player said he believes the Club asked two of his former clubs, Stade Rennes and Wigan Athletic, for his medical file.

9. In any event, the Player stated that during the first set of medical tests at Aspetar in Qatar the attending doctors had his medical file from Wigan Athletic and that he rang Wigan Athletic from the hospital to make sure that contact in relation to his medical situation had been made. Moreover, the Player stated that during the second set of medical tests in London, the attending doctor, Mr. Passat, number one in the world according to Qatar, had the "Bolton report" and said that, based on all medical reports, there was no reason why he could not play. The Player and his witnesses stated that there was no concealment of his medical story. The Panel finds the Player's account convincing and credible.

10. On 25 June 2010, the parties entered into the Contract for the period 1 July 2010 until 31 May 2012. Under the Contract, the Player was under the usual obligations in employment contracts of this kind, *inter alia* an obligation to participate in all club games and to practice in trainings and an obligation to undergo athletic and therapeutic measures ordered by the person duly authorised by the Club.

11. The Club was, according to Article IV of the Contract, under an obligation to remunerate the Player in accordance with the Schedule. Article IV para. 1 second sentence states: *"In the event of any dispute the remuneration set out in the Schedule shall be conclusively deemed to be the full entitlement of the player"*.

12. The Player's remuneration set out in the Schedule to the Contract was as follows:

> *"(a) Total amount*
>
> *2.600.000 € Euro = (Two Million Six hundred thousand € Euro Only).*

for the first season:

1.300.000 € Euro = (one Million Three Hundred Thousand € Euro Only).

Provider contract 30% (390.000 € Euro Only)

70% (910.000 € Euro Only) Divided by Monthly Salary (from 1/8/2010 to 31/5/2011) 91.000 € Euro Only for every Month.

for the second season:

1.300.000 € Euro = (one Million Three Hundred Thousand € Euro Only).

Provider contract 30% (390.000 € Euro Only)

70% (910.000 € Euro Only) Divided by Monthly Salary (from 1/8/2011 to 31/5/2012) 91.000 € Euro Only for every Month".

13. As regards sickness and accidents, Article VII of the Contract states as follows:

"Article VII Sickness and Accident

1. *Any incapacity or sickness shall be reported by the Player to the Club immediately and the Club shall keep a record of any incapacity. The Player shall submit promptly to such medical and dental examinations as the Club may reasonably require and shall undergo, at no expense to himself, such treatment as may be prescribed by the medical and dental adviser of the Club in order to restore the Player to fitness. The Club shall arrange promptly such prescribed treatment and shall ensure that such treatment is undertaken and completed without expense to the Player.*

2. *In the event that the Player shall become incapacitated by reason of sickness or injury for a period smaller than three months the Club shall continue to pay to the Player the All Amount.*

…

The Player must be insured by the Club against sickness and accidents. Insurance must include coverage for any matches and training sessions with national representative teams in accordance with FIFA's regulations governing this matter. Any supplementary insurance is at the Player's expense".

14. As regards the Player's permanent inability to play, the Contract states as follows:

"Article VIII Permanent Inability to Play

1. *The Club is entitled to insure the Player at its own expense against death or permanent inability to play as the result of an accident or sickness.*

2. *If claims arise in respect of paragraph 1 above, the Player will cede them to the Club, which assumes the transfer of such claims.*

3. *Such insurance can be concluded jointly between the Player and the Club. Claims will be distributed in proportion to the responsibility for payment of the premiums".*

15. As regards the termination of the Contract by the Player or the Club, the Contract states as follows:

> *"Article X Termination by the Club or the Player*
>
> *1. The Club and the Player may terminate this Contract before its expiring term by mutual agreement.*
>
> *2. The Club and the Player shall be entitled to terminate the Contract before its expiring term by fifteen (15) days' notice in writing for just cause according with the FIFA Regulations governing this matter as well as the Law of the State of Qatar.*
>
> *3. When the termination of the Contract is not due to a just cause or a mutual agreement between the Parties concerned, the Club or the Player shall be entitled to receive from the other party in breach of the Contract a compensation for an all amount".*

16. Following the Player's start on 1 July 2010, one medical incident involving the Player is evident from the file. This occurred on 16 September 2010 when the Player lost consciousness for 15-30 seconds. At the hearing before the CAS, the Player said that, after receiving the results of the tests, the attending doctor immediately concluded that the incident had nothing to do with the Player's heart. According to the medical report by Dr. Fathi Qader, the Player is said to have an athletic heart and fainted due to dehydration after diarrhoea. He was advised to rest and resume training after good rehydration and to be reassessed by a cardiologist if the symptoms were to occur again. The Player alleged that, soon after this incident, he resumed his participation in training sessions and matches with the Club.

17. The Appellant alleged further that the Player was repeatedly absent from training sessions from 1 July 2010 until April 2011. However, the Appellant has furnished no evidence to support this contention. This statement is also inconsistent with the Player's statements that until the 16 September 2010 incident he *"participated in the trainings and matches of Umm Salal"* and that in the period after the 16 September 2010 incident he *"undisputedly showed to be in excellent condition"*.

18. On 2 February 2011, the Player was requested to undergo further medical tests at the Aspetar clinic. The Player was given no reason as to why the tests were required. According to the medical report, the echocardiogram data was within normal values and adapted to the level of training. The findings of the stress test showed that the Player was operating under an *"abnormal resting electrocardiogram"* and that *"his normal stress ECG [was] similar to June 2010"*.

19. In April 2011, the Club requested that the Player undergo further medical tests at the Aspetar clinic. At the hearing before the CAS, the Player said he was frustrated by this request, as he *"felt like a guinea pig"*. The Player said he spoke with Sheikh Al Thani, Chairman of the Club, who said that he should not worry about the tests and that he should play in the two upcoming, important games and undergo the tests afterwards.

20. In any event, the Player complied with the Club's request to undergo the medical tests. Two medical tests took place on 7 and 12 April 2011 at the Aspetar clinic and two further medical tests took place on 19 and 25 April 2011 at the CHU Rennes. The final medical report of the Aspetar clinic was issued on 1 May 2011.

a. According to the advice based on the first set of tests dated 7 April 2011, the Player *"does not take part any more in some competition for UMM Salal SC"*.

b. According to the report of the second set of tests dated 12 April 2011, it was recommended that *"Mario* [i.e. the Player] [should] *not participate in any training or games until the completion of all his comprehensive cardiac work-up"*, pending further tests.

c. According to the report of the third set of tests dated 25 April 2011, the Player *"shows an abnormal ECG with arrhythmias during exercise and MRI abnormality reflecting an underlying cardiomyopathy which appears not compatible with competitive sport practice"* and that *"Aspetar International Sports Cardiologist specialist, Prof. Carre's professional opinion is that Mr. Melchiot must be disqualified for football competition participation"*.

d. The summary and recommendations of the report of the fourth set of tests dated 1 May 2011, which takes into account the series of tests carried out in April 2011, states as follows:

*"**Summary***

You present with a long history of an uncommon ECG pattern for an athlete, with an associated family history of sudden death in a brother aged 25. In addition you had an episode of collapse while training associated with a transient loss of consciousness.

MRI confirms a myocardial scar of unknown significance, but your most recent stress ECG reveals significant and pathological rhythm disturbances with high intensity exercise and during recovery.

Genetic testing has been arranged (results pending), but given the current limitations in genetic testing the outcome of these tests will not change the ultimate decision on your competitive football participation.

Recommendation:

Following consideration of the above features and consultation with internationally recognised experts in Sports Cardiology, it is our opinion that you should not participate in competitive football".

21. Upon receipt of this final medical report, a meeting took place between Sheikh Faisi Bin Ahmid Al Thani, Chairman of the Club, and Mr. Albert van Werkhoven, the Player's agent, to discuss the Player's future. At the hearing before the CAS, Mr. van Werkhoven said it was clear that Sheikh Al Thani did not want to pay the Player's salary. Indeed, the Club ceased the payment of the Player's salary from 1 May 2011. At the hearing before the CAS, Mr. van Werkhoven also said that Sheikh Al Thani asked Mr. van Werkhoven to send an email to Mr. Laurent Denis, counsel for the Club, to ask the opinion of the Club.

22. Accordingly, by email dated 1 May 2011, Mr. van Werkhoven wrote to Mr. Denis stating the following:

"This afternoon we had a conversation with Sheik Faisi Ben Ahmid Al Thani about the player Mario Melchiot from Umm Salal.

It appears, concluded by a medical report, the player probably is unable to play any longer for the club since April 2011.

Due to the contract (article V11.2) it is my opinion the club is obliged to pay the salary to the player for a period of three months not without the understanding of article V111.

The sheik asked me to send you this email just to enable you to give your comments today".

23. In reply, by letter dated 1 May 2011, Mr. Laurent Denis, counsel for the Club, replied to Mr. Albert van Werkhoven, the Player's agent, in the following terms, so far as material:

"…On the basis of medical reports established by the institute of world frame ASPETAR (03/04/2011, 07/04/2011, 12/04/2011 and 27/04/2011) and by the Professor François CARRE (in his capacity of expert cardiology elected by his medical staff of ASPETAR) (25.04.2011), it results that after a multitude medical examinations carried out, Mr. MELCHIOT presents of the important cardiac problems so that it is highly and unanimously recommended to Mr. M. MELCHIOT not to more practice football of high level (competition) under penalty of risking heart failure suddenly resulting in death.

WHAT TO THINK ABOUT IT?

1.

The club UMM SALAL SPORTS CLUB is astonished initially that Mr. M. MELCHIOT didn't inform correctly on his health before the conclusion of the contract of employment.

Admittedly, if it rests on a club of football to take all the information necessary and useful relating to the physical conditions of a player of football before concluding a contract of employment, he doesn't remain about it less than the player of football as mentioned must inform with veracity the club of football before engaging.

The club UMM SALAL SPORTS CLUB understands from now on better the repeated absences of Mr. M. MELCHIOT with the trainings since the beginning of the execution of the contract of employment.

…

WHAT TO DO?

The club UMM SALAL SPORTS CLUB has the choice between two different solutions:

1)

To suspend the contract of employment with Mr. M. MELCHIOT in the hope that this last can replay football of high level in the future.

This first solution seems however unrealistic with the unanimous reading of the medical reports concerning Mr. M. MELCHIOT.

2)

To put an end to the contract of employment with Mr. M. MELCHIOT insofar as this last cannot achieve his sporting obligations any more failing on to him and this, by calling upon the case of the absolute necessity (since the health of Mr. M. MELCHIOT is not ascribable with the club UMM SALAL SPORTS CLUB the more so as the club qatari achieved all the duties as a good father of family with respect to Mr. M. MELCHIOT).

This second solution is that of the reason insofar as the club UMM SALAL SPORTS CLUB doesn't want to be responsible for some possible death of Mr. M. MELCHIOT if this last replayed football with the qatari club.

In the case of species, if the club UMM SALAL SPORTS CLUB can legitimately call upon a case of absolute necessity putting an end to the contract of employment without indemnity to pay to Mr. M. MELCHIOT, nevertheless, the club UMM SALAL SPORTS CLUB would agree to meet Mr. M. MELCHIOT to be appropriate for a friendly transaction.

Except holding a contrary position categorically, the club UMM SALAL SPORTS CLUB proposes to meet Mr. M. MELCHIOT to seek an agreement…".

24. After the final medical report on 1 May 2011, the Player alleged he continued to attend team trainings, trained in the fitness centre and joined the rest of the team for lunch. At the hearing before the CAS, the Player also said that he hired a personal trainer in Qatar and trained 4-5 times per week to maintain his fitness level.

25. While the Player has not questioned the soundness of the final medical report of 1 May 2011, as noted in consideration 33 of its decision of the FIFA DRC, the Player stated that in early May 2011 he requested the Club to allow him to undergo further medical tests or to obtain a second medical opinion at an independent Western European Hospital (in particular, to determine whether his cardiac problems were linked to his brother's death in 1996, which the Player considered relevant information). He even offered to pay for this himself. The Player alleged that the Club promised to obtain a second medical opinion, but this never occurred. In any event, the Club alleged that it was under no obligation, contractual or otherwise, to organise for a second medical opinion and that the Player was free at all times to obtain a second medical opinion, but did not do so.

26. Negotiations took place in May 2011. At the hearing before the CAS, Mr. Sigi Lens, the Player's agent, said he was contacted in May 2011 by Sheikh Al Thani. He asked him to come to the Club the following week to negotiate the Player's situation. Mr. Lens said that he was in Qatar with his team from Monday until Thursday, but Sheikh Al Thani came to discuss with the group for one hour only on Thursday. Sheikh Al Thani offered two months' salary as a settlement offer and said there was *"a problem with the fee"*. Mr. Lens said the parties reached no agreement and that, after this encounter, he never heard from Sheikh Al Thani again.

27. According to the Player, in late May 2011, the Club allowed all other players to go on vacation until 6 July 2011, but refused the Player permission to leave the country.

28. Consequently, by letter dated 27 May 2011, Mr. André Brantjes, counsel for the Player, wrote to Mr. Weiss, Legal Counsel of FIFA's Players' Status Committee, stating that, in addition to the main employment dispute between the parties, a related matter had also arisen which required FIFA's intervention. This matter concerned the Club's alleged refusal to allow the Player to leave Qatar to go on vacation. Such vacation is required under Qatari law. Reference was made to Article VI of the employment contract and to the fact that all players of the Club except the Player had been permitted to leave for vacation until 6 July 2011.

29. By letter dated 29 May 2011, Mr. Laurent Denis, counsel for the Club, replied to Mr. Weiss, Legal Counsel of FIFA's Players' Status Committee, copying Mr. André Brantjes, counsel for the Player. In this letter, Mr. Denis stated the following on behalf of the Club:

    a) The Club categorically disputed having taken any steps to prevent the Player from leaving for vacation, as envisaged under Article VI of the employment contract, and allowed the Player to leave Qatar at all times;

    b) The Player's continued presence in Qatar could only be explained by a desire to continue negotiations with the Club in relation to the main employment dispute;

    c) Training would resume on 28 June 2011.

30. By letter dated 31 May 2011, Mr. Brantjes, counsel for the Respondent, wrote to Mr. Weiss, Legal Counsel of FIFA's Players' Status Committee, to inform him that the matter had been resolved between the parties, that the Player would return to Qatar on 27 June 2011 and that the preparation for the upcoming football season would start on 7 July 2011.

31. When the vacation ended, the Club refused to allow the Player to go to France for a training camp. The Player therefore returned to the Club on 7 July 2011 (rather than on 27 June 2011, as per the letter of 31 May 2011). In this regard, the Player alleged that the return date of 28 June 2011 had never been established as a precise date on which the Player should join the team and that the return date of 7 July 2011 was in accordance with the Club's instructions refusing him to go to France for the training camp. By contrast, the Club alleged that in its letter dated 29 May 2011 it specified that training would resume on 28 June 2011 and that this constituted a warning to the Player.

32. By letter dated 27 June 2011, Mr. André Brantjes wrote to Mr. Laurent Denis, counsel for the Club, to note that the parties had failed to agree on termination of the employment contract by mutual consent, and therefore, to notify the Club of the continuing validity of the Contract. Counsel for the Player pointed out that, based on article 18 (4) of the FIFA Regulations on the Status and Transfer of Players, the validity of an employment contract may not be made subject to a medical examination. On behalf of the Player, Mr. Brantjes stated that the Player did not intend to terminate the employment contract. He submitted that the Club continued to be bound by its obligation to pay the Player's salary for April – June 2011 and for the full season 2011-2012. If the Club failed to comply, counsel for the Player would ask FIFA to intervene.

33. By letter dated 6 July 2011, Mr. Laurent Denis, counsel for the Club, wrote to Mr. André Brantjes, counsel for the Player, repeating previous assertions that the Player was under an obligation to disclose his medical condition prior to concluding the employment contract with the Club and that the employment contract was breached by the Player on either of the following dates:

    - In the first place, on 1 May 2011 which was the date of the final medical report attesting the Player's state of permanent incapacity, in which case the club, if necessary, was willing to compensate the Player for April 2011 and an additional two months' remuneration;

- In the alternative, sometime after 1 July 2011 due to his allegedly unjustified absences since that date, in which case the club could agree to pay remuneration from April to June 2011, but reserved the right to request some allowance for the Player's primary breach of contract.

34. Negotiations between the parties continued, without success, until August 2011. The Player remained in Qatar until September 2011 to remain available for negotiations with the Club and to undergo a second medical examination.

35. On 12 August 2011, the Player submitted a Complaint and a Claim to FIFA to intervene. The Club submitted its Response to the Player's Complaint and Claim on 4 September 2011. This was not on file at the CAS.

36. The Player says that he remained in Qatar until the beginning of September 2011 to remain available for negotiations to resolve the dispute and to undergo a second medical examination. By letter dated 20 September 2011, Mr. André Brantjes, counsel for the Player, wrote to Mr. Laurent Denis, counsel for the Club, informing the Club *inter alia* that the Player had decided that he preferred to wait in the Netherlands for the outcome of the FIFA proceedings. The Player would report himself to the Club if he was required to do so and he was fully prepared to undergo any medical exam in Western Europe, preferably in the Netherlands.

III. PROCEEDINGS BEFORE THE FIFA DRC

37. On 12 August 2011, the Player lodged a claim against the Club with the FIFA Dispute Resolution Chamber requesting the following:

a) To order the Club to pay his salary for April, May and August 2011 plus interest;

b) To order the Club to comply with its contractual obligations as of 1 September 2011 including those related to a car and accommodation;

c) To impose a penalty fee of EUR 1,000 per day as long as the contractual violation continues;

d) To order the Club to pay to the Player extrajudicial costs of EUR 10,000 and the costs of the proceedings; and

e) To sanction the Club.

38. In its reply to the Player's claim, the Club referred to its letter dated 6 July 2011 and maintained that, primarily, the employment contract must be considered terminated as of 1 May 2011 due to the Player's permanent incapacity to play football, or, subsidiarily, as of 6 July 2011 due to the Player's absence since 1 July 2011. Due to the alleged breach of Contract on the part of the Player, the Club also submitted a counterclaim in the amount of EUR 500,000, for grounds which were not further specified.

39. In its decision dated 28 June 2013, the FIFA DRC at para. 13 rejected the Club's primary position that the Contract was terminated on 1 May 2011 (i.e. the date on which the final medical

report was issued) on the basis that *"the contract cannot be considered automatically terminated on the date that said medical advice was issued, irrespective of any implications such medical advice may have, and, consequently, the Chamber could not uphold the Respondent/Counter-Claimant's viewpoint"*.

40. Accordingly, the FIFA DRC at para. 15 found that the Contract was terminated by the Club on 6 July 2011, the date on which the Club notified the Player that it considered the Contract to be terminated, and said that the relevant question was whether the Contract had been terminated *"with or without just cause"*.

41. In the first place, the FIFA DRC at para. 16 stated that *"on the basis of art. 18 par. 4 of the Regulations and the Chamber's respective jurisprudence, a club wishing to employ a player has to exercise due diligence and carry out all relevant medical examination prior to entering into an employment contract with a player"*. The FIFA DRC took into account that the Player had been medically cleared prior to the signature of the employment contract.

42. The FIFA DRC then stated at para. 18 that *"an injury or health condition of a player can be no valid reason to cease the payment of a player's remuneration and even less so to terminate an employment contract … it is the club's responsibility to secure the continuation of payment of remuneration in such cases, possibly by means of adequate insurance"*. In that regard, the FIFA DRC also noted that the topic of insurance was explicitly covered in Articles VII and VIII of the employment contract.

43. The FIFA DRC further stated at para. 19 that *"permanent incapacity in itself can be no valid reason to unilaterally terminate an employment contract. However, such specific circumstance will have an effect on the amount of compensation, in the light of the bilateral character of an employment contract and the circumstance that in the event of permanent incapacity to play, a player is no longer in the position to render his services to the club"*.

44. Accordingly, the FIFA DRC at para. 22 found that the employment contract had been terminated on 6 July 2011 without just cause. For the sake of completeness, the FIFA DRC stated that *"a 5 days' absence of a player, even if duly corroborated with relevant documentation, cannot be considered a just cause to terminate a contract, particularly without any warning in this regard … only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning"*.

45. As regards compensation, the FIFA DRC noted the following:

    a. The Club was liable to pay EUR 91,000 to the Player as outstanding compensation for May 2011.

    b. As regards the consequences for the unilateral termination of the Contract without just cause, article 17 para. 1 of the Regulations states that the amount of compensation shall be calculated, unless otherwise stated in the contract, with due consideration of the law of the country concerned, the specificity of sport and other objective criteria, such as the remuneration and other benefits due under the existing contract and/or next contract and the time remaining on the existing contract.

    c. In view of the latter criteria, the FIFA DRC stated that the wording of Article X para. 3 of the Contract – which states that where the termination of a contract is not due to just cause or mutual agreement the Club or the Player shall be entitled to receive from the

other party in breach compensation *"for an all amount"* – was insufficiently clear to serve as a basis for calculating compensation.

d. In view of the other (non-exhaustive) parameters set out in article 17 para. 1 of the Regulations, the amount of EUR 910,000 serves as a basis for the final determination of the amount of compensation, since the Contract was due to run for an additional 10 months until 31 May 2012.

e. Since the Player had not played professional football after the termination of the Contract, he had not been able to mitigate his damages.

f. Based on the medical advice received in May 2011, which *"had not been demonstrated…to be considered erroneous, either in part or in full, or even ambiguous"*, the Player was advised to end his professional career and had not played any professional football since then.

g. The FIFA DRC then stated at para. 34: *"In the event of permanent incapacity to play, the player is obviously prevented from fulfilling his main obligations arising from the employment contract, i.e. to render his services to the club"*. Accordingly, the FIFA DRC deemed compensation in the range of 70-80% of the final amount of compensation to be reasonable and proportionate in the specific case at hand. In view of all the circumstances, the FIFA DRC found that the Club must pay the Player the amount of EUR 670,000 as compensation for breach of contract in the specific case at hand.

46. In sum, the FIFA DRC found that the Club was liable to pay EUR 91,000 as outstanding remuneration for May 2011 and EUR 670,000 as compensation for the unjustified breach of the Contract by the Club, within 30 days from the date of notification of its decision plus 5% interest after the prescribed time limits.

47. Finally, the FIFA DRC rejected the Club's counterclaim in its entirety.

48. On 29 November 2013, the parties were notified of the decision issued by the FIFA DRC (the "Appealed Decision").

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

49. On 15 December 2013, the Club filed its Statement of Appeal with the CAS.

50. On 20 December 2013, the CAS Court Office acknowledged receipt of the Club's statement of appeal, of its payment of the CAS Court Office fee and took note of its nomination of Mr. Bernard Hanotiau as arbitrator.

51. On 23 December 2013, the CAS Court Office granted the Club an extension until 7 January 2014 to file its Appeal Brief, following a request to this effect from the Club on the same day. On the same day the Respondent opposed to the arbitrator nominated by the Appellant and nominated Mr. Michael Geistlinger as Sole Arbitrator.

52. On 7 January 2014, the Club lodged its appeal brief and opposed to the matter to be decided by a Sole Arbitrator. The CAS Court Office by letter dated 8 January 2014 reserved this issue to be decided by the President (or his Deputy) of the CAS Appeals Arbitration Division.

53. On 27 January 2014, the Player filed his statement of defence, which contained a statement of the facts and legal arguments accompanied by supporting documents.

54. On 31 January 2014, the CAS Court Office notified the parties that the Deputy President of the CAS Appeals Arbitration Division had decided that the case would be submitted to a three-member Panel and that the parties were invited to nominate their arbitrators by 7 February 2014.

55. On 25 February 2014, the CAS Court Office informed the parties that the three-member Panel had been constituted as follows: Mr. Ian Forrester QC, attorney-at-law, Brussels, Belgium as President and Mr. Bernard Hanotiau, attorney-at-law, Brussels, Belgium and Prof. Mr. Michael Geistlinger, attorney-at-law, Salzburg, Austria, as Arbitrators.

56. On 5 March 2014, the CAS Court Office informed the parties that the Panel decided to hold a hearing in the matter and would be available on 13 May 2014. The parties were invited to raise objections to the holding of a hearing on this date by 7 March 2014.

57. On 7 March 2014, the Respondent informed the CAS Court Office, by letter, of his availability for a hearing on 13 May 2014. On the same day, the CAS Court Office extended the time limit until 11 March 2014 for the Appellant to inform it of its availability for the hearing.

58. On 13 March 2014, the CAS Court Office, having not received any communication from the Appellant, confirmed the holding of the hearing on 13 May 2014 and requested the parties to provide it with a list of all persons who would attend the hearing by 20 March 2014.

59. On 19 March 2014, the Player provided the CAS Court Office with the names of the witnesses that would appear on his behalf at the hearing on 13 May 2014. The Player asked for special permission for his sister, Ms. Lorraine Melchiot to attend the hearing, even though she was not appearing as a witness in the case. On the same day, the CAS Court Office invited the Club to advise it whether it agreed that Ms. Lorraine Melchiot could attend the hearing as a spectator.

60. On 26 March 2014, the CAS Court Office extended the time limit until 31 March 2014 for the Club to provide its list of persons to attend the hearing.

61. On 23 April 2014, the CAS Court Office confirmed the venue for the hearing on 13 May 2014 and, in view of the letters of 13, 19 and 26 March 2014 that had already been sent to the Club, exceptionally extended the time limit until 25 April 2014 for the Club to provide its list of persons to attend the hearing.

62. On 7 May 2014, the CAS Court Office requested the Parties to sign and return a copy of the Order of Procedure to it by 12 May 2014. On the same day, the CAS Court Office acknowledged receipt of the Player's signed Order of Procedure. Finally, on the same day, the CAS Court Office sent a copy of the Hearing Schedule to the Parties for the hearing on 13 May 2014.

63. The hearing was held on 13 May 2014 at the Lausanne Palace & Spa Hotel in Lausanne, Switzerland. The Panel members were present and assisted by Mr. Christopher Singer, Counsel to the CAS, who substituted Mr. Fabien Cagneux (who himself was unable to attend the hearing), and Mr. Calum Warren, *ad hoc* Clerk.

64. Before the start of the hearing, the Panel learned with surprise that counsel for the Appellant, Mr. Denis, would not attend. Instead, the Panel was informed by Mr. Fabien Hohenauer, attorney-at-law in Lausanne, that he had been sent by Mr. Denis to substitute him on compassionate grounds. Mr. Hohenauer stated that he had not been informed of the nature of the problem which prevented Mr. Denis from attending and that he did not possess a power of attorney empowering him to act. The Panel suspended proceedings to allow Mr. Hohenauer to obtain a power of attorney. Mr. Hohenauer was unable to furnish the Panel with a power of attorney, despite the grant of additional time to contact Brussels and Qatar for clarifications. About two hours were consumed as Mr. Hohenauer sought to clarify his position. The Panel felt unable to allow Mr. Hohenauer to represent the Appellant pursuant to article R30 of the Code.

65. No other persons attended the hearing on behalf of the Appellant.

66. The Respondent was represented by his attorneys, Mr. André Brantjes and Mr. Thomas Geukes Foppen. In addition, the Panel heard evidence from the following persons, who were examined by their attorneys and questioned by the Panel:

    a. Mr. Mario Melchiot, Respondent, who had travelled from California to attend with his sister;

    b. Mr. Sigi Lens, the Respondent's agent;

    c. Mr. Albert van Werkhoven, the Respondent's agent.

67. Each person heard was invited by the President of the Panel to tell the truth subject to the consequences provided by the law.

68. On 14 May 2014, the CAS Court Office wrote to the parties explaining the events that had occurred at the hearing, enclosing a copy of the audio recording of the hearing and requesting the Club to comment on the contents of the letter within 10 days of receipt by courier.

69. On 10 June 2014, the CAS Court Office notified the parties (including the Club directly) that the Appellant's counsel had failed to take delivery of its letter of 14 May 2014 (including its enclosures) and set a new time limit of 20 June 2014 by which time the Club's counsel should pick up the shipment of 14 May 2014 and file its observations (if any) on the audio recording of the hearing (failing which the Club would be considered to have renounced its right to comment).

70. On 23 June 2014, the CAS Court Office notified the parties that its shipment of 14 May 2014 had not been picked up on behalf of the Club and drew the parties' attention to the letter of 23 May 2014, in which the Player's counsel set out its position as regards the procedure.

71. On 29 July 2014, the CAS Court Office notified the parties of the Club's letter of 28 July 2014 informing the Panel that the Appellant would henceforth be represented by Mr. José Duarte Reis, counsel, MRGL abogados, Lisbon, Portugal and requesting the Player to provide comments on the Club's request for a new hearing by 5 August 2014.

72. On 4 August 2014, the CAS Court Office notified the parties of the Player's letter of 1 August 2014 objecting to a new hearing.

73. On 6 August 2014, the CAS Court Office informed the parties that the Appellant's request for a new hearing had been dismissed, but that the Panel, exceptionally, invited the newly-appointed counsel for the Club to file, no later than 13 August 2014, a brief written submission of not more than ten pages, summarizing the core arguments which could have been orally advanced by the Club.

74. On 15 August 2014, the CAS Court Office requested, no later than 19 August 2014 that the Club provide it with proof that the Club sent its written submission within the prescribed deadline of 13 August 2014.

75. On 18 August 2014, the CAS Court Office notified the parties of the Club's letter of 18 August 2014 in which the Club's counsel maintained that it did not receive the CAS Court Office's letter of 13 August 2014. The CAS Court Office attached to its letter of 18 August 2014 fax reports showing delivery of its letter of 6 August 2014.

76. On 20 August 2014, the CAS Court Office notified the parties of the Club's letter dated 19 August 2014 in which the Club's counsel alleged that a technical problem had prevented it from receiving the CAS Court Office's letter of 6 August 2014. The CAS Court Office also informed the parties that the Panel had, again exceptionally, extended the deadline until 22 August 2014 to allow the Club to file a brief submission of not more than ten pages.

77. On 25 August 2014, the CAS Court Office notified the parties of the Club's letter of 22 August 2014 and invited the Player to file its reply to the letter by 27 August 2014. On the same day, the CAS Court Office notified the parties of the Player's letter of the same day in which the Player requested an extension of one week to file its reply.

78. On 26 August 2014, the CAS Court Office notified the parties of the Club's letter of the same day in which the Club agreed with the one-week extension for the Player to file its reply. Accordingly, the CAS Court Office set the deadline for the Player to file its reply to 1 September 2014.

79. On 2 September 2014, the CAS Court Office notified the parties of the Player's reply of 1 September 2014 to the Club's submissions of 22 August 2014.

80. On 28 October 2014, the Panel asked the parties to submit their observations on whether adapting the FIFA DRC decision would be regarded as invoking a correction of an error or whether it would be regarded as acting upon a counterclaim. By letter dated 31 October 2014 the Respondent, and by letter dated 6 November 2014 the Appellant, answered this question.

V. SUBMISSIONS OF THE PARTIES

81. The Appellant submitted the following requests for relief:

"SUBSTANTIALLY MODIFY the decision passed by the FIFA Dispute Resolution Chamber on 28 June 2013 as follows:

PRIMARILY:

As principal issue, the contract of employment between the parties is terminated on First May 2011 as consequence of permanent incapacity of the Respondent (on basis of unanimous reports medical experts).

Consequently, except the outstanding remuneration of April 2011, no compensation is due for the Respondent.

SECONDARILY (IF REQUIRED):

As subsidiary issue, in despite of the warning addressed to the Respondent and in the case of no permanent incapacity after First of May 2011, the Appellant has terminated with just cause the contract of employment.

Consequently, a compensation fixed ex aequo et bono (with reference to art. 17 of FIFA Regulations in force) is due for an amount of € 500,000.00 for settlement by the Respondent to the Appellant.

The sum above-mentioned must be increased by an interest of 5% per annum and this, since the final award to pronounce by CAS until perfect payment.

IN ANY CASE:

REJECT all other claims of the Respondent against the Appellant.

SENTENCE the Respondent to pay all arbitration expenses (including the court office fee).

SENTENCE the Respondent to pay defence costs (and other miscellaneous costs) incurred by the Appellant, which ex aequo et bono amount to CHF 10,000.00".

82. The Appellant's submissions may be summarised as follows:

a. With regard to the Appellant's primary claim that the Contract was terminated as of 1 May 2011:

- While the burden rests on a club to inform itself about a player's physical conditions prior to signing, the player must also disclose all facts known to him and must not deliberately hide important information regarding his health status to his future employer. In the present case, the Player did not hand over his complete medical file prior to signing and has not put forward any evidence to show he did.

- The Player was repeatedly absent at training sessions until April 2011 due to health problems.

- On the basis of the four medical opinions issued in April 2011, the Club cannot allow the Player to continue to practise football.

- Since the Player has not rendered his services since 1 May 2011, he has not been able to fulfil his obligations under the Contract.

b. With regards to the Appellant's secondary claim that the Contract was terminated as of 6 July 2011:

- The Contract was terminated with just cause since the Player returned late from holiday.

- It was clear from the Club's letter dated 29 June 2011 that the Player should arrive back on 28 June 2011, whereas he did not arrive back until 7 July 2011.

- If the short delay (28 June 2011 – 6 July 2011) does not constitute valid termination with just cause, then it should be borne in mind that the Player had not trained with the Club since 1 April 2011 and the resumption of the training sessions was an important time for the Club to prepare for the new season.

83. In his answer, the Player submitted the following requests for relief:

"In light of the above, Melchiot respectfully requests the CAS to decide in a ruling de novo:

a. *To dismiss all claims and counterclaims of Umm Salal in this appeal procedure;*

b. *To determine that Umm Salal has unilaterally terminated the employment agreement of Melchiot without just cause;*

c. *To order Umm Salal to pay the full salary of Melchiot of the month of May 2011, i.e. an amount of € 91.000,- (ninety one thousand euro) net, to be paid within 7 days after the final decision in this case;*

d. *To order Umm Salal to compensate Melchiot for the damages suffered due to the unilateral termination by Umm Salal without just cause, amounting to an amount of € 1.300.000,- (one million three hundred thousand euro) net, equal to the residual value of the Contract, to be paid within 7 days after the final decision in this case;*

e. *To order Umm Salal to compensate Melchiot for the extrajudicial costs of € 15.000,- (excluding VAT) for the procedures before the FIFA DRC and CAS, to be paid within 7 days after final decision in this case;*

f. *To determine that all the amounts due to Melchiot are to be increased with an interest rate of 5% p.a. as per the date on which the respective amounts should have been paid;*

g. *To order Umm Salal to compensate Melchiot for the costs of these proceedings and to bear the arbitration costs".*

84. The Respondent's submissions may be summarised as follows:

a. With regard to the Appellant's primary claim that the Contract was terminated as of 1 May 2011:

- The Club did not explicitly terminate the Contract on 1 May 2011 and, in any case, the termination would be inconsistent with the fact that the Player visited the Club on a regular basis, and that the Club initially refused to let the Player leave Qatar and go on vacation.

- Under FIFA Regulations and FIFA and CAS case law, it is established that a club bears the duty to inform itself of the medical conditions of a player prior to entering into an

employment contract. Under article 8 of the Swiss Civil Code, it is incumbent on the party invoking a just cause to establish the facts founding the just cause. The Club must therefore prove that it did not receive the Player's full medical dossier prior to signing.

- The Club required the Respondent to undergo two medical tests prior to entering into the agreement, because it was aware of the Respondent's heart condition.

b. With regard to the Appellant's secondary claim that the Contract was terminated as of 6 July 2011:

- In its letter of 29 May 2011, which was never received by the Respondent, the Club acknowledged its initial refusal to allow the Respondent to leave for vacation. Contrary to what is claimed by the Appellant, this letter of 29 May 2011 did not contain an official warning and indeed none was ever given.

- By letter dated 31 May 2011, counsel for the Respondent informed the Club that the Respondent would return to Qatar on 27 June 2011 whereas preparation for the new season would start on 7 July 2011.

- The Club prohibited the Respondent from joining a training camp in France at the start of July 2011.

- Even if the Respondent had been required to return on 1 July 2011, the absence of 5 days would not, in accordance with FIFA case law, give just cause to terminate the Contract unilaterally, especially where there was no prior warning.

c. With regard to the damages claimed by the Respondent:

- The Respondent is entitled to the remaining value of his employment contract, in accordance with CAS case law;

- Given that the Club could have insured itself against the Respondent's permanent incapacity to play (in accordance with Articles VII and VIII of the Contract), it cannot be reasonably argued that the Club should not compensate the Player for the residual value of the Contract. In addition, the reference to compensation *"for an all amount"* in Article X of the employment contract should be understood as *"for the whole amount"*.

- Under the employment contract, the Respondent's total salary is EUR 1.3 million, divided into 10 monthly instalments of EUR 91,000 to be paid at the beginning of each month and an amount of EUR 390,000.

VI. ADMISSIBILITY, JURISDICTION AND APPLICABLE LAW

A. Jurisdiction

85. The jurisdiction of the CAS, which is not disputed, derives from article 67 para. 1 of the FIFA Statutes and article R47 of the Code.

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

87. Under article R57 of the Code, the Panel has the full power to review the facts and the law.

B. Admissibility

88. The appeal is admissible as the Appellant submitted it within the deadline provided by both article R49 of the Code and the Appealed Decision. It complies with all the other requirements set forth by article R48 of the Code.

C. The applicable law

89. Article R58 of the Code reads as follows:

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

90. Pursuant to article 62 para. 2 of the 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, being the law of the seat of FIFA".*

VII. MERITS

91. The main issues to be resolved by the Panel in deciding the dispute are the following:

A. Whether the Contract terminated automatically as of 1 May 2011;

B. Whether the Appellant terminated the Contract as of 6 July 2011 and, if yes, whether it did so with just cause;

C. If the Appellant did terminate the Contract with just cause, whether the Appellant is entitled to compensation;

D. If the Appellant did not terminate the Contract with just cause, whether the Respondent is entitled to compensation.

A. Whether the Contract terminated automatically or could have been terminated by the Club with just cause as of 1 May 2011

i. Parties' arguments

92. The Club submitted that the Player must disclose all medical information about himself and must not deliberately hide important information on his health status from his future employer. The Appellant argued that the Player did not hand over his complete medical file prior to signing, thus failing to comply with his duty of candour.

93. The Appellant also relied on a decision of the FIFA Dispute Resolution Chamber of 15 January 2004 to argue that the permanent incapacity of a Player entitled the Club to step out of the Contract.

94. In his answer, the Respondent stated that the Contract was not expressly terminated on 1 May 2011. As regards the argument that the Contract terminated automatically due to the Player's incapacity to work, the Respondent stated that article 18 (4) of the FIFA Regulations on the Status and Transfer of Players (hereinafter "RSTP") prohibits a club from unilaterally terminating an employment agreement due to a player's medical condition. In addition, referring to the FIFA commentary on the RSTP and FIFA and CAS case law (e.g. decision of the FIFA Dispute Resolution Chamber of 12 January 2006), the Respondent emphasised that a club is under the duty to inform itself of the Player's condition. The Respondent submitted that the Club was aware of the Player's heart condition prior to signing the Contract. Finally, the Respondent stated that the Club bore the burden of proof as regards the allegation that the medical dossier was not handed over prior to signing the Contract, and furthermore denied any lack of frankness.

ii. Decision of the FIFA DRC

95. The FIFA Dispute Resolution Chamber held that the Contract was not automatically void from the date of the final medical advice, received by the Player on 1 May 2011, which confirmed his permanent incapacity to play professional football. It held further that, based on article 18 (4) RSTP, the validity of the Contract could not be subjected to a successful medical examination and that permanent incapacity can be no valid reason to unilaterally terminate an employment contract.

iii. Legal principles

96. Given that the same legal principles apply both to the questions of the automatic termination of an employment contract and to the termination with just cause due to the permanent incapacity of a player, the Panel will consider them together.

97. Article 18 (4) of the RSTP, as contained in Chapter IV entitled *"Maintenance of Contractual Stability between Professionals and Clubs"*, reads as follows:

> *"The validity of a contract may not be made subject to a successful medical examination and/or the grant of a work permit".*

98. Moreover, the FIFA Commentary on the RSTP, in relation to article 18 (4) of the RSTP, reads as follows:

> *"5. Medical examinations and work permits*
>
> *1. The validity of an employment contract between a player and a club shall not be made subject to the positive results of a medical examination or to the acquisition of a work permit from the local authorities. Any such conditions that are included in a contract are not recognised and the contract is still valid without the clause. In other words, this means that the new club's failure to respect the contract represents an unconditional breach of contract without just cause.*

2. *The player's prospective club is therefore required to undertake all necessary research and to take all appropriate steps before concluding a contract. Once a contract has been signed, all parties involved can rely in good faith on it being respected and enforced.*

3. *Violations of this provision are linked to negligence by the new club that has not exercised the usual care expected from it in business life. In fact, both the medical examination and the request for a work permit have to be initiated by the new club. The player has to put himself at the club's full disposal and supply the prospective club with all necessary information and documents in order to facilitate these tasks. If the club does not use this diligence when signing a player, it cannot claim afterwards that the failure to fulfil a contract was based on (existing or presumed) injuries or the fact that the player has not received a work permit".*

99. While a club may, to a certain degree, be able to insist on provisions in the contract related to a player's health or fitness to play (for example, by making a portion of the player's salary performance dependent), it is clear from article 18 (4) RSTP that the validity of an employment contract cannot be made subject to the player passing a continually successful medical examination. Hence, a club is prohibited from inserting an express provision to this effect into the employment contract with the Player or from subsequently reading a provision of this kind into the employment contract, or claiming that the player's subsequent negative medical status entitles it to terminate the contract (see, to this effect, CAS 2008/A/1589).

100. As a result, the FIFA regime places the Club under a duty to undertake all necessary research. The Player must undergo any medical examinations requested by the Club and must also supply the Club with all the necessary information and documents to facilitate the Club's inquiries as regards the Player's medical status. The Panel finds no reason to doubt the Player's assertions that his previous medical history had been conveyed to the Club and its medical advisors.

101. Article 18 (4) RSTP does not directly address the situation of a player who is injured or unwell during the course of his employment. Nevertheless, the rationale underlying article 18 (4) RSTP is relevant throughout the employment relationship between the club and the player. Therefore, an employment contract cannot either terminate automatically or be terminated unilaterally with just cause on the basis that a player is found, after the contract of employment has been signed, permanently unable to continue his professional career.

102. The employment relationship does not, in the Panel's view, end because of a serious injury, or incapacity, nor do the duties of the parties end upon such an event. Clubs may choose to take out insurance in relation to unforeseeable situations relating to a player's health, precisely because of the risk of injury inherent in the professional life of a valuable player (see CAS 2008/A/1589, award of 20 February 2009; see also BERNASCONI M. in: Rechtsfragen bei Spieltransfers mit einem besonderen Blick auf die Frage der Gewährleistung, Schutz & Verantwortung, St-Gallen 2007, p. 133 *et seq.*).

103. A club may not terminate an employment agreement prematurely with just cause due to the subsequent emergence of a medical condition or serious injury. This is irrespective of whether such condition was detectable prior to the conclusion of the agreement or arose only at a later stage. In such circumstances, the contract can, in accordance with article 13 RSTP, be terminated only upon expiry of the agreed term or by the mutual agreement of the parties.

iv. The post-hearing submissions of the parties

104. The Panel invited the Appellant's new counsels to submit the core arguments they would have made, had they been present in Lausanne. The Appellant submitted a brief on 22 August 2014. This submission failed to provide any evidence as to the alleged lack of disclosure of the Player's medical condition. The Appellant did not comment on the audio recording of the witness statements. The submission primarily focused on the question whether the termination was with or without just cause.

105. The Appellant drew a distinction between a *"permanent incapacity"* that is the result of *"an injury that took place at a practice or a match"* and one that results from a *"congenital heart disorder"*. The Appellant underlined that *"we are not in the presence of an accident or a professional sickness, subject to an insurance against death or permanent inability to play, but to a previous congenital heart disorder that has nothing to do with the professional player's activity"*. Subsequently, the Appellant referred for the first time in this submission to a new provision of law, article 336 C of the Swiss Contract law Code ("Code des Obligations"), which lists examples of circumstances under which the employer is not allowed to terminate the contract. The Appellant argued that a disability which cannot be attributed to the employer is not included among these examples and drew the conclusion that *"if a worker has a medical problem, not related to his professional activity, which prevents him to do his job, the employer can terminate the contract"*.

106. The Appellant further drew an analogy between the circumstances of the present case and *"the case of a bus driver who becomes blind for a medical problem not related with his activity"*, arguing that in such case *"the contract finishes its effects and the parties are no longer required to provide the obligations to which they are committed. With a football player the legal principal is exactly the same. In the case at stake the Respondent has a heart problem which does not allow him to play football. Thus, the labour contract terminates (by expiry) and nothing more is due between the Parties: neither the Club nor the Player can claim compensation for the end of the contract"*.

107. These clear submissions of the Appellant's core arguments were given careful consideration by the Panel, which rejected the Player's objections to their admissibility.

108. The Panel rejects the proposition that a club is free of any obligation once a player is found unable to play due to injury or incapacity. The employment contract between a football club and a player is governed by special rules set forth in the RSTP. The Panel believes that the origin or cause of the disability does not have an impact on the scope of the employer's obligation once the employment has started.

v. Application of the legal principles to the facts in the present case

109. The Appellant's primary plea is that while the burden rests on a club to inform itself about a player's physical conditions prior to signing, the Player did not comply with his obligation of full disclosure in relation to his medical status. The Club suggested that the Player failed to hand over his complete medical file. The Player has on the contrary explained that his prior clubs were well aware of his condition and that there was no secret about the matter. The Player argued that the burden of proof in this regard rests with the Appellant.

110. As regards the Club's duty to inform itself of the Player's physical conditions, the Panel notes that, in the present case, the Club subjected the Player to two medical examinations in May 2010; one in Qatar on 25 May 2010 and one in London on 27 May 2010.

111. The reports of both medical tests gave the Player the "all clear" and did not advise the Player against playing professional football due to his heart condition or any other reason. Having subjected the Player to two medical examinations, the Club must have thoroughly informed itself of the Player's medical condition prior to signing the Contract.

112. The Club appears to have checked the Player's health rigorously in 2010. Furthermore, as the Respondent submitted in its letter dated 1 September 2014, the findings of the previous internationally known clubs for which the Player had worked form part of his medical dossier, which the Appellant should possess.

113. The Panel finds that it is highly probable that the Player did disclose his full medical details to the Club either prior to signing the Contract or, at the very least, to its medical advisers during the two medical examinations he underwent in May 2010, thereby complying with the obligation incumbent on him under article 18 (4) RSTP (and the Panel also notes the Respondent's assertions based on article 8 of the Swiss Civil Code in this regard). This conclusion is consistent with the Panel's understanding of the way medical examinations of this kind are, or at least should be, conducted. The Panel has heard no evidence which suggests there was any concealment; and the multiplicity of tests undergone by the Player would suggest that the Club considered there was something in need of study.

114. In particular, the Panel notes the following:

    a. The report from the second medical examination in London on 27 May 2010 states under "Indication" that the Player had a *"mild LVH on echo in 2008, but normal in 2010"*, thus implying that the attending doctors had consulted at least some of the Player's previous medical reports. Indeed, the report of the Player's medical examination at the Beaumont Hospital in Bolton on 17 March 2008 states that *"echocardiogram showed mildly hypertrophied left ventricle with interventricular septum at 15mm and left ventricular posterior wall at 13mm"*. This confirms the Player's contentions as to disclosure.

    b. At the hearing before the CAS, the Player informed the Panel that he believed that the Club asked two of his former clubs, Stade Rennes and Wigan Athletic, for his medical file prior to signing the Contract. The Player also said that he believed that the attending doctor for his medical examination in London on 27 May 2010 had a copy of the report from his previous medical examination at the Beaumont Hospital in Bolton (corroborating the Panel's observation above, to a certain degree), and that during that examination he telephoned his former club, Wigan Athletic, from the hospital during the second examination to make sure that contact in relation to his medical situation had been made. The Panel has no reason to disbelieve the Player.

115. In light of the foregoing, the Panel finds that both the Club and the Player discharged the obligations incumbent on them under article 18 (4) RSTP: on the one hand, the Club subjected the Player to two pre-contractual medical examinations; on the other hand, the Player

underwent the medical examinations and ensured that the Club and its medical advisors were aware of his previous medical history. The Panel finds the assertion of attempted concealment to be wholly unsubstantiated.

116. As a result, the Club's subsequent attempt to question the validity of the Contract as a result of the conclusions in its advisors' medical reports in April and May 2011 as to the Player's permanent incapacity to play professional football runs contrary to the protections afforded to players under the FIFA regime (in particular, as reflected in article 18 (4) RSTP) and generally afforded to players as employees under the Swiss Civil Code.

117. The Panel agrees with the FIFA DRC that the circumstance of being diagnosed as permanently unable to play professional football neither results in an automatic termination of an employment agreement nor gives a club a "just cause" or valid reason to terminate an employment agreement unilaterally. As held further by the FIFA DRC, the Club was under a responsibility to secure the continued payment of the Player's salary and could have done so by means of adequate insurance to this end. Indeed, the possibility of insurance had clearly been envisaged by the parties in the Contract in Article VII entitled "Sickness and Accident" and, more importantly, Article VIII entitled "Permanent Inability to Play". The Club's arguments were correctly rejected by the FIFA DRC.

118. The Panel concludes that the Contract did not automatically terminate on 1 May 2011 (the date of the final medical report) due to the Player's permanent incapacity. The circumstance of permanent incapacity did not give the Club a "just cause" to terminate the Contract with the Player prematurely and unilaterally.

B. Whether the Appellant terminated the Contract as of 6 July 2011 and, if yes, whether the Appellant did so with just cause

119. Given the Panel's finding that the Contract did not terminate automatically on 1 May 2011 (the date of the final medical report of the Club's medical advisers), the question remains whether the Appellant terminated the Contract with "just cause" by its letter of 6 July 2011. The Panel has already found that the Player's permanent incapacity to play professional football did not give the Club a "just cause" to terminate the Contract. So the only question that remains is whether, as per the Appellant's secondary claim, the fact that the Player was allegedly absent from the Club for five more days following the date agreed for his return gave the Club "just cause" to terminate the Contract unilaterally and prematurely.

120. As held by the FIFA DRC, an absence of 5 days, even if supported by documentary evidence (not furnished either to the FIFA DRC or to this Panel), cannot be considered a just cause to terminate a contract, particularly without any previous warning. The Panel agrees that only a breach or misconduct which is of a certain severity justifies termination of a contract without prior warning. A premature termination of an employment contract can always only be an *ultima ratio*.

121. In conclusion, the Player's five (5) days' absence, even if they had been credibly proved, was not of such severity that the Club was entitled to terminate the Contract unilaterally and prematurely with "just cause".

122. The Panel makes one final observation on this topic. At the hearing before the CAS, the Player and his advisers speculated that the Club had decided to dispose of certain players at the end of an unsuccessful season. The Player suggested that the Club might have used the Player's negative medical condition as a means of justifying the termination of his employment. Although the medical conclusions from April/May 2011 differed from those in previous examinations, the Panel has received no evidence to cast doubt on the integrity of the medical team conducting the tests in April/May 2011. The number of tests which the Player was asked to undergo at this time seems unusual. Since the Player did not press these arguments, the Panel sees no need to examine the matter any further.

123. Overall, the Panel observes that the Player's treatment during the period from April to September 2011 appears to have been inconsistent with the standards of fairness and transparency which a considerate employer of a talented athlete should have demonstrated.

124. The Panel concludes that the Player's entitlements under the Contract were terminated as of 1 May 2011. The Player was initially prevented from leaving Qatar for vacation and the Player's participation in the training camp in France at the end of June 2011 was cancelled at the last minute.

C. If the Appellant did terminate the Contract with just cause, whether it is entitled to compensation

125. The Panel has concluded that the Appellant did not terminate the Contract with "just cause". Therefore, the Appellant is not entitled to any compensation as a result.

D. If the Appellant did not terminate the Contract with just cause, whether the Respondent is entitled to compensation

126. The Panel has concluded that the Appellant terminated the Contract without "just cause" as from 1 May 2011. The question arises as to what compensation the Respondent is due.

127. Article 17 of the RSTP entitled "Consequences of terminating a contract without just cause" contains the rules applicable in situations when one party has terminated an employment agreement without just cause. Article 17 (1) of the RSTP reads as follows:

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

128. Contrary to the FIFA DRC's views in this regard, the Panel believes that the wording of the clause, which states that compensation *"for an all amount"* is payable in such circumstances, is sufficiently clear for it to be taken into consideration in the determination of the amount of compensation. In particular, the Panel notes the following:

- The phrase "all amount" is not used in isolation in Article X para. 3 of the Contract, but also features in Article VII para. 2, which states that *"in the event that the Player shall become incapacitated by reason of sickness or injury for a period smaller than three months the Club shall continue to pay the Player the All Amount"*. In this context, the phrase "all amount" would also appear to mean "full amount" or "whole amount".

- At the hearing before the CAS, Mr. Sigi Lens, the Player's agent, said that the Club had prepared the Contract and inserted the phrase *"for an all amount"* into Article X para. 3 of the Contract. According to Mr. Lens, the Club said that if the Contract were terminated without just cause, then the other party would get 100% and that the Club inserted this language into the Contract.

- At the hearing before the CAS, Mr. Albert van Werkhoven, the Player's tax advisor, testified that he was present in the negotiations with the Club on behalf of the Player prior to signing. Mr. van Werkhoven stated that the Club told him that the phrase *"for an all amount"* meant *"the rest of the value of the contract"* and that this point was clearly discussed between the parties. Mr. van Werkhoven said that he would have preferred to use more precise language, as is customary in the Netherlands. However, the circumstances prevailed and the Player was forced to sign the Contract *"on the steps of the plane"*, so the Contract could not be amended further.

- At the hearing before the CAS, the Player himself said that the phrase "for an all amount" was explained to him as meaning that if the Contract were terminated without just cause, then the other party would get the *"full amount"* of the remainder of the Contract.

129. The Panel notes that the parties agreed that the Contract would last for two seasons from 1 June 2010 until 31 May 2012. Throughout this period, both parties committed to perform the duties and responsibilities incumbent on them. Where the Contract was terminated without just cause, the parties agreed that the terminating party would pay the other the full value of the remainder of the Contract.

130. The fact that the full value of the remainder of the Contract is payable is also fully consistent with the fact that the parties had agreed in Article VIII para. 1 that *"the Club was entitled to insure the Player at its own expense against death or permanent inability to play as the result of an accident or sickness"*. Thus, the parties have envisaged or contemplated the remedy in such circumstances from the outset.

131. In any event, even if the Panel were to deem the phrase *"for an all amount"* in Article X para. 3 of the Contract to be insufficiently clear, it would be for the Panel to establish appropriate terms under article 17 (1) of the RSTP on which to calculate the level of compensation to the Player. Taking into account the Club's treatment of the Player following his diagnosis in May 2011, the Player's good faith and the Club's harsh treatment of a professional employee who appears to have wished to play to his best, the Panel believes that it would arrive at the same result.

132. As outlined at para. 11 above, the total amount of remuneration set out in the Schedule to the Contract is stated to be EUR 2,600,000, divided in equal parts of EUR 1,300,000 for the first and second season. In turn, each payment of EUR 1,300,000 is implicitly stated to be payable

in two amounts: the Provider contract amount of 30%, namely EUR 390,000 (the due date for payment is unclear); and the remaining 70%, payable in the form of a monthly salary for every month from 1 August until 31 May in instalments of EUR 91,000 in both the first and second seasons. In addition, the Player's remuneration is stated in the Schedule to include specified bonuses on the achievement of specific results, a flat/house, a car and 6 return business-class tickets (Doha-Amsterdam) for the Player and his family.

133. The Panel concludes that the FIFA DRC should have ordered the Appellant to pay a total of EUR 1,391,000 net to the Respondent, which sum should have comprised EUR 91,000 for the month of May 2011 and EUR 1,300,000 for the full second season from 1 August 2011 until 31 May 2012, *i.e.* to include both the Provider contract amount of EUR 390,000 and ten monthly payments of EUR 91,000.

134. However, in line with CAS jurisprudence (see e.g. case CAS 2013/A/3432 at para. 59) the competence of this Court extends only so far as the scope of the Appellant's pleas. The Appellant appealed against the decision of the FIFA DRC to award the Player EUR 91,000 for outstanding remuneration, and EUR 670,000 in respect of compensation for breach of contract. Whilst the Respondent did, in his answer to the Appeal, request that the Court make a ruling *de novo* that the Appellant pay to him the sum of EUR 1,391,000, that request must be deemed as a counterclaim and accordingly must be found to be inadmissible in light of the amendment to article R55 in the 2010 edition of the CAS Code, and the jurisprudence cited above.

135. Thus, in the absence of the Player filing a cross-appeal, this Panel can only uphold the decision of the FIFA DRC and order that the Appellant pay to the Respondent the sum of EUR 761,000 within 30 days as from the date of notification of this decision plus 5 % interest p.a. in case of late payment.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules:

1. The appeal filed by Umm Salal Sport Club on 15 December 2013 against the decision issued by the FIFA Dispute Resolution Chamber on 28 June 2013 is dismissed.

2. The decision issued by the FIFA Dispute Resolution Chamber on 28 June 2013 is confirmed.

(…)

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