Arbitration CAS 2015/A/4217 Zamalek FC v. Ricardo Alves Fernandes, award of 20 September 2016

Panel: Mr Bernhard Welten (Switzerland), President; Mr Mark Hovell (United Kingdom); Prof. Gustavo Abreu (Argentina)

Football
Termination of the employment contract with just cause by the player
Scope of review of the CAS
Compensation for damages
Individual appeal vs counterclaim

1. **According to CAS jurisprudence, a CAS panel is limited to the issues arising out of the appealed decision and cannot decide on the issues not subject to such appealed decision.**

2. **Article 17 para. 1 of the FIFA Regulations for the Status and Transfer of Players closely follows Article 337b of the Swiss Code of Obligations, which grants as compensation to the party not being in breach of the contract an amount corresponding to all claims arising out of the employment relationship, reduced by everything *"which he saved as a consequence of the termination of the employment relationship and which he earned or intentionally failed to earn through other work".* The Panel two financial situations have therefore to be compared in order to determine the compensation: the hypothetical financial situation without the breach of contract and the financial situation as it is following the breach of contract. In principle the party not being in breach of the contract should be restored in the position in which he would have been if the employment contract had been properly fulfilled.**

3. **If a party did not file an appeal against a decision and as counterclaims are no longer admissible under the CAS Code, the CAS panel is bound by the amounts awarded in the decision and cannot award more to the party even if the latter would be entitled to it.**

I. THE PARTIES

1. Zamalek FC (the "Club" or the "Appellant") is a football club with its registered office in Giza, Egypt. It is affiliated to the Egyptian Football Association (the "EFA") which is a member of Federation Internationale de Football Association ("FIFA"). The Club plays in the Egyptian Premier League, the highest professional league in Egyptian Football and the country's primary

football competition.

2. Mr. Ricardo Alves Fernandes (the "Player" or the "Respondent") is a Brazilian citizen and retired professional football player, born on 6 November 1982. He is currently resident in Ho Chi Minh City in Vietnam.

II. FACTUAL BACKGROUND

A. Facts

3. The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the submissions of the Parties, the exhibits produced and the declarations of the witnesses. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 20 July 2008, the Club signed an employment contract (the "Employment Contract") with the Player for a fixed period of three (3) seasons as from the date of the signature until the end of the 2010/2011 season.

5. On 29 July 2008, the Player was paid an amount of USD 45,000 by cheque relating to the contractually agreed Advanced Payment.

6. On 8 August 2008, the 2008/2009 season of the Egyptian Premier League started and the Club played its first game against the team of Mahala. During this game the Player physically harmed one of his team mates, Gamal Hamza, and was, therefore, sent off the match by the referee with a red card. Subsequently, the Player was sanctioned by the EFA with decision of 10 August 2008 with a fine in the amount of EGP 10,000 and suspended for the next three games for misconduct. Due to the abovementioned suspension, the Player missed the next three games which were scheduled on 12 August 2008, match day 2, Zamalek versus Itihad; on 24 August 2008, match day 3, Zamalek versus Masry and on 26 September 2008, match day 4, Etisalat versus Zamalek.

7. On 17 November 2008, the Club sent a letter to the EFA asking for the EFA's approval of financial sanctions the Club had imposed on the Player in the following amounts: (1) USD 34,374 relating to the suspension for three matches imposed on the Player by the EFA; (2) EGP 50,000 as a penalty for allegedly releasing a press statement to Al Forsan Newspaper of 10 October 2008, without the Club's permission to do so.

8. On 19 November 2008, the Player's agent, Mr. Usama Metry, sent a letter to the EFA to defend the Player against the imposition of the financial fines. The arguments of the Player were that, firstly, the calculation of the imposed fine of USD 34,374 was wrong and, secondly, that the Player did not give the mentioned interview to Al Forsan, respectively, if he had given the interview, he certainly would have been entitled to do so.

9. On 27 November 2008, the Club's board of directors decided to impose a fine in the amount of USD 10,000 on the Player for his alleged refusal to participate in a match and in the amount of USD 22,000 for his absence from the Club's training as of 7 November 2008 until 10 November 2008.

10. On 8 December 2008, the Player's agent, Mr. Usama Metry, wrote to the EFA's players' status committee on behalf of the Player and informed that the Player had claimed from the Club the reimbursement of the expenses born by the Player for air tickets and expenses for his accommodation during the stay with the Club before the Employment Contract was signed. The Player's agent further informed the EFA that the Club had deducted an amount of USD 10,000 to register the Player with the EFA as well as 20% income taxes on the monthly rent allowances, without being entitled to do so and additionally, the Player had asked the Club to pay a pocket money in the amount of USD 1,100 for the probation period.

11. On 14 December 2008, Mr. Usama Metry sent a letter to FIFA's Player's Status Committee seeking legal assistance form world football's governing body in relation to the Player's employment situation with the Club. He asked, in particular, for clarification whether it is legally admissible that the Player has to wait five months until he receives the next instalment of his annual salary.

12. On 9 January 2009, Mr. Usama Metry, on behalf of the Player, put the club in default regarding the payment of the next instalment in the amount of USD 68,750. He further warned the Club that if the Player did not receive the due amount as stated in the Employment Contract, the Player would have no other choice than to terminate the Employment Contract.

13. On 13 January 2009, the Player's agent sent a letter to the EFA complaining that the Player's rent allowances were not paid in accordance with the Employment Contract.

14. On 19 January 2009, Mr. Usama Metry, on behalf of the Player terminated the Employment Contract with the Club, invoking just cause, due to outstanding payments. He submitted, in particular, that the Club had not paid the second instalment which was due by 1 January 2009. As of 20 January 2009, the Player did not appear at the Club anymore.

B. Proceedings before FIFA's Dispute Resolution Chamber ("DRC")

15. On 7 February 2009, the Player filed a claim in front of FIFA's DRC requesting, after an amendment on 29 April 2010, the amount of USD 80,802 as outstanding remuneration plus 5% interest as of the due dates, as well as USD 1,223,566 as compensation for breach of contract.

16. On 16 June 2009, the Club lodged a counterclaim against the Player asserting that the Player terminated the Employment Contract without just cause and as a result thereof, the Club requested compensation for breach of contract in the amount of USD 1,223,566 plus 5% interest as of 16 June 2009.

17. On 10 April 2015, the DRC decided (the "Decision"):

"1. The claim of the Claimant / Counter-Respondent, Ricardo Alves Fernandes, is partially accepted.

2. The claim of the Respondent / Counter-Claimant, Zamalek FC, is rejected.

3. The Respondent / Counter-Claimant has to pay to the Claimant / Counter-Respondent, ***within 30 days*** *as from the date of notification of the present decision, outstanding remuneration in the amounts of USD 63,220 and EGP 11,400 plus 5% interest p.a. until the date of effective payment as follows:*
- 5% p.a. as of 21 July 2008 on the amount of USD 10,000;
- 5% p.a. as of 2 January 2009 on the amount of USD 53,220;
- 5% p.a. as of 1 November 2008 on the amount of EGP 3,000;
- 5% p.a. as of 1 December 2008 on the amount of EGP 3,000;
- 5% p.a. as of 1 January 2009 on the amount of EGP 3,000;
- 5% p.a. as of 1 August 2008 on the amount of EPG 600;
- 5% p.a. as of 1 September 2008 on the amount of EGP 600;
- 5% p.a. as of 1 October 2008 on the amount of EGP 600;
- 5% p.a. as of 1 February 2009 on the amount of EGP 600.

4. In the event that the amounts due to the Claimant / Counter-Respondent in accordance with the above-mentioned number 3. are not paid by the Respondent / Counter-Claimant within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and the formal decision.

5. The Respondent / Counter-Claimant has to pay to the Claimant / Counter-Respondent, compensation for breach of contract in the amount of USD 425,000 ***within 30 days*** *as from the date of notification of the present decision.*

6. In the event that the amount due to the Claimant / Counter-Respondent in accordance with the above-mentioned number 5. is not paid by the Respondent / Counter-Claimant within the stated time limit, interest at the rate of 5% p.a. will full due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

7. Any further claim lodged by the Claimant / Counter-Respondent is rejected.

8. The Claimant / Counter-Respondent is directed to inform the Respondent / Counter-Claimant immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received".

18. The reasoning of the Decision can be summarized as follows:

- The DRC stated that it is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Brazilian player and an Egyptian club, and that the 2008 edition of FIFA's Regulations on the Status and Transfer of Players (the "RSTP 2008") is applicable as to the substance.

- Based on the employment contract between the Player and the Club of 20 July 2008, valid as from the date of signature until the end of the 2010/2011 season, the Player was, in principle, entitled to the net payments of USD 55,000 on 20 July 2008 and on 1 January 2009.

- On 19 January 2009, the Player terminated the Employment Contract in writing, and he subsequently lodged a claim in front of FIFA against the Club seeking, beside the payment of USD 80,802 as outstanding remuneration and USD 1,223,566 as compensation for breach of contract, a compensation for psychological and moral coercion and the alleged bad faith of the Club.

- Based on the Employment Contract regarding the deductions concerning registration costs, the DRC decided that the Club was not entitled to deduct USD 10'000 from the salary, but the fine of EGP 10,000 (USD 1,780) could be deducted from the Player's salary. The DRC was of the opinion that the deduction of an internal fine of USD 34'374 was disproportionate, the fines of EGP 50'000 and USD 11'000 could not be deducted from the Player's salary and no deduction of income tax was allowed on the rent to be paid for the Player's apartment. Further, the Club had not been able to prove that it had paid the Player's rent for the months of October, November and December 2008.

- Considering all the before mentioned points, the DRC decided that the Player had a just cause to terminate the Employment Contract with the Club on 19 January 2009 due to several outstanding payments. Therefore, the Club was liable for the early termination of the Employment Contract. In this context the DRC stated that the Club must fulfil its obligations as per the Employment Contract in accordance with the general legal principle of *"pacta sunt servanda"* and decided that the Club was liable to pay to the Player the remuneration that was outstanding at the time of the termination of the contract, *i.e.* the amounts of USD 63,220 as well as EGP 11,400.

- In continuation, the DRC decided that the Player was also entitled to receive from the Club compensation for breach of contract according to Article 17 para. 1 RSTP 2008 in addition to any outstanding remuneration. In this respect the DRC concluded that the remaining value of the Employment Contract as from its early termination by the Player until the regular expiry of the contract amounted to USD 490,000, only taking into consideration the guaranteed net amounts.

- Then the DRC remarked that the Player, after the termination of the Employment Contract with the Club, had found new employment, where he would earn the amount of USD 65,000 for the period between March 2010 and December 2011. Therefore, in accordance with DRC's constant practice and the general obligation of the Player to mitigate his damages, the DRC decided that the Club must pay to the Player the amount of USD 425,000, which was considered to be a reasonable and justified amount as compensation for breach of contract.

- Finally, the DRC decided not to grant the Player's request regarding compensation for psychological and moral coercion in absence of sufficient documentary evidence. Therefore, any further claims lodged by the Player, as well as the counter-claim filed by the Club, were rejected.

III. PROCEEDINGS BEFORE THE CAS

19. On 22 September 2015, the Club filed its Statement of Appeal regarding the Decision, pursuant to Article R47 et seq. of the Code of Sports-related Arbitration ("the Code"). In this Statement of Appeal, the Club nominated Mr. Mark Hovell as arbitrator.

20. On 28 September 2015, the Player appointed, in accordance with Article R53 of the Code, Prof. Gustavo Abreu as arbitrator.

21. On 29 September 2015, FIFA stated that the present appeal procedure relates to a purely contractual dispute between the Appellant and the Respondent, and did not concern FIFA, as FIFA was not a party to the dispute; the Decision was not one of a disciplinary nature and no request was made against FIFA. Therefore, FIFA deemed that it could not be considered as a Respondent in the present case and requested that FIFA be excluded from the procedure at stake.

22. On 1 October 2015, the Appellant informed the CAS Court Office about its withdrawal of the appeal against FIFA.

23. On 14 October 2015, the Appellant filed its Appeal Brief, according to Article R51 of the Code.

24. On 9 November 2015, the Respondent filed his answer, pursuant to Article R55 of the Code.

25. On 20 November 2015, CAS Court Office informed the Parties that the Panel called upon to resolve the present dispute was composed as follows:

President:	Mr. Bernhard Welten, attorney-at-law in Bern, Switzerland
Arbitrators:	Mr. Mark Hovell, Solicitor in Manchester, United Kingdom
	Prof. Gustavo Abreu, Professor in Buenos Aires, Argentina

26. On 16 December 2015, the Appellant respectively on 21 December 2015 the Respondent signed the Order of Procedure.

27. On 17 December 2015, FIFA sent a copy of the complete DRC file to the CAS Court Office.

28. On 5 February 2016, a hearing was held at the CAS Office in Lausanne whereas the Appellant was represented by Mr. Hani Zada, assisted by Mr. Juan de Dios Crespo Perez and Mr. Nasr Eldin Azzam, attorneys at law. The Respondent, assisted by Mrs. Marisa de Souza, attorney at law was present by Skype. As witness Mr. Metry Uzama was heard by telephone. At the beginning of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel. Upon conclusion of the hearing, the Parties confirmed that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

29. In the following summaries, the Panel will not include every argument put forward to support

the Parties' claims. Nevertheless, the Panel has carefully considered and taken into account in its discussions and subsequent deliberations all of the evidence and arguments submitted by the Parties, but limits its explicit references to those arguments that are necessary in order to justify its decision.

A. Appellant's Submissions and Requests for Relief

30. The Appellant's submissions, in essence, may be summarized as follows:

- The Player and his agent acted in bad faith when claiming further payments from the Appellant on 9 and 12 January 2009; this acting in bad faith should help to terminate the Employment Contract.

- On 19 January 2009, the Player terminated the Employment Contract without just cause; he falsely pretended not having received the second instalment due on 1 January 2009. The Appellant correctly set off a total of USD 23'750 against this instalment; the balance of USD 45'000 was paid by cheque. Further the Appellant paid all rent allowances for the Player; the Appellant even paid additional accommodation for the Player before he joined the Club.

- On 19 January 2009, only 19 days had passed since the due date of the second instalment and therefore the Player had certainly no just cause to terminate the Employment Contract.

- Due to the fact that the Player had terminated the Employment Contract without just cause, he is liable to pay compensation to the Club. This compensation should be calculated by taking into consideration remuneration for the remaining period of the Employment Contract after the termination by the Player on 19 January 2009, the specificity of sport and the fines imposed by the Club on the Player. The Club was entitled to receive from the Player the amount of UDS 45,374 and EGP 60,000 relating to fines imposed on the Player for several disciplinary incidents which occurred during the employment relationship.

- In relation to any outstanding remuneration, the Club was entitled to deduct USD 10,000 as a registration fee in order to register the Employment Contract with the EFA and 20% as income tax according to the pertinent Egyptian tax laws.

- The Club was entitled to impose the following fines due to the disciplinary infringements committed by the Player: (1) a fine in the amount of EGP 10,000 for misconduct by beating his teammate during a game; (2) EGP 50'000 for an unauthorised interview given to a local newspaper; (3) deduction of USD 34,347 for losing the services of the Player for the period during which he was suspended; (4) deduction of an amount of USD 11,000 concerning the fine of the club; (5) fine for refusing to participate in an official match in the amount of USD 10'000; (6) fine for absence from training in the amount of USD 22,000.

31. In its prayers for relief, the Appellant requested the following:

"1. To uphold the present appeal of Football Club Zamalek, in view of the several reasons pointed out in

both Statement of Appeal and this Appeal brief. To dismiss fully the decision of the FIFA Dispute Resolution Chamber in the case ref.rov 09-00123 of 15 April 2015.

2. *To issue a new decision stating that the Player Ricardo Alves Fernandes has terminated the employment contract with the Club without just cause and thus, is liable to pay compensation in favour of the Club amounting to USD 840,326 (Eight Hundred Forty Thousand Three Hundred Twenty Six US Dollars) and L.E. 60,000 (which at present date equal to USD 7,667.53) plus interest at 5% rate p.a. as of the day of unjust termination, i.e. 19 January 2009.*

Or Alternatively:

3. *In the unlikely scenario that the most honourable members of the Panel deem that the Club as well breached the contract with the Player - in no case the Player has terminated the employment contract with just cause and was abusing his rights. As a consequence of that, the Player should be entitled only to an amount of his effective work for the Club until the termination date, i.e. 19 January 2009 which in any case is consumed entirely by the amount of fines imposed on the Player for his disciplinary misconduct. And thus the Player is not entitled to any amount of compensation for that premature termination of employment contract.*

But in any case:

4. *To fix a sum of 15,000 CHF to be paid by the Player to the Appellant, to help the payment of its legal fees costs.*

5. *To condemn the Player to the payment of the whole CAS administration costs and the Arbitrators fees".*

B. Player's Submissions and Request for Relief

32. The Player's submissions as to the compensation for breach of contract, in essence, may be summarized as follows:

- The Player had terminated the Employment Contract with just cause due to the fact that the Appellant had not fully paid the due salaries. Therefore, the Appellant is to be held liable to pay a financial compensation to the Player. The amount of compensation determined by the FIFA DRC in this context must be raised to USD 1,000,000 which is exactly the global amount of the Employment Contract between the Parties.

- The Appellant was not entitled to deduct from the Player's salaries the amount of USD 10'000 as a registration fee for the registration of the Employment Contract with EFA due to the fact that the pertinent regulation does not foresee that a player is responsible for such payment.

- Further, the Appellant was not entitled to fine the Player for the several alleged disciplinary infringements. In particular, the fine in the amount of USD 34,374 would be a second sanction for the same offence, as the Player was already punished by the EFA with a three match ban and a fine in the amount of EPG 10,000 for his violent conduct towards his

team mate in the Appellant's first match of the season 2008/2009. Besides this, the amount is totally disproportional due to the fact that the Player was only suspended for three matches and not a month and a half.

33. In his prayers for relief, the Player requested the following:

"a) In case of the Arbitration Panel considers it appropriate to hear the witnesses of whom are attached the written statements (Metry Usama, Daniela Vieira Aquino, Agogo; Dogbe; Ahmed Mohamed Abdelkder) and the respondent, that is determined the hearing to be through a videoconference, in order to lower the procedure costs;

b) Be maintained the decision rendered by FIFA DRC, with regard with the acknowledgment that the appellant failed paying the respondent's salaries correctly;

c) Be maintained the decision rendered by FIFA DRC, with regard with the acknowledgment that the appellant imposed illegal and inexistent deductions on the respondent's salaries;

d) Be maintained the decision rendered by FIFA DRC, that imposed on the appellant the payment of the amount of USD 63,220 (Sixty Three Thousand Two Hundred Twenty Dollars) for non-payment and 11,400 EGP (Eleven Thousand Four Hundred Egyptian Pounds) for non-payment of rent allowances to the respondent, plus interest of 5% since the date of the termination without just cause;

e) Be maintained the decision rendered by FIFA DRC, that recognized the termination of the employment contract with just cause caused by the appellant's misconduct, according to what states the article 14 of the FIFA Regulations on the Status and Transfer of Players;

f) Be maintained the decision rendered by FIFA DRC, that imposed on the appellant the payment of a compensation for causing the termination of the employment contract with just cause because of its conduct, according to the provision of the article 22 of the FIFA Regulations on the Status and Transfer of Players;

g) Be raised the compensation determined by the decision rendered by FIFA DRC, setting the amount of compensation for USD 1,000,000 (One Million Dollars), plus interest of 5% since the date of termination with just cause, being that request based on article 22 of the FIFA Regulations on the Status and Transfer of Players and article R 55 of the Code of Sports-related Arbitration, or;

h) If the raise of the compensation is not how the Panel sees the situation, the compensation amount of USD 425,000 (four Hundred Twenty Five Thousand Dollars) must be maintained, plus interest of 5% since the date of the termination with just cause, according the decision rendered by FIFA DRC;

i) The appellant must be determined to pay the outstanding amount within no more than 10 (ten) continuous days after the publication and/or communication of the decision that will be rendered by the CAS Arbitration Panel, and, for that, the respondent - in the maximum term of 48 (Forty Eight Hours) from the acknowledgment of the decision - will inform to this Court all necessary bank data to have the amount deposited, if the Panel interpret it convenient in order to comply with the obligation inside the internal organization of CAS;

j) Be explicitly determined in the decision to be rendered by this Court a coercive fine for the case of the appellant fail to comply the decision, without prejudice to the recognition of that FIFA is authorized to adopt all relevant disciplinary measures, considering as severe the noncompliance conduct. It is suggested the amount of USD 30,000 (Thirty Thousand Dollars) per day of delay, in case of noncompliance;

k) The appellant be ordered to pay in full all procedure costs as well as reimburse all expenses borne by the respondent with the aim of proceed his defence (lawyers, translations, correspondence, phone calls, etc.) including those one which are referred to any air transport, interpreters, videoconference, etc., which initial amount is assessed in USD 20,000 (Twenty Thousand Dollars);

l) Finally, to be requested to FIFA a complete copy of the case file of the procedure involving the litigant parties (case ref. Rov 09-00123 dated April 15th, 2015), so that all the documentation attached can be used as evidence by the respondent".

V. JURISDICTION

34. Article R47 of the Code provides as follows:

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

35. Articles 66 and 67 FIFA Statutes state that the CAS has jurisdiction to decide on appeals against final decisions passed by FIFA's legal bodies like the DRC. Furthermore, Article 24 para. 2 of the RSTP 2008 states that the decisions reached by the DRC may be appealed before the CAS.

36. Based on the aforementioned articles, the CAS has jurisdiction to decide the matter at hand. In signing the Order of Procedures, the Parties further have explicitly confirmed the CAS jurisdiction.

VI. ADMISSIBILITY

37. The Decision was rendered by the DRC on 10 April 2015; the grounds of the Decision were notified to the Appellant upon request on 1 September 2015. The statement of appeal was filed with the CAS Court Office on 22 September 2015 and therefore, within the 21-day deadline set by Article 67 para. 1 FIFA Statutes (2015 edition). The Appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office Fee.

38. Therefore, it follows that the Appeal is admissible.

VII. APPLICABLE LAW

39. 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

40. The Employment Contract of 20 July 2008 does not include any reference to any specific law being applicable. The Appellant stated in its submissions that the Panel should decide the present dispute according to the various FIFA Regulations and, subsidiarily, Swiss Law. The Respondent remained silent regarding the issue which law should be applicable to the merits of the present case, but referred in its submissions explicitly to the FIFA Regulations and Swiss Law. In doing so the Respondent accepted that the FIFA Regulations and, subsidiarily, Swiss Law are applicable.

41. The Panel, therefore, concludes that, in application of Article R58 of the Code, the Parties agreed upon that FIFA Regulations and, subsidiarily, Swiss Law are applicable in the present case.

42. In order to specify which of the FIFA Regulations are applicable to this matter, the Panel notes that the case at hand was submitted to the DRC on 7 February 2009, thus before 1 October 2015, which is the date when the revised FIFA RSTP (edition 2015) came into force. Pursuant to Article 26 para. 1 and 2 FIFA RSTP (edition 2015) any case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations, *i.e.* the 2008 edition. Accordingly, the 2008 edition of the RSTP, as already established by the DRC in the Decision, shall be applicable.

VIII. MERITS

43. As a preliminary remark the Panel notes that the fact that the Employment Contract was terminated by the Player remained uncontested between the Parties; it was the Player's agent who sent the termination letter on behalf of the Player to the Appellant on 19 January 2009. Additionally, it is uncontested that the Player remained absent from the Club's disposal as of 20 January 2009.

44. The first and most important question to decide by the Panel is, if the Player had just cause to terminate the Employment Contract on 19 January 2009. In looking at this question, the Panel refers to the following provisions of the RSTP 2008;

"Article 13 Respect of contract

A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.

Article 14 Terminating a contract with just cause

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

[…]

Article 17 Consequences of terminating a contract without just cause

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

1. *In all cases, the party in breach shall pay compensation. 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.*

   […]".

45. The FIFA Commentary states to Article 14 RSTP:

"The principle of respect of contract is, however, not an absolute one. In fact, both a player and a club may terminate a contract with just cause, i.e. for a valid reason.

The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behavior that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally. […]".

46. A landmark decision relating to the non-payment of salaries by a club towards a player is CAS 2006/A/1180, no. 26, which states:

"The non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated as in the present case - constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5 et seq.)".

47. In looking at the first prerequisite that the outstanding amount due to the player may not be "insubstantial" or completely secondary, the Panel starts to look at the financial duties of the

Appellant. The Parties agreed in Article 3 of the Employment Contract:

"First season amount of USD 275,000 (two hundred seventy five thousands US Dollars):
Advanced payment: amount of USD 68,750 (sixty eight thousands seven hundred fifty US Dollars) representing 25% of the value of the contract for the season settled on 20/07/2008; […]
First instalment: amount of USD 68,750 (Sixty Eight Thousands Seven Hundred Fifty US Dollars) settled on 01/01/2009
Second instalment: amount of USD 68,750 (Sixty Eight Thousands Seven Hundred Fifty US Dollars) settled on 15/04/2009. […]
& 25% settled at the end of the season according to the proportion of the participation of the player. In playing the proportion of 80% of the number of matches will be considered the rate which the Player is due for these amounts (25%) completely. The entry of the player in the list of the matches is considered participation in it.

Second season amount of USD 325,000 (Three Hundred Twenty Five Thousands US Dollars): […]

Third season amount of USD 400,000 (Four Hundred Thousands US Dollars): […]".

48. The Panel rejects in looking at these written agreements the Appellant's arguments that the salary was paid in advance, as there were four instalments payable at specific dates during the first year – one upfront payment, the next (labelled the "first") instalment after 5½ months, the next (labelled the "second") instalment after another 3½ months and final payment, conditional on appearances, at the end of the year. The total value of the first year of the Employment Contract amounts to USD 275,000 divided into these four separate instalments each instalment amounts to USD 68,750. The Club was, however, entitled to deduct from such amounts 20% income tax, according to the pertinent Egyptian tax law (see Fourth Article of the Employment Contract). Therefore, the Player was entitled to receive, in the first year of the Employment Contract, four instalments of USD 55,000 net each.

49. The Appellant stated in its submissions that it had paid the Player the contractually agreed advanced payment of USD 68,750, but that it had deducted from the said amount USD 13,750 relating to taxes and USD 10'000 as a registration fee to register the Player's contract with EFA. The net amount paid to the Player was, according to the Club's assertion USD 45,000. As a proof of the payment the Club referred to a cheque amounting to USD 45,000 and the confirmation of receipt signed by the Player for the payment of the contractually agreed advanced payment on 29 July 2008.

50. The Player claimed that the Appellant had not paid the contractually agreed advanced payment in the amount of USD 68,750 which was due on 20 July 2008, but only an amount of USD 45,000. The Panel noted that the Appellant's payment of USD 45,000 regarding the contractually agreed advanced payment is therefore not contested. However, the Panel has to determine whether the indicated deductions made by the Appellant were in accordance with the Employment Contract and the applicable Egyptian tax laws.

51. The Appellant referred to the pertinent Egyptian income tax law number 91 of 2005 which states:

"Book Two
Income Tax of Natural Persons
Chapter one
Tax Scope and Rate

Article 6:
An annual tax shall be imposed on the total net income of resident and non-resident natural persons in respect of their incomes earned in Egypt.

The total net income comprises the following sources:
1. Salaries and the like;
[…].

Article 7:
Tax is due on the total net income in excess of five thousand pounds earned by a resident taxpayer during the year.

Article 8:
The tax rates are as follows:
1. More than 5,000 up to 20,000 pounds 10%
2. More than 20,000 up to 40,000 pounds 15%
3. More than 40'000 pounds 20%
[…].

Chapter Two
Salaries and The Like

Article 9:
The tax applies to salaries and the like as follows:
1. All earnings by a taxpayer resulting form work for third parties, with or without a contract, on a regular or irregular basis, regardless of such dues names, forms or reasons, whether they are for works performed in Egypt or abroad, and the consideration thereof was paid from a source in Egypt, including wages, bonuses, incentives, commissions, grants, additional payments, allowances, dividends or shares in profits and cash and in-kind benefits of all types.
[…]".

52. Article 4 ("Fourth") of the Employment Contract states:

"The player will incur the taxes of the total amount of the contract according to law. The club will settle the taxes to the concerned tax administration and inform the player for the document of paying after the end of the season and before the beginning of the next season".

53. Looking at these provisions, the Panel is of the opinion that the tax deduction of 20% made by the Appellant from the Player's salary was correct, according to the cited provisions of the applicable Egyptian tax law (in particular Article 8) in connection with Article 4 ("Fourth") of the Employment Contract.

54. Regarding the deduction of the registration fee of USD 10'000 the Appellant referred to the preliminary clause of the Employment Contract on page 2 which states:

"The two parties declare their capacity to contract and they have read the regulation of player affairs which is valid during the signing of this contract and this regulation supersedes any other considered part of this contract and complement for it".

55. The Appellant further referred to EFA's Player's Affairs Regulations, which it considers being a part of the Employment Contract and which, according to the pretentions of the Appellant, state who is responsible to pay such registration fees. Although the Appellant referred to the EFA's Player's Affairs Regulations extensively, it failed to submit the corresponding documents. It only filed the correspondence with EFA, namely two letters from EFA to the Appellant, but not the Regulations itself.

56. The first EFA letter of 30 August 2012 states that according to the registration procedures applied during the season 2008/2009 the Player had to pay 1% of the total amount of his contract as registration fees. The second letter of EFA, dated 22 July 2015, confirms that according to the Player's Affairs Regulation of the EFA which forms part of the Employment Contract between the Player and the Club, the Player is obliged to pay 1% of the total amount of the contract to the EFA as registration fee. The Appellant attempted to prove with these documents that it was entitled to deduct a corresponding sum from the Player's salaries. The said documents do, however, only state that the Player had to pay the mentioned sum, i.e. 1% of the total contract value, for the registration with EFA. The Panel holds that the documents do not contain any declaration which party, Appellant or Player, is bearing this fee respectively or that the Appellant was entitled to deduct the registration fee from the Player's salaries.

57. The Player on his side referred to page 12 of the Employment Contract where it is stated:

"Fees of approval of club contracts of first and second divisions 3% of the total value of the contract as follows:

0.5% paid at the branch which the player will be registered at.
0.5% paid by a certified check in the name of the branch which the player was transferred from.
This check will be attached with contract to the association who will send it to the concerning branch.

1% paid at the branch which the player will be registered at if the player is transferring from one club to another inside the same branch and not outside it.

1% paid to the association.

Branches should not approve any contract opposes any term of this contract. The branch will be responsible for failure to execute this".

58. The Panel notes that the provision on page 12 of the Employment Agreement does also not indicate which party is finally bearing the registration fee. Obviously it is the Appellant's responsibility to register the Player with the EFA. In the hearing, the witness Usama Metry stated that the Club never informed him and/or the Player that it is up to the Player to pay this 1% registration fee. At the hearing the Player confirmed that the Player's Affairs Regulation of the EFA were available, but without sight of these, the Panel could not be sure what these stated, nor whether the Player actually read all or part of those regulations. The Appellant, bearing the burden of proof, did not show to the Panel's satisfaction that it is the Player's duty

to bear this 1% registration fee, paid through the Appellant. The Panel is therefore of the opinion that as no explicit contractual or regulatory basis was proven, the Appellant was not allowed to deduct the amount of USD 10,000 from the Player's salary. The Panel further noted the decision taken by the CAS panel in CAS 2013/A/3426 (paragraph no. 145) which was provided by the Appellant and which supported the position that the responsibility for the registration fee was with the club, not the player. Therefore the Appellant had failed to pay the full advanced payment on 20 July 2008 as it had only paid USD 45,000 instead of the due USD 55,000, as rightly stated in the Decision.

59. After having examined the past due amounts since 20 July 2008, the Panel assesses if the first instalment of USD 55'000, due on 1 January 2009, was fully paid to the Player. As the Appellant states that it was allowed to make several deductions from this first instalment, the Panel will assess all deductions in detail.

60. Regarding the deduction of an the EFA fine of EGP 10,000, the DRC stated in the Decision that such fine imposed on the Player by the EFA for a disciplinary infringement is justified, proportional and can be accepted. As a result, the DRC allowed the Appellant to deduct the amount of EGP 10,000, corresponding to USD 1,780, from the Player's first instalment.

61. The Player did not contest the fact that he was sent off during the match of 8 August 2008, but he denied being sanctioned by EFA with a fine of EGP 10,000. The Player alleged never having seen any document in relation to this fine and therefore, the Appellant could not, at his own volition, impose such a fine on him. According to the documents on file, the decision of the EFA of 10 August 2008 was, indeed, only sent to the Appellant. It stated that the Player was suspended for three matches and that a fine equal to EGP 10,000 was imposed. The fine had, according to the EFA's decision, to be paid by the Appellant, however, the decision then further stated that the Appellant shall deduct the fine from the Player's salaries.

62. The Panel, therefore, determines that the Appellant was obliged to pay the fine of EGP 10,000 to the EFA, according to EFA's decision of 10 August 2008. Article 5, para. 7 ("Fifth") of the Employment Contract states that *"Any financial fine imposed on the player by the association will be deducted from the player dues and sent to the association"*. Formally, the EFA decision, imposed the fine on the Appellant, but the decision later stated that such fine shall be deducted from the Player's salaries. Article 5 para. 7 ("Fifth") of the Employment Contract is applicable and in the Panel's view, the Appellant, therefore, correctly deducted this fine of EGP 10,000 (corresponding to USD 1,780) from the Player's first instalment.

63. Regarding the deduction of an amount of USD 34,374 concerning the Appellant's fine for the time period in which the Player was suspended, Article 6 para. 8 ("Sixth") of the Employment Contract states:

"Any period of suspension imposed on the player under a decision from the association or the club which the player is responsible for its reasons after adequate investigation and after the suspension is approved by the association, the club has the right to deduct proportion from the player's dues equal to the period of suspension to the season (article 6/80 of the regulation)".

64. The Appellant asserted having enforced the above mentioned clause and therefore deducted an amount of USD 34,374 corresponding to the period of suspension. The Player's suspension for the following three matches, remained undisputed:

- 12 August 2008: Zamalek versus Ittihad;
- 24 August 2008: Zamalek versus Masry;
- 26 September 2008: Etisalat versus Zamalek.

The Appellant stated that the time period for which the Player was suspended started on 10 August 2008 and was extended until 26 September 2008 which is after the Appellant's third match. The Appellant had therefore decided to deduct a proportional amount from the Player's salaries corresponding to the time period of suspension; the Appellant had lost the services of the Player for 10% of the league matches in this season. Regarding the legality of the said fine the Club referred to a previous CAS award in a similar matter; this award, CAS 2013/A/3426, stated in no. 151 the following:

"The Panel determined that the wording of clause 6.8 of the Contract was clear. Whilst the effect is quite severe, the Respondent was represented by lawyers when registering the terms of the Contract and the Supplemental Agreement and should have advised him of this clause. The Respondent was suspended by the EFA, he was given the opportunity to challenge that suspension and was even supported by the Appellant, but was still ultimately suspended. Whilst he was perhaps still able to provide some services to the Appellant (by training) he could not play in those 3 matches over 26 days and clause 6.8 was designed to cover such eventuality by allowing the Appellant to deduct his salary in full over that period".

Eventually, the Appellant asserted that in this case the CAS Panel had validated the fine and in the present case, the circumstances are almost the same. Thus, the Appellant's decision, to deduct the amount of USD 34,374 from the Player's salaries should be deemed valid and fully enforceable.

65. The Player stated that he was only suspended for three days and not for a month and a half and he was not absent from the Appellant's trainings during the time of the suspension. The fine imposed by the Appellant is further totally disproportional due to the fact that for the three days suspension the Appellant fined the Player with an amount corresponding to 50% what he was supposed to earn as a salary in three months.

66. The Panel finds that the facts of the present case differ somewhat from facts of the CAS decision 2013/A/3426. In the case at hand, the Player was only represented by his agent, not being a lawyer, when the Employment Contract was negotiated and signed. Unlike the player in CAS 2013/A/3426, the Player did therefore not have legal assistance of a lawyer. From the documents on file, the Panel cannot see if the Player was given the opportunity to challenge the EFA suspension and if he was supported by the Appellant in doing so. The Appellant did not bring forward any arguments asserting that the Player had the opportunity to contest the EFA's decision regarding the three match suspension. Further, at the hearing, it was made clear that the Club had not made any deductions before the Employment Contract was terminated. Rather, it was going through the process of seeking the EFA's approval before making any deductions. Whilst there was a hearing by the EFA, and the Club advanced its own memo from that hearing, there had been no final authority from the EFA. Contrary to the statements of the Appellant and the above cited CAS award, the Panel in these circumstances does not find that

the imposition of the fine would be lawful. Further, the Player was suspended for three matches, and not for a period of 48 days, *i.e.* 10 August 2008 until 26 September 2008. The present dispute differs therefore from other cases, where players were suspended for a specific period of time (see *e.g.* CAS 2014/A/3665, 3666 & 3667, award of 14 August 2014, no. 9, where the player was banned from taking part in any football-related activity for four consecutive months, although the appeal against this sanction was eventually accepted by CAS). During the time period of 10 August to 26 September 2008, the Player was still a member of the team and participated in the training sessions. The Appellant did not contest this. Hence, the Panel is of the opinion, that the Appellant's claim to reduce the Player's salaries in the amount of USD 34,374 in application of clause 6.8 of the Employment Contract would not be lawful. Such sanction is, in the view of the Panel, clearly disproportionate in relation to the Player's salaries and in view of these specific circumstances and his continued participation in training sessions.

67. The Appellant was looking to impose a further fine in the amount of EGP 50,000 on the Player, as the Player allegedly gave an unauthorized interview to a local independent newspaper named Al Forsan for its issue 174 of 10 October 2008. The Appellant had approached the EFA to impose a fine of EGP 25,000 for the non-authorized interview and another EGP 25,000 for damaging the Club's reputation. The Appellant referred to a clause in its internal Financial List for the Football first team, which states:

"Speaking to media

Without permission a deduction around L.E. 1500 and L.E. 25000 initially, if media declaration destroying Club's, administration, players reputation another penalty be imposed according to the range of event".

68. The Player asserted that the mentioned article was published without his knowledge and consent. He pointed out that there was no real interview and not even a contact with him, probably because he does not speak the Arab language.

69. The DRC decided that it cannot accept the imposition of this fine, because no evidence has been provided, proving the alleged offense nor that the Player had been notified of the decision or had been called up to defend his case. Further, the amount the Player was fined with does not correspond to the amount indicated in the Appellant's internal regulation. The Panel does agree with the findings of the DRC; no convincing proofs for the alleged offence were filed. The Appellant failed, in particular, to provide the Panel with a copy of the news article in question. There are some documents in the file, which make hints to the Appellant's decision to fine the Player, *e.g.* the Appellant's letter of 17 November 2008 to the EFA in which the Appellant requested the Association's approval of the penalty imposed on the Player for releasing a press statement to the Al Forsan newspaper on 10 October 2008 without the Appellant's permission and causing damages to the reputation of the Appellant. The same is true for the letter of 19 November 2008 from Mr. Usama Metry, the Player's agent, to the EFA, in which the Player's agent contested the fine imposed on the Player. These documents do, however, not substitute the article itself and a document granting the Player the right to defend himself. Therefore, the Panel cannot assess the content of the news article in question. The Appellant bearing the burden of proof is therefore not allowed to claim a deduction in the amount of EGP 50,000 from the Player's salary.

70. The Appellant also sought to deduct an amount of the Player's salary for allegedly failing to demonstrate seriousness, commitment and obligation to directors of the Appellant's staff during a match played against Olympic SC on 26 October 2008.

71. The Club asserted that the fine of 4% of the value of the Player's contract, corresponding to USD 11'000, was to be imposed on the Player based on the internal regulations, which state:

"The technical team is entitled to evaluate players in trainings and official or friendly matches along with rewarding preferred players and imposing financial penalties on neglectful players, based on technical team evaluation and Board's approval".

The Appellant, later stated that the sanction in relation to the match played on 26 October 2008 was cancelled by the board of directors after the players had submitted a request to reconsider the decision together with an apology and a declaration of their commitment in the future.

72. The Player stated that this sanction of USD 11,000 was, contrary to the statements of the Appellant, not to be cancelled in relation to him. He asserted that the fine was absurd as he had one of his best performances for the Club in this specific game.

73. The Decision states that there is no evidence submitted by the Club that the Player was notified of the Club's decision to impose the said fine and, in addition, no evidence was provided of the alleged offense. The Panel fully agrees with these findings of the DRC; the Appellant did not file any convincing proof of the Player's alleged infringements. According to the Appellant's match schedule, the Player even scored a goal, although the Club eventually lost the match. Therefore, the Panel is of the opinion that the Appellant is not allowed to claim a deduction in the form of this alleged fine of USD 11,000 from the Player's first instalment.

74. The Appellant looked to impose another sanction in the amount of USD 10,000 on the Player due to his refusal to participate in an official match against the side of Arab Contractors in November 2008. The Appellant referred to a resolution of its board of directors of 27 November 2008, according to which the fine in the amount of USD 10,000, as proposed by the manager was approved.

75. This particular fine is not mentioned in the Decision. The Panel can therefore not decide if such fine can be imposed lawfully, as this specific fine was not subject of the Decision and according to CAS jurisprudence, the Panel is limited to the issues arising out of the appealed decisions (see CAS 2013/A/3314, no. 31; CAS 2012/A/2874, no. 81). In any case, the Appellant did not file any convincing proofs that the Player indeed committed the alleged infringements. As such, the claim to deduct USD 10,000 from the Player's first instalment is therefore not possible.

76. The Appellant sought to impose yet another sanction in the amount of USD 22,000 on the Player as the Player allegedly was absent from four trainings during November 2008. The Appellant referred to a resolution of its board of directors of 27 November 2008, according to which the fine in the amount of USD 22,000 was approved.

77. This particular fine is again not mentioned in the Decision as well and as stated before (see no.

74), the Panel can therefore not decide if such fine can be imposed lawfully. However, even for this fine, the Appellant did not file any convincing evidence that the Player actually refused to attain the training sessions. Therefore, the Appellant is not entitled to impose the said sanction on the Player; it cannot deduct this amount of USD 22,000 from the Player's first instalment.

78. According to the Appellant's internal Financial List for the Football First Team, foreign players were entitled to receive a monthly rent allowance of EGP 3,000 for married players and EGP 2,500 for single players. It is not contested between the Parties, that the Appellant was liable to pay the amount of EGP 3,000 to the Player as rent allowance. However, the Appellant stated that it was obliged to deduct 20% income tax of the said amount according to the applicable tax laws. The Player contested that the Appellant was entitled to this deduction and pretended that the monthly rental payments were not paid properly, because the Appellant had irregularly deducted taxes form these rent payments. The Player pointed out that the Employment Contract does not contain any provision which would entitle the Appellant to deduct the taxes. Furthermore, the Player asserted that the Appellant was obliged to pay the monthly rent allowances directly to the landlord. As such, these payments could not be considered as income according to the pertinent Egyptian tax laws.

79. The DRC stated that the Employment Contract in Article 4 ("Fourth") clearly stipulates that the Player will incur the taxes of the total amount of the contract payments and the Appellant's internal regulations do not mention anything in relation to a tax reduction regarding the rent or the bonus payments. As such, the DRC was of the opinion that no income tax could be deducted from the Player's rent allowances.

80. The Panel fully agrees with the findings of the DRC. The Employment Contract states in Article 4 ("Fourth") with reference to Article 3 ("Third") that the Player will incur the taxes of the total amount of the contract, in other words on the amount of USD one million. The Appellant's duty to cover actual expenses of the Player, like e.g. rent allowances, logically refers to net amounts. The deduction of 20% income tax on the Player's rent allowances was therefore not lawful; the Employment Contract does not entitle the Appellant to make these deductions.

81. The Player asserted that the Appellant had either failed to pay the rents totally or had not paid the entire amounts. He stated in detail:

- July/August and September 2008: only 80% of EGP 3,000 were paid, *i.e.* 2,400 EGP;
- October/November and December 2008: no rent was paid;
- January 2009: only 80% of EGP 3,000 were paid, *i.e.* only 2,400 EGP.

Therefore, according to the submissions of the Player, a total of EGP 11,400 as rent allowances remained unpaid until January 2009; this constituted a breach of the Employment Contract and the Appellant's internal financial regulations.

82. The Appellant stated that the rents were duly paid and referred to its Annex 26 as proof for such payments. In assessing whether the rent allowances were paid, the Panel examined the submitted documents in detail:

- The cheque of 5 October 2008 shows that a sum of EGP 205,654.50 was paid to a certain Waleed Badr ElSayed as beneficiary, whereby it is not clear for the Panel, who this person is. The Appellant remained silent hereto in its submissions. The Panel has seen that the amount of EGP 205,654.50 corresponds to the gross total amount for all of the Appellant's players and the technical staff for the month of September 2008.

- The cheque of 25 November 2008 shows that a sum EGP 98,289.60 was paid, again to Waleed Badr ElSayed as beneficiary. The Panel has seen that this sum corresponds to the total of the salaries for the Appellant's players of the first football team for the month of October 2008.

- The cheque of 13 December 2008 shows that an amount of EGP 202,706.60 was paid to Waleed Badr ElSayed as beneficiary. The amount corresponds to the gross total of the salaries for all of the Appellant's players and the technical staff for the month of November 2008.

- The cheque of 17 January 2009 shows that a sum of EGP 2,799.60 was paid to a certain Mostafa Abdel Maksoud. For the Panel it is not clear, who this person is. The Club remained silent hereto in its submissions. The cheque states as reason of the payment "accommodation allowance" for the Player for December 2008 in a total amount of EGP 3,500, less taxes of EGP 700 and administrative fees of EGP 0.40, hence a total amount of EGP 2,799.60.

83. The Panel has therefore not sufficient proofs that the Appellant paid the Player's rent allowances according to the Employment Contract and the Appellant's internal financial regulations. The documents on file do not prove that the rent allowances for October and November 2008 were paid to the Player or his landlord. The payment for rent allowance for December was EGP 3,500 does not correspond to the Appellant's internal financial regulations (EGP 3,000 per month) but indicates that the monthly rent allowance of EGP 3,000 stated in the internal financial regulations of the Appellant is a net amount. However, it is not shown by the Appellant if Mostafa Abdul Maksoud is the Player's landlord. The Appellant remained silent and did not file any information to the persons receiving the before mentioned payments by cheque. Considering all this, the Panel determines that the Appellant did not prove to the Panel's satisfaction that it had paid the Player's rent allowances according to the Employment Contract and its internal financial regulations. Hence, the amount of EGP 11,400 has to be considered as outstanding, according to the Player's submissions, as rightly stated in the Decision.

84. The Panel acknowledges that in January 2009 the Appellant had paid an amount of EGP 15,673 to the Player for accommodation relating to expenses before the Player actually joined the Club. The Appellant itself stated in its submissions that this payment was made outside of the Employment Contract. Therefore, this payment has to be treated as such. The Panel is of the opinion that such payment cannot be set-off in any way against the Appellant's contractual obligations.

85. Summing up, the Panel concludes that the Appellant was entitled to deduct 20% income tax

from the Player's salaries, the deduction of the registration fee was not lawful and therefore, the Appellant owed the Player an amount of USD 10'000 as of 29 July 2008.

86. On 1 January 2009, the Appellant was obliged to pay to the Player the first instalment. The Panel concludes that the following deductions from this first instalment were not lawful in view of the contractual duties:

- USD 34,374 concerning the Appellant's fine for the time period for which the Player was suspended;
- EGP 50,000 concerning the Appellant's fine;
- USD 11,000 concerning the Appellant's fine;
- USD 10,000 as the Appellant's fine for refusing to participate in an official match;
- USD 22,000 as the Appellant's fine for the absence from training.

In addition to the first instalment, the Player was also entitled to receive the outstanding rent allowances in the total amount of EGP 11,400.

87. The Panel holds that on 19 January 2009, the moment when the Player terminated the Employment Contract, the Appellant had outstanding payments towards the Player in the amount of USD 63,220 (USD 10,000 regarding the unlawful deduction of the registration fee and USD 53,220 as the non-paid first instalment) plus EGP 11,400 regarding the not fully paid rent allowances. This amount corresponds roughly to a quarter of the total gross value of the Employment Contract for the first year. Therefore, the Appellant's outstanding amounts towards the Player, were clearly not "insubstantial or completely secondary" and the Panel is of the opinion that the first prerequisite according to the CAS jurisprudence for invoking just cause is met. The Appellant had breached the Employment Contract. Further, the Panel is of the opinion that whilst at the hearing the Appellant submitted that it had not actually deducted anything at the date of termination, it was clearly looking to deduct sums that would have effectively meant the Player would receive nothing from the first instalment. This course of threaten fines (indeed the Panel was left with the impression that the Player believed he had been fined and would receive nothing in January 2009) had, in the Panel's opinion, eroded the bond of trust and confidence between the Player and the Club, resulting in the Player terminating the employment relationship, with just cause.

88. The second prerequisite of the warning given by the Player is fulfilled as well. The Panel notes that on 9 January 2009 the Player sent through his agent, Mr. Usama Metry, a letter to the Appellant requesting the outstanding payments, in particular the first installment. In this letter, Mr. Usama Metry stated that the Player will be forced to terminate the Employment Contract, if he does not receive the due amounts. On 19 January 2009, the Player terminated the Employment Contract with the Club. The Panel is of the opinion that the Player therefore had just cause to terminate the Employment Contract on 19 January 2009.

89. Having established that the Player terminated the Employment Contract with just cause, the Panel concludes that the Appellant is to be held liable for the early termination. The Panel therefore refers to Article 17 para. 1 RSTP which states that the party in breach of contract shall pay compensation to the other party. This means that in the case at hand, the Player is entitled to receive an amount of compensation for breach of contract in addition to any outstanding payments on the basis of the relevant Employment Contract on 19 January 2009.

90. The Panel is of the opinion, as mentioned before, that the outstanding amounts on 19 January 2009 were:

- USD 10,000 regarding the unlawful deduction for the registration fee;
- USD 53,220 regarding the unpaid first instalment;
- EGP 11,400 regarding the rent allowances.

The Player is therefore entitled to receive USD 63,220 and EGP 11,400 as outstanding salaries and rent allowances, as the DRC correctly stated in the Decision.

91. The DRC granted the Player a compensation in the amount of USD 425,000. The Player claimed in its Response to the CAS that the amount of compensation shall be raised to USD 1,000,000, corresponding to the global amount of the Employment Contract.

92. Article 17 para. 1 RSTP states that the 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 (amortized over the term of the contract) and whether the contractual breach falls within a protected period.

93. According to the CAS jurisprudence, Article 17 para. 1 RSTP, closely follows Article 337b Swiss Code of Obligations (CO), which grants as compensation to the party not being in breach of the contract an amount corresponding to all claims arising out of the employment relationship, reduced by everything *"which he saved as a consequence of the termination of the employment relationship and which he earned or intentionally failed to earn through other work"*. The Panel has therefore to compare two financial situations in order to determine the compensation: the Player's hypothetical financial situation without the Appellant's breach of contract and the financial situation as it is following the breach of contract by the Appellant.

94. The Panel agrees that in principle the Player should be restored in the position in which he would have been if the Employment Contract had been properly fulfilled by the Appellant. The Panel notices that for the remaining time of the first season, the Appellant was obliged to pay the Player the second instalment in the amount of USD 68,750 as well as the remaining 25%, amounting to USD 68,750 as well, which totals a gross amount of USD 137,500. For the second year of the Employment Contract, the Player was entitled to receive a gross amount of USD

325,000 and for the third year, a gross amount of USD 400'000.The total gross amount for remaining period of the Employment Contract is therefore USD 862,500.

95. The DRC stated in the Decision that the Player had earned an amount of USD 65,000 for the period between March 2010 and December 2011 and deducted this amount from the compensation payable to the Player. However, the Employment Contract between the Player and the Club was only closed to last until the end of the season 2010/2011, *i.e.* until 30 June 2011. The Panel is of the opinion that the deduction made by the DRC for the time period from July until December 2011 should not be taken into consideration. As the Player did not contest the deduction of USD 65,000 the Panel, nevertheless, leaves the deducted amount at USD 65,000. Considering this deduction, the Panel would grant the Player a gross amount of USD 797,500 as compensation for the breach of contract committed by the Appellant.

96. As the Player himself did not file an appeal against the Decision and a counterclaim is no longer admissible under the Code, the Panel is therefore bound by the amounts awarded by the DRC (see CAS 2008/A/1644, award of 31 July 2009, no. 22; CAS 2008/A/1518, award of 23 February 2009, no. 74). Therefore, the Panel confirms the Decision.

ON THESE GROUNDS

The Court of Arbitration for Sports rules that:

1. The appeal of Zamalek FC against Mr. Ricardo Alves Fernandes regarding the decision of the FIFA Dispute Resolution Chamber dated 10 April 2015 is dismissed.

2. The Decision of the FIFA Dispute Resolution Chamber dated 10 April 2015 is confirmed.

(…)

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