



Arbitration CAS 2016/A/4408 Raja Club Athletic de Casablanca v. Baniyas Football Sports Club & Ismail Benlamalem, award of 29 June 2017

Panel: Mr Rui Botica Santos (Portugal), President; Mr Didier Poulmaire (France); Prof. Luigi Fumagalli (Italy)

Football

Termination of the employment contract without just cause by the player

Principle of res judicata

Res judicata of a decision when a party has withdrawn its appeal

Res judicata of a decision against a party found to be jointly and severally liable of a debt

Failure to appear at work without just cause

Definition of “new” club

- 1. An arbitral tribunal violates procedural public policy if it disregards the *res judicata* effect of a previous decision or if the final award departs from the opinion expressed in an interlocutory award disposing of a material preliminary issue. There is *res judicata* when the claim in dispute is identical to that which was already the subject of an enforceable judgment (identity of the subject matter of the dispute). This is the case when in both litigations the same parties submitted the same claim to the court on the basis of the same facts. The identity must be understood from a substantive and not grammatical point of view, so that a new claim, no matter how it is formulated, will have the same object as the claim already adjudicated. The *res judicata* effect extends to all the facts existing at the time of the first judgment, whether or not they were known to the parties, stated by them, or considered as proof by the first court. However, it does not stand in the way of a claim based on a change in circumstance since the first judgment. The *res judicata* effect does not extend to the facts after the time until which the object of the dispute could be modified, namely to those which took place beyond the last time when the parties could supplement their statements of facts and evidentiary submissions. Such circumstances are new facts (real *nova*) as opposed to the facts already in existence at the decisive time, which could not have been invoked in the previous proceedings (false *nova*), which opened the way to revision.**
- 2. If a player’s appeal with the CAS against a decision was deemed withdrawn, the decision of the first instance body became final and binding upon him. The fact that the player was allowed to intervene as a respondent in other arbitral proceedings between two other parties against the same decision does not change the fact that the decision is enforceable as far as he is personally concerned. The proceedings initiated before the CAS by another party (a club), on the one hand, and by the player, on the other hand could have remained separate *vis-à-vis* these parties, who were independent from each other. The position taken by the player (such as his withdrawal from the proceedings) does not have any impact on the legal position of the other, irrespective**

of whether this could result in an award inconsistent with the appealed decision towards the player. As a respondent in the other arbitration proceedings, the player is only allowed to request the total or partial dismissal of the appeal of the other appellant (the club). In other words, he cannot somehow change the fact that the appealed decision is final and binding upon him, following the withdrawal of his appeal.

3. According to the jurisprudence of the Swiss Federal Tribunal, a first instance decision which has already been declared final and binding upon the principal debtor (the player) because the latter has withdrawn his appeal is not *res judicata vis-à-vis* the party (the club) that has been found to be jointly and severally liable of the debt. Therefore, a CAS panel has to address the submissions of the club on the merits of the case.
4. There is an unjustified non-appearance at or leaving of the working place when the employee is absent for a certain amount of time and the employer can reasonably assume that it is not in the employee's intention to return and that his decision is final. This is particularly true if the employee is summoned to return to work or to justify his non-appearance (for instance by means of a medical certificate) and does not comply or is unable to provide a just cause. Likewise, if the employee does not return to work after vacation and leaves his employer without any news for several months, the employer can – in good faith - assume that the employee's employment has ended without having to dismiss him or the employee having explicitly resigned.
5. The first club for which the player registers after the contractual breach is the player's "*new club*" for the purpose of Article 17 para. 2 RSTP. The fact that the player returned to the club on the basis of an employment contract which existed before a loan contract does not change the fact that the club must be considered as the "*new club*". The FIFA Regulations subject loan transfers to the same rules, which govern ordinary or permanent transfer of players. One of the characteristics of a transfer, be it a loan or a permanent transfer, is that it brings with it the effects of contractual stability. Under such circumstances, there is no valid reason to treat differently the club of origin, to which the player returns after he terminated the loan agreement without just cause and another club, which registers the same player for the first time.

I. PARTIES

1. Raja Club Athletic de Casablanca ("Raja Club") is a football club with its registered office in Casablanca, Morocco. It is a member of the Royal Moroccan Football Federation ("FRMF"), which has been affiliated with the Fédération Internationale de Football Association ("FIFA") since 1960.
2. Baniyas Football Sports Club Company LLC ("Baniyas") is a football club with its registered office in Baniyas, United Arab Emirates. It is a member of the United Arab Emirates Football

Association (“UAEFA”), affiliated with FIFA since 1974.

3. Mr Ismail Benlamalem (“Player”) is a professional football player of Moroccan nationality.

II. FACTUAL BACKGROUND

A. Background facts

4. Below is a summary of the relevant facts and allegations based on the Parties’ written and oral submissions, pleadings, and evidence adduced in these proceedings. References to additional facts and allegations found in the Parties’ written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis 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 deems necessary to explain its reasoning.

B. The contracts entered into by the Parties

5. On 15 December 2010, the Player entered into an employment contract with Raja Club. This contract was a fix-term agreement, valid for four seasons, effective from 1 December 2010 until 30 June 2014.
6. On 1 August 2012, the Parties contractually agreed to the transfer of the Player to Baniyas on a temporary loan basis. For this purpose, they signed a document entitled “*Foreign Football player Loan Contract*” (“Loan Contract”), which governed the details of the loan between the two clubs as well as the labour relationship between the Player and Baniyas.
7. The main characteristics of the Loan Contract can be summarised as follows:
 - The loan period was from 1 August 2012 to 31 May 2013.
 - The end of the loan coincided with the end of the labour relationship between the Player and Baniyas.
 - Baniyas undertook to pay a loan fee of USD 400,000 to Raja Club “*on execution of the loan contract*”.
 - The Player was entitled to the following remuneration from Baniyas:
 - o an “*advanced payment*” of USD 100,000 “*payable upon the execution of the contract*”;
 - o an “*advanced payment*” of USD 100,000 payable on 18 November 2012;
 - o a “*salary*” of USD 5,000 at the end of every calendar month.

- Throughout the duration of the Loan Contract, the Player was also entitled to a car, “a furnished accommodation”, four business class plane tickets, bonuses and health insurance for himself, “his wife and two kids under 18 years old”.
- There was an option-clause providing Baniyas with the right to make the Player’s transfer definitive. The option was to be exercised on or before 31 December 2012, together with the payment of another USD 400,000 to Raja Club.
- Among other obligations, the Player committed himself a) to “refund the received advanced payment in the event of unilateral termination without [just] cause”, b) to “participate in all matches and training sessions and related activities, unless otherwise required by the Club”, c) to “obey all instructions issued by [Baniyas]”, d) not to “retire, on his own initiative, throughout the term of this contract”, e) not to “leave the state without having written [the end of this clause is missing]”.
- Article 9 of the Loan Contract reads as follows:

“All notifications and correspondence pertaining to this contract shall be sent in writing by fax or e-mail or by hand to be delivered to the addresses set forth herein with acknowledgment of receipt or to the each party who shall undertake to notify the other party of any change in his address”.

8. It is undisputed that Baniyas made the following payments:

- On 13 August 2012, USD 100,000 to the Player corresponding to the first “advanced payment”.
- On 15 August 2012, USD 400,000 to Raja Club corresponding to the loan fee.
- On 29 November 2012, USD 70,000 to the Player corresponding to the second “advanced payment”, from which was deducted a fine of USD 30,000 imposed upon the Player by Baniyas following internal disciplinary proceedings initiated against him. At the hearing before the Court of Arbitration for Sport (CAS) and contrary to its written submissions, Baniyas claimed that it actually paid the whole USD 100,000. The Player’s representative was unable to confirm or rebut this information; and
- Four times USD 5,000 corresponding to four months of salaries.

C. The Player’s alleged breaches of contract

9. On 22 August 2012, the Player attended a three-week pre-season training camp organised by Baniyas in Lisbon, Portugal. There are contradictory versions of events regarding what actually happened there:

- On the one hand, Baniyas claims that the Player committed several disciplinary violations and, as a consequence, was sent back to Abu Dhabi before the end of the camp; and

- On the other hand, Raja Club and the Player contend that, on 28 August 2012, the latter had been called by the Moroccan national team, which was also based in Lisbon, in order to prepare for the qualifying round of the Africa Cup of Nations. In this context and on 3 September 2012, he played for the Moroccan national team in Mozambique before he returned to Abu Dhabi.
10. On 25 September 2012, the Player's pregnant wife came to Abu Dhabi. When she found out that, contrary to her expectations, Baniyas would not cover the medical costs associated with the delivery of her baby, she decided to fly back to Morocco, which she did on 1 October 2012.
 11. It is undisputed that the Player left Abu Dhabi on 4 October 2012:
 - Baniyas submits that the Player had informed its management that he *"had been called up to play with the Moroccan National Team against Mozambique. Said match supposedly (...) was going to be held on 13 October 2012. However, [Baniyas] did not receive any call up letter from the Moroccan Football Association, which obviously made [Baniyas] believe that the supposed call up with the Moroccan National team was simply not true"*.
 - Raja Club and the Player claim that the latter was alarmed by his wife's health condition and decided to be by her side. He left for Morocco with the authorization of Mr Salam Ismael, Baniyas' Team Manager.
 12. It is Baniyas' case that, from the moment the Player left Abu Dhabi, it tried to enter into contact with him but could not reach him by any means.
 13. On 21 October 2012, Baniyas sent a notification to the Player ("First Notification"), whereby it complained about his unjustified absence from the club, which allegedly caused *"great damages and financial loses"*. It drew his attention to the fact that he had missed four official matches and failed to provide any reason to explain his departure from his contractual obligations. It insisted that his actions *"constitute a breach of the provisions of an employment contract & the rules of FIFA & UAE football association and club's rules"*. It reminded the Player of the disciplinary violations, which he committed during the training camp in Lisbon as well as of his subsequent commitment to behave properly from then on. Baniyas informed the Player that, until further notice, it would *"suspend [him] from the training and matches of the club"* and *"stop payments of all financial due to be paid to [him]"*. It urged the Player to return to the club within the next 24 hours.
 14. The Player contests having ever received such notification.
 15. On 25 October 2012, the Player's wife gave birth to a boy.
 16. According to Raja Club and the Player, the latter returned to Baniyas on 28 October 2012. They contend that *"upon his return, he was congratulated for this birth. Actually, the Club never complained about this absence for two reasons: because the Club was aware of it and because the Club won all matches"*.

17. Baniyas submits that, on 31 October 2012, and in the absence of any news from the Player, it sent him a second notification (“Second Notification”) outlining his unexplained absence from the club, criticising his lack of communication and summoning him to appear within the next three days, failing what Baniyas would *“terminate an employment contract, to protect the interests of the team which affected by [his] absence, and [he] shall bear the legal responsibilities resulting from the termination including the financial liability like the paid advance payments and the loan fees of (\$ 400.000) paid to [his] former club (...) and expenses paid to conclude an employment contract with [him]”*.
18. According to Baniyas, the Player finally showed up at the club in the evening of 31 October 2012 and attended a meeting during which he a) acknowledged receipt of the First Notification and the Second Notification, b) agreed with the facts related therein, c) accepted that he was at fault and that he committed several contractual violations and d) undertook to behave properly from then on. He allegedly confirmed that he had not been called up by the Moroccan national team and that his absence from the club was exclusively due to the fact that he wanted to attend the birth of his child. The Player’s statements were recorded in the minutes of the meeting, signed by him as well as by several representatives of the club.
19. Raja Club and the Player deny the convening of a meeting on 31 October 2012 and the fact that the Player acknowledged receipt of the First and Second Notifications. They claim that the Player’s signatures on these documents as well as on the minutes of the meeting were forged.
20. On 8 November 2012, Baniyas notified in writing the Player of its decision to impose upon him a USD 30,000 fine as a disciplinary sanction following his absence *“during the period from 4-10-2012 to 31-10-2012 and non participating in five official football matches (...) as well as a friendly match which resulted in morally and materially damages to the team”*. This decision makes reference to the First and Second Notifications as well as to the *“minutes of meeting conducted in [the Player’s] presence dated 31-20-2012 (sic)”*. A copy of the decision was allegedly sent to FIFA, UEFA, PRO League, *“Company managing director”*, *“Legal advisor”*, *“Finance division”* and *“Player’s file”*. In its written submissions before the CAS, Baniyas clarified that the fine was deducted from the second advanced payment to be made to the Player in accordance with the Loan Contract. At the hearing before the CAS, it explained that it actually waived its right to collect the USD 30,000 and paid the full second advanced payment on 29 November 2012.
21. According to the Player, his wife joined him in Abu Dhabi on 25 November 2012 but without their newborn son as Baniyas *“refused to proceed to the Customs formalities for the baby”*. He claims that, when he complained about the situation to the club’s management, Baniyas downgraded him to its amateur team and refused any further contact with him. As a result, the Player felt *“mentally pressured”* and *“decided to ask for psychological support”*. Following a friend’s recommendation, he chose to meet with a *“psychotherapist/ mental coach in Brussels”*. In this regard, the Player submits that *“[before] leaving he asked for a meeting to explain the reasons of his need to go abroad but in vain. Before he left, he informed the team manager Mr Sala Ismaël of his decision by SMS on 1st of December”*.
22. On 1 December 2012, the Player left Baniyas and never returned.

23. In their respective submissions, Raja Club and the Player put forward the following sequence of events:

- *“Before leaving [the Player] asked for a meeting to explain the reasons of his need to go abroad but in vain. Before he left, he informed the team manager Mr. Salah Ismaël of this decision by SMS on 1st of December”.*
- *On 3 December 2012, “a member of Baniyas came to the hotel and told the Player’s wife that her husband will be replaced in the team and therefore that it would be good for everyone if he does not come back to the Club and even better to Abu Dhabi”.*
- *“After being told the story by his wife, the Player asked her to prepare her luggage and return to Morocco what she did on the 6th of December”.*
- *“During this time, [the Player] tried in vain to contact the Club’s management to understand the situation but no one accepted to answer him”.*
- *“He decided then not to return to the Club until the Club expressed this wish to have him back to the club. But, no one has never called him, so he never returned to the Club”.*
- *“On 25th December, the Player left Brussels and joined his wife and his son in Morocco”.*
- *“On July 2013 and therefore after the term of the loan Contract, he returned to his former Club RAJA with which he was still contractually bound for one year”.*
- *“He has had no news from Baniyas since December 2012. He was thus surprised to learn in 2015 that the Club had lodged a complaint before the FIFA DRC”.*

24. Baniyas claims that on 4 December 2012, it served another notification to the Player (“Third Notification”) urging him to come back to the club within the next 72 hours, failing which he would have to face *“the legal responsibilities resulting from [his] breach and [Baniyas] will start legal proceeding in accordance to the provisions stipulated in the employment contract and FIFA rules”*. Baniyas sent a copy of this document (via facsimile) to FIFA, UAEFA and to Raja Club. According to the transmission report, Raja Club received the fax.

25. Baniyas submits that it had to replace the Player and, therefore, on 13 January 2013, signed a new employment contract with the Swedish professional player, Mr Christian Wilhelmsson for a total amount of EUR 1,400,000.

26. It is undisputed that the Player returned to Raja Club after 31 May 2013, *i.e.* after the maturity date of the Loan Contract.

D. The Proceedings before the FIFA Dispute Resolution Chamber

27. On 14 December 2012, Baniyas initiated proceedings before the FIFA Dispute Resolution

Chamber (“DRC”) against the Player. Apparently, FIFA received Baniyas’ claim but did not act upon it.

28. On 12 September 2014, Baniyas lodged a second claim before FIFA against the Player for terminating his employment relationship without just cause and against Raja Club for inducement to breach his employment contract. It sought to obtain the payment of USD 1,803,694, plus 5% interest *p.a.* as from 4 December 2012 as well as sporting sanctions against both the Player and Raja Club.
29. In a decision dated 21 May 2015, the DRC held that the Player terminated the employment relationship with Baniyas without just cause when he left the club on 1 December 2012 and, therefore, was liable to pay compensation, in accordance with Article 17 para. 1 of the applicable Regulations on the Status and Transfer of Players (“RSTP”).
30. With reference to the calculation of the amount of compensation in the case at stake, the DRC made the following findings:
 - The Player received an advanced payment of USD 100,000 for the entire duration of the employment relationship with Baniyas. Considering that he remained with this club only for four months, the Player must repay to Baniyas the amount of USD 60,000, plus 5% interest as of the date of the claim.
 - The DRC found that *“the average remuneration of USD 53,562 for the time remaining of the relevant contract should be taken into account in the calculation of the amount of compensation for breach of contract payable to Baniyas”*.
 - Bearing in mind a) the *“time remaining on the contract”* as well as b) the fact that the transfer fee paid by Baniyas to Raja Club amounted USD 400,000, the DRC concluded that *“the non-amortized transfer compensation, amounting to USD 240,000, shall also be included in the calculation of the amount of compensation for breach of contract”*.
31. Finally, the DRC held that *“in accordance with the unambiguous contents of art. 17 par. 2 of the [RSTP], the player’s new club, i.e. Raja, shall be jointly and severally liable for the payment of compensation”*.
32. On 21 May 2015, the DRC decided the following:
 - “1. The claim of [Baniyas] is partially accepted.
 2. The counterclaim of [Raja Club] is inadmissible.
 3. The [Player] is ordered to pay to [Baniyas], within 30 days as from the date of notification of this decision, the amount of USD 60,000 plus 5% interest *p.a.* as from 12 September 2014, until the date of effective payment.
 4. The [Player] has to pay to [Baniyas], within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of USD 293,562 plus 5% interest *p.a.* on said

amount as from 12 September 2014 until the date of effective payment.

5. *[Raja Club] shall be held severally liable for the payment of the amount mentioned in point 4 above.*
6. *Any further claims lodged by [Baniyas] are rejected.*
7. *In the event that the amounts due to [Baniyas] plus interest in accordance with the above-mentioned points 3 and 4 are not paid within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
8. *[Baniyas] is directed to inform the [Player] and [Raja Club] 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”.*

33. On 18 December 2015, the Parties were notified of the decision issued by the DRC (“Appealed Decision”).

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

34. On 5 January 2016, Raja Club filed a statement of appeal (dated 4 January 2016) against the Appealed Decision with the CAS in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (“Code”). Raja Club designated Baniyas as sole Respondent.
35. The Player as well as Baniyas also filed a statement of appeal against the Appealed Decision with the CAS. Eventually, these appeals were deemed withdrawn. The President of the Appeals Arbitration Division of the CAS formally put an end to the arbitral proceedings initiated by the Player and Baniyas with two separate termination orders.
36. On 20 January 2016, the CAS Court Office took note of Raja Club’s nomination of Mr Didier Poulmaire as arbitrator together with its selection of French as the language of the arbitration.
37. On 21 January 2016, Baniyas confirmed to the CAS Court Office that it was appointing Prof. Luigi Fumagalli as arbitrator and submitted that the proceedings must be conducted in English.
38. On 11 February 2016, the President of the Appeals Arbitration Division of the CAS rendered an order on language, whereby she ruled that *“The language of the procedure TAS 2016/A/4408 (...) is English”*.
39. On 18 February 2016 and within the prescribed deadline, Raja Club filed its appeal brief in English in accordance with Article R51 of the Code.
40. On 15 March 2016, the Player requested to intervene in the arbitral proceedings in accordance with Articles R41.3 and R41.4 of the Code. The Player’s petition was eventually granted following the approval of Raja Club and Baniyas.

41. On 18 March 2016, respectively on 25 March 2016, Baniyas and the Player asked the CAS Court Office that the time limit for the filing of its/his answer be fixed after the full payment by Raja Club of the advance of costs.
42. On 18 May 2016, the CAS Court Office acknowledged receipt of the payment by Raja Club of the totality of the advance of costs.
43. On 8 June 2016 and within the granted deadline, Baniyas as well as the Player filed their respective answer in accordance with Article R55 of the Code.
44. On 17 June 2016, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Mr Rui Botica Santos, President of the Panel, Mr Didier Poulmaire and Prof. Luigi Fumagalli, arbitrators.
45. On 27 June 2016, the CAS Court Office requested FIFA to provide a copy of its file related to the Appealed Decision, which it did on 21 September 2016.
46. On 27 July 2016, the Parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held. Baniyas confirmed that it preferred for the matter to be decided solely on the basis of the Parties' written submissions, whereas Raja Club and the Player applied for a hearing.
47. On 11 August 2016, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing, which was eventually scheduled for 29 March 2017, with the agreement of the Parties.
48. During the proceedings, the Player and Raja Club questioned the authenticity of several documents filed by Baniyas in support of its allegations. In this context, the CAS Court Office had a lengthy exchange of correspondence with the Parties, which led to the appointment of Dr Raymond Marquis as an independent expert to analyse the authenticity of the Player's signature, namely on Notifications 1 and 2.
49. On 31 October 2016, the CAS Court Office informed the Parties of the following:

"(...) in view of the appointment of Dr Raymond Marquis as forensics expert in the present matter, [Raja Club and the Player are invited] to provide the CAS Court Office, no later than 18 November 2016, with original signatures of the [Player]. Such original signatures must be prior, contemporary and posterior to the signatures whose authenticity is disputed. Original current signatures of the [Player] are also required".
50. On 18 November 2016, the Player informed the CAS Court Office that he was not in a position to provide *"the requested documents with his signature contemporary to those whose his signature is challenged"*.
51. The same day, Raja Club informed the CAS Court Office that it needed more time to find any original documents bearing the Player's signature.

52. On 25 November 2016, the CAS Court Office invited Baniyas to provide “*the originals of exhibits n. 5, 6 and 12 of its answer no later than **5 December 2016***”.
53. On 16 December 2016 and within the granted extension of its deadline, Baniyas confirmed that it was unable to file any further original document and affirmed that “*all originals in its power have already been submitted to the CAS. Any other original document shall be in power of [the Player]*”.
54. On 22 December 2016, the Player informed the CAS Court Office that he was “*not able to provide any document contemporary to the challenged ones*”.
55. The same day, Raja Club confirmed to the CAS Court Office that it was “*unable to find any document containing the original signature of [the Player] due to a complicated situation due to financial troubles and a litigation between the former direction and the new one*”.
56. On 8 February 2017, the CAS Court Office informed the Parties of the following:

“*Further to the request to appoint an independent forensics expert, I draw the parties’ attention that, in order to compare the alleged forged signatures of the Player, such expert imperatively needs originals signatures of the Player that have to be dated prior, contemporary and posterior to the disputed facts.*

Despite requiring the aforementioned original signatures at several occasions, I have received no communication in this respect.

On behalf of the Panel, [Raja Club] and [the Player] are granted a last and ultimate time limit until 20 February 2017 to provide the CAS Court Office with these original signatures. No extension of time will be granted by the Panel.

Should the relevant parties fail to provide the Player’s original signatures within the prescribed deadline, the request to appoint an independent forensics expert shall be deemed withdrawn and the Panel will nevertheless proceed with the arbitration”.
57. On 1 March 2017, and as Raja Club and the Player failed to submit the required documents, the CAS Court Office confirmed to the Parties that the request to appoint an independent forensic expert was deemed withdrawn and that the Panel would proceed with the arbitration.
58. Between 21 and 28 March 2017, the Parties signed and returned the Order of Procedure in the present matter.
59. The hearing was held on 29 March 2017 in Lausanne. The Panel members were present and assisted by Mr Fabien Cagneux, Counsel to the CAS, and by Mr Patrick Grandjean, acting as *ad hoc* Clerk.
60. The following persons attended the hearing:
 - Raja Club was represented by its legal counsel, Mr Redouane Mahrach.

- Baniyas was represented by its in-house lawyer, Mr Al Moutaz Sharif Billah, assisted by its legal counsel, Mr Daniel Muñoz Sirera.
 - The Player was not present but was represented by his legal counsel, Mrs Tatiana Vassine.
61. The Panel observes that until the hearing, the Player was represented by Mrs Céline Schopphoff, Attorney-at-law in Marseille, France. However, on the eve of the hearing, the latter informed the CAS Court Office that, “[d]ue to personal reasons, [she would] not attend the hearing [and] asked [her] colleague Mrs. Tatiana Vassine to replace [her] and to represent [the Player] at the hearing”. Mrs Tatiana Vassine happens to be a partner of the law firm RMS Avocats, founded by Mr Redouane Mahrach, *i.e.* Raja Club’s legal representative in this case. The Panel found this situation unusual and to be potentially in conflict of interest. However, considering that the Player endorsed the position of an Appellant (his requests for relief, line of defence and submissions were similar to the ones of Raja Club), the risk of an inappropriate conduct in the light of deontologic rules was limited, in the opinion of the Panel. The Panel also underlines the fact that neither the Player’s nor Raja Club’s interests were jeopardized as their respective legal representatives chose to collaborate closely together from the beginning of the case.
62. At the outset of the hearing, the Parties confirmed that they did not have any objection as to the composition of the Panel.
63. After the Parties’ final arguments, the Panel closed the hearing, and announced that its award would be rendered in due course. At the conclusion of the hearing, the Parties confirmed that their right to be heard and to be treated equally in the present proceedings before the Panel had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appeal

64. In its appeal brief, Raja Club submitted the following requests for relief:

“[Raja Club] respectfully requests the Court of Arbitration for Sport to:

- a. Declare the present appeal admissible;*
- b. Set aside the Decision of the FIFA DRC dated 21st of May 2015;*
- c. Adopt a new one and:*
 - i. Main: consider that the contract between the Player (...) and Baniyas FC was not terminated before its fixed term;*

- ii. *First subsidiary: consider that the Player did not terminated the contract without just cause and cannot be held responsible for it;*
- iii. *Second subsidiary: consider that even the Player terminated the contract without just cause, Baniyas suffered no prejudice in link with this early termination;*
- iv. *Third Subsidiary: consider that in case the Player is condemned to pay a compensation to Baniyas FC, [Raja Club] is not jointly and severally liable with the Player to pay this compensation to Baniyas FC;*
- v. *In any case, reject any claim or prayer for relief from Baniyas FC;*
- vi. *Condemn Baniyas FC to pay [Raja Club] a sum of CHF 30.000 as a contribution to its legal costs and fees incurred in this proceedings;*
- vii. *Condemn Baniyas FC to pay the CAS costs and the arbitrators fees”.*

65. Raja Club’s submissions, in essence, may be summarized as follows:

- The claim of Baniyas is abusive. This club waited almost two years (*i.e.* the end of the time limit to lodge a claim with the FIFA deciding bodies – see Article 25 para. 4 RSTP) to complain before FIFA about the Player’s alleged unilateral and unjustified termination of his employment relationship with Baniyas.
- The employment relationship between the Player and Baniyas did not come to an end before the term contractually agreed in the Loan Contract:
 - Baniyas did not prematurely terminate the employment relationship. A fixed-term contract cannot come to an end before the expiration of the agreed period unless there is a just cause for its termination. Under such a circumstance, a prior notification is mandatory and Baniyas should have drawn the Player’s attention to the fact that his conduct was not in accordance with his obligations. In this regard, “*no termination letter was sent to the Player nor any prior notification that the Player would have been in breach of his contractual duties*”.
 - The Player has never received the notification allegedly served by Baniyas on 4 December 2012 (*i.e.* the Third Notification) and the Club has not proven otherwise. Hence, the Player was not duly informed that he was in breach of the Loan Contract.
 - Likewise, the Player did not terminate the employment relationship before its term as contractually agreed in the Loan Contract. It “*is important to stress that the Player acted in good faith since he informed the Club of his temporary absence and that the Club did not seem to be affected at all*”.
- “*Each party accepted this situation where none neither blame the other nor ask the execution of the*

other one's obligation. Thus, the Club did not ask the Player to fulfil his duties and the Player did not complain about the non-payment of his wages".

- Baniyas was not interested in the Player anymore *"because it had already decided to replace him by a forward Player. That's why the Club never sent any notice to the Player for fear of seeing the Player coming back to the Club and this make the hiring of the forward impossible"*. As a matter of fact and according to the applicable local regulations, each club could register a maximum of three foreign players. As Baniyas had exhausted its quota of foreigners, it could hire Mr Christian Wilhelmsson only if the Player did not return to the club.
- If, against all odds, the employment relationship between the Player and Baniyas must be considered as having been prematurely terminated, the Player cannot be held responsible for this situation. As a matter of fact, he *"had no idea his temporary leave could lead to his contract termination. Even more, the panel should consider his leave was based on valid reasons and could not be seen as a termination without just cause"*:
 - Regarding his absence in August 2012, the Player was called up by his national team, in order to prepare for the qualifying round of the Africa Cup of Nations, which took place in Mozambique on 3 September 2012.
 - The Player's absence in October 2012 was explained by the fact that he had to join his pregnant wife, who was admitted to a Moroccan hospital due to a medical complication.
 - Baniyas had never complained about the Player's absences of August and October 2012. The Player denies having ever received the First and Second Notifications. He contests having ever signed those documents and claims that his signature on these documents was forged.
 - The Player left for Belgium where he underwent mental therapy sessions, following the bad treatment received from Baniyas, which a) refused to pay for his wife's medical costs associated with the delivery of her baby, b) refused to provide a furnished apartment to the Player, c) refused to complete the administrative steps necessary for his new-born son to live with him in the United Arab Emirates, d) downgraded the Player to its amateur team.
 - The Player was supposed to spend just a couple of days in Belgium but decided to extend his stay when he found out that the Club told his wife that he was not needed anymore.
- The Player's absences did not cause any prejudice to Baniyas. While the Player was gone, the Club won all of its matches and had known the best season of its history. Because of the Player's leave, Baniyas was in a position to hire a new foreign player, whose skills were more adequate to the needs of its first team (*"Baniyas decided to hire a forward instead of a defender because it had an issue with its forwards, not with its defenders"*).

Finally, Baniyas did not suffer any financial loss as it was able to hire a new forward without having to make any further payments to the Player.

- Article 17 para. 2 RSTP is not applicable to Raja Club, which was unaware of the fact that the employment relationship between the Player and Baniyas had been terminated. “[It] should be recalled that the Player returned to RAJA only after the end of the loan agreement (...). RAJA requested an ITC on July 2013 while the loan ended on May 31st 2013”. Furthermore, Raja Club cannot be considered to be the Player’s new club for the purpose of Article 17 para. 2 RSTP, because it “was not in a position to refuse the return of the Player since at the end of the loan it had the obligation to welcome him because the contract with him was still running for a year”.

B. The Answers

a) The answer filed by Baniyas

66. Baniyas submitted the following requests for relief:

“(...) Baniyas Sports Club hereby respectfully requests that the Panel:

1. *Reject the appeal filed by [Raja Club] against the decision of the FIFA Dispute Resolution Chamber passed on 21 May 2015 (...), whose grounds were notified to the Parties on 18 December 2015.*
2. *Confirm the FIFA DRC decision in full and as such, rule that [the Player] terminated the employment contract with Baniyas SC without just cause on 1 December 2012, being [the Player] and Raja Club, as new club of the player, jointly and severally liable to pay compensation to Baniyas SC as follows:*
 - (i) *[The Player] is ordered to pay Baniyas SC, **within 30 days** as from the date of notification of this decision, the amount of USD 60,000 plus 5% p.a as from 12 September 2014, until the date of effective payment.*
 - (ii) *[The Player] is ordered to pay Baniyas SC, **within 30 days** as from the date of notification of this decision, compensation for breach of contract in the amount of USD 293,592 plus 5% p.a on said amount as from 12 September 2014, until the date of effective payment.*
 - (iii) *Raja Club, shall be held jointly and severally liable for the payment of the amount mentioned in point (ii) above, i.e USD 293,592 plus 5% p.a on said amount as from 12 September 2014, until the date of effective payment.*
3. *In any case, decide that Raja Club, as [the Player’s] new club, is jointly and severally liable for any compensation awarded to Baniyas SC.*
4. *Fix a minimum sum of 30,000 CHF to be paid by Raja Club as a contribution to [Baniyas’] legal fees and costs.*

5. *Condemn [Raja Club] to pay the entire amount of CAS administration and the Arbitrator fees”.*

67. The submissions of Baniyas, in essence, may be summarized as follows:

- The Appealed Decision is final and binding as to the Player, regardless of the appeal filed by Raja Club and of the findings of the CAS Panel.
- The Player terminated his employment relationship with Baniyas without just cause. He breached his employment contract on several occasions. He left Baniyas without explanation and without authorization of the club on 4 October and on 1 December 2012.
- The Player had no reason for terminating his employment relationship with Baniyas. As a matter of fact, the club complied with all of its contractual duties: it provided the Player with suitable accommodation, transportation, four airlines tickets and paid all the salaries and advanced payments as provided under the Loan Contract. In fact, the Player left Baniyas permanently on 1 December 2012, just two days after he had received his second advanced payment.
- Contrary to the Player’s and Raja Club’s statements, Baniyas had not authorized the Player to leave the club, did not refuse to provide its assistance for his son to be reunited with the Player in Abu Dhabi and did not downgrade the Player to its amateur team. The Player and Raja Club made up all these allegations without establishing them in any manner.
- The Player’s action has caused financial and sporting damages to Baniyas.
 - Baniyas had to pay USD 400,000 to Raja Club in order to obtain the Player’s services. It also paid to the Player USD 200,000 in advanced payments (and not USD 100,000 as considered by the DRC) in addition to his salaries and other benefits in kinds.
 - Baniyas was forced to sign a replacement player, Mr Christian Wilhelmsson. *“The cost incurred by the Club in signing this player was EUR 466,668 corresponding to six months salaries plus EUR 16,667 corresponding to the accommodation allowance for the first six months of the employment contract”.*
 - Baniyas accepted to pay large amounts of money in order to hire the Player. This *“proves the importance that the Club gives to this player in order to acquire its sporting objectives during the season”.*
- The DRC miscalculated the compensation resulting from the Player’s unjustified unilateral termination. However, Baniyas has decided not to appeal against the Appealed Decision and therefore to accept the awarded compensation.
- Raja Club is jointly and severally liable for the damages caused by the Player’s

unjustified termination of his employment relationship with Baniyas.

b) The answer filed by the Player

68. The Player submitted the following requests for relief:

“[The Player] respectfully requests the Court of Arbitration for Sport to:

- a. *Set aside the Decision of the FIFA DRC dated 21st of May 2015;*
- b. *Adopt a new one and:*
 - i. *Main: consider that the contract between the Player (...) and Baniyas FC was not terminated before its fixed term;*
 - ii. *First subsidiary: consider that the Player did not terminated the contract without just cause and cannot be held responsible for it;*
 - iii. *Second subsidiary: consider that even if the Player terminated the contract without just cause, Baniyas suffered no prejudice in link with this early termination;*
 - iv. *In any case, reject any claim or prayer for relief from Baniyas FC;*
 - v. *Condemn Baniyas FC to reimburse the fine amounting to 30.000USD that was unlawfully deducted from his salary;*
 - vi. *Condemn Baniyas FC to pay [to the Player] a sum of CHF 30.000 as a contribution to its legal costs and fees incurred in this proceedings;*
 - vii. *Condemn Baniyas FC to pay the CAS costs and the arbitrators fees.*

69. As admitted by the Player himself, his submissions are similar, if not identical, to the ones of Raja Club, which can be referred to by analogy.

70. However, the Player filed a seventeen-page long expertise, dated 9 March 2016 and drafted by Mrs Christine Navarro.

71. Mrs Christine Navarro identified herself as “*Judicial expert among the Court of Appeal of Paris*”; “*Expert certified by the Court of Cassation*”; “*G.2.4 Scientific and Technic Investigations - Materials and Writings*”; “*Expert before the International Criminal Court*”; “*President of the Judicial Experts in criminalistic Company*”; “*Old expert of the Criminal Research Institut of the National Police force*”. Mrs Navarro confirmed that the signatures of the Player on five documents dated between 21 October and 8 November 2012 were apparently imitations. Mrs Christine Navarro’s expertise was not based on original documents. For this reason she concluded her study as follows (as translated from French into English by the Player): “*To declare an opinion more detailed, and peremptory, we should examine:*

- *Originals, particularly under magnification, to check the presence of an possible montage;*
- *And specimens of authentic signatures from Mr. Ismail BENLAMALEM from end of 2012 to examine finely all the intravariations of the signature during that period”.*

V. JURISDICTION

72. The jurisdiction of the CAS in the present matter derives from Articles 66 *et seq.* of the applicable FIFA Statutes and Article R47 of the Code.
73. At the hearing before the CAS, the Parties expressly accepted the jurisdiction of the CAS, which is furthermore confirmed by the signature of the Order of Procedure.
74. It follows that the CAS has jurisdiction to decide on the present dispute.
75. Under Article R57 of the Code, the Panel has the full power to review the facts and the law.

VI. RES JUDICATA PRINCIPLE

76. On 5 January 2016, the Player filed a statement of appeal with the CAS against the Appealed Decision but failed to submit his appeal brief within the given time limit. As a consequence, the President of the Appeals Arbitration Division of the CAS terminated the arbitral proceedings initiated by the Player on 2 March 2016. In the course of the present procedure, the Player has never suggested or established that the termination order did not come into force or was subsequently set aside. As a result and according to Baniyas, the Appealed Decision became final and binding upon the Player.
77. The Player as well as Raja Club claim that Article R57 of the Code (“*The Panel has full power to review the facts and the law*”) contemplates a full hearing *de novo* of the original matter and grants the CAS Panel the authority to render a new decision superseding the one rendered by the previous instance. Hence, it is their case that the CAS is not bound by the factual or legal findings of the DRC. The Player and Raja Club also insist on the fact that the Parties to the present appeals arbitration procedure are identical to the ones involved in the dispute before the DRC. Under such circumstances and according to them, the Player must have the same rights as Baniyas and Raja Club. They submitted that any other conclusion would clearly infringe the Player’s right to be heard, and thus contravene Swiss law. Finally, they argue that there would be a risk of conflicting decisions in relation to the subject-matter of the dispute, if the Appealed Decision was final and binding upon the Player but the CAS was to find that the Player did not terminate his employment relationship with Baniyas without just cause.

A. The principle of *res judicata*

78. It is generally accepted that the choice of the place of arbitration also determines the law to

be applied to arbitration proceedings. The Swiss Private International Law Act (“PILA”) is the relevant arbitration law (DUTOIT B., *Droit international privé Suisse, commentaire de la loi fédérale du 18 décembre 1987, Bâle 2005, N. 1 on article 176 PILA*; TSCHANZ P-Y., in *Commentaire romand, Loi sur le droit international privé - Convention de Lugano, 2011, n° 1, p. 1627, ad art. 186 LDIP*). Article 176 para. 1 PILA provides that the provisions of Chapter 12 of PILA regarding international arbitration shall apply to any arbitration if the seat of the arbitral tribunal is in Switzerland and if, at the time the arbitration agreement was entered into, at least one of the parties had neither its domicile nor its usual residence in Switzerland.

79. The CAS is recognized as a true court of arbitration (ATF 119 II 271). It has its seat in Switzerland. Chapter 12 of the PILA shall therefore apply, the Parties in the present dispute having neither their domicile nor their usual residence in Switzerland.
80. In a decision dated 27 May 2014, the Swiss Federal Tribunal (SFT) held that public policy within the meaning of Article 190(2)(e) PILA is violated when some fundamental and generally recognized principles are contravened, leading to an insufferable contradiction with the sense of justice, such that the decisions appear incompatible with the values upheld in a state of law (ATF 140 III 278 at 3.1; ATF 132 III 389 at 2.2.1). An arbitral tribunal violates procedural public policy if it disregards the *res judicata* effect of a previous decision or if the final award departs from the opinion expressed in an interlocutory award disposing of a material preliminary issue (ATF 136 III 345 at 2.1, p. 348; 128 III 191 at 4a, p. 194).
81. There is *res judicata* when the claim in dispute is identical to that which was already the subject of an enforceable judgment (identity of the subject matter of the dispute). This is the case when in both litigations the same parties submitted the same claim to the court on the basis of the same facts. The identity must be understood from a substantive and not grammatical point of view, so that a new claim, no matter how it is formulated, will have the same object as the claim already adjudicated (ATF 140 III 278 at 3.3; ATF 139 III 126 at 3.2.3).
82. The *res judicata* effect extends to all the facts existing at the time of the first judgment, whether or not they were known to the parties, stated by them, or considered as proof by the first court (ATF 139 III 126 at 3.1, p. 129). However, it does not stand in the way of a claim based on a change in circumstance since the first judgment (ATF 139 III 126 at 3.2.1, p. 130 and the cases quoted). The *res judicata* effect does not extend to the facts after the time until which the object of the dispute could be modified, namely to those which took place beyond the last time when the parties could supplement their statements of facts and evidentiary submissions. Such circumstances are new facts (*real nova*) as opposed to the facts already in existence at the decisive time, which could not have been invoked in the previous proceedings (*false nova*), which opened the way to revision (ATF 140 III 278 at 3.3; judgment 4A_603/2011 of November 22, 2011, at 3.1 and the references).
83. In the present case, the Player’s appeal before the CAS against the Appealed Decision was deemed withdrawn as he failed to supplement his incomplete statement of appeal within the allotted time. In this respect, a termination order was rendered on 2 March 2016. In the course of the present procedure, the Player has never submitted nor established that he challenged

the termination order or that this decision did not come into force or was subsequently set aside. According to the SFT, an arbitral tribunal acting in appeal proceedings no longer has jurisdiction if the appeal is withdrawn (ATF 140 III 520 at 3.2.2). As a result, the decision of the first instance body became final and binding upon the Player.

84. From an objective standpoint, the matter in dispute in the present arbitral proceedings is identical to that which was already the subject matter of the earlier proceedings before the DRC: the Parties are identical and the claims are based on the same facts. There is no new claim based on modified circumstances that occurred after the decision of the DRC. In particular, Raja Club has not raised any new fact or ground for the revision of the Appealed Decision (*i.e.* the Appealed Decision was influenced by a criminal offense; decisive facts and evidence were discovered and were unknown to the Player at the time the Appealed Decision was rendered, violation of public policy; etc.) that could affect the validity and/or enforcement of the Appealed Decision.

B. Lack of jurisdiction *Ratione Personae*

85. The impact of the withdrawal of the appeal filed before the CAS by one of the co-defendants has been addressed by the SFT in a decision rendered on 28 August 2014 (ATF 140 III 520). In this case, the FIFA DRC (acting as a first instance body) found that the player had terminated without just cause his employment contract with his former club. As a consequence, the FIFA DRC ordered the player and his new club (the co-defendants) to pay jointly and severally an amount of GBP 400,000 to the former club for unilateral and unjustified termination of the working relationship. Both co-defendants challenged the said decision before the CAS and the two appeal proceedings were consolidated. However, the player's appeal was deemed withdrawn as he failed to pay the advance on costs in a timely fashion. Relying on this withdrawal, the former club argued *inter alia* that the decision of the FIFA DRC came into force and that the CAS had no jurisdiction to hear the appeal of the new club. In a decision dated 20 November 2013, the CAS set aside the decision rendered by the DRC and referred the case back to the first instance body for a new decision. The former club brought the matter before the SFT, which held that the CAS had no jurisdiction to annul the decision rendered by the DRC, insofar as this decision concerned the case between the former club and the player. As a matter of fact, it found that the decision issued by the FIFA DRC acquired force of *res judicata* between the player (who withdrew his appeal) and the former club. The CAS award was therefore annulled to this extent and upheld as to the rest.
86. In substance, the reasoning of the SFT is the following one (ATF 140 III 520 at 3.2.2 - translation from French to English can be found on the website: www.swissarbitrationdecisions.com):

“[In the procedure before the DRC], the [new club] and the Player were necessary joint defendants on the merits (...). According to case law and legal writing, the presence of joint defendants does not affect the plurality of the cases and the parties. The joint defendants remain independent from each other. The behavior of one of them, and in particular his withdrawal, failure to appear or to appeal, is without influence upon the legal position of the others (...). As to the judgment to be issued, it may be different as to one of the joint defendants

or the other (...). The independence of joint defendants will continue before the appeal body: a joint defendant may independently appeal the decision affecting him regardless of another's renouncing his right to appeal the same decision; similarly, he will not have to worry about the appeals of the other joint defendants being maintained if he intends to withdraw his own (...). Among other consequences, this means that the res judicata effect of the judgment concerning joint defendants must be examined separately for each joint defendant in connection with the opponent of the joint defendants because there are as many res judicata effects as couples of claimant/defendant (...).

In the light of these principles, the [former club] was blatantly wrong to deny that the CAS had any jurisdiction to address the [new club's] appeal against the DRC decision (...), on the basis of the Player's [withdrawal of his] appeal against the same decision. Indeed, the withdrawal had no impact on the appeal proceedings between the [new club] and the [former club]. In other words, the [new club] could argue before the CAS, among other things, that the DRC was wrong to find the Player in breach of his contract with the [former club] by demonstrating, for instance, that the contract had not become enforceable between these two parties, with a view to establish the extinction of the Player's obligation which had been jointly imposed upon the [new club] by Art. 17(2) RSTP (judgment 4A_304/2013 of March 3, 2014 at 3). It is immaterial that this may result in an award incompatible with the enforceable decision of the DRC as to the fate of the Player sued by the Appellant.

*However, the CAS made the same mistake by annulling §2 of the operative part of the DRC award, which exclusively concerned the dispute between the [former club] and the Player. In so doing, it overlooked that the withdrawal of the Player's appeal (...) put an end to this appeal procedure so that the decision of first instance was henceforth res judicata as to the Player and the [former club]. In other words, the CAS arrogated to itself a jurisdiction *ratione personae* that it no longer had as a consequence of the withdrawal of the appeal when it annulled a decision already enforceable as to one of the joint Defendants and henceforth untouchable, irrespective of the fate of the appeal of the other joint Defendant and of the risk of contradictory awards. It actually acted as though it were still seized of the appeal made and then withdrawn by the Player. (...) Otherwise, i.e., in the appeal case between the [former club] and the [new club], the CAS was right to accept its jurisdiction *ratione personae*".*

C. Other considerations in relation to the Player's claim

87. At the hearing before the CAS, Raja Club and the Player argued that the above findings of the SFT were not applicable by analogy as the Player had been admitted to the present arbitral proceedings once his application for intervention was granted.
88. For the reasons exposed above, the Player's appeal before the CAS against the Appealed Decision was deemed withdrawn and, consequently, the decision of the first instance body became final and binding upon him. The fact that the Player was allowed to intervene as a respondent in the arbitral proceedings between Raja Club and Baniyas does not change the fact that the Appealed Decision is enforceable as far as he is personally concerned. As the SFT exposed, the proceedings initiated before the CAS by Raja Club, on the one hand, and by the Player, on the other hand could have remained separate *vis-à-vis* these parties, who were independent from each other. The position taken by one of them (such as his withdrawal from the proceedings) does not have any impact on the legal position of the other, irrespective of

whether this could result in an award inconsistent with the Appealed Decision towards the Player.

89. In addition, it must be observed that, following the 2010 revision of the Code, counterclaims are not allowed in the CAS appeals procedure. As noted in the commentary that was released by the CAS together with the revised Code, “[t]he persons and entities which want to challenge a decision [have] to do so before the expiry of the applicable time limit for appeal”. In other words, under the current edition of the Code, it is not possible to submit a counterclaim at the late stage of the filing of the answer to an appeal.
90. The Player was admitted into these arbitration proceedings (*i.e.* CAS 2016/A/4408) as a respondent. In this capacity, he was only allowed to include in his answer all the factual allegations and legal arguments on which he intended to rely to request the total or partial dismissal of the appeal filed by Raja Club against the decision of the FIFA DRC. In other words, as a respondent, the Player is not in a position to request the Panel to modify the Appealed Decision on certain aspects. Such requests for relief would amount to counterclaims, which are inadmissible. Under these circumstances, the Panel finds unclear and therefore rejects the Player’s position that his intervention as a respondent to the present arbitral proceedings could somehow change the fact that the Appealed Decision is final and binding upon him, following the withdrawal of his appeal.

D. Conclusion

91. Based on the above considerations, the Panel concludes that the Appealed Decision is final and binding upon the Player.

VII. ADMISSIBILITY

92. The appeal is admissible as Raja Club submitted it within the 21-day deadline provided by Article R49 of the Code as well as by Article 67 para. 1 of the applicable FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code.

VIII. APPLICABLE LAW

93. Article R58 of the Code provides the following:

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

94. Pursuant to Article 66 para. 2 of the applicable FIFA Statutes, “[t]he provisions of the CAS Code

of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

95. At the hearing before the CAS, the Parties expressly confirmed to the Panel that the CAS should primarily apply the relevant FIFA regulations and, accessorially, Swiss law. It must be observed that, in their respective submissions, the Parties adopted the same approach.
96. As a result, subject to the primacy of applicable FIFA’s regulations, Swiss Law shall apply complementarily, whenever warranted.
97. Baniyas filed two claims before the DRC: a first one on 14 December 2012 against the Player only and a second one on 12 September 2014 against the Player for terminating his employment relationship without just cause and against Raja Club for inducement to breach his employment contract.
98. In view of the scope of jurisdiction of the CAS, the relevant date will be the moment the present case was submitted to FIFA on 12 September 2014, *i.e.* after 1 and 11 August 2014, which are the dates when a) the RSTP, edition 2014, and b) the FIFA Statutes, edition August 2014, came into force. These are the editions of the rules and regulations which the Panel will rely on to adjudicate this case

IX. MERITS

99. The question as to whether a party that has been found to be jointly and severally liable may proceed on appeal and overturn a first instance decision which has already been declared final and binding on the principal debtor is not as straightforward as it may seem. The SFT made commendable efforts in addressing this question in its judgment no. ATF 140 III 520 of 28 August 2014. There is no doubt that the intricacies surrounding the issue of *res judicata* in matters of joint and several liability will in future emanate in even more complex and sophisticated formats. One may therefore wonder whether the SFT could have gone a step further and shed more light on this issue. As it stands however, the Panel must be led by the jurisprudence so far established by the SFT. It therefore follows that the Appealed Decision is *res judicata vis-à-vis* the Player but not on Raja Club. Consequently, the Panel shall address Raja Club’s submissions and establish whether the Player had just cause to terminate the Contract.
100. Raja Club claims that neither the Player, nor Baniyas, terminated the employment relationship by way of regular, explicit and/or written termination notice. According to Raja Club, while the employment relationship was indisputably still valid, the Player left Baniyas in the beginning of December 2012 to fly to Belgium, before he returned to his country of origin on 25 December 2012. The Player was not heard of until July 2013, when he returned to Raja Club “*with which he was still contractually bound for one year*”. It is Raja Club’s case that the Player has never raised any complain about possible failure of Baniyas to pay his salaries or other benefits and throughout the Player’s long absence, Baniyas did not make contact with him

and/or did not formally request him to carry out his contractual obligations. Under these circumstances, Raja Club is of the view that Baniyas as well as the Player waived their respective right to terminate with immediate effect the employment relationship and chose to remain bound by the said contract.

101. Baniyas contends that the Player terminated his employment relationship by not resuming his professional activities in the beginning of December 2012. It argues that the Player did not have any just cause not to perform his side of the employment relationship as the club carried out all of its contractual duties. In support of its case, Baniyas relies on the fact that it served the Player a notification on 4 December 2012 urging him to come back to the club before it initiated proceedings before the DRC on 14 December 2012.

102. Under these circumstances, the following issues have to be addressed:

- Had the employment relationship between Baniyas and the Player been prematurely terminated and if yes, by whom?
- Was the premature termination of the employment relationship based on a just cause?
- Is the injured party entitled to any compensation? And if so, did DRC grant a fair compensation?
- Is Raja Club jointly and severally responsible for the payment of the compensation?

A. Had the employment relationship between Baniyas and the Player been prematurely terminated and if yes, by whom?

(i) In general

103. In the present case, Baniyas and the Player were bound by a fix-term contract, valid from 1 August 2012 to 31 May 2013. The Loan Contract does not contain any provision governing the premature termination of the employment relationship.

104. Article 13 of the RSTP defends the principle of contractual stability by expressly stating that a contract between a player and a club can only be terminated on due date or by mutual agreement. According to this provision “*a contract between a Professional and a club may only be terminated on expiry of the term of the contract or by mutual agreement*”.

105. However, the principle of contractual stability is not absolute as Article 14 of the RSTP provides that “*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*”. This provision is substantially identical to Article 14 of the RSTP edition 2005.

106. In this respect, the FIFA commentary on the RSTP (edition 2005) reads as follows (commentary ad. Article 14, page 39):

- “1 *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.*
- 2 *The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally. (...)*
- 5 *In the event of just cause being established by the competent body, the party terminating the contract with a valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions.*
- 6 *On the other hand, the other party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed”.*
107. However, the FIFA Regulations do not define what constitutes a “*just cause*”. Therefore, abiding by ample CAS jurisprudence, the Panel examines the relevant provisions of Swiss law, applicable to the interpretation of the FIFA Regulations (HAAS U., Applicable law in football-related disputes - The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, in the CAS Bulletin 2015/2; pages 7 *et seq.* and references),
108. According to Swiss law, fixed-term contracts terminate without requiring notice upon the expiry of the agreed period (Article 334 para. 1 of the Swiss Code of Obligations - hereinafter “CO”).
109. Fixed-term contracts cannot come to an end before the expiration of the agreed period unless the contract has been terminated by mutual agreement or there is a just cause for termination of the employment relationship or if the employer becomes insolvent (ATF 110 II 167; WYLER R., *Droit du travail*, 2ème édition, Berne, 2008). In the presence of a just cause, the employer or the employee may at any time terminate with immediate effect the contract (Article 337 para. 1 CO). Such a just cause exists whenever the terminating party can in good faith not be expected to continue the employment relationship (Article 337 para. 2 CO). In other words, the event that leads to the immediate termination must so significantly shatter the trust between the parties that a reasonable person could not be expected to continue to work with the other party who is responsible for the just cause (ATF 130 III 28; ATF 116 II 145; ATF 116 II 142; ATF 112 II 41).
110. CAS applies these principles, notably in the following case :
- “82. *In the current case the persistent non-attendance at training constitutes objective criteria, especially as it is not disputed by the Respondent, and the evidence of warnings and discussions with the Respondent made it clear that the relationship had developed to a level where there was a serious breach of confidence, which could*

reasonably be expected. The evidence is sufficient to enable the Sole Arbitrator to conclude that the violations of the terms of employment identified above have been persistent and cumulated over a long period of several months.

83. There is also considerable authority that a party will only be able to establish a just cause to terminate the employment contract if it had previously warned the other party of its unacceptable conduct or attitude (CAS 2007/A/1233 & 1234, CAS 2004/A/587, CAS 2011/A/2567 and CAS 2012/A/2698). It is to be noted that in the current case the Contract was not terminated without prior warning. The evidence of there being several warnings is mentioned in paragraph 76.

84. Therefore the Sole Arbitrator rules that the Appellant terminated the Respondent's contract with just cause as contemplated by Article 14 of the FIFA Regulations for the Status and Transfer of Players" (CAS 2013/A/3407).

(ii) In particular

111. In the present case, neither Baniyas nor the Player have alleged that the employment relationship had been terminated by mutual agreement. In the eyes of the members of the Panel, the fact that none of them raised this possibility demonstrates clearly that they did not intend to put an end to their employment relationship by tacit consent. Under these circumstances, there is no reason to address this aspect any further.
112. Consequently, the Panel has to examine a) whether the Player's absence constitute a unilateral termination of the contract and b) whether Baniyas was somehow in breach of the terms of the Loan Contract in such a manner that the Player was entitled not to perform his side of the contract anymore.
113. The RSTP do not contain any provision regarding the consequences of an employee's absenteeism. Swiss law is therefore applicable to this issue, which is governed by Article 337d CO. This provision reads as follows:

"Art. 337d Failure to take up post and departure without just cause

1 Where the employee fails to take up his post or leaves it without notice without good cause, the employer is entitled to compensation equal to one-quarter of the employee's monthly salary; in addition he is entitled to damages for any further losses.

2 Where the employer has suffered no losses or lower losses than the value of the compensation stipulated in the previous paragraph, the court may reduce the compensation at its discretion.

3 Where the claim for damages is not extinguished by set-off, it must be asserted by means of legal action or debt enforcement proceedings within 30 days of the failure to take up the post or departure from it, failing which it becomes time-barred".

114. According to Swiss law, the individual employment contract is a contract whereby the employee has the obligation to perform work in the employer's service for either a fixed or indefinite period of time, during which the employer owes him a wage (Article 319 para. 1 CO). On the basis of the principle of loyalty set forth under Article 321a CO, if the employee decides to stop carrying out his work, he must warn his employer without delay in order to safeguard the latter's legitimate interests. The employer may reasonably expect from an employee who suddenly abandons his position to be immediately informed by the latter of his intentions. In this light, if the employee fails to make contact with his employer for an extended period of time, the employer can, in good faith, assume that he is no longer interested in keeping his position (decisions of the Swiss Federal Court of 14 March 2002, 4C.370/2001, consid. 2a; of 24 August 1999, 4C.143/1999, consid. 2a). If the employee fails to appear at work for a relatively short period of time, he cannot be dismissed for failure to attend work on time before a prior warning and a further episode (ATF 121 V 277, consid. 3.a).
115. There is an unjustified non-appearance at or leaving of the working place when the employee is absent for a certain amount of time and the employer can reasonably assume that it is not in the employee's intention to return and that his decision is final. This is particularly true if the employee is summoned to return to work or to justify his non-appearance (for instance by means of a medical certificate) and does not comply or is unable to provide a just cause (ATF 108 II 301, consid. 3 b; decisions of the Swiss Federal Court of 21 December 2006, 4C.339/2006, consid. 2.1; of 6 July 2005, 4C.155/2005, consid. 2.1; of 14 March 2002, 4C.370/2001, consid. 2a; WYLER R., op. cit., p. 499; AUBERT G., in Commentaire romand, Code des obligations, vol. I, 2nd edition, 2012, ad art. 337d, N. 2, p. 2107). Likewise, if the employee does not return to work after vacation and leaves his employer without any news for several months, the employer can – in good faith - assume that the employee's employment has ended without having to dismiss him or the employee having explicitly resigned (ATF 121 V 277).
116. In the present case, it is undisputed that the Player left Baniyas on 1 December 2012 and never came back. Raja Club submits that *"Before leaving [the Player] asked for a meeting to explain the reasons of his need to go abroad but in vain. Before he left, he informed the team manager Mr. Salah Ismaël of this decision by SMS on 1st of December"*. This assertion has not been established in any manner. With regards to the burden of proof, it is Raja Club's duty to objectively demonstrate the existence of what it alleges (Article 12 al. 3 of the applicable FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber; Article 8 of the Swiss Civil Code; ATF 132 III 449; consid. 4). It is not sufficient for it to simply assert a state of fact for the Panel to accept it as true. In any event, the simple fact that the Player sent a SMS (the content of which was undisclosed) to the team manager does not make his departure legitimate and/or excuse his absence from his club.
117. Likewise, Raja Club offered no evidence that the Player a) committed to come back after a certain time, b) tried to contact Baniyas while he was abroad, c) informed his employer of his intentions, d) discussed a possible end of contract, or e) complained about his employer's attitude towards him.

118. In particular, Raja Club accepts that the Player was supposed to spend just a couple of days in Belgium but decided to extend his stay when he found out that Baniyas allegedly told his wife that he was not needed anymore. To this extent, Raja Club admits that the Player decided unilaterally and without consulting/informing his employer to remain abroad for an indefinite time. He eventually returned to his country of origin and was never seen again by Baniyas.
119. It must be observed that the Player had already taken leaves on two previous occasions (*i.e.* in September 2012 for several days and from 4 to 31 October 2012). These absences were controversial, as the Parties could not agree on their justification. Raja Club explains that, in September 2012, the Player had been called by the Moroccan national team and, in October 2012, he had been authorized by Baniyas to stay at his wife's side, while she was experiencing complications during pregnancy and delivery. Raja Club also failed to substantiate these allegations in any manner.
120. Baniyas claims that it served several notifications to the Player to complain about these unauthorized absences. Raja Club contests that the Player received these notifications. It must be noted that the Panel was willing to appoint an independent forensics expert to analyse the authenticity of the Player's signature on Notifications 1 and 2. Because Raja Club and the Player failed (after several reminders) to submit the required documents, the Panel was left with no other choice but to call off the planned expertise. Under these circumstances, the Panel is of the view that if a person is in a position to assist in its search of truth, an inference may be drawn if that person does not collaborate. In any event, whether the Player signed or not the Notifications 1 and 2 is not decisive.
121. As a matter of fact, Baniyas has been able to establish that it did comply with all of its contractual duties. In particular, it is undisputed that until 1 December 2012, the club had paid to the Player all of his dues, including the second advanced payment, made two days before the Player's permanent departure (the payment of this amount is not disputed. In his request for relief, the Player asked the CAS to "*Condemn Baniyas FC to reimburse the fine amounting to 30.000USD that was unlawfully deducted from his salary*", admitting thereby that he had received at least USD 70,000 on 29 November 2012). With such a payment, the club showed unequivocally that it was still interested in the Player's services.
122. Consistently, with its Third Notification, Baniyas urged the Player to return to the club within the next 72 hours. This document renders also likely the fact that the club wanted to carry out its employment relationship with the Player. In this regard, Baniyas established that it sent a copy of the Third Notification (*via* facsimile) to FIFA, UAEFA and to Raja Club. According to the transmission report, Raja Club received the fax. Baniyas cannot be criticised for not notifying the Third Notification directly to the Player as there are no indication on the file that he informed his employer of his whereabouts, when he left on 1 December 2012.
123. Finally, on 14 December 2012, Baniyas initiated proceedings before the DRC against the Player, which clearly establishes the fact that it was putting an end to the employment relationship with the Player.

124. In light of the foregoing, the Panel comes to the conclusion that Baniyas could reasonably assume that it was not in the Player's intention to return and that his decision was final. Under these circumstances, the Panel holds that the Player unilaterally and prematurely terminated his employment relationship with Baniyas. As a professional player, he could not ignore that he was bound to the terms of the Loan Contract, which specifically states that he must "*participate in all matches and training sessions and related activities, unless otherwise required by the Club*", "*obey all instructions issued by [Baniyas]*", not "*retire, on his own initiative, throughout the term of this contract*", not "*leave the state without having written* [the end of this clause is missing]".

B. Was the premature termination of the employment relationship based on a just cause?

125. For the reasons exposed hereabove, the Panel holds that the Player unilaterally and prematurely terminated the employment relationship with Baniyas.

126. According to Article 14 of the RSTP "*A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause*". This provision is substantially identical to Article 14 of the RSTP edition 2005.

127. In this respect, the FIFA commentary on the RSTP (edition 2005) reads as follows (commentary ad. Article 14, page 39):

"1 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.

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

(...)

5 In the event of just cause being established by the competent body, the party terminating the contract with a valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions.

6 On the other hand, the other party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed".

128. In the present case, the Panel holds that Baniyas carried out correctly and extensively all of its contractual obligations until the beginning of December 2012, when the Player abruptly left.

129. According to Raja Club, the Player cannot be held responsible for the premature termination of the employment relationship with Baniyas as he *“had no idea his temporary leave could lead to his contract termination. Even more, the panel should consider his leave was based on valid reasons and could not be seen as a termination without just cause”*. Raja Club submits that Baniyas had never complained about the Player’s absences of August and October 2012. Furthermore, it claims that the Player left for Belgium where he underwent mental therapy sessions, following the bad treatment received from Baniyas, which a) refused to pay for his wife’s medical costs associated with the delivery of her baby, b) refused to provide a furnished apartment to the Player, c) refused to complete the administrative necessary for his new-born son to live with him in the United Arab Emirates, d) downgraded the Player to its amateur team.
130. Raja Club did not offer any evidence in support of these allegations, which were rejected in full by Baniyas.
131. Based on the foregoing considerations, the Panel holds that Baniyas did not fail to comply with its contractual obligations in such a manner that it entitled the Player to terminate the employment agreement with a just cause. In particular, the Player did not give any warning to his employer and has never established how Baniyas’ alleged contractual failure affected his situation to a point where he could not be expected to remain in an employment relationship with this club.
132. In light of the above considerations, the Panel finds that the Player did not have a just cause to unilaterally and prematurely terminate the employment relationship with Baniyas.

C. Is the injured party entitled to any compensation? And if so, is the compensation awarded by FIFA fair?

133. It appears that the Panel came to the same conclusion as the DRC, which held that the Player terminated unilaterally and prematurely his employment relationship without a just cause.
134. The DRC concluded that Baniyas was entitled to compensation and gave a detailed explanation of the amounts to be awarded in its favour.
135. Raja Club did not provide any reason justifying a reduction of the compensation awarded by the DRC.
136. The Panel in any case agrees with the criteria applied by the DRC in arriving at the compensation. The compensation was arrived at in accordance with the RSTP and the Panel sees no reason to mitigate it. Under these circumstances, the Panel finds that the Appealed Decision must be upheld in its entirety, without any modification.

D. Is Raja Club jointly and severally responsible for the payment of the compensation?

137. The remaining issue to be resolved by the Panel is whether Raja Club is jointly and severally responsible for the payment of the compensation awarded by the DRC to Baniyas.

138. As regards the issue at stake, the relevant provision is Article 17 RSTP, which provides so far as material as follows:

“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.*

2. *Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.*

(...).”

139. Raja Club submits that the above provision is not applicable in the present dispute for two reasons:

- Raja Club was absolutely unaware of the fact that the employment relationship between the Player and Baniyas had been terminated unilaterally and prematurely. The Player returned to Raja Club only after the end of the loan agreement with Baniyas. Under these circumstances, Raja Club had no reason to believe that there was an employment related dispute between the Player and Baniyas.
- Raja Club cannot be considered as the Player’s “new club” since its employment relationship with the Player predates the Loan Contract with Baniyas. Once the loan period had expired, the Player returned to Raja Club in order to carry out the obligations governed by the contract signed prior to his transfer to Baniyas on a temporary loan basis. Raja Club “was not in a position to refuse the return of the Player since at the end of the loan it had the obligation to welcome him because the contract with him was still running for a year”.

140. The termination of a contract without just cause is a serious violation of the obligation to respect an existing contract and triggers the consequences set out in Article 17 RSTP. The purpose of Article 17 RSTP is basically nothing else than to reinforce contractual stability, *i.e.* to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as deterrent against unilateral contractual breaches and terminations. This, because contractual stability is crucial for the well functioning of the international football. The deterrent effect of

Article 17 RSTP shall be achieved through the impending risk for a party to incur disciplinary sanctions, if some conditions are met, and the risk to have to pay a compensation for the damage caused by the breach or the unjustified termination (CAS 2008/A/1519 - 1520 para. 80 *et seq*; CAS 2014/A/3707 para. 108).

141. Article 17 para. 2 RSTP plays an important role in the context of the compensation mechanism following the unjustified termination of an employment contract. This provision is aimed at avoiding any debate and difficulties of proof regarding the possible involvement of the “*new club*” in the player’s decision to terminate his former contract, and at better guaranteeing the payment of whatever amount of compensation the player is required to pay to his former club on the basis of Article 17 RSTP. It is in fact clear that the “*new club*” will be responsible, together with the player, for the payment of compensation to the former club, regardless of any involvement or inducement to breach the contract, and without considering its good or bad faith (CAS 2013/A/3149 para. 99). In this regard, it can be observed that, during the hearing before the CAS, the representatives of Raja Club and the Player confirmed that the latter would need more than a lifetime to pay off the awarded compensation. This is precisely what Article 17 para. 2 RSTP seeks to avoid by imposing an automatic joint and several liability on the new club, which not only offers better guarantees than the Player himself but which also will be in a better position to take recourse against the Player, whose debt it paid (*i.e.* negotiate the specific terms of repayment within the frame of the employment relationship with the Player).
142. Article 17 para. 2 RSTP, edition 2014, is identical to Article 17 para. 2 RSTP, edition 2005. In this respect, the FIFA commentary on the RSTP (edition 2005) reads as follows (commentary ad. Article 17, page 47, consid. 4):
- “Whenever a player has to pay compensation to his former club, the new club, i.e. the first club for which the player registers after the contractual breach, shall be jointly and severally liable for its payment (...) The new club will be responsible, together with the player, for paying compensation to the former club, regardless of any involvement or inducement to breach the contract”.*
143. It is undisputed that Raja Club is “*the first club for which the player registers after the contractual breach*”. It is therefore the Player’s “*new club*” for the purpose of Article 17 para. 2 RSTP. The liability stems simply from Raja Club’s status as the Player’s “*new club*”. The joint and several liability is not dependent on Raja Club’s being proven to have induced the Player’s breach or otherwise being at fault. Hence, Raja Club’s submission that it was unaware of the fact that there was an employment related dispute between the Player and Baniyas is not only irrelevant but is also unconvincing as Baniyas has established that Raja Club received a copy of the Third Notification sent on 4 December 2012.
144. The fact that the Player returned to Raja Club on the basis of an employment contract - which existed before the Loan Contract - does not change the fact that Raja Club must be considered as the “*new club*”. Loan transfers are contracts and confer upon the parties rights and duties similar to those which would have accrued to them, had the employment contract or transfer been signed on a permanent basis (CAS 2008/A/1593 para. 22). This is corroborated by

Article 10 para. 1 RSTP, which reads in part that “[a]ny such loan is subject to the same rules as apply to the transfer of players (...)”. The FIFA Regulations therefore subject loan transfers to the same rules, which govern ordinary or permanent transfer of players. One of the characteristics of a transfer, be it a loan or a permanent transfer, is that it brings with it the effects of contractual stability. If loan transfers were exempted from the principle of contractual stability, then clubs and players would find easy avenues through which they would evade their contractual responsibilities.

145. Under such circumstances, there is no valid reason to treat differently the club of origin (*i.e.* Raja Club), to which the player returns after he terminated the loan agreement without just cause and another club, which registers the same player for the first time. Any other conclusion would be at odd with contractual stability, which is the main objective of Article 17 RSTP. As a matter of fact, assuming that the club of origin would not be considered as the Player’s “*new club*”, it would allow the player to terminate at any moment and without just cause the loan agreement in order to return to his club of origin. In such a scenario, Raja Club would be left untouched, while Baniyas would remain uncompensated following the unjustified termination caused by the player. Such a result would be even more shocking, in a case such as the present dispute, where Baniyas paid a loan fee of USD 400,000 to Raja Club and made two advance payments of USD 100,000 to the Player, who terminated his employment relationship without just cause after four months.
146. As a party to the Loan Contract, which received a considerable loan fee (USD 400,000), Raja Club had certainly a greater responsibility to make sure that the Player on loan will respect the contractual stability. Under such circumstances, Raja Club’s several and joint liability seems all the more justified.
147. In light of the above considerations, the Panel finds that the requirements of Article 17 para. 2 RSTP are met and Raja Club is jointly and severally responsible for the payment of the compensation awarded to Baniyas by the DRC in its decision of 21 May 2015.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Raja Club Athletic de Casablanca against the decision issued by the FIFA Dispute Resolution Chamber on 21 May 2015 is dismissed.
2. The decision issued by the FIFA Dispute Resolution Chamber on 21 May 2015 is confirmed.
3. (...).
4. (...).
5. (...).
6. All other of further claims are dismissed.