



Arbitration CAS 2016/A/4902 Al Fujairah Sports Club v. Hassan Yebda, award of 2 August 2017

Panel: The Hon. Michael Beloff QC (United Kingdom), Sole Arbitrator

Football

Contractual dispute

Inadmissibility of respondents' counterclaims in appeal proceedings before the CAS

Violation of a football player's fundamental right

Duty to mitigate

1. **Counterclaims by respondents are inadmissible in appeal proceedings before the CAS.**
2. **By refusing to register a player a club is effectively barring, in an absolute manner, his potential access to competition and, as such, violating one of his fundamental rights as a football player.**
3. **An employee has the duty to mitigate any loss caused by his dismissal. It cannot be considered that an employee's duty to mitigate arises before dismissal or that an employee can be forced, though he may choose, himself to terminate a contract by reason of an employer's breaches. Rather, such a duty arises for the victim of a breach only when a contract is brought to an end in consequence of the breach.**

I. INTRODUCTION

1. This is an appeal brought by Al Fujairah Sports Club ("the Club") against the decision ("the Decision") of the FIFA Dispute Resolution Committee ("the DRC") in which it awarded Mr Hassan Yebda ("the Player") the sum of EUR 1,526,056.39 by way of outstanding remuneration and EUR 985,000 compensation for breach of contract plus 5% interest until the date of effective payment.

II. PARTIES

2. The Club is an Emirati football club.
3. The Player, born on 14th May 1984, is a peripatetic Algerian football player who has played as a midfielder professionally for a number of clubs in Europe, England, France, Spain and Italy as well as for his country in the football World Cups 2010 and 2014.

III. FACTUAL BACKGROUND

A. Background facts

4. Below is a summary of the relevant facts based on the parties' written submissions, pleadings and evidence before and at the hearing. Additional facts found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. In football season 2013-2014 the Player played for Granada FC in Spain at an annual salary of EUR 1,256,000.
6. By a contract dated 13th August 2014 ("the Contract") the Player, and the Club entered into an employment contract effective as of the date of its signature until 31st May 2015. The contract was signed by Sultan Al Shara, the then CEO of the Club, described as "*Presented (...) for the signing hereof capacity as Executive Director of the Club*", the Player, Mr Adel Al Amerei a licensed football agent of the United Arab Emirates football association ("UAEFA") authorised to act on the Player's behalf pursuant to a mandate from the Player dated 3rd August 2014 (but paid by the Club for his role). It was witnessed by Mr Hakim Kolli, an employee of Perfect Line Integrated Business, a company owned by Mr Adel Al Amerei, and Mr Mehdi Kolli his brother, and was franked with the Club stamp.
7. In the preamble to the Contract it was said that the Club was "*desirous to appoint the Player to the post of foreign football player within the first team of the Club Arabian Gulf League*". The Contract itself provide, so far as material, as follows:
 - Clause 2 that the Player was entitled to receive from the Club the total amount of EUR 1,300,000 divided as follows:
 - EUR 65,000 "*equivalent to 317,200 Dirham's [AED]*" as monthly salary payable at the end of every month;
 - EUR 650,000 "*equivalent to [AED] 3,172,000*" as sign-on fee payable in two equal instalments of EUR 325,000 "*equivalent to [AED] 1,586,000*" on 15th September 2014 and 15th January 2015.
 - Clause 13.6 that the Player was entitled, *inter alia*, to the following bonuses:
 - USD 1,000 corresponding to AED 3,670 for each goal scored;
 - USD 500 corresponding to AED 1,835 for "*goal assistants*";
 - USD 30,000 corresponding to AED 110,100 if the club "*reach position 12th / 7th in the League*".

- Clause 2.d that the Player was entitled to *“two way airway ticket Business class for him and for his wife and three from his children to France”*.
 - Clause 13.2 *inter alia* that: *“if the Player is absent from training without an acceptable reason, the amount of 17% of his monthly salary will be deducted for each day of absence”*.
 - Clauses 2.g and 13.5 of the Contract respectively that:
 - *“[The Club] may terminate the Contract at any time. [The Club] is committed in this case to pay [the Player] all and any amounts left to be paid on the contract until 31st May 2015”*.
 - *“If the Player want to terminate the Contract before the end of the Contract, he shall be required to pay the rest of the Contract until 31st May 2015”*.
8. On 17th August 2014, an appendix to the Contract (“the Appendix”) was signed by the same persons who had signed the Contract, apart from Mr Al Amerei and was also franked with the Club stamp. The Club was described as *“legally represented by Sultan Al Shara, the Executive Director”*.
9. The Appendix provided, so far as material, as follows:
- Article (1) that: *“The following contract Appendix, concluded on 13/08/2014 is attached, fully integrated and part of the foreign football player subscribed on the same day 13/08/2014 between [the Player] and [the Club]”*.
 - Article (2) that: *“In addition to the value of the original contract [the Club] is obligated to pay the amount of 300,000 Euros to [the Player] in 15/03/2015”*.
 - Article (3) that: *“The Parties agreed to extend the duration of the contract for an extra season 2015/2016 with a salary of 1500000 Euros net per year, which will be paid as:*
 1. *To be pay to the player amount (65000) Euro is equivalent to 323700 Dirham’s it will pay for the player end of every month from 1/8/2015 until 31/5/2016;*
 2. *Amount (85000000) Euro is equivalent to (...) Dirhams as advanced in two parts:*
 - Amount (450000) Euro is equivalent to (...) Dirhams on 30/8/2015*
 - Amount (400000) Euro is equivalent to (...) Dirhams on 01/01/2016”*.
 - Article (4) that:
 1. *“Parties have expressly agreed that in case of first party team do not stay in professional league during the first season of the contract the second season 2015/16 on the player’s contract will be automatically cancelled without any compensation from any of the parties to the other. In this case the player has all rights of movement to any other team without any conditions or compensation.*

2. *Also, the parties have expressly agreed that in case that the player receives an offer of contract for the season 2015/16 with a salary superior to 1.500.000 euros net per year, the second year of contract with the Club corresponding to the same season will be automatically cancelled, and the player will have all rights of signing with any other team without any compensation to the Club.*
3. *(The Club) may terminate this contract appendix at any time. (The Club) is committed in this case to pay to (the Player) all and any amounts left to be paid on the contract until 31/05/2016”.*
10. Article (5) of the Appendix stipulated, in accordance with the procedure set out in the Contract at Article 2.f, that one of its three copies was to be filed with UAEFA. This was not done.
11. The terms of the agreement, whatever it was, between the parties were negotiated by Mr Alexandre Bonnot, the Player’s regular French agent. It appears, from emails provided by Mr Bonnot, showing that there were continuing negotiations during the latter part of August 2014 over its content - with various drafts passing to and fro - as well as from the Player’s travel documents at the end of that month that the Contract and Appendix were pre-dated but nothing was said by either party to turn on this.
12. The Player played for the Club in 2014/2015 UAE local competitions, namely the UAE Pro League and Arabian Gulf Cup - playing 15 matches, scoring one goal, and providing two assists.
13. In February 2015 in the light of the cap of three foreign players per club imposed by the applicable UAEFA Professional League Competition Regulations, the Club removed the Player from the list of eligible players for the local league and replaced him with one Karim Ziani. The Player’s federative licence was cancelled and he was relegated to the under 21 team. The Player was allowed thereafter to train with the Club under 21 team only.
14. The Club asserted that on several occasions thereafter, 13th, 22nd, 23rd March, 5th, 19th, 28th April, 4th and 10th May 2015, the Player had missed training with the under 21 team and deducted a percentage of his salary purportedly pursuant to the Contract.
15. On 23rd March 2015, the Player’s lawyers sent to the Club the first of several letters before action (“LBAs”) asserting a breach by the Club of its contractual obligations to the Player and claiming sums said to be due under both the Contract and the Appendix. Further letters to like effect followed on 31st March, 16th April, 3rd July and 9th July 2015. No response was sent to any of these letters, save that on 2nd July 2015 Sultan Al Shara asked the Player’s lawyers to provide proof that they had power of attorney from the Player which on 4th July 2015 they duly did. Other letters making complaints about non-payment were also sent to the Club’s lawyers and to the UAEFA.
16. On 20th May 2015 the Club’s coach signed a letter authorising the Player to be absent from the Club over a holiday period from 20th May 2015 to 5th July 2015.
17. On 5th July 2015 Sultan Al Shara sent to the Player a letter which stated (in patently imperfect translation) *“(The Club) notifies you that as current period not invite you to play or train with none of our*

teams. At the same time (the Club) the absence of any obligation to you at current period in accordance with the terms of the agreement as well as you are not obliged to implementation of any agreements now”.

18. On or about the same time the Club’s lawyers Ahmed Sheikh and Co e-mailed the Player which stated (also in patently imperfect translation) *“Mr Hassan your contract in finished in May 2015 and we may renew your contract because u don’t accept our rules and our agreement and sign in all one in 2015.and we send for u letter many times and suddenly we no that you stay in our accommodation in Concorde hotel in Fujairah.u should come with ur agent mr Adel Al Amir as written in your contract to settle everything and also you going out from country without any permission written in our contract”.*
19. At or about the start of August 2015 the Club dismissed Sultan Al Shara from his position as CEO.
20. On 10th August 2015, the Club filed a criminal complaint (“the Complaint”) with the police which claimed, *inter alia*, that it was only after receipt of an LBAs that the Club’s board became aware of the Appendix; that the Appendix was signed *“without the knowledge of the Club’s management and will”*. It accused Sultan Al Shara *“with wasting the public money of the Club and breach of trust (...) by using papers and stamps of the Company”* (i.e. Club) *“to sign an agreement damaging to the Club’s interest without its knowledge in participation with the second and third accused”* naming the Player and Mr Hakim Kolli respectively.
21. On 10th August 2015 also Mr Mohammad Mahmud Sabir Al Jamal, Managing Director of the Club (“the Club’s MD”), gave to the Police the Club’s version of the circumstances surrounding the signature of the Appendix and how they differed from those pertaining to signature of the Contract.
22. On 13th September 2015 Lieutenant Colonel Rashid Hamad Al Yamhi of the Fujairah Police Office produced a report of the inquiries he had made pursuant to the Complaint and noted that on the same date *“the penal case is referred to the public prosecution”*.
23. On 17th December 2015 a settlement was reached between the Club and Sultan Al Shara in which, by Article 1, Sultan Al Shara acknowledged that *“he has made a professional mistake that harmed the (Club) when he entered into a contract with the Player”* (i.e. the Appendix) *“without the knowledge or permission from the president of the Club, board of directors or Football Union”* and by Articles 2, 3 and 4, agreed in effect to indemnify the Club for any loss, damage or costs arising out of claims made by the Player against the Club and by Article 6 also agreed that, if he failed to fulfil his obligations under those Articles, to pay the penal condition of EUR 2,000,000 to the Club. As a *quid pro quo* under Article 5 the Club undertook to waive its penal case against Sultan Al Shara.
24. On 1st July 2016, the Player joined the Portuguese club FC Os Belenenses.

B. Proceedings before the FIFA Dispute Resolution Chamber

25. On 24th September 2015, the Player lodged a claim before the DRC requesting compensation and damages in the total amount of EUR 3,409,533.03 as well as the imposition of sporting sanctions on the Club.

26. On 18th August 2016, the DRC issued the Decision.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 14 December 2016, in accordance with Articles R47 *et seq.* of the Code of Sports-Related Arbitration (“the Code”), the Appellant filed its statement of appeal with the Court of Arbitration for Sport (“the CAS”).
28. On 23 December 2016, in accordance with Article R51 of the Code, the Club filed its appeal brief.
29. On 3 January 2017, in accordance with Article R55 of the Code, the Player filed his answer.
30. On 30 May 2017, the CAS Court Office sent the parties the Order of Procedure.
31. On 30 and 31 May 2017, respectively, the Player and the Club returned the signed Order of Procedure to the CAS Court Office.
32. In accordance with Article R57 of the Code, the parties, experts, and witnesses, were heard at the hearing, held on 20 June 2017 at the CAS offices, in Lausanne Switzerland.

The following were in attendance:

Panel: - The Hon. Michael Beloff QC, Sole Arbitrator;
- Assisted by Mr Daniele Boccucci CAS Counsel.

For the Appellant: - Mr Stefano La Porta, attorney-at-law;
- Mr Ahmed Saad, general counsel of the Club;
- Dr Saman Jalal, interpreter;
- Mr Sultan Al Shara, witness, by video-conference;
- Mr Adel Ahmed Al Amerei, witness, by tele-conference;
- Mr Hakim Kolli, witness, by tele-conference.

For the Respondent: - Mr Francisco Domínguez Otero, attorney-at-law;
- Mrs Montse Estadella Duran, attorney-at-law;
- Mr Hassan Yebda, the Player, by video-conference;
- Mr Alexandre Bonnot, witness, by tele-conference.

33. The parties were given the opportunity to present their cases, to examine the witnesses, to make their submissions and arguments and to answer questions asked by the Sole Arbitrator. At the outset of the hearing the parties confirmed that they had no objection to the appointment of the Sole Arbitrator and at its conclusion confirmed that their respective rights to be heard had been fully respected and that they had been treated equally in the proceedings. At the end of the hearing, the Appellant was also granted by the Sole Arbitrator the opportunity to file a list

of players who had been able to join “major clubs” after playing in the UAE. On 26 June 2017 such list was filed by the Appellant.

V. SUBMISSIONS OF THE PARTIES

34. The following is a summary of the parties’ submissions and does not purport to be comprehensive. Further submissions by both parties will be considered in the Section on merits below. The Sole Arbitrator, in any case, has thoroughly considered in his discussion and deliberation all of the evidence and arguments submitted by the parties, even if no specific or detailed reference has been made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.

A. The Club

35. The Club’s submissions were in essence as follows.
36. There was only one binding agreement between the Club and the Player *i.e.* the Contract. The Appendix was, as the Player knew, subject to the Board’s approval which was itself dependent on his performance since the Player’s experience had been hitherto limited to European leagues and he was an unknown quantity as far as football outside Europe was concerned. No useful purpose from the Club’s perspective could be served by the Appendix, unless it was on a contingent basis. Such approval was never given and the Appendix in consequence never duly registered with the UAEFA; the Player’s performance fell so far short of expectation that he had to be replaced by Mr Ziani, and thereafter he was derelict in carrying out his training duties. The LBAs were sent in bad faith given that the Player was aware that the pre-conditions for implementation of the Appendix were never satisfied. The Player’s efforts to remain with the Club on the false premise that he had a two-year contract also illustrated his bad faith. The Player could and should have applied for an International Transfer Certificate (“ITC”) and mitigated any loss sustained as a result of the Club’s termination of the (one year) Contract and had failed to do so.
37. In its appeal brief, the Club made the following request for relief:

“That the CAS issue an arbitral award:

1. *declaring that the appeal of [the Club] is admissible;*
 2. *setting aside the decision of the DRC of 18th August 2016 and;*
 - 3.1 *rejecting the claim of the Player fully;*
- or, alternatively*
- 3.2 *reducing the amount due to the Player liquidated by the DRC;*

4. *condemning the Player to support the entire procedural costs and to reimburse (the Club) its own fees and expenses related to both these proceeding and the proceedings before the DRC”.*

B. The Player

38. The Player’s submissions were in essence as follows.
39. Both the Contract and the Appendix were binding on the Club. The Club’s Board were well aware of and approved the Appendix (which was entered into separately from the Contract for balance sheet reasons), as was shown by the fact that the Player was insured by the Club for two years, not one only, and was treated by the Club Coach as part of the squad for the 2015-2016 season for training purposes. The Club had indeed retained a copy of the Appendix. In any event the Club was bound by the signature of the Club’s CEO who had apparent, if not actual, authority to enter into player agreements on its behalf. In contrast to the Club which, *inter alia*, failed to pay him the salary due and de-registered him without notice, the Player never breached any term of the Contract or Appendix. The Player was not obliged to mitigate any loss until he justifiably brought his agreement with the Club to an end by instituting his claim before the DRC. Given that, by reason of the way in which he had been wrongfully treated by the Club, he was damaged goods, his Agent’s efforts to find him alternative employment in Europe predictably failed until he was offered a trial contract with Os Belenenses only as a second and last minute, after the Club had lost their first, choice.
40. In his answer, the Player requested that CAS issue an arbitral award declaring:

“that the appeal filed by the counterparty be dismissed, and that the decision issued by the Dispute Resolution Chamber dated 18th August 2016 be maintained in all its content (...).

According to the R44.1 of the Code of Sport-related Arbitration (...) we consider that the breaches of the contract and its annex by the Club are of such entity and have caused such detrimental damage to the Player to this day that they deserve an exemplary punishment in order to prevent such behaviour from being suffered by another player in the future (...). Therefore, considering that the Decision of the Dispute Resolution Chamber upheld almost entirely all the claims set forth by this party, it dismissed pleas calling on the imposition of sanctions of different nature to the Club based on its malicious and conscious conduct (...). Consequently (...) we wish to reiterate by means of this proceeding our application for the imposition of the following sanctions to the Club Al Fujairah, based on the repeated, serious and harmful breaches of contract and its annex, both consciously and maliciously, which were rejected by the Decision of the Dispute Resolution Chamber (...). To pay, by way of disciplinary sanction, the amount of € 500,000”.

VI. JURISDICTION

41. Article R47 of the Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration

agreement and if as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body”.

42. The Club relies on Article 58 of the FIFA Statutes as conferring jurisdiction on CAS. The jurisdiction of CAS is not contested by the Player and is confirmed by the signatures by the Parties of the Order of Procedure.

VII. ADMISSIBILITY

43. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

44. The grounds of the Appealed Decision were notified to the parties on 24 November 2016. The Club’s statement of appeal was timeously filed within 21 days of the Appealed Decision. Admissibility of the Appeal is not contested by the Player.

45. At the outset of the hearing the Sole Arbitrator indicated that in his provisional view the Player’s cross appeal (in respect, in particular, of those sums which the DRC did not award him) was inadmissible under the Code (see MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport*, p. 249). The Player agreed and the cross appeal was not pursued.

VIII. APPLICABLE LAW

46. Article R58 of the Code provides as follows:

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

47. The applicable regulations within the meaning of the above provision are the FIFA Regulations on the Status and Transfer of Players (2016) (“the FIFA Regulations”). Since FIFA is a Swiss Association, Swiss Law applies subsidiarily.

IX. MERITS

A. Overview

48. It was common ground between the parties that, if the Player’s claim for breach of contract by the Club were sound, the calculation of the amount due to him by the DRC was accurate. The issue between the parties therefore related to liability, not to quantum.

49. As to liability there were four main questions to resolve:
- (i) Did the Appendix (as well as the Contract) bind the Club? (“the Appendix”)
 - (ii) Did any of the Player’s acts or omissions disentitle him to make otherwise viable claims against the Club? (“Players breach?”)
 - (iii) Did the Club breach its obligations towards the Player? (“Club’s breach?”)
 - (iv) Did the Player fail to mitigate his damage? (“Mitigation?”)
50. As to liability, this is a case whose outcome, in the view of the Sole Arbitrator, pivots on the factual findings. It is necessary, in his view, for the Sole Arbitrator to make findings, especially as to the circumstances of creation of the Appendix which can accommodate each and every one of those facts which are indisputable (see factual background above). All pieces of the jigsaw must fit together.

B. The Appendix

51. As to the Appendix there are two possibilities; first that it was made by Sultan Al Shara with the agreement of the Club Board; second that it was made by him without such agreement.
52. In the Sole Arbitrator’s view in considering which of those possibilities is the more likely, it is useful, if unusual, to start the analysis at the end rather than the beginning of the story, namely with the complaint brought by the Club against Sultan Al Shara and to determine the most plausible explanation both for it and the subsequent settlement (“the Documents”). There are, in theory, two main choices open to him as a finding; first that this was a cosmetic bilateral exercise in which both the Club and Sultan Al Shara participated to pretend, contrary to the true facts, that the Appendix was signed by Sultan Al Shara without Board approval and so deny the Player his rightful claim; second, that this was a genuine exercise by the Club to obtain a remedy against Sultan Al Shara for wrongly signing the Appendix without approval of the Board.
53. The Sole Arbitrator has concluded that the second scenario is more likely to be correct and fits better with the known facts. As to the first, if the Club wanted simply to extricate itself from what proved to be, in its assessment, a disadvantageous bargain by asserting falsely, but with his connivance, that Sultan Al Shara signed the Appendix without Board approval, it could have done so without bringing a criminal complaint. The bringing of such a complaint necessarily involved the police whose subsequent handling of it would be beyond the Club’s control and might have prevented what, on this hypothesis, would be a colourable settlement of a contrived dispute. As to the second, its acceptance requires from the Sole Arbitrator no more than taking the Documents at their face value. The Complaint has as its premise that Sultan Al Shara in signing the Appendix acted without Board approval and so exposed the Club to expensive claims by the Player: the Settlement has as its premise that Sultan Al Shara acknowledged that he had done precisely that, and, in order to avoid the pursuit of criminal charges, accepted full

liability for any financial consequences of his error which may have visited upon the Club. In the Sole Arbitrator's opinion, subject to the matters discussed below, the Documents are coherent *inter se* and make sufficient sense.

54. The only doubt that the second scenario is the more likely is generated by the Player's assertion that the Club indeed were, at all material times, aware of and approved the Appendix, for, if that were so, the making of the complaint would only be explicable on the basis of the first scenario.
55. In support of that assertion the Player relied on several matters.
- (i) The insurance policy for the Player on its face stipulated that his salary was to continue until the end of the 2015-2016 season. However, the Sole Arbitrator notes that was in its face signed by Sultan Al Shara himself, not by a Board member (for his part Sultan Al Shara simply but unconvincingly disclaimed any recollection of the Insurance document or his role in relation to it).
 - (ii) The Club first team coach, Mr Ivan Hasek, had authorised the Player to miss pre-season training for the 2015-2016 season (something that, according to Sultan Al Shara, the coach had no right to do) and then involved him in training sessions for that season - the contemporary documents indeed show that the Player trained with the Club's team on 9 occasions between 9th July 2015 and 16th July 2015. However these facts cannot compel the Sole Arbitrator to find that the Board was aware of the Coach's actions, still less approved the Player's status as member of any Club team for that new season.
 - (iii) Although before the DRC the Club asserted that Sultan Al Shara had "*maliciously kept undisclosed*" the Appendix from the Board, there was evidence, including the testimony of Club's MD to the Police, that a copy of the Appendix was actually kept by the Club but, in the Sole Arbitrator's view, that of itself tells one nothing about who approved it before, or appreciated it after, it was signed. Notably in his testimony to the police, the Club's MD acknowledged that, while he was responsible for ensuring that a draft of the Appendix was on Club format, he was "*an employee executing the instructions only*", that is from Sultan Al Shara. The Sole Arbitrator cannot construe his recorded evidence as being an admission of Board approval of the Appendix, not least because that would be wholly inconsistent with what the Club's MD said elsewhere in the same statement.
56. The late timing of the Complaint and dismissal of Sultan Al Shara would be curious - though not inexplicable - had the Club Board been aware and appreciative of the fact that claims were made on the footing of the Appendix as and when the first LBA was sent. The Complaint states at one juncture that the Board were only so aware from "*last July*" (or elsewhere "*last June*"). But the fact that no response was made to the earlier LBAs is at least consistent with a conclusion that they were not read, or, even if read, not fully understood by the Board until a summer date. The Sole Arbitrator was deprived of evidence from the Club Board by the late withdrawal of a member of it from the roster of Club witnesses. Such evidence might have cast further light on what the Board did or did not know, and when; but the Sole Arbitrator was compelled to work within the boundaries of the evidence actually adduced.

57. But although the Sole Arbitrator has sought, responsive to the parties' submissions, to untangle the evidential web, in his judgment the question of whether and if so, when the Board became aware of the Appendix ultimately matters not to the disposal of this Appeal, since whatever was the true position, the Club was bound by the Appendix and cannot now disavow it. Not only was Sultan Al Shara, the then CEO, someone who in right of office had either actual, ostensible or at the very least apparent authority to bind the Board; as the DRC put it "*one could not think of a more legitimized person to sign the said Appendix*" but the Appendix itself was created in the same way as the Contract in that it was signed by Sultan Al Shara and the Player, had the same two witnesses as the Contract (only Mr Adel Al Amerei being omitted from the signatories on this latter occasion), and so bore all the hallmarks of being linked to it. Mr Adel Al Amerei said in oral evidence that he was not aware of the Appendix at the time of its signature, but he himself addressed a letter to the Club dated 13th September 2015 in which he wrote "*the contract annex*" (*i.e.* the Appendix) "*forms an integral part of the original contract*". His explanation that he signed that letter only to maintain a relationship with the Player after his links with the Club had been severed does not dissuade the Sole Arbitrator from taking that letter literally. There may indeed have been a departure from ordinary procedures for a player/club contract, both as respects the Club and the UAE football *e.g.* as to non registration of the Appendix with UAEFA; but the Player was not to be taken as knowing of - or indeed interested in - the former, and as to the latter the Club could not rely upon its own omission to fulfil the requirements of local football law. If Sultan Al Shara breached any contractual or fiduciary duties owed by him to the Club, that was no concern of the innocent Player and could not affect rights otherwise conferred upon him by the Appendix.
58. Before the DRC the Club alleged that the Player was part of a conspiracy to deceive the Club; the DRC said that no evidence was adduced to that effect. Before the Sole Arbitrator the Club's witnesses, Sultan Al Shara and Mr Hakim Kolli, more circumspectly, sought to suggest that the Player was told that the Club's fulfilment of obligations set out in the Appendix was subject to Board approval and his own performance. Sultan Al Shara disclaimed any authority to bind the Board and said the Appendix with two-year commitment (which he agreed had been discussed during negotiation) was contingent on Board approval and was designed to incentivize the Player. The Player denied any knowledge of such contingency. With the advantage of seeing and hearing the witnesses who gave evidence on this point the Sole Arbitrator preferred that of the Player. All the witnesses were *parti pris* in the sense that their evidence was self-serving; but he was persuaded that the Player would have been unlikely to sign a contract which offered him a lower salary than that of his previous Club FC Granada, as would the Contract without the addition of the Appendix, especially given his recent inclusion in his national world cup squad. The Player and his agent, Mr Bonnot, who negotiated the deal with the Club, understood that reasons of budget convenience explained the Club's wish for bifurcation. Moreover, Sultan Al Shara said that a bifurcation of contract and appendix was, in his experience, "*common practice*" - something confirmed by Mr Bonnot: on that general matter at least witnesses from both sides were *ad idem*.
59. But most significant, in the view of the Sole Arbitrator, were the two provisions in the Appendix at Article (4) and set out in full above which themselves made a second season extension subject

to preconditions. If Board approval was a further precondition, it would have been elementary to include it. Its absence was telling.

C. Player's breach?

60. The Club's claim before the DRC to have withheld payments because of suspicions about the Player's involvement in a conspiracy with Sultan Al Shara is unsustainable. There was, as the Sole Arbitrator has already concluded, no conspiracy. Moreover the first failure to pay preceded - on the Club's own evidence - its first awareness of the Appendix (whenever that precisely occurred).
61. The Club's replacement mid-season of the Player by Mr Ziani as one of the Club's permitted foreign players does not of itself show that there was objectively a shortfall in the Player's play. It could as well be explained by the adoption of a new playing strategy by the Club coach. The Sole Arbitrator lacks evidence to make any finding on this point; but more importantly does not need to do so. Neither the Contract nor the Appendix would entitle the Club to deny the Player his contractual rights merely because it was, justifiably or not, displeased with his on-pitch performance; as long as the Player "*exerted every possible participation effort and capability*" in accordance with Article 3.b of the Contract nor, as apparently conceded by the Club before the DRC, could his deregistration affect his entitlement thereunder (Sultan Al Shara claimed the Player was told of deregistration but could not remember how or when. The Sole Arbitrator prefers the evidence of the Player that he was not told).
62. As to the allegations and warnings of missed training the Sole Arbitrator is satisfied that they were contrived; it appears from contemporary documentation that the Player was authorised not to train or that the team did not train at all or that (as regards the training sessions of 4th May 2015 and 10th May 2015) he actually did train. In the view of the Sole Arbitrator these baseless warnings were designed to force the Player out (he notes that before the DRC the Coach's authorisations were apparently claimed by the Club to be a forgery, but no evidence was adduced before him to that effect) Moreover, as the DRC found and the Sole Arbitrator accepts, the Player "*was never duly informed of the imposition of the relevant fines, let alone granted the opportunity to explain the reasons for his alleged absences*".

D. Club's breach?

63. The Sole Arbitrator concludes simply that, for better or for worse, those involved in the running of the Club's footballing side did not feel that the Club was getting its money's worth for the Player and were doing their best to compel him to quit; the Player says in his oral evidence that he was frozen out by the Club and never spoke to the CEO, the Club President or the Club's lawyer. The Sole Arbitrator further concludes that Sultan Al Shara, who had been responsible for the Player's acquisition and who committed the Club both to the Contract and the Appendix, was himself seeking a way out of the unhappy situation created, in particular, by the Appendix which he sought to shield from the Club Board; but ultimately failed to do so and paid the price by being dismissed and simultaneously made the object of a criminal complaint. It is notable in this context that in April 2015 the Player was told to collect a cheque, of whose existence he had allegedly previously been informed, only, when he did so, to have it

dishonoured. The Club was unenthusiastic to pay the Player even that which, on its version of his more limited entitlement, he could properly claim (there was evidence from Sultan Al Shara that complaints by Club players about non-payment of salaries due were recurrent).

64. The Sole Arbitrator also endorses the DRC's view that "*by refusing to register a player a club is effectively barring, in an absolute manner, his potential access to competition, and, as such, violating one of his fundamental rights as a football player*". The Club's suggestion that the removal of the Player's federative licence, disabling from first team services in national competitions, nonetheless allowed him to play in international competitions was scant solace since the Club never qualified for such competitions. The Club's breach did not only sound in non-payment of monies due but in denying the Player the opportunity to play, as promised, first team football.

E. Mitigation?

65. As to the Player's alleged failure to mitigate his loss, each of the Contract (Article 2.G) and Appendix (Article 4.3), obliged the Club, if it chose to terminate the relationship thereunder it, to pay all outstanding sums due to the Player until 31 May 2016. The Sole Arbitrator need not decide, if this provision applies by implication if it was not the Club but the Player who terminated (for just cause) - a proposition rejected by the DRC. Neither before the DRC nor before the Sole Arbitrator did the parties analyse precisely when the contract between them came to an end. The letter of 5th July 2016 from Sultan Al Shara, and that of about the same date from the Club's lawyer, both of which may have lost something in translation, do not on any fair reading constitute an unequivocal termination of any contractual relationship, but rather a denial of any continuing obligation vis à vis the Player under any subsisting agreement. The Sole Arbitrator is content to accept the DRC's conclusion that the contractual relationship came to an end when the Player filed his claim before the DRC *i.e.* on 24th September 2015 upon commencement of the new football season. This was indeed the Player's premise in his written submission (*i.e.* Answer) and that he did so with just cause was also, rightly, accepted by the DRC.
66. On that premise the Sole Arbitrator agrees with the Club that both Swiss Code of Obligation Article 337c (2) and case law (see *e.g.* decisions of the Swiss Federal tribunal 4A 372/2016, 4C 321/2005fzc as well as CAS jurisprudence *CAS 2006/A/1062*, *CAS 2015/A/4346* and *CAS 2015 A/4206-4209*) (and principles of the *lex ludica*) recognize a duty of an employee to mitigate any loss caused by his dismissal.
67. However the Sole Arbitrator does not consider that the duty to mitigate arises before dismissal or that an employee can be forced, though he may choose, himself to terminate a contract by reason of an employer's breaches.
68. Rather, in his view, such a duty arises for the victim of a breach, only when a contract is brought to an end in consequence of the breach. Up till 24th September 2015 the Player did, and was entitled to, treat his employment relationship with the Club as subsisting. After that date, the making of his claim disabled him from so contending. In its Appeal Brief the Club itself did not suggest that the Player's duty to look for and find a new team to which to render his sporting performances "*arose earlier than in respect of the 2015-2016 season*".

69. Article 18.3 of the FIFA Regulations states “*A professional shall only be free to conclude a contract with another club if his contract with his present Club has expired or is due to expire within six months. Any breach of this provision shall be subject to appropriate sanctions*”. That provision fettered the Player’s ability to enter into a contract with another club earlier than six months after 24th September 2015.
70. The Club argued that the Player should not be permitted to lead evidence about any attempt to mitigate his loss since none was referred to in his pleading and the Club would not be in a position to investigate or challenge such evidence if, without such warning, introduced at the hearing. The Sole Arbitrator interpreted the Player’s pleaded Response as signalling that the damage done to the Player’s standing and skills by his being sidelined for the best part of a year by the Club had itself deprived the Player of any real opportunity to mitigate, and he permitted Mr Bonnot, who had provided a signed witness statement, saying, *inter alia*, that “*the cancellation of his federative licence, like all the other breaches from the Club have made it impossible to negotiate a professional contract with other Clubs in the economical conditions that he should have got in respect to his experience, age and technical and physical qualities*” to expand on that theme. The evidence that he gave, which the Sole Arbitrator accepts, free standing of any impact of Article 18.3 of the Regulations, was that his efforts to procure for the Player a contract with another European club never proceeded beyond the extension of initial feelers which were swiftly waved away. A footballer, the wrong side - in football terms - of thirty, who had left European football leagues for a brief and unhappy sojourn in a Middle Eastern league where - and the Sole Arbitrator intends no disrespect - the perception in the world of football is that the standards are generally lower, would most likely find it difficult, after travelling down the snake once more to ascend the ladder: the fact that the Player only was able to sign belatedly for Os Belenenses at a far lower salary than he had agreed with the Club spoke for itself. The Club was itself, as noted above, in the interests of fairness permitted after the hearing exceptionally to adduce evidence by way of a schedule of various players who had made that return journey, but each case is axiomatically fact specific and it was not suggested that any player referred to in that schedule had been treated in the same way by his former employer as was the Player by the Club. In short, the examples relied upon by the Club were not shown to be in *pari materia*. The Sole Arbitrator therefore declines to find that the Player breached any duty to mitigate imposed by law upon him.
71. For the foregoing reasons the Appeal is dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Al Fujairah Sports Club on 14 December 2016 against the decision issued by the Dispute Resolution Chamber of FIFA on 18 August 2016 is dismissed.
2. The decision issued by the Dispute Resolution Chamber of FIFA on 18 August 2016 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.