Arbitration CAS 2017/A/5125 Bahrain Football Association (BFA) v. Adnan Hamad Majid, award of 22 May 2018

Panel: Mr Sofoklis Pilavios (Greece), President; Mr Boris Vittoz (Switzerland); Mr Mark Hovell (United Kingdom)

Football
Termination of contract of employment between a club and a coach
Termination without just cause by the club
Law applicable to the calculation of the compensation due to the coach
Incompatibility of a contractual provision entailing a renouncement of a claim arising from mandatory provision of law
Determination of the compensation due to the coach

1. **Just cause for contract termination is deemed to exist in cases where there is a breach of contract by the other party of such gravity and extent, that the aggrieved party cannot in good faith be expected to continue with the contractual relationship. In the same vein, the aggrieved party is required to give a prior notice inviting its counter-party to desist the breach, before proceeding with contract termination. In this respect, a termination with immediate effect is in principle to be applied as *ultima ratio*. The performance of the duties of a head coach requires an increased degree of trust by the other party, be it a club or a national association. Without any other specific incidents that arguably shattered the trust and faith of the other party in the head coach, the team's performance, alone, does not justify an immediate contract termination e.g. three months after its conclusion and without any prior notice.**

2. **Pursuant to Article 57 of the FIFA Statutes and Article R58 of the CAS Code, FIFA Regulations are primarily applicable, supplemented by Swiss law. However, under Article 1 para. 1 of the FIFA Regulations on the Status and Transfer of Players (RSTP) it is crystal clear that Article 17 of the FIFA RSTP is only intended to apply in cases of breach of contract or contract termination between clubs and players and as such it cannot be taken to regulate the manner in which compensation is to be awarded in employment disputes with coaches. Therefore it is Article 337 (c) of the Swiss Code of Obligations (CO) that is the relevant provision in the event of immediate termination without just cause of an employment agreement by the employer in order to determine the amount of compensation due to the employee.**

3. **According to Article 341 para. 1 CO, an employee may not waive claims arising from mandatory provisions of law or mandatory provisions of a collective employment contract during the period of the employment relationship and for one month after its end. The provision of Article 337(c) CO regarding the employee's claims for financial compensation in case of unilateral termination of an employment contract without just cause by the employer is such a mandatory provision, as explicitly stipulated in**

Article 362 CO. In this regard, an amount of compensation payable under the employment contract that falls a long way short of the amount of compensation according to the criteria set out in Article 337 (c) para. 1 CO derogates substantially from the mandatory provision of Article 337 (c) para. 1 CO to the detriment of the employee. The relevant provision of the employment contract, which effectively restricts the compensation entitlements of the coach to two monthly salaries for the first year and a fraction of his remuneration for the second year, entails a renouncement of his claims under Article 337 (c) para. 1 CO, in a way incompatible with Article 341 para. 1 CO. Therefore, said provision is null and void and cannot be applied to determine the appropriate measure of compensation.

4. **According to Article 337 (c) para. 2 CO, the employee's entitlements in compensation may be reduced by any amounts that he saved as a result of the termination of the employment relationship or the amounts he earned by performing an alternative work or the amounts he would have earned had he not intentionally foregone such work. This provision essentially encapsulates the duty of the employee to mitigate his damages in case of a breach of contract by the employer, which falls in line with the general principle of fairness and good faith and is also relevant in the sports industry. It is to be noted that the duty to mitigate damages is a more difficult task for coaches than it is for players.**

I. PARTIES

1. The Bahrain Football Association (hereinafter the "Appellant" or the "BFA") is the national association for football in Bahrain, which is affiliated to the Fédération Internationale de Football Association (hereinafter "FIFA") and to the Asian Football Confederation.

2. Mr Adnan Hamad Majid (hereinafter the "Respondent" or the "Coach") is a professional football coach of Iraqi nationality.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties' written submissions, oral pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows.

4. On 5 August 2014, the parties concluded a contract (hereinafter "the Employment Contract") by means of which the BFA hired the Coach as full time Head Coach of the First National

Team of Bahrain for a term of two years, starting on 5 August 2014 and ending on 31 July 2016.

5. According to the relevant provisions contained in Articles 3 and 4 of the Employment Contract the BFA agreed to pay the Coach for his services the following amounts:

A. For the first contractual year the amount of 600,000 (six hundred thousand) USD, payable as per Article 3 in the following manner:

i) 100,000 (one hundred thousand) USD, as an advance payment on 1 September 2014;

ii) 500,000 (five hundred thousand) USD in 12 monthly instalments of 41,667 USD each, payable during the last week of each month starting 31 August 2014 until 31 July 2015.

B. For the second contractual year the amount of 750,000 (seven hundred and fifty thousand) USD, payable as per the Article 4 in the following manner:

i) 150,000 (one hundred and fifty thousand) USD as an advance payment on 1 September 2015;

ii) 600,000 (six hundred thousand) USD in 12 monthly instalments of 50,000 USD each, payable during the last week of each month starting 31 August 2015 until 31 July 2016.

6. According to Articles 3 and 4 of the Employment Contract the Coach was also entitled to additional benefits every contractual year as follows:

- Housing allowance: The BFA shall provide the Coach with a house as per his desire;
- Car allowance: The BFA shall provide the Coach with a new 4 x 4;
- Tickets: 5 business class tickets per year, 2 business class tickets per year for the spouse, 2 business class tickets per year for the children [3 children];
- Schooling allowance: in one of the schools of the Kingdom [high school]
- Bonuses: USD 100,000 for winning tournament [official or friendly]
- Game Bonuses: as applicable to the Players of national team and as per regulations of the Association.

7. The Employment Contract was accompanied by an Addendum captioned as *"Conditions of termination of the Contract"* which was also signed by the parties. The Panel notes that the English translations provided by the parties are not identical. However, differences in the two translations do not concern material issues that are relevant to the merits of the case. According to the translation provided by the Respondent the Addendum stipulates as follows:

- *"This Addendum is considered to be an integral part of the Contract*

- *In case the agreement was terminated in the first year by the First Party [i.e. the BFA] the following will be due: The First Party shall pay the Second Party [i.e. the Coach] 2 months salary in addition to the advance payment of the second year (USD 150,000)*
- *In case the Agreement was terminated in the second year by the First Party [i.e. the BFA] the following will be due: The First Party will pay the Second Party [i.e. the Coach] 2 months salary (in addition to the advance payment of the contract)*
- *In case the Agreement was terminated in the first year by the Second Party [i.e. the Coach] the following will be due: The Second Party will pay the First Party [i.e. the BFA] the advance payment of the first year in addition to all the remaining salaries for the first year.*
- *In case the Agreement was terminated in the second year by the Second Party [i.e. the Coach] the following will be due: If termination was during the first 6 months (i.e. prior to January 2015 the Second Party will pay the First Party [i.e. the BFA] the advance payment of the second year (150,000 USD) in addition to 6 months salaries. If termination was during the last 6 months (after January 2015) the Second Party pays the First Party 50% of the second year advance payment, i.e. 75,000 USD in addition to the remaining salaries for the second year".*

8. On 17 November 2014, the BFA terminated unilaterally the Employment Contract. The termination was announced to the Coach in a meeting with the President and the Vice President of the BFA. That same day the BFA issued a press release on its website informing that it had decided to discharge the Coach from his duties as head coach of the national football team with immediate effect, after having reviewed: *"the teams' situation and unconvincing technical level, asserting the need to develop solutions before the third round match in the Gulf Cup tournament and upcoming participation in the 2015 AFC Asian Cup".*

9. Following this the BFA invited the Coach to sign a settlement agreement and to accept a settlement amount of 101,444.52 BHD (Bahraini Dollars), as per the provisions contained in the Employment Contract and Addendum.

10. The Coach did not accept the settlement amount offered by BFA, as he deemed that it did not represent the amounts he was entitled to under the Employment Contract.

11. On 12 December 2014, the legal representative of the Coach notified the BFA of the Coach's claims for compensation following the termination of the Employment Contract and requested payment of the total amount of USD 2,133,666.

12. On 24 December 2014, the legal representative of the BFA replied that the compensation due to the Coach is calculated on the basis of Article 15 of the Employment Contract [i.e. the Addendum] and amounts to USD 233,334, which corresponds to two full months' salaries of USD 41,466 each, in addition to the advance payment for the second year. He also informed the Coach that the BFA had already issued a cheque in his name for the total amount of BHD 109,587.910, which exceeds the amount of USD 233,334, and invited him to collect it in full settlement of all amounts due following the termination of the Employment Contract.

13. Notwithstanding this offer the BFA has not made any payments to the Coach to date.

14. On 30 June 2016, the Coach singed an Employment Contract with the Football Club "Al Wehdat" in Jordan with an annual salary of USD 180,000.

B. Proceedings before the FIFA Player's Status Committee

15. On 22 June 2015, the Coach lodged a claim against the BFA in front of the Player's Status Committee of FIFA (the "FIFA PSC") requesting compensation for the early termination of the Employment Contract in the total amount of USD 2,148,540.25 with annual interest at a rate of 5% as from the date of termination i.e. as of 17 November 2014, as follows:

"a. USD 375,000 for the residual value of the agreement for the first year, i.e. from November 2014 to July 2015 according to Bahraini law;

b. USD 750,000 for the residual value of the agreement for the second year including 12 monthly salaries and the advance payment;

c. USD 20,833.50 as "end of service benefit" according to Bahraini law;

d. USD 233,334 as "end of service benefit" based on the addendum;

e. USD 11,822.01 corresponding to the accrued annual leave according to Bahraini law;

f. USD 1,047.74 corresponding to return expenses to Iraq for the Coach and his family in accordance with article 6 of the Contract and the Labour Market Regulation Authority law;

g. USD 6,500 corresponding to the flight tickets the coach and his family would have been entitled to if the agreement had not been terminated;

h. USD 750,000 corresponding to the damage to his reputation under the Bahraini Civil Code and considering the press statement made by the BFA".

16. During the course of the proceedings the Coach modified slightly his initial claim by amending his request for an end of service benefit according to Bahraini law from the amount USD 20,833 to USD 5,937, thus, reducing the total amount requested to USD 2,133,643.75.

17. The BFA argued that according to the Addendum of the Employment Contract the parties had agreed upon an amount of compensation in case of termination, in line with Article 17 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") and, consequently, the amount of compensation due to the Coach was limited to USD 271,910.15 as follows:

"a. USD 233,334 as amount of compensation based on the Addendum;

b. USD 10,416.75 for the accrued holiday time;

c. USD 22,222.40 corresponding to the outstanding salary from 1 November to 16 November 2014;

d. USD 5,937 corresponding to the "end of service payment" under Bahraini Law".

18. On 15 June 2016, the Single Judge of the FIFA PSC rendered a decision on the matter (the "Appealed Decision") with, *inter alia*, the following operative part:

"1. The claim of the Claimant, Adnan Hamad Majid is admissible.

2. The claim of the Claimant, Adnan Hamad Majid is partially accepted.

3. The Respondent, Bahrein Football Association, has to pay the Claimant, Adnan Hamad Majid, within 30 days as from the date of notification of the present decision, the amount of USD 1,002,740 as compensation for breach of contract as well as 5% interest per year on the said amount from 22 June 2015 until the date of effective payment.

(…)

5. Any further claims lodged by the Claimant, Adnan Hamad Majid, are rejected.(…)".

19. On 6 April 2017, FIFA notified the grounds of the Appealed Decision to the parties, determining, essentially, the following:

- The BFA did not contest having dismissed the Coach. The dismissal of the Coach occurred without just cause and the contractual relationship has de facto ended on 17 November 2014.
- The Addendum of the Employment Contract provided for the amount of compensation payable in the event of contract termination by the BFA and by the Coach. However, said Addendum contravenes the general principle of proportionality and the principle of equal treatment, since it blatantly provided a higher amount of compensation towards the BFA with no analogous right in favour of the Coach.
- On those grounds the Addendum cannot be applied to determine the amount of compensation due neither the amount for an end of service benefit.
- The amount of compensation shall be assessed in accordance with other criteria taking into consideration the residual value of the Employment Contract.
- Taking into consideration that the Employment Contract was valid until 31 July 2016 the Coach is in principle entitled to the remaining value of his salary for the unilateral termination without just cause. That amounts to USD 1,125,000 USD corresponding to 9 monthly salaries of USD 41,667 each for the first year and 12 monthly salaries of USD 50,000 each for the second year as well as USD 150,000 as advance payment for the second year.
- It was verified that the Coach had not been able to sign an employment contract with another Club during the relevant period of time. However, considering that the contract termination occurred on 17 November 2014 the Coach had opportunities to find a new club and thus to mitigate to some extent his loss of income.
- Consequently, the BFA must not pay the entire residual value of the Employment Contract but the amount of USD 1,000,000 which is a reasonable and proportionate amount of compensation for breach of contract in this case.
- In addition, the BFA must compensate the Coach with the amount of USD 2,740 for air tickets for the coach and his family.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 4 May 2017, the BFA filed a Statement of Appeal pursuant to Article R48 of the CAS Code of Sports-related Arbitration (the "Code") with the Court of Arbitration for Sport (the "CAS") against the Coach with respect to the Appealed Decision. With its Statement of Appeal, the BFA nominated Mr Boris Vittoz, attorney-at-law in Lausanne, as an arbitrator in the present matter. The Statement of Appeal also contained a request for evidentiary measures and in particular the production of documents by the Coach and the production of the full case file by FIFA.

21. On 17 May 2017, the BFA filed an appeal brief pursuant to Article R51 of the Code with following requests for relief:

"The Bahrain Football Association applies for the Court of Arbitration for Sport to rule as follows:

i. The Appeal is upheld.

ii. The FIFA decision issued on 15 June 2016 in the matter between the Bahrain Football Association and Adnan Hamad Majid is annulled.

iii. The Bahrain Football Association owes a maximum amount of USD 255,556.40 (two hundred fifty-five thousand and five hundred fifty -six US Dollars and forty cents) to Mr Adnan Hamad.

iv. Mr Adnan Hamad Majid shall bear all arbitration costs and shall be ordered to reimburse the Appellant the minimum CAS Court Office fee of CHF 1,000 as well as any other amounts of advances of costs paid to the CAS.

v. Mr Adnan Hamd Majid shall be ordered to pay the Bahrain Football Association a contribution towards the legal and other costs incurred by the latter in the framework of these proceedings, in an amount to be determined at the discretion of the Panel".

22. On 25 May 2017, the Respondent nominated Mr Mark Hovell, solicitor in Manchester, as an arbitrator in the present matter.

23. On 21 June 2017, pursuant to Article R54 of the Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:

President: Mr Sofoklis P. Pilavios, attorney-at-law in Athens, Greece
Arbitrators: Mr Boris Vittoz, attorney-at-law in Lausanne, Switzerland
Mr Mark Andrew Hovell, solicitor in Manchester, United Kingdom

24. On 26 June 2017, the CAS Court Office, upon directions by the Panel, invited FIFA to provide a copy of the complete case file in connection to the Appealed Decision.

25. On 18 July 2017, the Respondent filed an answer in accordance with Article R55 of the Code, with the following requests for relief:

"[…] Mr Hamad respectfully requests that the CAS orders that:

(a) the BFA's appeal is dismissed;

(b) the PSC Decision is upheld;

(c) the BFA shall be liable for all the costs of this arbitration; and

(d) the BFA shall be liable for all of Mr Hamad's costs incurred in relation to this arbitration, including but not limited to legal fees, disbursements and any and all fees payable to the CAS".

26. On 19 July 2017, the CAS Court office invited the parties to state whether they prefer for a hearing to be held in the matter or for the Panel to issue an award based solely on the parties' written submissions.

27. On 26 July 2017, the parties informed the CAS Court office of their preference for a hearing to be held in the matter.

28. On 2 August 2017, the parties were informed that the Panel, in accordance with Article R57 of the Code, had decided to hold a hearing. By same correspondence the Respondent was ordered to disclose a copy of his employment contract with Al-Wehdat, and to provide an English translation of such document.

29. On 9 August 2017, the Respondent submitted a copy of his employment contract with Al-Wehdat together with an English translation.

30. On 18 October 2017, the CAS Court Office sent a copy of the Order of Procedure to the parties and on 20 October 2017 and on 30 October 2017 the Respondent the Appellant, respectively, returned a duly signed copy.

31. On 19 October 2017, FIFA provided a copy of the complete case file in the matter.

32. On 31 October 2017, a hearing was held in Lausanne, Switzerland.

33. The Panel was assisted by Mr Daniele Boccucci, Counsel to the CAS and the hearing was attended by the following persons on behalf of the parties:

a) For the Appellant: Mr Abdulla Alsowaidi, representative of the BFA, Mr Jorge Ibarrola, counsel, Mr Sebastian Permain, counsel, and Ms Dana Morales Cardenas, observer, intern.

b) For the Respondent: Mr Adnan Hamad Majid, the Respondent himself, Dr Stephan Netzle, counsel, Mr Stephen Sampson, counsel and Mr Saad Watt Awal, interpreter.

34. The following witnesses testified: i) Rania Tarabie, President's Assistant for the BFA (by teleconference) ii) Abel Al Ansaari, Head of National Team's Department at the BFA (by teleconference), iii) Ms Layala Shehab, Head of Labour arbitration and consultation at the Ministry of Labour of the Kingdom of Bahrain (by teleconference), all for the Appellant.

35. Before the hearing was concluded, both parties expressly stated that they did not have any objection with respect to the procedure and that their right to be heard had been respected.

36. The Panel confirms that it carefully took into account in its deliberations all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

37. On 20 March 2018, the Appellant filed additional submissions and documents, to the admissibility of which the Respondent objected on 23 March 2018.

38. On 26 March 2018, the CAS Court Office informed the parties of the Panel's decision to declare inadmissible the Appellant's submissions filed on 20 March 2018, pursuant to Article R56, para. 1, of the Code.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

39. The submissions of the BFA, in essence, may be summarized as follows:

- In its written submissions the BFA argued that the Employment Contract did not contain an explicit choice of law, therefore, the Panel should apply primarily FIFA Regulations and subsidiarily Swiss law, in accordance with Article 57 of FIFA Statutes and Article R58 of the Code. In its oral pleadings, however, the BFA argued against the subsidiary application of Swiss law and in favour of the supplementary application of Bahraini law.
- The BFA admits that it terminated the Employment Contract on 17 November 2014 on account of the poor results of the Bahraini National Team, yet, argues that the compensation due to the Coach should be calculated according to Article 15 of the Employment Contract (i.e. the Addendum), which is a valid and enforceable clause under the respective FIFA Regulations, but also falls in line with Swiss law, as well as with Bahraini law.
- Article 15 of the Employment Contract (i.e. the Addendum) is a liquidated damages clause in compliance with the requirements of Article 17 of the FIFA RSTP, as it sets out in detail the consequences for unilateral contract termination by one or the other party.
- This clause was drafted and negotiated by the Coach's agent, in order for him to be able to terminate the Contract at any point and also to be adequately compensated in the event of termination by the BFA.
- Subsidarily, this clause is a valid and enforceable penalty clause under Swiss law, on the basis of Articles 160 and 163 of the Swiss Code of Obligations (hereinafter the "CO"), and its content is compatible with all requirements provided therein.
- Finally, the content of Article 15 (i.e. the Addendum) does not contravene the principle of equal treatment or the principle of proportionality. There is no provision in Swiss law that requires penalty clauses to be reciprocal in order to be valid. At any rate, this

provision is reciprocal in the sense that it provides for damages for either party in the event of contract termination by the other.

- The provision of Article 15 (i.e. the Addendum) is also valid under Bahraini law and in particular, Article 111 (c) of the Bahraini Labour Law, that allows for the parties to agree on any amount of compensation in case of contract termination by the employer, provided that the compensation agreed upon does not fall below the wage of three months or the wage for the remaining period, whichever is lesser.
- In conclusion, according to Article 15 of the Employment Contract (i.e. the Addendum) the compensation due to the Coach corresponds to two months salary instalments in the amount of USD 83,334 (41,667 x 2), plus the advance payment for the second contractual year in the amount of 150,000 USD. On this basis the BFA maintains that the Coach's entitlement to compensation does not exceed the amount of 233,334 USD. In addition to this amount the BFA acknowledges that it owes the Coach part of his salary instalment for the period from 1 to 16 November 2014 in the amount of 22,222.40 USD.

B. The Respondent

40. The submissions of the Coach, in essence, may be summarized as follows:

- Article 17 of the FIFA RSTP is not applicable in present case, as its scope is limited to cases of contract termination between players and clubs and does not regulate cases between coaches and associations.
- The compensation due in the present case must be assessed by applying Swiss law and must comply with the mandatory provision contained in Article 337 (c) (1) of CO.
- The Coach firmly denies that he had appointed an agent to negotiate and draft the Employment Contract on his behalf. The Employment Contract was drafted by the BFA and the Addendum could not have possibly been added at the request of the Coach, as such provision does not effectively protect his rights.
- The Coach provided his services in compliance with the contractual terms. The Coach had not been given any warning of any alleged breach, or, prior notice that his Contract would be terminated.
- The BFA does not dispute having unilaterally terminated the Employment Contract on 17 November 2014 due to the poor results of the Bahraini National team. However, the teams' results and performance do not constitute just cause for termination. Therefore, the BFA's termination was without just cause.
- The compensation due to the Coach should be assessed solely with reference to Article 337 (c) (1) of CO, which is applicable in cases of contract termination without just cause by the employer. Pursuant to this provision the Coach is entitled to receive full compensation in the amount that he would have earned had the Employment Contract expired on its agreed fixed term, namely until 31 July 2016. This is also consistent with the Swiss law doctrine of positive interest.

- Article 337 (c) (1) of CO creates a mandatory obligation for the employer, which cannot be derogated from to the detriment of the employee. This excludes the application of a liquidated damages clause that does not effectively provide for full compensation in accordance with Article 337 (c) (1) of CO. The amount of compensation provided for in the Addendum does not fully compensate the Coach for his actual loss. Therefore, such provision in so far as it compromises the entitlement of the Coach to full damages must be considered null and void.
- In addition, the Addendum cannot be understood to create a right for the BFA to terminate the Employment Contract, as there is no clear wording to indicate so. The circumstances for lawful termination by the parties are set out exhaustively in Article 11 of the Employment Contract.

V. JURISDICTION

41. The jurisdiction of CAS in this matter, which is not contested by the parties, derives from Article 58 para. 1 of the FIFA Statutes and Article R47 of the Code.

42. Article 58 para. 1 of the FIFA Statutes provides as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question".

43. 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 the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".

44. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by the parties. It follows that CAS has jurisdiction to decide on the present matter.

VI. ADMISSIBILITY

45. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. […]*".*

Further, as indicated above (para. 40), Article 58 of the FIFA Statutes stipulates that appeals *"shall be lodged with CAS within 21 days of notification of the decision in question".*

46. The grounds of the Appealed Decision were notified to the parties by post on 6 April 2017, but were actually received by the Appellant only on 13 April 2017. Consequently, the 21-day deadline to file the appeal was met.

47. The Panel, therefore, finds that the appeal is admissible.

VII. APPLICABLE LAW

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

49. Article 57 para. 2 of the FIFA Statutes provides as follows:

"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall apply the various regulations of FIFA and, additionally, Swiss law".

50. The Panel shall also take into account the respective provisions of the Employment Contract. The Panel remarks again that the translated texts submitted by the parties are not identical, yet there are no material differences that could affect the adjudication of the present dispute.

51. According to the translation provided by the Respondent the preamble of the Employment Contract stipulates as follows:

"The following agreement was concluded in compliance with the legal provisions applicable before the Association, namely the employment law nb 36 of 2012 as well as the employees regulations applicable within the Association of which the Second party received copies thereof which would complement this agreement wherever the latter is silent, further the Second party hereby agrees to work within any amendments of the above mentioned regulations throughout the term of this Contract and this Preamble is construed to be and integral part of this Agreement".

According to the translation provided by the Appellant the preamble of the Employment Contract stipulates as follows:

"… the Contract has been drafted as per the bylaws and regulations of the Bahrain Football Association in particular the Labor Law of the civil Section issued by virtue of Law No. 26 on 2012 and the Association's Employees and Financial Regulations. The Second Party approves of any amendments to these regulations and bylaws during the duration of this contract, and this prologue is to be considered as an integral part of this contractual agreement".

52. Further, according to the English translation provided by the Respondent Article 12 of the Employment Contract states:

"Any dispute emanating out of the interpretation or the execution of any of the provisions of the Agreement shall be dealt with amicably at the Association failing any amicable solution, the dispute will be submitted to the Olympic Committee, failing such the dispute will be submitted to FIFA's DRC".

Similarly, according to the English translation provided by the Appellant Article 12 of the Employment Contract states:

"Any disagreement or dispute emanating from any of the contract's articles is solved amicably within the association and in a manner applicable to both parties. If the former is not achievable, then the matter is shown to the Bahrain Olympic Committee and if that was not even doable, the matter is submitted to the dispute resolution chamber of FIFA".

53. The BFA in its appeal brief expressly admitted that the Employment Contract does not contain an explicit choice of law by the parties. According to its contentions, the Contract makes some references to Bahraini Labour law, but does not provide for the exclusive application of such law in case of a dispute. On this premise, the BFA acknowledged that pursuant to Article 57 of the FIFA Statutes and Article R58 of the Code, the CAS has to apply primarily FIFA Regulations and additionally Swiss law.

54. This was not contested by the Coach. In the answer to the appeal the Coach confirmed that the Employment Contract did not contain a governing law clause. Therefore, the Coach endorsed the position of the BFA that pursuant to Article 57 of the FIFA Statutes and Article R58 of the Code the CAS should apply the rules and regulations of FIFA and, subsidiarily, Swiss law.

55. The Appellant's subsequent submissions at the hearing that Bahraini law, instead of Swiss law, would be applicable as supplementary law were made after an agreement existed between the parties as to the applicable set of rules in the present case, which cannot be unilaterally modified by the Appellant.

56. Therefore, the Panel shall decide the merits according to the respective FIFA Regulations and in particular the FIFA RSTP and Swiss law shall be applied subsidiarily.

VIII. MERITS

57. The central issue of the dispute is no other than the financial consequences of the unilateral termination of the Employment Contract by the BFA on 17 November 2014, and, more specifically, the appropriate measure of compensation due to the Coach as a result of this termination. The key aspect of controversy is whether the amount of compensation should be calculated on the basis of the provision contained in the Addendum of the Employment Contract, or whether said contractual provision is non-applicable for this purpose.

58. The Panel shall first examine whether the decision of the BFA to terminate the Employment Contract was justified or not. In its appeal brief the BFA contends that on 17 November 2014 its delegation informed the Coach that: *"his failure to implement adequate training - playing strategies, contrary to his promises during the negotiations, has led to the termination of his Employment Contract"*. The

termination was intended to have an immediate effect and left no "grace period" for the Coach. That day the BFA also issued a press release announcing that it held an urgent meeting to discuss the *"national teams' poor performance and negative results in the first and second rounds of Group B in the 22nd Gulf Cup tournament"* which ultimately led to the resolution to release the Coach form his duties *"starting today"*.

59. The Panel recalls that pursuant to CAS jurisprudence, just cause for contract termination is deemed to exist in cases where there is a breach of contract by the other party of such gravity and extent, that the aggrieved party cannot in good faith be expected to continue with the contractual relationship (*CAS 2015/A/4161* para. 110, *CAS 2008/A/1447* para. 13 with references contained therein). In the same vein, there is an extensive body of CAS case law that requires the aggrieved party to give a prior notice inviting its counter-party to desist the breach, before proceeding with contract termination. In this respect a termination with immediate effect is in principle to be applied as *ultima ratio* (*CAS 2009 /A/1956* para. 25, *CAS 2014/A/3460* para. 63).

60. There is no doubt that the performance of the duties of a head coach requires an increased degree of trust by the other party, be it a club, or, a national association. In the present case, it is quite striking that the BFA was quick to terminate the Employment Contract just three months after its conclusion. However the BFA did not plea any specific incidents - other than the team's sporting results - that arguably shattered its trust and faith in the Coach in order to justify its decision. On those grounds, and in light of the specific facts of the present case, the Panel concludes that the team's performance, alone, does not justify an immediate contract termination, and, consequently, the BFA terminated the Employment Contract without just cause.

61. The next issue that needs to be addressed is the calculation of the compensation due to the Coach following the termination of his Employment Contract without just cause. The BFA does not dispute its obligation to pay compensation, yet argues that the Coach's entitlement in this instance is limited to the amount of USD 233,334, as per the respective provisions of the Addendum. The BFA maintains that the Addendum contains a liquidated damages clause, in accordance with the requirements of Article 17 para. 1 of the FIFA RSTP, which purports to set out in detail the financial consequences for the parties in the event of unilateral contract termination during the first or the second contractual year.

62. The Panel has already established that FIFA Regulations are primarily applicable to this case, supplemented by Swiss law. However, Article 1 para. 1 of the FIFA RSTP defines the scope of application of the rules contained therein as: *"global and binding rules concerning the status of players, their eligibility to participate in organized football and their transfer between clubs belonging to different associations"*. On this premise it is crystal clear that Article 17 of the FIFA RSTP is only intended to apply in cases of breach of contract or contract termination between clubs and players and as such it cannot be taken to regulate the manner in which compensation is to be awarded in employment disputes with coaches.

63. Consequently, the Panel agrees that Article 17 of the FIFA RSTP is not applicable in the case at hand.

64. The Panel shall therefore revert to Article 337 (c) of CO, which is applicable under Swiss law as the relevant provision in the event of immediate termination without just cause of an employment agreement by the employer in order to determine the amount of compensation due to the employee.

65. Article 337 (c) (1) of CO stipulates as follows:

> *"*1. *If the employer dismisses the employee without notice in the absence of a valid reason, the latter shall have a claim for compensation of what he would have earned if the employment relationship had been terminated by observing the notice period or until the expiration of the fixed agreement period".*
>
> 2. *The employee must permit a set-off against this amount for what he saved because of the termination of the employment relationship, or what he earned from other work, or what he has intentionally failed to earn.*
>
> 3. *The judge may order the employer to pay the employee an indemnity, the amount of which is determined at his discretion while taking due account of all circumstances; however, it cannot exceed an amount corresponding to six months of salary for the employee".*

66. The Panel notes that the Addendum of the Employment Contract is titled *"Conditions of terminating the Agreement"* and provides for a method of calculation of the compensation due to each party in case of contract termination by the other.

67. The majority of the Panel formed the view that the Addendum does not confer upon the parties an express right to terminate the Employment Contract before its contractual term. On this basis, the majority of the Panel is of the opinion that the Employment Contract was a fixed term contract, in other words, it was agreed for a determined period of two years and could not be terminated before the expiry of such period, namely before 31 July 2016.

68. With these considerations the Panel shall examine whether the terms of the Addendum are in fact compatible with Article 337 (c) of CO, which is relevant to determine the compensation claims of an employee in case of immediate termination of the employment agreement without just cause.

69. In the case at hand the BFA terminated the Employment Contract on 17 November 2014, while its contractual expiry was not until 31 July 2016. This means that, had the Employment Contract been performed all the way until its initially anticipated conclusion, the Coach would have been able to earn in salaries an aggregate amount of USD 1,125,000, namely the remaining nine salary instalments of USD 41,667 for the first year, and, the entire amount of his remuneration of USD 750,000 for the second year.

70. Yet, the BFA maintains that under the terms of the Addendum the Coach is entitled to an amount of compensation that corresponds to two salary instalments of USD 41,667, plus, the amount of the advance payment of USD 150,000 for the second year, totalling to USD 233,334.

71. In this respect the majority of the Panel points out that according to Article 341 para. 1 of CO an employee may not waive claims arising from mandatory provisions of law or

mandatory provisions of a collective employment contract during the period of the employment relationship and for one month after its end. The provision of Article 337(c) of CO regarding the employee's claims for financial compensation in case of unilateral termination of an employment contract without just cause by the employer is such a mandatory provision, as explicitly stipulated in Article 362 of CO.

72. In the present case, by application of the terms of the Addendum the compensation due to the Coach would result merely in a figure of USD 233,334, while the residual value of his salaries under the Employment Contract amounted to USD 1,125,000. It is therefore evident, that the amount of compensation payable under the Addendum falls a long way short of the amount of compensation according to the criteria set out in Article 337 (c) para. 1 of CO. Consequently, the Addendum derogates substantially from the mandatory provision of Article 337 (c) para. 1 of CO to the detriment of the Coach.

73. In view of the above, the majority of the Panel finds that the relevant provision of the Addendum, which effectively restricts the compensation entitlements of the Coach to two monthly salaries for the first year and a fraction of his remuneration for the second year, entails a renouncement of his claims under Article 337 (c) para. 1 of CO, in a way incompatible with Article 341 para. 1 of CO. Therefore, the majority of the Panel concludes that the respective provision of the Addendum is null and void and cannot be applied to determine the appropriate measure of compensation in the present case.

74. Further, the Panel notes that according to Article 337 (c) para. 2 of CO the employee's entitlements in compensation may be reduced by any amounts that he had saved as a result of the termination of the employment relationship or the amounts he had earned by performing an alternative work or the amounts he would have earned had he not intentionally foregone such work. This provision essentially encapsulates the duty of the employee to mitigate his damages in case of a breach of contract by the employer, which falls in line with the general principle of fairness and good faith and is also relevant in the sports industry (*CAS 2015/A/4206 & CAS 2015/A/4209 paras. 235-236*).

75. There is no doubt that since 17 November 2014 the Coach was left without employment in a foreign country, after having relocated there his family and certainly with very slim prospects of finding an alternative job with comparable terms to substitute his loss of income for season 2014-2015. In this connection, the Panel remarks that a coach may need considerably more time compared to a player to find an alternative engagement with a club. In this respect, the duty to mitigate damages is a more difficult task for coaches than it is for players.

76. Having said so, however, it cannot be disregarded that in the present case the termination of the Employment Contract occurred in the first half of the first contractual year of season 2014-2015. Consequently, the Coach would be reasonably expected in demonstration of good faith, to take appropriate steps to seek new employment at least for the second year of the Employment Contract, namely for season 2015-2016 in order to mitigate his damages.

77. The Coach, however, did not present the Panel with any record of his actions or his efforts, such as contacts or negotiations with clubs, in order to take up a new job as coach in season

2015-2016. The Panel is also mindful of the fact that at the hearing the Coach conceded that he did not take immediate action to find new employment after the termination by the BFA. Upon request of the BFA the Coach produced to the Panel his contract with the football club "Al-Wehdat" in Jordan, which was apparently concluded on 30 June 2016, just one month before the expiry of the contractual term of his previous engagement with the BFA. This engagement seems to be on markedly worse financial conditions compared to his Employment Contract with the BFA. However, this fact alone does not suffice to prove that the Coach had reasonably exhausted all his options to find a job earlier in season 2015-2016.

78. In the absence of any additional evidence, the Panel is not satisfied that the Coach fully discharged his duty to mitigate his damages during season 2015-2016, for most part of which he remained unemployed.

79. In consideration of all the above elements the majority Panel finds that in accordance with Article 337 (c) paragraphs (1) and (2) of CO the Coach is entitled to receive an amount of compensation corresponding to the remaining salary instalments that he expected to have earned as remuneration for his services under the Employment Contract until its conclusion, namely the amount of USD 1,125,000 with a reduction by a factor of 25%, which ultimately results in the amount of USD 843,750. This reduction represents a reasonable set off for the amounts that the Coach would have been able to earn in good faith as income from his coaching work with a club or national association, had he not failed to take appropriate action to find such alternative employment in season 2015-2016.

80. Consequently, the Coach is entitled to the aggregate amount USD 843,750 as compensation following the unilateral termination of the Employment Contract by the BFA without just cause.

81. The interest payable on such amount shall start as determined by the Appealed Decision, i.e. as from 22 June 2015, namely the date of the claim filed before FIFA PSC by the Coach and shall remain at a rate of 5% p.a.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Bahrain Football Association on 4 May 2017 against the Decision passed on 15 June 2016 by the Single Judge of the Player's Status Committee of the Fédération Internationale de Football Association is partially upheld.

2. Paragraph 3 of the operative part of the Decision passed on 15 June 2016 by the Single Judge of the Player's Status Committee of the Fédération Internationale de Football Association is amended as follows:

   "the Bahrain Football Association is ordered to pay Adnan Hamad Majid the amount of USD 843,750 (eight hundred forty three thousand seven hundred and fifty US Dollars) within 30 (thirty) days from the notification of the present award with interest at a rate of 5% per annum from 22 June 2015 until date of full payment".

3. (…).

4. (…).

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