



Arbitration CAS 2018/A/5659 Al Sharjah Football Club v. Leonardo Lima da Silva & Fédération Internationale de Football Association (FIFA), award of 29 March 2019

Panel: Mr Georg von Segesser (Switzerland), President; Mr Alexander McLin (Switzerland); Mr Efraim Barak (Israel)

Football

Outstanding salaries within a loan agreement

International dimension of the dispute

Conditions for the establishment of a national dispute resolution system

Substantive reasons for challenging an arbitration agreement

Consent of the parties to arbitration

Consent to the competence of a national adjudicating body

- 1. The international dimension is to be defined based on the national status of the parties and not the national status of the dispute. The fact that a player changed clubs within a national federation and not from a foreign club is for the assessment of the character of the dispute not relevant. The player with a nationality different than that of the national federation of the club s/he is playing for is a foreigner in that national federation and a registration with the national federation does not make this any different.**
- 2. A specific employment-related dispute of an international dimension can only be settled by an authority other than the FIFA Dispute Resolution Chamber (DRC) if the following requirements are met: (i) there is an independent arbitral tribunal established at the national level; (ii) the jurisdiction of this independent arbitral tribunal derives from a clear reference in the employment contract; and (iii) this independent arbitral tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs. Pursuant to the FIFA Circular no. 1010 the terms “independent” and “duly constituted” require that an arbitral tribunal meets the minimum procedural standards which comprise the principle of parity in the constitution of the arbitral tribunal, the right to an independent and impartial tribunal, the principle of a fair hearing, the right to contentious proceedings and the principle of equal treatment. The FIFA National Dispute Resolution Chamber Standard Regulations which came into effect on 1 January 2008 refer to these fundamental procedural rights in detail dealing with the requirements for the composition of the NDRC, the form and conduct of the proceedings, the production and examination of evidence, the deliberations by the member of the NDRC and the form and content of its decisions.**
- 3. The substantive reasons for challenging consent to, or the existence of, an international arbitration agreement include: (i) lack of agreement on essential terms; (ii) lack of consent; and (iii) indefinite or uncertain wording of the arbitration agreement. The**

essential terms consist of an obligation to resolve certain disputes by “arbitration” and the right to demand that such disputes be resolved in this fashion. It is not necessary that the word “arbitration” is used in the arbitration agreement, if it can be concluded that the dispute resolution mechanism has the characteristics of arbitration. Further terms, such as the seat, the applicable rules, the composition of the arbitral tribunal and the scope of the arbitration clause may also be considered essential, but the absence or ambiguity of these terms do not ordinarily make the arbitration clause invalid. It is also not necessary that the arbitration clause explicitly excludes the jurisdiction of an authority which would otherwise be competent to deal with the dispute.

4. In order to determine whether a party has consented to the arbitration agreement it is necessary to establish his intent and whether under generally applicable rules of contract interpretation his signature to the agreement can be construed as an acceptance of the dispute resolution authority of the dispute resolution body. Thereby, the scope of the arbitration clause will be construed based on the wording of the clause, and the principle of confidence and good faith. Where the mutually agreed intention of the parties cannot be established, the consent of the party agreeing to arbitration, as an exception to an otherwise applicable dispute resolution method, must be interpreted according to the principle of good faith and it must be determined how, under the specific circumstances, a manifestation or a behaviour by that party could and should have been understood by a reasonable person under the same circumstances. The intent of a party to be bound by an arbitration clause presupposes that there is a clear understanding of the scope of the clause and of the nature of the disputes which fall thereunder.
5. The text of Art. 22 lit. b) of the FIFA Regulations on the Status and Transfer of Players (RSTP) provides for an exception from the general rule that international employment disputes between a club and a player should be dealt with by the FIFA DRC. Such provisions, providing for an opting out of the standard rule, should not be given an extensive meaning pursuant to general principles applicable to the construction of rules and regulations. Where the provision of the FIFA RSTP referring to employment-related disputes and the requirement that the competence of a national adjudicating body must be *“included either directly in the contract or in a collective bargaining agreement applicable to the parties”*, one could also understand thereby that the term *“contract”* refers to an employment agreement and not to any other agreement, for example one which primarily deals with the transfer of a player from one club to another.

I. PARTIES

1. Al Sharjah Football Club (the “Appellant” or the “Club”) is a club with its registered office in Sharjah, United Arab Emirates.

2. Mr Leonardo da Silva (the “First Respondent” or the “Player”) is a professional football player with Brazilian nationality.
3. Fédération Internationale de Football Association (the “Second Respondent” or “FIFA”) is the governing body of football world-wide.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions and pleadings at the hearing. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. Under the Player Loan Agreement of 19 August 2014 (the “Agreement”) between the Player, the Appellant and the Emirati club Al Nasr, the Player was temporarily transferred to the Appellant, as from 20 August 2014 until 30 June 2015 under the terms and conditions of the Agreement (clause 2). According to clause 3 of the Agreement, the Appellant had to pay to the Player for the duration of the loan period a total amount of USD 1.000.000,00 in monthly salaries.
6. By letter dated 19 April 2016, the Player put the Appellant in default with regard to an outstanding payment in the amount of USD 600.000,00 and set a time limit of 10 days to remedy the default.
7. On 25 May 2016, not having received payment of the above amount, the Player submitted his claim against the Appellant to the FIFA DRC for the outstanding remuneration, requesting the amount of USD 600.000,00. The Player further asked for default interest of 5% p.a. on the outstanding amount as from 30 June 2015 until the date of the effective payment of the salary.
8. In its reply to the Player’s claim, the Appellant argued that FIFA had no jurisdiction to deal with the claim, as only the Dispute Resolution Chamber of the United Arab Emirates Football Association (the “UAE FA DRC”) was the competent body to deal with the matter pursuant to clause 5.2 of the Agreement. The UAE FA DRC complies with all the minimum procedural standards to qualify as competent authority under the requirements pursuant to the FIFA Circular No. 1010 of 20 December 2005 as well as article 22 lit. b) of the FIFA Regulations on the Status and Transfer of Players (the “FIFA RSTP”).
9. As to the merits of the First Respondent’s claim, the Appellant emphasised that the Player did not prove to have provided sport services to the Appellant as per the Agreement for the duration of the loan period. His claim must therefore be rejected.
10. In reply to the jurisdictional objection, the First Respondent argued that the Agreement was only signed between the two clubs and that his role was just to agree with the loan, but not

that he became a party to the Agreement. He never agreed on the jurisdiction of the UAE FA DRC (see exhibit 4 to FIFA's answer). As clause 5.2 of the Agreement refers to mediation and amicable dispute resolution through the intermediary of the internal committee of the UEA Football Association (the "UEA FA"), clause 5.2 does not even constitute a valid arbitration clause.

11. Taking the Parties' arguments with regard to the jurisdiction of the UAE FA DRC into account, the FIFA Dispute Resolution Chamber in its decision of 8 March 2018 (the "Appealed Decision") rejected the Appellant's objection to the competence of FIFA to deal with the matter brought before it by the Player and held that it is competent to consider the matter as to its substance, based on article 22 lit. b) of the FIFA RSTP (exhibit 2 to the Statement of Appeal, p.5). The FIFA DRC ordered the Appellant to pay to the Player USD 600.000,00 plus 5% interest p.a. as from 30 June 2015 until the date of effective payment. The operative part of the Appealed Decision reads as follows:

“1. The claim of the Claimant, Leonardo Lima da Silva, is admissible.

2. The claim of the Claimant is accepted.

*3. The Respondent, Sharjah FC, has to pay to the Claimant, **within 30 days** as from the date of notification of this decision, overdue payables in the amount of USD 600,000 plus 5% interest p.a. as from 30 June 2015 until the date of effective payment.*

4. In the event that the aforementioned sum plus interest is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

5. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.

6. A reprimand is imposed on the Respondent”.

12. The grounds of the Appealed Decision were communicated to the Parties on 19 March 2018.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 8 April 2018, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS"). The receipt of the Appellant's Statement of Appeal together with its exhibits 1 – 3 was acknowledged by CAS on 12 April 2018. The Appellant nominated Mr Bandar Alhamidani as arbitrator. The Statement of Appeal was followed by Appellant's Appeal Brief filed on 19 April 2018 together with its exhibits 4 – 9. The Respondents were invited by CAS to submit their answers to the Appellant's Appeal within 20 days. On 12 April 2018, the First Respondent nominated Mr Efraim Barak as arbitrator. Due to the challenge of Mr E. Barak as arbitrator (see *infra* para 14.), this deadline was extended and the Player submitted his Answer to the Appeal Brief (the "Player's Answer") on 13 June 2018 and FIFA its Answer (the "FIFA Answer") on 14 June 2018.

14. With its letter of 26 April 2018, the Appellant indicated that it had legitimate doubts as to the independency and impartiality of the arbitrator Mr Efraim Barak, nominated by the Respondent 1. Following Mr Barak's disclosure of the CAS cases where FIFA was a party and he served as an arbitrator in the years from 2015 to 2018, and after the exchange of further correspondence between the Appellant and CAS, the Appellant challenged Mr E. Barak as arbitrator pursuant to Article R34 of the Code of Sports-related Arbitration (the "Code") with its submission of 9 May 2018, in particular on the grounds of his repeated activity as arbitrator in CAS proceedings involving FIFA and his alleged lack of independence and impartiality as an Israeli citizen in a dispute with a party of the UAE with which Israel does not have diplomatic relations.
15. On 25 June 2018, the Parties were invited to inform the CAS Court Office whether they preferred a hearing to be held in this matter or, conversely, for an award be rendered on the sole basis of the Parties' written submissions.
16. On 29 June and 2 July 2018, the Respondents stated that they preferred an award be rendered on the sole basis of the Parties' written submissions.
17. On 2 July 2018, the Appellant requested the Panel to hold a hearing in this matter.
18. On 17 August 2018, the Board of the International Council of Arbitration for Sport (the "ICAS") dealt with the Appellant's challenge of Mr E. Barak and, after having considered all the reasons brought forward by the Appellant in support of its challenge and the comments in response thereto by the Player and FIFA as well as by Mr E. Barak, dismissed the Appellant's challenge of the nomination of Mr E. Barak as arbitrator in these proceedings.
19. On 10 September 2018, following the resignation of the arbitrator initially nominated by the Appellant, the latter nominated Mr Alexander McLin as arbitrator.
20. On 11 September 2018, in accordance with Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted as follows: Mr E. Barak and Mr Alexander McLin, arbitrators nominated by the Parties, and Dr Georg von Segesser as President.
21. With reference to the correspondence with the Parties between 26 and 28 September 2018, the CAS Counsel informed the Parties on 1 October 2018 that a hearing would be held on 13 November 2018. The Order of Procedure was signed by the Parties and CAS on 9 and 10 October 2018, expressly confirming CAS jurisdiction to hear this matter.
22. At the hearing on 13 November 2018 the following persons were present:
 - Mr Luca Smacchia, representative of the Appellant,
 - Mr Gustavo Koch Pinheiro, representative of the First Respondent,
 - Mr Mario Flores Chemor, representative of the Second Respondent.

At the close of the hearing the Parties confirmed that their right to be heard had been fully respected and that they were satisfied with the conduct of the proceedings.

IV. SUBMISSIONS OF THE PARTIES

23. The Parties' requests for relief are as follows:

- Appellant's Appeal Brief:

"The Appellant respectfully requests the Arbitral Tribunal to render a final and binding award of the following:

- 1. Accepting this Appeal filed by Al Sharjah FC against the decision of FIFA DRC passed on 19 March 2018;*
- 2. Setting aside the decision of FIFA DRC to condemn Sharjah FC to pay the Player the amount of USD 600,000 plus 5% interest as from 30 June 2015;*
- 3. Ruling that the FIFA DRC has no jurisdiction to examine the Dispute; and*
- 4. Ordering the Player to pay CHF 20,000 the legal expenses of the Appellant, as well as all expenses incurred by Al Sharjah FC during the Appeal, or in connection with the Dispute, including the arbitration costs and FIFA costs.*
- 5. Setting aside the disciplinary sanction under art. 12bis FIFA".*

- Player's Answer:

"In the light of the above, given all the exposed facts and legal arguments, Leonardo Lima da Silva kindly asks this panel to reject the appeal, maintaining in full FIFA DRC decision.

As a result, the Appellant must be held responsible to pay CHF 20'000 the legal expenses of the Respondent, as well all expenses incurred by the Player during the appeal or in connection with this dispute".

- FIFA's Answer:

- "1. That the CAS rejects the present appeal against the decision of the Dispute Resolution Chamber (hereinafter also referred to as the DRC or the Chamber) dated 8 March 2018 and to confirm the relevant decision in its entirety.*
- 2. That the CAS orders the Appellant to bear all the costs of the present procedure.*
- 3. That the CAS orders the Appellant to cover all legal expenses of FIFA related to the proceedings at hand".*

24. The Parties' submissions may be summarized as follows:

a) The Appellant

25. The Appellant argues that the present dispute derives from the Agreement which incorporates the employment agreement between the Appellant and the Player with the clause that any dispute must be referred to the competent body of the UAE FA. The FIFA DRC therefore lacks the competence to deal with this case. The Agreement had been drafted by Al Nasr Football Company and not by the Appellant. The parties to the Agreement have agreed on a set of laws to be applicable and FIFA is nowhere mentioned in the Agreement. All elements for a valid arbitration agreement are met, in particular Clause 5.2 of the Agreement refers to "jurisdiction", "dispute" and the "UAE FA DRC" and thereby establishes clearly the jurisdiction without any reference to FIFA. Moreover, the dispute is of an internal and domestic dimension and does therefore not fall into the scope of the FIFA DRC.

26. Even if one were to assume that the dispute is of an international nature, the UAE FA DRC is an independent arbitration tribunal guaranteeing fair proceedings. The present dispute must be dealt with by the national dispute resolution body of the UAE FA, explicitly chosen by the Parties in the tripartite Agreement. By reference to article 68.3 of the FIFA Statutes and article 22 lit. b) of the FIFA RSTP, the Appellant argues that the agreement in writing to subject the dispute to the UAE FA DRC must be respected, in particular as the UAE FA DRC is operative and has dealt with employment-related disputes of international dimension before. The UAE FA DRC meets all FIFA requirements for a competent, independent and impartial adjudication body.

27. If the jurisdiction clause in the Agreement is unclear, which the Appellant denies, it must be interpreted and supplemented according to the general rules of contract law and in a manner, which respects the true intention of the parties. The UAE FA Regulations have entered into force in 2009 and according to the articles 124 and 126 of the UAE FA Statutes two different divisions exist, one for internal national disputes that arise between clubs and players in respect of employment contracts and the other for national dispute between parties belonging to associations.

b) The First Respondent

28. The Player in his Answer takes up the argument of the FIFA DRC that clause 5.2 of the Agreement, which refers to the Dispute Settlement Committee of the UAE FA does not clearly refer to one specific national dispute resolution body in the sense of article 22 lit. b) of the UEFA RSTP. The clause does not mention "arbitration" or "national resolution chamber" and does not meet the requirement stated by the Swiss Federal Supreme Court that arbitration must be chosen by the parties explicitly. There is no need to mention FIFA in the arbitration agreement to constitute the jurisdiction of the FIFA DRC, as this is the standard which applies to all international disputes between clubs and players.

29. The general rule, that FIFA is the competent authority to adjudicate any employment-related disputes with international dimension must prevail. Regarding the Appellant's argument that clause 5.2 of the Agreement when interpreted according to the intention of the parties, clearly confirms the competence of the UAE FA DRC with regard to the present disputes fails because the Player never agreed on excluding the jurisdiction of the FIFA DRC. Moreover, the Agreement has an international dimension and disputes in connection therewith must for that reason fall into the jurisdiction of the FIFA DRC.

c) Second Respondent

30. The Second Respondent argues that the UAE FA DRC is not in compliance with the FIFA standards and regulations, and the Appellant has not met its burden of prove to show that the UAE FA DRC is independent and guarantees a fair procedure in compliance with the requirements of article 22 lit. b) of RSTP. The jurisdiction of the FIFA DRC cannot be waived, unless there is a clear provision in the Agreement and a reference to the exclusive jurisdiction of a national body. Both conditions are not met in the present case.

V. JURISDICTION

31. The Player filed his claim against the Appellant with FIFA on 2 May 2016. Consequently, FIFA Statutes and Regulations as in force at that time will be applicable in this case for the examination of the Appellant's appeal.
32. Article R47 of the Code states as follows:

“Appeal

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

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned”.

33. The jurisdiction of the CAS is derived from Article 67 paragraph 1 of the FIFA Statutes (2015 edition) which determines that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”. Paragraph 2 of the same Article provides: “Recourse may only be made to CAS after all other internal channels have been exhausted”.
34. Article 67 paragraph 1 of the FIFA Statutes grants the Player a right of appeal to CAS from a decision of the FIFA DRC. The Appellant, in its Statement of Appeal (page. 3, para. 9), submits that the FIFA Statutes provide for CAS jurisdiction in the present case.

35. It is not contested by the Parties that the appealed decision is a decision rendered by the FIFA DRC, nor that the legal remedies within FIFA have been exhausted. In addition, all Parties have signed the Order of Procedure, expressly consenting thereby to CAS jurisdiction.

VI. ADMISSIBILITY

36. The Appealed Decision was notified to the Parties on 19 March 2018 and the Appeal was lodged with the CAS on 8 April 2018, i.e. within the time limit of Article R49 of the Code. Therefore, the Appeal is admissible which has also not been contested by the Respondents.

VII. APPLICABLE LAW

37. Article 187 paragraph 1 of the Swiss Private International Law Act (the “PILA”) provides as follows.

“The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the dispute has the closest connection”.

38. Article R58 of the Code provides more specifically 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”.

39. Article 66 paragraph 2 of the FIFA Statutes states as follows:

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

40. The Panel noted that the Parties had referred to the FIFA Regulations and that they had not agreed on any applicable law. The Arbitral Tribunal will thus apply primarily the various rules and regulations of FIFA and, subsidiarily, Swiss law should the need arise to fill a possible gap in the rules and regulations of FIFA.

VIII. MERITS

41. The Panel will first examine the jurisdiction of the UAE FA DRC under the applicable provisions of the Statutes of the UAE FA, the Regulations of the UAE FA DRC, the FIFA RSTP and the FIFA Circular no. 1010. Thereafter, it will analyse the validity and scope of the arbitration agreement and address the Appellant’s objection that the Player failed to render the contractual services.

A. The FIFA Articles and Regulations Governing the Resolution of Disputes Between Clubs and Players

42. In accordance with article 13 of the FIFA Statutes all member associations have to comply fully with the FIFA Statutes, the Regulations, directives and decisions of the FIFA bodies. It is not contested by the Parties that the above Statutes and Regulations with the directives apply to the present case.

43. Pursuant to article 22 lit. b) in conjunction with article 24 (1) of the FIFA RSTP the FIFA DRC is, as a rule, competent to deal with all employment-related disputes between a club and a player that have an international dimension. Art. 22 lit. b) of the Regulations reads as follows:

“Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

a) ...

b) *employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs”.*

44. FIFA has issued its Circular no. 1010 (dated 20 December 2005) stating as minimum procedural standard the following conditions and principles:

“ Principle of parity when constituting the arbitration tribunal

The parties must have equal influence over the appointment of arbitrators. This means for example that every party shall have the right to appoint an arbitrator and the two appointed arbitrators appoint the chairman of the arbitration tribunal. The parties concerned may also agree to appoint jointly one single arbitrator. Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrator list.

- Right to an independent and impartial tribunal

To observe this right, arbitrators (or the arbitration tribunal) must be rejected if there is any legitimate doubt about their independence. The option to reject an arbitrator also requires that the ensuing rejection and replacement procedure be regulated by agreement, rules of arbitration or state rules of procedure.

- Principle of a fair hearing

Each party must be granted the right to speak on all facts essential to the ruling, represent its legal points of view, file relevant motions to take evidence and participate in the proceedings. Every party has the right to be represented by a lawyer or other expert.

- *Right to contentious proceedings*

Each party must be entitled to examine and comment on the allegations filed by the other party and attempt to rebut and disprove them with its own allegations and evidence.

- *Principle of equal treatment*

The arbitration tribunal must ensure that the parties are treated equally. Equal treatment requires that identical issues are always dealt with in the same way vis-à-vis the parties”.

45. Furthermore, by means of FIFA Circular Letter no. 119 (dated 28 December 2007) FIFA’s National Dispute Resolution Chamber (the “NDRC”) Standard Regulations (the “FIFA NDRC Standard Regulations”) were implemented as guidelines for the Member Associations for establishing a national dispute resolution system along the lines of the principles of FIFA DRC (exhibits 2 and 3 to FIFA’s Answer).

46. The FIFA NDRC Standard Regulations in article 3(1) provide for the following:

“The NDRC shall be composed of the following members, who shall serve a four-year renewable mandate:

- a) A chairman and a deputy chairman chosen by consensus by the players and the club representatives from a list of at least five persons drawn up by the association’s executive committee”.*

47. The Panel is of the view that the present dispute is of an international dimension and it does not share Appellant’s assessment that it is an internal domestic dispute. The international dimension is to be defined based on the national status of the parties and not the national status of the dispute. The fact that the Player changed clubs within the UAE and not from a foreign club to the Appellant is for the assessment of the character of the dispute not relevant. As it is undisputed that the Player is of Brazilian nationality, there can be no question that an international dispute exists. Although it is not decisive, the Panel notes that the Player has had residence in Brazil at the time he submitted its claim to the FIFA DRC in May 2016 (see exhibit “Contrato Especial de Trabalho Desportivo” submitted by the Player on 13 November 2018). The Player with Brazilian nationality is a foreigner in the UAE and a registration with the national UAE FA does not make this any different (see CAS 2016/A/4846). Consequently, the Panel finds that the employment related dispute between the Appellant and the Player is of an international dimension.

48. A specific employment-related dispute of an international dimension can thus only be settled by an authority other than the FIFA DRC if the following requirements are met: (i) there is an independent arbitral tribunal established at the national level; (ii) the jurisdiction of this independent arbitral tribunal derives from a clear reference in the employment contract; and (iii) this independent arbitral tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs (see also Arbitration CAS 2014/A/3684 & 3693).

49. Pursuant to the Circular no. 1010 the terms “independent” and “duly constituted” require that an arbitral tribunal meets the minimum procedural standards which comprise the principle of parity in the constitution of the arbitral tribunal, the right to an independent and impartial

tribunal, the principle of a fair hearing, the right to contentious proceedings and the principle of equal treatment. The NDRC Standard Regulations which came into effect on 1 January 2008 refer to these fundamental procedural rights in detail dealing with the requirements for the composition of the NDRC, the form and conduct of the proceedings, the production and examination of evidence, the deliberations by the member of the NDRC and the form and content of its decisions.

B. The UAE FA DRC

50. The first requirement for the jurisdiction of the UAE FA DRC encompasses its independence and impartiality and whether it satisfies the criteria referred to in FIFA's Circular no. 1010 and of the NDRC Standard Regulations regarding the UAE FA DRC's composition. The Appellant refers to article 124 of the UAE FA Statutes (exhibit 6 to the Appeal Brief) pursuant to which the UAE FA DRC is established in accordance with the FIFA's standards. The UAE FA DRC is composed of a president and a vice-president who have qualifications in the field of law and in addition of three members representing the clubs and three members representing the players. In view of the Appellant all minimum requirements established by FIFA are met by UAE FA DRC.
51. As to the organisation of the UAE FA DRC, the Appellant refers to the UAE FA Chamber's Bill of Dispute Resolution (the "UAE FA DRC Regulations", exhibit 7 to the Appeal Brief) which states in Article 3 that the UAE FA DRC is competent to decide disputes between clubs and players and in Article 4 states that it shall be composed of 8 members selected and nominated in accordance with the requirements established by FIFA. The Appellant further states that the UAE FA DRC has been operative and has dealt with employment-related disputes of international dimension in two cases (exhibits 8 and 9 to the Appeal Brief). Looking at these two decisions, it is established that the parity among the members of the UAE FA DRC, representing clubs and players has been followed.
52. With regard to the composition of the UAE FA DRC, article 4 of the UAE DRC Regulations (exhibit 7 to the Appeal Brief) states the following:

"The Chamber practices its work according to the principle of the equal representation between the clubs and players and the principles of disputes resolution related to FIFA.

The Chamber is composed of eight members, from outside the Association's Board of Directors, as the following:

a- The president and vice president, legally qualified, selected in compromise, from the players and clubs representatives in a list to be prepared by the Board of Directors, from five persons.

b- Three members, elected by the clubs, provided that a club shall have no more than one representative.

b-(sic) Three members to be elected by the Players Union.

The Chamber's meeting is true (sic) by attending 3 members, of whom the president or the vice president, provided the equality attendance of the clubs and players.

The Association shall be the Chamber's venue”.

53. In the abstract, it looks like the principle of parity in constituting the UAE FA DRC may be respected, although it is not explained in the UAE DRC Regulations how the representatives on the list who are eligible as president and vice president of a panel are selected by the Board of Directors of the UAE FA. However, the sole fact that they are selected by the Board of Directors of the UAE FA raises some doubts about their neutrality, as the Players Group does not seem to be able to exercise equal influence over that selection process and over the composition of the arbitrators' list from which the president and the vice-president are selected. As explained by the Appellant's counsel at the hearing, decisions by the UAE FA DRC are taken by the majority of its members. With the president having the casting vote in case of equality of votes, pursuant to article 27 of the UAE DRC Regulations, a risk of imparity subsists in cases where the president is a representative of the clubs. It is thus not established that the president of the UAE FA DRC is appointed by consensus between the players and the Clubs in accordance with FIFA Circular Letter no. 1010 and the NDRC Standard Regulations.
54. The Panel must also look at the entire dispute resolution mechanism of the UAE FA and not only to the procedure before the UAE FA DRC. The UAE FA DRC Regulations provide in article 32 the possibility of an appeal against the decisions of the UAE FA DRC and in the two decisions submitted by the Appellant it is also mentioned that “[t]his decision is able to be appealed before the Arbitration Committee within 7 days [...]”. The UAE FA DRC Regulations do not contain any details about such an appeal procedure and which authority would be competent to decide on an appeal. Article 124 of the Statutes of the UAE FA provides for an arbitration body which is, however, only competent to deal with national disputes and can therefore not be relevant for the present case. This all leaves the question entirely open how the “Arbitration Committee” is composed and whether this “Arbitration Committee” would satisfy the requirements which must be met under the conditions and standards set out in FIFA's Circular Letter no. 1010 and the NDRC Standard Regulations referred to above.
55. The Appellant bears the burden of proving to this Panel that the UAE FA DRC (i) can be considered a qualified independent and duly constituted dispute resolution authority meeting the minimum procedural standards as referred to in FIFA's Circular Letter no. 1010 and the NDRC Standard Regulations, and (ii) respects the principle of parity in the constitution of the arbitral tribunal, the principle of a fair hearing, the right to contentious proceedings and the principle of equal treatment. CAS jurisprudence is consistent in establishing the principle that

“any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove facts on which it relies with respect to that issue. (...) The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence” (CAS 2003/A/506, para 54; CAS 2009/A/1810 & 1811, para 46; CAS 2009/A/1975, paras 71 et seqq. and CAS 2014/A/3656).

56. The Appellant has failed to show to this Panel the evidence which would serve to prove that these mandatory requirements are met by the UAE FA DRC to warrant its jurisdiction for the present case. The witness of Appellant, Dr Mohamed Al Douri who was expected to give evidence by phone at the hearing on those aspects of the functioning of the UAE FA DRC was not available as, per the explanation of the Appellant’s counsel, he is no longer with the UAE FA.
57. Having established the above, the Panel finds that the UAE FA DRC cannot be qualified as a national adjudication body that respects the principle of equal representation of players and clubs. The Panel does not suggest that the proceedings before the UAE FA DRC are not fair or lack the desired quality, but rather that the appointment of the president is not in line with the minimum precepts of FIFA. Furthermore, the Appellant has failed to show that the appeal procedure meets FIFA’s principles and standards. Based on these considerations, the Panel concludes that the UAE FA DRC has no jurisdiction in this case and that the FIFA DRC was indeed competent to adjudicate and decide on the proceedings leading to the Appealed Decision.

C. Arbitration Agreement

58. Having determined that the FIFA DRC was competent to decide the present dispute, the Panel will still examine the Respondents’ argument that the Player did not consent to the arbitration clause in the Agreement and that the arbitration clause itself is invalid for lack of clarity.
59. Pursuant to article 22 b) of the FIFA RSTP, parties with regard to an employment related dispute of an international dimension may *“explicitly opt in writing for such dispute to be decided by an independent arbitration tribunal that has been established at national level ...”* (emphasis added). The jurisdiction of the UAE FA DRC must thus derive from a clear reference in the employment contract, i.e. the Agreement. Its clause 5.2 reads as follows:

“In case of any dispute or disagreement regarding this agreement, “Dispute Settlement Committee” of the “U.A.E. Football Association” shall have the jurisdiction to interfere and settle the same”.

60. The Agreement with the title “Player Loan Agreement” has been concluded between the Appellant, Al Nasr Football Company and the Player. As stated in paragraph 3 of the preamble, which forms an integral part of the Agreement, the Player *“agreed to be loaned to the Appellant according to the terms and conditions of the Agreement”*. In clause 3 the Appellant committed itself to pay to the Player throughout the loan period monthly salaries adding up to a total annual amount of USD 1.000.000,00 and the Al Nasr Football Company undertook to pay to

the Player outstanding amounts as per the contract signed with the Player on 25 November 2012. The Player agreed to these terms and conditions.

61. The Respondents argue that clause 5.2 of the Agreement cannot be read in the same way as if an arbitration clause had been stated in an employment contract concluded only between the Player and the Appellant (see para. 4.2 of FIFA's Answer; para. 23 of the Player's Answer). The Player further alleges that he never had the intention to agree to arbitration by the UAE FA DRC and to exclude the jurisdiction of FIFA DRC (para. 20 of the Player's Answer).
62. The substantive reasons for challenging consent to, or the existence of, an international arbitration agreement include: (i) lack of agreement on essential terms; (ii) lack of consent; and (iii) indefinite or uncertain wording of the arbitration agreement. The essential terms consist of an obligation to resolve certain disputes by "arbitration" and the right to demand that such disputes be resolved in this fashion. It is not necessary that the word "arbitration" is used in the arbitration agreement, if it can be concluded that the dispute resolution mechanism has the characteristics of arbitration. Further terms, such as the seat, the applicable rules, the composition of the arbitral tribunal and the scope of the arbitration clause may also be considered essential, but the absence or ambiguity of these terms do not ordinarily make the arbitration clause invalid (see BORN G., *International Commercial Arbitration*, 2nd ed., 2014, p. 763/5). The use of the designation "Dispute Settlement Committee of the U.A.E. Football Association" instead of the term "Dispute Resolution Chamber" as used in the FIFA NDRC Regulations (see paras. 25 et seqq. of the Player's Answer) is in the present case under these aspects not relevant and the Panel does not share the Player's view that the use of the term "Settlement" must be understood as a mediation committee. It is also not necessary that the arbitration clause explicitly excludes the jurisdiction of an authority which would otherwise be competent to deal with the dispute.
63. In line with international arbitration practice, arbitration agreements should be upheld, by striving to give effect to the intention of the parties to submit disputes to arbitration, and not to allow any inconsistencies or uncertainties in the wording or operation of the arbitration clause to thwart that intention. The courts of most countries generally try to uphold arbitration agreements, unless the incomplete and uncertain terms are such that it is difficult to make sense thereof and to construe an intent to arbitrate (see Redfern and Hunter on *International Arbitration*, 5th ed., 2009, para. 2.179).
64. The second requirement refers to the consent of the parties. In order to determine whether the Player has consented to the arbitration agreement in Clause 5.2 of the Agreement it is necessary to establish his intent and whether under generally applicable rules of contract interpretation his signature to the Agreement can be construed as an acceptance of the dispute resolution authority of the UAE FA DRC. Thereby, the scope of the arbitration clause will be construed based on the wording of the clause, and the principle of confidence and good faith. Where the mutually agreed intention of the parties cannot be established, the consent of the party agreeing to arbitration, as an exception to an otherwise applicable dispute resolution method, must be interpreted according to the principle of good faith and it must be determined how, under the specific circumstances, a manifestation or a behaviour by that

party could and should have been understood by a reasonable person under the same circumstances.

65. The intent of a party to be bound by an arbitration clause presupposes that there is a clear understanding of the scope of the clause and of the nature of the disputes which fall thereunder. In the present case, the Agreement is not denominated as an employment contract but rather as a loan agreement. It is thus conceivable that one would understand that the scope of the arbitration clause encompasses disputes related to the loan by one football club to the other and not so much those arising from the employment. Although the Player has accepted the terms and conditions under the Agreement, such terms only refer to the limited aspect of the salaries of the Player. The employment aspects within the scope of the arbitration clause are therefore very limited, and other aspects of the employment, such as holidays, expense allowance, participation in training, participation in commercialisation and marketing, etc. which could give rise to a dispute, are not covered.
66. The Panel questions whether in the present circumstances it is appropriate to interpret the scope of the arbitration clause extensively and to assume that the Player had the intention to agree to arbitration before the UAE FA DRC for employment matters. It should also be taken into account that the scope of an employment dispute is based on a different contractual relationship and, unlike a loan between two football clubs, entails rather personal elements and protective rights of the employee. A clear reference is a distinct requirement promulgated by the provision of article 22 lit. b) of FIFA RSTP requesting an explicit opting out.
67. The text of Art. 22 lit. b) of the FIFA RSTP provides for an exception from the general rule that international employment disputes between a club and a player should be dealt with by the FIFA DRC. Such provisions, providing for an opting out of the standard rule, should not be given an extensive meaning pursuant to general principles applicable to the construction of rules and regulations. Where the provision of the FIFA RSTP referring to employment-related disputes and the requirement that the competence of a national adjudicating body must be *“included either directly in the contract or in a collective bargaining agreement applicable to the parties”*, one could also understand thereby that the term *“contract”* refers to an employment agreement and not to any other agreement which primarily deals with the transfer of the Player from one club to another.
68. It would also have been interesting for the Panel to explore whether the Player was aware that he, by signing the Agreement, had agreed to be bound by the arbitration clause limited to the few terms regulated by the Agreement and that for all other employment issues another dispute resolution method would have applied. Unfortunately, the Player was not available for testimony at the hearing, either in person or by telephone. It was thus not possible to learn anything about his intent and the background he might have had in mind when signing the Agreement.
69. Based on the text of clause 5.2 of the Agreement and the requirement of an explicit written opting out of the standard dispute resolution method for settlement of international employment disputes between players and clubs, it appears to be at least doubtful to the Panel whether the arbitration clause in the Agreement could bind the Player and exclude the

jurisdiction of the FIFA DRC. In the Panel's view the matter can be left open, as the jurisdiction of the UAE FA DRC has already been excluded based on the considerations referred to in paragraph VIII. B. above.

D. Sports Services

70. The Appellant's objection that the Player has not rendered the contractual services and that the FIFA DRC, for that reason, should have denied the Player's claim, must be dismissed. First, the argument is entirely unsubstantiated and, before the Appeal was submitted, the Appellant never argued that the Player did not render his services. Second, the Appellant would have to present the evidence for the omission of the contractual services which can be expected from a football club having access to all information about the play and the training of its players. Third, the Agreement states the payment obligation of the club and does not contain any provision which would allow a reduction or a refusal of the salaries of the Player due to the failure to rendering the services as a whole or in part. The employment of the Player has a fixed term until 30 June 2015 and a reduction of the salaries would at least require an early termination of the employment or a breach of contract by the Player which the Appellant has not even argued.

IX. CONCLUSIONS

71. The Panel finds that the UAE FA DRC does not meet the FIFA principles and standards to be granted the authority to deal with employment-related disputes of an international dimension. As such an authority can only be established under a valid opting-out scenario, the jurisdiction of the FIFA DRC must be affirmed and the decision of the FIFA DRC of 8 March 2018 is to be confirmed. Even if the Panel had come to the conclusion that the UAE FA DRC could have had jurisdiction in this case (*quod non*), it is highly doubtful whether the arbitration clause in paragraph 5.2 of the Agreement would have been binding for the Player.
72. The Appellant's objection to the payment obligation in favour of the Player due to a lack of services is to be dismissed for lack of substantiation.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 8 April 2018 by Al Sharjah Football Club against the decision of the Dispute Resolution Chamber of the Fédération Internationale de Football Association issued 8 March 2018 is dismissed.

2. The decision issued on 8 March 2018 by the Dispute Resolution Chamber of the Fédération International de Football Association is confirmed.
3. (...).
4. (...).
5. (...).
6. All other and further motions or prayers for relief are dismissed.