



**Arbitration CAS 2019/A/6131 Archad Burahee v. Equatorial Guinea Football Federation, award of 14 August 2019**

Panel: Mr Manfred Nan (The Netherlands), Sole Arbitrator

*Football*

*Match agent*

*CAS jurisdiction*

*Exclusion of disciplinary proceedings from the scope of the arbitration proceedings due to lack of standing to be sued*

*Duty to object to jurisdiction before entering into the merits of a case*

*Validity of an agreement not complying with the regulatory requirements*

- 1. If requests to impose disciplinary sanctions formed an integral part of a claim with FIFA and as such of the appealed decision, CAS is also competent to deal with the arguments related to the requests for relief to order FIFA to open disciplinary proceedings.**
- 2. The commencement of disciplinary proceedings and/or the imposition of sporting sanctions concern the relation between the regulatory body and its (indirect) members in a vertical relationship, and, as such, is explicitly reserved for FIFA, UEFA or national federations. It is for these sports governing bodies to secure the proper enforcement of applicable regulations and principles within an association. As such, an agent who did not call any regulatory body, such as FIFA, as a respondent in the appeal arbitration proceedings cannot seek relief for the commencement of disciplinary proceedings and/or the imposition of sporting sanctions against a federation and that federations' current and former presidents and/or to impose sporting sanctions on them.**
- 3. A jurisdictional defense must be raised before any defense on the merits. This applies the principle of good faith embodied at Art. 2 (1) of the Swiss Civil Code, which applies to all areas of law, including arbitration. Hence the party addressing the merits without reservation (*Einlassung*) in an arbitral procedure dealing with a matter capable of arbitration, acknowledges by this concluding act that the arbitral tribunal has jurisdiction and definitively loses the right to challenge the jurisdiction of the aforesaid tribunal.**
- 4. Absent any written agreement whereby a federation authorised a match agent to organise a particular match, an agreement can be reached in this respect by means of an "Authorisation letter" issued by the federation and the email correspondence exchanged between the parties based on the terms discussed between them. If the agent acted in good faith by repeatedly insisting on the confirmation from the federation on the terms and conditions discussed, which approval was ultimately given although not in the form desired by the agent, the argument that any agreement concluded with the agent is to be declared null and void because the requirements of Article 18 FIFA Match**

**Agent Regulations are not complied with is to be dismissed. Even if Article 18 FIFA Match Agent Regulations has indeed not been fully complied with, in accordance with the Latin maxim *commodum ex injuria sua nemo habere debet*, which means that a wrongdoer should not be enabled by law to take any advantage from his actions, the lax attitude and the failure of the federation to conclude a specific contract with the agent for the organisation of the match in question cannot be protected.**

## **I. PARTIES**

1. Mr Archad Burahee (the “Appellant” or the “Agent”) is a match agent of French nationality, licensed at the relevant moment by the *Fédération Internationale de Football Association* (“FIFA”).
2. Equatorial Guinea Football Federation (the “Respondent” or the “Federation”) is the national governing body of football in Equatorial Guinea, with its registered office in Malabo, Equatorial Guinea. The Federation is affiliated to FIFA.

## **II. INTRODUCTION**

3. The present appeal arbitration proceedings concern an appeal brought by the Agent against the decision (the “Appealed Decision”) of the Single Judge of the Player’s Status Committee of FIFA (the “FIFA PSC Single Judge”) dated 23 October 2018, by means of which the Agent’s claim that the Federation be ordered to pay him an amount of EUR 53,828.38 and USD 4,000 as fees and expenses related to organising three international friendly matches, plus 5% interest for outstanding match agent fees and expenses, was only partially accepted for the amount of USD 15,800 plus 5% interest. The Agent’s requests to impose sporting sanctions on the Federation, its president and its former president were dismissed.

## **III. FACTUAL BACKGROUND**

4. Below is a summary of the main relevant facts, as established on the basis of the parties’ written submissions and the evidence examined in the course of the present appeal arbitration proceedings. This background information is set out for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion in the section on the merits.

### **A. The First Match, between the Federation and Mauritius**

5. On 8 October 2017, the Agent’s Private Limited Company BestWay Soccer Ltd (“BestWay Soccer”) provided the Federation with an invoice related to the friendly match organised between the Federation and the Mauritius Football Federation (“Mauritius”) in the amount of EUR 6,828.38.

6. The first match, between the Federation and Mauritius, took place on 9 October 2017.
7. On 19 February 2018, BestWay Soccer provided the Federation with two invoices related to the match organised between the Federation and Mauritius in the total amount of EUR 47,000.

**B. The Second Match, between the Federation and St Kitts and Nevis**

8. A friendly match between the Federation and St Kitts and Nevis was supposed to take place on 11 November 2017.
9. On 25 October 2017, the Agent, representing BestWay Soccer, the Federation and the St Kitts and Nevis Football Federation (“St Kitts and Nevis”) concluded a tripartite agreement titled “*Intermediation Agreement*” (the “Intermediation Agreement”), duly signed and stamped, providing as follows, as relevant:

*“WHEREAS by means of the present contract, the [Federation] hires the services of the [Agent] to negotiate on its behalf with [St Kitts and Nevis] regarding the terms and conditions of the Friendly Match to be played on November 11<sup>th</sup> 2017 in St Kitts and Nevis.*

*[...]*

*The professional services of the [Agent] will be executed personally by the [Agent] or any collaborators of Best Way Soccer.*

*[...]*

*The [Federation], [...], will pay to the [Agent] as a result of the services rendered, the amount of USD 5,000 (Five thousand USD) [note: the amount of USD 5,000 is crossed out and an amount of USD 4,000 is added in handwriting, the Agent’s initials are added in handwriting in the margin]*

*[...]*

*The [Agent] shall be the sole responsible for any cost incurred in performing his services outside the ones stipulated in this contract.*

*[...]”.*

10. The second match, between the Federation and St Kitts and Nevis, was cancelled by the Federation for political reasons.

**C. The Third Match, between the Federation and Andorra**

11. A friendly match between the Federation and Andorra was supposed to take place on 26 March 2018.
12. On 22 January 2018, the Federation issued a document titled “*Autorisation letter in order to find Friendlies Matches*” in favour of BestWay Soccer (the “Autorisation Letter”), duly signed and stamped, providing as follows, as relevant:

*“To whom it may concern,*

*It has been granted to BestWay Soccer and its employees and partners to find and seek future matches and oppositions for the National Team of Equatorial Guinea Team A.*

*BestWay Soccer should report any potential matches and conditions in order to [the Federation] to evaluate the opportunity and proceed or not.*

*Any given proposal occurring by this assignment, should be either accepted or rejected, and no match should be arranged without the implication of BestWay Soccer.*

*This authorisation is valid until from 22/01/2018 up to 30/03/2018”.*

13. On 5 February 2018, BestWay Soccer issued a “draft quote” in respect of the organisation of the match against Andorra for an amount of EUR 30,000.

14. On 8 February 2018, the Agent sent an email to Mr Gustavo Ndong of the Federation, informing him as follows:

*“I’ve attached for you:*

- 1) Draft Contract*
- 2) Quotes for the match (Package – Agency Fees)*
- 3) Hotel Brochure for the Camp*
- 4) A Company Brochure*

*Let me know if you need anything else”.*

15. On 9 or 19 February 2018<sup>1</sup>, Mr Gustavo Ndong answered the Agent as follows:

*“Can you please put this invoice: 42.000 euros: also remove quote and put invoice”.*

16. Another string of emails commences with an email from the Agent to Mr Gustavo Ndong on 8 February 2018, with Ms Jacinta One in carbon copy, stating as follows:

*“I’ve checked with most of the partners involved in the organisation of the match and camp to see if they will consider accepting cash payment.*

*Some will for the low amounts, but for the most important they will not.*

*I’m ok to act as buffer in order to solve this problem as I intend to work on a long term basis with EG. But we’ll need to figure out the financial payment process each time so I can organise and evaluate the cost. I should pay 50% on booking and 50% 10 days prior the arrival of the team.*

*For now I don’t have much solutions. I’ll be obliged to send Wester Union Payments from Marbella to my company account. We have a limit of 3000 Euros per person per day from Spain. And the cost is each time almost 100 euros (70 euros and 20 euros to receive).*

*30 000 euros + 5 000 euros = 35 000 euros / 3000 = 12 transactions to be made during the camp. Basically I’ll need 12 people to do it in a day, or 6 in 2 days, to 4 in 3 days ....*

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<sup>1</sup> It is not entirely clear from the email provided whether it is dated 9 or 19 February 2018. The Sole Arbitrator however finds that the difference is not material for the outcome of the case.

12 x 100 = 1200 euros

***In addition I still have the invoice for Mauritius pending 6828.38 euros***

***On this matter please prepare 43 038.28 euros in cash to be bring to Marbella in order to settle this.***

*For the extra at the hotel you'll be able to pay in cash, as these should be low amounts.*

[...]

*Until the banking system get better I think we won't have much choice, and we'll have to process like this. If you have better ideas let me know.*

*Let me know what you think, but it might be useful to include this variables in your meeting” (emphasis added in original).*

17. On 8 February 2018, Mr Ndong answered the Agent as follows:

*“Let's work on the hosting and participating form for now, I will let you know as soon as I have money on hand for sure we will bring the money in cash for all the payment we are going to make during our stay in Marbella. For your invoice with Islas Mauricio maybe I don't understang [sic] but from what I know your invoice is 5.000\$ and not the amount you mention below. I repeat I may be wrong, please clarify”.*

18. Also on 8 February 2018, Ms Jacinta Ona informed the Agent and Mr Ndong as follows:

*“Gustavo, also the tickets fee. The invoice is with the minister, to see the details”.*

19. On 9 February 2018, the Agent informed Mr Ndong as follows:

*“I am about to conclude all contracts for your match.*

*Could you please acknowledge everything before I get my company engaged?*

[...]

*I would need the contract and quotes signed and stamped took, before to proceed”.*

20. Also on 9 February 2018, Mr Ndong informed the Agent as follows:

*“Noted with thanks”.*

21. Also on 9 February 2018, the Agent informed Mr Ndong as follows:

*“I'm waiting for your approval to engage my company on behalf of the your FA.*

*Could you let me know what was the minister decision ?*

*If we have to move forward, with the contract and quotes and cash to be available in Malabo to cover the expenses”.*

22. On 14 February 2018, Mr Ndong answered the Agent as follows:

*“Dear Archad please go ahead, but we need the participating form for Andorra as well as hosting form from Spain”.*

23. Also on 14 February 2018, the Agent answered Mr Ndong as follows:

*“To start the Spain fifa forms I need to sign the contracts for the stadium in order to have the form properly filled with the booked field.*

*That is why I've asked your prior to engage my company to get me the signed documents I require as per our usual business policy.*

*I'll move forward now as I have your approval, but you guys run businesses too...”.*

24. On 19 February 2018, BestWay Soccer issued an invoice for the amount of EUR 5,000 to the Federation in respect of the organisation of the match against Andorra.

25. Also on 19 February 2018, BestWay Soccer issued an invoice for the amount of EUR 42,000 (GBP 37,228.76) to the Federation for the hotel (40 persons for 4 nights). The invoice further determines, *inter alia*, as follows:

*“The price of this football package includes:*

- *Full Board Accommodation in hotel [...], with 2 upgrades.*
- *Organization of 1 friendly matches*
- *Referee for 1 friendly matches*
- *[...]*
- *Fee to the Spanish Federation”.*

26. On 9 March 2018, the Federation, *inter alia*, informed the Agent that it had cancelled the match against Andorra due to political reasons.

#### **D. Proceedings before the Single Judge of the Players' Status Committee of FIFA**

27. On 21 June 2018, the Agent lodged a claim against the Federation before the FIFA PSC Single Judge, claiming the following amounts with 5% interest:

- EUR 6,828.38 as match agent fee and transport costs in connection with a friendly match played between the Federation and Mauritius;
- USD 4,000 as match agent fee in connection with a cancelled friendly match between the Federation and St Kitts and Nevis;
- EUR 5,000 as match agent fee in connection with a cancelled friendly match between the Federation and Andorra;
- EUR 42,000 as compensation for the costs incurred in connection with the cancelled friendly match between the Federation and Andorra.

28. Furthermore, the Agent requested FIFA to impose several sanctions on the Federation and on its president and former president, as well as the reimbursement of legal costs in the amount of EUR 2,000.
29. The Federation partially accepted the Agent's claim, arguing that the Agent was only entitled to an amount of USD 11,800.
30. On 23 October 2018, the FIFA PSC Single Judge issued the Appealed Decision, with the following operative part:
1. *The claim of the [Agent] is partially accepted.*
  2. *The [Federation], has to pay to the [Agent], within 30 days as from the date of notification of the present decision, the total amount of USD 15,800, plus 5% interest p.a. until the date of effective payment as follows:*
    - a. *5% p.a. as of 2 December 2017 on the amount of USD 4,000;*
    - b. *5% p.a. as of 21 June 2018 on the amount of USD 11,800.*
  3. *If the aforementioned sum, plus interest as established above, is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
  4. *Any other claims lodged by the [Agent], are rejected.*
  5. *The final costs of the proceedings in the amount of CHF 10,000 are to be paid by both parties, **within 30 days** as from the date of notification of the present decision, as follows [...]*
  6. *[...]*" (emphasis in original).
31. On 29 January 2019, the grounds of the Appealed Decision were communicated to the parties by email, determining, *inter alia*, as follows:
- *"[...] the Single Judge acknowledged that, in his claim to FIFA, the [Agent] had inter alia requested from the [Federation] the payment of several outstanding match agent fees and expenses allegedly incurred in connection with three matches which he would have organized on the [Federation]'s behalf against [Mauritius], [St Kitts and Nevis] and [Andorra] respectively.*
  - *Furthermore, the Single Judge recalled that the [Federation] had admitted having mandated the [Agent] in connection with the organisation of the Mauritius, the St. Kitts and Nevis and the Andorra matches owing the latter the sum of USD 5,000 per match for the Mauritius and the Andorra matches. Equally, the Single Judge recalled that the [Federation] had also admitted having concluded an agreement with the [Agent] on 25 October 2017 by means of which it had undertaken to pay to the latter the sum of USD 4,000 in connection with the St. Kitts and Nevis match. Finally, the Single Judge took into account that the [Federation] had also admitted that it had to pay to the [Agent] the amount of USD 1,800 for the flight tickets that the [Agent] had to buy in relation to the Mauritius match.*
  - *In light of all the above and considering that it had remained uncontested that the [Federation] had to pay to the [Agent] the total amount of USD 14,000 as agent fees in connection with the Mauritius, the St. Kitts and Nevis and the Andorra matches, the Single Judge, taking into account the legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good*

*faith, established that in order to fulfil its contractual obligations the [Federation] has to pay to the [Agent] the amount of USD 14,000.*

- *In continuation and considering that it had remained uncontested that the [Federation] had to reimburse to the [Agent] the sum of USD 1,800, which the latter had spent in flight tickets in connection with the Mauritius match, the Single Judge, taking into account the legal principle of pacta sunt servanda, established that in order to fulfil its contractual obligations the [Federation] has to additionally pay to the [Agent] the amount of USD 1,800.*
- *In continuation and as to the [Agent]'s request related to reimbursement of several additional costs in which he would have allegedly incurred in connection with matches organized on behalf of the [Federation], the Single Judge referred to the content of art. 12 par. 3 of the Procedural Rules, and pointed out that in accordance with the provision in question, any party claiming a right on the basis of an alleged fact shall carry the respective burden of proof.*
- *With the aforementioned consideration in mind, the Single Judge noted that no substantial evidence had been provided by the [Agent] in support of the allegation that he would have personally incurred in the relevant costs and that they would in any way be directly related to the provision of his services to the [Federation]. The Single Judge also noted that such requests were neither admitted by the [Federation] nor substantiated by any documentation of contractual, legal or regulatory nature.*
- *Hence, the Single Judge came to the conclusion that all requests of the [Agent] related to the alleged reimbursement of various expenses had to be rejected for lack of substantial evidence.*
- *As to the request of the [Agent] concerning the imposition of sanctions of the [Federation] the Single Judge pointed out that such request lacked any legal or regulatory basis and had therefore to be rejected. In the same context and as to the [Agent]'s request related to the imposition of sanctions on two of the former employees of the [Federation], the Single Judge recalled that in accordance with art. 6 par. 1 of the Procedural Rules, “[P]arties are members of FIFA, clubs, players, coaches or licensed match agents”. Hence, the Single Judge lacked competence to consider such request of the [Agent] as it concerned two individuals who are not a coach, a player or a licensed match agent.*
- *Finally, the Single Judge established that the [Agent]'s request for reimbursement of legal expenses in the amount of EUR 2,000 in connection with the present proceedings has to be rejected, for lack of any legal, regulatory or contractual basis.*
- *In view of all the aforementioned, the Single Judge concluded that the claim of the [Agent] is partially accepted and that the [Federation] has to pay to the [Agent] the amount of USD 15,800 plus 5% interest p.a. until the date of effective payment as follows: 5% p.a. as of 2 December 2017 on the amount of USD 4,000 and 5% p.a. as of 21 June 2018 on the amount of USD 11,800.*
- *[...]”*

#### **IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

32. On 5 February 2019, the Agent lodged a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the “CAS Code”). In this submission, the Agent requested that the present dispute be submitted to a sole arbitrator. Further, and in accordance with Article R51



of the CAS Code, the Agent requested in his Statement of Appeal that it be considered as his Appeal Brief.

33. On 11 February 2019, upon being invited by the CAS Court Office to express its view in this respect, the Federation agreed to refer the present dispute to a sole arbitrator and requested that the present procedure be conducted either in Spanish or in French.
34. On 12 February 2019, following an objection of the Agent, the Federation maintained its position on the language of the arbitration proceedings, *i.e.* that the present procedure shall be conducted in French.
35. On 20 February 2019, in view of the parties' disagreement on the language of the arbitration, the President of the CAS Appeals Arbitration Division issued an Order on Language, rejecting the Federation's request, ruling that the language of this procedure, in accordance with Article R29 of the CAS Code, would be English.
36. On 26 February 2019, the Federation filed its Answer, in accordance with Article R55 of the CAS Code.
37. On 7 March 2019, upon being invited to express his view in this respect, the Agent informed the CAS Court Office of his preference for the award to be rendered on the basis of the parties' written submissions only. The Agent also provided additional documentation that would allegedly prove that he is the owner, director and sole shareholder of Bestway Soccer.
38. On 11 March 2019, the Federation informed the CAS Court Office that it did not consider it necessary to hold a hearing.
39. On 19 March 2019, pursuant to Article R54 CAS Code, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:
  - Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as Sole Arbitrator
40. On 16 April 2019, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.
41. Also on 16 April 2019, on behalf of the Sole Arbitrator and pursuant to Article R44.3 CAS Code, the CAS Court Office informed the parties as follows:

*"The email referred to under Exhibit A-7 seems to contain an attachment. However, such attachment was not produced together with the statement of appeal/appeal brief. The Appellant is therefore invited to provide the CAS Court Office with such attachment within **ten (10) days** from receipt of this letter by email;*

*Exhibit A-10 refers to an amount of EUR 42,000. Exhibit A-12 appears to indicate that an amount of EUR 21,130 was paid, but that an amount of EUR 2,624 is to be returned, totalling an amount of EUR 18,506. Exhibit A-29 appears to indicate that an amount of GBP 17,248.98 was transferred, which (according to Exhibit A-32) represents an amount of EUR 19,017. The parties are requested, within **ten***

*(10) days from receipt of this letter by email, to clarify whether they are of the view that these figures are related to each other or not, and if so, how they are to be reconciled” (emphasis in original).*

42. On 17 and 19 April 2019 respectively, the Agent and the Federation addressed the Sole Arbitrator’s questions.
43. On 24 April 2019, on behalf of the Sole Arbitrator, the CAS Court Office invited the Federation to respond to the content of the documents filed by the Agent on 7 March 2019.
44. On 26 April 2019, the Federation commented on the documents filed by the Agent on 7 March 2019.
45. On the same day, the Agent objected to the Federation’s comments, suggesting that the scope of the Sole Arbitrator’s request dated 24 April 2019 was limited to the admissibility of these documents.
46. On 29 April 2019, the CAS Court Office informed the parties that the Sole Arbitrator deemed himself to be sufficiently well informed and had decided not to hold a hearing. Furthermore, the parties were informed that the Federation’s comments filed on 26 April 2019 were admitted to the file, clarifying that the invitation to comment was not limited to the admissibility of the documents filed on 7 March 2019.
47. On the same day, the CAS Court Office provided the parties with an Order of Procedure, which were duly signed and returned to the CAS Court Office on 29 April 2019 by both parties.
48. By signing the Order of Procedure, both parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.
49. The Sole Arbitrator confirms that he carefully took into account all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present award.

## V. SUBMISSIONS OF THE PARTIES

### A. The Agent

50. The Agent submitted the following requests for relief:
  - “1. To declare that CAS has jurisdiction rule on the present dispute. To set aside point 4 of the FIFA DRC decision (Exhibit A25), because FIFA DRC erroneously dismissed the remaining claims of the Appellant.***
  - 2. To amend point 2 of the FIFA PSC decision (Exhibit 25) in which the Respondent was condemned to pay outstanding match agents fees for three international matches and transport costs to the Appellant, due to the fact that two of the outstanding payments are listed using the wrong currency.***

***Point 2 of the FIFA PSC decision shall be amended by CAS to reflect that:***

***The Respondent shall pay to the Appellant 6,828.38 EUR (six thousand eight hundred and twenty-eight Euro and thirty-eight Eurocents) as match agent fee and reimbursement of flight and transport costs for the Mauritius match (4,254.50 EUR match agent fee and 2,573.88 EUR as flight and transport costs, respectively).***

***The Respondent shall pay 5,000 EUR (five thousand Euro) as match agent fee to the Appellant for the Andorra match.***

***CAS shall confirm that the Respondent shall pay 4,000 USD (four thousand US Dollars) as outstanding match agent fee to the Appellant for the match versus St. Kitts and Nevis.***

3. ***To order the Respondent to pay to the Appellant 42,000 EUR (forty-two thousand Euro). The sum of 42,000 EUR corresponds to the full costs incurred by the Appellant for the organization of the match with Andorra and represents the damages and expenses incurred by the Appellant because of the violations of the Respondent, which did not reimburse these expenses to the Appellant.***
4. ***To order FIFA to start a separate disciplinary case and to fine the Respondent and to ban the Respondent from taking part in any football competitions organized by FIFA and CAF for a period of 4 years, due to the political interference of the Equatorial Guinea Government in the matters of the Respondent (Art. 15 FIFA Statutes).***
5. ***To order FIFA to start a separate disciplinary case and to fine and to impose a lifetime ban on the President of the Respondent Gustavo Ndong Edu, from taking part on any football-related activity on a global level. The sanction shall be imposed by FIFA due to his multiple and severe violations of the FIFA Statutes and Regulations and for allowing major conflict of interest and political interference in the matters of the Respondent by the Government of Equatorial Guinea.***
6. ***To order FIFA to start a separate disciplinary case and to fine and to impose a lifetime ban on the former President of the Respondent Andrés Jorge Mbomio Nsem Abua, from taking part on any football-related activity on a global level. The sanction shall be imposed by FIFA due to his multiple and severe violations of the FIFA Statutes and Regulations and for allowing major conflict of interest and political interference in the matters of the Respondent by the Government of Equatorial Guinea and due to the fact he acted at the same time as President of the Respondent and Deputy Prime Minister of Equatorial Guinea and Minister of Youth and Sports, which is against the principle of political independence, stipulated in the FIFA Statutes.***

***In any event***

7. ***To order the Respondent to pay to the Appellant 5% annual interest rate on the whole amount awarded by CAS from the due date of each respective unpaid sum.***
8. ***To order the Respondent to bear all the costs incurred with the present CAS procedure.***
9. ***To order the Respondent to pay 4,000 EUR (four thousand Euro) to the Appellant, as contribution to his expenses for legal representation before FIFA PSC and CAS.***

10. *To order the Respondent to reimburse to the Appellant all FIFA PSC arbitration costs related to the FIFA PSC proceedings in the amount of the 5,000 CHF (five thousand Swiss Francs), paid by the Appellant* (emphasis in original).

51. The Agent's submissions, in essence, may be summarised as follows:

- The FIFA PSC Single Judge, *inter alia*, violated the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules") as the Federation did not provide a power of attorney and because the Federation was allowed to make submissions in Spanish.
- The Federation hired the Agent's services in connection with the organisation of three friendly matches (against Mauritius, St Kitts and Nevis and Andorra) and is obliged to pay him the agreed match agent fees and to reimburse the costs incurred by him. The Agent refers to articles 17, 97, 102, 103, 107, 412-418 of the Swiss Code of Obligations (the "SCO") and CAS jurisprudence.
- The legal basis of the claims are the agreements concluded between the parties in respect of the Mauritius and St Kitts and Nevis matches, and the Authorisation Letter in respect of the Andorra match.
- As to the Andorra match, the Federation acknowledged the contractual relationship by email and admitted that it had the obligation to pay EUR 42,000 to the Agent.
- The agreements between the Agent and the Federation are to be considered as brokerage contracts as defined in Article 412 SCO.
- The costs paid in advance by the Agent in respect of the organization of the match against Andorra are as follows:
  - "07 February 2018 – 870 EUR paid as advance to cover travel expenses*
  - 19 February 2018 – 2,113 EUR as first payment to the firm Football Impact S.L.*
  - 28 February 2018 – 4,500 EUR as payment of the RFEF fee for the match versus Andorra*
  - 06 March 2018 – 454 EUR as advance to cover travel expenses*
  - 12 March 2018 – 17,248.98 GBP (which is equivalent to 19,017 EUR) Second payment to Football Impact S.L.*
  - 19 March 2018 – 7,467.52 EUR payment for the referees hotel and accommodation made to the firm Football Impact S.L."*
- Although the Federation cancelled the matches against St Kitts and Nevis and Andorra, this does not release the Federation from its duty to pay the Agent the full amount for his services and to reimburse his expenses in organising these events.
- The Appealed Decision is "erroneous" because the FIFA PSC Single Judge "failed to take into consideration several significant exhibits, which contain evidence in support of the claim of the [Agent]".

- The FIFA PSC Single Judge “*did not take into account the correct currency*”. In addition to the above-mentioned reimbursements, the Federation shall pay to the Agent as follows:
  - “*4,000 USD as match agent fee to the Appellant for the St. Kitts and Nevis match [...]. FIFA awarded 4,000 USD and this amount is correct.*
  - 6,828.38 EUR as match agent fee and reimbursement of flight and transport costs (for the Mauritius match (4,254.50 EUR match agent fee and 2,573.88 EUR as flight and transport costs) [...]. FIFA awarded only 6,800 USD making mistake in the currency.*
  - 5,000 EUR as match agent fee for the Andorra match [...]. FIFA mistakenly awarded only 5,000 USD using the wrong currency*”.
- Because of the cancellation of the “*two international matches as a result from political interference committed by the Government of Equatorial Guinea*”, the Federation and its current president, Mr Gustavo Ndong Edu, violated Article 15 of the FIFA Statutes, which “*strictly prohibit any form of political influence of interference by any government in the decision-making process of each FIFA member association [...]*”.
- In continuation, the former president of the Federation, Mr Andrés Jorge Mbomio Nsem Abua, “*was acting as President of the Federation and Minister of Youth and Sport at the same time in 2017 [...] is currently acting as Second Deputy Prime Minister in Equatorial Guinea, having taken this position on 23 June 2016, when he was still in charge of the [Federation]*”.
- As a result, the Federation should be “*banned from participating in FIFA and CAF competitions for 4 years*”, adding that both its current president, Mr Gustavo Ndong Edu, and its former president, Mr Andrés Jorge Mbomio Nsem Abua, should be “*banned for life from taking part in any activity related to football*”.

## B. The Federation

52. The Federation submitted the following requests for relief:

*“To render an award rejecting the Appeal, confirming in full the decision of the Sole Judge of the FIFA Players’ Status Committee rendered with grounds on 29 January 2019 (case ref. Iza 18-01253) and ordering the appellant to bear the costs of the present Appeal proceeding”.*

53. The Federation’s submissions, in essence, may be summarised as follows:

- The “*object of this Appeal can only be the review of the economic issues and not the Agent’s requests to order FIFA to open disciplinary proceedings*”. The Agent’s requests to order FIFA to open disciplinary proceedings and to impose sanctions on the Federation and on private individuals fall outside the de novo competence of CAS and should be “*rejected as a preliminary question without entering into analysis of those requests*”.
- The Agent is not the company BestWay Soccer, and as such the Federation cannot be condemned to pay any amount to BestWay Soccer.
- With regard to the match against St Kitts and Nevis, the FIFA PSC Single Judge is correct in holding that the Federation is obliged to pay the Agent USD 4,000 based on the written

agreement between the Federation and the Agent dated 25 October 2017. Even though the agreement was signed with BestWay Soccer, taking into account that the Agent decided to claim for himself the compensation due to BestWay Soccer and Federation *“accept to pay directly to him, the payment in favour of [the Agent] cancel the debt with the company, without prejudice to the right o [sic] [BestWay Soccer] for claim against [the Agent] an eventual payment”*.

- With regard to the match against Mauritius, the Agent *“has no legal basis for any claim concerning the match with Mauritius”* because no written agreement exists, which is in violation of Articles 17 and 18 of the FIFA Match Agent Regulations. Furthermore, the Agent has *“not produced any proof of the amount claimed”*, except for two invoices. There is however no evidence proving that such invoices were paid partially or entirely. Nevertheless, it is accepted that the Federation *“mandated the [Agent] in connection with the organization of the Mauritius match and had accepted to pay to the Agent the sum of USD 5,000 for his intervention on this Match and 1.800 USD as a compensation of travel fees for this Match”*.
- With regard to the match against Andorra, it is reiterated that the *“rules concerning written form and burden of proof abovementioned are also applicable on this point: there is no written agreement (despite the fact of this formality is mandatory) and there is no evidence of any commitment of the [Federation] other than the payment of a fee of USD 5,000”*. The email correspondence between the Agent and the Federation makes it clear that there was no engagement. The Agent’s claim for the Federation to pay his expenses must be dismissed because there is no contract and because the Federation *“never gave any instruction to pay these amounts”*. Moreover, the Agent does not provide evidence of having paid all the expenses he claims. Nevertheless, it accepts that it *“mandated the [Agent] in connection with the organization of the Andorra match and had accepted to pay to the Agent the sum of USD 5,000 for his intervention on this Match”*.
- It does not seem possible for the CAS not only to revoke the Appealed Decision, but to go futher (reformatio in peius) and order the opening of disciplinary proceedings. The Agent in any event did not present any evidence of the alleged disciplinary infractions.

## VI. JURISDICTION

54. Article R47 CAS Code reads as follows:

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

55. The jurisdiction of CAS derives from Article 58(1) of the FIFA Statutes (edition 2018) as it 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”* and Article R47 of the CAS Code. Furthermore, the jurisdiction of CAS is confirmed by the Order of Procedure duly signed by the parties.

56. However, in its Answer the Federation argues that “CAS has obviously jurisdiction for the Appeal of the decision of the PSC. But the CAS has no jurisdiction – and even less in the frame of an Appeal proceeding – for ordering FIFA the opening of disciplinary proceedings. In conclusion, the CAS has jurisdiction with regard to the points 1,2,3,7,8,9 and 10 of the request of relief of the Statement of Appeal, but not with regard to the points 4,5 and 6 of it”.
57. The Sole Arbitrator observes that the Agent’s requests to impose disciplinary sanctions as formulated in paragraph 4, 5 and 6 of his requests for relief, formed an integral part of his claim with FIFA and as such of the Appealed Decision. Therefore, the Sole Arbitrator finds himself competent to deal with all issues related to the Appealed Decision. Accordingly, the Sole Arbitrator will address the Federation’s arguments related to the Agent’s requests for relief under point 4, 5 and 6 of the Appeal Brief to order FIFA to open disciplinary proceedings in the merits section of this award below.
58. Consequently, the Sole Arbitrator finds that CAS has jurisdiction to decide on the present dispute between the Agent and the Federation.

## VII. ADMISSIBILITY

59. The appeal was filed within the deadline of 21 days set by Article 58(1) FIFA Statutes. The appeal complied with all other requirements of Articles R48 and R51 CAS Code, including the payment of the CAS Court Office fees.
60. It follows that the appeal is admissible.

## VIII. APPLICABLE LAW

61. Article R58 CAS Code reads 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”.*
62. The Agent argues that “CAS shall apply the FIFA Regulations and Swiss law to current appeals arbitration proceedings”. The Federation did not provide its position on the applicable law.
63. The Sole Arbitrator observes that Article 57(2) FIFA Statutes stipulates the following:
- “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”.*
64. The Sole Arbitrator finds that the various regulations of FIFA are primarily applicable, and, subsidiarily, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

## IX. PRELIMINARY ISSUES

### A. The Alleged Procedural Flaws in the Proceedings before the FIFA PSC Single Judge

65. The Agent argues that the FIFA PSC Single Judge violated the FIFA Procedural Rules, *inter alia*, because he allegedly “*ignored its own demand for specific power of attorney and proceeded to render a decision without confirming the credentials of the representative of the [Federation] [...], and “allowed the [Federation] to make submissions in Spanish, despite the fact that the proceedings were conducted entirely in English”*”.
66. Although the wording “*inter alia*” suggests that more procedural violations were committed by the FIFA PSC Single Judge beyond the two issues raised in the above paragraph, the Agent did not specify what such further procedural violations would comprise of. According, the Sole Arbitrator will limit his analysis to the two issues specifically raised.
67. The Sole Arbitrator, by virtue of Article R57 para. 1 CAS Code, has the power to address the issues *de novo*. In doing so, he is not limited in reviewing the legality of the Appealed Decision, but he can issue a new decision without being limited by the legal and factual reasoning provided by the FIFA PSC Single Judge. Procedural flaws occurred through the previous instance can be cured by the *de novo* appeal to CAS (MAVROMATI D., The Panel’s right to exclude evidence based on Article R57 para. 3 CAS Code: a limit to CAS’ full power of review?, CAS Bulletin 1/2014, p. 50).
68. Thus, the Sole Arbitrator can reconsider and evaluate the legal arguments and evidence provided by the parties anew. The Sole Arbitrator feels himself comforted in this conclusion by consistent CAS jurisprudence:
- “Amongst the procedural violations in a first instance decision that can be cured by a de novo CAS proceeding is the ‘right to be heard’, and this has been consistently established in CAS jurisprudence [See for example, CAS 2012/A/2913, CAS 2012/A/2754, CAS 2011/A/2357 and TAS 2004/A/549]. The Swiss Federal Tribunal (“SFT”) has also confirmed the legality of the curing effect of the CAS de novo review. Accordingly, infringements on the parties’ right to be heard can generally be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal in the first instance and in front of which the right to be heard had been properly exercised [See ATF 124 II 132 of 20 March 1998]”* (CAS 2016/A/4387, para. 148 of the abstract published on the CAS website).
69. The Sole Arbitrator observes that the Federation did provide a power-of-attorney and that the submissions of the Federation in the present proceedings before CAS were drafted in the English language. Accordingly, insofar there would have been a procedural violation in the proceedings before the FIFA PSC Single Judge, such violations have been repaired in the present appeal arbitration proceedings before CAS.
70. For this reason, the Sole Arbitrator does not deem it necessary to determine whether there have been any procedural violations in the proceedings before the FIFA PSC Single Judge.



**B. The Scope of the Present Appeal Arbitration Proceedings**

71. The Federation objects to the admissibility of the Agent's requests for relief insofar as these exceed the Agent's requests for relief before the FIFA PSC Single Judge. The Federation submits that the Agent requested the imposition of sanctions against the Federation and the Federation's current and former presidents before the FIFA PSC, whereas it presently requests CAS to order FIFA to open disciplinary proceedings against the Federation and the Federation's current and former presidents before CAS on appeal.

72. The Sole Arbitrator finds that the commencement of disciplinary proceedings and/or the imposition of sporting sanctions concern the relation between the regulatory body and its (indirect) members in a vertical relationship, and, as such, is explicitly reserved for FIFA, UEFA or national federations. It is for these sports governing bodies to secure the proper enforcement of applicable regulations and principles within an association, and consequently ultimately touches on the interest of the association itself.

73. As such, the Sole Arbitrator considers that the Agent could not seek relief for the commencement of disciplinary proceedings and/or the imposition of sporting sanctions, because the Agent did not call any regulatory body, such as FIFA, as a respondent in the current appeal arbitration proceedings.

74. The Sole Arbitrator feels himself comforted in the conclusion by the reasoning of the CAS panel in CAS 2008/A/1677:

*"Pursuant to CAS jurisprudence, summarised by the Panel in charge of the cases CAS 2007/A/1329 & 1330: "Under Swiss law, applicable pursuant to Articles 60.2 of the FIFA Statutes and R58 of the CAS Code, the defending party has standing to be sued (légitimation passive) if it is personally obliged by the "disputed right" at stake (see CAS 2006/A/1206 Milan Zivadinovic vs. Iraqi Football Association). In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (cf. CAS 2006/A/1189 IFK Norrköping vs. Trinité Sports FC & Fédération Française de Football; CAS 2006/A/1192 Chelsea FC vs. Adrian Mutu)" (CAS 2007/A/1329 & 1330, para. 27).*

*In its statements of appeal, the Appellant named the Club Al Ittihad as Respondent but not FIFA, who is not a party to this case.*

*The Panel deems that while the club has standing to be sued with respect to the financial aspect of this case (it would clearly be affected by what the Appellant is seeking (the annulment of an order to pay it USD 45,000)), this is not the case with respect to the imposed sporting sanctions.*

*Indeed, with respect to the annulations of the sporting sanction, the Appellant is not claiming anything against the club nor seeking anything from it. The Appellant is seeking something only against FIFA and this relief affects FIFA only and, indirectly, the new club of the Appellant, the Tunisian "Club Africain" (CAS 2008/A/1677, para. 47-50 of the abstract published on the CAS website).*

75. In light of the above, the Agent's requests to order FIFA to open separate disciplinary proceedings against the Federation and the Federations's current and former presidents and/or to impose sporting sanctions on them, is dismissed.

76. In light of such finding, the Sole Arbitrator is not required to decide on whether the Agent's requests for relief related to the opening of disciplinary proceedings before CAS exceeded his requests for relief as submitted before the FIFA PSC Single Judge and whether this is permissible, as this issue became moot.

## **X. THE MERITS**

### **A. The Main Issues**

77. The main issues to be resolved by the Sole Arbitrator are the following:
- i. Did the FIFA PSC Single Judge rightly assume jurisdiction over the Agent's claim?
  - ii. Is the Agent entitled to any fees/compensation for the match against St Kitts and Nevis?
  - iii. Is the Agent entitled to any fees/compensation for the match against Mauritius?
  - iv. Is the agent entitled to any fees/compensation for the match against Andorra?
- i. Did the FIFA PSC Single Judge rightly assume jurisdiction over the Agent's claim?*
78. The Federation argues that it concluded agreements with the company BestWay Soccer and that the Agent is therefore not entitled to personally claim sums allegedly owed to BestWay Soccer, because these are two different legal entities.
79. The Sole Arbitrator finds that, properly construed, this is a belated objection against the jurisdiction of the FIFA PSC Single Judge to deal with a dispute between the Agent and the Federation.
80. The Sole Arbitrator however notes that the Federation's reasoning is not entirely consistent in this respect, as it also argues in its Answer that, even though the Intermediation Agreement for the match against St Kitts and Nevis was signed with BestWay Soccer, taking into account that the Agent decided to claim for himself the compensation due to BestWay Soccer the Federation "*accept to pay directly to him, the payment in favour of [the Agent] cancel the debt with the company, without prejudice to the right o [sic] [BestWay Soccer] for claim against [the Agent] an eventual payment*".
81. Be this as it may, the Agent filed a claim against the Federation in the proceedings before the FIFA PSC Single Judge, while the Federation does not appear to have taken issue with the fact that the claim was filed by the Agent in person rather than by BestWay Soccer, but the Federation nonetheless defended itself on the substance of the Agent's claim.
82. In fact, the Federation accepted to have "*mandated the [Agent] in connection with the organisation of the St. Kitts and Nevis match, the Mauritius and of the Andorra match [sic]*" as is determined in the Appealed Decision.

83. In light of this, the Sole Arbitrator finds that the Federation is barred from raising this jurisdictional argument now in these appeal arbitration proceedings before CAS, based on the general legal principle of “*Einlassung*”.

84. The Sole Arbitrator observes that the Swiss Federal Tribunal (the “SFT”) considered the following in respect of the legal concept of *Einlassung*:

*“Pursuant to Art. 186 (2) PILA, the jurisdictional defense must be raised before any defense on the merits. This applies the principle of good faith embodied at Art. 2 (1) [Swiss Civil Code], which applies to all areas of law, including arbitration. Stated differently, the rule of Art. 186 (2) PILA implies that the arbitral tribunal in which the defendant proceeds on the merits without reservation, acquires jurisdiction from this fact only. Hence the party addressing the merits without reservation (Einlassung) in an arbitral procedure dealing with a matter capable of arbitration, acknowledges by this concluding act that the arbitral tribunal has jurisdiction and definitively loses the right to challenge the jurisdiction of the aforesaid tribunal (ATF 128 III 50 at 2cc/aa and the references)”* (SFT 4A\_628/2012, §4.4.2.1).

85. The Federation did not file an appeal against the Appealed Decision and it should therefore be deemed that the Federation accepted the outcome thereof, including the fact that the Agent could claim fees and expenses on behalf of the company BestWay Soccer.

86. In light of all the above, the Sole Arbitrator finds that the Agent is entitled to claim the fees allegedly owed to him based on the agreements concluded with the Federation.

***ii. Is the Agent entitled to any fees/compensation for the match against Mauritius?***

87. The Agent argues that the Federation owes him EUR 6,828.38, being the agent fee in the amount of EUR 4,254.50 plus “*flight and transport costs*” in the amount of EUR 2,573.88. The Agent submits that the FIFA PSC Single Judge made a mistake by awarding the amount of USD 6,800 in USD, whereas it should have been awarded in EUR.

88. The Federation confirms its obligation to pay the Agent USD 6,800, being the agent fee in the amount of USD 5,000 plus “*travel expenses compensation*” in the amount of USD 1,800.

89. The Sole Arbitrator finds that the burden of proof lies with the Agent in order to convince the Sole Arbitrator that he is entitled to EUR 6,828,38 instead of USD 6,800, as accepted by the Federation.

90. The Sole Arbitrator observes that the parties apparently did not conclude a written agreement in respect of this match, although the Federation confirmed to have authorised the Agent to organise this match.

91. The Sole Arbitrator observes that according to BestWay Soccer’s invoice dated 8 October 2017 in the amount of EUR 6,828.38, the Agent charged the Federation with EUR 4,254.50 for “*FIFA MATCH INTRODUCTION Booking of Mauritius National Team A for a friendly Match between October 5<sup>th</sup> and October 10<sup>th</sup> **Flat fee of \$5000***” and with EUR 2,573.88 for “*International Transport fees As per Air France ticket attached £,2297.10*” (Emphasis added by Sole Arbitrator).

92. Accordingly, even in accordance with the evidence provided by the Agent himself it appears that the fee for organising the match against Mauritius was USD 5,000 and not EUR 5,000.
93. The Sole Arbitrator further observes that on 8 February 2018, the Agent sent an email to Mr Gustavo Ndong, as representative of the Federation with, *inter alia*, the following content:  
*“In addition I still have the invoice for Mauritius pending 6828.38 euros [...]”*.
94. Mr Gustavo Ndong replied on the same day as follows:  
*“For your invoice with Islas Mauricio maybe I don’t understand (sic) but from what I know your invoice is 5.000\$ and not the amount you mention below. I repeat maybe I am wrong, please clarify”*.
95. The Sole Arbitrator notes that the Agent did not only not provide any clarification, but the invoice presented by the Agent expressly mentions a flat fee in the amount of USD 5,000, confirming USD currency. No further evidence has been presented as to the travel expenses made by the Agent.
96. In light of the above, the Sole Arbitrator has no hesitation to determine that the parties agreed on a flat agent fee in the amount of USD 5,000 and that no mistake in currency was made by the FIFA PSC Single Judge.
97. Furthermore, in the absence of any proof that the Agent’s travel expenses exceeded the amount accepted by the Federation, and in the absence of any proof that the parties agreed on a higher amount than USD 1,800, the Sole Arbitrator concurs with the FIFA PSC Single Judge in finding that the Agent is entitled to receive from the Federation USD 6,800, plus 5% interest *p.a.* as from 21 June 2018 until the date of effective payment.
98. Any claim from the Agent for additional fees or compensation in respect of the organisation of the match against Mauritius is dismissed.
- iii. Is the Agent entitled to any fees/compensation for the match against St Kitts and Nevis?***
99. The Sole Arbitrator observes that the Agent claims remuneration for his services in connection with the organisation of the match against St Kitts and Nevis in the amount of USD 4,000, in accordance with the Intermediation Agreement.
100. This claim is explicitly accepted by the Federation.
101. As such, the Sole Arbitrator concurs with the FIFA PSC Single Judge and finds that the Agent is entitled to receive from the Federation USD 4,000, plus 5% interest *p.a.* as from 2 December 2017 until the date of effective payment.

**iv. *Is the agent entitled to any fees/compensation for the match against Andorra?***

102. The Agent argues that the Federation owes him EUR 47,000, being the agent fee in the amount of EUR 5,000, plus EUR 42,000, “*which cover hotel, transport, stadium, accommodation, referee fees, fees payable to RFEF*”.
103. The Federation confirms its obligation to pay the Agent a fee in the amount of USD 5,000, rejecting that it agreed on any other commitment with the Agent.
104. The Sole Arbitrator finds that also with regard to this match, the burden of proof lies with the Agent in order to convince the Sole Arbitrator that he is entitled to EUR 47,000 instead of USD 5,000, as accepted by the Federation.

*a) The agreement concluded between the parties*

105. The Sole Arbitrator observes that similar to the match against Mauritius, the parties did not conclude a written agreement, whereby the Federation authorised the Agent to organise this particular match. Nevertheless, the Federation confirmed it had authorised the Agent to organise this match too.
106. The Sole Arbitrator finds that the parties reached an agreement by means of the Authorisation Letter issued by the Federation and the email correspondence that was exchanged between the Agent and Mr Gustavo Ndong.
107. The Authorisation Letter that was issued by the Federation on 22 January 2018 reads as follows, as relevant:

*“It has been granted to BestWay Soccer and its employees and partners to find and seek future matches and oppositions for the National Team of Equatorial Guinea Team A.*

*BestWay Soccer should report any potential matches and conditions in order to [the Federation] to evaluate the opportunity and proceed or not.*

*Any given proposal occurring by this assignment, should be either accepted or rejected, and no match should be arranged without the implication of BestWay Soccer.*

*This authorisation is valid until from 22/01/2018 up to 30/03/2018”.*

108. From the email correspondence between the Agent and Mr Gustavo Ndong, it transpires that the Agent was very insistent on concluding a specific contract with the Federation for the organisation of the match against Andorra (see emails dated 8, 9 and 13 February 2018), but that the Federation was not.
109. The Sole Arbitrator finds that Mr Ndong’s email dated 14 February 2018 serves as an agreement on behalf of the Federation to nevertheless engage the Agent:

*“Dear Archad please go ahead, but we need the participating form for Andorra as well as hosting form from Spain”.*

110. This, while apologising to the Agent for the delay in giving such approval only 10 minutes after the above email was sent:

*“Sorry for delay this is EG”.*

111. The Sole Arbitrator further finds that the Agent acted in good faith by confirming that he understood Mr Ndong’s email as an agreement from the Federation, while also expressing his disappointment with the way the Federation was dealing with the matter:

*“[...] I’ll move forward now as I have your approval, but you guys run businesses too...”.*

112. In light of such correspondence, the Sole Arbitrator finds that a written agreement was reached by means of which the Federation hired the services of the Agent for the organisation of the match against Andorra based on the terms discussed between them and by analogy to the Intermediation Agreement concluded in respect of the match against St Kitts and Nevis. The Federation’s argument that any agreement concluded with the Agent is to be declared null and void because the requirements of Article 18 FIFA Match Agent Regulations are not complied with is to be dismissed, because the Agent acted in good faith by repeatedly insisting on the confirmation from the Federation on the terms and conditions discussed, which approval was ultimately given although not in the form desired by the Agent. The Sole Arbitrator finds that, although Article 18 FIFA Match Agent Regulations has indeed not been fully complied with, the lax attitude and the failure of the Federation to conclude a specific contract with the Agent for the organisation of the match against Andorra cannot be protected in the circumstances at stake. The Sole Arbitrator finds that it is the Federation itself that is to be blamed for the fact that no proper contract was concluded with the Agent for the organisation of the match against Andorra and the Federation cannot in good faith invoke such failure to escape from its payment obligations towards the Agent. Indeed, this is in accordance with the Latin maxim *commodum ex injuria sua nemo habere debet*, which means that a wrongdoer should not be enabled by law to take any advantage from his actions.

*b) The terms of the agreement concluded between the parties*

113. As to the terms of the agreement, the Sole Arbitrator finds that it transpires from the email correspondence exchanged between the Agent and Mr Gustavo Ndong that the Agent agreed to advance certain expenses (to act as a “buffer”) for the Federation. The Agent informed Mr Ndong as follows on 8 February 2018:

*“I’ve checked with most of the partners involved in the organisation of the match and camp to see if they will consider accepting cash payment.*

*Some will for the low amounts, but for the most important they will not.*

*I’m ok to act as buffer in order to solve this problem as I intend to work on a long term basis with EG. But we’ll need to figure out the financial payment process each time so I can organise and evaluate cost. I should pay 50% on booking and 50% 10 days prior the arrival of the team. [...]”.*

114. On 9 February 2018, the Agent again emphasised that he expected to be reimbursed for the expenses advanced by him:

*“If we have to move forward, with the contract and quotes and cash to be available in Malabo to cover the expenses”.*

115. The Sole Arbitrator finds that Federation’s overall acceptance to hire the services of the Agent and BestWay Soccer on 14 February 2018, serves as a confirmation from the side of the Federation that the Agent would pay certain expenses on behalf of the Federation.

116. This of course does not mean that the Agent and BestWay Soccer could make expenses as they liked. The Sole Arbitrator however finds that Mr Gustavo Ndong’s email of 9 or 19 February 2018, in conjunction with the subsequent overall acceptance to hire the services of the Agent and BestWay Soccer, serves as an acceptance from the Federation that it would reimburse the Agent for expenses up to an amount of EUR 42,000:

*“Can you please put this invoice: 42.000 euros: also remove quote and put invoice”.*

117. On the basis of the above, the Sole Arbitrator is prepared to accept that the Federation should indeed reimburse the Agent for the expenses made in respect of the organisation of the match against Andorra up to an amount of EUR 42,000.

*c) The Agent’s fee for organising the match against Andorra*

118. The Sole Arbitrator observes that whereas the Agent claims to be entitled to a fee of EUR 5,000, the Federation submits that he is only entitled to a fee of USD 5,000. The Sole Arbitrator is therefore put to the task of determining whether the Agent succeeded in establishing that he is entitled to a fee of EUR 5,000 instead of USD 5,000.

119. The Sole Arbitrator observes that BestWay Soccer issued an invoice to the Federation on 19 February that clearly refers to a commission for organising a friendly match against Andorra in the amount of EUR 5,000, i.e. contrary to the commission for the previous matches the currency chosen this time was EUR instead of USD.

120. Prior to this, the Agent already referred to an amount of EUR 5,000 in his email to Mr Gustavo Ndong dated 8 February 2018.

121. Consequently, in light of this information and the Federation’s acceptance to hire the services of the Agent on 14 February 2018 thereby accepting the conditions set out by the Agent, the Sole Arbitrator finds that the Agent succeeded in establishing that he is entitled to a fee of EUR 5,000.

*d) The actual expenses incurred by the Agent on behalf of the Federation*

122. However, in order to be awarded with EUR 42,000 as expenses that were to be reimbursed by the Federation, the Agent obviously needs to prove that he indeed incurred such expenses. Insofar the Agent claims to be entitled to the prospective costs, this is to be dismissed, because

the amounts advanced were not for the Agent or BestWay Soccer, but were to be paid to third parties in order to accommodate the match against Andorra.

123. As to the actual expenses made by the Agent, the Sole Arbitrator comes to a different conclusion than the FIFA PSC Single Judge in the Appealed Decision. The FIFA PSC Single Judge reasoned as follows:

*“[T]he Single Judge noted that no substantial evidence had been provided by the [Agent] in support of the allegation that he would have personally incurred in the relevant costs and that they would in any way be directly related to the provision of his services to the [Federation]. The Single Judge also noted that such requests were neither admitted by the [Federation] nor substantiated by any documentation of contractual, legal or regulatory nature.*

*Hence, the Single Judge came to the conclusion that all requests of the [Agent] related to the alleged reimbursement of various expenses had to be rejected for lack of substantial evidence”.*

124. Such decision may have been legitimate for the FIFA PSC Single Judge based on the evidence before him. However, based on the evidence submitted (invoices, bank statements, etc) in the present proceedings before CAS, the Sole Arbitrator comes to a different conclusion.

125. The Sole Arbitrator observes that the Agent argues that he incurred the following expenses:

- 7 February 2018: EUR 870 “as advance to cover travel expenses”;
- 19 February 2018: EUR 2,113 “as first payment to Football Impact S.L.”;
- 28 February 2018: EUR 4,500 “as payment of the RFEF fee for the match”;
- 6 March 2018: EUR 454 “as advance to cover travel expenses”;
- 12 March 2018: GBP 17,248.98 (allegedly equivalent to EUR 19,017) as “second payment to Football Impact S.L.”; and
- 19 March 2018: EUR 7,467.52 “for the referees hotel and accommodation made to the firm Football Impact S.L.”.

126. The Federation argues that the Agent did not provide the slightest proof of having paid the claimed amounts and that the Agents’ explanations are not reliable. Further, the Federation maintains that the payment of GBP 17,248.98 was made after the Federation informed the Agent by mail dated 9 March 2018 that the match was cancelled and that the invoice of Football Impact of EUR 18,506 was issued two months later. The Federation points out that the Agent in his email dated 8 February 2018 informed the Federation that the hotel expenses would be paid in cash directly to the hotel, and as such no amounts had to be paid upfront.

127. Firstly, the Sole Arbitrator notes that the costs specified by the Agent sum up to **EUR 34,421,52** (EUR 870 + EUR 2,113 + EUR 4,500 + EUR 454 + GBP 17,248.98 (= EUR 19,017) + EUR 7,467,52) and not EUR 42,000.

128. The Sole Arbitrator will now address the different alleged expenses made by the Agent on behalf of the Federation one by one below.



129. As to the payment on 7 February 2018 in the amount of EUR 870 “*as advance to cover travel expenses*”, the Sole Arbitrator notes that the Agent provided evidence by filing a copy of BestWay Soccer’s Business Euro Account that his company indeed made an expense for this amount, but without any reference to the match against Andorra and without any other underlying documents that could prove a direct relationship with arranging the particular match. Furthermore, these costs were allegedly made one week before Mr Ndong’s email dated 14 February 2018. As such, the Sole Arbitrator is not convinced that this payment is exclusively done in relation to the match between the Federation and Andorra, and dismisses this part of the Agent’s claim.
130. As to the payment on 19 February 2018 in the amount of EUR 2,113 “*as first payment to Football Impact S.L.*”, the Sole Arbitrator notes that the Agent provided evidence by filing a copy of BestWay Soccer’s Business Euro Account that his company indeed paid this amount but without any reference to the match between the Federation and Andorra and without an underlying invoice of Football Impact S.L. or any other documents that could support his stance. As such, the Sole Arbitrator is not convinced that this payment is exclusively done in relation to the match between the Federation and Andorra, and rejects this part of the Agent’s claim too.
131. As to the payment on 28 February 2018 in the amount of EUR 4,500 to the RFEF “*as payment of the RFEF fee for the match*”, the Sole Arbitrator finds that the Agent provided convincing evidence by filing a copy of BestWay Soccer’s Business Euro Account with reference to the particular match and a letter of the RFEF in which the organiser of the match is obliged to pay a fee. Taking into consideration that the Federation did not dispute the amount itself, the Sole Arbitrator finds that the Federation should reimburse the Agent with this amount.
132. As to the payment on 6 March 2018 in the amount of EUR 454 “*as advance to cover travel expenses*”, it appears from the copy of BestWay Soccer’s Business Euro Account that the payment was made without reference to the match against Andorra. Furthermore, and although the evidence filed by the Agent with regard to these travel expenses refer to costs made on 20 February and 3 March 2018 in relation to flight tickets to and from Malaga and the rental of a car in Malaga around the date of the particular match, these documents covering costs for four people, not including the Agent himself, in the total amount of EUR 959,96 which amount does not correspond with the payment of EUR 454. As such, the Sole Arbitrator is not convinced that the payment of EUR 454 on 6 March 2018 is related to the match between the Federation and Andorra.
133. As to the payment on 12 March 2018 in the amount of GBP 17,248.98 (equivalent to EUR 19,017 according to the bank statement provided by the Agent) as “*second payment to Football Impact S.L.*”, the Sole Arbitrator notes that the Agent provided evidence by filing a copy of BestWay Soccer’s Business Current Account that his company indeed paid this amount to Football Impact S.L., and by filing an invoice dated 14 May 2018 from Football Impact S.L. which invoice provides as follows:

***“Guinea Ecuatorial***

*Training camp from 23<sup>rd</sup> till 27<sup>th</sup> March, 2018 (4 days)*

*Accommodation in Hotel Alhaurin Golf Resort 4\**

*Training in Alhaurin Golf Resort football pitch*

**Total 18.506,00 €**

**Payments:**

21.130,00 € Paid

**-2.624,00 € To be returned”.**

134. Although the payment was made after the cancellation of the match on 9 March 2018, the Agent by email dated 8 February 2018 informed the Federation that he had to pay “50% on booking and 50% 10 days prior the arrival of the team”. As the cancellation was made around 17 days before the scheduled match and as the Agent already informed the Federation of the obligation to pay 50% of the costs upfront, which corresponds largely with the amount transferred, the Sole Arbitrator finds that the Agent had the obligation to pay EUR 18,506 to Football Impact S.L., which amount is to be reimbursed by the Federation to the Agent.
135. As to the payment on 19 March 2018 in the amount of EUR 7,467.52 “for the referees hotel and accommodation made to the firm Football Impact S.L.”, the Sole Arbitrator notes that the Agent provided evidence by filing a copy of BestWay Soccer’s Business Euro Account that his company indeed paid this amount to Football Impact S.L., and by filing an invoice dated 31 January 2019 from Football Impact S.L. which invoice provides as follows – as relevant:

**“Services of FIFA International referees for match Andorra NT vs Equatorial Guinea NT**

*Date : 26/03/18*

*Venue: Marbella*

**Total 6.171,50 €**

[...]

**Total FACTURA**

**7.467,52 €”.**

136. In light of these details, the Sole Arbitrator finds that the Federation shall reimburse the Agent with this amount as well. The Federation’s argument that the Agent should not have paid this amount because the match against Andorra was already cancelled is to be dismissed, because the Sole Arbitrator finds that it should be presumed that the Agent would have avoided payment if possible and that services were rendered so that Football Impact S.L. had a legitimate claim to be compensated for its efforts, regardless of the fact that the match was ultimately cancelled.
137. Consequently, the Sole Arbitrator finds that the Agent is entitled to receive from the Federation EUR 4,500 “as payment of the RFEF fee for the match”, EUR 18,506 as “second payment to Football Impact S.L.” and EUR 7.467,52 “for the referees hotel and accommodation made to the firm Football Impact

*S.L.*”, in total **EUR 30,473.52**, plus 5% interest *p.a.* as of 21 June 2018 until the date of effective payment.

## **B. Conclusion**

138. Based on the foregoing and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that the services provided by the Agent entitle him to a remuneration from the Federation, as follows:

- USD 4,000, plus 5% interest *p.a.*, as from 2 December 2017 until the effective date of payment;
- USD 6,800, plus 5% interest *p.a.*, as from 21 June 2018 until the effective date of payment;
- EUR 5,000, plus 5% interest *p.a.*, as from 21 June 2018 until the effective date of payment;
- EUR 30,473.52, plus 5% interest *p.a.*, as from 21 June 2018 until the effective date of payment.

139. All other and further motions or prayers for relief are dismissed.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 7 February 2019 by Mr Archad Burahee against the decision issued on 23 October 2018 by the Single Judge of the Players’ Status Committee of the *Fédération Internationale de Football Association* is partially upheld.
2. The decision issued on 23 October 2018 by the Single Judge of the Players’ Status Committee of the *Fédération Internationale de Football Association* is confirmed, save for para. 2, which shall read as follows:
  - a) The Equatorial Guinea Football Federation shall pay Mr Archad Burahee within 30 days the sum of USD 4,000 (four thousand United States Dollars) plus 5% interest *per annum*, as from 2 December 2017 until the effective date of payment;
  - b) The Equatorial Guinea Football Federation shall pay Mr Archad Burahee within 30 days the sum of USD 6,800 (six thousand eight hundred United States Dollars) plus 5% interest *per annum*, as from 21 June 2018 until the effective date of payment;

- c) The Equatorial Guinea Football Federation shall pay Mr Archad Burahee within 30 days the sum of EUR 35,473.52 (thirty five thousand four hundred seventy three Euros and fifty two cents) plus 5% interest *per annum*, as from 21 June 2018 until the effective date of payment.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.