



**Arbitration CAS 2019/A/6350 Hendrik Willem ten Cate v. Al Jazira Football Sports Company, award of 22 January 2020**

Panel: Mr Lars Hilliger (Denmark), President; Mr Manfred Nan (The Netherlands); Mr Rui Botica Santos (Portugal)

*Football*

*Employment-related dispute (outstanding salaries and bonuses)*

*Burden of proof*

*Shifting of the burden of proof in Beweisnotstand*

*Scope of an appeal to the CAS*

1. In CAS arbitration, 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 the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them. The CAS Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence.
2. Swiss law is not blind vis-à-vis difficulties of proof (“Beweisnotstand”). Swiss law knows a number of tools in order to ease the – sometimes difficult – burden put on a party to prove certain facts. These tools range from a duty of the other party to cooperate in the process of fact finding, to a shifting of the burden of proof or to a reduction of the applicable standard of proof. A club knows and cannot ignore if match bonuses for matches won during a season were or not paid to its players. A player should not be required to prove facts which, in the absence of an adequate explanation from the club, are controlled and should be known by the club. In this exceptional circumstance, the burden of proof should shift from the player to the club.
3. In accordance with Article R57 of the CAS Code, a CAS panel has full power to review the facts and the law. However, in reviewing a case in full, the panel cannot go beyond the scope of the previous litigation and is limited to the issues arising from the challenged decision.

**I. PARTIES**

1. Mr Hendrik Willem ten Cate (the “Appellant” or the “Coach”) is a professional football coach of Dutch nationality, currently domiciled in Amsterdam, the Netherlands.

2. Al Jazira Football Sports Company (the “Respondent” or the “Club”) is a professional football club based in Abu Dhabi and affiliated with the United Arab Emirates Football Association, which in turn is affiliated with the Fédération Internationale de Football Association (“FIFA”).
3. The Coach and the Club are hereinafter jointly referred to as the “Parties”.

## II. FACTUAL BACKGROUND

### A. Background Facts

4. Below is a summary of the relevant facts and allegations as established by the Panel on the basis of the decision rendered by the Single Judge of the Players’ Status Committee (the “FIFA PSC”) on 16 April 2019 (the “Appealed Decision”), the written and oral submissions of the Parties and evidence adduced. 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, the Panel refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 13 July 2015, the Parties signed a Head Coach Employment Agreement (the “Initial Contract”), valid as from 1 January 2016 until 1 June 2016. Shortly afterwards, the Parties concluded a second Head Coach Employment Contract (the “Contract”), valid as from 1 July 2016 until 30 June 2018.
6. The Contract stated, *inter alia*, as follows:

*“5.1 A monthly salary of [EUR 135,000] (net of UEA INCOME TAX) will be paid to [the Coach] during the first week of each month [...]*

*Annual signing fee of [EUR 180,000] net of UEA income tax, the first signing fee shall be payable during August 2016, and the second contractual year the signing fee of [EUR 180,000] will be paid during the first week from July 2017.*

*[...]*

*5.2.1 For any official match victory by Al Jazira in the Asian Champions League, AGL or President’s Cup, and the UEA League cup, the [Coach] shall be entitled to receive a bonus equal to 100% from one of the player’s bonus in Dirhams, i.e. if one player receive 15,000 AED for the official winning then the [Coach] will be entitled to receive 15,000 AED.*

*[...]*

*5.7 The bonuses for winning the AGL, and the President’s Cup and the winning of the AFC shall be as per attachment”.*

7. In May 2017, the Parties agreed to raise the monthly salary of the Coach for the period from 1 July 2017 until 30 June 2018 to EUR 193,334 in addition to the annual signing fee of EUR 180,000.
8. The Parties are in agreement that the said negotiations between the Coach and his legal adviser, Mrs Ester Bóinck, on the one side, and Mr Binbutti, the then President of the Club and Mr Al Fatah, the Club's Sports Legal Affairs Manager, on the other side, also included negotiations regarding other bonuses, whereas the Parties are not in agreement about whether or not the Parties actually reached an agreement regarding such bonuses.
9. During and following the said negotiations, Annex (2) (Head Coach Employment Contract) ("Annex 2") to the Contract was drafted, but this annex was apparently not signed by the Parties in connection with the negotiations. However, Mr Binbutti allegedly affixed his signature opposite the amounts written by hand under clause B.7. Whether both Parties subsequently signed Annex 2 is another issue in dispute.
10. Annex 2 stipulated, *inter alia*, as follows:

*"Clause 1:*

- A. *This annex is a part and integral to [the Contract] of the [Coach and the Club] which started already on 1 July 2016, and is a formal part of the remuneration as mentioned in article 5.8 both parties herein agreed on amending the annual salary mentioned in article 5.1 to be Two Million and Five Hundred thousand Euro (only 2,500,000 EURO) to be divided as an annual signing fee of EUR 180.000 payable as per 1 July 2017 and 12 monthly instalments of EUR 193.334, starting from the July 2017 till 30 June 2018, i.e. the previous annual salary of 1.8 million Euro is amended and cancelled to be 2.5 million per annum.*
- B. *Both parties herein agreed on the bonuses of the season 2017/2018 to be as follows:*

*[...]*

*7. Clubs world Cup Champion 2017:*

- a) *30,000 Euro – 40 [inserted in handwriting]*
- b) *60,000 Euro – 80 [inserted in handwriting]*
- c) *120,000 Euro – 160 [inserted in handwriting]*
- d) *240,000 – 350. [inserted in handwriting]*

*Clause 2:*

*Other clause articles, terms and conditions within the employment contract signed by both parties which already started on 1 July 2016 will remain without any changes.*

*All bonuses are cumulative and payable the latest 30 days after the end of the relevant season”.*

11. The Contract was not renewed between the Parties and expired automatically on 30 June 2018.

**B. Proceedings before the FIFA Players’ Status Committee**

12. By petition to the FIFA PSC of 14 November 2018, the Coach submitted that despite several reminders to do so, the Club had failed to meet its financial obligations to the Coach as follows:

EUR 193,000 (net salary for the month of June 2018)

EUR 180,000 (net annual signing fee payable as at 1 July 2017)

EUR 120,000 (net bonus for Club World Cup Champion 2017)

EUR 62,000 net (17 times match bonus at AED 15,000 per match).

13. Based on the above the Coach requested that the FIFA PSC:

- a) *“Declares that [the Club] is in breach of its financial obligations under the [Contract];*
- b) *Order [the Club] to pay the amount of EUR 1,127,217.31 gross (EUR 555,000 net) or any other amount [the FIFA PSC] deems to be reasonable to [the Coach] [...];*
- c) *Order [the Club] to pay the legal costs incurred by [the Coach] amounting to EUR 25,000 exclusive of VAT;*
- d) *Order [the Club] to pay all costs [...].”*

14. In its reply, the Club did not challenge the Coach’s claim that the amounts of EUR 193,000 and EUR 180,000 were outstanding.

15. However, with regard to the alleged victory match bonuses (the “Match Bonus”), the Club explained that it has a discretionary policy of payment of bonuses to the players and that the Coach had failed to provide evidence that such victory match bonuses were paid to the players in the 17 matches for which the Coach requested payment of a similar bonus.

16. Finally, the Club submitted that the Coach is not legally entitled to receive any Club World Cup Champion 2017 bonus.

17. The Single Judge of the FIFA PSC, after having confirmed his competence, concluded, *inter alia*, that the 2018 edition of the Regulations on the Status and Transfer of Players (the “Regulations”) was applicable to the case.

18. In relation to the amounts of EUR 193,000 and EUR 180,000, the Single Judge observed that, in its reply, the Club acknowledged the existence of the related debt. Therefore, and since this

part of the claim thus remained undisputed, and taking into consideration the legal principle of *pacta sunt servanda*, the Single Judge established that the Club had to pay to the Coach the outstanding amount of EUR 373,000 (i.e. EUR 193,000 + EUR 180,000).

19. With regard to the amounts claimed for the Club World Cup Champion 2017 (EUR 120,000) and for the 17 times victory match bonuses (EUR 62,000), the Single Judge referred to the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, according to which the burden of proof lies with any party claiming a right on the basis of an alleged fact.
20. In application of the said principle, and after having examined the documentation on file, the Single Judge observed that the Coach had failed to provide any evidence to prove that the conditions entitling him to the possible bonuses were met.
21. Hence, the Single Judge came to the conclusion that the request of the Coach related to the payment of outstanding bonuses had to be rejected for lack of proof.
22. On 16 April 2019, the Single Judge of the FIFA Players' Status Committee rendered the Appealed Decision and decided, *in particular*, that:
  - “1. *The claim of [the Appellant] is partially accepted.*
  2. *[the Respondent] has to pay to [the Appellant] within 30 days as from the date and notification of the present decision, the total amount of EUR 373,000 “net of UEA income tax”.*
  3. *If the aforementioned sum is not paid within the aforementioned deadline, interest at the rate of 5% p.a. will fall due and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
  4. *Any other requests lodged by [the Appellant] are rejected.*
  5. *[...]*
  6. *The final costs of the proceedings in the amount of CHF 20,000 are to be paid by both parties, within 30 days as from the date of notification of the present decision, as follows:*
    - 6.1 *The amount of CHF 5,000 has to be paid by [the Appellant]. [...]*
    - 6.2 *The amount of CHF 15,000 has to be paid by [the Respondent]. [...]*
23. On 17 June 2019, the grounds of the Appealed Decision were communicated to the Parties.

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

24. On 4 July 2019, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”) against the Respondent with respect to the Appealed Decision.
25. On 15 July 2019, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.
26. On 14 August 2019, and in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows:

President: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark

Arbitrators: Mr Manfred Peter Nan, Attorney-at-Law in Arnhem, the Netherlands (nominated by the Appellant)

Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal (nominated by the Respondent)

27. On 5 September 2019, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.
28. On 28 October 2019, the CAS Court Office sent the parties the Order of Procedure, which was returned signed on 31 October 2019 and on 4 November 2019 by the Appellant and the Respondent, respectively.
29. On 12 November 2019, a hearing was held in Lausanne, Switzerland.
30. In addition to the Panel, Mr Daniele Boccucci, counsel to the CAS, the following persons attended the hearing:

For the Appellant:

- Mr Hendrik Willem ten Cate
- Mr Harro J. A. Knijff, legal counsel
- Mrs Ester Bóinck, witness

For the Respondent:

- Mr Bernardo Palmeiro, legal counsel

31. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel.

32. The Panel heard the evidence of the Coach and Mrs Ester Bóinck, witness called by the Coach, who was invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. The Parties and the Panel had the opportunity to examine and cross-examine both the Coach and the witness.
33. The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
34. After the Parties' final submission, the Panel closed the hearing and reserved its final award. The Panel took into account in its subsequent deliberations all the evidence and arguments presented by the Parties although they may not have been expressly summarised in the present Award.
35. Upon the closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

#### IV. PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

##### A. The Appellant

36. In its Appeal Brief, the Appellant requested the following relief from the Panel:

*“(I). To quash [the Appealed Decision] with respect to the rejection of [the Appellant’s] claim of EUR 120,000 net 2017 FIFA Club World Cup bonus and the rejection of [the Appellant’s] claim of EUR 62,000 net 17 times victory match bonus and to order [the Respondent] to pay these bonuses to be increased by payment of an interest rate of 5% per annum from 1 July 2018 to the date of full payment;*

*(II). To confirm [the Appealed Decision] with respect to the acceptance of [the Appellant’s] claim in the amount of EUR 373,000 “net of UAE income tax”, to be increased by payment of an interest rate of 5% per annum as of the date of indebtedness to the date of full payment, which means payment of the above-mentioned interest rate of 5% per annum over an amount of EUR 193,000 net as of 1 July 2018 and over an amount of EUR 180,000 net as of 1 July 2017;*

*(III). To order [the Respondent] to pay the costs of the arbitration proceedings, including but not limited to the CAS Court Office fee, the administrative costs of the CAS, the costs and fees of the arbitrators, the fees of the ad-hoc clerk, if any;*

*(IV). To order [the Respondent] to pay the costs of arbitration on the part of [the Appellant] with respect to the Players’ Status Committee procedure amounting to CHF 5,000;*

*(V). To order [the Respondent] to pay the costs of legal assistance on the part of [the Appellant], estimated at 10% of [the Appellant’s] claim on [the Respondent]; and*

*(VI). To make any provision CAS deems justified in the given circumstances”.*

37. The Appellant's submissions, in essence, may be summarised as follows:

- Pursuant to the Appealed Decision, the Respondent is liable to pay to the Appellant, within 30 days of the notification of the Appealed Decision, the amounts of EUR 193,000 and EUR 180,000 subject to interest at the rate of 5% p.a. as from the said due date.
- Despite the Respondent having recognised its payments obligation, by the date of the hearing, the Appellant has still not received the outstanding amounts from the Respondent, either in part or in full, and it is therefore only fair that the Respondent is ordered to pay to the Appellant interest at the rate of 5% p.a. as from the dates when the above-mentioned amounts originally fell due, i.e. interest on EUR 180,000 as from 1 July 2017 and on EUR 193,000 as from 1 July 2018.
- With regard to the 2017 FIFA Club World Cup Bonus (the "Club World Cup Bonus"), this bonus was negotiated between the Parties at the same time in May 2017 as when the Parties agreed to raise the Appellant's annual salary.
- There is no dispute between the Parties regarding their agreement to raise the annual salary, which is also included in Annex 2, and, apart from the salary covered by the Appealed Decision, the Appellant was paid his salaries by the Respondent in accordance with this agreement.
- The Appellant and his legal adviser, Mrs Ester Bóinck, on the one side and Mr Binbutti on the other side agreed that the Appellant should be entitled to bonuses for each victory of the Respondent's team in the 2017 FIFA Club World Cup, which amounts were then written by hand in Annex 2:

*"Both parties herein agreed on the bonuses of the season 2017/2018 to be as follows:*

*[...]*

*7. Clubs world Cup Champion 2017:*

*a) 30,000 Euro – 40*

*b) 60,000 Euro – 80*

*c) 120,000 Euro – 160*

*d) 240,000 Euro– 350".*

- Since it is undisputed that the team of the Respondent did in fact win two matches at the 2017 FIFA Club World Cup in December 2017, the Appellant is entitled to receive his Club World Cup Bonus in the amount of EUR 120,000 plus interest at the rate of 5% p.a. as from the due date of 1 July 2018.



- With regard to the match victory bonus, pursuant to the Initial Contract, the Appellant was entitled to receive a bonus of AED 15,000 *“For any official match victory by Al Jazira in the Asian Champions League, AGL or President’s Cup”*.
- The Appellant always received the relevant victory bonus in the normal way during the initial contract period from 1 January 2016 until 1 June 2016.
- As a result of the higher bonuses to the players of the team, the wording in the Contract was amended to read as follows: *“For any official match victory by AL Jazira in the Asian Champions League, AGL or President’s Cup, and the UEA League cup, the [Coach] shall be entitled to receive a bonus equal to 100% from one of the player’s bonus in Dirhams, i.e. if one player receive 15,000 AED for the official winning then the [Coach] will be entitled to receive 15,000 AED”*.
- As such, the starting point is that the Appellant is entitled to receive a bonus from the Appellant for every match won by the team, and it is consequently not correct that it is at the discretion of the Respondent to decide whether or not to pay the victory bonus to the Appellant.
- The amount of each bonus payable to the Appellant has also been determined, namely 100% of the bonus a player of the team is entitled to receive.
- The Club has never denied that the players of the team of the Appellant were entitled to receive/did in fact receive a bonus for each match won by the team. However, the Respondent never informed the Appellant of the amount of such bonuses the players were entitled to receive/actually received during the 2017/2018 season.
- It is not for the Appellant to prove that the players of the Respondent were entitled to or did in fact receive such bonuses in order for the Appellant to be entitled to receive his own victory match bonuses.
- It is undisputed that the team of the Respondent won 17 matches during the 2017/2018 season.
- As the entitlement of the Appellant to receive his victory match bonuses is agreed upon in the Contract, and since the Respondent did not provide the requested transparency regarding the size of the bonuses to the players of the team during the 2017/2018 season, the Appellant is entitled to receive at least the amount of AED 15,000 for each of the 17 games won by the team of the Respondent.

**B. The Respondent**

38. In its answer, the Respondent requested the Panel to:

*“1. Dismiss the appeal lodged by [the Appellant] in full;*

2. *Confirm the [Appealed Decision].*

3. *Rule that the costs of these proceedings shall be paid by [the Appellant] in full and he shall pay a contribution to [the Respondent's] legal fees and other costs in the amount considered appropriate".*

39. The Respondent's submissions, in essence, may be summarised as follows:

- It must be stressed that the burden of proof lies with any party claiming a right on the basis of an alleged fact.
- Based on that, there is no doubt that it is for the Appellant to prove that the Respondent has the obligation to execute the payment of the requested bonuses.
- With regard to the Club World Cup Bonus, the Respondent does not dispute that the Parties were engaged in negotiations regarding such potential bonus and that the Annex 2 was drafted during and following such negotiations.
- However, the Parties never reached a final agreement, and Annex 2 was never signed by the Parties.
- Thus, no agreement was concluded between the Parties in this regard, and the Appellant is not contractually entitled to receive such alleged bonus.
- The Appellant failed to prove that any agreement was reached, and it is not sufficient to argue that the Respondent never disputed the alleged obligation to pay such bonus.
- In any case, the Respondent agrees with the Single Judge in the Appealed Decision that the alleged conditions for granting this bonus are rather unclear.
- Based on that, the Appellant is not entitled to receive any Club World Cup Bonus from the Respondent.
- With regard to the match victory bonus, the Appellant has failed to adduce evidence proving that such match victory bonuses were actually ever paid to the players of the team for its victory during the 2017/2018 season.
- Based on that, the Respondent agrees with the Single Judge in the Appealed Decision that the Appellant's claim should be rejected for lack of proof of the Appellant's alleged entitlement to be paid such bonuses himself.
- Finally, with regard to the Appellant's claim for interest from the original due date of the amounts of EUR 193,000 and EUR 180,000, this claim should be rejected since the Appealed Decision already decided on this matter and awarded interest as from the date of the notification of the Appealed Decision.

## V. JURISDICTION

40. Article R47 of the CAS Code provides as follows:

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

41. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 58(1) of the FIFA Statutes 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. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, and both Parties confirmed the CAS jurisdiction when signing the Order of Procedure.

42. It follows that the CAS has jurisdiction to decide on the appeal of the Decision.

## VI. ADMISSIBILITY

43. The grounds of the Appealed Decision were notified to the Appellant on 17 June 2019, and the Statement of Appeal was lodged on 4 July 2019, i.e. within the statutory time limit of 21 days set in Article 58(1) of the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

44. It follows that the appeal is admissible.

## VII. APPLICABLE LAW

45. Article R58 of the CAS Code provides as follows:

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

46. The Coach maintains that the applicable regulations in these proceedings for the purpose of Article R58 of the CAS Code are the rules and regulations of FIFA and, additionally, that Swiss law applies since the present Appeal is directed against a decision issued by the FIFA PSC applying the rules and regulations of the same. However, the Panel notes that the Respondent submits that pursuant to clause 10.1 of the Contract the Panel “should apply the FIFA Statutes and regulations on a primary basis, whilst considering the provisions of the laws of the UAE”.

47. The Panel notes that the Parties agree on the application of the FIFA Regulations, which implies, according to Article 57(2) of the FIFA Statutes, that *“CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”*.
48. The Panel further notes that the question of the meaning of Article 10.1 of the Contract is relevant only “subsidiarily” and the Respondent has not invoked any particular UAE law or regulation with relevance for this case
49. Based on the above, and with reference to the filed submissions, the Panel is satisfied to accept the application of the various rules and regulations of FIFA and, subsidiarily, Swiss law.
50. The Panel furthermore agrees with the Single Judge of the FIFA Players’ Status Committee and Parties that the 2018 edition of the Regulations is applicable to this case.

### VIII. MERITS

51. Initially, the Panel notes that it is undisputed by the Parties that pursuant to the Contract, and in addition to the net salary for the month of June 2018 (EUR 193,000) and the net annual signing fee payable as at 1 July 2017 (EUR 180,000) as already established in the Appealed Decision, the Appellant is entitled to receive from the Respondent:

*“5.2.1 (...) For any official match victory by AL Jazira in the Asian Champions League, AGL or President’s Cup, and the UEA League cup, [...] a bonus equal to 100% from one of the player’s bonus in Dirhams, i.e. if one player receive 15,000 AED for the official winning then the [Coach] will be entitled to receive 15,000 AED.*

[...]

*5.7 The bonuses for winning the AGL, and the President’s Cup and the winning of the AFC shall be as per attachment”*.

52. It is furthermore undisputed that in May 2017, the Parties engaged in negotiations regarding, *inter alia*, the bonuses included in article 5.7 of the Contract, but the Parties are in dispute over whether or not the Parties actually reached an agreement regarding such bonuses.
53. The Parties agree that Annex 2 was in fact drafted during these negotiations with the following wording, but the Parties are in dispute over whether this annex reflects any final agreement between the Parties and whether it was ever signed as a result hereof:

*“Clause 1:*

*This annex is a part and integral to [the Contract] of the [Coach and the Club] which started already on 1 July 2016, and is a formal part of the remuneration as mentioned in article 5.8 both parties herein agreed on amending the annual salary mentioned in article 5.1 to be Two Million and Five Hundred thousand Euro (only 2,500,000 EURO) to be divided as an annual signing fee of EUR 180.000 payable as per 1 July 2017 and 12 monthly instalments of EUR 193.334, starting from*

*the July 2017 till 30 June 2018, i.e. the previous annual salary of 1.8 million Euro is amended and cancelled to be 2.5 million per annum.*

*Both parties herein agreed on the bonuses of the season 2017/2018 to be as follows:*

*[...]*

*7. Clubs world Cup Champion 2017:*

- a) 30,000 Euro – 40 [inserted in handwriting]*
- b) 60,000 Euro – 80 [inserted in handwriting]*
- c) 120,000 Euro – 160 [inserted in handwriting]*
- d) 240,000 – 350. [inserted in handwriting]*

*Clause 2:*

*Other clause articles, terms and conditions within the employment contract signed by both parties which already started on 1 July 2016 will remain without any changes.*

*All bonuses are cumulative and payable the latest 30 days after the end of the relevant season”.*

- 54. With regard to the match victory bonuses pursuant to article 5.2.1 of the Contract, it is undisputed that the team of the Respondent won 17 matches covered by the said provision in the 2017/2018 season.
- 55. However, the Respondent submits that it is for the Appellant to prove that the Respondent has the obligation to execute the payment of the requested bonuses, including an obligation to adduce evidence to prove that match victory bonuses were in fact paid to the players of the team following its victories in the 2017/2018 season. According to the Respondent, the Appellant failed to provide such evidence.
- 56. Finally, it is disputed between the Parties from which dates the Appellant is entitled to receive interest on the net salary for the month of June 2018 and on the net annual signing fee payable as at 1 July 2017.
- 57. Thus, the main issues to be resolved by the Panel are:

- A. Is the Appellant entitled to receive payment from the Respondent of the Club World Cup Bonus, and in the affirmative, in what amount?
- B. Is the Appellant entitled to receive payment from the Respondent of any Match Bonus for the 2017/2018 season, and in the affirmative, in what amount?
- C. From which dates is the Appellant entitled to receive interest on the undisputed salary for the month of June 2018 and on the net annual signing fee payable as at 1 July 2017?

**A. Is the Appellant entitled to receive payment from the Respondent of the Club World Cup Bonus, and in the affirmative, in what amount?**

- 58. It is undisputed that pursuant to the Contract, “5.7 *The bonuses for winning the AGL, and the President’s Cup and the winning of the AFC shall be as per attachment*”.
- 59. Furthermore, it is undisputed that the question of the actual amounts of such bonuses was part of the negotiations between the Parties and/or their representatives during May 2019, which, before the meeting between the former president of the club, Mr Binbutti on the one side and the Appellant and his legal adviser, Mrs Ester Bóinck, on the other side, resulted in the drafting of Annex 2, which left a blank space for the amount the Parties were potentially going to agree upon.
- 60. It remained also undisputed that the Club’s team won the first and second round matches of the FIFA Club World Cup.
- 61. Based on the facts of the case and the Parties’ submissions, the Panel finds that it is up to the Appellant to discharge the burden of proof to establish that the Parties did in fact agree that the Appellant should be entitled to receive bonuses in the amounts of EUR 40,000 and EUR 80,000, respectively, for winning the first and second round matches of the FIFA Club World Cup.
- 62. In doing so, the Panel adheres to the principle established by CAS jurisprudence that “*in CAS arbitration, 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 the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (...). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*” (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46; and CAS 2009/A/1975, para. 71ff).
- 63. The Panel finds that the Appellant succeeded in discharging this burden of proof.
- 64. The Panel notes initially in this connection that Mrs Ester Bóinck has explained in detail how the size of the bonus amounts in question was negotiated and finally agreed on at the meeting held in May 2017 between Mr Binbutti on the one side and the Appellant and Ms Ester Bóinck

on the other side, coupled with the statement that Mr Binbutti subsequently affixed his personal signature opposite the said amounts written by hand.

65. The Respondent never disputed that this signature was in fact the signature of Mr Binbutti, and the Respondent also failed to call Mr Binbutti as a witness in order for the Panel to hear his view on what happened during the above-mentioned negotiations.
66. The Panel further notes that during the subsequent correspondence between Mrs Ester Bóinck and the Respondent, during which some of the content of Annex 2 was discussed, the Respondent never questioned nor objected to the amounts written in connection with the Club World Cup Bonus.
67. The Panel finds no reason to question the convincing statement by the witness, whose credibility the Panel finds high against the background of her statement.
68. Furthermore, the Panel notes that the Appellant's annual salary was in fact paid by the Respondent in application of the amended amount as agreed upon and included in Annex 2.
69. Based on that, the Panel finds itself convinced that the Parties did in fact reach an agreement regarding the Club World Cup Bonus as inserted by hand in Annex 2 and subsequently confirmed by Mr Binbutti's signature.
70. In these circumstances, and since it is undisputed that the Respondent's team won the first and second round matches at the FIFA Club World Cup 2017, the Panel finds that the Appellant is entitled to receive from the Respondent EUR 120,000 (EUR 40,000 + EUR 80,000) as Club World Cup Bonus pursuant to Annex 2.
71. For the sake of good order, the Panel would like to underline that it understands the fact that the Single Judge of the FIFA PSC came to a different conclusion in the Appealed Decision based on the information and evidence available to him, in particular not having the opportunity to consider the witness statement in his assessment. Already based on that, the Panel finds no grounds for amending para 6.1 of the Appealed Decision.

**B. Is the Appellant entitled to receive payment from the Respondent of any Match Bonus for the 2017/2018 season, and in the affirmative, in what amount?**

72. The Panel notes that it is undisputed between the Parties that, pursuant to the Contract, the Appellant is entitled to receive a Match Bonus *"equal to 100% from one of the player's bonus in Dirhams, i.e. if one player receive 15.000 AED for the official winning then the [Appellant] will be entitled to receive 15.000 AED"*.
73. The Panel further notes that it is undisputed that the players of the Respondent's team, together with the Appellant, received a Match Bonus in accordance with this provision in the amount of at least AED 15,000 per match won by the team during the 2016/2017 season.

74. The Appellant submits that, to his knowledge, the players of the team were also receiving Match Bonus for matches won during the 2017/2018 season, which is why he is also entitled to receive such Match Bonus. However, the Appellant did not provide evidence that this was in fact the case.
75. The Respondent, on the other hand, has not denied that the players were in fact receiving such Match Bonus during the said season, and the counsel of the Respondent furthermore confirms that, to his knowledge, no decision was made to change the Match Bonus scheme, neither for the players, nor for the Appellant.
76. The Panel notes that the provision on Match Bonus is considered to have been agreed by the Parties in good faith and that the Appellant has indisputably fulfilled his obligations under the Contract and therefore, in compliance with the legal principle of *pacta sunt servanda*, is entitled to receive the agreed Match Bonus if such bonus was paid to the players of the team.
77. It should be noted in this context that the Respondent apparently declined to contribute to clarifying the unresolved question as to whether the players have actually received or are entitled to receive Match Bonus for matches won during the 2017/2018 season and, if so, to state the amounts of such bonuses.
78. The Respondent was for instance not represented at the hearing by any of its members, nor did the Respondent in its Answer either confirm or deny the right of the players to receive Match Bonus for the relevant season.
79. The Respondent knows and cannot ignore if Match Bonus for matches won during the 2017/2018 season were or not paid to its players. The Appellant should not be required to prove facts from which, in the absence of an adequate explanation from the Respondent, are controlled and should be known by the Respondent. In this exceptional circumstance, it is the Panel's understanding that the burden of proof should shift from the Appellant to the Respondent (see CAS 2016/A/4417, 4419 & 4420, para. 262 and 2013/A/3256 para. 281, stating: "*Swiss law is not blind vis-à-vis difficulties of proof ("Beweisnotstand"). Swiss law knows a number of tools in order to ease the – sometimes difficult – burden put on a party to prove certain facts. These tools range from a duty of the other party to cooperate in the process of fact finding, to a shifting of the burden of proof or to a reduction of the applicable standard of proof*").
80. In the light of these circumstances, in particular, the Panel finds that it should not prejudice the Appellant that he has not been capable of providing evidence to establish that the players did in fact receive the Match Bonus for winning matches during the in 2017/2018 season, not least against the background of the Respondent's unwillingness to clarify this unresolved question, notwithstanding that this would have been easy for the Respondent, and also considering the fact that the Respondent has not denied that the players received the bonus payments concerned.
81. However, the Panel finds no grounds for concluding either that the amount of the Match Bonus payable to the players was increased compared to the previous season, for which reason it must be considered that the bonus amount per match won was not lower than AED 15,000.



82. Based on the foregoing and given the fact that it is undisputed that the team of the Respondent won 17 matches covered by the said provision in the 2017/2018 season, the Panel finds that the Appellant is entitled to receive from the Respondent Match Bonus for the 2017/2018 season pursuant to the Contract in the amount of AED 255,000.
- C. From which dates is the Appellant entitled to receive interest on the undisputed salary for the month of June 2018 and on the net annual signing fee payable as at 1 July 2017?**
83. Initially, the Panel notes that pursuant to the Appealed Decision, “[...] *If the aforementioned sum is not paid within the aforementioned deadline [30 days as from the date of notification of the present decision], interest at the rate of 5% p.a. will fall due [...]*”.
84. It is undisputed that until now the Respondent has failed to pay to the Appellant, either in part or in full, the amount of EUR 373,000, for which reason interest at the rate of 5% per annum is applied as from 30 days after the date of notification of the Appealed Decision until payment is made.
85. The Appellant submits that since the Respondent has failed to pay to the Appellant both the said salary and the said signing fee, despite having recognised its obligation to do so, it is only fair that the Respondent is ordered to pay interest to the Appellant at 5% per annum on the amount of EUR 193,000 as from 1 July 2018 and on the amount of EUR 180,000 as from 1 July 2017.
86. However, when asked by the Panel, the Appellant confirmed that no request for interest was submitted to the FIFA PSC.
87. The Respondent requests that this claim be rejected since the issue was already dealt with in the Appealed Decision.
88. The Panel notes that in accordance with Article R57 of the CAS Code, the Panel has the full power to review the facts and the law.
89. However, with respect to the Appellant’s request for awarding interest as from 1 July 2018 and July 2017, respectively, on the salary for the month of June 2018 and the annual signing fee, which was initially not claimed by the Appellant before FIFA, the Panel notes that it goes beyond the permitted scope of review of prayers for relief which were not included in the subject-matter of the claim lodged before the first-instance legal body.
90. The Panel is generally not in a position to decide on a claim that has not been previously reviewed within FIFA and for which the internal remedies are not exhausted.
91. In accordance with CAS jurisprudence (see CAS 2016/A/4560, para 75), in reviewing a case in full, the Panel cannot go beyond the scope of the previous litigation and is limited to the issues arising from the challenged decision.

92. As such, the Panel finds no other alternative but to dismiss this request, which was not previously reviewed by FIFA.
93. The same goes for the request regarding interest as from 1 July 2018 on the Club World Cup Bonus and the Match Bonus.

## ON THESE GROUNDS

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

1. The appeal filed by Hendrik Willem ten Cate on 4 July 2019 against the decision rendered by the Single Judge of the FIFA Players' Status Committee on 16 April 2019 is partially upheld.
2. The decision rendered by the Single Judge of the FIFA Players' Status Committee on 16 April 2019 is confirmed, save for para. 2 of the operative part which is amended as follows:
  - *2. Al Jazira Football Sports Company is ordered to pay to Mr Hendrik Willem ten Cate the following amounts:*
    - *EUR 373,000 net of UAE income tax subject to interest at the rate of 5% p.a as from 30 days after the notification of the decision rendered by the Single Judge of the FIFA Players' Status Committee on 16 April 2019;*
    - *EUR 120,000 as Club World Cup Bonus, subject to interest at the rate of 5% p.a. as from the date of notification of this decision;*
    - *AED 255,000 as Match Bonus, subject to interest at the rate of 5% p.a. as from the date of notification of this decision.*
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.