Arbitrations CAS 2019/A/6468 [M] v. [Al] & Fédération Internationale de Football Association (FIFA) & CAS 2019/A/6478 [Al] v. [M], award of 2 July 2020

Panel: Mr Alain Zahlan de Cayetti (France), President; Mr Manfred Nan (The Netherlands); Mr Alexis Schoeb (Switzerland)

Football
Termination of the employment contract with just cause by the player
Authority arising from a transaction
Ratification of transaction
Valuation of the sums due to a player under his relevant ensuing employment contracts
Non-application of FIFA's jurisprudential practice of reduction of compensation by two thirds
Inadmissibility of new claims at appeal level

1. **Where a represented party has expressly or *de facto* announced the authority he has conferred, he may not invoke its total or partial revocation against a third party acting in good faith unless he has likewise announced such revocation.**

2. **Where a person without authority enters into a contract on behalf of a third party, rights and obligations do not accrue to the latter unless he ratifies the contract.**

3. **Art. 17.1 of the FIFA Regulations on the Status and Transfer of Players refers to the remuneration/benefits *"due"* to a player, and not to the remuneration/benefits *"earned"* or *"paid"*.**

4. **Cases where a club blatantly circumvented its obligations from the outset of an employment relationship and prevented its normal execution do not match the cases presented by FIFA in which the circumstances call for an application of its alleged *"long standing DRC jurisprudence"* to reduce by two thirds the amount of compensation payable to a player for breach of contract when the execution of a contract *"apparently never started"*. A lack of execution serving as ground for the mitigation of compensation, precisely for the benefit of the party in breach, would be tantamount to promote and reward the blatant breaches of contracts.**

5. **The scope of an appeal is limited to issues arising from the appealed decision. Amended claims may not go beyond the scope and the amount of the previous litigation. Hence, any new claim, which was not submitted to the first instance body and for which there is no legitimate reason not to have been advanced in the previous litigation, should be rejected as inadmissible.**

I. PARTIES

1. Mr [M] (hereinafter, "Mr [M]" or the "Player") is a […] professional football player.

2. [Al] (hereinafter, "[Al]" or the "Club") is a professional football club based in […], Kingdom of Saudi Arabia, competing in the Saudi First Division and affiliated with the Saudi Arabian Football Federation (hereinafter, "SAFF"), which in turn is a member of the Fédération Internationale de Football Association.

3. Fédération Internationale de Football Association ("FIFA") is the international federation governing the sport of football worldwide. It has its headquarters in Zurich, Switzerland.

II. BACKGROUND FACTS

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in their written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion which follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. Mr [M] and the […] club [K] (hereinafter, "[K]") entered into an employment contract valid from 1 July 2015 until 31 May 2016. In its section 3, the parties have agreed on a mutual right to extend the employment agreement for one additional sporting season in the following terms:

> *"In case the Player takes part in more than 25 official league games (calculated for both he is in the bench and/or first eleven) of the Club in the season 2015/2016, the Parties have right to extent the Employment Agreement, by notifying the other Party and* […] *until 31.5.2016 via public notary for the season 2016/2017. In that case, the employment relationship between the Parties will extend under the following conditions".*

6. In addition, para. 16 of Section 3 *("Special Previsions")* of the employment contract provided that the Player had *"the right to terminate the contract hereby unilaterally and set himself free to transfer any club, provided that to make the payment of EUR 500.000.- to the Club as early termination compensation".*

7. On or around 16 April 2016, the Player's counsel and Mr […], the Board's Chairman Office Manager of [Al], started negotiations for the hiring of the Player by [Al].

8. Between 5 May 2016 and 8 May 2016, all members of the Board of Directors of [Al] (hereinafter, the "Board") (*i.e.* HRH […], Mr […], Mr […], Mr […], Mr […] and Mr […]) resigned from their positions with effect at the end of the sporting season 2015/2016.

9. On 31 May 2016, [K] and the Player entered into a termination agreement (hereinafter, the "Termination Agreement") by means of which they agreed to terminate their mutual employment relationship which had been extended by [K] on 2 May 2016 for the season 2016/2017 (paragraph 3 of the recitals to the Termination Agreement). As part of the Termination Agreement, [K] recognized owing to the Player the total amount of EUR 225,000 and, therefore, have agreed to terminate the employment contract as follows:

> *"For the premature termination of the employment relationship, in appliance to Article 3, paragraph 16 of the Employment Contract of date 1 July 2016, the Player left the outstanding amount of 225.000.- Euro and will pay in favour of the Club the compensation amounting to EUR 275,000.00 (two hundred and seventy five thousand euro), which correspond to the remaining part of the compensation between the contractual termination clause and the outstanding obligations"* (Article 2.1 of the Termination Agreement).

10. On 1 June 2016, the Player and [Al] entered into an employment agreement (hereinafter, the "Employment Agreement") by means of which the Player was recruited by the Club for two sporting seasons, starting from 1 June 2016 and ending on 31 May 2018. The Employment Agreement was signed by the HRH […] ("HRH […]") on behalf of [Al], in his capacity as President of the Club. In its relevant part, the Employment Agreement reads as follows:

> *"Whereas the first party wishes to sign with the second party as a football professional player in the first team, according to the conditions of this contract and regulations; and whereas the second party agrees to play for the first party as a football professional player according to the conditions of this contract and regulations; and after declaring their capacity for only this contract, the two parties have agreed on the following:*
>
> ***Item 1:*** *The preface is considered as an integral part of this contract.*
>
> ***Item 2: The Term of the Contract:***
>
> *The term of the contract is 2* ***(two)*** *years, and it will take effect from the date of 01/06/2016 AD, and will end on 31/05/2018 AD.*
>
> ***Item 3: Complying with Regulations and Rules:***
>
> *The two parties shall comply with and implement the laws, circulars and regulations issued by SAFF, FIFA, the Confederation and Saudi professional league.*
>
> ***Item 4: Obligations of the First Party:***
>
> - *According to the content of Article 6 of Professionalism Regulations, the content and the integral text of the Professionalism Regulations and of the Club's Internal Regulations should be communicated to the Second Party within 1st June 2016. In contrary, the Second Party will be submitted only to the obligations sanctioned in this contract, with the exception of those who refer to any regulation, except*

of: FIFA Regulations on the Status and Transfer of Players and the SAFF Regulations for the Football Activity and/or SAFF Regulations on the Status and Transfer of Players.

- *The first party shall comply with the following after the second party passes all required medical tests:*

  1) ***First Year**: Total of 1.800.000 (One million and eight hundred thousand EURO), this amount divided to two instalment: 800.000 (Eight hundred thousand EURO) in the 1st of June 2016, 1.000.000 (One million EURO) as a salary which (83.333 Eighty three thousand three hundred and thirty three EURO) at the end of every Gregorian month.*

     ***Second Year:** Total of 1.600.000 (One million and six hundred thousand EURO), this amount divided to two instalment: 350.000 (Three hundred and fifty thousand EURO) in the beginning of the second season in the 15th of June 2017, 1.250.000 (One Million and two hundred fifty thousand EURO) as salary which is 104.667 (One hundred and four thousand six hundred and sixty seven EURO) at the end of every Gregorian month.*

  2) *Housing allowance: Luxury furnished house or apartment*

  3) *Transportation: Luxury car;*

(…)

***Item 6: Regular Payment of Salary & Termination of Contract**:*

The first party may not delay payment of the second party's salaries or terminate the contract due to player's injury during play or training.

(…)

Item 9: Settlement of disputes:

1) *The two parties shall seek solving their disputes on the enforcement of the contract by amicable ways.*

2) *The Dispute Resolution Chamber of the Saudi Arabian Football Federation and FIFA Dispute Resolution Chamber is concerned with considering and resolving the disputes that arise between the club and player on this professional contract, implementing and interpreting it.*

(…)

Item 12: Declarations:

1) *The player declares that this is his only contract and that he is not bound by any contract with other clubs.*

2) *He shall declare that he is a full-time player dedicating all his time for the club and that he is not bound by any governmental or private business of any kind from the date of the beginning of this contract with the club until its end.*

Item 13: General Provisions:

1) *The two parties declare that they have taken note of SAFF and FIFA regulations and circulars before signing this contract and that they are obliged to implement them.*

2) *Any text conflicting with the regulations, laws and circulars issued by SAFF, FIFA, Confederation and Saudi Professional League, shall not be recognized.*

3) *The provisions of Professional Players' status and transfer regulations shall apply to all matters not provided for in this contract.*

4) *The two parties may agree on the addition of any terms or conditions to the contract without prejudice to regulations.*

5) *All the correspondences between the parties shall be made at the coordinates pre-indicated in the introduction of the parties section.*

Item 14: Copies of the Contract:

This contract is made in (3) copies with all its pages duly signed and the last page is dated and it shall also bear the stamp of the first party, and one copy shall be delivered to each party immediately on signing the contract, and a copy shall be delivered to SAFF which will be the approved one in case of dispute.

Item 15*: This contract is binding to the two parties from the date of being signed, and shall not be effective before being approved by the Committee".*

11. On 2 June 2016, the Player's counsel sent a letter to the Club requesting for the payment of the first instalment agreed in the amount of EUR 800,000 due on 1 June 2016, and indicating that the registration of the Player *"should be made as soon as possible"*.

12. On 6 June 20016, the Player's counsel approached the Club in writing, for a second time, reminding it of the payment of the first instalment being outstanding, requesting [Al] to provide the Player with the details of its sporting program and with the dates of the training camp, and claiming for the delivery of his flight tickets. Furthermore, the Player's counsel acknowledged that they had *"taken knowledge that HRH* […]*, is not anymore the President of the club. We carefully followed the televised press conference of His Royal Highness made on 2 June 2016, at 23.30, which we have registered and documented for evidence purposes. Acknowledging the fact that His replacement might take several time, we inform* [Al] *that this is a completely administrative issue which does not affect our contractual*

relationship. Consequently, we invite your club to pursuit and execute the contractual obligations towards Mr [M] *and not to neglect the fact that my client is a football player of* [Al]*, even though his employment was concluded by the former President".*

13. On 7 June 2016, the President of the General Sport Authority of Saudi Arabia (the "GSASA") issued a resolution by means of which he acknowledged the collective resignation of the members of [Al]'s Board and approved the appointment of a provisional board to be in charge of the Club until the date of the Club's General Assembly. In this same resolution the GSASA opened a nomination process for the election of the new board members.

14. On 15 June 2016, the Player's counsel sent another letter to the Club, giving the latter a 5-day notice to pay the outstanding first instalment. The Player's counsel reiterated the other claims made in his letter of 6th June 2016 (*i.e.* registration of the Player and communication of the sporting program). Finally, the Player's counsel informed the Club of the following:

> *"On 14 June 2016, the agent of the Player, Mr* […] *informed me (verbally) that after a phone conversation with the General Secretary of* [Al]*, Doc.* […]*, the last has communicated to him that the club had no intention in respecting the contract with Mr* [M]. *This willingness (according to what I was informed) was based upon the fact that, His Royal Highness had resigned from His duties on 1 June 2016, thus, the contract was not valuable. We regret to say that, we have registered His Royal Highness public conference of date 2 June 2016, where such resignation was communicated. Therefore, we find it roughly explainable what* [Al] *General Secretary has communicated to Mr* […]. *In any case, if there is any administrative or institutional willingness as it was aforementioned, we urge its notification in written form toward us.*
>
> *Finally, we inform His Royal Highness that the failure to executed the financial obligations by* [Al] *has caused enormous prejudice to my client, since, this amount was dedicated to the former club, as a compensation for the premature termination of the contract by Mr* [M]*, whom in good faith of being paid by You, reached this agreement with the* […] *side,* [K]. *Consequently, my client is facing difficulties to resolve the situation, since this amount of money cannot be afforded to be paid directly by him (without mentioning the sporting and financial penalties plus interests)".*

15. On 21 June 2016, the Player's counsel approached [Al] for the fourth time, requesting that the following actions be taken before 30 June 2016:

> *"- The payment of the contractual instalment amounting to EUR 800,000.00;*
> *(…)*
> - *The registration of the Player's transfer in FIFA Transfer Matching System;*
> - *The notification of the Club's training program and schedule (especially the date and place of the training camp);*
> - *The notification of the Club's objectives for the football season 2016/2017;*
> - *The notification of the Club's internal disciplinary regulations;*
> - *The providing of the flight tickets (business class) for Mr* [M] *and his family;*

- *The providing of the Visa for the entrance in the territory of the Kingdom of Saudi Arabia for Mr* [M] *and his family.*

(…)

Also, we notify [Al] *that on the same date* [1 July 2016]*, the monthly salary of June 2016 will be legally qualified as the contractual instalment, constituting a just cause for the termination of the employment contract".*

16. On 1 July 2016, the Player's counsel sent a fifth letter to [Al] reiterating the Player's claims and notifying the Club of the Player's intent to terminate the Employment Agreement with just cause in the event the Club fails to pay the outstanding amounts (*i.e.* the amount of EUR 883,333 corresponding to the first instalment and to the salary for the month of June 2016) by 10th July 2016, and bring a claim before the FIFA Dispute Resolution Chamber. On the same date the Player's counsel submitted this letter to the attention of the SAFF.

17. On 4 July 2016, the Player, [Al] and [K] are deemed to have apparently executed the following documents:

    i. An agreement between the Player, the Club and [K] *"FOR THE PAYMENT OF THE FINANCIAL LIABILITIES"*, by virtue of which [Al] would have committed itself to pay [K] the amount of EUR 315,000, corresponding to the obligations owed by the Player to his former club. Additionally, the agreement provided for a penalty in the amount of EUR 235,000 for non-fulfilment by [Al] of its payment obligation.

    ii. A letter of intent titled *"DECLARATION OF LIABILITIES"*, addressed to [K] by [Al], in which the latter has committed to execute the payment of dues owed by the Player to [K] between 14 and 20 July 2020, due to the suspension of banking activities in Saudi Arabia during the month of Ramadan.

    iii. An agreement between the Player and [Al] *"FOR THE EXECUTION OF OVERDUE PAYABLES"*, by virtue of which the Club agreed to pay the Player EUR 651,666 in consideration of overdue payments. Furthermore, [Al] has committed itself to provide the Player with (i) flight tickets for the training camp, (ii) the training program and schedule, (iii) its sporting objectives, and (iv) the FIFA TMS instructions for his transfer. Finally, in this agreement the parties established that in case of a breach by the Club of its obligations under this agreement, the Employment Agreement would be automatically terminated and the Club would have to pay the Player (a) EUR 651,666 as overdue payments, (b) EUR 1,400,000 as compensation for the termination of the Employment Agreement and (c) EUR 315,000 in case the Club had not already paid this amount to [K].

18. On 14 and 15 July 2016, the Player participated in [Al]'s training camp in Croatia and the Club published in its social media some pictures of the Player, officially announcing his joining and welcoming him to the Club.

19. On 20 July 2016, [Al] sent a correspondence to the Player expressing its surprise about [K]'s claim of an alleged compensation for the Player's transfer, stating that the validity of the Employment Agreement was subject to the Player's status of a free agent. Consequently, [Al] requested the Player to produce, within 72 hours, a proof that his employment relationship with [K] had been terminated before 1 June 2016, failing which the Employment Agreement would become null and void.

20. On 22 July 2016, [K] provided [Al] with its correspondence referring to the non-payment of the agreed amount and mentioning the penalty clause (*i.e.* EUR 550,000 in total).

21. On 26 July 2016, the Player's counsel extended a letter to [Al], indicating that [K] had not received the agreed amount and requesting for an update in respect of the Player's registration process with the Club.

22. On 28 July 2016, GSASA's President approved and promulgated the new composition of [Al]'s Board in the following terms (translation provided by the Club and not contested by any of the Parties):

> *"According to what has been presented by the Deputy Chief of General Sport Authority based on the letter of the General Director of Sport Authority Office in* […] *no. 2309 dated 12/10/1437 H corresponding to 27/7/2016 Gr accompanied by a minute of the ordinary general assembly of* [Al] *that was held on 25/9/1437 H corresponding to 30/6/2016 Gr, through which the chief of the Board of Directors and the Meeting Minutes of the Board of Directors no. (1) dated 28/9/1437 H corresponding to 3/7/2016 Gr, were recommended, thorough which positions were distributed between the Board of Directors;*
>
> *(…)*
>
> ***(It was decided the following)***
>
> *First, the new Board of Directors of* [Al] *of* […] *Approval of as follows:*

No.	***Name***	***Position***
1	*HRH* […]	*President*
2	*Eng.* […]	*Vice President*
3	*Mr* […]	*Secretary General*
4	*Mr* […]	*Member*
5	*Mr* […]	*Member*
6	*Doc.* […]	*Member*
7	*Mr* […]	*Member*

Second, the Deputy Chief of the General Sport Authority shall approve this decision and inform those who require".

23. On 30 July 2016, [Al] sent a correspondence to the Player and to [K] rejecting the payment of any amount to the latter and challenging the authenticity of the document dated 4 July 2016, *"on the basis that the* [Al] *didn't made* [sic] *any other agreement with the player or with any other third party except the agreement with the player of 1 June 2016 as a free agent"*. In particular, the Club claimed that the signature of [Al]'s President (*i.e.* HRH […]) would have been forged.

24. On 3 August 2016, the Player unilaterally terminated the Employment Contract with immediate effect, justifying the termination by [Al]'s breach of its contractual obligations and of the agreements dated 4 July 2016. Furthermore, in his letter of the same date, the Player's counsel notified [Al] to pay to the Player the amount of EUR 2,366,000 before 4 August 2016, in order to avoid legal proceedings and *"disciplinary and financial sanctions from FIFA Disciplinary Committee"*.

25. On the same date, the Player's counsel informed SAFF of the unilateral termination of the Employment Agreement.

26. On 7 August 2016, the General Secretary of SAFF sent a letter to the General Secretary of the […] Football Federation ([…]),to the Player[1] and to [K], regarding the Employment Agreement, affirming that its *"players' Status Committee has rejected the effectiveness and the approval of the said document on the grounds or by the fact of law that the party acting on behalf of the club has not been granted the requisite authority by the General Administration of Sports authority, therefore, all documents signed between the period of 1 June until 4 July 2016 are null and void from the beginning. (…) This notice is given for the* […], [K] *and the player to avoid any doubt that the alleged agreement of 1 June 2016 is voidable and enforceable, and therefore the employment contract with the former club is still in force and effective unless* [K] *decides otherwise"*.

27. On 25 August 2016, the Player entered into an employment agreement with [K], valid from 25 August 2016 until 31 May 2017, pursuant to which the Player would receive an annual fixed remuneration of EUR 400,000.

28. On 10 January 2018, the Player entered into an employment agreement with the club [A] ("[A]"), valid from 10 January 2018 to 10 June 2018, pursuant to which the Player would receive a total remuneration of USD 70,000[2].

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1 The Player challenges the fact of having received this letter.

2 Amount equal to EUR 60,869 based on the information provided by the Player and not challenged by the other Parties.

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

29. On 15 March 2017, the Player filed a claim against [Al] with the FIFA Dispute Resolution Chamber (the "FIFA DRC"). In his claim, the Player sustained that he had terminated the Employment Agreement with just cause, based on [Al]'s breach of its contractual obligations, and sought the following relief:

> *"- The full acceptance of the claim;*
>
> *- The obligation of the Respondent to pay overdue payables amounting to EUR 2,473,027.00, corresponding to the lump payment, salaries of June 2016 and July 2016, the penal clause for the termination of the employment relationship and the reimbursement of the costs for a luxury car;*
>
> *- The obligation of the Respondent to pay interest for the overdue payables, as following:*
>
> - *5% p.a. of EUR 651,666.00 as of 1 August 2016 until its effective payment;*
> - *5% p.a. of EUR 1,400,000.00 as of 3 August 2016 until its effective payment;*
> - *5% p.a. of EUR 315,000.00 as of 20 July 2016 until its effective payment;*
> - *5% p.a. of EUR 106,361.00 as of 1 June 2016 until its effective payment.*
>
> *- The obligation of the Respondent to pay a compensation amounting to EUR 3,045,000.00 for the breach of the Contract.*
>
> *- The imposing of a fine and a ban for registering players for two consecutive transfer windows".*

30. On 8 August 2017, [Al] disputed the Player's claim.

31. On 1 February 2019, following several written submissions filed by the Player and the Club, the FIFA DRC rendered the following decision:

> *"1. The claim of the Claimant,* [M]*, is partially accepted.*
>
> *2. The Respondent,* [Al]*, has to pay to the Claimant,* ***within 30 days*** *as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 976,666 plus 5% interest p.a. as from 1 February 2019 until the date of effective payment.*
>
> *3. In the event that the amount plus interest due to the Claimant in accordance with the above-mentioned number 2. is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
>
> *4. Any further claim lodged by the Claimant is rejected.*

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

32. On 2 September 2019, the grounds of the decision were notified to the parties.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

33. On 20 September 2019, the Player filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against [Al] and FIFA with respect to the decision rendered by the FIFA DRC on 1 February 2019 (the "Appealed Decision"), pursuant to Articles R47 and 48 of the Code of Sports-related Arbitration (the "CAS Code"). In its Statement of Appeal, the Player appointed Mr Manfred Nan as arbitrator and submitted the following request for relief:

*"**1.** To accept this Statement of Appeal against the Decision with regards exclusive the following part:*

***2.** To modify the compensation for breach of the contract awarded in favour of the Player in point 2 of the Decision (its page 11) and condemn the First Respondent to the payment of the following amounts:*

***i.** Pay the Appellant the NET amount of EUR 3,400,000.00/- which is **equivalent to the gross amount of EUR 4,930,000.00/-** plus five percent (5%) per annum interest rate, starting from the 3rd of August 2016 until its effective and entire payment as the residual value of his employment contract with the First Respondent;*

***ii.** Pay the Appellant the NET amount of **EUR 850,000.00/-** which is **equivalent to the gross amount of EUR 1,232,500.00/-** based on the specificity of sport plus five percent (5%) per annum interest rate, starting from **3rd of August 2016**;*

***3.** To order FIFA the imposition of sporting sanctions to the First Respondent: i.e. a ban on registering new players either nationally or internationally, for two entire consecutive registration periods*

***4.** To condemn the First Respondent to the payment of the whole CAS administration costs and arbitrators fees – if any.*

***5.** To condemn the First Respondent to the payment of EUR 20,000.00/- as contribution to the legal fees of the Appellant".*

34. On 23 September 2019, [Al] filed a Statement of Appeal with the CAS against the Player with respect to the Appealed Decision, submitting the following claims for relief:

"1. Declare this Appeal admissible;

2. Annul the Decision under Appeal of the FIFA Dispute Resolution Chamber;

3. *Declare that HRH* […] *was not empowered to validly conclude an employment contract with the Respondent on 1 June 2016;*

4. *Declare that no valid employment contract had been entered into between the Appellant and the Respondent on 1 June 2016;*

5. *Declare that no breach of contract had been committed by the Appellant;*

6. *Declare that no compensation or outstanding remuneration shall be payable by the Appellant to the Respondent;*

7. *Order the Respondent to bear the costs of proceedings before the Court of Arbitration for Sport;*

8. *Award a contribution to be established at its discretion to cover the legal fees and expenses of the Appellant".*

35. On 2 October 2019, the Club nominated Mr Alexis Schoeb as Arbitrator.

36. On 10 October 2019, FIFA sent a correspondence to the CAS confirming that it did neither oppose to the appointment of Mr Alexis Schoeb as arbitrator, nor to the consolidation of the proceedings.

37. On 18 October 2019, the Player filed his Appeal Brief in the matter CAS 2019/A/6468, seeking the following relief:

*"**1.** To accept this Statement of Appeal against the Decision with regards exclusively the following part:*

***2.** To modify the compensation for breach of contract awarded in favour of the Player in point 2 of the Decision (its page 14) and condemn the Respondent to the payment of the following amounts:*

***i.** Pay the Appellant the additional NET amount of **EUR 3,400,000.00/-** (three million four hundred thousand Euro) plus five percent (5%) per annum interest rate, starting from the 3rd of August 2016 until its effective and entire payment as the residual value of his employment contract with the First Respondent;*

***ii.** Pay the Appellant the NET amount of **EUR 850,000.00/-** (eight hundred and fifty thousand Euro) based on the specificity of sport plus five percent (5%) per annum interest rate, starting from the 3rd of August 2016;*

***iii.** Pay the Appellant the amount of **EUR 3,780,838.00/-** (three million seven hundred eighty thousand eight hundred thirty eight Euro) as a "gross up" in relation to the taxes the Player will burden in his current place of residency, i.e. Germany, upon being paid by the Respondent*

*the amounts specified in **(i)** and **(ii)** above which had to be earned by the Appellant as net amounts;*

iv. *An amount to be determined (as in-kind benefits) subject to further gross up upon due calculation, whenever the Club will comply with our evidentiary request in order to allow the Player to its quantifications plus five percent (5%) per annum interest rate.*

3. *To order FIFA the imposition of sporting sanctions to the First Respondent: i.e. a ban on registering new players either nationally or internationally, for two entire consecutive registration periods;*

4. *To condemn the First Respondent to the payment of the whole CAS administration costs and arbitrators fees – if any;*

5. *To condemn the First Respondent to the payment of EUR 25,000.00/- as contribution to the legal fees of the Appellant;*

6. *To determine any other any other* [sic] *relief the Panel may deem appropriate".*

38. On 4 November 2019, [Al] filed its Appeal Brief in the matter CAS 2019/A/6478 with the following requests for relief:

"1. Declare this Appeal admissible;

2. Set aside entirely the decision of the FIFA Dispute Resolution Chamber and issue a new decision;

3. Declare that the HRH […] *was not empowered to validly conclude an employment contract with the Respondent on 1 June 2016;*

4. Declare that no valid employment contract had been entered into between the Appellant and the Respondent on 1 June 2016;

Alternatively, to points 3 and 4:

5. Declare that no breach of contract had been committed by the Appellant;

6. Declare that no compensation or outstanding remuneration shall be payable by the Appellant to the Respondent;

Alternative, and subsidiary to point 6:

7. further [sic] *mitigate the damages awarded by the FIFA Dispute Resolution Chamber as per the arguments developed in this Appeal Brief;*

And in any case,

8. Order the Respondent to bear the costs of proceedings before the Court of Arbitration for Sport;

9. Award a contribution to be established at its discretion to cover the legal fees and expenses of the Appellant".

39. On 12 November 2019, on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel which had been appointed in order to rule on the present dispute was constituted as follows:

President: Mr Alain Zahlan de Cayetti, Attorney-at-law in Paris, France;

Arbitrators: Mr Manfred Nan, Attorney-at-law in Arnhem, the Netherlands;
Mr Alexis Schoeb, Attorney-at-law in Geneva, Switzerland.

40. On 29 November 2019, the CAS Court Office informed the Parties that Mr Yago Vázquez Moraga, Attorney-at-law in Barcelona, Spain, had been appointed as *ad hoc* Clerk, in order to assist the Panel in these proceedings.

41. On 17 December 2018, in accordance with Article R55 of the CAS Code, FIFA filed its Answer in the matter CAS 2019/A/6468, requesting the CAS to:

"(a) Reject the Appellant's appeal in its entirety;

(b) Confirm the decision rendered by the Dispute Resolution Chamber on 1 February 2019;

(c) To order the Appellant to bear all costs incurred with the present procedure and to order the Appellant to make a contribution to FIFA's legal costs".

42. On 18 December 2019, the Player filed his Answer in the matter CAS 2019/A/6478, requesting the CAS:

*"**1.** To dismiss the appeal filled by* [Al] *against the Player with respect to the decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (hereinafter referred as the "FIFA DRC") on the 1st of February 2019, communicated to the Parties with the grounds on the 2nd of September 2019;*

***2.** To condemn the Appellant to the payment of the whole CAS administration cost and the Arbitrators fees.*

3. *To fix a sum of 20,000 CHF to be paid by the Appellant to the Player to help the payment of his legal fees covering the costs of its legal representation in front of the judicial bodies of the Court of Arbitration for Sport".*

43. On the same date, 18 December 2019, [Al] filed its Answer in the matter CAS 2019/A/6468 requesting the CAS to:

"1. Dismiss the Appellant's Appeal;

2. Award to the Appellant a compensation for breach of contract in the amount of EUR 175,000;

Alternatively to point 2,

3. Award to the Appellant a compensation for breach of contract of EUR 976,666;

4. Reject the Appellant's claim for gross-up of the amount awarded as compensation;

Alternatively to point 4,

5. Appoint a German tax expert in order to proceed to the gross-up of the compensation awarded;

And in any case,

6. Reject the Appellant's request to impose sporting sanctions on the Respondent;

7. Order the Appellant to bear the costs of proceedings before the Court of Arbitration for Sport;

8. Award the Respondent a contribution to be established at its discretion to cover the legal fees and expenses of the Respondent".

44. On 6 January 2020, upon the Parties' request and in accordance with Articles R57 and R44.3 of the CAS Code, the Panel ordered (i) the Club to provide a copy of its regulations applicable to the Player, effective on the date of the Employment Agreement and (ii) FIFA to produce a copy of the complete FIFA DRC file.

45. On 7 January 2020, after consultation with the Parties, the CAS Court Office informed the Parties that, pursuant to Article R57 of the CAS Code, the Panel had decided to hold a hearing in these proceedings.

46. On 10 January 2020, FIFA produced a copy of the complete FIFA DRC case file.

47. On 15 January 2020, the Club provided a copy of its regulations applicable to the Player, together with their translation into English.

48. On 4 February 2020, the CAS Court Office issued the Order of Procedure of consolidated proceedings, which was duly signed by the Parties. In its copy of the signed Order of Procedure, the Club included a caveat providing: *"*[Al] *reserves all its rights in connection with the decision of the Panel notified on 6 January 2020 whereby it rejected* [Al]*'s requests for production of documents made in its Appeal Brief dated 4 November 2019 and its Answer to the Appeal of* [M] *dated 18 December 2019".*

49. On 14 February 2020, a hearing was held in Lausanne in these consolidated appeal proceedings. The following persons attended the hearing:

- For the Player: Mr Lorin Burba, Mr Alfonso León Lleó, counsels;
- For the Club: Mr Gauthier Bouchat and Mr Sven Demeulemeester, counsels;
- For FIFA: Mr Jaime Cambreleng and Mr Alexander Jacobs, counsels.

In addition, Mr Antonio de Quesada, CAS Head of Arbitration, and Mr Yago Vázquez Moraga, *ad hoc* Clerk, assisted the Panel at the hearing.

50. At the outset of the hearing, the Parties confirmed that they had no objections with regard to the constitution and composition of the Panel. During the hearing, the Parties had the opportunity to present their case, submit their arguments and answer all the questions posed by the Panel. At the end of the hearing, the Parties and their counsels expressly declared that they did not have any objections with respect to the procedure adopted by the Panel and that their right to be heard had been fully respected.

51. This award is rendered within the extended deadline granted by the Deputy Division President, pursuant to Article R59 of the Code.

V. SUBMISSIONS OF THE PARTIES

52. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each contention put forward by them. However, in considering and deciding the Parties' claims, the Panel, has carefully considered all the submissions made and the evidence adduced by the Parties, even if there is no specific reference to those submissions in this section of the award or in the legal analysis that follows.

A. Submission of the Player

53. The Player's submissions, in essence, may be summarized as follows:

54. The Player agrees with the finding of the FIFA DRC that the Employment Agreement was valid and binding and was terminated by the Player with just cause. However, the Player

considers that the FIFA DRC miscalculated the amount of the compensation (*i.e.* EUR 976,666) and did not provide sufficient grounds for the applied method of calculation. The Player sustains that based on the provisions of Article 17.1 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), Article 337c of the Swiss Code of Obligations (the "SCO") and the principle of "positive interest", the compensation shall be equal to the residual value of the Employment Agreement mitigated by any amount earned by the Player from the new employment contracts covering the same period of time. Therefore, the Player alleges that in the present case the compensation which the FIFA DRC should have awarded was the value of the Employment Agreement (*i.e.* EUR 3,400,000) minus the amounts earned by the Player as a result of the new contracts signed with [K] (*i.e.* EUR 400.000) and with [A] (*i.e.* USD 70,000 or EUR 60,869). The Player further insists that the actual remuneration received by him under the contract with [K] was EUR 252,875.51 only. Therefore, the total amount to be deducted as mitigation of the total compensation is EUR 313,726.51 (EUR 252,875.51 plus EUR 60,869).

55. The FIFA DRC considered that the amount of the compensation had to be reduced based on the fact that, allegedly, the execution of the contract had never started, whereas such grounds are not retained by Article 17.1 of the FIFA RSTP. Accepting this criterion would create a precedent, and would, in particular, cause clubs to prematurely terminate employment contracts.

56. The Player affirms that, contrary to FIFA DRC's findings, the Employment Agreement was in force as from the 1st June 2016 until its termination on the 3 of August 2016 and was executed during this period. Indeed, the Player sustains that the execution of the Employment Agreement is clearly established by the fact that, on 14 July 2016, the Player has joined [Al]'s training camp in Croatia and has been officially presented as a new player of its team. Ultimately, the Player considers that the failure to continue the execution of the Employment Agreement *"was caused exclusively due to the deliberate fault of* [Al]*"*.

57. Furthermore, the Player indicates that the compensation must be increased due to the specificity of sport in accordance with Article 337c par. 3 of the SCO. The Player considers that, taking into account all circumstances of the case and, in particular, the Club's bad faith, the compensation must be increased with an extra amount corresponding to six months of salary (*i.e.* EUR 850,000). To this end, the Player refers to the following circumstances which should be taken into account in order to calculate the amount of the compensation: (a) the Club made the Player terminate his employment contract with [K], (b) the Player had to sign a contract with the […] club with a significantly lower salary, (c) the Club ignored the Player's repeated requests and did not reply to his correspondence, (d) the Club made the Player terminate the Employment Agreement within the protected period, (e) the Club hired other players to replace the Player when the Employment Contract was still in force, (f) the Club left the Player unemployed few weeks before the end of the most part of transfer windows worldwide which affected his negotiations with new clubs, (g) the Club caused a severe damage to the Player's sporting career.

58. Furthermore, the Player claims that, considering that salaries in Saudi Arabia are not subject to taxes and that the amounts received from clubs are deemed to be net, the claimed amounts shall be increased to their gross values. Therefore, the Player submits that he shall be entitled to an extra amount of EUR 3,780,838, corresponding to the gross-up calculated by an expert and taking into account the current tax residency of the Player (*i.e.* Germany).

59. Finally, the Player claims for benefits in kind agreed on in the Employment Agreement.

60. Concerning the Appeal filed by [Al], the Player considers it to be groundless and an attempt to mitigate the amount of the compensation awarded. In that regards, the Player affirms that:

- The Employment Contract was validly signed by [Al]. It is not true that from 8 May 2016 onwards nobody was able to legally represent the Club until the GSASA appointed an interim board. Apparently, the members of the Board have expressed their intentions to supposedly resign from their position at the end of the sporting season (hence without immediate effect). However, the Club did not provide any evidence supporting that the alleged resignations were accepted and/or executed in accordance with the provisions of Articles 35 and 36 of the Club statutes. Therefore, the Board was not dissolved at the time the Employment Agreement was signed. In any case, the alleged resignations were not acknowledged until 8 June 2016, when the interim board has been appointed by the competent authority.

- Moreover, [Al] did not express any intention to revoke HRH […]'s mandate. In fact, after the announcement of his resignation on 5 May 2016, HRH […] kept negotiating and signing contracts on behalf of the Club, and the latter did not take any actions in order to inform the corresponding third parties of the President's alleged resignation. As a result, HRH […] appears to have had the legal capacity to act on behalf of the Club for the execution of the Employment Agreement and he should be considered as an obvious and authorized representative of [Al]. In that regard, the Player considers that the re-election of HRH […] as President of [Al] on 11 June 2016, resulted in the confirmation and ratification of all the acts that he executed during the alleged transitional period. Should [Al]'s allegations be correct, it would have had to consider bringing a claim against HRH […] for any damage which it would consider having suffered accordingly.

- In line with this, the Player considers that the ratification of the Employment Agreement by [Al] is proved by the Club's conduct, in particular, by its acceptance of the Player's participation in the training camp held by the Club in Croatia on 14 July 2016, and by its official presentation of the Player as its new team-member through its social media (Twitter and Instagram). Therefore, the Club is bound by the Employment Agreement.

- The Player firmly denies the Club's accusations of forgery (*i.e.* forgery of signatures under the agreements of 4 July 2016). The Player indicates that, despite having the burden to prove the existence of the alleged forgery, the Club (i) has not presented any evidence,

whatsoever, supporting such accusation, (ii) has not conducted any internal investigation with regard to the procedure of signing of these documents, (iii) has failed to file a criminal complaint against the Player, (iv) has not called any witnesses with regard to the alleged forgery, although the allegedly forged signatures belong to the Club's representatives, and, finally, (v) has not filed any counterclaim against the Player on this basis. Additionally, the Player remarks that in its correspondence of 7 August 2016, the SAFF acknowledged the signing by the Club of these documents, affirming however that the person who had signed it did not have the authority to represent and bind the Club.

- The Player rejects [Al]'s accusation of having infringed Article 18.5 of the FIFA RSTP for having entered into simultaneous contracts. He affirms that on the date of entering into the Employment Agreement, his contract with [K] was terminated and, therefore, no infringement can be attributed to him.

- The Player has terminated the Employment Agreement with just cause since it became obvious that the Club was not willing to comply with its contractual obligations. In particular, at the time of the termination, [Al] had breached several obligations of the Employment Agreement and owed the Player the amount of EUR 883,333, representing 49% of the total salary of the Player for the entire season 2016/2017. As a result, the Club had committed a substantial breach of its payment obligations and the Player was entitled to unilaterally terminate the Employment Agreement with just cause.

- In reply to the Club's statement that the Player was not paid due to his failure to undergo the required medical test, the Player affirms that this argument shall be disregarded as it breaches the provisions of Article 18.4 of the FIFA RSTP.

B. Submission of the Club

61. [Al]'s submissions, in essence, may be summarized as follows:

62. In the first place, [Al] submits that it has not entered into the Employment Agreement with the Player and that, in any event, it was not signed by an individual who had legal capacity to act on behalf of the Club. In this respect, [Al] affirms that due to the resignation of the members of its Board between 5 May 2016 and 8 May 2016, HRH […] had no power to legally act and represent the Club in accordance with the Club's statutes. Therefore, from 8 May 2016 until 7 June 2016, date on which the GSASA appointed an interim board, nobody was able to legally represent the Club. Consequently, [Al] submits that even if it was established that HRH […] had signed the Employment Agreement, the Club was not bound by this contract.

63. In this context, [Al] adduces that according to Articles 32 et seq. of the SCO a principal (*i.e.* [Al]) would only be bound by the acts of an unauthorised agent (*i.e.* HRH […]) under two circumstances, when (i) the appearance of powers is attributable to the principal, or (ii) the acts of an unauthorized agent are ratified by the principal, which do not occur in the present case.

Furthermore, the Club indicates that neither the Player nor his legal counsel requested for any proof of HRH […]'s power to represent the Club and, hence, they did not comply with their duty of diligence. On the contrary, the Club has acted diligently by publishing on the social media all relevant information with regards to the resignation of the members of its Board and other information relating to the elections held.

64. Furthermore, [Al] affirms that neither the Club's interim board, nor the new board, nor any of their individual members have ratified the Employment Agreement, in an express or in a tacit manner. On the contrary, in its correspondence of 30 July 2016, the Club has contended that it has never had the intention to recruit the Player, and hence that HRH […]'s intent when concluding the Employment Agreement did not match with that of the Club. In these circumstances, there being no mutual expression of their intent by the parties, in accordance with Article 1 of the SCO, the Employment Agreement cannot be deemed valid. Therefore, [Al] sustains that the Player should have exercised the remedy foreseen in Article 39 of the SCO which grants him the right to claim damages against any pseudo-agent instead of against the Club. Regarding the three other agreements of 4 July 2016, [Al] argues that the considerations made with respect to the Employment Agreement, apply to such agreements.

65. On a subsidiary basis, should the Panel consider that the Employment Agreement is valid, the Player would not be entitled to receive any compensation due to his behaviour in bad faith. In that regard, [Al] claims that the agreements dated 4 July 2016 were forged by the Respondent and [K] with the intention to extort funds from the Club. [Al] considers that the failure by the Player to provide any original copy of these agreements, to be paradoxical, given that such agreements never existed and were never signed by any of the parties. In the event that such documents would have been exchanged between the parties by e-mail, the relating correspondence sent from an official electronic address of [Al], would have been in the Player's possession. Moreover, the comparison of the signatures contained in the agreements with the signature under the Employment Agreement leads the Club to the conclusion that the documents of 4 July 2016 were forged. Additionally, [Al] considers that [K]'s failure to lodge a complaint against it for the alleged breach of the tripartite agreement and for the payment of the buy-out clause, evidences that these documents were forged. Therefore, should the Employment Agreement be deemed attributable to the Club, the Player should not be awarded with any compensation due to his bad faith behaviour in trying to artificially (through the forged agreements) increase the amount of such compensation.

66. Furthermore, [Al] maintains that the Player fabricated the Termination Agreement in order to obtain an undue compensation from the Club. [Al] argues that it makes no sense that the Player first accepted the extension of his employment contract with [K] for the season 2016-2017 and few days after, signed the Termination Agreement by virtue of which he committed to pay EUR 500.000 to [K]. According to [Al], the only explanation is that such document was fabricated at a later stage together with the documents dated on 4 July 2016, in order to extort funds form [Al] and to build the present case.

67. The Club also sustains that, as the Termination Agreement was fabricated, at the time of signing the Employment Agreement the Player was still employed by [K] and thus infringed Article 18.5 of the FIFA RSTP. In that regard, [Al] considers that, pursuant to Article 44 of the SCO and in accordance with the principle *nemo auditur propriam turpitudinem allegans,* the Player must not be entitled to any compensation as he was at fault when entering into the Employment Agreement.

68. In addition, [Al] affirms that, since the Employment Agreement was never executed, the Player is not entitled to receive any damages. In that regard, the Club emphasizes that the Player was never registered with [Al], never travelled to Saudi Arabia to join the Club and, furthermore, according to some press publications, he re-joined [K] on 1 July 2016.

69. In any event, should the Employment Contract be considered as executed, the Player did not have just cause to terminate the contract on the basis of alleged outstanding payments. The Club has indicated that it was entitled to suspend the payment of the Player's salary since he was not rendering any services to the Club and had not passed the medical test.

70. With regard to the calculation of the compensation, the Club considers that, in line with Swiss jurisprudence, given that the Employment Agreement was terminated before the start of the employment relationship, the employee would have to be compensated based on the theory of *"negative interest"*, and not "positive interest" as the Player insists. This means that the employee must be financially placed in the position which he would have if he never concluded the contract. Accordingly, the damages included are the losses and costs incurred by the employee as a result of the negotiation and signature of the contract. Moreover, the Club notes that according to the Article 42 of the SCO, the burden to prove these damages lies on the Player, as the creditor. The Club recognizes that the employee may be entitled to additional compensation provided by Article 337c par. 3 of the SCO, which lies in the Panel's discretionary power to decide on, depending on the circumstances of the case.

71. The Club clarifies that, based on the principle of *"negative interest"*, the Player's damages in the present case would be equal to EUR 175,000, representing the difference between the amount which the Player would have earned if he had stayed with [K] instead of signing with [Al] (*i.e.* EUR 575,000) and the amount obtained under his new agreement with [K] (*i.e.* EUR 400,000). In relation to the compensation of the expenses incurred by the Player, the Club considers that no amount can be granted based on the Player's failure to present any proof of such expenses. Finally, concerning the potential additional compensation envisaged by Article 337c par. 3 of the SCO, given that the breach in this case is only attributable to the Player (the non-execution of the Employment Contract), taking into account his acting in bad faith and committing a criminal offence by forgery, [Al] sustains that no additional compensation shall be awarded in this case.

72. In the event that the Panel considers that the execution of the Employment Agreement had started, the theory of the "positive interest" (Arts. 337c par. 1 and 2 of the SCO) would apply.

In this case, the residual amount of the Employment Agreement (*i.e.* EUR 3,400,000) and the amounts earned by the Player with [K] (*i.e.* EUR 400,000) and [A] (*i.e.* USD 70,000) would have to be taken into account. Furthermore, the commission due by the Player to his agent shall be deducted from the amount of the compensation.

73. Furthermore, the specificity of sport and the circumstances of the case (in particular, the Player's acting in bad faith, in particular, by forging documents and attempting to extort funds from [Al]) justifies the reduction of the compensation based on Articles 44 and 337c par. 1 and 2 of the SCO to EUR 976,666. And for the same reason, [Al] considers that the Player's claim for additional compensation must be rejected.

74. Finally, regarding the gross-up of the amount of the compensation, requested by the Player to cover the alleged tax burden which he would have to bear in Germany, [Al] requests that the Panel dismisses such relief based on the lack of any legal or contractual grounds. The Employment Agreement neither makes any reference to the salary amounts being *"net amounts"*, nor includes any clause establishing an obligation for the Club to fulfil any tax or any other financial obligation. In that regard, [Al] points out that the expert report submitted by the Player to quantify such tax burden is not reliable, as it is issued by an […] legal auditor.

C. Submission of FIFA

75. FIFA's submissions, in essence, may be summarized as follows.

76. FIFA considers that it has no standing to be sued in the present matter since the present proceedings concern a contractual dispute between the Player and the Club, which is *"exclusively of a horizontal nature"*. Based on Swiss law and CAS jurisprudence, a party in an arbitration proceeding only has standing to be sued if it has some stake in the dispute or if something is sought against it and it is personally obliged by the disputed right. In that regard and contrary to what happens in vertical disputes, in horizontal disputes only the counterparty of the legal relationship (*i.e.* [Al]) has standing to be sued.

77. FIFA sustains that the Player lacks the necessary legal standing to request the imposition of sporting sanctions on [Al]. Pursuant to FIFA's submissions, the Player has no legitimate interest on requesting the imposition of sporting sanctions on the Club, since he would gain nothing in the event when the Club is banned from registering players.

78. Regarding the compensation awarded by the FIFA DRC to the Player, FIFA affirms that the amount of such compensation (*i.e.* EUR 976,666) has been calculated taking into consideration (i) the amount which the Player would have received under the terms of the Employment Agreement if the same had been executed until its expiry (*i.e.* EUR 3,400,000), (ii) the remuneration received by the Player under the two new employment contracts (*i.e.* EUR 470.000) and, finally, (iii) the non-execution of the Employment Agreement. In that regard, FIFA notes that the amount of the awarded compensation corresponds to one third of the total

value of the Employment Agreement, which is in line with the jurisprudence of the FIFA DRC in cases of this kind, where a valid and binding contract did not come into force due to a failure attributable to the club.

79. Finally, taking into account that the Player maintained his Appeal against FIFA even though the latter had requested to be excluded from these proceedings, FIFA submits that it should be awarded with the compensation of the costs and legal expenses incurred by it in relation to the present proceedings.

VI. JURISDICTION

80. Article R47 of the CAS Code states:

> *"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 it prior to the appeal, in accordance with the statutes or regulations of that body".*

81. Article 57.1 of the FIFA Statutes provides the following:

> *"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents".*

Additionally, Article 58.1 of the FIFA Statutes provides:

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

82. Article 24.2 of the FIFA RSTP states:

> *"Decisions reached by the DRC or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS)".*

83. In consideration of the provisions mentioned above and of the fact that (a) the jurisdiction of the CAS is not contested by the Parties, and (b) the Parties have expressly recognized the jurisdiction of the CAS by signing the Order of Procedure, the Panel is satisfied that the CAS has jurisdiction to decide the present matter.

VII. ADMISSIBILITY

84. Article R49 of the CAS Code provides as follows:

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

85. Article 58.1 of the FIFA Statutes establishes:

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

86. The grounds of the Appealed Decision were notified to the Player and to the Club on 2 September 2019, and they filed with the CAS their Statements of Appeal on 20 and 23 of September 2019, respectively, hence within the 21-day term established by the applicable regulations. It follows that both appeals are admissible.

VIII. APPLICABLE LAW

87. Article R58 of the 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".*

88. Furthermore, Article 57.2 of the FIFA Statutes provides:

> *"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".*

89. On the other hand, the Panel notes that in clause 3 of the Employment Agreement the parties agreed on the following:

> *"The two parties shall comply with and implement laws, circulars and regulations issued by SAFF, FIFA, the Confederation and Saudi professional league".*

90. In addition, in clause 13.1 of the Employment Agreement, the parties established:

"The two parties declare that they have taken note of SAFF and FIFA regulations and circulars before signing this contract and that they are obliged to implement them".

91. Both the Player and FIFA consider that the present arbitration shall be decided in accordance with the FIFA Statutes and regulations and, in particular, in accordance with the FIFA RSTP, which they deem to be applicable in the sense of Article R58 of the CAS Code. In addition, both parties submit that Swiss law shall be applied on a subsidiary basis, in case there is a legal matter that is not covered by the applicable regulations.

92. On the contrary and despite having challenged the validity of the Employment Agreement, the Club contends that the parties agreed that for the purposes of the Employment Agreement any dispute would have to be decided in accordance with the SAFF regulations, the FIFA RSTP and *"the Saudi Arabian law and regulations"*, which the Club considers to be the applicable law in the present matter.

93. The Panel observes that the Appealed Decision was rendered by the FIFA DRC which settled the dispute in accordance with the FIFA regulations and, in particular, with the FIFA RSTP. Therefore, as starting point, the Panel finds that the FIFA regulations are to be deemed the applicable regulations in the sense of Article R58 of the CAS Code. Therefore, the present dispute shall be decided in accordance with the *"various regulations of FIFA and, additionally, Swiss law"* (Article 57.2 of the FIFA Statutes).

94. For the sake of completeness, and in relation to the legal framework referred to by the parties in the Employment Agreement, the Panel notes that, contrary to what [Al] sustains, the parties agreed to comply with the regulations of the SAFF and FIFA (as well as those from the Confederation and the Saudi professional league), and not to the *"Saudi Arabian law and regulations"*, as it is affirmed by [Al]. Therefore, without prejudice to the consideration that the Panel may make application, if necessary, of the law of Saudi Arabia in accordance with Article 17.1 of the FIFA RSTP *("compensation for the breach shall be calculated with due consideration for the law of the country concerned")*, such national legal framework cannot be considered as the law applicable to the present dispute. Moreover, the Panel notes that [Al] in its submissions relies on Swiss law, in particular the Swiss Code of Obligations.

95. Furthermore, regarding the potential applicability of the SAFF regulations, the Panel firstly observes that in the Employment Agreement the parties referred, indistinctly, to both the FIFA and the SAFF regulations, without giving preference to any of these regulations over the other. Therefore, in the Panel's view, both parties unconditionally accepted the applicability of the FIFA regulations to their employment relationship. Furthermore, even if, *quod non*, a conflict between the parties' choice of law and the *"applicable regulations"* resulting from the application of Article R58 of the CAS Code existed in this matter, the applicable regulations (*i.e.* the FIFA regulations) would take precedence over the law chosen by the parties, as they are mandatorily applicable in accordance with the aforementioned Article R58 of the CAS Code.

96. This notwithstanding, should there be any relevant issue in this matter, which is not governed by the applicable FIFA regulations, the Panel may apply the SAFF regulations when specifically relied upon, in accordance with clauses 3 and 13.1 of the Employment Agreement.

97. Therefore, taking into account the aforementioned, the Panel concludes that the law applicable to these proceedings shall be, primarily, the FIFA regulations and, in particular, the FIFA RSTP, and additionally, Swiss law, in accordance with Article 57.2 of the FIFA Statutes.

IX. MERITS OF THE APPEAL

A. Preliminary note: FIFA's alleged lack of standing to be sued

98. As a preliminary point and in respect of FIFA's alleged lack of standing to be sued, for reasons of procedural economy the Panel considers that it is not necessary to address this issue in the present award, since the determination made regarding the Player's alleged lack of a legitimate interest to request the imposition of sporting sanctions (as it will be developed in the Issue 4) below) makes this submission moot.

B. Introduction

99. In consideration of the facts in dispute and taking into account the content of the Appealed Decision, the main issues to be resolved by the Panel are as follows:

1. *Was the Employment Agreement valid and binding?*

2. *Did the Player terminate the Employment Agreement with just cause?*

In the affirmative:

3. *What are the legal consequences deriving from the termination of the Employment Agreement with just cause?*

4. *Are sporting sanctions to be imposed on* [Al]*?*

1. Was the Employment Agreement valid and binding?

100. The Panel observes that the validity of the Employment Agreement is contested by the Club which insists that the contract was null and void *ab initio*, based on the allegation that the individual who executed it on behalf of [Al] (*i.e.* HRH […]) at that time had no legal capacity to represent and act on behalf of the Club.

101. In particular, [Al] sustains that at the time of execution of the Employment Agreement (*i.e.* 1 June 2016), HRH […] was no longer the President of the Club due to his resignation and to the dissolution of the Club's Board as a result of the collective resignation of all its members. In its view, the only persons empowered to enter into binding contracts on behalf of [Al] were the three members of the Club's interim board, who were appointed on 7 June 2016 by the GSASA. Furthermore, [Al] holds that HRH […] acted as an *"unauthorised agent"* of the Club in the sense of Articles 32 to 39 of the SCO, and that his acts could not bind or oblige the Club.

102. The Player objects such submission and considers that the contract was valid and binding. First, the resignation of the members of the Board did not take effect until the end of the sporting season (*i.e.* 29 May 2016). Second, the formal requirement foreseen in Article 35.2 of [Al]'s statutes was not fulfilled. Third, the dissolution of the Board was not acknowledged by the President of the GSASA until 7 June 2020. Finally, the Player insists that the Employment Agreement was in any event ratified afterwards.

103. With regard to the events leading to the dissolution of [Al]'s Board the Panel observes that, in accordance with the evidence produced by the Parties, the chronology of the facts was the following:

    (i) Between 5 and 8 May 2016, all members of the Club's Board have informed its Secretary General about their decision to resign from their positions *"as of the end of the sportive season 2015/2016"*.

    (ii) In particular, HRH […] presented his resignation letter on 5 May 2016. Furthermore, he made a public statement in which he announced that he was going to *"step down from his position at the end of this season after 7 years of managing the club"* and that his *"last game as* [Al]*'s president will be the King's Cup final"*, to be played on 27 May 2016.

    (iii) On 2 June 2016, HRH […] gave a press conference on television regarding his resignation from the presidency of the Club.

    (iv) On 6 June 2016, the Player's counsel has sent a letter to [Al] stating that they *"carefully followed the televised press conference of His Royal Highness made on 2 June 2016, at 23.30, which we have registered and documented for evidence purposes. Acknowledging the fact that His replacement might take several time, we inform* [Al] *that this is a completely administrative issue which does not affect our contractual relationship"*.

    (v) On 7 June 2016, the President of the GSASA has issued a resolution *"based on article (59\18) of the basic regulation of sports clubs"*, by which he acknowledged the collective resignation of [Al]'s Board and approved the appointment of an interim board to manage the Club until the date of the Club's General Assembly. In this same resolution he also called for the elections to renew the Club's Board.

(vi) On 28 July 2016, the GSASA approved and proclaimed the composition of the Club's new Board, in accordance with which HRH […] was re-elected as President of [Al] for a new term.

104. Since the FIFA regulations do not provide any specific rule regarding the power and capacity to represent legal entities, and no evidence was filed to assess that the SAFF regulations provide such rules, the Panel shall assess this question in accordance with Swiss law (as invoked by the parties) and with the statutes and regulations of [Al]. In that regard, the Panel observes that [Al]'s statutes establish a specific procedure for the resignation of the members of its Board (Article 35), as well as for the dissolution of the Board in full (Articles 36 and 59). In particular, when the members of the board resign, *"The Secretary General shall present the proof of death or resignation to the board of directors and to confirm that on board of directors minutes of meeting"*. However, [Al] has not produced the copy of such minutes and hence, it is unknown whether such meeting aimed to acknowledge the resignation of the members of the Board, was held.

105. Furthermore, the Panel notes that, with respect to the dissolution of the Board, Article 59 of [Al]'s statutes (or *"the basic regulation of sports clubs"*, as it is referred in the resolution of the GSASA of 7 June 2016), provides the following:

"Article (59) Voting and election

18) ***The presidency shall assign one of the board members to run the club's affairs or to assign temporary new board of directors to manage the club after*** *the expiration of regular board of directors term, or* ***dissolution of the board of directors*** *for any reason illustrated in this regulation, or when half of member resigned, or more than half of membership expired, for a period of time starting of one month up to one year if required for the club general interest it can be extended to another more one year.*

The temporary board of directors will handle all affairs of elected board of directors, and he must work to remove all violations which lead to dissolute the previous board, and to send invitation to general assembly for meeting (extraordinary) to elect new board of directors at the time decided by the presidency. A detailed report about the club should be presented to the general assembly, including what has been done during his management period"[3] (emphasis added).

106. Therefore, the Panel observes that, in its view, contrary to [Al]'s allegations, pursuant to the Club's own statutes it was not possible that *"from 8 May 2016 onwards nobody was able to legally represent the Club and this until the Saudi General Sport Authority appointed an Interim Board of Directors"*. The Panel cannot endorse such argument, as it would imply that the Club would have been without a legal representative for a long period. Just like any other legal entity, a football club cannot be headless (*i.e.* with no legal representatives). That situation would provoke the paralysis of the Club and will bring legal uncertainty not only to the Club itself but also to third parties.

3 Certified translation provided by [Al] and not contested by the Parties.

107. To the contrary, the Panel is of the opinion that pursuant to Article 59 of the Club's statutes, the dissolution of the Club's Board could not be effective until a *"temporary new board of directors"* was appointed to manage the Club until the relevant extraordinary General Assembly (in which the new board would be elected) took place. In the present case, the interim board of [Al] was appointed on 7 June 2016 and hence, the Panel concludes that all acts, contracts and transactions executed by the Club's outgoing Board and by its President were valid and binding for the Club, in particular, the Employment Agreement which was signed on behalf of [Al] by HRH […] on 1 June 2016.

108. The Panel considers that, even if *arguendo*, it was assumed that on 1 June 2016 HRH […] could not formally act on behalf of [Al], the legal effect would remain the same. In view of such assumption, the Employment Agreement would be valid and binding for the Club, since the Player would have had the legal status of a third party in good faith, in the sense of Article 33 par. 3 of the SCO and, in particular, of Article 34 par. 3 of the SCO invoked by [Al], which provides:

> *"Where the represented party has expressly or de facto announced the authority he has conferred, he may not invoke its total or partial revocation against a third party acting in good faith unless he has likewise announced such revocation".*

109. In that regard, the Panel observes that under Swiss law, the communication of the power to represent a party can be made in an express manner or be deducted from an express act. In particular, in accordance with the Swiss scholars, *"La communication prend la forme concluante lorsque la volonté de faire connaître les pouvoirs peut être déduite du comportement du représenté, conformément au principe de la confiance"*, which can be freely translated into English in the following terms: *"The communication is conclusive when the will to make public the powers can be deducted from the behaviour of the represented party, in accordance with the principle of protection of trust"* (THÉVENOZ/WERRO, *Commentaire Romand, Code des Obligations I*, Helbing & Lichtenhahn , p. 294).

110. When the Player started his negotiations with the Club on or around 16 April 2016, HRH […] was undoubtedly the President of the Club. At that time, he had been the President of the Club for 7 years, and hence, it was of public knowledge that he represented and had powers to act on behalf of the Club. In addition, HRH […] appeared in [Al]'s official web page as the President of the Club. In line with this, the person who held the negotiations on behalf of [Al], Mr […], was its Board's Chairman Office Manager, and appeared in the Club's webpage. Therefore, in accordance with the legal principle of protection of trust *(Vertrauensschutz),* considering that HRH […] had been the President of the Club for 7 consecutive years, that in its official webpage [Al] was publishing him as its President and that no official communication had been made at that time by the Club regarding the resignation of its President (indeed, the press conference given by HRH […] was given on 2 June 2016), under Swiss law such conduct will constitute a *"procuration tolérée"* (tolerated representation) or a *"procuration apparente"* (apparent representation), and hence, his acts will be binding for the Club towards a third party in good faith, in particular, the Player.

111. For the sake of completeness, ultimately, even if it was assumed that the Player could not be considered as a party in good faith in the sense of Articles 33 and 34 of the SCO *(quod non)*, the Employment Agreement will be also binding for [Al], in accordance with Article 38 par. 1 of the SCO, pursuant to which:

> *"Where a person without authority enters into a contract on behalf of a third party, rights and obligations do not accrue to the latter unless he ratifies the contract".*

112. In the present case, the Panel notes that [Al] ratified the Employment Agreement at least on two occasions. First, on 20 July 2016 (when the interim board of the Club was already in charge), in its correspondence to the Player, the Club referred *"to the Employment agreement signed with* [Al] *on 1 June 2016"* and assumed that the Employment Agreement was a valid and binding contract, even though its enforceability was allegedly made conditional (*quod non*) to the production by the Player of a proof that his employment with [K] had been terminated before entering into the Employment Agreement. Furthermore, following the appointment of its new Board, in the correspondence sent by [Al] to the Player and [K] on 30 July 2016, the former expressly acknowledged and tacitly ratified the Employment Agreement, in the following terms:

> *"*[Al] *didn't make any other agreement with the player or with any other third party except the agreement with the player of 1 June 2016 as free agent. (…)*
>
> *On the other hand, the player has failed to undertake his commitment to provide the proof of such termination of 31 May 2016 as allegedly in order to render the signed employment agreement of 1 June 2016 effective and executable.*
>
> *Respondent had never ever signed any settlement agreement with whatsoever parties except the agreement of 1 June 2016 which is voidable and non executable under such circumstances and facts".*

113. The Panel is of the opinion that through these letters, [Al] ratified the Employment Agreement and confirmed that HRH […] had the necessary capacity and legal powers to execute the Employment Agreement on behalf of the Club and to bind it, this being without prejudice to its consideration by the Club as *"voidable and non-executable"* due to the alleged non-fulfilment of a condition precedent which indeed was not established in the Employment Agreement (*i.e.* the Player to produce to the Club his termination agreement with [K] and to evidence that on 1 June 2016 he was a free agent). The parties had not established this condition in the Employment Agreement and hence, it could not affect its validity or enforceability, specially taking into account that, ultimately, when the Player entered into the Employment Agreement with [Al] he had already terminated his employment relationship with [K] and it was impossible to enter into simultaneous employment contracts, as [Al] sustains.

114. Finally and for the sake of completeness, the Panel considers that in the last instance, [Al] would have ratified the Employment Agreement with its own acts, in particular (i) by accepting the

Player at the Club's training camp in Croatia on 14 July 2020 and (ii) by publishing in its social media that the Player had been officially hired by the Club. For all these reasons, the Panel finds that the Employment Agreement was a valid and binding contract and hence, was mandatory for the parties.

2. Did the Player terminate the Employment Agreement with just cause?

115. On 3 August 2016, the Player unilaterally terminated the Employment Contract *"with just cause and immediate effects"*. The Appealed Decision held that such termination had just cause, *"given that the Respondent did not contest that it had not performed any of its obligations under the employment contract and that, in fact, it merely disputed the legal validity of such contract, the conclusion that a valid and legally binding employment contract had been entered into unavoidably leads to the decision that such contract was breached by the Respondent and subsequently terminated with just cause by the Claimant on 3 August 2016"* (Consideration nº 20 of the Appealed Decision).

116. However, [Al] claims that the Employment Agreement was never executed and hence, it was not possible for the Player to have just cause for terminating the contract. In particular, the Club sustains that no outstanding payments could exist since the Player did not render any service to the Club. In addition, [Al] holds that the Player's salary was only payable once he had passed the agreed medical test.

117. The Panel cannot endorse this line of argument. It concludes that the Employment Agreement was indeed executed, or at least it was executed to the extent possible, given [Al]'s reluctance to fulfil the contract and, ultimately, due to the Club's conduct, addressed to prevent the continued execution of the Employment Agreement. However, despite the Club's indifference towards the Player's numerous requests to fulfil the agreement, finally, due to the Player's perseverance, the Employment Agreement was, to say the least, executed *de facto*. In particular, this is clearly proven by the fact that the Player joined the Club's training camp on 14 and 15 July 2016, participating in the pre-season activity which the Club undertook in Croatia. Precisely, pursuant to Clause 5.3 of the Employment Agreement, *"Attend*[ing] *training, camp, seminars"* was one of the main contractual obligations of the Player. Therefore, the Panel considers that the Employment Agreement was indeed executed. This is also consistent with the fact that at this point [Al] decided to announce the joining of the Player through its social media.

118. Regarding the fact that the Player did not pass the medical examination referred to in Clause 4 of the Employment Agreement *("The first party shall comply with the following after the second party passes all required medical test")*, pursuant to Article 18.4 of the FIFA RSTP *("The validity of a contract may not be made subject to a successful medical examination and/or the grant of a work permit")* such provision is null and void and hence, cannot release the Club from its obligations towards the Player and, in particular, from its obligation to pay his salaries.

119. In accordance with Clause 4 of the Employment Agreement, from the total salary agreed for the first season (*i.e.* EUR 1,800,000) on 1 June 2016 the Club had to pay the Player a first

instalment in the amount of EUR 800,000. Subsequently, together with other in-kind benefits (house, transportation, flight tickets, etc.), at the end of each calendar month [Al] had to pay the Player a monthly salary of EUR 83,333. Therefore, on 3 August 2016, when the Player unilaterally terminated the agreement, [Al] owed him the total amount of EUR 966,666, this being 53,7 % of the Player's annual salary. In the Panel's opinion, this payment default was to be considered as an essential and substantial breach of [Al]'s contractual obligations.

120. In addition, by the time of the termination of the Employment Agreement, the Player on seven occasions had put [Al] in default for the non-fulfilment of its contractual obligations, through the remittance of the relevant letters. Notwithstanding the Player's proactive behaviour towards the fulfilment of the agreement and many opportunities given by him to the Club to redress its failure and to comply with its obligations, [Al] remained completely indifferent and passive until 20 July 2016, the date on which it sent its first reply to the Player, questioning the validity of the Employment Agreement.

121. The Panel considers that in such circumstances the Player could not reasonably expect that the Club was going to pay him the outstanding remuneration and to fulfil the contract in future and, therefore, the Employment Agreement was terminated by him with just cause in the sense of Article 14 of the FIFA RSTP and of Article 337 par. 2 of the SCO since, as it has been acknowledged by the CAS jurisprudence (CAS 2006/A/1180) *"The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5 et seq.)".*

122. Based on the foregoing facts and considerations, the Panel considers that the conditions established by the FIFA RSTP and the CAS jurisprudence to ascertain the existence of a serious and relevant breach by the Club of its contractual obligations entailing for the termination by the Player of the Employment Agreement with just cause, exist. Consequently, the Panel concurs in this respect with the FIFA DRC, and finds that the Player terminated the Employment Agreement with just cause.

3. The legal consequences deriving from the termination of the Employment Agreement with just cause

123. Having established that the Player had just cause to terminate the Employment Agreement, the Panel must determine the legal consequences arising out of [Al]'s breach of the contract. In that regards, Article 17.1 of the FIFA RSTP provides as follows:

"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".

124. The Appealed Decision established that the Club had to pay EUR 976,666 to the Player for its unjustified breach of contract on the basis of Article 17.1 of the FIFA RSTP. To this end, the FIFA DRC took into account the total remuneration agreed in the Employment Agreement (*i.e.* EUR 3,400,000) and deducted the amounts which the Player agreed on with [K] (*i.e.* EUR 400,000) and [A] (according to the FIFA DRC *"approx. € 70,000"*) in their subsequent agreements. As a result, the total amount after the deduction is EUR 2,930,000. However, considering that *"the execution of the contract had apparently never started"*, the FIFA DRC mitigated the amount of the compensation to EUR 976,666, applying the so-called *"one third rule"* on the grounds of *"long standing DRC jurisprudence"*, pursuant to which *"when a valid contract does not come into force due to a failure which can be attributed to the club, in such cases, the player is entitled to compensation from the club for an amount of one third of the total value of the contract"*.

125. Article 17.1 of the FIFA RSTP shall be taken into account, as the starting point, in consideration of this issue. The said article establishes the economic consequences of the termination of a contract without just cause and applies, analogically, to cases in which the contract is terminated by the non-breaching party with just cause.

126. Therefore, except otherwise established by the parties in the contract (*e.g.* penalty clauses, liquidated damages clause, etc.), the party in breach shall pay a compensation to the other party, which shall be quantified in accordance with the criteria established by this provision, without prejudice to any other relevant criterion that the Panel may consider appropriate depending on the circumstances of the case. This compensation is addressed to (i) foster the necessary contractual stability in the world of football and, additionally, (ii) when such contractual stability has failed, to re-establish the non-breaching party in the situation in which he or she would have been if the contract at stake had been completely fulfilled (theory of the "positive interest" or the "dommage positif"). At this point it shall be noted that the Club's request to limit in this case the compensation to the Player's *"negative damage"* on the grounds of the alleged non-execution of the contract, shall be rejected since, as it has been established by the Panel, that the Employment Agreement was indeed executed to the extent possible, taking into account the Club's behaviour intended to impede the fulfilment of the contract.

127. In this context, the amount of the compensation must be established taking into account the circumstances at stake, and considering the relevant objective criteria envisaged by Article 17.1 of the FIFA RSTP. Bearing in mind this guidance, the Panel observes the following:

(i) Remuneration and other benefits due to the Player under the Employment Agreement:

- Outstanding salaries: EUR 800,000 (first instalment due on 1 June 2016) and two monthly instalments of EUR 83,333 each, the total outstanding amount being of EUR 966,666;

- Residual value of the contract: EUR 833,334 for the season 2016/17 and EUR 1,600,000 for the season 2017/18, the total amount being of EUR 2,433,334;

- Regarding the in-kind benefits (housing allowance, luxury car, plane tickets, etc.) which might be taken into consideration and which the Player intended to claim, the Panel will disregard them since the Player has not quantified them or given any justification for their award.

  In this regard, the Panel notes that in accordance with Art. 8 of the Swiss Civil Code, *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives the rights from that fact"*. Therefore, the burden of proving the existence of an alleged damage lies on the claimant. In particular, in accordance with consistent CAS jurisprudence *"When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests a compensation who bears the burden of making as far as possible, sufficient assertions and who bears as well the burden of proof"* (CAS 2008/A/1519-1520).

  Therefore, given that in the case at hand the Player has not discharged his burden to prove the existence and reality of this specific damage claimed (the in-kind benefits), not having been able to quantify such alleged damage, the Panel shall dismiss this submission.

Thus, the total amount to be considered under this concept, is EUR 3,400,000.

(ii) Remuneration and other benefits due to the Player under the new contracts with [K] and [A]

- Contract with [K] (season 2016/17): EUR 400,000

  The Player claims that notwithstanding that the salary agreed on in this contract was in the total amount of EUR 400,000, [K] paid him only EUR 252,857.51. Considering that the criterion established by Article 17.1 of the FIFA RSTP refers to the remuneration and other benefits *"due"*, and not to benefits *"earned"* or *"paid"*, for the purpose of this quantification, the Panel will consider the salary

agreed on in the contract signed with [K], being in the total amount of EUR 400,000.

In that regards, if [K] did not fulfill its economic obligations towards the Player under this new contract, the latter will hold a credit against the […] club, being, hence, entitled to claim it before the competent jurisdiction. Therefore, such potential debt shall be disregarded for the purpose of the quantification of the damages suffered as a result of [Al]'s breach of the Employment Agreement.

- Contract with [A] (valid from 10 January 2018 to 10 June 2018): EUR 60,869[4].

Thus, the total amount to be considered under this concept, is EUR 460,869.

128. Therefore, taking into account these objective criteria and in principle, the amount which the Player should receive, in order to be re-established in a position of compliance, is EUR 2,939,131.

129. With regards to the claimed late payment interest, the Panel agrees with the Player and finds that, in accordance with Art. 102 of the SCO and well-established CAS jurisprudence, the compensation accrues interest from the date of the termination of the Employment Agreement (*i.e.* 3 August 2016) (and not from the date of filing the claim before the FIFA DRC, as the Appealed Decision held) and until its effective payment, at the interest rate envisaged by Article 104 par.1 of the SCO.

130. Furthermore, the Panel notes that the Appealed Decision reduced the amount of the compensation by two thirds, considering that *"the execution of the contract had apparently never started"*. As expressed, previously, the FIFA DRC justified its position based on several FIFA DRC precedents. It shall, first, be underlined that decisions rendered by the FIFA DRC are not binding to CAS' panels. Second, with regard to the three decisions of the FIFA DRC which FIFA specifically produced in support of the existence of an alleged *"long standing DRC jurisprudence"* and which would match this case, the Panel observes that the said three cases are not similar to the one at stake, where the Club blatantly circumvented its obligations from the outset of the contractual relationship, and prevented the normal execution of the contract.

131. To the contrary, the Panel is of the opinion that, in these circumstances, considering that the lack of execution serves as ground for the mitigation of compensation, precisely for the benefit of the party in breach, would be tantamount to promote and reward the blatant breaches of contracts: the more serious is the breach, the less severe is the sanction.

132. Taking into account the other criteria envisaged by Article 17.1 of the FIFA RSTP, in particular, (i) the fall of the contractual breach within the contractual protected period, (ii) the age of the

[4] The original remuneration was USD 70,000, which, according to the conversion into Euro submitted by the Player and not contested by the Parties, corresponds to EUR 60,869.

Player who at the time was 30 years old and hence, near the end of his sporting career, (iii) the behaviour of the Club which infringed its contractual obligations from the very beginning and remained passive and silent despite the numerous attempts from the Player to foster the execution of its contractual obligations, the Panel deems that the aforementioned amount of EUR 2,939,131 is appropriate taking into account the circumstances at stake.

133. Notwithstanding the foregoing assessment with regards to the compensation, the Panel must determine if there are any grounds which would mitigate the amount of this compensation, as [Al] is requesting or, on the contrary, increase it for the reasons submitted by the Player.

a. Potential mitigation of the compensation

134. The Panel observes that [Al] questions the veracity of the salary that the Player agreed with [A] (*i.e.* USD 70,000), suggesting that the Player may have accepted a lower salary than what he might have expected, hence, infringing his duty to mitigate the damages. This notwithstanding, the Club has not presented evidence or any reasonable proof which could lead to believe that such circumstance had taken place, and hence, this argument must be dismissed.

135. The Panel reaches the same conclusion regarding [Al]'s request to deduct from the compensation the commission that the Player may have paid to his agent in case the contract had been fulfilled. The Panel considers that the Club has not presented any reasonable argument to justify that the potential economic obligations which the Player may have had with his Agent, shall reduce the amount of the damages which [Al]'s breach of the Employment Agreement had caused. To the contrary, the Panel considers that the contractual relationship which the Player had with his agent in no way alters the Club's responsibility towards the Player and does not reduce the amount of the damages which its breach caused. For this reason, the Club's request is dismissed.

136. Finally, the Panel notes the Club's request to mitigate the compensation on the grounds of the specificity of sport and, in particular, due to the purported bad faith of the Player, who allegedly would have forged the agreements of 4 July 2016, in order to extort funds from [Al] and to obtain an unfair enrichment. Such request is inadmissible. The Panel notes that the Player does not ground his claim for compensation on the agreements of 4 July 2016, as he accepted the determination which the FIFA DRC had made with regard to these documents (*i.e.* they should be disregarded because the evidence produced was *"insufficient to establish their authenticity"*). Therefore, the Panel considers that these documents are not relevant for deciding the present appeals.

137. Furthermore, the Panel considers that, with regard to the alleged bad faith of the Player, such purported conduct has not been established during these proceedings. In that regard, except for submitting baseless accusations of forgery, [Al] has not produced any evidence which could indicate the forged nature of these documents. If the Club was convinced that the signature of HRH […] had been forged by the Player, it would have been expected to file a criminal

complaint against the Player for such a serious offence. Furthermore, given that the burden to prove such allegations lays on [Al], it could have requested, for instance, a handwriting expert to produce a report in order to submit it in these proceedings or, at least, to call HRH […] or Mr […] as witnesses, for the Panel to hear their version of the facts and to conduct examination. Indeed, the Club did not conduct any evidentiary activity and merely relied on its word and allegations, which is clearly insufficient to persuade the Panel about the veracity of such serious accusation. Therefore, [Al]'s request to mitigate the compensation based on these grounds, is rejected.

b. Potential increase of the compensation

138. The Player requests the Panel to increase the amount of the compensation on the grounds of the specificity of sport, by an *"extra sum"* corresponding to six months of salary, in line with the provisions of Article 337c par. 3 of the SCO. The Player justifies such petition by the alleged bad faith displayed by [Al] and, in essence, in its notorious intention to disrespect the Employment Agreement.

139. This petition however must be rejected. First, the Panel considers that, since such claim was not put forward by the Player before the FIFA DRC, submitting it at this stage constitutes a *mutatio libelli* which cannot be admitted. While Article R57 of the CAS Code gives the Panel full power to review the facts and the law of the case, it does not entitle the parties to modify the scope of their claim and to file with their appeal new claims that had not been put forward at the first instance *(pendente appellatio nihil innovetur)*. To the contrary, despite the parties' rights to complete, develop, quantify, submit new arguments or produce new evidence, among others, the scope of the Panel's review shall stick to the procedural object of the first instance proceedings. In this regard, the Panel is satisfied that this approach is also consistent with the previous CAS jurisprudence on this matter, pursuant to which *"the scope of the appeal is limited to issues arising from the Appealed Decision, i.e. amended claims may not go beyond the scope and the amount of the previous litigation. Hence, any new claim, which was not submitted to the DRC and for which there is no legitimate reason not to have been advanced in the previous litigation, should be rejected by the Panel as inadmissible"* (CAS 2012/A/2874). Therefore, this request is deemed inadmissible.

140. For the sake of completeness, in addition to this procedural obstacle which makes such petition inadmissible, the Panel, contrary to the Player's affirmations, considers that the facts which he submits, in order to justify his request, do not imply any extraordinary circumstance which could lead to the increase of the compensation based on the specificity of sport. To the contrary, such facts are precisely the grounds to sustain that the amount of the compensation established (*i.e.* EUR 2,939,131) is appropriate due to the circumstances at stake, despite the short effective duration of the contractual relationship (*i.e.* two months). For this reason, the Panel dismisses the Player's request to increase the amount of the compensation with an amount equivalent to 6 monthly salaries.

141. Finally, the Player submitted a request to be awarded with an additional amount intended to avoid or compensate the tax impact which the payment of the compensation will put on the Player in Germany. The Player sustains that salaries are not subjected to any tax in Saudi Arabia, and hence all amounts set out in the Employment Agreement were net. In particular, the Player claims for EUR 3,780,838 which would correspond to the gross-up of the compensation claimed.

142. The Panel rejects this submission for several reasons. First, analogous to the Player's request to increase the amount of the compensation due to the specificity of sport, this claim is not admissible for procedural reasons. At the first instance proceedings, the Player did not request any amount to mitigate the taxes which he would have to pay in Germany with regards to the compensation claimed. Therefore, for the reasons stated above, the Panel considers this claim to be inadmissible, as it constitutes a *mutatio libelli* which is not acceptable at this procedural stage.

143. This notwithstanding, and for the sake of completeness, the Panel deems it convenient to clarify that, in spite of this procedural obstacle, in any case such petition shall be rejected due to the lack of legal grounds. Clause 4 of the Employment Agreement evidences that at no time the parties agreed that the remuneration established in the Employment Agreement was to be considered as *"net amounts"*. In that regard, it is for each individual to fulfil his personal tax obligations and hence, the establishment of *"net amounts"* in a contract cannot be presumed. Obviously, if the parties had wished to agree the payment of net amounts they would have expressly specified this in the Employment Agreement as they apparently did in the contested *"Agreement for the execution of overdue payables"* of 4 July 2016, where all the amounts were referred to as net amounts. Consequently, this request is dismissed.

4. Are sporting sanctions to be imposed on [Al]*?*

144. The Player requests that the Panel orders FIFA to impose sporting sanctions on [Al], *i.e.* a *"ban on registering new players either nationally or internationally, for two entire consecutive registration periods"*. The Panel observes, however, that in both instances (FIFA DRC and CAS), the Player failed to provide any grounds for such request and to invoke any specific legal provision entitling him to do so. In these circumstances, the Panel is of the opinion that, in principle, the vagueness and lack of motivation of this petition should entail *per se* its dismissal.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by [M] on 20 September 2019 against the decision rendered by the FIFA Dispute Resolution Chamber on 1 February 2019 is partially upheld.

2. The appeal filed by [Al] on 23 September 2019 against the decision rendered by the FIFA Dispute Resolution Chamber on 1 February 2019 is dismissed.

3. The decision rendered by the FIFA Dispute Resolution Chamber on 1 February 2019 is confirmed with the exception of point 2 of the operative part of the decision, which is modified as follows:

   2. *The Respondent,* [Al]*, has to pay to the Claimant,* ***within 30 days*** *as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 2,939,131 plus 5% interest p.a. as from 3 August 2016 until the date of effective payment.*

4. (…).

5. (…).

6. (…).

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