Arbitration CAS 2020/A/6727 Benjamin Acheampong v. Zamalek Sports Club, award of 8 December 2020

Panel: Mr Hendrik Willem Kesler (The Netherlands), President; Mr Mark Hovell (United Kingdom); Mr Espen Auberg (Norway)

Football
Termination of the employment contract with just cause by the player
New regulatory framework regarding termination of contract with just cause
Waiver of remuneration
Consequences of just cause to terminate the employment contract
Unfair advantage according to Art. 21 SCO
Exploitation of straitened circumstances
Duty to substantiate factual allegations
Additional amount of compensation for damages

1. **In the June 2018 version of the FIFA Regulations on the Status and Transfer of Players (RSTP), Article 14 has been amended to include a new paragraph concerning abusive situations where the stance of a party (either a player or a club) is intended to force the counterparty to terminate or change the terms of the contract and that a new Article 14bis has been introduced in order to address the specific circumstance of terminating a contract due to overdue salaries. These amendments largely reflect the jurisprudence of the FIFA DRC and CAS and do not result in any particular changes to the practice in assessing breach of contract situations, with certain added requirements, such as a 15-day notice period. However, in assessing whether a club's conduct was of such a nature that a player could no longer be reasonably expected to continue the employment relationship with the club, a CAS panel can now base itself on the newly implemented provisions of Articles 14(2) and 14bis FIFA RSTP.**

2. **A player cannot waive all his entitlements deriving from work already performed and work to be performed under an employment contract. The content of such a waiver would be immoral insofar as it would oblige the player to perform work without salary, as a consequence of which the waiver would be null and void on the basis of Article 20(1) of the Swiss Code of Obligations (SCO). In a similar vein, a waiver of only his outstanding entitlements and not his future entitlements, would also be null and void, as for the work already accomplished, the employee cannot waive in a legally binding way his rights to be paid. Indeed, the right to get the base salary for work already accomplished has a mandatory character protected by Article 341 SCO.**

3. **Articles 14 and 14bis FIFA RSTP do not specifically determine that a player is entitled to any compensation for breach of contract by the club when the player has just cause to terminate the employment contract. However, according to Article 14(5) and (6) FIFA**

Commentary, a party responsible for and at the origin of the termination of the contract is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed. Hence, although it was the player who terminated the employment contract, the club was at the origin of the termination by breaching its contractual obligations towards the player and is thus liable to pay compensation for the damages incurred by the player as a consequence of the early termination.

4. **In order for Article 21 SCO to apply i) the injured party must have been in straitened circumstances when concluding the contract; ii) the party entitled to benefit from the contract must have exploited the other's vulnerability; and iii) a clear disparity between performance and consideration is required.**

5. **A club which is in complete control of the process related to the player's International Transfer Certificate (ITC) such as to prevent the player's registration for a new club and which clearly makes the issuance of the ITC conditional upon the conclusion of a settlement agreement under which the player waives his entitlement to claim outstanding remuneration and compensation for breach of contract is exploiting the player's straitened circumstances. As a general rule, in a situation where a club does not value the services of a player and the player clearly has just cause to terminate an employment contract, a club cannot be permitted to object to issuing the player's ITC, at least not in order to pressure the player into entering into a settlement.**

6. **Submissions are substantiated if they are detailed enough to determine and assess the legal position claimed as well as detailed enough for the counter-party to be able to defend itself.**

7. **Article 17(1)(ii) FIFA RSTP provides that subject to the early termination of the contract being due to overdue payables, in addition to the mitigated compensation, the player shall be entitled to an additional compensation of an amount corresponding to three monthly salaries. In case of egregious circumstances, the additional compensation may be increased up to a maximum of six monthly salaries. This citation is to be divided in two parts: i) additional compensation for early termination due to overdue payables; and ii) additional compensation for egregious circumstances. Based on the wording of the provision, whereas the former is an obligation (i.e. *"shall be entitled"*), the latter is a discretion (i.e. *"may be increased"*).**

I. PARTIES

1. Mr Benjamin Acheampong (the "Player") is a professional football player of Ghanaian nationality.

2. Zamalek Sports Club (the "Club") is a professional football club with its registered office in Giza, Egypt. The Club is registered with the Egyptian Football Association (the "EFA"), which in turn is affiliated to the *Fédération Internationale de Football Association* (the "FIFA").

3. The Player and the Club are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal analysis.

A. Background Facts

4. On 4 September 2017, the Player and the Club concluded an employment contract (the "Employment Contract"), for a period of four seasons, i.e. valid from 1 August 2017 until the end of the 2020/21 season.

5. On 27 January 2018, the Player, the Club and the Egyptian football club Petrojet, concluded a tripartite loan agreement (the "Loan Agreement") until the end of the season, by means of which the Player purportedly waived his financial dues from the Club for the remainder of the 2017/18 season.

6. The Club maintains that the pre-season started on 9 June 2018 and that every player was notified of this by the Club's First Team Administrator. The Club submits that the Player did not show up and that it tried to contact him without success.

7. On 22 June 2018, the Club notified the Player by email that the pre-season had started on *"9/6/2018"*, that he was notified thereof on *"7/9/2018"* and that *"we should like to inform you that the regulations have been implemented regarding the discontinuation of the training and all legal procedures will be taken towards this"*. The Player failed to respond to this email.

8. The Club maintains that the Player was absent from the Club from 11 to 28 June 2018, without the Club's authorisation.

9. The Club maintains that, when the Player returned to Egypt, he joined the Club's first team training.

10. The Player maintains that he was not allowed to join the Club's training camp in Germany that started on 8 July 2018, but that he instead had to train with junior players.

11. The Player alleges that, on 12 July 2018, he had a meeting with the Club's President, during which the Player was requested to agree with a termination of his Employment Contract,

or a loan to another club, as he would not be registered with the Club for the 2018/19 season. After the Player indicated that he wanted to stay at the Club, he was allegedly kept alone in the President's office for 5 hours. When the Club's President returned, the Player was allegedly asked whether he had changed his mind. The Player allegedly replied that he insisted on wanting to stay with the Club, following which the Club's President threw a bottle of water at him, but that the Player was finally allowed to leave the office.

12. The Club instead maintains that a normal meeting took place between the Player and the Club's President, during which it was indicated that the Player had not met the Club's expectations and that the Club's coach and technical team had decided that the best option was to find a new solution to loan the Player again to another club.

13. The Club submits that, until the Player and the Club agreed on a solution for the Player's future, the Player trained normally with the Club's staff, the exception being the training camps abroad for which he was not called up. In this respect, the Club submits that the Player had been away for the most of June 2018, when the first team started the pre-season and because he had not shown the minimal physical condition, for which reason the Player spent a significant amount of time with the Club's physical coaches.

14. On 13 July 2018, the Player's legal representative informed the Club of the circumstances that had allegedly taken place the day before and put the Club in default, asking for i) the registration of the Player with the Club for the 2018/19 season within 3 days; ii) a confirmation that no loan agreement would be concluded without the Player's consent; and iii) the payment of USD 133,000 as outstanding remuneration within 7 days. The Club failed to respond to this letter.

15. The Player maintains that, between 13 and 18 July 2018, he trained with 4 junior players of the Club.

16. The Club maintains that the Player did not show up for training on the days following the Player's letter dated 13 July 2018.

17. On 15 July 2018, the Club informed the EFA of the Player's absence and its inability to contact him.

18. On 18 July 2018, the Player's legal representative indicated to the Club that the Player had trained with a few junior players between 13 and 18 July 2018, requesting that he be i) reinstated in the first team; ii) paid his outstanding remuneration; iii) assured that no loan agreement had been or would be concluded without the Player's consent; and iv) registered with the Club for the 2018/19 season within 3 days. The Club failed to respond to this letter.

19. On 19 July 2018, the Club's first team returned from training camp in Germany, but the Player was allegedly not reinstated in the Club's first team.

20. On 22 July 2018, the Club announced the 30-man squad that would go on a second training camp. The Player was not mentioned on this list.

21. On 23 July 2018, the Player's legal representative referred to the two unanswered letters dated 13 and 18 July 2018 and indicated that the Player had still not been informed that he was registered for the 2018/19 season. The Club was also informed that the Player was again required to train with junior players while the Club's first team left on training camp and that he had not received any payment. In this respect, the Player requested to i) be registered for the 2018/19 season within 3 days; ii) be reinstated in the Club's first team immediately; and iii) be paid his outstanding salaries in the amount of USD 133,000 within 5 days. The Player also requested timely payment of an amount of USD 72,582 that would fall due on 1 August 2018. The Player reserved the right to terminate his Employment Contract in case of non-compliance and file a claim before the Dispute Resolution Chamber of FIFA (the "FIFA DRC"). The Club failed to respond to this letter.

22. Between 23 and 26 July 2018, the Player allegedly trained with three junior team players of the Club.

23. On 24 and 26 July 2018, the Club's first team played two friendly matches. The Player was not part of the match squads.

24. On 28 July 2018, the Club's first team had its first training session at the Club after returning from the second training camp. The Player maintains that, after he had found out the starting time of the training session from a teammate, he was not allowed to train with the first team. The Player maintains to have had a meeting with two representatives of the Club, who told him that he was not part of the team, that he was not registered with the Club's first team and that he should leave the Club or go on loan.

25. On 29 July 2018, the Player allegedly had to train with only one other player. The Player maintains that he had another meeting with a Club representative and that he was told that he had to go on loan or stay on the Club's "waiting list".

26. On 30 July 2018, the Player's legal representative repeated the content of his previous letters to the Club and referred to the above facts as contended by the Player, providing the Club with a deadline of 3 days to comply with the terms of the Employment Contract. The Club failed to respond to this letter.

27. On 31 July 2018, the Club played its first official match of the 2018/19 season, but the Player was not called up.

28. On 1 August 2018, an amount of USD 72,582 fell due. The relevant payment was not made by the Club.

29. The Club maintains that it was clear that the Player did not want to cooperate with the Club and was preparing to do something against the Club, as it did not consider it to be normal to send 4 correspondences all with the same content in a period of approximately 2 weeks.

The Club argues that, given this situation, the payment of the first instalment of the 2018/19 season was not executed on 1 August 2018.

30. Between 1 and 3 August 2018, the Club's first team trained, but the Player alleges not to have been informed thereof.

31. The Club maintains that, on 1 August 2018, the Player signed an employment contract with the Qatari football club Al Shamal, valid from 1 August 2018 until 31 May 2019, and that the Player's Employment Contract with the Club was therefore automatically terminated.

32. On 4 August 2018, the Club played the second official match of the 2018/19 season, but the Player was not called up.

33. On 5 August 2018, the Player allegedly trained all by himself in the Club's gym. The Player maintains that, afterwards, he was supposed to have a meeting with a Club representative at 17.00 hour, but that this representative called him several times to inform him that he was delayed and that the Player had to be patient. The Player maintains that he finally left the Club's premises at around 22.30 hour as the Club representative never showed up.

34. On 6 August 2018, the Player's legal representative informed the Club that the Player terminated his Employment Contract, invoking just cause. In this letter, it was indicated that the Club i) failed to register the Player with the Club's squad in the EFA; ii) excluded the Player from training sessions without valid reasons; iii) failed to pay the Player his outstanding remuneration in an amount of USD 133,000; iv) failed to pay the Player another amount of USD 78,582 that fell due on 1 August 2018; and v) failed to reply to any of the four default notices sent by the Player. The Player reserved his right to file a claim against the Club before the FIFA DRC.

35. The Player maintains that, after the Player's termination letter, the Club continuously tried to contact him.

36. The Club maintains that, after the Player's termination letter, no one from the Club contacted the Player.

37. On 13 August 2018, as set out in more detail below, the Player lodged a claim against the Club before the FIFA DRC.

38. On the same date, 13 August 2018, the Player travelled to Qatar, because the Qatari football club Al Shamal had shown interest in his services.

39. According to the Club, by mid-August 2018, the Player contacted the Club, indicating that he had an opportunity to sign an employment contract with another club and that it was his intention to settle the pending dispute with the Club. The Club indicated that it was reluctant to sign a settlement agreement at first. The Club maintains that the Player was so desperate that he promised to record and send a video confirming that he had freely signed the settlement agreement and that he would not be entitled to claim any further amount from the Club.

40. In his written submissions, the Player maintains that, on 25 August 2018, he signed an employment contract with the Qatari club Al Shamal for one season, i.e. valid as from 1 August 2018 until 31 May 2019. However, the Player corrected this at the hearing, where he maintained that he signed the employment contract on 16 August 2018.

41. On 25 August 2018, the Player signed his Third Party Ownership ("TPO")-declaration, which Al Shamal needed to upload in FIFA's Transfer Matching System ("TMS") to finalise the Player's transfer.

42. According to the Player, shortly after 25 August 2018, Al Shamal was informed by the Qatari Football Association (the "QFA") about the consequences of Article 17 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") and the concept of "joint liability" and "sporting sanctions". Al Shamal was informed that it was advisable that a player would provide a declaration from his former club that he was free to sign with a new team, as it could otherwise be held liable for inducement of breaching the player's employment contract with his former club and be required to pay compensation.

43. According to the Player, from that moment on, he was continuously told to arrange his "release letter" from the Club, without which the FIFA TMS and ITC procedures would not be initiated. Al Shamal allegedly indicated that it also needed a TPO-declaration from the Club.

44. On 4 September 2018, allegedly because he did not want to enter into a second contractual dispute within one month and because he was afraid that he would be unemployed again, the Player and the Club signed a document entitled *"Contract Termination Agreement"*. Given that the Employment Contract had already been terminated by the Player on 6 August 2018 and based on the terms of the agreement, the Panel refers to this document as the "Settlement Agreement" instead of a "termination agreement". It is in fact common ground between the Parties that it was not a termination agreement. By means of this Settlement Agreement, the Player confirmed having received all his dues, even though he had not received any salary since his return to the Club following his loan with Petrojet. The Settlement Agreement provides, *inter alia*, the following:

> *"WITH THE REFENCE TO THE EMPLOYMENT CONTRACT WHICH IS FOUR (4) YEARS WITH THE CLUB STARTING FROM 2017 UNTILL [sic] 2021 WITH* [the Club].
>
> *THIS IS A DECLARATION FROM* [the Player].
>
> *I AGREE TO EARLY TERMINATION OF THE EMPLOYMENT CONTRACT WITH* [the Club] *IN A FRIENDLY WAY UPON MY REQUEST WITH LEGAL AND SPORTIVE EFFECT FROM:30-07-2018, THIS DATE SHALL BE REFERRED TO AS THE TERMINATION DATE.*

I DECLARE THAT I RECEIVE ALL MY MONEY AND FINANCIAL BELONGING AND THAT I HAVE NO RIGHTS TO CLAIM FROM THE CLUB ANY OTHER FINANCIAL BENEFITS AFTER THIS DATE

IN REFERENCE WITH OUR MUTUAL AGREEMENT WITH [the Club]*, FROM THE TERMINATION DATE* [the Club] *SHALL DECLARE ME AS A FREE PLAYER (FREE AGENT) AND* [the Club] *SHALL FULLY COOPERATE IN TMS AND/OR ANY OTHER DOCUMENTS REQUIRED TO TRANSFER TO ANY OTHER CLUB IN AND/OR OUTSIDE EGYPT, WITHOUT CLAIMING ANY COMPENSATION WHATSOEVER.*

BY SIGNING THIS AGREEMENT I CONFIRM THAT I WITHDRAW ANY PREVIOUS COMPLAINT AGAINST THE CLUB INFRONT OF ANY ENTITY ALL OVER THE WORLD, NEITHER FIFA OR CAS.

ANY AND ALL CONTROVERSIES OR DISPUTES ARISING FROM THIS AGREEMENT SHALL BE SOLELY SUBJECT TO THE JURISDICTION OF THE COMPETENT FIFA JUDICIAL BODIES, NEITHER FIFA OR CAS.

FINALLY MY SINCERE APPRECIATION TO THE MANAGEMENT OF [the Club] *FOR SUPPORTING ME DURING THE PERIOD THAT I PLAYED WITH THE CLUB AND WISHING MY BEST REGARDS TO THE CLUB IN THE FUTURE".*

45. The Club maintains that, after having thoroughly analysed the situation, it concluded that the Player did not match the Club's and its fans' expectations and decided not to go after compensation for breach of contract, so that the Club did not originally expect and agreed to settle the dispute with the Player by signing the Settlement Agreement.

46. Upon conclusion of the Settlement Agreement, the Player recorded a video in which he expresses his gratitude to the Club and its President for being with the Club, that he had no problem with the Club and that he wished the Club all the best. The Club submits that the video demonstrates that the Player confirms that he freely entered into the Settlement Agreement, that it was his will to do so and that he therefore had no further amounts to claim from the Club.

47. On 6 September 2018, the Club signed a TPO-declaration which Al Shamal needed for the FIFA TMS instruction.

48. The Player maintains that he then signed a new version of his employment contract with Al Shamal, for one season, also valid as from 1 August 2018 until 31 May 2019. This second version of the employment contract however determined that the payment obligations of Al Shamal towards the Player only commenced as from 6 September 2018.

49. The Club maintains that this second employment contract was signed, because the first employment contract was concluded in violation of the FIFA RSTP, as the Player at the time was still bound by his Employment Contract with the Club.

50. The Club maintains that it was misled by the Player as he did not withdraw his claim before the FIFA DRC after signing the Settlement Agreement. The Club submits that it nevertheless decided to keep its position and not to file a counter-claim as it believed that the FIFA DRC had no other possibility but to reject the Player's claim.

51. On 7 September 2018, Al Shamal entered the transfer instruction into the FIFA TMS and uploaded all the relevant documents to this effect. On the same date, the QFA requested the Player's ITC from the EFA.

52. On 9 September 2018, the EFA issued the Player's ITC to the QFA.

53. On 11 September 2018, the Player was registered with the QFA. An abstract from FIFA TMS indicates that the *"reason for former contract termination"* was *"[t]he player mutually agreed an early termination with his former club"*.

B. Proceedings before the FIFA Dispute Resolution Chamber

54. On 13 August 2018, the Player lodged a claim against the Club before the FIFA DRC, claiming outstanding remuneration in the amounts of USD 202,602 and EGP 31,200, compensation for breach of contract in the amounts of USD 895,158 and EGP 364,000, and compensation on the basis of specificity of sport in the amount of USD 306,911, plus interest.

55. On 28 August 2018, the Player's claim was forwarded to the Club.

56. On 6 September 2018, forwarded to the Player on 26 September 2018, the Club filed its reply, arguing that the matter had been settled and provided the FIFA DRC with a copy of the Settlement Agreement.

57. On 10 October 2018, the Player confirmed in his replica that he had indeed signed the Settlement Agreement, but indicated that it was null and void as he had signed it under straitened circumstances and because Article 341(1) of the Swiss Code of Obligations (the "SCO") provides that an employee cannot waive claims arising from an employment contract during its term or within one month of termination.

58. Although duly invited to do so by the FIFA DRC, the Club did not file a duplica.

59. On 9 July 2019, upon FIFA's request, the Player indicated that he had signed an employment contract with the Qatari club Al Shamal, valid as from 1 August 2018 until 31 May 2019, in accordance with which he was entitled to receive a total amount of QAR 588,015 (approximately USD 160,500 on 1 August 2019), but that no salary was due for

the month of August 2018, as there had been a delay in signing the employment contract and the issuance of the Player's ITC.

60. On 16 August 2019, the FIFA DRC rendered its decision (the "Appealed Decision"), with the following operative part:

> *"The claim of the* [Player] *is rejected".*

61. On 9 January 2020, the grounds of the Appealed Decision were communicated to the Parties, determining, *inter alia*, the following:

- *"*[…] *[T]he Chamber established that the primary issue at stake is to determine as to whether the matter was indeed amicably settled between the parties by means of the* [Settlement Agreement] *and thus, whether the* [Player] *had consequently waived his right to claim outstanding remuneration and compensation vis-à-vis the* [Club].

- *In this light, the Chamber firstly noted that the* [Settlement Agreement] *was signed by both parties. Furthermore, the DRC placed particular emphasis on the fact that, in his replica, the* [Player] *confirmed that he had signed the document* […].

- *Having established the above, the Chamber took into consideration the* [Player's] *arguments, who held that he had signed the* [Settlement Agreement] *"under straitened circumstances" because he, inter alia, lodged a claim in front of FIFA on 13 August 2018, and because his new club, Al Shamal, wished to receive a clearance letter from the* [Club]. *Consequently, the DRC recalled that as per the* [Player]*, the document dated 4 September 2018 signed by the* [Player] *and the* [Club]*, is to be declared null and void.*

- *In this respect, and in relation to the argument of the* [Player] *that he signed the document "under straitened circumstances" on 4 September 2018, the Chamber recalled that according to the legal principle of the burden of proof, any party claiming a right on the basis of an alleged fact shall carry the burden of proof (cf. art. 12 par. 3 of the Procedural Rules).*

- *In this context, the DRC was of the opinion that no convincing documentation, or any form of evidence, was provided by the* [Player]*, which could support his allegation that the* [Settlement Agreement] *was signed under duress and that, as a consequence, said agreement was to be declared null and void. As such, the members of the Chamber, after making reference to art. 12 par. 3 and par. 6 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the burden of proof and the evidence shall be considered with free discretion respectively, concluded that the* [Player] *did not prove beyond doubt that the* [Club] *coerced the* [Player] *into signed the above-mentioned document. Consequently, the DRC decided that the* [Player's] *allegations in this regard cannot be accepted.*

- *Furthermore, the DRC was eager to emphasise that a party signed a document of legal importance without knowledge of its precise contents, as a general rule, does so on its own responsibility.*

- *In light of all of the above, and in particular bearing in mind the fact that on 4 September 2018 the* [Player] *signed a document by means of which the* [Player] *held that had* [sic] *no right to claim any*

"financial benefits" from the [Club]*, the Dispute Resolution Chamber decided that the* [Player] *had waived his rights to claim such financial benefits and that, as a result, it must reject the claim put forward by the* [Player] *in its entirety".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

62. On 24 January 2020, the Player filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision, in accordance with Articles R47 and R48 of the 2019 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In this submission, the Player named the Club as the sole respondent and he nominated Mr Mark Andrew Hovell, Solicitor in Manchester, United Kingdom, as arbitrator.

63. On 6 February 2020, the Player filed his Appeal Brief, in accordance with Article R51 CAS Code.

64. On 13 February 2020, upon being invited by the CAS Court Office to express its position in this regard, FIFA renounced its right to request its possible intervention in the present arbitration proceedings.

65. On the same date, 13 February 2020, outside the time limit granted to it by the CAS Court Office, the Club nominated an arbitrator.

66. On 14 February 2020, the Player indicated that he did not agree with the Club's late nomination of an arbitrator.

67. On 17 February 2020, the CAS Court Office informed the Parties that, in light of the Player's objection to the arbitrator nominated by the Club, pursuant to Article R53 CAS Code, it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to appoint an arbitrator on behalf of the Club.

68. On 2 April 2020, in accordance with Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

President:	Mr Hendrik Willem Kesler, Attorney-at-Law in Enschede, the Netherlands;
Arbitrators:	Mr Mark Andrew Hovell, Solicitor in Manchester, United Kingdom; and
	Mr Espen Auberg, Legal Director of the Football Association of Norway in Oslo, Norway.

69. On 27 April 2020, the Club filed its Answer, in accordance with Article R55 CAS Code.

70. On 28 April 2020, the CAS Court Office informed the Parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.

71. On 29 April 2020, the Club filed two translations of documents that it had already filed in Arabic together with its Answer to the CAS Court Office.

72. On 4 May 2020, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing that would in principle be held in Lausanne, Switzerland.

73. On 6 May 2020, the Player requested that the translations filed by the Club be excluded from the case file. The Player also requested a new document to be admitted to the case file on the basis of exceptional circumstances under Article R56 CAS Code. The Player maintained that this document was a response to an argument raised for the first time by the Club in the proceedings before CAS.

74. On 12 May 2020, the Club reiterated its request that the two translations be admitted to the case file, because they had been filed timely. The Club confirmed that it had no objection to the new document filed by the Player on 6 May 2020 to be admitted to the case file and commented on the content thereof.

75. On 15 June 2020, the CAS Court Office informed the Parties on behalf of the Panel that i) the translations filed by the Club were admissible since the original exhibits in Arabic were filed within the deadline; ii) in view of the Parties' agreement, the new exhibit filed by the Player on 6 May 2020 was admitted to the case file.

76. On 3 July 2020, the external counsel that had represented the interests of the Club informed the CAS Court Office that he no longer represented the Club and that any further communication was to be addressed to Mr Amir Mortada Mansour, the Club's Football Sector Director.

77. On 14 July 2020, further to a request from the Panel on the basis of Article R57 CAS Code, FIFA provided the CAS Court Office with a copy of the complete case file related to the proceedings that resulted in the Appealed Decision. The CAS Court Office also enquired as to whether Mr Amir Mortada Mansour and Mr Sheriff Mohamed Islam would still be attending the hearing on behalf of the Club, which request remained unanswered.

78. On 15 July 2020, the CAS Court Office provided the Parties with an Order of Procedure, which was duly signed and returned by the Parties on 17 July 2020 and 2 October 2020, respectively.

79. On 21 July 2020, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, the Player confirmed that he had no objection as to the constitution and composition of the arbitral tribunal.

80. In addition to the Panel, Ms Delphine Deschenaux-Rochat, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

    a) For the Player:

        1) The Player (by video-conference); and
        2) Mr Mario Flores Chemor, Counsel.

81. Despite being duly invited, the Club did not attend the hearing and did not give any information or explanation relating to its absence prior to the start of the hearing.

82. The Panel heard evidence from the Player.

83. The Player was invited by the President of the Panel to tell the truth subject to the sanction of perjury under Swiss law. The Parties and the Panel had full opportunity to examine and cross-examine the Player. However, due to the fact that the Club unexpectedly did not attend the hearing, the Club did not cross-examine the Player.

84. Although the Club had initially called a number of witnesses to be heard, none of them appeared at the hearing. Accordingly, Mr Ahmed Ibrahim, the Club's First Team Administrator, Mr Sherif Farouk, Intermediary, and Mr Ayman Hafez, the Club's First Team Administrator in the season 2016/17, were not heard.

85. Both Parties were given full opportunity to present their cases, submit their arguments and to answer the questions posed by the members of the Panel. However, due to the fact that the Club unexpectedly did not attend the hearing, only the Player made use of such opportunity.

86. Before the hearing was concluded, the Player expressly stated that he had no objection to the procedure adopted by the Panel and that his right to be heard had been respected.

87. On 22 July 2020, the Club informed the CAS Court Office that it had not been able to attend the hearing, because the person managing the Club's email address had left the Club, because it was in the process of retaining a new external counsel to handle its cases and because the email regarding the online hearing was *"short notice for us to be ready for the call giving the legal and gap that we have at the moment"*, indicating that it required approximately a week to prepare for the call. The Club further enquired whether the hearing took place, what the outcome was and if a further call was going to take place. Finally, the Club provided a new email address on which it was to be contacted and indicated that it requested the Player's requests to be rejected.

88. On 23 July 2020, the CAS Court Office informed the Parties that the hearing confirmation was sent on 8 May 2020, that the Club was offered the possibility to attend the hearing by video-conference and that the Club duly received the invitation from Cisco Webex to join the hearing on 21 July 2020. The Parties were also informed that, pursuant to Article R57(4) CAS Code, if any of the parties, having been duly summoned, fails to appear, the Panel may nevertheless proceed with the hearing and render an award. The CAS Court Office informed the Parties that the Panel had decided to proceed with the hearing on 21 July 2020 as scheduled, despite the Club's absence, that the Panel had taken due note of the Club's written submissions and evidence and determined that an award would be issued in due course. Finally, the Club was invited to sign and return a copy of the Order of Procedure.

89. On 30 July 2020, in the absence of a reply from the Club to the CAS Court Office's request to sign and return a copy of the Order of Procedure within the prescribed time limit, the CAS Court Office informed the Parties that the Panel would nevertheless render an award in due course.

90. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Appellant

91. The Player's submissions, in essence, may be summarised as follows:

a) Considerations on the Appealed Decision

- It was inappropriate for the FIFA DRC to conclude that the Player provided too little evidence to prove the straitened circumstances under which he signed the Settlement Agreement, considering that he asked to provide the FIFA DRC in person with his testimony, an offer that was rejected by the FIFA DRC. This is contradictory and constitutes a violation of the Player's right to be heard.

- The Club did not dispute the Player's allegations with respect to the circumstances under which he signed the Settlement Agreement. In accordance with Article 9(3) of the FIFA Rules Governing the Procedures of the Players' Status Committee and the FIFA Dispute Resolution Chamber (the "Procedural Rules"), the FIFA DRC should have accepted the submissions of the Player as accurate.

- It is incomprehensible why the FIFA DRC dismissed the Player's claim on the basis of Article 12(6) Procedural Rules, while the Player responded to all of the FIFA DRC's requests and the Club remained silent. The FIFA DRC also held that the Player did not prove the relevant facts *"beyond doubt"*, which is not the standard of proof in employment-related disputes before the FIFA DRC.

- The FIFA DRC also simply ignored the Player's argument that on the basis of Article 341 SCO he could not have waived his entitlements.

b) The Player had just cause to terminate the Employment Contract

- The Club treated the Player disrespectfully and had no interest in the services of the Player. The Club had a clear incentive to exploit the Player's straitened circumstances and have him sign a waiver.

- At the moment of termination, the Player had a well-founded claim for outstanding remuneration and compensation for breach of contract.

- It derives from CAS jurisprudence that a player has i) the right to timely payment of his salaries; ii) the right to be registered to compete for a club; and iii) the right to access organised training. It is clear that the Player had just cause to terminate

the Employment Contract as the Club violated all three principles. The Club also failed to reply to any of the 4 default letters sent by the Player.

- Furthermore, the Club representatives made it clear during the various meetings that the Player should either go on loan, stay on some sort of "waiting list" or should terminate his Employment Contract and waive his entitlements, none of which was considered acceptable to the Player. The Club also intimidated the Player. The foregoing is proven by the various default notices that remained undisputed at the time.

- The Player's exclusion from the Club's first team was a violation of Article 3(7) of the Employment Contract.

c) The difficulty in finding a new club following a unilateral termination

- It is common knowledge that a player who has unilaterally terminated his employment contract, invoking just cause, encounters difficulties in signing with a new club. The concept of "joint liability" results in a situation where the first club the player joins after the unilateral termination of the contract can be ordered to pay compensation for breach of contract to the player's former club for the player's unfounded termination of the contract. This situation is only clarified when the FIFA DRC has passed a decision, which can take between 1 and 3 years. For this reason, clubs are reluctant to hire a "free" player if they know that they can end up paying an unknown amount of compensation.

- In addition, Al Shamal could potentially also face sporting sanctions if the FIFA DRC would come to the conclusion that the Player did not have just cause and Al Shamal could not prove that it did not induce the Player to breach his contract. Only this legal uncertainty in itself is a sufficient deterrent for clubs to sign players who have terminated their contract prematurely and unilaterally.

- Also obtaining an ITC from the federation of the player's former club is an immense obstacle for a player to sign with a new club, especially in lower developed clubs and leagues where they are not aware how to proceed in such situation. A player does not have the possibility to request the ITC, as this can only be done by a federation upon request of a club. A player is therefore completely dependent on the clubs and their willingness and knowledge to act in the proper way. This difficulty is recognised by FIFA in footnote 36 of the Commentary to the FIFA RSTP (the "Commentary").

- A further obstacle is the requirement of Article 8.2(1) of Annex 3 FIFA RSTP, which requires a new club to upload in FIFA TMS a TPO declaration from the player and a TPO declaration from the player's former club in order to start the process. Obtaining a TPO declaration from the player is not a problem. Yet, obtaining a TPO declaration from the former club is in practice close to impossible

when a player has terminated his employment contract unilaterally invoking just cause.

- The TPO declaration of the Club was only issued after the Player signed the Settlement Agreement.

d) The Settlement Agreement

- The Player does not deny having signed the Settlement Agreement. Yet, the Settlement Agreement should be declared null and void in view of the fact that the Player was distressed when signing the document and that he signed it under straitened circumstances.

- First, the Settlement Agreement does not correspond to the reality, as the Player declared that he had received all his money and financial belongings, while he was still owed a substantial amount as outstanding remuneration. The Player did not receive any sum from the Club when he signed the Settlement Agreement.

- The Player's personal circumstances shall be taken into account. He is the breadwinner of his family and needs to take care of his wife and two children (the second of which was born two months before the Player's termination of his Employment Contract). The Player was in a dire situation by the beginning of August 2018. He had not been paid his salaries as early as August 2017, he had just terminated his Employment Contract due to the merciless behaviour of the Club, he knew that in order to obtain the amounts he was entitled to he would have to go through a lengthy judicial process in which no one could guarantee him that he would ultimately get his outstanding entitlements, the Club had indicated that they would not release his ITC if he would not sign the Settlement Agreement and could file a claim for breach of contract against him.

- To his relief he found a Qatari club which offered him a decent contract, yet he found himself in another dire situation when this club insisted on receiving the "release paper", in the absence of which it would not sign him. In the beginning of September, the registration periods in many countries had already closed.

- The Settlement Agreement should also be declared null and void because there was no consideration in return for the waiver (Article 21 SCO). The only benefit for the Player was that the Club would declare him as a free player (free agent) and that it would cooperate in TMS without claiming any compensation whatsoever. The Player gained nothing, because he was in principle already a free player as he had already terminated the Employment Contract. The Club on the other hand gained an enormous and disproportionate benefit by getting rid of a case of breach of contract, by not having to pay the Player's outstanding remuneration and compensation for breach of contract and by avoiding sporting sanctions. The Club also knew that the Player found himself in a weak and straitened position.

- With reference to Articles 29 and 30 SCO, the Player submits that the Settlement Agreement was signed under duress.

e) Waiver of entitlements on the basis of Article 341 SCO

- Notwithstanding the arguments above, the Player was not in a position to waive his entitlements under Article 341 SCO, which is a mandatory provision of Swiss law. The Player's waiver of claiming his entitlements was not valid. This view is supported by CAS jurisprudence. The particularities of the situation of a football player at the end of an employment relationship as compared to the situation of an ordinary employee shall be taken into account as this puts extra pressure on a player to waive his entitlements. This falls under the "specificity of sport".

- Article 341 SCO applies to both outstanding salaries as well as for claims of compensation for breach of contract, which is also supported in CAS jurisprudence.

f) The financial consequences

- The Player is entitled to USD 202,602 and EGP 31,200 as outstanding remuneration.

- The remaining value of the Employment Contract at the time of termination was USD 895,158. The Player's housing costs for the remaining period amounted to EGP 364,000. Together this comprises an amount of USD 917,733.

- The Player mitigated his damages with an amount of USD 176,400.

- The Player shall also be awarded an additional 6 months' salary in view of the egregious circumstances surrounding the conclusion of the Settlement Agreement, i.e. USD 153,225.

- The total amount of compensation for breach of contract to be awarded is therefore USD 894,558, plus 5% interest as from 6 August 2018.

92. On this basis, the Player submits the following prayers for relief:

"a) To overturn the decision of the FIFA DRC dated 16 August 2019.

b) To pass a new decision accepting the claim of the Appellant.

c) To rule that the Termination Agreement is null and void and/or not binding on the parties.

d) To rule that the Appellant was not in a position to waive its entitlements.

e) To rule that the Appellant had a just cause to terminate the employment contract with the Respondent.

f) To rule that the Respondent must pay the Appellant outstanding remuneration in the amount of USD 202,602 and EGP 31,200 plus 5% interest as follows:

- *USD 41,730 as the remaining part of the first instalment of the 2017/2018 season + 5% interest p.a. as from 2 August 2017;*
- *USD 23,774 as the second instalment of the 2017/2018 season + 5% interest p.a. as from 16 January 2018;*
- *USD 64,516 as the fourth instalment of the 2017/2018 season + 5% interest p.a. as from 16 June 2018;*
- *USD 72,582 as the first instalment of the 2018/2019 season + 5% interest p.a. as from 2 August 2018;*
- *EGP 31,200 plus 5% interest as from the due dates of the housing costs, which is the first day after the relevant month.*

g) To rule that the Respondent must pay the Appellant compensation for breach of contract in the amount of USD 894,558 + 5% interest as from 6 August 2018.

h) To condemn the Respondent to pay the entire CAS administration costs and the arbitration fees and to reimburse the Appellant of any and all expenses he incurred in connection with this procedure.

i) To rule that the Respondent has to pay the Appellant a contribution towards legal costs".

B. The Respondent

93. The Club's submissions, in essence, may be summarised as follows:

a) The Appealed Decision was correct

- The Appealed Decision was correctly rendered, anchored upon one very simple yet unchallenged fact: on 4 September 2018 the Parties freely and consciously signed the Settlement Agreement, thereby settling any and all controversies between themselves. In fact, the Player undertook to withdraw the claim which eventually resulted in the Appealed Decision.
- The Player now submits that he was somehow forced to enter into the Settlement Agreement. However, contrary to the Player's arguments, it was the Player who had most interest in signing the Settlement Agreement and he benefitted most from it. No one forced the Player to sign the Settlement Agreement, just as no one forced him to record the video in which he stated that he settled the matter freely and had nothing to claim from the Club.

- The FIFA DRC correctly decided that the irrelevant submissions of the Player could not change the analysis undertaken, leading to the Appealed Decision.

- The Player did not submit any additional evidence that can change the conclusions correctly reached by the FIFA DRC. The Appeal Brief is full of alleged facts that are not substantiated at all.

- If any, the only straitened circumstances under which the Player signed the Settlement Agreement were self-inflicted. By terminating the Employment Contract alleging just cause, the Player immediately created a problem for his new club, as it ran the risk of being considered to have induced the Player to terminate the Employment Contract and be held jointly liable to pay compensation and receive a sanction.

b) The Settlement Agreement was balanced and benefitted both Parties

- Despite the title of the document – termination agreement – what the Parties intended to sign was a settlement agreement. Since the Employment Contract had already been terminated unilaterally by the Player, no termination could have occurred at this stage, but only an agreement to settle their differences.

- The terms of the Settlement Agreement demonstrate a balanced agreement, benefitting both Parties. Actually, it was the Player that benefitted most.

- Backdating the Settlement Agreement to 30 July 2018 benefitted mainly the Player, because the Player signed a new employment contract with Al Shamal on 1 August 2018, while he was still under contract with the Club. In other words, in accordance with Article 18(5) FIFA RSTP, before voluntarily terminating the Employment Contract alleging just cause, the Player had already terminated the Employment Contract by signing a new employment contract with Al Shamal. The Settlement Agreement basically eliminated the (negative) effects of the Player's actions in violation of the FIFA RSTP.

- In what concerns Al Shamal, settling the matter amicably meant that both the Player and Al Shamal avoided a potential difficulty with the registration of the Player (hence the reason why the Settlement Agreement declared the Player as a free player) regarding the issuance of the ITC and related administrative steps, and, most importantly, avoided a future dispute regarding the unilateral termination of the Employment Contract by the Player which, in case it was decided against him, would make Al Shamal jointly responsible for the termination.

- By travelling to Qatar only one week after having terminated his Employment Contract, the Player demonstrated beyond any doubt that his urgency arose not from the Club's alleged breaches or any discomfort or distress they may have caused, but from the Player's willingness to enter into a new employment contract with a new club. One can therefore assume that it was Al Shamal's inducement of

the Player, that resulted in the Player's decision to unilaterally terminate the Employment Contract.

- Article 21 SCO is therefore not applicable to the matter at stake.

c) The Settlement Agreement was not signed under duress and straitened circumstances

- The Player has not submitted any evidence to sustain the alleged duress under which he signed the Settlement Agreement. It seems that the only thing the Player relies on to *"justify the alleged duress and straitened circumstances under which he signed the settlement agreement is his own testimony"*.

- Signing the Settlement Agreement was actually the best possible solution to avoid a real problem in the future.

- Finally, the Player's employment contract with Al Shamal was signed before the Settlement Agreement was signed. Therefore, even if Al Shamal decided not to register the Player, it would not have affected the contractual obligations that it had assumed towards the Player. The alleged difficulties to issue the ITC would not change the obligations that had been assumed by means of the contract signed between the parties. The issuance of an ITC does not represent an obstacle for a player to sign a new agreement with a new club. This is just a matter of registration. Even if the Player was not registered, which would not be the case, as FIFA would normally issue a temporary ITC, the Player would still be entitled to his salary from Al Shamal.

- The Player's reliance on his familiar situation is not appropriate, because someone that is under familiar pressure simply refrains from unilaterally terminating an employment contract.

- The difficulty of finding a new club cannot be used by the Player in his favour to challenge the validity of the Settlement Agreement. It is the opposite. The alleged difficulty to find a new club does not result from the specific circumstances of the present matter, but purely from the way the regulations are drafted and the principles they intend to protect.

- A player who is in a position to unilaterally terminate his employment contract based on just cause must be aware that this will most probably generate a dispute and his new club runs the risk of being held jointly responsible for the said contractual termination. This is a risk that the Player accepted to take when unilaterally terminating the Employment Contract, but this cannot be considered as straitened circumstances that lead the Player into signing the Settlement Agreement.

d) Article 341(1) SCO is not applicable to the matter at stake

- Article 341(1) SCO is only applicable when the parties reach a mutual termination agreement, which is supported in CAS jurisprudence. However, in the matter at stake we are not dealing with a mutual termination agreement. In the matter at stake, we are facing a unilateral termination of the Employment Contract followed by the conclusion of a settlement agreement to amicably resolve the dispute.

- It is important to recall that the Settlement Agreement was concluded freely between the Parties and that the Player highly benefitted from it, setting aside a significant risk of being condemned (jointly with his new club) to compensate the Club for the unilateral termination of the Employment Contract without just cause.

- Ultimately, the fact that the Player had no just cause to terminate his Employment Contract unilaterally, means that even if Article 341(1) SCO would be applicable, he would not be entitled to be granted any further payment of any amounts allegedly outstanding or compensation.

e) The Player did not have just cause to terminate the Employment Contract

- None of the arguments invoked by the Player is accurate and they do not assist the Player in terminating the Employment Contract with just cause.

- Since the registration period in Egypt was open until the end of August 2018, it is not possible for a player to argue that he was not registered and use this as an argument to terminate an employment contract. Not all players of a club are immediately registered. If the status of a player is uncertain they are often not registered yet. This is particularly relevant for the matter at stake because the Player missed the majority of the pre-season, skipped training when back in Egypt, and was not adequately in shape to be called up to participate in matches. The Player's demands in this respect were simply premature and had the only intention of putting the Club under pressure and prepare his unilateral termination of the Employment Contract to immediately sign with Al Shamal.

- It is simply not true that the Player was excluded from trainings and was training with some junior players under the supervision of non-qualified staff, such as doctors. The burden of proof in this respect lies with the Player. The reality is that the Player did not join the team in the beginning of the pre-season, arriving almost one month later than the other players. The Player also arrived in a weak physical situation.

- The Club had no overdue payables to the Player over the 2017/18 season. The amounts paid to the Player were net amounts, while the Club withheld the taxes to be paid by the Player at a rate of 22.5%. Since the Player's salary during his loan with Petrojet was paid by the latter club, the Club had no obligations to pay the Player's salary during this period, which was explicitly confirmed by the Player.

- It is true that an amount of USD 78,582 fell due on 1 August 2018. The Player however signed an employment contract with Al Shamal on this date, thereby terminating the Employment Contract, meaning that no further amount was due. In any event, the Player terminated the Employment Contract on 6 August 2018. Considering that the instalment covered the Player's salary from August 2018 until January 2019, the Player could only be entitled to the amount corresponding to the period in which the Employment Contract was valid, i.e. from 1 to 6 August 2018, which represents an amount of USD 4,839.

94. On this basis, the Club submits the following prayers for relief:

"(i) Dismiss the appeal lodged by Mr Benjamin Acheampong in full;

(ii) Confirm the decision rendered by FIFA's Dispute Resolution Chamber;

(iii) Confirm that the agreement signed between Zamalek and the Player is valid;

(iv) Confirm that article 341 of the Swiss Code of Obligations is not applicable to the matter at stake;

(v) Confirm that the Player did not have just cause to unilaterally terminate his employment contract with Zamalek;

(vi) Rule that the costs of these proceedings shall be paid by Mr Benjamin Acheampong in full and he shall pay a contribution to Zamalek's legal fees and other related costs in the amount considered appropriate".

V. JURISDICTION

95. The jurisdiction of CAS derives from Article 58(1) FIFA Statutes (2019 Edition), as it determines that *"[a]ppeals 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"* and Article R47 CAS Code. The jurisdiction of CAS is not contested by the Respondent and is further confirmed by the Order or Procedure duly signed by both Parties.

96. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

97. The appeal was filed within the deadline of 21 days set by Article 58(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

98. It follows that the appeal is admissible.

VII. APPLICABLE LAW

99. The Player submits that, in accordance with Article R58 CAS Code, because of the Club's recognition that it would *"respect"* the rules and regulations of FIFA in Article 3(5) of the Employment Contract, the FIFA RSTP shall apply, as well as, in accordance with Article 57(2) FIFA Statutes, Swiss law.

100. The Club does not contest that the FIFA RSTP and Swiss law are to apply.

101. Article R58 CAS Code provides as follows:

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

102. Article 57(2) FIFA Statutes provides the following:

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

103. The Employment Contract does not contain any specific choice-of-law clause, but Articles 3 and 5 of the Employment Contract provide as follows, respectively:

> *"The Club is liable of the following:*
>
> […]
>
> *5. Respect the rules and regulations of Fifa".*
>
> *"The Player is liable of the followings* [sic]*:*
>
> […]
>
> *7. To obey the rules and regulations; and decisions of Fifa".*

104. In view of the choice of the Parties to refer their dispute to the FIFA DRC and their commitment to abide by the rules and regulations of FIFA, in particular the RSTP (edition June 2018), the Panel finds that the Parties accepted the applicability of Article 57(2) FIFA Statutes. In accordance with this provision, the regulations of FIFA are primarily applicable and, if necessary, additionally, Swiss law.

VIII. MERITS

A. The Main Issues

105. The main issues to be resolved by the Panel are:

i. Did the Player have just cause to terminate the Employment Contract on 6 August 2018?

ii. If the Player had just cause to terminate his Employment Contract, what are the consequences thereof?

i. Did the Player have just cause to terminate the Employment Contract on 6 August 2018?

106. The Player invoked the following reasons to terminate the Employment Contract on 6 August 2018. The Player maintains that the Club:

i) failed to register the Player with the Club's squad in the EFA;

ii) excluded the Player from training sessions without valid reasons;

iii) failed to pay the Player his outstanding remuneration in an amount of USD 133,000;

iv) failed to pay the Player another amount of USD 78,582 that fell due on 1 August 2018; and

v) failed to reply to any of the four default notices sent by the Player.

(a) The regulatory framework

107. Article 14 FIFA RSTP determines as follows:

"1. A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.

2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause".

108. Article 14bis FIFA RSTP provides as follows:

"1. In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to

fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.

2. *For any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered. Delayed payment of an amount which is equal to at least two months shall also be deemed a just cause for the player to terminate his contract, subject to him complying with the notice of termination as per paragraph 1 above.*

3. *Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in paragraphs 1 and 2 above. The terms of such an agreement shall prevail".*

109. Given that the Player terminated the Employment Contract, the burden of proof in establishing that such premature termination was justified lies with the Player.

110. The Panel notes that Article 14(2) and Article 14bis FIFA RSTP were newly implemented in the June 2018 version of the FIFA RSTP. In FIFA's Circular no. 1625, dated 26 April 2018, it is explained to the stakeholders that Article 14 FIFA RSTP *"has been amended to include a new paragraph concerning abusive situations where the stance of a party (either a player or a club) is intended to force the counterparty to terminate or change the terms of the contract"* and that a new Article 14bis FIFA RSTP *"has been introduced in order to address the specific circumstance of terminating a contract due to overdue salaries"*.

111. The Panel considers that these amendments largely reflect the jurisprudence of the FIFA DRC and CAS and do not result in any particular changes to the practice in assessing breach of contract situations, with certain added requirements, such as the 15-day notice period.

112. Indeed, the Panel observes that the FIFA Commentary already provided general guidance as to when an employment contract was terminated with just cause in the context of Article 14(1) before the implementation of Articles 14(2) and 14bis FIFA RSTP:

> *"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally".*

113. In this regard, the Panel notes that in *CAS 2006/A/1180*, a CAS panel stated the following:

> *"The RSTP 2001 do not define when there is "just cause" to terminate a contract. In its established legal practice, CAS has therefore referred to Swiss law in order to determine the purport of the term "just cause". Pursuant to this, an employment contract which has been concluded for a fixed term, can only be terminated prior to expiry of the term of the contract if there are "valid reasons" or if the parties reach mutual agreement on the end of the contract (see also ATF 110 I 167; WYLER R., Droit du travail, Berne 2002, p. 323 and STAEHELIN/VISCHER, Kommentar zum Schweizerischen Zivilgesetzbuch,*

Obligationenrecht, Teilband V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, marg. no. 17 ad Art. 334, p. 479). In this regard Art. 337 para. 2 of the Code of Obligations (CO) states – according to the translation into English by the Swiss-American Chamber of Commerce: "A valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship". According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (ATF 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa). Particular importance is thereby attached to the nature of the breach of obligation. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (ATF 101 Ia 545). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus (ATF 5 May 2003, 4C.67/2003 no. 2). According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit., p. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., op. cit., p. 364 and TERCIER P., op. cit., no. 3394, p. 495)" (CAS 2006/A/1180, para. 25 of the abstract published on the CAS website)

114. The Panel fully adheres to such legal framework, which is still applied in recent CAS jurisprudence (cf. CAS 2017/A/5312, para. 82; CAS 2016/A/4846, para. 175 of the abstract published on the CAS website), and will therefore examine whether the Club's conduct was of such a nature that the Player could no longer be reasonably expected to continue the employment relationship with the Club. In making such assessment, the Panel will however base itself on the newly implemented provisions of Articles 14(2) and 14bis FIFA RSTP.

(b) Outstanding remuneration

i. 2017/18 season

115. Turning first to the alleged outstanding remuneration, Clause 2 of the Employment Contract provides as follows:

*"**First Season 2017/2018 $258,064# (Two Hundred and Fifty Eight Thousand Sixty Four US Dollars Only)** to shared* [sic] *as follow:*

***First instalment**: $146,000# (One Hundred and Fourty six Thousand US Dollars Only) payable on the 1/8/2017.*

***Second instalment**: $23,774# (Twenty Three Thousand Seven Hundred Seventy Four US Dollars Only) payable on the 15/1/2018.*

> ***Third instalment***: *$23,774# (Twenty Three Thousand Seven Hundred Seventy Four US Dollars Only) payable on the 15/4/2018.*
>
> ***Fourth instalment***: *$64,516# (Sixty Four Thousand Five Hundred Sixteen US Dollars Only) payable on the 15/6/2018"* (emphasis in original).

116. Furthermore, Clause 5 of the Employment Contract provides as follows:

> *"House can be changed* [sic] *for the player at 10,400 L.E. monthly (Ten thousand four hundred Egyptian pounds monthly) only".*

117. The Player acknowledges that he was not entitled to the third instalment of USD 23,774 to be paid by 15 April 2018 due to his loan to Petrojet, as that club was paying his wages. The total amount due for the 2017/18 season was therefore, according to the Player, USD 234,290.

118. At the start of the Employment Contract, the Club only paid the Player an amount of USD 110,829 instead of USD 146,000 as indicated in the Employment Contract, leaving a balance of USD 35,171. Furthermore, on 28 December 2017, the Club paid the Player an amount of USD 4,256 (EGP 76,285), leaving a balance of USD 30,915. While the Player claims that he was only paid an amount of USD 104,270, the Club provided evidence that it in fact paid the Player an amount of USD 115,085.

119. The Player also contends that the Club failed to pay him housing costs in accordance with the Employment Contract for the month of May 2018, i.e. a total of EGP 10,400 (or USD 645 in a conversion made by the Player that remained undisputed by the Club).

120. The Club maintains that it paid all due amounts to the Player. The Club argues that i) the Player waived the remuneration due to him when he went on loan to Petrojet; and ii) that the amounts mentioned in the Employment Contract were gross amounts and that the Club paid the relevant taxes to the tax authorities on behalf of the Player.

121. As to the Player's waiver of his salary during the loan period with Petrojet, the Panel observes that the tripartite Loan Agreement concluded between the Club, Petrojet and the Player on 27 January 2018 indicates the following in Clauses 2 and 4 respectively:

> *"The loan duration will be for half season from January 2018 till the end of 2017/2018 season,* [the Club] *will not be responsible to pay any salary till the end of the loan* […]*".*
>
> *"The player acknowledges to waive all his current and future dues towards* [the Club] *i.e. to release* [the Club] *from his current and the future dues".*

122. Besides, the Player signed the following waiver, dated 28 January 2018:

> *"i'm/* [the Player] *…agreed that I am waiving my financial dues for the 2017/2018 season and I am not entitled to claim any dues now or in the future. This is a acknowledgement from me …* [sic]*".*

123. Whereas the Club maintains that the Player waived all his entitlements under the Employment Contract, the Player maintains that he only waived his entitlements during the loan period with Petrojet.

124. Article 18(1) SCO provides as follows:

> *"When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".*

125. The Panel finds that the waiver is to be interpreted solely as a waiver of the Player's remuneration during his loan with Petrojet, i.e. the waiver does not cover amounts that fell due before and after such loan.

126. First of all, the Player testified that it was explained to him that he would not waive his salary but that Petrojet would pay his salary during the loan and that he had not been informed that agreeing to the Loan Agreement and signing the waiver would mean that he would waive all his entitlements under the Employment Contract.

127. This evidence of the Player remained uncontested, as the witnesses initially called by the Club did not appear before the Panel, as the Club itself failed to attend the hearing.

128. Furthermore, the Panel finds that the content of the waiver would be immoral insofar as the Club purports that the Player would have waived all his entitlements deriving from work already performed and work to be performed under the Employment Contract. Since the Employment Contract has a total value of USD 1,225,804, this would mean a waiver of USD 1,110,719, since the Club only paid the Player USD 115,085. Moreover, the Player would still be contractually obliged to return back to the Club after the loan period with Petrojet, as Clause 3 of the Employment Contract provides that *"[t]he player acknowledges that he will return back to* [the Club] *upon the end of the loan duration"*. This combination of obligations would clearly be immoral as it would oblige the Player to perform work without salary, as a consequence of which the waiver would be null and void on the basis of Article 20(1) SCO.

129. Rather, the Panel finds that the Parties' intention was that, by means of concluding the Loan Agreement, the Club would be relieved from its duty to pay salary to the Player during the loan period. This makes perfect sense as it would be logical for Petrojet to take over the duty of the Club to pay the Player's salary during this period and for the Player it would not make a difference.

130. Insofar as the Club purports that the Player waived only his outstanding entitlements and not his future entitlements, the Panel finds that this would be in violation of Article 341(1) SCO, which provides as follows:

> *"For the period of the employment relationship and for one month after its end, the employee may not waive claims arising from mandatory provisions of law or the mandatory provisions of a collective employment contract".*

131. In legal doctrine this provision has been interpreted to mean that *"especially for the work already accomplished, the employee, based on Article 341* [SCO]*, cannot waive in a legally binding way his rights to be paid* […] *The right to get the base salary for work already accomplished has a mandatory character protected by Article 341* [SCO]*"* (WYLER R., Droit de travail, 7.1.8., p. 279-280).

132. This view has also been upheld in the jurisprudence of CAS, notably in a CAS award involving the Club:

> *"The Panel further notes that even if the signature and the alleged statement "I confirm receipt and accept for termination" were to be interpreted as an agreement (which was denied by the Player), the termination agreement would be deemed null and void: according to Article 341* [SCO] *pursuant to which an employee may not validly waive any claims arising from mandatory law during and for 30 days after termination of the employment agreement. Considering the terms mentioned in the letter, the Panel notes that a termination without any financial obligation must be deemed unbalanced. The Player may not waive his right for compensation. Therefore, even if the letter qualified as mutual agreement, it would be null and void in terms of Article 341* [SCO]. *Considering this outcome, the Panel deems it obsolete to examine the validity of the adding the handwritten sentence "I confirm receipt and accept for termination""* (CAS 2016/A/4582, para. 67 of the abstract published on the CAS website).

133. Accordingly, if this alternative interpretation of the waiver were to be followed, it would also be null and void.

134. Turning to the loan period with Petrojet, the Panel first of all observes that, by means of the Loan Agreement, the Club was released from its duty to pay salary to the Player *"from January"* until the end of the 2017/18 season.

135. Contrary to the Player's submissions, the Panel finds that this includes the instalment of USD 23,774 that was to be paid on 15 January 2018, despite the fact that this amount fell due before the Loan Agreement was concluded, because the loan agreement was for half a season, *"from January"*.

136. It is in dispute when the 2017/18 season ended. The Player maintains that the season ended at the end of April 2018 as the last match of the season was played on 27 April 2018, whereas the Club argues that the season ended in May 2018.

137. Regardless of when the season ended exactly, the Panel observes that it is acknowledged by the Club that the season ended in May 2018 at the latest, as a consequence of which the salary of USD 64,516 that was to be paid to the Player by the Club on 15 June 2018 fell due after the loan period with Petrojet and is, therefore, in principle, due.

138. Accordingly, the Panel is satisfied to accept that the Player validly waived the instalments of 15 January and 15 April 2018 and that the Club, therefore, was no longer required to

pay these amounts. The Club was nonetheless required to pay the 1 August 2017 and 15 June 2018 instalments. The Panel finds that the Player was, therefore, in principle, entitled to an amount of USD 210,516 over the 2017/18 season, but only received USD 115,085 from the Club, i.e. USD 95,431 short.

139. As to the housing costs in the amount of USD 1,935 in May 2018, the Panel finds that the Player validly waived this claim, just like he waived his salary over May 2018.

140. Consequently, the Panel finds that the Player only validly waived his salary and housing costs to be paid by the Club during the period of the loan with Petrojet, i.e. from January until the end of May 2018, but that he remained entitled to receive remuneration from the Club on the basis of the Employment Contract before and after the loan period with Petrojet, which amounted to USD 95,431.

ii. 2018/19 season

141. Turning to the alleged outstanding remuneration over the 2018/19 season, Clause 2 of the Employment Contract provides as follows:

> *"**Second Season 2018/2019** $290.322# (Two Hundred Ninety Thousand Three Hundred Twenty Two US Dollars Only) to be shared as follow:*
>
> ***First instalment**: $72,582# (Seventy Two Thousand Five Hundred Eighty Two US Dollars Only) payable on the 1/8/2018.*
>
> ***Second instalment**: $72,580# (Seventy Two Thousand Five Hundred Eighty US Dollars Only) payable on the 15/1/2019.*
>
> ***Third instalment**: $72,580# (Seventy Two Thousand Five Hundred Eighty US Dollars Only) payable on the 15/4/2019.*
>
> ***Fourth instalment**: $72,580# (Seventy Two Thousand Five Hundred Eighty US Dollars Only) payable on the 15/6/2019"* (emphasis in original).

142. Furthermore, Clause 5 of the Employment Contract provides as follows:

> *"House can be changed* [sic] *for the player at 10,400 L.E. monthly (Ten thousand four hundred Egyptian pounds monthly) only".*

143. At the time of the Player's termination on 6 August 2018, the Club not only owed the Player the amount of USD 95,431 as set out above, but it is not in dispute that the Club also failed to pay the Player the first instalment of the 2018/19 season salary in the amount of USD 72,582 on 1 August 2018, despite the fact that the Player had insisted that such amount be paid on time by letters dated 23 and 30 July 2018.

144. Furthermore, although the Panel concluded that the Player waived his housing costs regarding the month of May 2018, he did not waive the housing costs over June and July 2018 and was therefore entitled to receive an amount of USD 1,290 from the Club.

145. Consequently, the Club's total debt towards the Player at the time of his termination letter was USD 169,303 (USD 95,431 + USD 72,582 + USD 1,290).

iii. Taxes

146. The Club argues that there were no overdue payables because the Club had paid the Player's taxes to the tax authorities in Egypt and that it therefore only paid the Player the net amount of salary corresponding to the gross salary as set out in the Employment Contract

147. The Panel observes that Clause 4(5) of the Employment Contract provides as follows:

> *"The player will be responsible for the due tax on him for this contract, and any other bonus according to the law. The club should deduct it (due tax) from his entitlement and provide it for the tax office on his (player) behalf".*

148. Based on this provision, the Panel notes that the Player himself is obviously primarily responsible to pay taxes and that the Club was in principle required to pay the Player the basic gross salary as set forth in the Employment Contract.

149. Clause 4(5) of the Employment Contract, however, entitles the Club to deduct the due taxes from the amounts to the Player, but only if such amounts are transferred to the tax office on the Player's behalf.

150. The Panel finds that the Club failed to prove that it paid any taxes to the Egyptian tax authorities on behalf of the Player.

151. In the absence of any such evidence, the Club did not enable the Panel to determine if and how much taxes were paid, as a consequence of which the Player is entitled to the full gross salary set forth in the Employment Contract.

152. In any event, the Club concedes that the amount of USD 110,829 does not fully cover the net salary of the amount of USD 146,000 gross, because it allegedly deducted a registration fee of USD 2,321 from the Player's net salary. There is no evidence on file that the Club paid this amount to the EFA or that the Player accepted to pay for this amount instead of the Club. Accordingly, even if the taxes would have been correctly paid to the Egyptian tax authorities on behalf of the Player, the Player had a legitimate claim against the Club for the amount of USD 2,321. This discussion is however not material to the outcome of the case, because the Club failed to prove that it paid any taxes on behalf of the Player.

153. Consequently, the Panel finds that the Player was entitled to receive an amount of USD 169,303 from the Club on 6 August 2018, i.e. the date the Player terminated his Employment Contract, invoking just cause.

iv. Interim conclusion

154. For the 2017/18 season, the Player's average monthly wage was USD 21,505 (USD 258,064 / 12) and for the 2018/19 season this was USD 24,194 (USD 290,322 / 12), i.e. an average monthly salary of USD 22,850.

155. Accordingly, the overdue amount comprised approximately 7,5 months of salary (USD 169,303 / USD 22,850), which plainly exceeds the standard of 2 monthly salaries as set forth by Article 14bis(1) and (2) FIFA RSTP.

156. The Player also complied with the procedural requirement of Article 14bis(1) FIFA RSTP requiring a player to *"put the debtor club in default in writing and* [granting] *a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s)"*, as he notified the Club concerning the outstanding amounts on 13, 18, 23 and 30 July 2018, before finally terminating the Employment Contract only on 6 August 2018, i.e. 24 days after the Player's first default notice.

157. Accordingly, the Panel finds that the prerequisites of Article 14bis(1) and (2) FIFA RSTP are complied with and that the Player, in principle, had just cause to terminate his Employment Contract because of the Club's breach thereof.

158. Even applying the arguably higher threshold that was applicable before the introduction of Article 14bis FIFA RSTP, the FIFA Commentary refers explicitly to the following example in respect of Article 14 FIFA RSTP:

> *"A player has not been paid his salary for over 3 months. Despite having informed the club of its default, the club does not settle the amount due. The player notifies the club that he will terminate the employment relationship with immediate effect. The fact that the player has not received his salary for such a long period of time entitles him to terminate the contract, particularly because persistent noncompliance with the financial terms of the contract could severely endanger the position and existence of the player concerned".*

159. The Panel notes that the amount of USD 169,303 was significantly more than 3 months of salary and that the outstanding amount was a substantial part of the total remuneration of the Player for the relevant period as agreed in the Employment Contract. Further, the Panel notes that parts of the amount owed by the Club, USD 30,915, was due 1 August 2017, more than a year before the Player terminated the Employment Contract, and that the Club's failure to make further payments due on 15 June 2018 and 1 August 2018, seen in connection with the relatively large outstanding amount, was sufficient for the Player to lose faith that the Club would comply with its contractual obligations under the Employment Contract.

(c) Additional arguments raised by the Club

160. The Club's email to the Player dated 22 June 2018 informing the latter that the pre-season had started on *"9/6/2018"*, that he had been notified thereof on *"7/9/2018"* and that *"we should like to inform you that the regulations have been implemented regarding the discontinuation of the training and all legal procedures will be taken towards this"*, is of little relevance. First, there is no

evidence on file that the Player was notified by the Club that he was required to report himself on 9 June 2018. Second, the Player testified that the Club bought his flight tickets for his vacation, so that the Club knew that the Player was scheduled to return on 28 June 2018 and did not object thereto. The Player's testimony was not contested by the Club.

161. Furthermore, the Panel finds that the notification sent by the Club to the EFA on 15 July 2018 appears to have been made in bad faith, because at that point in time the Player was already back at the Club for some time. Indeed, the Club itself maintains that the Player was training normally with the first team (or at least its staff) upon return from his vacations at the end of June 2018. The allegation made by the Club in such letter that *"[w]e are unable to reach* [the Player] *by phone which is intentionally closed and accordingly we notified* [him] *through* [his] *registered address"* remained entirely unsubstantiated. In any event, the Club's notification to the EFA failed to specify when the Player allegedly failed to report for training. The Club's argument that it could not contact the Player is flawed, because there is no indication on file that the Club even tried to reply to the email received from the Player's legal representatives sent on 13 July 2018, i.e. two days before.

162. The Panel also does not find that the Player signed an employment contract with Al Shamal on 1 August 2018 and that this was the reason the Player terminated his Employment Contract. Although it is true that the employment contract with Al Shamal was dated 1 August 2018, the Panel is persuaded by the Player's testimony that he only signed the employment contract upon arrival to Qatar after having been medically examined, i.e. when he had already terminated his Employment Contract with the Club. The Player's position is corroborated by the flight tickets to Qatar and he referred to the Qatari immigration date stamps in his passport too.

(d) Contributing factors

163. Although the Panel finds that the overdue payables are an independent reason justifying the termination, there are several factors that exacerbated the Player's situation and contributed to the conclusion that the Player was in his right to terminate the Employment Contract due to the Club's failure to fulfil its obligations.

164. The Panel does not consider it necessary to enter into great detail with respect to these aggravating circumstances, but they are briefly set out below.

165. The Player convincingly testified that the Club did not see any future prospects for him with the Club and therefore it encouraged him to go on loan with another club, which the Panel considers to be an indication that the Club was no longer interested in the Player's services, but did not want to release him so as to maintain its claim on any possible transfer fee.

166. The pressure exercised on the Player during the meeting with the President of the Club that allegedly took place on 12 July 2018 is unacceptable. The Panel has no reason to doubt the Player's testimony in this respect, as the Club did not call any witnesses that could rebut the Player's account of events. The Club had no right to pressure the Player into rescinding

his Employment Contract or accepting to go on loan. Rather, the Player had the right to stay with the Club on the basis of the Employment Contract.

167. Furthermore, the Club did not register the Player for the new season, although this could still have been repaired by the Club because the transfer window in Egypt only closed at the end of August 2018, i.e. after the Player had terminated the Employment Contract.

168. The Player was not invited to the training camps and was forced to train alone or in small groups. Although this was denied by the Club in its Answer, no evidence has been presented by the Club that the Player did take part in training with the Club's A-team or that there were legitimate reasons justifying his absence. Absent any evidence, the Panel does not accept the Club's contention that the Player did not keep a minimum level of fitness and that this was the sole reason that he was not permitted to train with the Club's A-team. This violation is particularly severe because Clause 3(7) of the Employment Contract provides as follows:

> *"It is unlawful for the Club to forbid the player to train with the team with which he is registered".*

169. Finally, the Club did not have the decency to answer the Player's default letters dated 13, 18, 23 and 30 July 2018. Indeed, should the Club have engaged with the Player as to the outstanding amount the potential consequences of the waiver with respect to the Player's loan to Petrojet could have been sorted out.

170. As mentioned *supra* already, the "straw that broke the camel's back" was the fact that, despite reminders being sent on 23 and 30 July 2018, the Club failed to pay the Player the amount of USD 72,582 that fell due on 1 August 2018.

(e) Conclusion

171. Considering all the above circumstances, individually insofar as the outstanding remuneration is concerned, but certainly jointly with the other factors, the Panel finds that the Player had just cause to terminate the Employment Contract on 6 August 2018.

ii. If the Player had just cause to terminate his Employment Contract, what are the consequences thereof?

172. Having determined that the Player had just cause to terminate the Employment Contract, it is now up to the Panel to determine the consequences thereof.

173. Besides in principle being required to pay the Player his outstanding salary in the amount of USD 169,303, the Club may also be required to pay compensation for breach of contract to the Player.

174. Although it has been established that the Player had just cause to terminate the Employment Contract, Articles 14 and 14bis FIFA RSTP do not specifically determine that a player is entitled to any compensation for breach of contract by the club in such scenario.

175. The Panel, however, is satisfied that the Player is in principle entitled to compensation because of the Club's breach of its contractual obligations under the Employment Contract. In this respect, the Panel makes reference to the FIFA Commentary. According to Article 14(5) and (6) FIFA Commentary, a party *"responsible for and at the origin of the termination of the contract is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed"*. Hence, although it was the Player who terminated the Employment Contract, the Club was at the origin of the termination by breaching its contractual obligations towards the Player and is thus liable to pay compensation for the damages incurred by the Player as a consequence of the early termination. This approach has also been applied in CAS jurisprudence (*e.g.* in CAS 2012/A/3033, para. 72 of the abstract published on the CAS website; CAS 2019/A/6175, para. 155 of the award as published in FIFA's legal portal).

176. The Panel observes that Article 17(1) FIFA RSTP provides as follows:

> *"The following provisions apply if a contract is terminated without just cause:*
>
> *1. 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.*
>
> *Bearing in mind the aforementioned principles, compensation due to a player shall be calculated as follows:*
>
> *i. In case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated;*
>
> *ii. In case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminate early (the "Mitigated Compensation". Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract.*
>
> *iii. Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in the points i. and ii. above. The terms of such an agreement shall prevail".*

177. The Parties did not deviate from the application of Article 17(1) FIFA RSTP by means of a liquidated damages clause. The compensation for breach of contract to be paid to the Player by the Club is therefore to be determined in accordance with Article 17(1) FIFA RSTP.

178. The Panel takes due note of previous CAS jurisprudence establishing that the purpose of Article 17(1) FIFA RSTP is basically nothing else than to reinforce contractual stability, i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (CAS 2008/A/1519-1520, para. 80, with further references to: CAS 2005/A/876, p. 17*: "*[…] *it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability'* […]*"*; CAS 2007/A/1358, para. 90; CAS 2007/A/1359, para. 92: *"*[…] *the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability* […]*"*; confirmed in CAS 2008/A/1568, para. 6.37).

179. In respect of the calculation of compensation in accordance with Article 17(1) FIFA RSTP and the application of the principle of "positive interest", the Panel follows the framework set out by a previous CAS panel as follows:

> *"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 compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.*
>
> *As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have if no breach had occurred.*
>
> *The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see Streiff/von Kaenel, Arbeitsvertrag, Art. 337d N 6, and Staehelin, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also Wyler, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) (…).*
>
> *The principle of the "positive interest" shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the player by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the player from a third party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including the specificity of sport, as foreseen in art. 17 FIFA Regulations"* (CAS 2008/A/1519-1520, para. 85 *et seq.* of the abstract published on the CAS website).

180. The Panel finds that the legal framework set out above and the principle of positive interest are applicable to the present case and adheres thereto. Against this background, the Panel will proceed to assess the Player's objective damages, before applying its discretion in adjusting this total amount of objective damages to an appropriate amount, if deemed necessary.

181. Notwithstanding this general legal background, the Club submits that, based on the Settlement Agreement concluded between the Parties on 4 September 2018, no damages are payable.

182. The content of the Settlement Agreement concluded on 4 September 2018 is repeated here for ease of reference and provides, *inter alia*, the following:

> *"WITH THE REFENCE TO THE EMPLOYMENT CONTRACT WHICH IS FOUR (4) YEARS WITH THE CLUB STARTING FROM 2017 UNTILL [sic] 2021 WITH* [the Club].
>
> *THIS IS A DECLARATION FROM* [the Player].
>
> *I AGREE TO EARLY TERMINATION OF THE EMPLOYMENT CONTRACT WITH* [the Club] *IN A FRIENDLY WAY UPON MY REQUEST WITH LEGAL AND SPORTIVE EFFECT FROM:30-07-2018, THIS DATE SHALL BE REFERRED TO AS THE TERMINATION DATE.*
>
> *I DECLARE THAT I RECEIVE ALL MY MONEY AND FINANCIAL BELONGING AND THAT I HAVE NO RIGHTS TO CLAIM FROM THE CLUB ANY OTHER FINANCIAL BENEFITS AFTER THIS DATE*
>
> *IN REFERENCE WITH OUR MUTUAL AGREEMENT WITH* [the Club]*, FROM THE TERMINATION DATE* [the Club] *SHALL DECLARE ME AS A FREE PLAYER (FREE AGENT) AND* [The Club] *SHALL FULLY COOPERATE IN TMS AND/OR ANY OTHER DOCUMENTS REQUIRED TO TRANSFER TO ANY OTHER CLUB IN AND/OR OUTSIDE EGYPT, WITHOUT CLAIMING ANY COMPENSATION WHATSOEVER.*
>
> *BY SIGNING THIS AGREEMENT I CONFIRM THAT I WITHDRAW ANY PREVIOUS COMPLAINT AGAINST THE CLUB INFRONT OF ANY ENTITY ALL OVER THE WORLD, NEITHER FIFA OR CAS.*
>
> *ANY AND ALL CONTROVERSIES OR DISPUTES ARISING FROM THIS AGREEMENT SHALL BE SOLELY SUBJECT TO THE JURISDICTION OF THE COMPETENT FIFA JUDICIAL BODIES, NEITHER FIFA OR CAS.*
>
> *FINALLY MY SINCERE APPRECIATION TO THE MANAGEMENT OF* [the Club] *FOR SUPPORTING ME DURING THE PERIOD THAT I PLAYED WITH THE CLUB AND WISHING MY BEST REGARDS TO THE CLUB IN THE FUTURE".*

183. As argued by both Parties, since the Employment Contract had already been terminated on 6 August 2018, the Panel does not consider it appropriate to refer to this document as a "termination agreement", but considers it to be a "settlement agreement". The Panel does not consider it appropriate to refer to the Settlement Agreement as a unilateral waiver from the Player, because based on the terms of the Settlement Agreement the Club purports to give a consideration to the Player, which will be analysed in more detail below.

(a) The relevance and legality of the Settlement Agreement

184. The Club avers that by means of the Settlement Agreement dated 4 September 2018, the Player confirmed that he had received all his money and financial belongings from the Club and that he had no claims against the Club. On this basis, the Club maintains that the Player is not entitled to any outstanding remuneration or compensation for breach of contract.

185. The Player maintains that the Settlement Agreement was invalid because it was concluded in violation of Articles 21(1), 29(1), 30 and 341(1) SCO.

186. Article 21(1) SCO provides as follows:

> *"Where there is a clear discrepancy between performance and consideration under a contract concluded as a result of one party's exploitation of the other's straitened circumstances, inexperience or thoughtlessness, the injured party may declare within one year that he will not honour the contract and demand restitution of any performance already made".*

187. Article 29(1) SCO provides as follows:

> *"Where a party has entered into a contract under duress from the other party or a third party, he is not bound by that contract".*

188. Article 30(1) SCO provides as follows:

> *"A party is under duress if, in the circumstances, he has good cause to believe that there is imminent and substantial risk to his own life, limb, reputation or property or to those of a person close to him".*

189. Article 341(1) SCO, provides as follows:

> *"For the period of the employment relationship and for one month after its end, the employee may not waive claims arising from mandatory provisions of law or the mandatory provisions of a collective employment contract".*

190. The Panel notes that the interconnection between Article 21 SCO on the one hand, and Articles 29 *et seq.* SCO on the other, has been discussed in CAS jurisprudence based on legal literature:

> *"Article 21 and Articles 29 SCO et seq. are closely related. According to the majority view in jurisprudence and legal literature, Articles 29 SCO et seq. are not applicable when a party takes*

advantage of an existing predicament (SFT 5A_468/2008, E. 2.1; BSK-OR/Schwenzer, Art. 29 N. 6). However, Article 21 SCO may be applicable in such case (SFT 5A_468/2008, E. 3.1)" (CAS 2016/A/4826, para. 75).

191. Since the Player primarily relies on the argument that the Club abused his straitened circumstances, the Panel will start its analysis by looking at Article 21 SCO.

192. The Panel finds that the situation in the matter at hand resembles the situation in CAS 2016/A/4826. The Panel finds the structure and framework of the award in such case logical and compelling and therefore applies it to the matter at hand.

193. In order for Article 21 SCO to apply i) the injured party must have been in straitened circumstances when concluding the contract; ii) the party entitled to benefit from the contract must have exploited the other's vulnerability; and iii) a clear disparity between performance and consideration is required (HONSELL H. (ed.), Obligationenrecht, 2014, p. 106-109).

i. The Player's straitened circumstances

194. The Panel finds that the Player objectively found himself in a difficult situation at the time of signing the Settlement Agreement. He had terminated his Employment Contract with the Club and knew that he would probably have to start lengthy legal proceedings against the Club in order to try and obtain the outstanding remuneration and compensation he believed he was entitled to. Although determined with the benefit of hindsight, the Panel considers it important to add that the Player was basically left with no other option but to terminate the Employment Contract by the Club's failure to comply with the terms. The fact that the Player did the unavoidable should not be held against him.

195. Furthermore, the Player also had to look for new employment while facing a situation that any such new club could potentially be found jointly and severally liable with him should it be determined that he had no just cause to terminate his Employment Contract. This follows from Article 17(2) RSTP, which provides as follows:

"Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, ***the professional and his new club shall be jointly and severally liable for its payment****. The amount may be stipulated in the contract or agreed between the parties"* (emphasis added).

196. This joint liability is also applicable in the absence of any fault from the new club (see for instance CAS 2013/A/3149, para. 99).

197. Besides the potential joint liability, also sporting sanctions could be imposed on the new club on the basis of Article 17(4) RSTP, which provides as follows:

"In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. ***It shall be presumed, unless established to the contrary, that any club***

> ***signing a professional who has terminated his contract without just cause has induced that professional to commit a breach****. The club shall be banned from registered any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exception and the provisional measures stipulated in article 6 paragraph 1 of these regulations in order to register players at an earlier stage"* (emphasis added).

198. It was therefore difficult for the Player to find new employment, a situation for which the Player himself was not to blame. This notwithstanding, the Player found potential new employment with the Qatari football club Al Shamal.

199. However, after already having signed an employment contract with Al Shamal, the latter club became hesitant to proceed with the Player in the absence of an ITC being issued by the EFA, because this could mean getting involved in a legal dispute in which it could potentially be held jointly and severally liable with the Player to pay damages for breach of contract to the Club.

200. Although the Panel finds that the Club would have had no reasonable claim against the Player, this was nearly impossible to assess for Al Shamal. The Panel therefore considers it understandable that Al Shamal encouraged the Player to obtain his ITC with the permission of the Club. When confronting the Club with his difficult situation, the Player was faced with the situation that the Club was willing to instruct the EFA to release his ITC, but only on the condition that the Player would waive all his entitlements from the Club. This created a difficult dilemma for the Player.

201. Furthermore, the Panel agrees with the Player that a potential objection of a club against its national federation issuing the player's ITC to the new federation, comprises a significant hurdle for players to sign with a new club. In obtaining the ITC, a player is largely dependent on his former club's willingness to allow the issuance of the ITC.

202. The Player could have proceeded to apply for a provisional ITC, but this would not have comforted Al Shamal, because the Player's new club would remain exposed to the risks set out above. In this respect, the Panel also considers the Player's statement at the hearing relevant that Al Shamal wanted to avoid political problems, because of the background of political turmoil between the states of Egypt and Qatar.

203. Be this as it may, the Panel notes that it is recognised by FIFA that clubs may attempt to pressure players to waive rights in exchange for an ITC. Indeed, the FIFA Commentary shows that FIFA is aware of this problem as it refers to the following example:

> *"The club that the player is leaving will mostly oppose attempts to allow its own association to issue an ITC if the player has signed a contract with a new club in another association. In some cases, this opposition is meant to intimidate or penalise the player who may in this way agree to waive his rights towards his former club".*

204. This is also confirmed in CAS jurisprudence referred to by the Player:

> *"The Panel is, however, aware of numerous cases where the player and the club are in dispute and the player leaves the club, moves abroad and looks to continue his career with a new club. That new club needs an ITC to register the player with its association, and often the original club will request its own association to hold onto the ITC, to use it as leverage against the player or the new club (to obtain compensation or a fee for the player for example"* (CAS 2018/A/5935).

205. Finally, pursuant to Article 8(2)(1) of Annex 3 FIFA RSTP, before starting the ITC application the new club requires proof *"signed by the player and his/her former club that there is no third-party ownership of the player's economic rights"*, while it is in practice very difficult to obtain such declaration from the player's former club when a player has terminated his employment contract with such club, invoking just cause.

206. Against this regulatory background, the Player's personal situation was aggravated by the fact that he had received only a small fraction of his salary from the Club for more than a year, that he was the breadwinner of his family and that the Player had become father of his second child on 2 May 2018, approximately four months before signing the Settlement Agreement.

207. Consequently, the Panel finds that the Player was in straitened circumstances.

ii. The Club's exploitation of the Player's straitened circumstances

208. According to the Player's uncontested testimony, the Club would not allow the EFA to issue his ITC to the QFA, unless he would waive all his outstanding salary and possible compensation to be received for the Club's breach of the Employment Contract.

209. The Panel finds that the Club thereby abused the Player's difficult situation. The Club required the Player to conclude a deal by means of which the Player would waive his entitlement to the balance of the Employment Contract, which was USD 895,158, i.e. USD 1,225,804 (total value of the Employment Contract – USD 258,064 (salary for the first season) – USD 72,582 (first instalment for the second season)) at the relevant moment in time, while the *quid pro quo* was the Club's consent to the EFA to issue the Player's ITC to the QFA.

210. The Club's argument that the video recorded by the Player demonstrates that he confirmed that he freely entered into the Settlement Agreement, that it was his will to do so and that he therefore had no further amounts to claim from the Club, is simply not true. The video does not contain any statement from the Player regarding the Settlement Agreement. The Player simply expressed his appreciation to the Club and the Club's management.

211. The Club was in complete control of the process related to the Player's ITC as well as of the negotiations with the Player concerning the Settlement Agreement. In this position, the Club could prevent the Player's registration for Al Shamal. This is exemplified by the fact

that the Player's ITC was released by the EFA upon the conclusion of the Settlement Agreement.

212. The Club clearly made the issuance of the Player's ITC conditional upon the conclusion of the Settlement Agreement and, thus, conditional upon the Player's waiver of his entitlement to claim outstanding remuneration and compensation for breach of contract. The Panel finds that there was no justification for this behaviour.

213. First of all, Article 9(1) RSTP provides that an *"ITC shall be issued free of charge without any conditions or time limit"*.

214. As held by the CAS panel in CAS 2016/A/4826, *"[a]lthough a dispute may have existed between the Player and the Club about the amount of compensation to be paid to the Player for the early termination of the Employment Contract, this is no valid reason for the Club to prevent the Player from registering for a new club. It was clear that the Player would not continue his career with the Club. The termination as such was also never disputed by the Player"* (CAS 2016/A/4826, para. 80 of the abstract published on the CAS website).

215. As also held by the CAS panel in CAS 2016/A/4826, *"[b]esides the obligation of the Club to act in good faith pursuant to the FIFA RSTP, the Panel also finds that the Club – in light of the Employment Contract – had obligations post contractum vis-à-vis the Player not to hinder his right to find new employment"* (CAS 2016/A/4826, para. 80 of the abstract published on the CAS website).

216. The situation in CAS 2016/A/4826 is different from the matter at hand in at least one respect. Whereas the club in CAS 2016/A/4826 had unilaterally terminated the employment contract with the player, in the matter at hand the Player unilaterally terminated the employment contract with the Club. Accordingly, whereas the club in CAS 2016/A/4826 unequivocally accepted that there was no future for the player with the club, this cannot be said from the situation of the Player with the Club. The Club had the right to dispute the Player's termination by means of commencing proceedings against the Player before the FIFA DRC in order to claim compensation for breach of contract.

217. Based on the evidence in front of it, and the Player's uncontested account of the meeting with the Club's President on 12 July 2018, it was clear that the Club did not see a future for the Player with the Club as it tried to convince the Player to rescind his Employment Contract or to go on loan to another club. In short, it was clear that the Club no longer valued the Player's services.

218. Also, with the knowledge of hindsight, the Club had no reasonable argument that would justify claiming compensation for breach of contract by the Player, as it was clearly the Club itself that breached the terms of the Employment Contract, thereby causing the Player to terminate it.

219. The Panel finds that, generally, in a situation where a club does not value the services of a player and the player clearly has just cause to terminate an employment contract, a club

cannot be permitted to object to issuing the player's ITC, at least not in order to pressure the player into entering into a settlement.

220. Although the Club maintains that the Settlement Agreement was concluded on the initiative of the Player, the Panel is convinced by the Player's uncontested testimony that it was actually the Club that pressured the Player into signing the Settlement Agreement.

221. Consequently, the Panel finds that the Club exploited the Player's straitened circumstances.

iii. The disparity between performance and consideration

222. The disparity is clear. There was no actual *quid pro quo*, because whereas the Player waived an amount of USD 895,158, the Club gave the Player something in return that it should have given him anyway (i.e. the ITC). The Club avoided a claim being lodged against it for the aforementioned amount plus the Player's outstanding remuneration by issuing the ITC, whereas the Player only obtained something that should have been given to him anyway.

223. There was no reasonable argument for the Club to object to the issuance of the ITC as it had no reasonable claim against the Player. Accordingly, the Club should have issued the ITC without consideration, as set forth by the RSTP. The Club abused the regulatory framework to pressure the Player into concluding the Settlement Agreement.

iv. The procedural requirements of Article 21 SCO

224. Again with reference to CAS 2016/A/4826, the Panel is satisfied to accept that there are certain formalities that must be complied with in order to accept that the Player has satisfied his burden of proof:

> *"Since the CAS Code does not contain any provision with respect to the threshold of substantiation, this Panel – in application of article 182(2) of Switzerland's Private International Law Act (the "PILA") – takes guidance in Swiss Procedural law. In this context the Panel refers to the jurisprudence of the Swiss Federal Tribunal, according to which submissions are substantiated, if:*
>
> - *they are detailed enough to determine and assess the legal position claimed (BGer 4A_42/2011, 4A_68/2011, E. 8.1); and*
> - *detailed enough for the counter-party to be able to defend itself (BGer 4A_501/2014, E. 3.1)"* (CAS 2016/A/4826, para. 87).

225. The duty to substantiate factual allegations not only lies with the Player, but also with the Club. Similar to CAS 2016/A/4826, whereas the Player gave a detailed account of the situation, the Club limited itself to denying the facts as submitted by the Player. The Club, e.g., did not call any witnesses and in fact did not even appear at the hearing. In particular, the Club did not make available any person that was involved in the discussions with the Player concerning the signing of the Settlement Agreement.

226. Consequently, the Panel finds that the procedural prerequisites for applying Article 21 SCO are complied with.

v. The deadline for invoking Article 21 SCO

227. Pursuant to Article 21 SCO, the provision has to be invoked *"within one year"*.

228. The Panel finds that this prerequisite is clearly complied with.

229. The Settlement Agreement was concluded on 4 September 2018, whereas the Player already invoked the nullity of the Settlement Agreement on 10 October 2018 during the proceedings before the FIFA DRC.

230. Consequently, the Panel finds that the Player timely invoked Article 21 SCO.

vi. Conclusion

231. Since all procedural and substantive requirements for the application of Article 21 SCO are satisfied, the Panel finds that the Settlement Agreement is invalid. The Settlement Agreement is therefore irrelevant for the matter at hand.

b. Calculation of damages based on Article 17(1) RSTP

232. Accordingly, the Player's damages are to be calculated in accordance with Article 17(1) RSTP and the principle of positive interest as set forth above.

233. On the date of the termination, i.e. 6 August 2018, the remaining value of the Player's Employment Contract was USD 217,740 (USD 290,322 – USD 72,582) for the 2018/19 season, USD 322,580 for the 2019/20 season, and USD 354,838 for the 2020/21 season. This comprises a total amount of USD 895,158.

234. Because of the Club's breach of contract, the Player missed out on earning this amount. Accordingly, the Panel finds that the Player is, in principle, entitled to an amount of compensation of USD 895,158.

235. The Panel notes that the Player also claimed to be entitled to be compensated for his housing costs in an amount of EGP 10,400 per month, but finds that the Player failed to establish to have incurred any costs in this respect and that such claim is therefore to be dismissed.

236. The Player concedes that the remuneration he received from Al Shamal up until the end of the 2020/21 season is to be deducted from the amount of USD 895,158 in accordance with Article 17(1)(ii) FIFA RSTP.

237. The Player contends that he earned an amount of USD 176,400 with Al Shamal from 6 September 2018 until 31 May 2019, which leaves a balance of USD 718,758. The Player

contends that he was not able to find a new club after 31 May 2019. The Panel finds that there are no indications on file justifying the conclusion that the Player failed to properly mitigate his damages and the Club did not put forward any arguments in this respect.

238. The Player further claims that he is entitled to an additional amount of compensation of 6 months' salary, because of the egregious circumstances under which his Employment Contract was terminated.

239. In this respect, Article 17(1)(ii) FIFA RSTP provides as follows:

> *"*[…] *[S]ubject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract".*

240. The Panel finds that this citation is to be divided in two parts: i) additional compensation for early termination due to overdue payables; and ii) additional compensation for egregious circumstances. Based on the wording of the provision, whereas the former is an obligation, (i.e. *"shall be entitled"*), the latter is a discretion (i.e. *"may be increased"*).

241. Given the wording of Article 17(1)(ii) FIFA RSTP and because the Employment Contract was indeed terminated by the Player primarily due to overdue payables, it is incumbent on the Panel to award an additional amount of compensation of three monthly salaries, i.e. USD 68,550 (3 x USD 22,850). Since this additional compensation does not exceed the mitigated amount (USD 176,400), it is to be awarded.

242. However, turning to the second element, the Panel does not consider it appropriate to award an additional amount of compensation to the Player for egregious circumstances. By being entitled to receive the balance of his Employment Contract, which comprises salary for a period of nearly 3 years and without any evidence on file that the Player made significant efforts to mitigate his damages, in particular during the 2019/20 and 2020/21 season, the Panel finds that the Player is already fairly compensated for his damages by the amount of USD 718,758.

243. Finally, as to interest, the Panel observes that Article 339(1) SCO determines as follows in a free translation into English:

> *"When the employment relationship ends, all claims arising therefrom fall due".*

244. Furthermore, Article 73(1) SCO provides as follows in a free translation into English:

> *"Where an obligation involves the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5% per annum".*

245. Consequently, as to the outstanding remuneration in the amount of USD 169,303, the Player is entitled to interest at a rate of 5% *per annum* over the following amounts as follows:

- USD 35,171 as from 2 August 2017 until 28 December 2017;
- USD 30,915 as from 29 December 2017 until the date of effective payment;
- USD 64,516 as from 16 June 2018 until the date of effective payment;
- USD 645 as from 1 July 2018 until the date of effective payment;
- USD 645 as from 1 August 2018 until the date of effective payment;
- USD 72,582 as from 2 August 2018 until the date of effective payment.

246. Furthermore, the Panel finds that the Club shall pay compensation for breach of contract in the amount of USD 787,308 (USD 718,758 + USD 68,550) to the Player, with interest at a rate of 5% *per annum* as from 7 August 2018 until the date of effective payment.

247. Finally, insofar as the Player requests the Panel to apply Article 24bis RSTP, the Panel finds that this request falls outside the Player's prayers for relief and can therefore not be entertained.

B. Conclusion

248. Based on the foregoing, the Panel finds that:

i) The Player had just cause to terminate the Employment Contract on 6 August 2018;

ii) The Club shall pay outstanding remuneration to the Player in the amount of USD 169,303, plus interest.

iii) The Club shall pay compensation for breach of contract to the Player in the amount of USD 787,308, plus interest.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 24 January 2020 by Mr Benjamin Acheampong against the decision issued on 16 August 2019 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 16 August 2019 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is set aside.

3. Zamalek Sports Club shall pay outstanding remuneration to Mr Benjamin Acheampong in the amount of USD 169,303 (one hundred sixty nine thousand three hundred three United States Dollars), with interest at 5% *per annum* accruing as follows:

   - USD 35,171 as from 2 August 2017 until 28 December 2017;
   - USD 30,915 as from 29 December 2017 until the date of effective payment;
   - USD 64,516 as from 16 June 2018 until the date of effective payment;
   - USD 645 as from 1 July 2018 until the date of effective payment;
   - USD 645 as from 1 August 2018 until the date of effective payment;
   - USD 72,582 as from 2 August 2018 until the date of effective payment.

4. Zamalek Sports Club shall pay compensation for breach of contract to Mr Benjamin Acheampong in the amount of USD 787,308 (seven hundred eighty seven thousand three hundred eight United States Dollars), with interest at a rate of 5% *per annum* as from 7 August 2018 until the date of effective payment.

5. (…).

6. (…).

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