



Arbitration CAS 2020/A/6962 César Manuel Payovich Perez v. Difaa Hassani El Jadidi, award of 18 November 2021

Panel: Mr Wouter Lambrecht (Belgium), Sole Arbitrator

Football

Conclusion of a contract with a person not holding capacity to bind the club

Theory of appearance

Granting of representation powers

Protection of a third party acting in good faith

Ratification of an invalid contract

1. According to Swiss law, representative powers may be granted either expressly or by means of conclusive acts. For what concerns representative powers granted by means of conclusive acts, one should distinguish tolerated powers of attorney (*“procuratio tolérée”*) from apparent powers of attorney (*“procuratio apparente”*). In the case of tolerated powers of attorney, the principal knows that the agent is acting on his behalf vis-à-vis a third party whereas in the case of apparent powers of the attorney, the principal does not know but should have known if he was paying due attention.
2. For what concerns the actual granting of representation powers by the principal to the agent, the alleged representation power must first be analysed from the point of view of the addressee to whom said representation powers would have been granted i.e. from the agent’s perspective acting on behalf of the principal (= the internal relation) and only if no such representation power can be found at internal level can one analyse the alleged representation power by looking at the relationship between the agent and the third party (= the external relation) to see whether the third party could in good faith rely on the representation power of the agent.
3. The protection of a third party acting in good faith requires two conditions to be met. First, it requires a communication of powers (*“communication des pouvoirs”*) by the represented party which can be made expressly or by means of a conclusive form. Secondly it requires the good faith of the third party in believing that the representing party was empowered to act and represent the represented party.
4. One should be reluctant in accepting that an invalid contract has been ratified. The (non-)approval is basically informal and can therefore also be implied, for example by execution of the contract or by relying on the legal consequences of the transaction. However, in case of doubt, silence shall mean non-approval, certainly in cases where a time-limit is set.

I. PARTIES

1. Mr César Manuel Payovich Pérez (the “Appellant” or the “Coach”) is a professional football coach of Uruguayan nationality, previously employed by the Indonesian Football Association from 2007 until 2015 as the head coach of various of its national youth teams.
2. Difaa Hassani el Jadidi (the “Respondent” or the “Club”) is a football club with its registered office in El Jadidi, Morocco. The Club is registered with the Royal Moroccan Football Federation (the *Fédération Royale Marocaine de Football* – the “FRMF”), which in turn is affiliated to the *Fédération Internationale de Football Association* (FIFA).
3. The Coach and the Club are hereinafter jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. 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 discussion.
5. In this respect, it should be noted that the background facts are based on what is a redacted run of an exchange of emails between a Mr Mohamed Moundib, with email address sec.gen.ajfc@gmail.com and the Coach, the redacted run of emails being clear from the sequence of dates mentioned below. While the Coach maintains that Mr Moundib represented the Club, the Club maintains that Mr Moundib is completely unknown to the Club and that it had no employee by the name of Mohamed Moundib for the last decade.

A. Background Facts

6. On 30 November 2017, the Coach received an email from a Mr Mohamed Moundib (“Mr Moundib”) containing a letter in annex (“Letter”) as well as a confidentiality agreement (the “Confidentiality Agreement”) for the Coach to sign in order to continue the negotiations.
7. The Letter reads as follows in its relevant parts:

“[...] My name is Mohamed Moundib, I am the current general secretary of the club Difaa Hassani d’El Jadidi, and I am contacting you following our first exchange several months ago, to discuss the possibilities to work together, in a sphere of collaboration and absolute confidence.”

[...] I am contacting you again since you have deposited your candidature to become the next coach of our first team, a candidature that, following a lot of consideration, has been accepted unison by our sporting directors, however we still have some considerations to discuss with you before giving our final ok”.

8. On 7 December 2017, the Coach countersigned and returned the Confidentiality Agreement to Mr Moundib.
9. On 12 December 2017, Mr Moundib sent a reply email to the Coach *inter alia* confirming receipt of the signed Confidentiality Agreement and touching upon the salary component of the agreement. This email reads as follows in its relevant parts:

“We have already homologated your confidentiality agreement and I have given instructions to work on the draft of your contract, I want to retake and verify your salary expectations.

If we understood correctly, you have asked 3 million euro per season for the technical staff, including a coach, assistant coach, goalkeeper trainer, a conditional preparer and you as head-coach, did we understand this correctly?

*[...] It goes without saying that we currently have a head coach and that we must remain very discrete and that we must take all possible precautions to not make the error to make public your hiring and it is in the interest of everyone that our prior negotiations with you remain reserved. [...]*².

10. On 9 January 2018, Mr Moundib sent a first draft of the employment contract to the Coach via email. On the same date, the Coach replied via email that he would meet his lawyer to analyse the contract.
11. On 14 January 2018, the Coach sent an email to Mr Moundib allegedly returning an amended contract with the changes being made in red (NB: *the amended contract allegedly contained as annex to this email was not submitted as an exhibit during this procedure*).
12. On 18 January 2018, Mr Moudib sent an email to the Coach informing him *inter alia* that the amended contract would be shared with his legal department whilst requesting the Coach to share a proof of bank account identification (“*relevé d’identité bancaire*”).

¹ Informal translation from French: “*Je m’appelle Mohamed Moundib je suis l’actuel secrétaire générale du club sportif Difaa Hassani d’El Jadidi, je viens vers vous depuis qui (sic !) nous avons pris nos premiers contact (sic !) avec vous il y a quelques mois de ceci, pour en discuter avec vous les possibilités qui (sic !) nous avons de pouvoir travailler ensemble, dans un cadre de coopération dans une atmosphère de confiance absolue. [...] Je reprends contact avec vous car vous vous avez posez (sic !) votre candidature à devenir notre prochain entraîneur sportif, dans notre équipe de première division, proposition qu’après beaucoup de considérations la direction sportive a accepté par unanimité, cependant nous avons encore quelques considérations à faire avec vous avant de la signature définitive de notre accord. [...]*”.

² Translation from French: “[...] Nous avons déjà homologué votre accord de confidentialité, et je viens de donner des instructions dans le sens de travailler l’échantillon de votre contrat je voudrais reprendre et vérifier avec vous votre prétention salarial. Si nous avons bien compris vous avez demandé 3 million d’Euros par la saison avec votre corps technique détaillé en entraîneur physique, deuxième entraîneur, entraîneur de gardien de but, préparateur physique et vous comme entraîneur principal, est-ce bien compris ? [...] Je crois que cela va de soit qui (sic !) vous êtes au courant qui (sic !) nous avons actuellement un entraîneur sur place nous devons être très discrets et nous devons prendre toutes les précautions pour ne pas commentre l’erreur de faire public votre embauche et c’est dans l’intérêt de tout le monde qui (sic !) notre préalable négociation avec vous reste tout de même réservé [...]”.

13. On 29 January 2018, Mr Moundib sent an email to the Coach adding a set of pictures of houses from amongst which the Coach and his staff were to choose their place to live whilst stating that “*shortly, I will be sending you the final version of the contract for your review*”³ (NB: *the email that was allegedly sent shortly afterwards containing the final version of the contract, possibly incorporating the alleged changes made by the Coach, was not shared during this procedure nor was this version of the contract submitted as an exhibit to the procedure*).
14. On 2 February 2018, the Coach replied that he agreed to all the terms and conditions of the Employment Contract and that he was waiting to receive the signed version from the Club both via email and via registered letter.
15. On 5 February 2018, Mr Moundib stated that he was happy that the Coach had accepted the Employment Contract and that a version signed by the President of the Club would be sent to the Coach later that day. Still on the same day, the Coach replied to this email by thanking Mr Moundib and asking Mr Moundib to send him a WhatsApp message to improve the communication between him and Mr Moundib.
16. In the evening of 5 February 2018, Mr Moundib sent the Employment Contract to the Coach by email, which was allegedly signed by Mr Moundib and the President of the Club, Mr Abdellatif El Mouktarid (“Mr El Mouktarid”), and allegedly containing the Club’s seal. Furthermore, Mr Moundib informed the Coach that he could not communicate with him via Whatsapp, as this was allegedly not permitted by the *Agence Nationale de Communication du Royaume*.
17. On 6 February 2018, the Coach countersigned the Employment Contract and returned it to Mr Moundib by email, together with the identification document of his bank account.
18. The Employment Contract, *inter alia*, contained the following terms of employment:
 - Valid from 30 June 2018 to 30 June 2019;
 - Gross monthly payment of USD 250,000, for a total of USD 3,000,000;
 - Signing bonus of USD 600,000;
 - Annual performance bonus of USD 600,000;
 - Arrangements as to housing for the entire coaching staff, plane tickets and meal vouchers.
19. From the redacted run of emails submitted by the Coach, it shows that following the rather steady exchange of emails between the Coach and Mr Moundib from November 2017 to the beginning of February 2018, the exchange started to slow down once the signed version of the contract was exchanged via email.
20. On 25 March 2018, the Coach sends an email to Mr Moundib which reads as follows:

“Hallo Mohamed, I am seeking information following my last email sharing the signed electronic version of the contract. Since then, I have had no news from you. Maybe I misunderstood something but you said that once

³ Translated from French: “[...] *a la sequence je t’envoi (sic!) la version finale du contrat pour votre revue*”.

*signed and having shared my bank account identification statement, I should be receiving a registered letter with the original copies at my home address. I am now attached to you and your institution as a professional and I need to know the next steps. I thank you in advance for your swift response”.*⁴

21. On 5 April 2018, Mr Moundib informed the Coach that following his request a telephone conference would be held between the Coach, Mr Moundib and president of the Club, Mr El Mouktarid, on 10 April 2018, *inter alia*, to discuss: the delivery of the original version of the Employment Contract, payment dates, the starting date of employment of the Coach and the accommodation of the Coach and his staff.
22. In the same email, Mr Moundib requested the Coach to confirm his availability for the call at the proposed hour (NB: *no document was produced during this procedure by means of which the Coach confirmed his availability for the call*) whilst Mr Moundib excused himself for the delay in replying to the Coach stating as follows: *“the delay for contacting you is on the one hand due to the fact that we have an informal contact with you facilitated by a common friend whilst we also had to make our arrangements to avoid legal problems with the FRMF and FIFA”*⁵.
23. On 15 May 2018, the Coach sent an email to Mr Moundib, asking if there was any problem as he had received no further communication since the 5th of April, nor had he received the originals of the signed contract. No reference is made to the telephone conference having taking place or not.
24. On 16 May 2018, Mr Moundib sent an email to the Coach excusing himself for the delay, indicating that they were due to slow processes and having advanced too quickly with him whilst having other agreements in place and whilst assuring the Coach that everything would be clarified to him soon.
25. On 9 June 2018, the Coach sent another email to Mr Moundib stating that he had received no news since a long period of time whilst inquiring *inter alia* about the starting date of employment, the date of delivery of the original version of the Employment Contract, his work visa and the date of payment of the signing bonus in the amount of USD 150,000 (NB: *the Employment Contract foresees a signing bonus of USD 600,000*). Besides, the Coach indicated that he needed a direct line of communication with the Club’s President and he requested both fixed and mobile numbers and office hours during which he could call the Club whilst also stressing the need to receive a reply quickly.
26. On 11 June 2018, Mr Moundib replied, stating *inter alia* that the Club was organising everything, that he would be sending the original copies on Tuesday the 12th and that the Coach should receive the original version of the Employment Contract on Thursday

⁴ Translated from French: *“Bonjour Mohamed, je viens aux Nouvelles car notre dernier email je vois ai envoyé la version électronique de mon contrat signé. Depuis je n’ai plus eus de nouvelles. J’ai peut-être mal compris mais tu m’avais dit qu’après ma signature et mon RIB envoyé je devais recevoir un courrier postal avec les originaux a mon domicile. Je suis depuis attaché à vous et à votre institution comme professionnel j’ai besoin savoir les pas à suivre. Je vous remercie de bien vouloir me répondre incessamment sur pen”* (sic !).

⁵ Translated from French: *“[...] Le retard en prendre contact avec toi d’un côté nous avions un contact informel avec toi à travers d’un ami proche par autre cote nous nous avons vues obliges de faire des arrangements pour éviter avoir des problèmes légales avec la FRMF et FIFA [...]”*.

according to the arrangements made. Furthermore, Mr Moundib provided the Coach with the (alleged) email address of Mr El Mouktarid (i.e. web.abdelaziz@gmail.com), assured the Coach that the signing bonus in the amount of USD 150,000 would be paid once the Club had received the countersigned original version of the Employment Contract and shared several phone numbers stating as follows: “[...] *As to the telephone numbers, I have been told that that your staff have already been in contact with the directors of the club so you can call them on the numbers that you already have at your disposal and you can ask for me or the President. [...]*”⁶.

27. Following the above email, and still on 11 June 2018, the Coach sent an email to the email address of Mr El Mouktarid, introducing himself whilst requesting a direct line of communication. The Club maintains that the email address of Mr El Mouktarid as provided to the Coach by Mr Moundib was incorrect and that Mr El Mouktarid therefore never received said email.
28. On 19 June 2018, the Coach sent another email to Mr Moundib stating that he had not received any documents from the Club nor any response from Mr El Mouktarid. He inquired about the situation again and asked for a quick response, as there was little time left until the start of the season whilst asking what was going on⁷.
29. From the documents on file, it does not appear that the Coach received an answer to this email.
30. Then, on 29 March 2019, more than nine months after the last correspondence between the Parties, the Coach sent a payment notice to the Club by registered post and by email to Mr Moundib.
31. The payment notice was addressed to Mr Moundib and Mr El Mouktarid, and in said notice the Coach demanded to be paid the amount of USD 3,100,000 within 10 days as a result of the alleged breach of the Employment Contract by the Club (NB: Pursuant to the Employment contract the Coach would be entitled to receive USD 3,600,000).
32. On 8 April 2019, Mr El Mouktarid replied on behalf of the Club by means of a letter which reads as follows:

“[...] Dear Sir Cesar Payovich,

We received with astonishment your letter dated of March 29, 2019, claiming us an amount of \$ 3.100.000, resulting, according to your words, from a contract binding you to our club dated of February 6, 2018.

We inform you that we are completely unaware of the emitting of such a contract, considering that at that time we had a Moroccan coach engaged under a contract registered in our federation and the CAF.

⁶ Translated from French: “[...] *Quant aux numeros de telephone on m’a déjà informé qui (sic !) ton personnels ont déjà était en contact avec la directions du club donc tu peux appeler aux même numeros qui (sic !) tu as déjà et demander après moi ou Mr le président. [...]*”.

⁷ Translated from French: “[...] *S’IL TE PLAIT DITES-MOI QU’EST-CE QU’EST EN TRAIN DE PASSER. [...]*”.

However, we encourage you to review your email and your request in the light of what has been said.

Otherwise, if you have authentic documents certifying your request, please send them to us to further analyze this matter. [...]”.

33. No further exchange took place between the Parties following the abovementioned letter of the Club.

B. Proceedings before the FIFA Players’ Status Committee

34. On 28 May 2019, the Coach filed a claim against the Club before the FIFA Players’ Status Committee (the “FIFA PSC”), requesting payment of USD 3,100,000 corresponding to the value of the Employment Contract, plus interest.

35. The Club disputed the Coach’s claim, arguing, *inter alia*, that Mr Moundib was not an official of the Club and that the documents relied on by the Coach were forged.

36. On 11 February 2020, a Single Judge of the FIFA PSC rendered his decision (the “Appealed Decision”), with the following operative part:

- “1. *The claim of [the Coach] is rejected.*
2. *The final costs of the proceedings in the amount of CHF 5,000 are to be paid by [the Coach] to FIFA [...]*”

37. On 30 March 2020, the grounds of the Appealed Decision were communicated to the Parties, determining, *inter alia*, as follows:

- *[...] [T]he Single Judge deemed the main issue at stake in this current matter was to determine if a valid employment contract had been signed by the parties and in that case, by which party had it been breached and the consequence of said eventual breach.*
- *[...] [T]he Single Judge recalled that in order for an employment contract to be considered as valid and binding, apart from the signature of both the employer and the employee, it should contain the essentialia negotii of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship, the remuneration and the signature of both parties. After a careful study of the contract presented by [the Coach], the single judge concluded that that in principle, said contract contained all such essential elements.*
- *[...] [A]ccording to [the Coach], he had signed 2 documents, [the Confidentiality Agreement] and [the Employment Contract], which were respectively countersigned by Mr Moundib and Mr El Mouktarid [...] for [the Employment Contract]. The Single Judge further noted that according to [the Coach], Mr Moundib was the secretary general of [the Club] and Mr El Mouktarid was the President of [the Club].*
- *[...] [T]he Single Judge found it important to emphasise that in according [sic] with the legal principle of the burden of proof, which is a basic principle in every legal system, a party deriving a right from an*

asserted fact has the obligation to prove the relevant fact (cf. ar. 12 par. 3 of the Procedural Rules). In this regard, the Single Judge highlighted that [the Coach] did not provide evidence that [Mr Moundib] was part of [the Club] and had the power to contract on behalf of [the Club].

- *On Mr El Mouktarid, the Single Judge wanted to underline that it did not found relevant the fact that at some point in time Mr El Mouktarid became President of the [Club], but highlighted once more that there was no evidence that when the [Coach] signed the [Employment Contract] Mr El Mouktarid was already President of the [Club].*
- *Moreover, the Single Judge took into account the argumentation of the [Club] according to which the signature of Mr El Mouktarid in the contract provided by the [Coach] was different from his signature and provided multiple documents with its signature in it.*
- *At this stage, the Single Judge considered it appropriate to remark that, as a general rule FIFA's deciding bodies are not competent to decide upon matters of criminal law, such as the ones of alleged falsified signature or document, and that such affairs falls into the jurisdiction of the competent national criminal authority.*
- *In continuation, the Single Judge recalled that all documentation remitted shall be considered with free discretion and, therefore, he focused his attention on the [Employment Contract] as well as on other documents containing Mr El Mouktarid' signature, provided by the parties in the context of the present dispute.*
- *After a thorough analysis of the aforementioned documents, in particular, comparing the relevant signatures of [Mr El Mouktarid] in the various documents provided in the present affair, the Single Judge had no other option but to conclude that, for a layman, the signatures on such documents appear to be different.*
- *With all of the above in mind, the Single Judge was of the opinion that [the Coach] did not provide any evidence that he had signed the contract with persons officially representing [the Club], and as such authorized to contract on behalf of [the Club]. As such, the Single Judge considered that no valid employment contract had been signed between [the Coach] and [the Club] and that consequently no compensation could be claimed by [the Coach].*
- *In light of all of the above, the Single Judge decided that he must reject the claim put forward by the [Coach] in its entirety”.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

38. On 16 April 2020, the Coach filed a Statement of Appeal with the Court of Arbitration for Sport (“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 Coach named the Club as the sole respondent and requested that the proceedings be submitted to a sole arbitrator.

39. On 27 April 2020, the Club informed the CAS Court Office that it agreed to submit the proceedings to a sole arbitrator.
40. On 4 May 2020, FIFA informed the CAS Court Office that it renounced to its right to request its possible intervention in the present proceedings based on Articles R52 and R41.3 of the CAS Code.
41. On 13 May 2020, the Coach filed his Appeal Brief in accordance with Article R51 of the CAS Code.
42. On 30 September 2020, the CAS Court Office informed the Parties that, pursuant to Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the arbitral tribunal appointed to hear the appeal was constituted as follows:

Sole Arbitrator: Mr Wouter Lambrecht, Attorney-at-Law, Barcelona, Spain
43. On 13 November 2020, the Club filed its Answer, in accordance with Article R55 of the CAS Code. In its Answer, the Club applied for evidentiary measures by asking the Sole Arbitrator to order the Coach to produce his latest (or any other) employment contract signed with the Indonesian Football Association.
44. On 25 November and 1 December 2020 respectively, following an inquiry from the CAS Court Office in this respect, both the Club and the Coach indicated their preference for a hearing to be held.
45. On 7 December 2020, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing by video-conference.
46. Also on 7 December 2020, pursuant to Article R44.3 CAS Code, the Coach was requested by the Sole Arbitrator to (i) produce a copy of each employment contract signed with the Indonesian Football Association; and (ii) take the necessary steps and make his best effort to ensure that Mr Moundib would be present at the hearing as a witness and inform the CAS Court Office of the steps taken in this regard.
47. Furthermore, in the same correspondence, the Club was requested to (i) produce a copy of its audited financial accounts for the financial years ending in 2017, 2018 and 2019; and (ii) produce, in relation to both the sporting seasons 2017/18 and 2018/19, a copy for each season of at least three employment contracts and three transfer contracts, be it transfers in or out and either on permanent or loan basis, introduced in FIFA TMS containing the FIFA TMS watermark.
48. On 16 December 2020, both the Coach and the Club returned duly signed copies of the Order of Procedure, provided to the Parties by the CAS Court Office on 15 December 2020.
49. On 17 December, the Club provided the CAS Court Office with the documentation requested by letter dated 7 December 2020, except for a third transfer agreement concluded in the

2018/19 season, arguing that only two transfer agreements had been introduced in FIFA TMS that season.

50. On 28 December, also the Coach provided the CAS Court Office with the documentation requested by the letter dated 7 December 2020. With regard to the presence of Mr Moundib at the hearing, the Coach stated that “[the Coach] *lost all contact with him in June 2018*” and that “*it is impossible for the Coach to ensure that [Mr Moundib] could be present at the hearing as a witness; probably is easier for [the Club] to find him, as [Mr Moundib] worked for [the Club]*”.
51. On 12 February 2021, and as a reply to submit its list of people attending the hearing, the Coach reiterated that he had lost all contact with Mr Moundib in June 2018 whilst providing evidence that he had sent four emails to Mr Moundib, in which he asked Mr Moundib to be present at the hearing, but that these emails remained unanswered. The Coach reiterated that it would probably be easier for the Club to find him, as Mr Moundib worked for the Club and lives in the same country.
52. On 17 February 2021, a hearing was held by videoconference. At the outset of the hearing, both Parties confirmed that they had no objection as to the appointment of the Sole Arbitrator.
53. In addition to the Sole Arbitrator and Mr Antonio De Quesada, CAS Head of Arbitration, the following persons attended the hearing:
 - a) For the Appellant:
 - 1) Mr César Manuel Payovich Perez, the Coach;
 - 2) Mr Horacio González Mullin, Counsel;
 - 3) Mr Guillermo Rodríguez Capurro, Counsel;
 - 4) Ms Belen Fernandez, junior counsel;
 - 5) Ms Aline Vega, Interpreter.
 - b) For the Respondent:
 - 1) Mr Abdelatif El Mouktarid, President of the Club;
 - 2) Mr Hicham Ait Lasri, Administrative and Financial Director of the Club;
 - 3) Mr Abdelilah Belkihal, General Secretary of the Club;
 - 4) Mr Gonçalo Almeida, Counsel;
 - 5) Ms Maria Fonseca junior counsel;
 - 6) Mr Redouane Jamaledine, Interpreter.
54. The following witnesses and party representatives were heard, in no specific order of appearance:

Called by the Coach:

 - 1) Mr Julio Dornell, assistant coach that worked with the Coach (witness);
 - 2) Mr Maximiliano Bizzio, fitness coach that worked with the Coach (witness);

- 3) Mr Martín Berlocco, goalkeeper coach that worked with the Coach (witness);
- 4) Mr César Payovich (party).

Called by the Club

- 5) Mr Hicham Ait Lasri, Administrative and Financial Director of the Club (party representative);
 - 6) Mr Abdellatif El Mouktarid, President of the Club (party representative);
 - 7) Mr Abdelilah Belkihal, General Secretary of the Club (party representative);
 - 8) Mr Tarik Najm/Taoufik Malki, General Secretary of the FRMF (witness).
55. The respective witnesses were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law. Both Parties and the Sole Arbitrator had full opportunity to examine, cross-examine and reconduct the witnesses.
56. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the Sole Arbitrator.
57. Before the hearing was concluded, both Parties expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard and to be treated equally in the proceedings had been fully respected.
58. On 19 February 2021, the Sole Arbitrator, making reference to Article R44.3 of the CAS Code, and as anticipated during the hearing, requested the Club to produce three additional employment contracts and three additional transfer contracts relating to the sporting season 2016-17 containing the FIFA TMS watermark. The Club produced the requested documents on 26 February 2021.

IV. SUBMISSIONS OF THE PARTIES

59. The following section summarizes the Parties' main arguments in support of their respective requests for relief with respect to the merits of the case. The Sole Arbitrator confirms that he carefully heard and took into account in his 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. More precisely, only those arguments which in his view are relevant to decide the issue under appeal have been summarized.

A. The Appellant

60. In his Appeal Brief, the Coach submitted the following requests for relief:

One: *To deem the present Appeal Brief presented in due time and form*

Two: *To revoke the decision of the Single Judge of the Players' Status Committee and to condemn the CLUB to pay the COACH the sum of \$3,600,000 (three million and six hundred*

thousand American dollars) for damages caused, for noncompliance and unilateral termination of the Employment Contract or for not controlling its employees, close members and property, under:

a) Signing bonus: Worth \$600,000.

b) Contract Residual Value: Worth \$3,000,000 (250,000 × 12)

Plus 5% interest p.a as of noncompliance and termination date until the date of full payment.

Three: *Let the CLUB be hold judgment against as sole responsible for this procedure, and to pay for all legal expenses incurred by the COACH, including payment in advance for all charges, costs and expenses”.*

61. The Coach’s submissions and positions advocated at the hearing in support of his requests for relief may, in essence, be summarised as follows:

- The Employment Contract was fully valid and should be deemed as such by the Sole Arbitrator.
- The Employment Contract contained all *essentialia negotii* of an employment contract, being (i) the role of each party (ii) the duration of the contract (iii) payment and (iv) signature on behalf of both parties.
- According to Article 319 and 320 of the Swiss Code of Obligations (“SCO”) an employment contract does not require any type of formality.
- In accordance with the SCO and CAS jurisprudence, a contract produced by a party is presumed to be authentic and valid unless proven otherwise by the other party, even more so if there is evidence to confirm this.
- The negotiations concerning the Employment Contract took place between 30 November 2017 and 18 June 2018. Mr El Mouktarid was elected as President of the Club on 17 August 2015 for a four-year term.
- According to the jurisprudence of the FIFA DRC, if a contract is signed by the President of a club alone, the counterparty can assume that the President, being the highest possible representative, is legally authorised to sign a contract on behalf of the club alone.
- During the FIFA procedures, the Club falsely stated that Mr El Mouktarid was not the President of the Club when the Employment Contract was signed. Such false and fraudulent declarations, in accordance with the principles of “*Fraus Omnia Corruptit*” and “*Malitiis non est indulgendum*”, imply that all acts and actions which were a direct or indirect consequence of said fraudulent act are to be declared null.

- Throughout the FIFA procedure the club acted in bad faith and due to its false statements, the Single Judge of the FIFA PSC was induced to make an incorrect decision.
- In fact, the Employment Contract should be deemed authentic by the Sole Arbitrator, because (i) reference was made to the real fact that another coach was employed by the Club and because this fact was taken in consideration during the negotiations; (ii) drafts with suggested amendments were exchanged between the Parties (NB: such amended documents are not on file as they were not submitted by the Coach); (iii) photographs portraying the accommodation for the technical team were sent to the Coach and (iv) because of the details contained in the Employment Contract.
- The Club should be held responsible for the acts of i) its workers; ii) its close members; and iii) its property, including the letterheaded paper and seal.
- Mr Moundib was the General Secretary of the Club when the Employment Contract was concluded, which is corroborated by the fact that the surname “Moundib” has been prevalent amongst multiple important people in the history of the Club.
- The Employment Contract contained the property of the Club, as it was drawn up on the letterheaded paper of the Club and bore the address, registration number, and seal of the Club.
- The Employment Contract was signed by Mr El Mouktarid and Mr Moundib.
- Following the “*Theory of Appearance*” applicable in Europe, “*when a fact of alleged real appearance causes others to believe in its authenticity and to perform certain legal acts, the attribution of responsibility arises for those who contributed for the fact to have such appearance*”. As a result, even if authentic representatives of the Club had not been involved, the Club is to take responsibility for the Employment Contract.
- Because the Club failed to comply with the Employment Contract unilaterally, the Club is to pay the Coach the residual value of the Employment Contract. The residual value consists of a signing bonus in the amount of USD 600,000 and remaining salary in the amount of USD 3,000,000. Therefore, the Club is to pay the Coach the total amount of USD 3,600,000.

B. The Respondent

62. In his Answer, the Club submitted the following requests for relief:

- “1. Entirely upheld the appealed decision;
2. Condemn the Appellant, as the sole responsible for the present procedure, to bear all proceeding costs, as well as to contribute towards the expenses incurred by it (e.g. with legal assistance, staff availability

and translation of documents) in a total amount no less than CHF 15.000,00 (fifteen thousand Swiss Francs)”.

63. The Club’s submissions, in essence, may be summarised as follows:

- As a preliminary note, the Club indicates that it is convinced that the Coach (i) acted isolated in pure bad faith; or (ii) in collaboration with a certain Mr Mohamed Moundib (in case this person really exists), but always with the single aim to illegitimately receive an unjustified profit at the Club’s expense, and that he was prepared to be or was part of a scam in order to mislead and convince FIFA and the CAS that he signed a multimillionaire employment contract with the Club and that as a consequence of the latter’s breach, he is entitled to receive a compensation.
- In order to sustain such fraud, the Coach, acting alone or with said Mr Mohamed Moundib, adopted a strategy of quantity in terms of alleged emails exchanged and the respective documents carried to the file, all of which are or false, non-binding for the Club or irrelevant.
- Whereas, the Coach affirms having been contacted by the Club, always and only via a certain Mr Moundib, allegedly the Club’s General Secretary, Mr Moundib is completely unknown to the Club and there has been nobody at the Club with said name for the last decade, which is confirmed by the “League Doukkala” affiliated to the FRMF.
- When the Employment Contract was allegedly concluded, the Club’s General Secretary was Mr Abdelilah Belkihal, who has held the position since 2013. This is confirmed by the FRMF.
- The email address used by Mr Moundib does not belong to the Club. The letters “ajfc” in the email address used by Mr Moundib (sec.gen.ajfc@gmail.com) do not have any connection with the Club. The official email addresses of the Club are dhj@frmf.ma and dhjfoot@gmail.com.
- Besides, Mr Mostapha Moundib, the Club’s President in 2008, is not related to any Mohamed Moundib, except for his father, who was the Club’s first General Secretary back in 1956 and who has unfortunately passed away.
- Accordingly, Mr Moundib’s entire alleged intervention, as claimed by the Coach, is irrelevant.
- While the Coach may thus have negotiated the terms of employment with Mr Moundib, one aspect of paramount importance is that the Employment Contract was never negotiated nor signed by the Club.
- This is confirmed by the Club’s correspondence of 8 April 2019, in which it stated that the Coach’s claim was a complete surprise, as the Club was unaware of the existence of any employment contract with the Coach, asking for clarifications or authentic documentation in this regard.

- As to the role of Mr El Mouktarid, the club corrects an honest mistake it made during the FIFA procedures and confirmed that he has been the President of the Club since August 2015. The Club incorrectly assumed that the initial contact was made prior to August 2015. However, Mr El Mouktarid was never involved in any kind of contractual negotiations with the Coach nor did he sign the Employment Contract.
- The signature of Mr El Mouktarid in the Employment Contract was clearly forged, as it differs from the one inserted in several other contracts signed by Mr El Mouktarid and the signature registered with the FRMF.
- The Club planned to submit the signature in the Employment Contract to a handwriting expert, but this was found to be impossible as this demanded for the original copies of the Employment Contract, which the Club does not have.
- The lack of authenticity of the Employment Contract is also backed by comparing several details of the Employment Contract with those of actual and genuine contracts used by the Club: (i) the stamp appearing in the Employment Contract is that of the FRMF whereas the stamp used in its genuine contracts is that of the Club, which is a very different stamp from the one in the Employment Contract, (ii) the letterhead of the Employment Contract is different from the one used by the Club whilst also the telephone and fax number of the Club mentioned in the Employment Contract are wrong and differ from the contact details set forth in its genuine documents, and (iii) the Club's registration number with the FRMF indicated on the Employment Contract is incorrect, the correct one being 013 instead of 1353-B.
- Lastly, the extraordinary remuneration established in the Employment Contract compared to that of its other coaches confirms that it is not authentic. The last coaches at the Club earned approximately EUR 14,000 to EUR 20,000 per month, hence offering a new coach a remuneration of USD 250,000 per month and a signing bonus of USD 600,000 is highly implausible. The Club simply is not able to offer the stratospheric amount of USD 3,600,000 per season.
- Besides, with all due respect to the Coach, it is also implausible that such an amount of money would be offered to a coach, who was coaching the U-23 and U-21 teams of Indonesia for the last 8 years, who remained unemployed since November 2015 and who coached the first team of a football club for the last time in 2005 in Uruguay. The Coach, if acting in good faith, could not believe that such a financial offer, that arrived out of the blue and without ever having even visited or met anyone from the Club, was a true offer.
- Based on the foregoing, the Employment Contract is not valid and not binding on the Club, as a consequence of which the Club cannot be held liable to pay any compensation whatsoever to the Coach. Quite the contrary, the Coach should pay compensation to the Club as a consequence of this entire scam/fraud.

- As a result of the alleged criminal conduct of the Coach, the Club filed criminal charges against the Coach before the Attorney General of Morocco.

V. JURISDICTION

64. 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 from Article R47 of the CAS Code.
65. The jurisdiction of CAS is not contested by the Parties and is further confirmed by the Order of Procedure duly signed by the Parties.
66. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute whilst according to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law and can hence decide the dispute *de novo*.

VI. ADMISSIBILITY

67. The grounds of the Appealed Decision were communicated to the Parties on 30 March 2020. The Coach filed his Statement of Appeal with CAS on 16 April 2020 i.e. within the time limit of 21 days set by Article 58(1) FIFA Statutes. Besides, the appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.
68. It follows that the appeal is admissible, which in any case has not been disputed by the Club.

VII. APPLICABLE LAW

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

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

70. Article 57(2) FIFA Statutes provides as follows in relation to CAS procedures:

“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”.

71. Both Parties submit that, in accordance with Article R58 of the CAS Code and Article 57(2) of the FIFA Statutes, the regulations of FIFA are primarily applicable with Swiss law subsidiarily applicable should there be a need to fill a possible gap in the various rules of FIFA.
72. Considering the submissions of the Parties, and in view of the above-mentioned legal framework, the law applicable to the merits of the case is comprised of the FIFA Statutes and regulations, in particular the FIFA RSTP (edition 2019), and additionally Swiss law to fill in any gap or *lacuna* within those regulations.

VIII. MERITS

73. In order to adjudicate the case under review, the following main questions need to be addressed:
- i) Is the Employment Contract a valid and binding employment contract for the Club?
 - ii) If so, what are the consequences for the Club for not honouring a valid and binding Employment Contract with the Coach?

i. Is the Employment Contract a valid and binding employment contract for the Club?

74. As a preliminary remark, the Sole Arbitrator observes that it is not disputed that the Employment Contract appears to contain all the *essentialia negotii* required for it to be considered a valid contract. However, the key issue is that the Club submits that said contract does not bind it since Mr Moundib (i) never worked for the Club and (ii) was thus not authorised to conclude the Employment Contract on behalf of the Club nor did he represent the Club whilst the other signature appearing on the Employment Contract, purportedly belonging to its president Mr El Mouktarid is a forgery. The Club hence never signed the Employment Contract.
75. This is disputed by the Coach, who submits that Mr Moundib was the General Secretary of the Club and therefore entitled to make a legally binding offer to the Coach on behalf of the Club. Regarding Mr El Mouktarid, the Coach submits that he was the President of the Club, and therefore in a position to legally and bindingly conclude the Employment Contract with the Coach. Subsidiarily, the Coach submits that he could in any event in good faith rely on the representations made and that therefore the Club is nonetheless bound by the Employment Contract.
76. Put in other words, this case boils down to the question whether the Coach signed a valid and binding contract with the Club, either because it was signed by the legal representatives of the Club or because the Coach could in good faith consider that he effectively interacted and exchanged messages with an individual that actually represented the Club implying that the contract would be binding on the Club.

a. *The involvement Mr Moundib, his link to the Club and his ability to bind the Club*

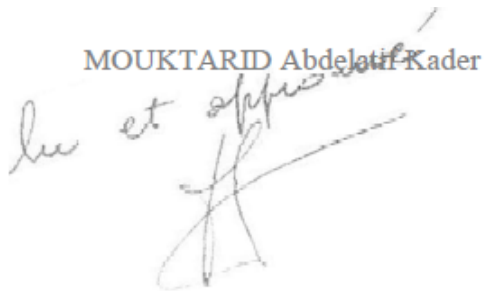

77. The Sole Arbitrator notes that the only documents on file that allegedly support the Coach's submission that Mr Moundib was the Club's General Secretary are the emails exchanged between the Coach and Mr Moundib, as submitted by the Coach.
78. The Sole Arbitrator will therefore assess whether the Coach could in good faith and legitimately understand that Mr Moundib was the General Secretary of the Club, therefore empowered to represent the Club, and to what extent, if any, the Club contributed to such understanding of the Coach.
79. As a starting point, the Sole Arbitrator observes that anyone can send an email pretending to be the Secretary General of a club whilst it is not disputed that the only person to ever have been in contact with the Coach concerning the Employment Contract, was Mr Moundib and this via email and from an email address of which the domain name was not that of the club but a general domain name, namely a Gmail address. Besides, the Coach tried to contact Mr El Mouktarid, but these attempts failed, as addressed in more detail infra.
80. It does not derive from the emails nor are there any other documents on file, that demonstrate that Mr Moundib worked for the Club and/or was legally authorised to bind the Club.
81. The Coach's argument that the surname "Moundib" is a common name in the history of the Club obviously does not prove that Mr Moundib was legally authorised to bind the Club or that he was the Secretary General of the Club.
82. On the other hand, the position of the Club that there was nobody employed by the Club by the name Mohamed Moundib when the Employment Contract was allegedly concluded is supported by multiple employees of the Club as well as by the FRMF.
83. Based on the convincing evidence provided by the Club, the Sole Arbitrator concludes that Mr Moundib was not the General Secretary of the Club when the Employment Contract was concluded. In fact, the Sole Arbitrator finds that no link whatsoever was established between Mr Moundib and the Club and that therefore the Club is, in principle, not bound by Mr Moundib's signature appearing on the Employment Contract.
84. In similar fashion, the Club is not bound by the alleged signature of Mr El Mouktarid appearing on the Employment Contract.
85. First, there is no evidence on file of anyone allegedly having witnessed Mr El Mouktarid personally affixing his signature to the Employment Contract, while Mr El Mouktarid testified at the hearing that he did not sign the Employment Contract.
86. Furthermore, the Sole Arbitrator finds that Mr El Mouktarid's alleged signature on the Employment Contract significantly differs from Mr El Mouktarid's signatures on all the other contracts requested by the Sole Arbitrator and produced by the Club. The Sole Arbitrator considers it relevant to point out that such contacts span three different sporting seasons, namely the seasons 2016-17 to 2018-19 and that the contracts produced, as requested by the

Sole Arbitrator, were copies of the ones uploaded to FIFA TMS containing the FIFA TMS's watermark. There is no reason to suspect that the produced contracts were forged and the Sole Arbitrator accepts them as genuine.

87. Mr El Mouktarid's alleged signature of and the stamp affixed to the Employment Contract are displayed as follows:

MOUKTARID Abdelatif Kader

le et approuvé

88. A small selection of Mr El Mouktarid's signatures on other contracts concluded by the Club is presented below and the Sole Arbitrator observes that unlike the signature affixed to the Employment Contract, the signatures contained in the 11 samples provided to the CAS Court Office by the Club on 17 December 2020 and the 5 relevant samples provided to the CAS Court Office on 26 February 2021 (2 of the 7 samples provided do not contain Mr El Mouktarid's signature) do not materially differ from each other:

- Transfer agreement dated 17 December 2015:

Pour « DHJ »

Le Président

ABDELLATIF EL MOUKTARID




- Employment contract dated 4 July 2016:

Le Président

ABDELLATIF EL MOUKTARID

LE CLUB (*)



- Employment contract dated 8 July 2017:

LE CLUB(*)

Le Président

ABDELLATIF EL MOUKTARID

le et opposé




- Employment contract dated 8 July 2018:

LE CLUB(*)
Le Président

ABDELLATIF EL MOUKTARID

Handwritten signature

Handwritten signature




Date de réception par la FRMF :

- Transfer agreement dated 4 January 2019:

For " DHJ Football "
The President
EL MOUKTARID Abdellatif

Handwritten signature



89. Comparing the signature in the Employment Contract to the signatures in the sample contracts provided by the Club, the following differences can be seen at first glance.
90. First, the signatures affixed to the different contracts produced by the Club bear a strong resemblance and differ significantly from the signature affixed to the Employment Contract. In this respect, the Sole Arbitrator subscribes to the finding of the FIFA PSC Single Judge in the Appealed Decision, that one need not be a forensic handwriting expert to see and conclude that the signature affixed to the Employment Contract, is clearly different from the other contracts provided.
91. In addition to the finding of the FIFA PSC Single Judge, the Sole Arbitrator considers that an examination by a forensic handwriting expert would not have contributed anything material to the above analysis since the signatures are clearly different and because no original version

of the Employment Contract bearing a “wet” signature is available for analysis, which would have significantly reduced the scope of the analysis to be performed.

92. Second, the Sole Arbitrator observed that all of Mr El Mouktarid’s signatures affixed to the contracts provided by the Club are accompanied by a stamp bearing the name of the Club, whereas no such stamp is affixed to the Employment Contract, rather it contains the stamp of the FRMF.
93. Third, on all contracts provided by the Club Mr El Mouktarid’s name is spelled as “Abdellatif El Mouktarid”, whereas the name appearing on the Employment Contract is spelled as “Mouktarid Abdelatif Kader”, i.e. in a different font, with only one “l” in “Abdellatif”, with reference to “Kader”, and without reference to “El”. Also, in the sample contracts provided by the Club, Mr El Mouktarid affixed his initials to each page of the relevant contract, which is however not done with the Employment Contract.
94. Fourth, the letterhead of the Employment Contract differs significantly from the letterheads of the samples provided by the Club.
95. Based on all these elements, the Sole Arbitrator is satisfied to accept that the signature appearing on the Employment Contract is not that of Mr El Mouktarid, with the consequence that the Employment Contract is therefore, in principle, not binding on the Club.
96. For the sake of completeness and for what concerns CAS 2014/A/3746, as invoked by the Coach, the Sole Arbitrator does indeed observe that in said award the panel determined that *“as a general rule and unless one party challenges it, a contract that has been produced by another party is under the presumption of being authentic”*. However, the Sole Arbitrator also notes that in CAS 2014/A/3746, it was established that the party disputing the authenticity of the contract had *“not conducted all the potential evidentiary activity that it could have reasonably been performed to try to challenge the authenticity of the Second Contract”*. In this regard, it was particularly held to the detriment of the party disputing the authenticity of the contract that it did not agree to instruct an independent expert to assess the authenticity of the signature. Therefore, it was decided in CAS 2014/A/3746 that the party disputing the authenticity of the contract was not in a position of *“Beweisnotstand”*.
97. Applying the legal framework set forth in CAS 2014/A/3746 as invoked by the Coach to the present proceedings, the Sole Arbitrator finds that the Club’s behaviour and denial of the conclusion of the Employment Contract was consistent and in line with what may be expected from a legal entity facing such situation, in particular the fact that the Club filed criminal charges against the Coach before the Attorney General of Morocco, be it only on 20 November 2020, and by making Mr El Mouktarid available for testimony during the hearing, where he testified not to have signed the Employment Contract. Also, as already explained above, submitting the Employment Contract to a forensic handwriting expert would unlikely have yielded material results given the fact that only a digital copy of the litigious signature would have been available for examination. Besides, unlike the case CAS 2014/A/3746, the Coach did not provide further *“evidence to corroborate the authenticity of the contract (written statements,*

official documents from the club, etc.)” whilst the mistakes and differences between the Employment Contract and the sample contracts are rather significant (Cfr. Para. 63 bullet point 13).

b. “Theory of reliance”

98. If the contract was not signed by anyone holding the legal capacity to bind the Club, and therefore not authentic, it might still be binding on the Club if the Coach could in good faith believe that he concluded a contract with an authorised person representing the Club.
99. However, based on the documents on file and the fact specifics of the case, the Sole Arbitrator, as will be explained further below, disagrees with the Coach’s submission that he could rely on the “theory of Appearance”. To the contrary, the Sole Arbitrator considers that the Coach could not, in good faith, believe that he concluded a contract with an authorised person representing the Club.
100. In reaching the above conclusion and lacking any relevant provision in the FIFA regulations for what the Coach has referred to as the “theory of reliance”, the Sole Arbitrator has relied on Swiss legal doctrine as well as on to the Swiss Code of Obligations (“SCO”).
101. According to Swiss law, representative powers may be granted either expressly or by means of conclusive acts. For what concerns representative powers granted by means of conclusive acts, one should distinguish tolerated powers of attorney (*“procuration tolérée”*) from apparent powers of attorney (*“procuration apparente”*).
102. In the case of tolerated powers of attorney, the principal knows that the agent is acting on his behalf vis-à-vis a third party whereas in the case of apparent powers of the attorney, the principal does not know but should have known if he was paying due attention, the latter being what the Coach has referred to as the “theory of reliance”.
103. For what concerns the actual granting of representation powers by the principal to the agent, Swiss doctrine prescribes a two-step approach whereby the alleged representation power must first be analysed from the point of view of the addressee to whom said representation powers would have been granted i.e. from the agent’s perspective acting on behalf of the principal (= the internal relations) and only if no such representation power can be found at internal level can one analyse the alleged representation power by looking at the relationship between the agent and the third party (= the external relation) to see whether the third party could in good faith rely on the representation power of the agent.
104. Therefore, when analysing whether the agent, *in casu* Mr Moundib, had the power to act on behalf of the principal, *in casu* the Club, one must first analyse the internal relationship between the Club and Mr Moundib. Subsequently, only if one would consider that no powers existed at the internal principal-agent level, only in such case would one need to look at the external relationship between the agent and the third party, i.e. the Coach, and whether the Coach could in good faith consider that the agent, i.e. Mr Moundib, represented the principal, i.e. the Club (ATF 120 II 197, c.2, JtD 1995 I 194) (CAS 2016/A/4777 para 154 re. internal and external legal relations).

105. Since no internal relation existed between the Club and Mr Moundib, at least such was not demonstrated during these proceedings, the Sole Arbitrator needs to consider whether the Coach, in his external relationship with the agent, i.e. Mr Moundib, should be awarded the protection granted to third party acting in good faith (*“protection du tiers de bonne foi”*), such pursuant to article 34 (3) of the SCO.
106. Article 34 (3) of the SCO reads as follows:
- “Where the represented party has expressly or de facto announced the authority he has conferred, he may not invoke its total or partial revocation against a third party acting in good faith unless he has likewise announced such revocation”.*
107. In this respect, the Sole Arbitrator notes that the protection foreseen by Article 34 (3) of the SCO protecting the third party acting in good faith, requires two conditions to be met. First, it requires a communication of powers (*“communication des pouvoirs”*) by the Club which can be made expressly or by means of a conclusive form (TF, 4A_313/2010, c. 3.4.2.3.), and secondly it requires the good faith of the Coach in believing that his counterparty, Mr Moundib, was empowered to act and represent the Club.
108. Based on the lack of any demonstrated relationship between Mr Moundib and the Club, requirement one of Article 34 (3) of the SCO is clearly not met. Besides, no convincing elements were put forward whereby the Club would have contributed to the appearance that Mr Moundib was a representative of the Club.
109. For what concerns the second requirement, namely the requirement of good faith, the Sole Arbitrator notes that pursuant to Article 3 paragraph 1 of the Swiss Civil Code, good faith is always presumed.
110. However, in the case at hand, there are various elements that should have raised red flags with the Coach and made the Coach have (serious) doubts vis-à-vis the representation powers of Mr Moundib. These elements, in no particular order of relevance, are set out directly below.
111. As a starting point, the Sole Arbitrator finds that an unknown person claiming to be the General Secretary of a club, does not in and by itself imply that he is automatically authorised to bind such club. One should be reluctant in assuming that a person is authorised to bind a legal entity solely based on written statements of the person claiming to be authorised.
112. The above is all the more relevant when the only contact the Coach had with the Club was via email and this from an email address which does not have the Club’s name as domain name but Gmail as its domain name.
113. The Sole Arbitrator considers it abnormal, and so should have the Coach, that the Club did not consider it necessary to meet him in person before making him and his technical staff an offer of USD 3,600,000 (three million six hundred thousand dollars) and that did not require an in-person meeting before concluding the actual Employment Contract. In fact, no personal contact ever took place between the Coach and anyone from the Club, not even by telephone

or videoconference and not even between the Coach and Mr Moundib; all contact was conducted via email. This is a rather abnormal process of negotiating and agreeing terms of employment.

114. Another factor that made the exchange between the Coach and Mr Moundib all the more odd, was that when the Coach asked Mr Moundib to set up a more direct line of communication by Whatsapp, (Cfr. email para. 16), the latter implying that the Coach did indeed find the pure exchange by email a bit unusual, that Mr Moundib replied that he was prevented from communicating via WhatsApp with the Coach by the *Agence Nationale de Communication du Royaume*.
115. Moreover, making abstract of the actual email address from which the Coach was receiving and to which he was sending emails, the Sole Arbitrator also finds that the actual content of said emails should have raised serious doubts with the Coach. More precisely, when questioned at the hearing on various paragraphs contained in said exchange of emails, the Coach, contrary to what was mentioned in the emails of Mr Moundib, confirmed that:
- he never had spoken to anyone at the Club prior to receiving the first email (Cfr. email at para 7 – *“I am contacting you following our first exchange several months ago, to discuss the possibilities to work together, in a sphere of collaboration and absolute confidence”*);
 - he had never applied for the job as head-coach of the Club nor did he mandate anyone to do so on his behalf (Cfr. email at para 7 – *“I am contacting you again since you have deposited your candidature to become the next coach of our first team”*);
 - at no point in time did he propose nor request a specific salary to the Club and that it was the Club which had proposed the salary finally reflected in the Employment Contract (cfr. email at para. 9 – *“if we understood correctly, you have asked 3 million euro per season for the technical staff [...] and you as head coach”*);
 - there was no common friend that had made the informal contact between him and the Club (Cfr. Email at para. 21 – *“we have an informal contact with you facilitated by a common friend”*);
 - none of his staff members had ever spoken to the Club (Cfr. Email at para. 26 – *“As to the telephone numbers, I have been told that that your staff have already been in contact with the directors of the club so you can call them on the numbers that you already have at your disposal”*).
116. Another factor that should have raised serious doubts with the Coach, aside from the bizarre process that ultimately led to the conclusion of the employment contract, was the actual content of the financial offer he received. In the opinion of the Sole Arbitrator, the process described by the Coach in and by itself is bizarre, and this all the more when considering the magnitude of the financial terms that were offered to the Coach and his staff. It is reminded that these financial terms were offered without him ever having applied for the job, without any verbal exchange nor meeting ever having taken place, nor him having made any indication as to his salary expectations. The financial terms offered were simply “to good to be true” and

this should have raised doubts with the Coach. In fact, the Sole Arbitrator also finds that the Coach should have known that the offer was too good to be true when keeping in mind his previously earned salaries with the Indonesian Football Association, starting with a net salary of USD 5,000 which was later increased to a net salary of USD 20,000 per month, amounts which are significantly lower than the offer of the Club for him and his technical staff. Having analysed the circumstances of the Coach and the evidence on file (i.e. the Coach's unemployment since 2015 and his career coaching the youth teams of the Indonesian Football Association) the Sole Arbitrator finds that such circumstances are not consistent with the Club willing to offer the Coach and his technical staff an employment contract for a value of USD 3,600,000.

117. Besides, the Sole Arbitrator also finds that the Coach should have questioned the Club's ability to pay such a high salary. With all due respect for the Club, and as admitted by the Club itself, it is not one of the leading teams in Morocco whilst Morocco is not one of the leading countries in African football for what concerns club football.
118. Based on all above, Sole Arbitrator finds that the Coach should have been reluctant to rely on the representations made to him by Mr Moundib and that as a consequence he should have undertaken reasonable efforts to verify Mr Moundib's identity and authority to act on behalf of the Club, for example by means of independent sources, such as public records, information from the Club's website or from the FRMF. There are however no indications on file suggesting that the Coach engaged in any such verification of Mr Moundib's identity whilst the Sole Arbitrator, without deriving any adverse conclusion therefrom, also found it strange that only a redacted run of the exchange of emails with Mr Moundib was shared by the Coach during this procedure whilst the alleged track-changed Employment Contracts exchanged with the Club were not submitted either as annexes.
119. Indeed, the Sole Arbitrator finds that the Coach could not in good faith believe in and rely on the emails exchanged with Mr Moundib for the reasons set out above and that as such he could not in good faith believe that he concluded a valid employment contract with an authorised person representing the Club.
120. In addition, and while such information was obviously not available to the Coach when Mr Moundib presented him with the offer, evidence provided by the Club during the present appeal proceedings corroborates the above-finding as it demonstrates that the salary offered to the Coach was completely disproportionate to the salaries the Club committed itself to pay to coaches that worked at the Club before and after the foreseen term of the Employment Contract. Namely:
 - EUR 14,000 per month for Mr Abderrahim Taleb between 1 July 2016 and 3 June 2019;
 - EUR 18,500 per month for Mr Velud Hubert between 29 October 2018 and 30 June 2021 (plus signing fee of EUR 30,000);

- EUR 16,000 per month for Mr Ezaki Badou between 11 February 2019 and 30 June 2019, EUR 19,000 for the 2019/20 season, and EUR 20,000 for the 2020/21 season.
121. Keeping in mind the above salaries, the Sole Arbitrator finds that it would be very unlikely for the Club to have been able to offer the financial terms the Coach and his staff were offered by Mr Moundib and on which the Coach relied. In fact, the offer and salary contained in the Employment Contract substantially exceeded half of the total revenues of the Club as contained in its audited accounts for the financial years ending in 2017⁸ and 2018⁹ whilst the salary contained in the Employment Contract with the term corresponding to the financial year ending in 2019¹⁰ amounted to 70% of the overall revenue of the club during that financial year. Moreover, the same audited accounts show that the salary contained in the Employment Contract largely exceeded the total expenses of the Club foreseen under the cost-centre reflecting the Club's total salary spend on its staff and players during those financial years. This financial information comforts the Sole Arbitrator in the conclusion he has reached above.

c. Ratification of the Employment Contract by the Club

122. Having concluded that the Coach could not in good faith rely on the representations made by Mr Moundib and thus cannot benefit from the protection foreseen in article 34 (3) of the SCO, the Sole Arbitrator still needs to verify whether the Club, in any way, ratified the Employment Contract.
123. Reference is made to Article 38 of the SCO which reads as follows:

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

124. In this respect, legal doctrine indicates that one should be reluctant in accepting that an invalid contract has been ratified:

“Die (Nicht-)Genehmigung ist grundsätzlich formlos möglich [...] und kann daher auch konkludent, z.B. durch Vertragsdurchführung [...] oder die Berufung auf Rechtsfolgen des Geschäfts [...] erfolgen. Schweigen bedeutet jedoch im Zweifel [...] und jedenfalls bei Fristsetzung nach Abs. 2 Nichtgenehmigung” (HONSELL H. (Ed.), *Obligationenrecht*, 2014, p. 174).

Freely translated into English:

“The (non-)approval is basically informal and can therefore also be implied, for example by execution of the contract or by relying on the legal consequences of the transaction. However, in case of doubt, silence shall mean non-approval, certainly in cases where a time-limit is set” (CAS 2016/A/4489, para. 77).

⁸ MAD 56,020,769.41 equals EUR 5,114,696.24 as per the average exchange rate of MAD 1 = EUR 0.0913 in 2017.

⁹ MAD 67,030,416.55 equals EUR 6,052,846.61 as per the average exchange rate of MAD 1 = EUR 0.0903 in 2018.

¹⁰ MAD 49,161,892.18 equals EUR 4,567,139.78 as per the average exchange rate of MAD 1 = EUR 0.0929 in 2019.

125. As indicated *supra*, the only acknowledged communication between the Club and the Coach started on 29 March 2019 which is when the Coach addressed a letter to the Club by registered post.
126. While the Coach previously sent certain emails to web.abdelaziz@gmail.com, i.e. the email address provided to him by Mr Moundib that purportedly belonged to Mr El Mouktarid, the Club and Mr El Mouktarid maintain that this is not Mr El Mouktarid's email address and that he therefore never received the Coach's emails.
127. The Sole Arbitrator accepts the Club's contentions in this respect and finds that the Coach failed to prove that the email address he used, belonged to the President of the Club. In any event, the Coach never received a reply from Mr El Mouktarid and could therefore not simply assume that his emails were received by the Club.
128. As soon as the Club was confronted with the Coach's registered letter dated 29 March 2019, the Club disputed the alleged conclusion of the Employment Contract by means of its letter of 8 April 2019 in which the Club explicitly stated that it was "*completely unaware of the emitting of such a contract*" whilst inviting the Coach to send the authentic documents certifying its payment request.
129. As such, the Sole Arbitrator finds that the Club did not ratify the Employment Contract after its alleged conclusion, neither expressly nor implicitly.

d. Other

130. Finally, the Sole Arbitrator also wishes to address one of the main arguments advanced by the Coach at the hearing.
131. According to the Coach, the fact that all the representatives of the Club, when asked, confirmed that the confidentiality clause contained in the sample contracts produced by the Club were strictly adhered to and that their contracts were kept confidential, combined with the fact that the Employment Contract in terms of its structure, content and sequence of articles was identical to that of the sample contracts produced by the Club, implies that the Employment Contract was drafted by and originated from the Club.
132. Said argument is to be dismissed, as the content of the contracts, both that of the Employment Contract and the sample employments contracts produced by the Club, are based on a template of the FRMF which could be publicly available or, at least, not very difficult to obtain.

e. Conclusion

133. Based on all the foregoing, and after having taken into due consideration all the specific circumstances of the cases, the evidence produced and the arguments submitted by the Parties, the Sole Arbitrator finds that the Employment Contract is not valid and binding upon the Club, as a consequence of which the Coach's claim is to be dismissed. Hence, the second question referred to in para. 73 needs not be addressed.

134. As a final remark, the Sole Arbitrator wishes to express that, while he finds that the Coach was naïve and gullible in his communication with Mr Moundib, he does not have the impression that the Coach acted in bad faith, noting that the Coach made a trustworthy and genuine appearance at the hearing when answering the questions put to him. Indeed, it may very well be that both the Coach and the Club are the victim of an attempted scam initiated by a third party for which neither of them is to blame.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 16 April 2020 by Mr César Manuel Payovich Pérez against the decision issued on 11 February 2020 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association* is dismissed.
2. The decision issued on 11 February 2020 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association* is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.