Arbitration CAS 2020/A/7144 Raja Club Athletic v. Léma Mabidi, award of 4 May 2021

Panel: Mr Wouter Lambrecht (Belgium), Sole Arbitrator

Football
Termination of the employment contract
Principle tempus regit actum with regard to jurisdictional issues
Standing to be sued in general
Standing to be sued in decisions of associations
Standing to be sued of FIFA in horizontal disputes about jurisdiction
Normative effects of FIFA circulars
Normative effects of the FIFA NDRC Standard Regulations
Requirements of fair proceedings before the national sports arbitration tribunal
Principle of parity

1. **According to the principle of *tempus regit actum*, substantive aspects are governed by the regulations in force at the time of the relevant facts, while procedural matters are governed by the rules in force at the time when the procedural action occurs. Questions relating to jurisdiction are procedural issues as they relate to the procedure rather than the nature of the obligations arising from a legal relationship.**

2. **Under Swiss law, the question of standing to sue or be sued will be reviewed *ex officio.* Standing to be sued refers to the party against whom an appellant must direct its claim in order to be successful. A party has standing to be sued only if it is personally obliged by the claim brought by an appellant. The question of who has standing to be sued is a question of the merits implying that if the respondent's standing to be sued is denied, then the appeal, albeit admissible, must be dismissed.**

3. **A challenge against an association decision must, in principle, always be filed against the association that issued the decision. This finding is however to be nuanced because: (i) an appeal in front of the CAS is quite different to a regular action for voidance in front of Swiss Courts under Article 75 of the Swiss Civil Code (SCC), and (ii) one must distinguish between different kinds of association decisions that warrant a flexible approach. This flexible approach consists in differentiating between decisions entailing a vertical element ("vertical disputes") and decisions entailing a horizontal element ("horizontal disputes") whilst acknowledging that some decisions may entail both vertical and horizontal elements.**

4. **In cases where FIFA merely acts as the legal body rendering the lower-instance decision, i.e. in cases which do not involve FIFA's disciplinary powers (so-called "horizontal disputes"), FIFA has the opportunity to participate in the CAS proceedings but is not a necessary party, nor the appellant has the burden to summon FIFA as a respondent in order for the CAS panel to adjudicate the issue of FIFA's jurisdiction.**

Such a situation does not differ from the situation in which a civil court, under the national laws and potentially international laws and directives such as the Lugano Convention and Brussels I Regulation, assesses its own jurisdiction. In the latter case, when a party does not agree with the ruling of a first instance civil court considering itself competent, and the party appeals such a ruling, it must not direct its appeal against nor include the first instance court as a respondent in its appeal. The same logic should apply to appeals before the CAS for what concerns purely jurisdictional issues.

5. **Although FIFA's Circular Letters are not regulations in a strict legal sense, they are nevertheless relevant for the interpretation of the FIFA Regulations. However, FIFA's Circular Letters cannot be allowed to take precedence over the clear and specific wording of FIFA's regulations and a Circular cannot amend, override, change or contradict the FIFA Regulations.**

6. **The FIFA NDRC Standard Regulations go beyond a mere interpretation of article 22 lit. b) of the FIFA Regulations on the Status and Transfer of Players (RSTP). The FIFA NDRC Standard Regulations are not legally binding on the national associations and whilst they contain guidance and important principles to help ensure that the minimum procedural requirements are met, non-compliance with one or more of the recommendations contained in said standard regulations cannot lead to the conclusion that a national dispute resolution chamber (NDRC) does not meet the requirements contained in article 22 lit. b) RSTP.**

7. **In the context of art. 22 RSTP, the requirement of whether a national dispute resolution chamber is an independent arbitral tribunal guaranteeing fair proceedings and respecting the principle of equal parity, is to be analysed in abstract terms. Whether a certain judicial body is competent or not to decide the dispute must be ascertainable for the parties before the claim is lodged and cannot depend on instances that arise during the course of the proceedings. Thus, what is required in the context of art. 22 of the FIFA RSTP is whether or not the procedural rules applicable before the national judicial bodies are such to enable a conduct of the procedure in a fair and equitable way.**

8. **The principle of parity does not imply that the parties will, in all circumstances, be entitled to appoint all arbitrators when just one party does not exert more or different influence on the appointment of arbitrators compared to the other party. The mere fact that a national federation's executive committee appoints the arbitrators does not necessarily imply that the principle of parity is not respected. For the principle of parity can also be respected if the parties had equal influence over the compilation of the arbitrator's list from which the national federation's executive committee appoints the members of the national dispute resolution chamber and/or equal influence over the nomination of the arbitrators deciding the case. However, if the club representation on the national federation's executive committee enables the club representatives to exercise more influence over the compilation of the list of arbitrators when compared to that of the players' representatives, the principle of parity is not respected.**

I. PARTIES

1. Raja Club Athletic (the "Club" or the "Appellant") is a professional football club with its registered office in Casablanca, Morocco. The Club is affiliated to the Fédération Royale Marocaine de Football ("FRMF"), which in turn is a member of the Fédération Internationale de Football Association ("FIFA").

2. Léma Mabidi (the "Player" or the "Respondent") is a Congolese professional football player, born in Kinshasa, the Democratic Republic of Congo, on 11 June 1993.

3. The Appellant and the Respondent are hereafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and claims based on the Parties' written submissions and evidence adduced during the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, claims, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

A. Facts

5. On 4 September 2015, the Player signed an employment contract with the Club valid as from 5 September 2015 until 30 June 2019 (the "Employment Contract") drafted in the French language. Article 14 of the Employment Agreement, as translated by the Parties, reads as follows:

> *"Article 14 Dispute settlement procedure*
>
> *In case of divergence and or dispute deriving from the execution or interpretation of the contract, the parties are obliged to prioritise an amiable settlement.*
>
> *In case of failure, the dispute will be submitted by either party [to] the chamber of resolution of disputes of the Moroccan Football Federation. The decision of the chamber of resolution of dispute[s] of the FRMF are susceptible to be appealed before FIFA"*[1].

6. Article 5.1.a) of the Employment Agreement provided for a monthly salary of 36,000 Moroccan dirhams ("MAD"), payable by the Appellant to the Respondent *"at the end of the month"* whilst

[1] Translation from French: *"Article 14 Procédure de règlement des litiges*
En cas de contestation et/ou de litige né de l'exécution et/ou de l'interprétation des clauses du présent contrat, les parties sont tenues de recourir en priorité à tous les moyens et procédures en vue d'un règlement amiable du litige.
En cas d'échec, le différent est soumis par l'une ou l'autre partie, à la chambre de résolution des litiges de la Fédération Royale Marocaine de Football. Les décisions de la chambre de résolutions des litiges de la FRMF sont susceptibles de recours devant la FIFA".

article 5.1 b), stipulates that the Player is entitled to a match premium *"in accordance with the scale established by the Club"*.

7. Moreover, article 5.1.c) of the Employment Agreement foresaw an annual signing-on fee of MAD 1,390,000, payable as follows:

- **Season 2015/2016:**

  MAD 540,000 after the receipt of the International Transfer Certificate (ITC);
  MAD 405,000 on 31 December 2015; and
  MAD 445,000 on 30 June 2016.

- **Season 2016/2017:**

  MAD 540,000 on 31 December 2016;
  MAD 405,000 on 31 March 2017; and
  MAD 445,000 on 30 June 2017.

- **Season 2017/2018:**

  MAD 540,000 on 31 December 2017;
  MAD 405,000 on 31 March 2018; and
  MAD 445,000 on a date not stated in the Employment Contract. However, both Parties have acknowledged in their submissions that this installment was due on 30 June 2018.

- **Season 2018/2019:**

  MAD 540,000 on 31 December 2018;
  MAD 405,000 on 31 March 2019; and
  MAD 445,000 on a date not stated in the Employment Contract. However, both Parties have acknowledged in their submissions that this installment was due on 30 June 2019.

8. On 13 June 2017, the Player sent a first default notice to the Club requesting the payment of outstanding salary amounting to MAD 1,095,000.

9. On an unspecified date, and after having put the Club in default, the Player confirmed having received the amount of MAD 119,600 from the Club.

10. On 23 June 2017, the Player sent a second default notice to the Club requesting payment of outstanding salary amounting to MAD 975,400, granting the Club until 30 June 2017 to remedy its default. No answer was received by the Player.

11. Lacking a reply to his second default notice and lacking payment, the Player sent a termination letter to the Club on 6 July 2017 and lodged a claim at FIFA (*infra – proceedings before FIFA*) on 10 July 2017 in which he *inter alia* sought the payment of outstanding salary related to the seasons

2015-16, 2016-17, confirmation by the FIFA DRC of the just cause to terminate and compensation for breach of contract.

12. The termination letter however remained without effect given that the Player and Club continued their employment relationship with the Player admitting in his second complaint to FIFA in May 2019 (*infra – proceedings before FIFA*) that *"in order not to prejudice his sporting career, Mr Mabidi took it upon himself to no longer send default notices requesting outstanding salaries"*[2].

13. On 13 May 2019, the Player sent the Club a third default notice to the Club requesting the payment of outstanding salary amounting to MAD 2,315,000.

14. In the absence of a response by the Club, the Player lodged a new complaint before FIFA on 31 May 2019, this time based on article 12bis of the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP"), requesting *inter alia* the amount of MAD 2,315,000.

15. On 1 July 2019, the Player left the Club since the Employment Contract, which expired on 30 June 2019, was not renewed.

B. Proceedings before the Dispute Resolution Chamber of FIFA (FIFA DRC)

16. On 10 July 2017, the Player lodged a first complaint against the Appellant in front of FIFA containing *inter alia* the following requests ("the First Complaint"):

- To rule that the Club failed to comply with its contractual obligations towards the Player;
- To find that the Employment Contract was terminated by Mr Lema Mabidi with just cause due to the breaches of contract by the club;
- To confirm that Mr Lema Mabidi is free to sign for any club of his liking since the 6th of August 2017;
- To condemn the Club to the payment of:
    - MAD 1.075.400 corresponding to the outstanding salary, broken down as follows:
        i. season 2015/2016: MAD 650.000 relating to the signing bonus;
        ii. season 2016/2017: MAD 325.400 as outstanding bonuses;
        iii. MAD 28.000 equaling four months of unpaid rent;
        iv. MAD 72.000 for unpaid salaries for the months of May and June 2017;
    - MAD 864.000 corresponding to the salary payable from 1 July 2017 until 30 June 2019;
    - MAD 2.780.000 corresponding to the signing bonus falling due in the seasons 2017/2018 and 2018/2019

[2] Translation from French: *"Afin de ne pas porter prejudice à sa carrière sportive, Monsieur Mabidi, va prendre sur lui de plus mettre en demeure de réclamer le paiement de ses salaires".*

- To impose a transfer ban on the Club for two transfer period windows;
- To rule that in case of non-payment of all convictions within 30 days following the notification of the decision to be taken, the sums shall bear interest at the rate of 5% per annum.

17. It appears that the First Complaint submitted on 10 July 2017 was not processed by FIFA nor was it withdrawn by the Player prior to introducing a second complaint on 31 May 2019.

18. The second complaint, lodged on 31 May 2019, included*, inter alia*, the following requests for relief ("the Second Complaint"):

- the payment of MAD 2,315,000, corresponding to the outstanding salary, broken down by the Player as follows:
    - season 2015/2016: MAD 650.000 of which MAD 235.000 relates to the second instalment due on 31 December 2015 and MAD 445.000 to the third instalment due on 30 June 2016;
    - season 2016/2017: MAD 445.000 corresponding to the third instalment payable by 30 June 2017;
    - season 2017/2018: MAD 540.000 corresponding to a part of the first instalment payable by 31 December 2018;
    - season 2018/2019: MAD 405.000 corresponding to the second instalment payable by 31 March 2019;
- the payment of MAD 445,000 to be paid on 30 June 2019;
- the application of 5% interest on the payments as of their due dates;
- the application of Article 12bis and Article 24bis of the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP").

19. The Club, when being notified the First and Second Complaint by FIFA on 13 June 2019, referred to by FIFA as an initial and later amended complaint, limited itself to submitting that FIFA DRC was not competent to deal with the dispute and it did not present any statements as to the substance of the case.

20. More precisely, according to the Club, the FIFA DRC was not competent to deal with the matter considering the jurisdiction clause contained in Article 14 of the Employment Contract, which installed exclusive jurisdiction on the national dispute resolution chamber of the FRMF (the "FRMF NDRC"). Furthermore, the Club, submitted that the FRMF NDRC, as per the FRMF NDRC Procedural Rules edition 2017, met the minimum procedural standards for independent arbitration tribunals and was thus competent to deal with the case in first instance.

21. The Player however argued that the FRMF NDRC did not meet the minimum procedural standards for independent arbitration tribunals as laid down in Article 22, lit. b) FIFA RSTP and in FIFA circular n° 1010 dated 20 December 2005. According to the Player, the FRMF

NDRC's failure to meet these standards resulted in the FIFA DRC's competence to rule on this matter.

22. On 25 February 2020, the FIFA DRC rendered its decision, in which the Player's claim was partially upheld as follows (the "Appealed Decision"):

"1. The claim of the Claimant, Léma Mabidi, is admissible.

2. The claim of the Claimant is partially accepted.

3. The Respondent, Raja Casablanca, has to pay to the Claimant the amount of MAD 2,760,000, plus 5% interest p.a. until the effective date of payment as follows:

a. 5% p.a. as of 1 January 2016 on the amount of MAD 235,000;
b. 5% p.a. as of 1 July 2016 on the amount of MAD 445,000;
c. 5% p.a. as of 1 July 2017 on the amount of MAD 445,000;
d. 5% p.a. as of 1 January 2018 on the amount of MAD 540,000;
e. 5% p.a. as of 1 January 2019 on the amount of MAD 245,000;
f. 5% p.a. as of 1 April 2019 on the amount of MAD 405,000;
g. 5% p.a. as of 1 July 2019 on the amount of MAD 445,000.

4. Any further claim lodged by the Claimant is rejected. (…)".

23. The grounds of the Appealed Decision were notified to the Parties on 15 May 2020.

24. Regarding its competence, the FIFA DRC held as follows in the Appealed Decision:

"(…) the DRC pointed out that (…) Art. 14 of the employment contract, as agreed by the parties, makes an explicit and unambiguous reference to competence and jurisdiction of the Moroccan NDRC for the interpretation, the execution and the enforcement of the relevant contract. (…)

Nonetheless, the Chamber emphasised that in accordance with Art. 22 lit. b) of the January 2020 edition of the Regulations on the Status and Transfer of Players it is competent to deal with a matter such as the one at hand, unless an independent arbitration tribunal, guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, has been established at national level within the framework of the Association and/or a collective bargaining agreement. With regard to the standards to be imposed on an independent arbitration tribunal guaranteeing fair proceedings, the Chamber referred to FIFA Circular no. 1010 dated 20 December 2005. In this regard, the Chamber further referred to the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations, which came into force on 1 January 2008.

(…) After an in-depth analysis of the above-mentioned provisions, the DRC recalled that the FIFA Circular no. 1010 states the following: "The parties must have equal influence over the appointment of arbitrators. This means for example that every party shall have the right to appoint an arbitrator and the two appointed arbitrators appoint the chairman of the arbitration tribunal (…). Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrator list." (principle of parity).

In this respect, the DRC noted that, from Art. 5 of the Dispute Resolution Chamber Regulations of the FRMF, the principle of parity is not respected with regard to the appointment of arbitrators, because the parties do not choose the arbitrators. Indeed, from the wording of the aforementioned Moroccan NDRC Regulations, they appear to always be designated by the Executive Committee of the FRMF. Furthermore, the DRC held that such a conclusion is consistent with its own jurisprudence as well as the CAS award, CAS 2016/A/4673 (…).

In view of the above, the members of the Chamber wished to stress that the club was unable to prove that, in fact, the Moroccan NDRC meets the minimum procedural standards for independent arbitration tribunals as laid down in Art. 22 lit. b) of the Regulations on the Status and Transfer of Players, in FIFA Circular no. 1010 as well as in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations.

To conclude, the Chamber established that [Club]'s objection to the competence of FIFA to deal with the present matter has to be rejected and that the Dispute Resolution Chamber is competent, on the basis of Art. 22 lit. b) of the Regulations on the Status and Transfer of Players, to consider the present matter as to the substance".

25. Regarding the substance, the FIFA DRC held as follows in the Appealed Decision:

"(…) the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with Art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Player (editions June 2018, June 2019, October 2019, January 2020), and considering that the present claim was lodged on 10 July 2017 and subsequently amended on 31 May 2019, the June 2018 edition of said regulations (hereafter: the Regulations) is applicable to the matter at hand as to the substance. (…)

The Chamber noted that the signing-on fee is payable for each season of the duration of the employment contact in the following instalments:

- *Season 2015/2016: (i) MAD 540,000 after the receipt of the ITC; (ii) MAD 405,000 on 31 December 2015; (iii) MAD 445,000 on 30 June 2016;*
- *Season 2016/2017: (i) MAD 540,000 on 31 December 2016; (ii) MAD 405,000 on 31 March 2017; (iii) MAD 445,000 on 30 June 2017;*
- *Season 2017/2018: (i) MAD 540,000 on 31 December 2017; (ii) MAD 405,000 on 31 March 2018; (iii) MAD 445,000 on 30 June 2018;*
- *Season 2018/2019: (i) MAD 540,000 on 31 December 2018; (ii) MAD 405,000 on 31 March 2019; (iii) MAD 445,000 on 30 June 2019.*

The members of the DRC duly noted that in his claim, the [Player] requested the amount of (i) MAD 2,315,000, corresponding to the outstanding signing on fee until 31 March 2019 as well as MAD 445,000, corresponding to the outstanding signing-on fee to be paid on 30 June 2019. Furthermore, the DRC took note that the [Player] requested 5% interest on the payments as of their due dates.

In continuation, the DRC took note that the[Club], for its part, failed to present its response to the substance of the [Player's] claim. In this way, so the DRC deemed, the [Club] accepted the [Player's] allegations.

(…) the DRC considered that it remained undisputed that the outstanding amount of MAD 2,315,000 corresponding to the outstanding signing-on fee until 31 March 2019 was not paid by Respondent.

Moreover, with regard to the amount of MAD 445,000, corresponding to the outstanding signing-on fee to be paid on 30 June 2019, the Chamber was of the opinion that as of the date of the decision, this amount became due and the Respondent did not provide any evidence that it paid this amount.

As a result, the Chamber decided that, in accordance with the general legal practice of pacta sunt servanda, the Claimant is entitled to receive MAD 2,760,000 from the Respondent".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 5 June 2020, the Appellant lodged an appeal against the Appealed Decision and this pursuant to Article R48 of the CAS Code of Sports-related Arbitration edition 2019 ("the Code"). In his Statement of Appeal, the Appellant named the Player as sole respondent and requested a sole arbitrator to be appointed. The Appellant's Statement of Appeal was drafted in English.

27. On 9 June 2020, the CAS Court Office notified the appeal to FIFA requesting whether FIFA, pursuant to Article R41.3 of the Code intended to become a party to the procedure. On the same day, the CAS Court Office equally notified the appeal to the Respondent.

28. On 12 June 2020, and in reply to the notification of the appeal, the Respondent informed the CAS Court Office that it agreed to submit the appeal to a Sole Arbitrator to be designated by the CAS, informed that it would not be paying its share of the advance of procedural costs and requested that the proceedings be conducted in French given that both the Player and the Club were French-speaking or at minimum be conducted in both French and English.

29. On 13 June 2020, the Appellant requested the CAS Court Office to be granted an extension of two weeks to submit its Appeal Brief, a request which was granted on 15 June 2020.

30. On 17 June 2020, the Appellant opposed the proposal of the Respondent and requested that the arbitral proceedings be conducted exclusively in English since the Appealed Decision was issued in English.

31. On 19 June 2020, the Appellant requested a suspension of the deadline to submit its Appeal Brief and this until an Order was issued on the language of the proceedings.

32. Still on the same day, FIFA renounced to its right to request an intervention in light of Articles R52 and R41.1 of the Code.

33. On 26 June 2020, the CAS Appeal Arbitration Division's Deputy President made an Order of Language determining that the present arbitration procedure would be conducted in English. The suspension of the deadline for submission of the Appeal Brief was consequently lifted.

34. On 29 June 2020, the Appellant requested the CAS Court Office for another two-week extension to submit its Appeal Brief.

35. On 2 July 2020, the CAS Court Office invited the Respondent to comment on the Appellant's request for an extension by 6 July 2020 at the latest, suspending the deadline to file the Appeal Brief in the meantime.

36. On 3 July 2020, the Respondent opposed the extension referring *inter alia* to dilatory tactics of the Appellant.

37. On the same day and lacking an agreement between the Parties, the CAS Court Office informed the Parties that the CAS Appeals Arbitration Division's President or its Deputy would decide on the extension.

38. Still on the same day, i.e. 3 July 2020, the CAS Court Office informed the Parties that the CAS Appeals Arbitration Division's Deputy President granted the Appellant a further extension of one-week (7 days) to submit its Appeal Brief.

39. On 13 July 2020, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

40. On 22 July 2020, the Respondent, pursuant to Article R55.3 of the Code, requested that a new time-limit be fixed to file its Answer after the Appellant's payment of the advance of costs.

41. On 24 July 2020, the CAS Court Office acknowledge receipt of payment by the Appellant, fixed a new time-limit for the Respondent to file its Answer, and in the same letter informed the Parties that pursuant to Article R54 of the Code, and on behalf of the President of the CAS Appeals Arbitration Division, the arbitral tribunal appointed to decide the present matter was constituted as follows:

Sole Arbitrator: Mr Wouter Lambrecht, Attorney-at-law in Barcelona, Spain

42. On 10 August 2020, the Respondent filed its Answer to the Appeal Brief, in accordance with Article R55 of the Code.

43. Following a request thereto by the CAS Court Office, on 18 August 2020 and 19 August 2020, the Respondent and the Appellant indicated that they did not consider it necessary for a hearing be held in this matter.

44. On 11 and 12 November 2020, the Appellant and the Respondent returned duly signed copies of the Order of Procedure to the CAS Court Office. By signing the Order of Procedure, the Parties expressly confirmed their agreement for the Sole Arbitrator to decide the matter based on the Parties' written submissions, without holding a hearing, and that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

45. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Claimant and the Respondent. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the Parties during the proceedings irrespective of whether or not there is a specific reference to them in the following summary.

A. The Appellant's Position

46. The Appellant submitted the following requests for relief in its Appeal Brief:

"FIRST – To dismiss the Appealed Decision, in its entirety;

SECOND – To confirm that the FIFA DRC did not have jurisdiction to adjudicate the claim filed by the Player;

THIRD – To order the Player to pay all arbitration costs and be ordered to reimburse the Club the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS;

FOURTH – To order the Player to pay to the Club any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in the amount of CHF 20,000 (twenty thousand Swiss Francs)".

47. In support of its appeal, the Appellant has, in essence, submitted that:

- The Swiss Private International Law Act ("PILA") is the procedural law applicable to these arbitral proceedings with the 2018 edition of the FIFA Regulations on the Status and Transfer of Players ("RSTP") and the 2018 edition of the FIFA Procedural Rules applicable to the merits of the case, such pursuant to Article R58 of the Code, Article 57 of the FIFA Statutes, Article 25, para. 6 of the FIFA RSTP and Article 2 of the FIFA Procedural Rules.

- The FIFA DRC did not have jurisdiction to rule on this matter in first instance since the Employment Contract contained a clear jurisdiction clause in favour of the FRMF NDRC.

- The FIFA DRC was wrong to consider that the FRMF NDRC did not meet all the minimum procedural standards for independent arbitration tribunals as laid down in Article 22 lit. b) of the RSTP, the FIFA Circular no. 1010 dated 20 December 2005 and the FIFA National Dispute Resolution Chamber Standard Regulations ("FIFA NDRC Standard Regulations").

- The FRMF NDRC is an independent arbitration tribunal at national level that guarantees fair proceedings (including guaranties on its impartiality and independence), and which respects the principle of equal representation of players and clubs.

- The FRMF NDRC went beyond what could be expected of it in developing its arbitral tribunal as to what concerns parity, in that the composition if its NDRC not only

contemplates a representative appointed by the players but one for each main stakeholder, e.g. coaches, doctors, futsal, etc. and this pursuant to article 5 of the FRMF NDRC Procedural Rules ed. August 2017.

- Pursuant to the same 2017 edition of FRMF NDRC Procedural Rules and its article 5, the constitution of the arbitration panel occurs in the presence of at least three members and whenever there is a dispute between a player and a club, the composition of the arbitration panel has compulsorily one arbitrator representing the players and another one representing the club, evidencing that the principle of equal representation and parity is met.

- The Appealed Decision erred in referring to CAS 2016/A/4673 Wydad Athletic Club and Benito Floro Sans in motivating its decision since said case dealt with proceedings between a head coach and a national football association that was governed by the previous version of the FRMF NDRC Regulations, regulations which were amended considerably by the 2017 edition of new FRMF NDRC Procedural Rules.

- The Appealed Decision, when analysing the parity requirement, also incorrectly interpreted the notions *"influence"* to appoint an arbitrator and the *"right to indicate"* an arbitrator directly and wrongfully held that *"the principle of parity is not respected with regard to the appointment of arbitrators, because the parties do not choose the arbitrators. Indeed, from the wording of the aforementioned Moroccan NDRC Regulations, they appear to always be designated by the Executive Committee of the FRMF"*. since nothing in the FIFA RSTP states that parties should be able to appoint and elect their own arbitrator at NDRC level.

- The appointment of the NDRC members by the FRMF Executive Committee is no different from the appointment of FIFA DRC members by the FIFA Executive Committee in that there is nothing wrong with the appointment of members through a specific body, as long as both parties had equal influence over the members which make to the list of members that are finally appointed by said specific body.

- *In casu* the players and the clubs proposed representative members to the list of FRMF NDRC members, which were then appointed by the FRMF Executive Body, said representative members mandatorily appearing in disputes involving their "stakeholder" implying that the FRMF Executive Committee, no longer had any influence on the appointment of arbitrators in any individual player-club dispute.

- All other requirements contained in the FIFA RSTP, Circular and FIFA NDRC Standard Rules were met since Articles 6, 8 and 12 of the 2017 edition of FRMF NDRC Procedural Rules deal with the independence, recusal and challenge of FRMF NDRC members whilst articles 11, 12, 13 and 18 of the same regulations, address the issues of fundamental procedural rights, legal representation, written procedure, documentary evidence, as such guaranteeing contentious proceedings.

- Even if certain criteria for the FRMF NDRC to be considered an independent arbitral tribunal would not be met, its decisions can be appealed to the Court of Arbitration for

Sports pursuant to article 30 of the 2017 edition of the FRMF Procedural Rules, meaning that CAS will remedy any eventual procedural breach that may have occurred in first instance and this through the *"de novo"* doctrine.

B. The Respondent's Position

48. The Respondent has submitted the following requests for relief in his Answer to the Appeal Brief:

"- Dismiss the Appeal filed by the Appellant;

Consequently,

- Confirm that that the FIFA DRC had jurisdiction to rule on the claim filed by the Respondent;

- Confirm the decision taken by the FIFA DRC;

- Order the Appellant to bear all arbitration costs;

- Order the Appellant to pay to the Respondent a contribution towards the legal and other costs incurred and regarding the ongoing proceedings in the amount of CHF 15,000 (twenty thousand Swiss Francs)".

49. In support of its defence, the Respondent submitted, in essence, that:

- In challenging FIFA's jurisdiction, the Appellant incorrectly relies on the FRMF NDRC Procedural Rules that came into force on 1 August 2017 as these regulations were not yet in force when the Player introduced his initial claim before FIFA on 10 July 2017.

- Hence, the correct set of regulations to be taken into account to analyse whether the FMRF NDRC meets the minimum criteria are the 2016 edition of the FRMF NDRC Procedural Rules.

- Even if one were to take into account the 2017 edition of the FRMF NDRC Procedural Rules, the outcome would be the same in that articles quoted by the Appellant were only slightly modified compared to the 2016 edition.

- The FIFA DRC was right to conclude that it had jurisdiction in this matter for the following reasons:

    - it concerns an employment-related dispute with an international dimension.

    - The jurisdiction clause contained in the Employment Contract conferring jurisdiction on the FRMF NDRC is not applicable since the FRMF NDRC is not an independent arbitration tribunal, does not guarantees fair proceedings, nor does it respect the principle of equal representation of players and clubs.

- A plain reading of Article 5 a) and b) of the 2017 edition of the FRMF NDRC's Procedural Rules demonstrate that the principle of parity is not respected regarding the appointment of arbitrators. In fact, instead of the parties choosing the arbitrators, all FRMF NDRC's members, including the players' representative, are appointed by the FRMF's Executive Committee.

- No document has been put forward to explain how the arbitrators are selected, designated and appointed by the FRMF Executive Committee nor has it been demonstrated that the players had an equal influence as to the designation of individuals on the list of arbitrators who were finally appointed by the FRMF Executive Committee. This applies both to the individual appointed for the group they represent as for the president and vice-president of the FRMF NDRC.

- Article 25.1 of the FRMF Statutes contains the rules regarding the composition of the FRMF Executive Committee, from which it shows that 7 out of its 17 members are club representatives with two further league representatives, while there is only one representative of former international players and former Moroccan professional players. Since the FRMF Executive Committee appoints the FRMF NDRC members and takes its decisions by simply majority, such pursuant to article 26 of its Statutes, the clubs have the power to appoint the members of the FRMF NDRC.

- Moreover, pursuant to articles 17 and 18 of the FRMF's Statutes, the FRMF's Executive Committee members are elected by the FRMF's General Assembly which is composed of 53 members, 36 of which are club representatives. Since also the FRMF's General Assembly takes its decisions by a simple majority, as per articles 20.1 and 20.2 of the FRMF Statutes, the clubs have the full power to elect not only the members of the FRMF's Executive Committee but also, via the FRMF Executive Committee, to appoint the members of the FRMF NDRC

- The fact "FRMF President" has a casting vote in the event of a tie during cases before the FRMF NDRC is problematic since the FRMF's Executive Committee is responsible for the appointment of the President of the FRMF NDRC.

- The Appellant did not submit any evidence to sustain that FRMF NDRC can be considered an independent arbitral tribunal, despite that the burden of proof rests on the Appellant.

- The Appellant did not contest the debt it has towards the Respondent and has previously recognised the same in an email dated 25 October 2019.

V. JURISDICTION

50. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the Code of Sports-related Arbitration (the "Code"), Article 58 of the FIFA Statutes and Article 24.2 FIFA RSTP.

51. Article R47 of the Code provides, amongst other things, as follows:

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

52. Accordingly, Article 58 of the FIFA Statutes states as follows:

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

2. Recourse may only be made to CAS after all other internal channels have been exhausted. (…)".

53. Article 24.2, *in fine* FIFA RSTP provides that:

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

54. Consequently, it follows that the CAS has jurisdiction to decide this matter.

VI. ADMISSIBILITY OF THE APPEAL

55. Article 58.1 of the FIFA Statutes states as follows:

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

56. The Respondent does not contest the admissibility of the Appellant's appeal.

57. The Statement of Appeal was filed on 5 June 2020, within 21 days following the notification of the grounds of the Appealed Decision on 15 May 2020. Moreover, the appeal complied with all other requirements of Article R48 of the Code.

58. Consequently, it follows that the Appellant's appeal is admissible.

VII. APPLICABLE LAW

A. Applicable law

59. Article 187 para. 1 of the Swiss Private International Law Act ("PILA") provides:

"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection".

60. Article R58 of the 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".

61. Article 57.2 of the FIFA Statutes states 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".

62. Article 1 of the Employment Contract provides the following regarding the applicable regulations and the applicable law:

"The present fixed-term contract, concluded between the Club and the Player, is governed by the provisions of:

- *the Law 30-09 on Physical Education and Sport;*
- *the legislation in force in Morocco on professional sports contracts;*
- *the provisions of the General Regulations of the FRMF and, in particular, the FRMF Player and Transfer Status;*
- *the FIFA regulations"*[3].

63. From the above clause, the Sole Arbitrator notes that the Parties have elected different sets of rules and regulations to govern their relationship and this without giving preference to either one or the other nor establishing which one ought to prevail in case they would contain conflicting provisions.

64. However, the Sole Arbitrator also observes that neither Party submitted any arguments based on Moroccan law and that the Parties thus deemed Moroccan national law to be irrelevant to the present dispute.

65. The Appellant, from his side, limited himself to refer to the different FIFA Regulations and Swiss law in its applicable law section, whilst also referring to the FIFA NDRC Standard

[3] Translation from French:
"Le présent contrat d'engagement à durée déterminée, conclu entre le club et le joueur, est régi par les dispositions de:
- La loi 30-09 sur l'Education Physique et le sport;
- La législation en vigueur au Maroc sur les contrats sportifs professionnels
- Les dispositions des Règlement Généraux de la Fédération Royale Marocaine de Football et, en particulier, le Statut du joueur et du transfert de la FRMF;
- Les règlements de la FIFA".

Regulations, the FIFA Circular No 1010 and the FRMF NDRC Procedural Rules ed. 2017 in its arguments on the merits.

66. The Respondent from his side did not expressly refer to any specific applicable law but referred in his Answer to the same FIFA Regulations, Circular and NDRC Standard Procedural Rules as the Appellant, whilst also referring to the FRMF NDRC Procedural Rules ed. 2016 & 2017 and the FRMF Statutes.

67. Keeping the above in mind and considering that the main matter before the Sole Arbitrator relates to the issue of FIFA's jurisdiction opposed to that of the FMRF NDRC, the Sole Arbitrator shall apply the rules of FIFA, FIFA being the federation that issued the Appealed Decision, as well as on subsidiary basis, Swiss law, to which the relevant FIFA Statutes make explicit reference.

68. The regulations and statutes of the FRMF shall be examined insofar as the Parties raised arguments regarding the qualification of the FRMF NDRC as an independent arbitral tribunal as required by the FIFA rules.

69. This arbitral proceeding is further governed by the Articles 176 et seq. of the Swiss Private International Law Act ("PILA"), since at least one of the Parties is domiciled outside Switzerland and because the seat of the arbitration is in Switzerland (Article R27 of the CAS Code).

B. Applicable Law *ratione temporis*

70. The Sole Arbitrator observes that the Parties disagree as to which edition of the FRMF NDRC Procedural Rules should apply to the matter at hand whereas the Respondent, unlike the Appellant, did not elaborate with respect to the applicable edition of the FIFA RSTP in the case at hand.

a. As to the FRMF Procedural Rules

71. The Appellant submits that the 2017 edition of the FRMF NDRC Procedural Rules applies since the Respondent amended his claim on 21 May 2019 and the 2017 edition of said rules entered into force on 1 August 2017.

72. The Respondent submits that the 2016 edition of the FRMF NDRC Procedural Rules apply since the Respondent lodged his claim in front of FIFA on 10 July 2017, hence prior to the 2017 edition of FRMF NDRC Procedural Rules entering into force.

73. From its side, the Appealed Decision does not indicate which edition of the FRMF NDRC Procedural Rules applies albeit it does appear that the FIFA DRC analysed the 2017 edition of the FRMF NDRC Procedural Rules in analysing whether it was competent to hear the dispute.

b. As to the FIFA RSTP

74. As to the question, which edition of the FIFA RSTP should apply, the Respondent does not elaborate on which edition shall apply, while the Appellant endorses the FIFA DRC's point of view, set out in the Appealed Decision as to the applicability of the June 2018 edition of the FIFA RSTP.

75. As such, the Sole Arbitrator observes that the FIFA DRC and the Appellant thus implicitly took the Second Complaint dated 31 May 2019 before FIFA as reference point to determine the applicable regulations at hand, and hence not the First Complaint dated 10 July 2017.

76. As to the applicable version of the RSTP and the FRMF NDRC Procedural Rules, the Sole Arbitrator refers to the principle of *tempus regit actum*.

77. According to this principle, substantive aspects are governed by the regulations in force at the time of the relevant facts, while procedural matters are governed by the rules in force at the time when the procedural action occurs (CAS 2016/O/4683, para. 50; CAS 2016/O/4883, para. 47; CAS 2018/A/5628, para. 70). Questions relating to jurisdiction are procedural issues as they relate to the procedure rather than the nature of the obligations arising from a legal relationship (CAS 2018/A/5628, para. 70).

78. Consequently, the Sole Arbitrator must verify independently from one another and pursuant to the regulations in force at that moment in time, which judicial body was competent to deal with the First Complaint introduced in July 2017, but also which judicial body was competent to deal with the Second Complaint introduced in May 2019. Moreover, this independent analysis is necessary given that rather than constituting a simple update and amendment to the First Complaint, the Second Complaint dated 31 May 2019 and filed almost two years later, appears to be new claim based on article 12bis of the FIFA RSTP, containing substantially different requests for relief.

79. Keeping in mind the above, and contrary to what is held in the Appealed Decision, the Sole Arbitrator understands that with respect to the First Complaint dated 10 July 2017, and more precisely the requests for relief that remained unaffected following the Second Complaint dated 31 May 2019, the jurisdiction of the FIFA DRC should be reviewed keeping in mind the 2016 edition of the FIFA RSTP and the 2016 edition of the FRMF NDRC Procedural Rules, the latter being the rules in force at the FRMF when the first claim was filed by the Player before FIFA. For what concerns the Second Complaint and the new requests for relief contained therein, FIFA's jurisdiction should be reviewed keeping in mind the 2018 edition of the FIFA RSTP and the 2017 edition of the FRMF NDRC Procedural, the latter being the rules in force when the Player submitted the Second Complaint.

80. As such, the Sole Arbitrator considers that the Appealed Decision erroneously considered the Second Complaint dated 31 May 2019 as the sole reference point to determine the applicable regulations to review its jurisdiction, disregarding the moment in time when the First Complaint was submitted, namely 10 July 2017.

VIII. MERITS

A. Introduction

81. As previously mentioned, the issue at the centre of this appeal is whether the FIFA DRC, by means of the Appealed Decision, correctly retained jurisdiction holding that the FRMF NDRC did not meet the minimum procedural standards for independent arbitral tribunals as laid down in (i) Art. 22 lit. b) of the FIFA RSTP ed. 2018, (ii) in FIFA Circular no. 1010 as well as in (iii) the FIFA NDRC Standard Regulations.

82. This analysis must be made independently for what concerns the First Complaint in July 2017, more precisely for those requests for relief that remained unaffected following the Second complaint, and the new requests for relief contained in the Second complaint dated 31 May 2019.

83. However, before addressing this main issue, the Sole Arbitrator considers it necessary to address the following preliminary points on the merits.

B. Preliminary remarks on the merits

a. Standing to be sued

84. Although not addressed by the Parties *in casu*, the Sole Arbitrator considers it necessary to review and assess the Respondent's standing to be sued, as opposed to that of FIFA, given that under Swiss law, the question of standing to sue or be sued will be reviewed *ex officio* (HOHL F. *Procédure civile, Tome I, Introduction et théorie générale,* Bern 2001, p. 99).

85. In this respect, it must be noted that standing to be sued, or *"légitimation passive"* in French, refers to the party against whom an appellant must direct its claim in order to be successful. A party has standing to be sued only if it is personally obliged by the claim brought by an appellant. (HAAS U., *Standing to Appeal and Standing to be sued,* in *International Sport Arbitration,* Bern 2018, p. 53-88, para. 1 with reference to other CAS jurisprudence).

86. The review and assessment of the standing to be sued is necessary since the Appellant, among other things, asks the Sole Arbitrator to dismiss the Appealed Decision in its entirety and to confirm that the FIFA DRC did not have jurisdiction to adjudicate the claim filed by the Respondent.

87. Keeping in mind the Appellant's specific requests for relief, the Sole Arbitrator must thus consider whether the Respondent, as opposed to FIFA, has standing to be sued in the matter at hand. The question of who has standing to be sued is a question of the merits implying that if the Respondent's standing to be sued is denied, then the appeal, albeit admissible, must be dismissed (SFT 128 III 50 of 16 October 2001, at 55; SFT 4A_424/2008 of 22 January 2009, para. 3.3.; CAS 2008/A/1639, para. 3).

88. In light of the above, whilst Article 58 para. 1 of the FIFA Statutes provides that appeals against a decision of a FIFA body must be lodged at the CAS, neither the FIFA Statutes, nor the CAS Code, specify against which party the appeal should be lodged, i.e. who has standing to be sued.

89. Keeping in mind that the Appealed Decision is to be qualified as an *association decision,* in German *"Vereinsbeschluss"*, this lacuna is filled by Swiss law, and more precisely by Article 75 of the Swiss Civil Code ("SCC")[4] *iuncto* Article 706 of the Swiss Code of Obligations ("SCO")[5].

90. Following those articles, a challenge against an *association decision* must, in principle, always be filed against the association that issued the decision.

91. This finding has however been nuanced by jurisprudence of both the CAS[6] and the Swiss Federal Tribunal; nuanced because: (i) an appeal in front of the CAS is quite different to a regular action for voidance in front of Swiss Courts under Article 75 SCC as explained in detail in CAS 2014/A/3690, para. 88 to 93, whilst (ii) according to the same jurisprudence and legal doctrine, one must distinguish between different kinds of *association decisions* that warrant a flexible approach (emphasis added):

> *"Recent jurisprudence points towards a more nuanced approach, according to which there is room to differentiate in respect of the standing to be sued pursuant to article 75 SCC* ***depending on what kind of decision is being appealed****. Various reasons speak in favour of this (flexible) approach"*[7] (HAAS U., *Standing to Appeal and Standing to be sued,* in *International Sport Arbitration,* Bern 2018, p. 53-88, para. 49).

92. This flexible approach consists in differentiating between decisions entailing a vertical element ("vertical disputes") and decisions entailing a horizontal element ("horizontal disputes") whilst acknowledging that some decisions may entail both vertical and horizontal elements.

93. According to Prof. Haas:

> *"43. […] Vertical disputes, are characterized by the fact that the association issuing the decision thereby shapes, alters or terminates the membership relation between itself and the member concerned*[8]*. Vertical disputes typically arise in disciplinary*[9]*, eligibility or registration contexts*[10]*".*

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[4] Article 75 SCC: *"Any member who has not consented to a* ***resolution*** *which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof"* (emphasis added).
[4] The term "**resolution**" needs to be interpreted broadly and the notion is by no means limited to decisions of the General Assembly. Article 75 also applies, by analogy, to (final) decisions of any other organ of the association, other than the general assembly (SFT 132 III 503, E.3.).
[5] Article 706 SCO: *"Right of action and grounds: 1 The board of directors and every shareholder may challenge resolutions of the general meeting which violate the law or the articles of association by bringing action against the company before the court"* (emphasis added).
[6] CAS 2014/A/3690, at para. 80: *"the qualification of a DRC' resolution as a decision of an association does not entail automatically that any appeal to the CAS against such decision must involve FIFA as a respondent".* CAS 2015/A/3910, no. 135*: "However, the Panel also notes that it does not follow automatically from such qualification as "Vereinsbeschluss" (resolution of an association) that any appeal against it must be directed against FIFA".*
[7] See the observations by SUBIOTTO, 2016, 46, 48.
[8] CAS 2013/A/3140, no 8.12.
[9] MAVROMATI/REEB 2015, Art. 48 no. 60 and 68; CAS 2015/A/3999 & 4000, no. 81.
[10] CAS 2013/A/3140, no. 8.12.

whereas

"44. […] horizontal disputes do not affect the actual membership sphere, i.e. the participation rights of a member in the co-management of the federation's affairs or the usage rights of an individual member with respect to the associations' facilities. Instead, horizontal disputes originate in a legal relationship amongst individual members. Examples of horizontal disputes are conflicts relating to the performance or termination of employment contracts (between clubs and players or coaches), agency contracts (between clubs and agents) or transfer contracts (between clubs) [11]*. All these (horizontal) relationships between the individual members are heavily regulated by the respective federations. FIFA -e.g.- imposes extensive rules with respect to the execution, content and termination of contracts between players (or coaches) and clubs or for the transfer of players between clubs (cfr. Regulations on the status and transfer of players) Those horizontal disputes relationships are, thus, not entered into or executed outside the regulatory authority, but remain under the strict umbrella of FIFA. …".*

94. Still according to Prof. Haas:

"51. […] an association's competence when deciding horizontal disputes is very different from the powers exercised in vertical disputes[12]*. The association only intervenes in horizontal disputes if the claim is brought before its association tribunal by one of the members. Thus, it cannot alter the relationship between the parties ex officio, but only intervenes upon a specific request of the parties. In addition - and very different from vertical disputes*[13] *- once the association tribunal has exercised its (adjudicatory) function, the association's powers are at an end. In other words, as soon as the association (through its association tribunal) has exercised its jurisdictional powers, the only remaining persons entitled to freely dispose of the claim underlying the decision are the members*[14]*".*

95. The Sole Arbitrator subscribes to the views of Prof. Haas and considers that for what concerns the case under review, and keeping the above in mind, the better arguments speak in favour of this dispute being considered a horizontal dispute. The Sole Arbitrator reaches this conclusion mindful that different CAS jurisprudence exists regarding who has standing to be sued regarding jurisdictional matters, namely CAS 2016/A/4836.

96. Firstly, the Sole Arbitrator reaches the above conclusion since the Appellant and Respondent are bound by a bilateral contract whilst the Appellant is seeking the enforcement of his contractual rights, namely, to have his case heard in front of the FRMF NDRC and not be sued in front of the FIFA DRC as per the mutually agreed jurisdiction clause between the Parties.

97. FIFA's decision not to uphold the contractually agreed jurisdiction clause does not alter the membership relations of either one of the Parties vis-à-vis FIFA but mainly alters their contractual rights and obligations vis-à-vis one another. Moreover, once FIFA made its decision, its power came to an end and FIFA can no longer dispose of the claim of the underlying dispute whilst the Parties can still reach a different agreement, amending partially or

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[11] NETZLE, 2009, S. 93, 96.
[12] Cf. CAS 2015/A/3999 & 4000, no. 83: *"In consideration of the foregoing, the Panel reaches the conclusion that regarding the appeal filed by the Club, concerning a contractual dispute of an employment-related nature between the Player and the Club, irrespective of any given definition of "membership-related decision", […] FIFA is only involved in the proceedings before the CAS regarding the appeal filed by the Club as the adjudicating body in first instance".*
[13] Cf. CAS OG 24/16, no. 7.46.
[14] Cf. CAS 2013/A/3278, no. 54 et seq.

reaching an entirely different agreement than the content of the Appealed Decision, which is typical for horizontal disputes.

98. Secondly, the Sole Arbitrator holds that the FIFA DRC acted as an (quasi-) adjudicative first instance body ruling upon its jurisdiction under the rules contained in the FIFA Statutes and FIFA RSTP and that such a situation does not differ from the situation in which a civil court, under the national laws and potentially international laws and directives such as the Lugano Convention and Brussels I Regulation, assesses its own jurisdiction. In the latter case, when a party does not agree with the ruling of a first instance civil court considering itself competent, and the party appeals such a ruling, it must not direct its appeal against nor include the first instance court as a respondent in its appeal. The same logic should apply to appeals before the CAS for what concerns purely jurisdictional issues.

99. Moreover, the Sole Arbitrator is comforted in reaching the above conclusion keeping in mind other CAS jurisprudence in which it was held that *"With regard to the allegation that FIFA should have been summoned by the Appellant as a necessary party in the present proceedings (in order for the Panel to adjudicate the issue of FIFA's jurisdiction), the Panel agrees with CAS consistent jurisprudence according to which in cases where FIFA merely acts as the legal body rendering the lower-instance decision, i.e. in cases which do not involve FIFA's disciplinary powers (so-called "horizontal disputes"), as in the present case, FIFA has the opportunity to participate in the CAS proceedings but is not a necessary party, nor the Appellant has the burden to summon FIFA as a respondent (see CAS 2008/A/1705; CAS 2008/A/1708; CAS 2010/A/2289)"* (CAS 2015/A/3896 at para. 89).

100. In light of all the above, the Sole Arbitrator, conducting an *ex officio* review of the question who has standing to be sued, considers that the Respondent has standing to be sued and that the Appellant could address its appeal and respective requests for relief against the Respondent.

b. De novo review – appeal to CAS foreseen in the FRMF NDRC Procedural Regulations ed. 2017.

101. According to the Appellant, *"decisions rendered by the FRMF NDRC may be appealed before the CAS (cf. Article 30) meaning that CAS shall remedy any eventual procedural breach which may occur in first instance through the "de novo" doctrine".*

102. In light of the above, the Appellant seems to submit that irrespective of whether or not the FRMF NDRC would meet the minimum procedural requirements, provided that the regulations of such an NDRC allow for an option of appeal to CAS, then such an appeal would cure any deficiencies of the NDRC and hence FIFA, under its Article 22 lit. b) of the FIFA RSTP, should deny jurisdiction.

103. Prior to addressing this point, it seems useful to recall the exact wording of Article 22 lit b) of the FIFA RSTP editions 2016 and 2018, which reads, in its relevant parts, as follows:

"[…] parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective

bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs" (emphasis added).

104. Whereas the Sole Arbitrator agrees with the Appellant's submission that procedural deficiencies regarding fair proceedings and equal parity are cured by the *de novo* appeal and hearing before the CAS (CAS 2015/A/4162 para. 70 et. seq. and CAS 2013/A/3256 para. 261 et. seq. with further references), the Appellant's position cannot be upheld.

105. The Appellant refers to the possibility to appeal the FRMF NDRC decision to the CAS, however, Article 30[15] of the 2017 edition of FRMF NDRC Procedural Rules, first and foremost provides for an internal appeal to the *Commission Centrale d'Appel* whilst it appears that the appeal possibility to the CAS is temporary and only exists until a *Chambre Arbitrale du Sport* is established in Morocco. It is unknown to the Sole Arbitrator whether such a *Chambre Arbitrale du Sport* has, since the entry into force of the 2017 edition of the FRMF NDRC Procedural Rules, been established, if so whether it itself would meet the minimum criteria, and if not whether the appeal possibility to the CAS still existed should the FRMF NDRC have effectively rendered a decision.

106. In any case, the Sole Arbitrator notes that it is not the possibility to appeal *an sich* that cures procedural deficiencies but rather an actual appeal proceeding, which is a rather different thing and depends on an appeal actually being introduced. Hence the mere *temporary* possibility foreseen in Article 30 of the FRMF NDRC Procedural Rules ed. 2016 and 2017 to appeal an NDRC decision to the CAS, which shall hear a case *de* novo, after an internal appeal, is, in principle, not in and by itself, a reason for the FIFA DRC to deny jurisdiction.

107. Holding different would otherwise give a 'blank cheque' to associations to conduct their NDRC and internal appeal procedures as they wish, effectively cancelling one or more instances, and this is as long as the NDRC regulations would provide for an appeal possibility to the CAS or another arbitral tribunal established at national level. This cannot, in the opinion of the Sole Arbitrator, have been FIFA's intention when introducing Article 22 lit. b) in the FIFA RSTP, which constitutes and contains an exception to FIFA's jurisdiction.

108. Moreover, strictly applying the wording of Article 22 lit. b) of the FIFA RSTP, it should be noted that it refers to an independent arbitration tribunal established at national level, whilst the CAS, although evidently being an independent arbitration tribunal, is not established at the national level in Morocco.

[15] Translation from French: Article 30 of the FRMF NDRC Procedural Rules edition 2017:
"Recours: Les sentences de la CNRL pourront faire objet d'un recours auprès de la Commission Centrale d'Appel par lettre recommandée avec accusé de réception ou par fax adressé dans un délai maximal de 5 (cinq) jours à compter de la date de notification de la sentence contestée. Recours en appel: Les sentences de la CNRL sont susceptibles d'appel devant la Chambre Arbitrale du Sport lorsqu'elle sera instituée. […] Toutefois, dans l'attente de la création de ladite Chambre Arbitrale, les sentences peuvent être objet d'appel en dernier ressort directement devant le TAS dans un délai de 21 jours qui commence à courir à compter de la réception de la décision intégrale".

109. For the above reasons, the Sole Arbitrator disagrees with the Appellant's contention but does consider the reference in Article 22 lit. b) of the RSTP to the notion of *"independent arbitration tribunal"* problematic and partially misleading for the following reason:

110. Arbitral tribunals issue, *per definition*, arbitral awards whilst CAS and the SFT have held (i) on numerous occasions that FIFA's adjudicating bodies, and therefore, in this Sole Arbitrator's opinion, associations' adjudicating bodies *"are not true arbitral proceedings but "intra-association" proceedings*[16]*, and the decisions passed by those bodies are not true arbitral awards but a decision of a (Swiss) private association*[17] *[…] which are normally subject to an appeal and subsequent control by CAS, whose awards are considered as arbitral awards"* (MAVROMATI D., *Res judicata in sports disputes and decisions rendered by sports federations in Switzerland*, Bulletin TAS/CAS Bulletin 2015/1, p. 48 and following).

C. Did FIFA DRC have jurisdiction to decide the dispute?

a. Point of law and the position of the Parties

111. In the Appealed Decision, the FIFA DRC held that it was competent to deal with this matter since it considered that the FRMF NDRC did not met the minimum procedural standards for independent arbitration tribunals as laid down in Article 22 lit. b) of the FIFA RSTP, the FIFA Circular n° 1010 dated 20 December 2005 and the FIFA NDRC Standard Regulations.

112. It is reminded that according to the Appellant, FIFA did not have jurisdiction since Article 14, para. 2 of the Employment Contract conferred jurisdiction to the FRMF NDRC which, pursuant to the 2017 edition of the FRMF NDRC Procedural Rules, is an independent arbitral tribunal as required by the different FIFA Rules and article 22 lit b) of the FIFA RSTP (ed. June 2018).

113. The Respondent, on the other hand, argued that the FIFA DRC was competent since the FRMF NDRC did not meet the minimum procedural standards, more precisely the principle of parity, and this neither when taking into account the 2016 or the 2017 edition of the FRMF NDRC Procedural Rules.

114. In light of the above, reference is once again made to Article 22 lit. b) of the 2016 and June 2018 edition of the FIFA RSTP, which provides as follows:

> *"Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear: (…)*
>
> *b) Employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective*

[16] See CAS 2009/A/1880-1881, (…) para. 50.
[17] See CAS 2003/O/460, (…) para. 5.3. However, we should distinguish between cases in which the FIFA acts as the adjudicating body in a dispute between, for example, two clubs from cases in which the FIFA adjudicating body acts as an intra-association judicial organ.

bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs (…)" (emphasis added).

115. The Parties do not challenge that the matter at hand concerns an employment-related dispute of an international dimension, the Respondent being a Congolese player requesting his former Moroccan club to pay overdue salary.

116. As confirmed by the CAS' constant jurisprudence, *"the FIFA DRC is, under certain circumstances, competent to deal with employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level. This means that if an independent arbitration tribunal guaranteeing fair proceedings exists at national level, a dispute may be referred to the national body, even if it has an international dimension, provided that the parties have explicitly chosen the national body by means of an agreement acknowledging its jurisdiction"* (CAS 2015/A/4333, para. 68 with reference to CAS 2014/A/3864, para. 68 and CAS 2013/A/3172, para. 54).

117. Given the clear jurisdiction clause in Article 14, para. 2 of the Employment Contract, the Sole Arbitrator considers that the FRMF NDRC would indeed be competent to rule on the dispute, if it meets the minimum procedural standards.

118. On the contrary, if the FRMF NDRC does not meet the minimum procedural standards, then the FIFA DRC was right to consider that it had jurisdiction to decide on this matter.

b. Burden of proof

119. In the Appealed Decision, the FIFA DRC established that the Appellant was unable to prove that the FRMF NDRC met the minimum procedural standards for independent arbitration tribunals.

120. In its answer to the Appeal Brief, the Respondent argued that the burden of proof rests on the Appellant (with refence to CAS 2010/A/2289, para. 37 and to CAS 2016/A/4846, para. 166).

121. For the reasons set out directly below, the Sole Arbitrator considers that the position of FIFA, as contained in the Appealed Decision, and that of the Respondent cannot be entirely maintained.

122. Pursuant to Article 8 of the Swiss Civil Code ("SCC"), *"the burden of proving the existence of an alleged fact rests on the person who derives rights from that fact, unless the law provides otherwise"*. This principle, known as *"affirmanti incumbit probatio",* has been recognised by the CAS in other matters (CAS 2011/A/2494, para. 29; CAS 2016/A/4871, para. 125) as follows:

"In CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (...). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations

with convincing evidence" (CAS 2019/A/6095, para. 53, with reference to CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).

123. When applying the above to the present dispute, the Sole Arbitrator observes that the Club must substantiate in its appeal to CAS why the FIFA DRC, in the Appealed Decision, wrongfully considered itself competent, i.e. demonstrate that the FRMF NDRC does meet the minimum procedural standards, however, and still according to the same reasoning, the Player, rather than the Club should have carried said burden of proof in front of FIFA.

124. In the opinion of the Sole Arbitrator, it is the party who initially seeks to vacate and rejects the application of a contractually agreed jurisdiction clause that carries the burden of proof and should therefore reasonably demonstrate why the agreed jurisdiction clause should be set aside and why, *in casu*, the FRMF NDRC had no jurisdiction.

125. Consequently, the FIFA DRC in its Appealed Decision erred in exclusively putting the onus on the Club to prove that the FRMF NDRC met the minimum procedural standards.

c. The relevant provisions on the minimum procedural standards

126. Article 22 lit. b) of the FIFA RSTP ed. 2016 and ed. June 2018 provides that an independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs.

127. According to FIFA Circular n° 1010 of 20 December 2005, the minimum procedural standards to ensure fair proceedings comprise, among other things, the following conditions and principles:

> *"**- Principle of parity when constituting the arbitration tribunal***
>
> *The parties must have equal influence over the appointment of arbitrators. This means for example that every party shall have the right to appoint an arbitrator and the two appointed arbitrators appoint the chairman of the arbitration tribunal. The parties concerned may also agree to appoint jointly one single arbitrator. Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrator list.*
>
> ***- Right to an independent and impartial tribunal***
>
> *To observe this right, arbitrators (or the arbitration tribunal) must be rejected if there is any legitimate doubt about their independence. The option to reject an arbitrator also requires that the ensuing rejection and replacement procedure be regulated by agreement, rules of arbitration or state rules of procedure.*
>
> *(…)*
>
> *The members of FIFA and the confederations are obliged to ensure compliance with the foregoing minimum standard at all times when establishing or recognising an arbitration tribunal in accordance with art. 60, par. 3*

(c) of the FIFA Statutes. Members may, of course, provide for additional requirements with a view to reinforcing the independence and due constitution of the arbitration tribunal" (emphasis added).

128. The Sole Arbitrator observes that although FIFA's Circular Letters are not regulations in a strict legal sense, they are nevertheless relevant for the interpretation of the FIFA Regulations (CAS 2004/A/594, para. 24; CAS CAS 2015/A/4153, para. 153; CAS 2016/A/4448 para. 135). This finding applies for what concerns the FIFA Circular nº1010.

129. However, FIFA's Circular Letters cannot be allowed to take precedence over the clear and specific wording of FIFA's regulations and a Circular cannot amend, override, change or contradict the FIFA Regulations (CAS 2015/A/4153, para. 154). This finding is equally important for what concerns the FIFA NDRC Standard Regulations which are contained as an annexe to FIFA Circular nº 1129 and which, in its article 3 reads as follows:

"3. Composition

1. The NDRC shall be composed of the following members, who shall serve a four-year renewable mandate:

a) a chairman and a deputy chairman chosen by consensus by the player and club representatives from a list of at least five persons drawn up by the association's executive committee;

b) between three and ten player representatives who are elected or appointed either on the proposal of the players' associations affiliated to FIFPro, or, where no such associations exist, on the basis of a selection process agreed by FIFA and FIFPro;

c) between three and ten club representatives who are elected or appointed on the proposal of the clubs or leagues.

2. The chairman and deputy chairman of the NDRC shall be qualified lawyers.

3. The NDRC may not have more than one member from the same club.

4. The NDRC shall sit with a minimum of three members, including the chairman or the deputy chairman. In all cases the panel shall be composed of an equal number of club and player representatives".

130. This Sole Arbitrator notes that the FIFA NDRC Standard Regulations, go beyond a mere interpretation of article 22 lit. b) of the FIFA RSTP. The FIFA NDRC Standard Regulations are not legally binding on the national associations (CAS 2012/A/2983, para. 8.25) and whilst they contain guidance and important principles to help ensure that the minimum procedural requirements are met, non-compliance with one or more of the recommendations contained in said standard regulations cannot, in the opinion of the Sole Arbitrator, lead to the conclusion that an NDRC does not meet the requirements contained in article 22 lit. b) RSTP.

d. Application of the minimum procedural standards to the FRMF NDRC

131. As an introductory remark, the Sole Arbitrator observes that the requirement of whether the FRMF NDRC is independent arbitral tribunal guaranteeing fair proceedings and respecting the principle of equal parity, is to be analysed in abstract terms as correctly held in CAS 2012/A/2983 para. 8.37:

> *"[…] Whether a certain judicial body is competent or not to decide the dispute must be ascertainable for the parties before the claim is lodged and cannot depend on instances that arise during the course of the proceedings. Thus, what is required in the context of art. 22 of the FIFA-RSTP is, whether or not the procedural rules applicable before the [Helenic judicial bodies] are such to enable a conduct of the procedure in a fair and equitable way".*

132. In conducting this abstract analysis, the Sole Arbitrator observes that the FIFA Circular no. 1010 indicates that the parties must have equal influence over the appointment of arbitrators and that this means for example that every party has the right to appoint an arbitrator and that the two appointed arbitrators appoint the chairman of the tribunal. According to this Circular, the principle of parity implies that in a scenario where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrator list.

133. Hence, the principle of parity does not imply that the parties will, in all circumstances, be entitled to appoint all arbitrators when just one party does not exert more or different influence on the appointment of arbitrators compared to the other party (CAS 2012/A/2983, para. 8.23).

134. Notwithstanding the above, in the Appealed Decision, the FIFA DRC stated that the principle of parity is not respected regarding the appointment of the arbitrators because the parties cannot choose the arbitrators. Rather, the FRMF's Executive Committee appoints the arbitrators.

135. Contrary to what is held in the Appealed Decision, the Sole Arbitrator, pursuant to the FIFA Circular nº1010, considers that the mere fact that the FRMF's Executive Committee appoints the arbitrators does not necessarily imply that the principle of parity is not respected. For the principle of parity can also be respected if the parties had equal influence over the compilation of the arbitrator's list from which the FRMF's Executive Committee appoint the FRMF NDRC members and/or equal influence over the nomination of the arbitrators deciding the case.

136. Moreover, the Sole Arbitrator also disagrees with the inferences drawn by the FIFA DRC from the case CAS 2016/A/4673 since the case at hand is different from the situation that led to the aforementioned CAS award dd. 20 June 2017, in which the CAS Panel concluded that – under previous and hence different regulations - the FRMF NDRC did not respect the principle of parity since the FRMF's president designated the arbitrators (CAS 2016/A/4673, para. 136):

137. Hence, to determine whether the principle of parity has been respected in the matter at hand, an abstract analysis of both the 2016 and the 2017 edition of the FRMF NDRC Procedural Rules is required to verify if the parties have equal influence over the compilation of the arbitrator list of the FRMF NDRC.

138. It is reminded that FIFA's jurisdiction to entertain the unamended requests for relief contained in the First Complaint of the Player, dated 10 July 2017 must be analysed pursuant to the 2016 edition of the FRMF NDRC Procedural Rules whilst FIFA's jurisdiction to entertain the Second Complaint, and the new requests for relief as contained therein, must be analysed pursuant to the 2017 edition of the FRMF NDRC Procedural Rules.

e. Unamended request for relief as contained in the Player's First Complaint dd. 10 July 2017

139. Regarding FIFA's jurisdiction for what concerns the unamended requests for relief as contained in the First Complaint, *i.e. the request to be paid the amount of MAD 650.000 for the season 2015/2016 relating to the signing bonus,* the Sole Arbitrator considers that the FIFA DRC correctly retained jurisdiction.

140. More precisely, the Appellant, who carries the burden of proof to demonstrate that FIFA wrongly considered itself competent, did not submit any evidence as how FRMF NDRC, as per the 2016 edition of its Procedural Rules, complied with the principle of equal parity.

141. Rather the Appellant, in para. 120-121 of its Appeal Brief submitted that:

> *"The old version of the rules of the FRMF NDRC (See Exhibit - 5) which were referred to in the abovementioned case CAS 2016/A/4673 Wydad Athletic Club v. Benito Floro Sanz are no longer in force and have been replaced by the New FRMF NDRC Rules which came into force on 1 August 2017.*
>
> *The New FRMF NDRC Rules (e.g. the 2017 edition) have been drafted keeping in mind the FIFA RSTP, the Circular as well as in the FIFA NDRC Regulations and therefore the said rules of the FRMF NDRC have been drafted in compliance with the minimum procedural standards for independent arbitration tribunals as laid down in art. 22 lit. b) of the FIFA RSTP, the Circular as well as in the FIFA NDRC Standard Regulations".*

142. By making the above reference, the Appellant indirectly admitted that any FRMF NDRC Procedural Rules in place prior to the 2017 edition were not compliant with the minimum requirements and hence the principle of equal parity.

143. Moreover, from article 5 of the 2016 edition of the FRMF Procedural Rules, it can easily be deducted that the principle of equal parity was not respected. In fact, pursuant to said article, all members, including the player representative, are designated by the FRMF Executive Committee.

144. In light of the above, the FIFA DRC had jurisdiction for what concerns the unamended request for relief contained in the claim submitted on 10 July 2017, as mentioned above (*i.e. the amount of MAD 650.000 corresponding to the signing-bonus payable for the season 2015-16).*

f. New and or amended requests for relief as contained in the Player's Second Complaint dd. 31 May 2019.

145. Regarding FIFA's jurisdiction for what concerns the new and/or amended requests for relief as contained in the Second Complaint dd 31 May 2019, i.e., a more in-depth *in abstracto* analysis of the 2017 edition of the FRMF NDRC Procedural must take place.

146. To undertake such an analysis *in abstracto*, the Sole Arbitrator considers it useful to recall the wording of articles 5, 10 and 24 of the 2017 edition of the FRMF NDRC Procedural Rules:

> *"**Article 5: Composition***
>
> *The FRMF NDRC is composed of the following members:*
>
> *a) A President, a Vice-President, and an Alternate Vice-President appointed by the FRMF Executive Committee*
>
> *b) A representative of the clubs of the [Ligue Nationale de Football Professionnel*
> *A representative of the clubs of the [Ligue Nationale de Football Amateur]*
> *A player representative*
> *A representative of the coaches' group*
> *A representative of the Women's Football Association*
> *A representative of the futsal group*
> *A representative of the group of Doctors*
> *An administrative representative of FRMF*
>
> *Representative members attend meetings of the FRMF NDRC when the dispute concerns their entities.*
>
> *c) A substitute member shall be appointed for each full member. This substitute member shall not attend the meetings of the FRMF NDRC, unless in the case of absence or impediment of the full member for whatsoever reason. The secretariat of the FRMF NDRC is provided by an administrative representative of the FRMF; the latter ensures the preparation and follow-up of the files.*
>
> *If such members or one of them, referred to in (b), have not been proposed as required, the NHRC shall exercise its powers and render its decisions on the basis of a quorum not including the members not yet appointed*[18] (emphasis added).

[18] Translation from French: *"La CNRL est composée des membres suivants:*
a) Un Président, un vice- président, et un vice-président suppléant désignés par le Comité Directeur de la FRMF;
b) Un représentant des clubs de la LNFP
Un représentant des clubs de la LNFA
Un représentant des joueurs
Un représentant du groupement des entraîneurs
Un représentant du groupement Football Féminin
Un représentant du groupement futsal
Un représentant du groupement des Médecins
Un représentant administratif de la FRMF

(…)

Article 10: Quorum

The FRMF NDRC can only meet validly in the presence of at least three members, including the president or a vice-president[19] (emphasis added).

(…)

Article 24: Sitting and deliberation

The sittings and deliberations of the FRMF NDRC take place at the headquarters of FRMF.

The President of the meeting chairs them.

The FRMF NDRC decides behind closed doors by a simple majority of votes. The President of the session and the members present shall have one vote. Subject to the second paragraph of Article 10 above [remark added by the Sole Arbitrator: Article 10 does not have a second paragraph]. *All members present shall be required to vote. In the event of a tie, the president of the session shall have a casting vote"*[20] (emphasis added).

147. In similar fashion, the Sole Arbitrator deems it useful to recall the wording of articles 17, 18, 25 and 71.2 of the FRMF's Statutes ed. 2018 which provide as follows:

*"**Article 17:***

The General Assembly of the FRMF is composed of the representatives of the legal entities having the status of Active Members within the Federation (…)[21]

Article 18:

The Active Members are represented at the Ordinary and Extraordinary General Assemblies by 53 delegates (hereafter referred to as "Delegates") taking into account the different levels of competition and regional and professional representativeness according to the following modalities:

Les membres représentants assistent aux séances de la CNRL dès lors que le litige concerne leurs entités.
c) Un membre suppléant est désigné pour chaque membre titulaire. Ce membre suppléant n'assiste aux séances de la chambre qu'en cas d'absence ou d'empêchement, pour quelle que raison que ce soit, du membre titulaire. Le secrétariat de la CNRL est assuré par un représentant administratif de la FRMF; ce dernier assure la préparation et le suivi des dossiers.
Si lesdits membres ou l'un d'eux, cités au b) , n'ont pas été proposés dans les conditions requises, la CNRL exerce ses attributions et rend ses sentences sur la base d'un quorum ne tenant pas compte des membres non encore désignés".

[19] Translation from French: *"La CNRL ne peut siéger valablement qu'en présence de trois membres au moins, dont obligatoirement le président ou un vice-président".*

[20] Translation from French: *"Les séances et les délibérations de la CNRL ont lieu au siège de la FRMF. Elles sont dirigées par le Président de la séance. La CNRL prend sa sentence à huis clos à la majorité simple des voix. Le président de séance ainsi que les membres présents disposent d'une seule voix. Sous réserve du 2eme alinéa de l'article 10 ci-dessus. Tous les membres présents sont tenus de voter. En cas d'égalité des voix, celle du président de la séance est prépondérante".*

[21] Translation from French: *"L'Assemblée Générale de la FRMF est composée des représentants des personnes morales ayant la qualité de Membres Actifs au sein de la Fédération".*

- *Sixteen (16) Delegates representing the sixteen (16) clubs of the professional first division championship;*
- *Eight (8) Delegates representing the clubs of the second division professional championship elected by the sixteen (16) presidents of clubs of this championship in accordance with the statutes of the LNFP;*
- *Four (4) Delegates representing the clubs of the "National" championship, elected by the club presidents of this championship in accordance with the statutes of the LNFA.*
- *Four (4) Delegates of clubs of the "Amateur 1st Division" championship, elected by the club presidents of this championship in accordance with the LNFA statutes.*
- *Four (4) Delegates of clubs of the "Amateur 2nd Division" championship, elected by the club presidents of this championship in accordance with the statutes of the LNFA.*
- *One (1) Delegate for each of the Regional Football Leagues regularly constituted and affiliated to the FRMF;*
- *One (1) Delegate representing the regularly constituted Women's National Football Group affiliated to the FRMF;*
- *One (1) Delegate representing the National Futsal Group regularly constituted and affiliated to the FRMF;*
- *One (1) Delegate representing the regularly constituted National Beach-soccer Group affiliated to the FRMF;*
- *One (1) Delegate representing the Group of former international players and former Moroccan professional players regularly constituted and affiliated to the FRMF;*
- *One (1) Delegate representing the Group of coaches and educators regularly constituted and affiliated to the FRMF;*
- *One (1) Delegate representing the Group of former international referees and former*
- *referees of the higher division regularly constituted and affiliated to the FRMF.*
- *Each Delegate has one vote"*[22].

(…)

[22] Translation from French: *"Les Membres Actifs sont représentés aux Assemblées Générales Ordinaires et Extraordinaires par 53 délégués (ci-après "Délégués") en tenant compte des différents niveaux de compétition et de la représentativité régionale et professionnelle selon les modalités suivantes:*
- Seize (16) Délégués représentant les seize (16) clubs du championnat professionnel de première division;
- Huit (8) Délégués représentant les clubs du championnat professionnel de deuxième division élus par les 16 présidents de clubs de ce championnat conformément aux statuts de la LNFP;
- Quatre (4) Délégués de clubs du championnat « National », élus par les présidents de club de ce championnat conformément aux statuts de la LNFA.
- Quatre (4) Délégués de clubs du championnat « Amateur 1ère division », élus par les présidents de club de ce championnat conformément aux statuts de la LNFA".
- Quatre (4) Délégués de clubs du championnat « Amateur 2ème division », élus par les présidents de club de ce championnat conformément aux statuts de la LNFA.
- Un (1) Délégué pour chacune des Ligues régionales de football régulièrement constitué et affilié à la FRMF;
- Un (1) Délégué représentant le Groupement national du football féminin régulièrement constitué et affilié à la FRMF;
- Un (1) Délégué représentant le Groupement national du Futsal régulièrement constitué et affilié à la FRMF;
- Un (1) Délégué représentant le Groupement national Beach-soccer régulièrement constitué et affilié à la FRMF;
- Un (1) Délégué représentant le Groupement des anciens joueurs internationaux et des anciens joueurs professionnels marocains régulièrement constitué et affilié à la FRMF;
- Un (1) Délégué représentant le Groupement des entraîneurs et éducateurs régulièrement constitué et affilié à la FRMF;
- Un (1) Délégué représentant le Groupement des anciens arbitres internationaux et anciens arbitres de la division supérieure régulièrement constitué et affilié à la FRMF. Chaque Délégué dispose d'une voix".

Article 25:

In addition to the President of the FRMF, the President of the National Professional Football League and the President of the National Amateur Football League who are ex officio members, the Executive Committee is composed of fourteen (14) other members representing the Clubs, Leagues and Groups elected by the General Assembly for a period of four (4) years renewable by a vote by list and this according to the following distribution:

- *3 members coming from the clubs of the professional championship of 1st division;*
- *2 members coming from the clubs of the professional championship of 2nd division;*
- *2 members from the clubs of the "Amateur" championship;*
- *2 Presidents of Regional Leagues;*
- *1 member of the regularly constituted National Women's Football Group affiliated to the FRMF;*
- *1 member of the regularly constituted Coaches Group affiliated to the FRMF;*
- *1 member of the Group of Former International Referees and Former Higher Division Referees, duly constituted and affiliated to the FRMF.*
- *1 member from the Futsal or Beach Soccer Groups;*
- *1 member of the Group of former international players and former Moroccan professional players regularly constituted and affiliated to the FRMF*[23].
- *(…)*

Article 71 (…)

All disputes between clubs, between clubs and players or coaches and relating to work, contractual stability or those concerning player training compensation and solidarity contributions between FRMF affiliated clubs fall within the jurisdiction of the National Dispute Resolution Chamber (NDRC). Its awards are subject to appeal to the FRMF's appeals commission[24].

(…)

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[23] Translation from French: *"Outre le Président de la FRMF, le Président de la Ligue Nationale de Football Professionnel et le Président de la Ligue Nationale du Football Amateur qui en sont membres de droit, le Comité Directeur est composé de quatorze (14) autres membres représentant les Clubs, Ligues et roupements élus par l'Assemblée Générale pour une durée de quatre (4) ans renouvelable au scrutin de liste et ce selon la répartition suivante:*
- 3 membres issus des clubs du championnat professionnel de1ère division;
- 2 membres issus des clubs du championnat professionnel de 2ème division;
- 2 membres issus des clubs du Championnat « Amateur »;
- 2 présidents des Ligues régionales;
- 1 membre du Groupement national du football féminin régulièrement constitué et affilié à la FRMF;
- 1 membre du Groupement des entraîneurs régulièrement constitué et affilié à la FRMF;
- 1 membre du Groupement des anciens arbitres internationaux et anciens arbitres de la division supérieure et régulièrement constitué et affilié à la FRMF;
- 1 membre issu des Groupements du Futsal ou du Beach soccer;
- 1 membre du Groupement des anciens joueurs internationaux et anciens joueurs professionnels marocains régulièrement constitué et affilié à la FRMF".

[24] Translation from French: *"Tous les litiges entre les clubs, entre les clubs et les joueurs ou les entraîneurs et relatifs au travail, à la stabilité contractuelle ou encore ceux concernant les indemnités de formation des joueurs et les contributions de solidarité entre les clubs affiliés à la FRMF sont de la compétence de la Chambre Nationale de Résolution des Litiges (CNRL). Ses sentences sont susceptibles de recours devant la commission d'appel de la FRMF".*

The FRMF NDRC shall be composed of a President, a Vice-President and representatives of the players, clubs or leagues and, where applicable, representatives of the associations recognised by the FRMF.

The FRMF Executive Committee appoints the Members of the NDRC.

The rules and operating procedures of the NDRC shall be defined by special regulations issued by the FRMF in accordance with FIFA Directives"[25] (emphasis added).

148. Keeping in mind the above articles, the Sole Arbitrator concurs with the Appellant that in case of a dispute between a player and a club, the composition of the panel in the FRMF NDRC compulsorily has one arbitrator representing the players and another one representing the club. This can indeed be derived from Article 5, *in fine* of the 2017 edition of the FRMF NDRC's Procedural Rules, which state that *representative members* should attend the meetings if the dispute concerns their entity. However, the above finding is not in and by itself sufficient to conclude that the principle of equal parity is met (*infra).*

149. According to Article 10 of the 2017 edition of the FRMF NDRC Procedural Rules, the FRMF NDRC can only meet validly in the presence of at least three members, including the President or a Vice-President.

150. According to Article 24 of the FRMF NDRC's regulations, the FRMF NDRC decides behind 'closed doors' by a simple majority vote. The "President of the session" (in French: *"President de la séance"*) has the casting vote in the event of a tie.

151. The President or the Vice-President of the FRMF NDRC thus play a crucial role in proceedings before the FRMF NDRC.

152. The notion of "President of the session" is not explained in the FRMF NDRC's regulations, nor by the Parties in their submissions. However, this notion is important since CAS has ruled that a situation where the players' representatives have less influence on the appointment of the chairman than the clubs' representatives, is not in line with FIFA's requirements (CAS 2016/A/4846, para. 163).

153. A combined reading of Articles 5, 10 and 24 of the FRMF NDRC Procedural Rules suggests that the notion of "the President of the session" must be understood as the President or the Vice-President, since it is logical to assume that in the event of an arbitration panel with three arbitrators, the casting vote is given to the President or the Vice-President of the chamber rather than to the player's or club's representatives.

154. Hence, in assessing the FRMF NDRC's compliance with the principle of parity, the way in which its members are appointed is of utmost relevant, both for what concerns the President

[25] Translation from French: *"La CNRL est composée d'un Président, d'un vice-Président et des représentants des joueurs, des clubs ou ligues, et le cas échéant des représentants des groupements reconnus par la FRMF. Les Membres de la CNRL sont désignés par le Comité Directeur de la FRMF. Les règles et les procédures de fonctionnement de la CNRL sont définies par un règlement particulier édicté par la FRMF conformément aux Directives de la FIFA".*

or the Vice-President of the FRMF NDRC, who play a crucial role in proceedings before the FRMF NDRC, but also for what concerns the other members.

155. For what concerns the President and Vice-President, Article 5 lit. a) of the FRMF NDRC Procedural Rules explicitly states that the FRMF NDRC's President, Vice-President and Alternate Vice-President are appointed by the FRMF's Executive Committee. For what concerns the other members, including the club and player representative, Article 71.2 of the FRMF Statutes ed. 2018 foresees that the FRMF's Executive Committee appoints the members of the FRMF NDRC.

156. Hence, all members of the FRMF NDRC are appointed by the FRMF Executive Committee, which again, according to the Sole Arbitrator, in and by itself is not problematic.

157. However, within the FRMF's Executive Committee, at least 7 of the 17 members are representatives from clubs, including 5 members of professional clubs. Conversely, the FRMF's Executive Committee includes only 1 member of a group of former international players and former Moroccan professional players regularly constituted and affiliated to the FRMF, and it is not clear if and to what extent they represent the active professional players.

158. Consequently, the Sole Arbitrator considers that, clubs' representatives clearly have a more dominant position than players within the FRMF's Executive Committee, the latter being the body appointing the FRMF NDRC members.

159. Lacking any further evidence demonstrating that each stakeholder gets to designate and submit the names of their own representative to the FRMF Executive Committee for latter's appointment as a kind of "rubber stamp", and lacking any proof as to how the candidates for presidency and vice-presidency are selected, designated and finally appointed, the Sole Arbitrator considers that the club representation on the FRMF Executive Committee enables the club representatives to exercise more influence over the compilation of the list of arbitrators when compared to that of the players' representatives (CAS 2018/A/5659, para. 53).

160. The principle of parity is thus not respected.

161. The Sole Arbitrator's view is further strengthened by the fact that (i) the FRMF's Executive Committee also includes 4 representatives of the leagues, which might tend more towards clubs rather than towards players, since clubs are members of the league and of the FRMF; and (ii) the fact that the FRMF's General Assembly, pursuant to article 18 *iuncto* article 25 of the FRMF Statutes ed. 2018 elects the members of the FRMF's Executive Committee by a simple majority, while at least 36 out of the 53 members of the FRMF's General Assembly are club representatives. Club representatives thus have a vast majority within the FRMF's General Assembly and appear to be able to decide who sits on the FRMF's Executive Committee, the latter eventually appointing the members of the FRMF NDRC, including the players' representative.

162. The Appellant's submission holding that the FRMF's Executive Committee does not directly appoint the members of the arbitration panel of the FRMF NDRC in specific cases, cannot be

withheld. As set out above, the FRMF's Executive Committee appoints the President and the Vice-President of the FRMF NDRC and, following Article 10 of the FRMF NDRC Procedural Rules, the President or Vice-President are included in the quorum to validly hold meetings of the FRMF NDRC.

163. The Appellant further argues that the FRMF NDRC has procedural safeguards. However, this does not cure the violation of the principle of parity.

164. Having considered the above, the Sole Arbitrator rules that the FRMF NDRC does not meet the minimal procedural standards for an NDRC to be considered independent and duly constituted.

165. The FIFA DRC was thus right to declare that it had jurisdiction to rule over the unamended requests for relief contained in the First Complaint and the new requests for relief contained in the Second Complaint of the Player dated 31 May 2019.

D. The Appealed Decision

166. In the Appealed Decision, the FIFA DRC *inter alia* decided that, in accordance with the general legal practice of *pacta sunt servanda*, the Respondent is entitled to receive MAD 2,760,000 (plus interest) from the Appellant, broken down as follows:

"The Respondent, Raja Casablanca, has to pay to the Claimant the amount of MAD 2,760,000, plus 5% interest p.a. until the effective date of payment as follows:

a. 5% p.a. as of 1 January 2016 on the amount of MAD 235,000;
b. 5% p.a. as of 1 July 2016 on the amount of MAD 445,000;
c. 5% p.a. as of 1 July 2017 on the amount of MAD 445,000;
d. 5% p.a. as of 1 January 2018 on the amount of MAD 540,000;
e. 5% p.a. as of 1 January 2019 on the amount of MAD 245,000;
f. 5% p.a. as of 1 April 2019 on the amount of MAD 405,000;
g. 5% p.a. as of 1 July 2019 on the amount of MAD 445,000".

167. The Appellant has limited its defence to the issue of jurisdiction and did not submit any statements as to the substance of the case.

168. Having regard to the absence of argumentation by the Appellant regarding the substance and, hence, in the absence of any dispute as to the arrears of remuneration, the Sole Arbitrator must confirm the findings the Appealed Decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Appellant on 5 June 2020 against the decision of the FIFA Dispute Resolution Chamber dated 25 February 2020 is rejected.

2. The decision issued by the FIFA Dispute Resolution Chamber dated 25 February 2020 is confirmed.

3. (…).

4. (…).

5. All other motions or requests for relief are dismissed.