



**Arbitrations CAS 2020/A/7239 Shabab Al Ahli Dubai FC v. Mauro Alberto Díaz & Club Estudiantes de la Plata & CAS 2020/A/7261 Mauro Alberto Díaz & Club Estudiantes de la Plata v. Shabab Al Ahli Dubai FC, award of 1 November 2021**

Panel: Mr João Nogueira da Rocha (Portugal), President; Prof. Martin Schimke (Germany); Prof. Gustavo Albano Abreu (Argentina)

*Football*

*Termination of the employment contract without just cause by the player*

*Termination without prior warning*

*De-registration of a player*

*Contributory acts of the injured party*

*Condition for compensation*

1. **An employment contract can be exceptionally terminated without a prior warning, in case of a particularly severe breach of the employment contract.**
2. **Although the de-registration of a player might constitute a valid reason (just cause) to terminate an employment contract, if the de-registration was done by mutual agreement, it cannot constitute a reason for the termination of the contract.**
3. **According to Article 44 para. 1 of the Swiss Code of Obligations, compensation may be reduced if there are circumstances attributable to the injured party that helped to give rise to or increase the damage.**
4. **For a compensation to be granted, the party seeking for compensation shall demonstrate that it has suffered damages and shall prove its quantification.**

**I. PARTIES**

1. Shabab Al Ahli Dubai FC (“Shabab”) is a football club based in Dubai. Shabab Al Ahli is registered with the United Arab Emirates Football Association (the UAEFA).
2. Mr Mauro Alberto Díaz (the “Player”) is an Argentinean Citizen. He is a professional football player.
3. Club Estudiantes de la Plata (“Estudiantes”) is an Argentinean football club based in la Plata. Club Estudiantes de la Plata is registered with the Asociación del Fútbol Argentino (“AFA”).

## II. FACTUAL BACKGROUND

4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties' written submissions, the evidence filed with these submissions, and the statements made by the parties and the evidence taken at the hearing held in the present case. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Panel refers in its award only to the submissions and evidence it considers necessary to explain its reasoning. The Panel, however, has considered all the factual allegations, legal arguments, and evidence submitted by the parties in the present proceedings.

### A. Background Facts

5. On 11 June 2018, FC Dallas, U.S.A. and Shabab signed a transfer agreement regarding the Player Mauro Díaz. According to the aforementioned agreement, Shabab paid FC Dallas a transfer fee in the amount of USD 1,500,000.

6. On 29 June 2018, the Player and Shabab signed an employment contract valid from 1 July 2018 until 30 June 2021 (the "Contract").

7. According to Article 6, para. 1 and 2 of the contract, Shabab undertook to pay the Player remuneration as follows:

- USD 375,000 payable 5 days after *"the signature of the player [...] and he passes the medical exam"*.
- USD 150,000 on 1 January 2019;
- USD 225,000 on 1 July 2019;
- USD 125,000 per month from 1 July 2018 until 30 June 2021 payable *"on or before the 10th natural day of the subsequent month"*.

8. Clause 9.15 reads as follows (sic):

*"In the event of an unlawful breach by the Player of this Agreement the Player and the Club acknowledge and agree that the market value of the Player at the time of such unlawful breach, as determined by the Dispute Resolution Chamber of FIFA, shall be used (in addition to the existing criteria as set out at Article 17 of the FIFA Regulations for the Status and Transfer of Players) (as amended) when calculating the compensation due and payable by the Player to the Club for the Player's unlawful breach of Agreement. The Player agrees and acknowledges that such market value represents the actual loss sustained by the Club and the true and fair cost to the Club of replacing the Player as at the time of his unlawful breach of this Agreement. For the avoidance of doubt the market value shall be assessed at the time of the unlawful breach not at the date this Agreement was entered into. Nothing in this Agreement shall infer or imply an acceptance by the Club of the Player's ability to terminate this Agreement"*.

9. A few days before the end of the 2019's summer transfer window, Shabab proceed to the deregistration of the Player.

10. On 23 December 2019, the Player sent a communication to Shabab requesting the later to proceed with his “*registration for the upcoming year*” and informing Shabab that he had “*tolerated and accepted*” such situation, *i.e.* his deregistration, “*until January 2020*”. Accordingly, the Player gave a 10-day deadline for Shabab to register him “*again at the FA to play officially with the first team for the year 2020 and to include me in the official web page as member of the first team*”, under penalty of termination of the contract with just cause.
11. According to the information available in the Transfer Matching System (TMS), the relevant registration period in the UAE started on 7 January 2020 and ended on 3 February 2020.
12. On 11 January 2020, the Player sent a communication to Shabab terminating the contract.
13. On 15 January 2020, the Player and Estudiantes signed an employment contract valid as from the date of its signature until 30 June 2021.
14. According to the above-mentioned employment contract, the Player was entitled, *inter alia*, to the total fixed remuneration of Argentinian Peso (ARS) 23,750,000, broken down as follows:
  - ARS 600,000 per month for the period January 2020 until and including June 2020;
  - ARS 1,850,000 on 25 March 2020;
  - ARS 1,850,000 on 25 June 2020;
  - ARS 900,000 per month for the period July 2020 until and including June 2021;
  - ARS 2,825,000 on 25 March 2021;
  - ARS 2,825,000 on 25 June 2021.
15. On 17 January 2020, Estudiantes requested Shabab the Player’s “*Third-Party Ownership declaration*” regarding his registration with Estudiantes via TMS.
16. On 18 January 2020, Shabab answered the Player’s termination letter, *inter alia*, stating the following:

*“As a result of the detailed discussions where the content of your letters were taken into consideration from all aspects, we would like to inform you that the Technical Director as well as the entire administrative staff of the Club want to be able to take advantage of your technical skills and enroll you in the upcoming window.*

*As you are aware the Club has more than one front and championship it is participating at, be it in the UAE, or the wider Gulf competitions as well as the AFC Championship. As a matter of fact, the Club lost the final of the cup, as it had several of its foreign players injured and the coach recalled back all players under contract to join the squad again as soon as possible and before the close of the transfer window on the 3rd of February.*

*Further, the Club received a letter from Estudiantes De La Plata requesting the TPO declaration, in this respect we would like to remind you that you are still engaged with the Club by the Professional Football Player’s Contract that is still valid and binding, hence the Club will not be in a position to issue such declaration.*

*The Club complied with all its contractual obligations towards you, therefore the Club reserves its right towards you should you not perform your contractual obligations and report back to the Club as soon as possible and prior to the 3rd of February i.e. the close of the winter window transfer window, otherwise the Club will be obliged to take all legal steps to protect its interests”.*

17. On 19 January 2020, the Player replied to Shabab’s letter, stating *inter alia* the following:

*“In consideration of all the above-mentioned facts your request for my return has no legal basis. The employment contract we had was terminated by my with just cause and I will pursue compensation and sporting sanctions before FIFA for your breach and also sporting damages if you try to block my registration with Estudiantes from the beginning of the season”.*

18. On 20 January 2020, according to the information contained in the TMS, the AFA, in order to register the Player for its affiliated club Estudiantes, requested the Player’s International Transfer Certificate (ITC) through TMS from the UAEFA.
19. On 3 February 2020, the AFA addressed FIFA requesting assistance with regard to the provisional registration of the player for Estudiantes.
20. On 12 February 2020, the Single Judge of the Players’ Status Committee authorized AFA to provisionally register the player with Estudiantes with immediate effect.

#### **B. The Decision of the FIFA Dispute Resolution Chamber**

21. On 2 March 2020, Shabab filed a claim before FIFA against the Player and Estudiantes for breach of contract, seeking the payment of USD 3,000,000 *“plus the reasonable market value of the player and expected costs for the 2020/2021 season”*, for breach of contract.
22. On the same date, the Player lodged a parallel claim against Shabab for breach of contract seeking compensation in the amount of USD 2,013,000 for breach of contract.
23. On 20 May 2020, the FIFADRC rendered the following decision (the “DRC Decision” or the “Appealed Decision”):
1. *The claim of the Claimant / Counter-Respondent, Shabab Al Ahli Dubai, is partially accepted.*
  2. *The First Respondent / Counter-Claimant, Mauro Alberto Diaz, has to pay to the Claimant / Counter-Respondent compensation for breach of contract in the amount of USD 2,050,083, plus interest at the rate of 5% p.a. on said amount as from 2 March 2020 until the date of effective payment.*
  3. *The Second Respondent, Estudiantes de la Plata, is jointly and severally liable for the payment of the amount mentioned under point III./2. above.*

4. *Any further claim lodged by the Claimant / Counter-Respondent is rejected.*

[...].

24. On 18 June 2020, the grounds of the DRC Decision were notified to the Parties.

25. The relevant points of the PSC Decision read as follows:

[...]

18. *In continuation, the members of the Chamber found important to outline two key pieces of evidence, namely (a) the player's letter of 23 December 2019 and (b) the request for provisional registration made by Estudiantes and the player, according to which the player agreed to remain de-registered.*
19. *As such, and in line with the parties' submissions, the members of the Chamber were comfortably satisfied to conclude that the player and Shabab agreed on the player's de-registration, in spite of the dispute as to why and until when this was agreed.*
20. *Therefore, the members of the Chamber decided that the first point of the controversy to be clarified is until when such agreement for the player's deregistration lasted. Having said this, the DRC recalled that, as per the player's submissions, his de-registration had been agreed until December 2019.*
21. *Subsequently, the DRC observed that no written agreement was executed by the parties confirming the player's de-registration's term. However, based on the evidence on file, the Chamber outlined that the player confirmed, in his letter dated 23 December 2019, that he had "made clear that [his agreement to the de-registration] was only temporary until January 2020".*
22. *Consequently, the members of the Chamber concluded that the parties agreed that the player would remain de-registered (or would be re-registered) in the month of January 2020, as this was expressly admitted by the player in the aforementioned correspondence.*
23. *In addition, the DRC observed that in accordance with the information available in TMS, the registration period in the UAE started on 7 January 2020 and would remain open until 3 February 2020.*
24. *Consequently, the DRC concluded that at the time the player requested to be reregistered in December, (a) the mutually agreed deadline for re-registration of the player had not yet elapsed, and (b) the relevant transfer window was not yet open.*
25. *Hence, the DRC was of the opinion that by the time the player terminated the contract, it cannot be said that Shabab was in breach of its obligations, as the re-registration of the player was to take place at any time during the month of January 2020. Accordingly, the DRC concluded that the player's correspondence of 23 December 2019 is to be considered a reminder rather than a default notice.*

26. *Furthermore, the player, in his correspondence of 23 December 2019, gave the club “10 natural days to remedy the default”, i.e. until 2 January 2020. However, as per the information contained in TMS, the registration period in the UAE started only on 7 January 2020. On 11 January 2020, i.e. 4 days after the opening of the registration period, the player terminated the contract.*
27. *The Chamber was eager to emphasise that only a breach or misconduct which is of a certain severity justifies the termination of a contract. In other words, only when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties, may a contract be terminated prematurely. Hence, if there are more lenient measures which can be taken in order to ensure the fulfilment of the parties’ contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an ultima ratio measure.*
28. *In addition, the members of the Chamber also highlighted that while the deregistration of a player, as per the Jurisprudence of the DRC, might in principle constitute a valid reason justifying termination, it found that in the specific circumstances of the case at hand it does not.*
29. *In light of the foregoing considerations, the DRC concluded that the termination of the contract by the player in the present case cannot be considered as an ultima ratio measure.*
30. *In short, the members of the Chamber deemed that the player’s termination of the contract was premature; the deadline for the player’s re-registration had not yet elapsed and the club’s stance on the player’s re-registration had, in any case, not reached a level for the player to conclude that he could not reasonably be expected to continue the employment relationship.*
31. *Accordingly, the Chamber decided that the player terminated the employment contract on 11 January 2020 without just cause.*

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

26. In accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “Code”), Shabab filed its statement of Appeal against the Player and Estudiantes on 6 July 2020 in the procedure CAS 2020/A/7239 and Mr Díaz and Estudiantes filed their statement of Appeal on 9 July 2020 against Shabab in the procedure CAS 2020/A/7261.
27. In accordance with Article R51 of the Code, Shabab filed its Appeal Brief on 10 August 2020 in the procedure CAS 2020/A/7239 and Mr Díaz and Estudiantes filed their Appeal Brief also on 10 August 2020 in the procedure CAS 2020/A/7261.
28. On 27 August 2020, the CAS Court Office, on behalf of the Deputy President of the CAS Appeals Arbitration Division, confirmed the constitution of the Panel as follows:

President: Mr João Nogueira da Rocha, Attorney-at-Law in Lisbon, Portugal

Arbitrators: Prof. Dr. Martin Schimke, Attorney-at-Law, Dusseldorf, Germany  
Mr Gustavo Abreu, Professor in Law, Buenos Aires, Argentina

29. On 21 September 2020, Shabab, the Player and Estudiantes filed their Answers pursuant to Article R55 of the Code.
30. On 12 October 2020, after having consulted the Parties, the CAS Court Office informed them that pursuant to Article 57 of the Code, the Panel considers necessary to hold a hearing in this matter.
31. On 16 March 2021, the Parties were advised that considering the current travel restrictions as well as the fact that a hearing by video-conference fully respects the Parties' right to be heard, the Panel has decided to hold the hearing by video-conference, pursuant to Articles R57 and R44.2 of the Code.
32. On 16 April 2021 the Parties signed and returned the Order of Procedure in these procedures.
33. On 19 May 2021 a hearing was held by video-conference. The following persons attended the hearing, in addition to the Panel, Mr Antonio de Quesada, CAS Head of Arbitration:
  - a) For the Player and Estudiantes:
    - 1) Mauro Díaz, Party;
    - 2) Juan de Dios Crespo, attorney-at-law;
    - 3) Agustin Amoros, attorney-at-law;
    - 4) Ariel Reck, attorney-at-law;
    - 5) Julian Tanus Mafud, attorney-at-law.
  - b) For Shabab:
    - 1) Ahmad Ali Alzaabi, Shabab Representative;
    - 2) Ahmed Mohamed Abd El Fattah Mohamed Hamed, Shabab Senior Legal Counsel;
    - 3) Rafael Botelho, attorney-at-law;
    - 4) Flávio Torres, attorney-at-law;
    - 5) Vinicius Lucílio, attorney-at-law
34. The Panel heard evidence from the following persons, in order of appearance:
  - 1) The Player;
  - 2) Ahmad Ali Alzaabi, Shabab Representative;
  - 3) Mr Juan Antico, witness called by Mr Díaz and Estudiantes;
  - 4) Mr Julio Pigliacampo, witness called by Mr Díaz and Estudiantes.

35. All witnesses were invited by the President of the Panel to tell the truth subject to the sanction of perjury. All Parties and the Panel had the opportunity to examine and cross-examine the witnesses. The Parties were given the full opportunity to present their cases, submit their arguments in opening and closing statements, and to answer the questions posed by the Members of the Panel. Before the hearing was concluded, all the Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been fully respected.
36. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

#### **IV. SUBMISSIONS OF THE PARTIES**

37. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

##### **A. CAS 2020/A/7239**

38. In its Appeal Brief, Shabab seeks the following relief:
- a. *Confirming the FIFA Decision to the extent that: (i) the Player terminated the Contract, without just cause, upon inducement by Estudiantes; and (ii) the Respondents are jointly and severally liable for paying compensation to Shabab;*
  - b. *Reforming the FIFA Decision to the extent of the quantum payable by the Respondents to Shabab, and award a compensation in the amount of, at least, US\$3,800,000, plus the reasonable market value of the Player, all increased by interest on default at the rate of 5% (five percent) per annum, as of 11 January 2020;*
  - c. *Condemning the Respondents to support all costs associated with this dispute (CAS Administration and Panel fees); and*
  - d. *Fixing the sum of CHF25,000 to be paid by the Respondents to contribute towards the Appellant's legal fees and costs.*
39. Shabab's submissions may be summarized, in essence, as follows:



- *The Dispute Resolution Chamber concluded that the issue at the core of the dispute was whether the Player had just cause to terminate the contract on 11 January 2020, finding, unequivocally, that “the player terminated the employment contract on 11 January 2020 without just cause”.*
- *The DRC assessed the consequences of such termination and concluded that the Respondents [the Player and Estudiantes] should be jointly liable for paying compensation to Shabab, calculated in accordance with article 17 of the RSTP.*
- *The FIFA Decision established that the Respondents [the Player and Estudiantes] were liable for paying to Shabab the amount of US\$2,050,083 as compensation for the breach of the Contract. The DRC reached such sum by adding the non-amortized cost of the Transfer Fee (US\$750,000) to the average remuneration due to the player under the previous and the new contract (US\$1,300,083).*
- *The FIFA Decision, however, failed to consider (i) that the “new salary” of the Player was artificially lowered by the Respondents and (ii) the replacement cost of the Player and his actual market value.*
- *As consequence, the Appellant understands that, whilst the FIFA Decision was correct in determining the liability of the Respondents to pay compensation to the Appellant due to the unjustified breach of the Contract, it failed to accurately account for the damages suffered by Shabab when determining the quantum of compensation.*
- *The Contract (article 9, §15) referred to FIFA and the DRC to determine the fair compensation due to the Club in case of unlawful breach by the Player.*
- *However, when establishing the compensation payable by the Player to Shabab, the Dispute Resolution Chamber decided to dismiss the terms of article 9, §15 of the Contract.*
- *The DRC decided so under the assumption that all elements provided in such clause were already embodied in the contents of article 17 of the RSTP. However, when establishing the compensation due to Shabab, the DRC did not account for the “cost of replacement” of the Player, as specifically provided in the Contract.*
- *The FIFA Decision took into account only 02 (two) basic criterion to establish the compensation: (i) the non-amortized transfer fee; and (ii) remuneration and other benefits due to the Player under the previous and the new contract.*
- *By accounting only these two factors, “the Chamber concluded that the amount of compensation for breach of contract without just cause to be paid by the player to Shabab consists of the amount of USD 750,000 related to non-amortised expenses incurred by Shabab when engaging the services of the player and USD 1,300,083 being the reflection of the remuneration and other benefits due to the player under the previous and the new contract”.*

- *Since the Contract (article 9, §15) provides for consideration of the replacement costs incurred by the Club and the RSTP embodies such provision, the Appellant deems necessary for this honorable Court to reform the FIFA Decision and increase the compensation payable by the Respondents vis-a-vis the replacement costs incurred by Shabab and his remuneration under the Contract, without regard to his new contract (with Estudiantes).*
- *In sum, the Appellant requests the Panel to consider, at least: (i) the nonamortized transfer fee; (ii) the remuneration due to the Player under the Contract and (iii) the replacement costs incurred by Shabab.*
- *Non-amortized transfer fee: The Club paid a transfer fee of US\$ 1,500,000 to the MLS for the transfer of the Player, expecting to retain his services for 3 (three) seasons. Since the Player terminated the Contract, without just cause, following 1½ (one and a half) season, the Club have amortized only half the Transfer Fee, i.e. US\$ 750,000. Hence, the Respondents are responsible for paying to the Club an amount of US\$ 750,000, corresponding to the non-amortized portion of the Transfer Fee.*
- *Remuneration due to the Player: The Appellant rejects the calculation performed by the DRC, as it took into consideration the average amount between the Player's dues under the Contract (US\$ 2,250,000) and his salaries under the new contract (US\$ 396,000), arriving at the sum of US\$ 1,300,083.*
- *It must be considered that (i) the salaries of the Player under the new contract were artificially lowered by the Respondents; and (ii) the Player took a conscious decision to terminate the Contract (without just cause) and abandon US\$ 2,250,000 he was due by Shabab to take US\$ 396,000 from Estudiantes. Hence, his decision should not (and cannot) be held against Shabab.*
- *As for the first assertion, the Panel should bear in mind that the Respondents had every interest in establishing a below-the-market salary for the Player, as they could only profit from it:*
  - *If the DRC had found the Player to have just cause in terminating the Contract (quod non), the Player would be able to mitigate only such low salary from the compensation sought against Shabab.*
  - *If the DRC had found the Player to have terminated the Contract without just cause, as it correctly did, the Respondents would be able to use such low figure to diminish the average salaries of the Player and reduce the compensation payable to Shabab.*
- *As for the second assertion, the Panel should consider that the Player signed with Estudiantes allegedly only 4 (four) days after terminating the Contract, without just cause, and 2 (two) days after leaving Dubai. Clearly the Player did not make any effort to mitigate his (perceived) financial losses, signing a below-the-market contract with Estudiantes without even scanning the market.*
- *Because of that, the Panel should not hold against the Appellant the lack of effort from the Player to find a more advantageous contract. Also, it should not be overlooked that the Player, without just cause,*

*consciously decided to reject the US\$ 2,250,000 he was still due under the Contract to receive only US\$ 396,000 from Estudiantes.*

- *For the reasons provided above, the Appellant deems that this Court should consider only the salaries the Player was due under the Contract (US\$ 2,250,000) when establishing the compensation payable to Shabab, and not the average salaries of the Player under the Contract and the contract with Estudiantes. Thus, the Appellant requests the payment of further US\$ 2,250,000 by the Respondents.*
- *Replacement Cost. On 31 January 2020, the last day of the registration period and after the Player had refused to return to Dubai, the Appellant secured the services of another foreign midfielder, Mr. Azizjon Ganiev, of Uzbekistan citizenship.*
- *To secure the Player's registration rights, Shabab paid to LLC Professional Football Club NASAF the net amount of US\$ 700,000. The Appellant also paid to Mr. Asbraf Triguí, a commission of US\$ 100,000 in connection with Mr. Ganiev's transfer.*
- *In sum, it can be inferred that the Appellant supported costs of at least US\$ 800,000 to secure the services of another foreign midfielder, following the Player unilateral and unjustified termination of the Contract. Hence, such amount (US\$ 800,000) must be included in the compensation payable by the Respondents to Shabab.*
- *In conclusion, the Respondents should pay to Shabab at least US\$ 3,800,000, corresponding to the unamortized portion of the Transfer Fee (US\$ 750,000), the remaining salaries of the Player under the Contract (US\$ 2,250,000) and the replacement costs incurred by Shabab (US\$ 800,000). Such amount should, in any event, be increased by the fair assessment of the Player's market value and factor in the fact the Contract was terminated within the Protected Period.*

40. In its answer, Estudiantes and the Player seek the following relief:

1. *To dismiss the Appeal filed by Shabab against the Player and Estudiantes with respect to the Decision passed by the FIFA Dispute Resolution Chamber on 20 May 2020, with the reference No. 20-00403/osv-eam, communicated to the Parties with the grounds on 18th June 2020;*
2. *To reform the said Decision in the terms submitted in our Appeal Brief;*
3. *To condemn the Appellant to the payment of the whole CAS administration cost and the Arbitrators fees.*
4. *To fix a sum of 25,000 CHF to be paid by the Appellant to the Respondents to help the payment of his legal fees covering the costs of their legal representation in front of the Court of Arbitration for Sport.*

41. The submissions of the Player and Estudiantes in CAS 2020/A/7239 may be summarised as follows:

A. The de-registration was never consensual but a forced choice

- *The de-registration of the Player was not purely and simply a consensual agreement, but a fact that the Player was left no choice but to accept.*
- *The Player had a first successful season, playing 29 games and scoring 5 goals. The club won the Emirates Cup and the President's Cup.*
- *At the beginning of the second season the player was part of the pre-season camp and played several friendly games.*
- *However, a few days before the closure of the transfer window, the Club's head coach informed the Player's agent that the club was hiring another foreign player, Mr. Leonardo Da Souza.*
- *It is of paramount importance to note that in the UAE league, there is a quota of 4 foreign players. Hence, to register the new player, the club was obliged to de-register another one of its foreign players. According to the coach, that player was going to be Mauro.*

B. The Club had no longer interest in Player's service, since all the foreign quotas were occupied, and the Club kept silent concerning Player's request to be reinstated to first team.

- *Even Shabab asserted that it required the Player to return back to the team. However, this letter was only issued after the Player already terminated the contract and after the Estudiantes requested for TPO.*
- *During a long period of time, the Club didn't even bother to communicate with the Player or his agents about his request to be reinstated to first team.*
- *When the end of the mid-season was approaching, the Player and his Agents started movements to remind the Club of its obligation to register Mauro again. Since there wasn't even the slightest indication that the Club had the will of registering Mauro back, the Player's agents took action.*
- *After some unsuccessful informal attempts, the Agents travelled again to UAE to meet with the club CEO. However, nobody accepted to meet with them. Only the head coach again, but he confirmed that the decision to register Mauro or not was not in his hands and none of the other foreign player's was going to be transferred.*
- *With that scenario, the agents started to negotiate with the Club's lawyer. The lawyer advised them to find a new club for Mauro and to reach a termination agreement.*
- *The second part of the season started and the team begun to play matches again. Mauro was not called nor registered.*

- *Due to the lack of answers and with the season running again, Mauro sent Shabab a formal letter where he asked for his registration and made it very clear that if the Club failed to do so, the Player would terminate the contract with just cause. The email was dated December 23 and was sent December 25.*
- *However, no reply was received. This letter was forwarded also to the Club's lawyer, who acknowledged its receipt by the Club.*
- *Before the Player terminated the contract, all the foreign quotas were occupied, and the Club didn't show any intention of either removing nor replacing any of them; on the contrary, they hired a Spanish player on 16 January 2020.*
- *Following these 3 weeks of silence and no reaction on behalf of the Club, how could the Player believe that the Club would reinstate him when all the foreign quota was occupied and the Respondent didn't even bother to reply his request? Thus, the Player was made to believe that the Shabab had no further interest in his services and definitely wouldn't honor the obligation set in the employment contract; therefore he sent a letter terminating the employment contract with the Club for just cause on 11 January 2020.*
- *A few days later he started negotiations with Estudiantes de la Plata. The club was offering a much lower salary but the player was eager to play. He was already 6 months out of the fields and could not afford another six months of inactivity. Thus, he accepted the offer to protect his future career.*
- *On January 17 Estudiantes sent a letter to Shabbab requesting the TPO declaration.*
- *Only then, on January 18, that's 25 days after the first formal letter and 7 days after Mauro left the club, Shabab sent for the first time a letter answering Mauro's communications.*
- *In its letter dated January 18, the Club claimed that Mauro was needed due to the injury of the other foreign players. However, all the foreign player continued playing for the club and even worst, a new foreign player was hired: Mr. Pedro Conde, whose signing was announced on 16 January and he made his official debut on January 17.*
- *If Shabab had the true intention of reinstate Mauro, it had the opportunity to do it within the transfer window allegedly opened as from 7 January, even before the answer given to the Player, but Shabab did not react in any way, and the Player lost the opportunity to play in the Semi-final and the Final of the UAE League Cup.*

### C. The Findings of the FIFA DRC

- *The Respondents consider that the DRC failed to take into account that the Player was forced to be de-registered and whether the Player could use the lack of answer to the request of being reinstated as just cause for terminating the contract.*

C.1. Regarding the non-amortized transfer fee

- According to the Appellant, “the Club have amortized only half the Transfer Fee, i.e. US\$ 750,000. Hence, the Respondents are responsible for paying to the Club an amount of US\$ 750,000, corresponding to the non-amortized portion of the Transfer Fee”.
- The Respondents do not see any departure from the specific criterion of the appealed decision and, therefore, there’s no need of rebutting the Appellant’s position in this specific regard.

C.2. Remuneration due to the Player

- In this regard, the Appellant rejects the calculation made by the DRC, as it took into consideration the average amount between the Player’s salaries under the contract with Shabab (US\$ 2,250,000) and his salaries under the new contract with Estudiantes (US\$ 396,000).
- In order to defend this position, Shabab raised two different arguments:
  - (i) The salaries of the Player under the new contract were artificially lowered by the Respondents
  - (ii) The Player took a conscious decision to terminate the Contract (without just cause) and abandon US\$ 2,250,000 he was due by Shabab to take US \$396,000 from Estudiantes
- The Appellant tries to hold this certainly absurd argument alleging that “the Respondents had every interest in establishing a below-the-market salary for the Player, as they could only profit from it:
- If the DRC had found the Player to have just cause in terminating the Contract (quod non), the Player would be able to mitigate only such low salary from the compensation sought against Shabab.
- If the DRC had found the Player to have terminated the Contract without just cause, as it correctly did, the Respondents would be able to use such low figure to diminish the average salaries of the Player and reduce the compensation payable to Shabab”.
- Particularly in this case, the Appellant’s assertions appear absolutely ridiculous taking into account the circumstances of the case: (i) the Player was de-registered during the first leg of the season due to the disrespectful and unexpected behaviour of Shabab; (ii) Shabab did not answered the Player’s request or reacted as from 25 December 2019 until 18 January 2020, even after receiving his termination letter on 11 January; (iii) these facts made the Player believe that Shabab was no longer interested in his services, in a context of proximity of the end of the transfer window and the logical concern for the risk of a new period of inactivity during the second leg of the season.

- *These circumstances caused a logical serious decline of the value of the Player's services due to the out-of-competition period of six months, which always raises doubts in other clubs about the reasons of such inactivity (injuries, disciplinary or personal problems, decrease of competitive level, etc.).*
- *Therefore, this logical decline together with the understandable concern for being impeded again from participating in official competition for a new long period moved him to accept a quite much lower salary offer for the purpose of ensuring the possibility of returning to high level competition in order to avoid that his career resulted completely spoiled.*
- *On the one hand, the contract with Estudiantes was signed on 15 January 2020. This means that there were only two weeks left for registering the Player during the winter transfer window in the vast majority of countries.*
- *On the other hand, it was unlikely that other Clubs show their interest in the Player's services due to his prolonged period of absence from official competition. As it is well known, this kind of situation provokes the most varied suspicions and doubts in any Club about the Player's physical shape, professionalism, commitment or problems about personality, way of life or disciplinary issues.*
- *The priority of the Player in that situation was to come back to high competition as soon as possible in order to not spoil the rest of his career with other consecutive period out-of-competition.*
- *The total lack of interest in the Player's situation on behalf of Shabab should have had serious consequences regarding the compensation, if any, in the appealed decision, but also should have influence when approaching Shabab's grounds for its appeal.*
- *In our case, the Club was aware of the Player's request to be reinstated to first team even before the warning letter sent by the Player on 25th December 2019, however it didn't do anything to remedy the situation. What make it worse, it didn't even bother to reply the Player's warning letter and termination letter.*
- *If the Club truly was interested in the Player's service, would it ignore the Player's constant requests and keep silence even after receiving two letters sent by the Player? Wouldn't it re-register the Player immediately after it had the position to do so? And would it sign a new foreign player?*
- *Shabab continued silent after the receipt of the termination letter. With such clear and serious allegations is not acceptable for a club to remain silent. Several CAS precedents have interpreted the silence of the club in a negative way.*
- *It is also important to note that the Shabab only reacted when Estudiantes sent a TPO request.*

- *Since January 11, seven days elapsed before Shabab sent its first letter. The Player was absent from the club and Shabab did not even ask where the Player was. This is certainly unbelievable in modern football with Whatsapp, email, etc and confirms that the Club had no interest at all in the Player's services.*
- *Shabab never had any intention of registering Mauro and was only bargaining on his termination. Moreover, the Club never reintegrated the Player into the team's roster on its official website, and there was no window for that.*
- *This party cannot understand how the DRC did not even consider the matter when assessing the compensation for breach. Even in its wrong position as to the breach, the DRC should have considered that the club was not actually interested in the player's services.*

### C.3. Replacement Cost.

- *The Appellant states that "on 31 January 2020, the last day of the registration period and after the Player had refused to return to Dubai, the Appellant secured the services of another foreign midfielder, Mr. Azizjon Ganiev, of Uzbekistan citizenship".*
- *And: "To secure the Player's registration rights, Shabab paid to LLC Professional Football Club NASAF the net amount of US\$700,000.9. The Appellant also paid to Mr. Ashraf Trigui, a commission of US\$100,000 in connection with Mr. Ganiev's transfer".*
- *First, and according to Art. 57 of CAS Code, the documents produced by the Appellant in connection with this allegation should be refused because both of them were available to Shabab before the challenged decision was rendered.*
- *Secondly, the Player has already been replaced by other foreign player in the slot for foreigners for UAE national competitions during the summer transfer window. That's why Mauro was de-registered at the beginning of the season and that's why he was not registered when he requested Shabab to do so in December.*
- *It's obvious that Mr. Ganiev was not hired by Shabab in order to replace Mauro, who had no place left in the national competitions in which he had participated during 2018/2019 season and was supposed to continue playing. On the contrary, Mr. Ganiev only played in AFC Championship.*
- *As a consequence, the hiring of Mr Ganiev, from Uzbekistan, had the purpose of registering him for the AFC Champions League, and such position could only be occupied by a player from Asia.*
- *In these circumstances, it's obvious that there's no analogy or similarity between the role to be developed by both players.*



**B. CAS 2020/A/7261**

42. In its Appeal Brief, the Player and Estudiantes seek the following relief:

1. *To set aside the decision of the FIFA Dispute Resolution Chamber with a reference number 20-00403/osv-eam, passed in Zurich on the 20th May 2020 and notified with grounds to the Parties on the 18th June 2020;*
2. *To conclude that the Player terminated the contract with just cause;*
3. *To condemn Shabab Al Ahli to pay the Player the amount of USD 1.972.471 plus interests at a 5% annual rate from January 11, 2020.*
4. *To condemn the Respondents to the payment of the whole CAS administration costs and Arbitrators' fees; and*
5. *To condemn the Respondents to the payment of CHF 25,000 as contribution to the costs of the Appellants.*

43. The Player and Estudiantes submissions may be summarized, in essence, as follows:

- *This is a clear case about good and bad faith during the development of the employment relationship:*
  - *The bad faith shown by Shabab when hired an additional foreign player at the end of August 2019, provoking that the Player should be de-registered without time enough for searching an alternative path; and the Player's good faith accepting such situation on the condition that he was allowed to train with the first squad during the first part of that season, sacrificing thus a substantial part of his market value and competition level.*
  - *The good faith shown by the Player while continuing practicing and following all the Club's instructions; and the bad faith on the Club's side not even informing the Player or his agents about how it was planning to deal with the foreigners limitation in order to comply with its commitment.*
  - *The Player's good faith when addressing the Club a letter requesting to register him back; and the clear bad faith shown by the Club maintaining its silence not only regarding such letter but even when it received the termination letter sent by the Player when the term granted in the warning letter has been widely lapsed.*
  - *The Club's bad faith when stating that it was interested in the Player's services while it was hiring a new foreign player and not registering the Player at no time when it has the opportunity.*
- *Basically, the present appeal challenges the decision by the DRC to consider that the player terminated the employment agreement prematurely.*

- *The DRC decision under appeal states that when the Player requested his re-registration in December, the mutually agreed deadline for re-registration of the player had not yet elapsed, and the relevant transfer window was not yet open.*
- *Hence, the DRC was of the opinion that by the time the player terminated the contract, it cannot be said that Shabab was in breach of its obligations, as the re- registration of the player was to take place at any time during the month of January 2020.*
- *The interpretation of the DRC is contradictory with the overwhelming evidence produced in this case and the principles of common sense and the customary practice in the field of football.*
- *The DRC wrongly considered that the period between the opening of the TMS window and the termination was too short, omitting that Shabab never claimed it was not capable of registering Mauro or telling him he was going to be registered once the window opened. Moreover the TMS window is only for international transfers. Players whose ITC is already in the national federation (as with Mauro) are not subject to the international transfer window of the FIFA TMS.*
- *In any case, the DRC omitted the obvious evidence showing that the Club was never interested in the player's services and raised several false arguments only when answering the Player's claim (the injury issue, the registration period, the early departure of Mauro).*
- *Due to the overall circumstances of the case and following several informal and formal attempts to be registered again it was obvious for Mauro that the Club was not going to comply with the agreement of August and that he was facing a new and lethal period of inactivity.*
- *It would be irrational to pretend that the Player shall wait until the end of the registration period to confirm whether the Club would register him or not, since it was no sign of any attempt to register him. It was obvious that the Club was just trying to terminate the agreement with Mauro reaching a settlement and paying less than the remaining value of the contract. The risk and threat of another long period of inactivity was the way the Club pushed for that agreement.*
- *To summarize: The Player asked for his registration and the Club remained silent for a month. Finally, when Estudiantes asked the player's TPO, the Club reacted sending a communication on January 18, acknowledging the receipt of the player's previous letter and giving no explanation for its delay in answering.*
- *The Club claimed in that letter that the Player was going to be registered but for a different competition, a national cup and not for the league.*

- *The Club also claimed that several players were injury and that was the reason for registering him. However, all foreign players continue to play for the team. Additionally, one more foreigner was even hired the day before the letter to Mauro was sent.*
- *Based on all the above-mentioned, it is evident that Shabab was no longer interested in the player but speculated with his will and need to play to force his termination and later to push for a mutual termination agreement.*
- *Surprisingly, the DRC disregarded these clear signals and decided that the Player acted prematurely by giving the Club only a few days to register him.*
- *The decision did not consider that since the termination until the Club's first letter several additional days elapsed and the Club still did not register the player.*
- *When Shabab sent the letter of January 18, the TMS window was already opened for 11 days but Mauro was still de-registered. Even worse, on January 17, Shabab registered another foreign player Mr. Pedro Conde instead of Mauro.*
- *The DRC also disregarded that the Club never argued that it needed time to register the player. The argument was only raised before the FIFA DRC as a defense but never in the communications with Mauro.*
- *The decision further omitted to consider that the Player was never included in the Club's squad in the website, and there is no deadline for that.*
- *With all these clear signs it is evident that Shabab Al Ahli was not interested in the player's services and that Mauro Diaz had just cause to terminate the employment contract as he did.*
- *Having established the breach of the contract by the Club, the amount of compensation shall be amended by CAS according to its longstanding jurisprudence.*
- *It is well settled that the injured party must be restored to the position in which the same party would have been had the contract been properly fulfilled, the so-called positive interest.*
- *The relevant employment contract provided for a salary of USD 125.000 net a month. Since the contract was originally until June 30, 2021 the remaining value of the contract is  $125.000 \times 17 \text{ months} = \text{USD } 2.125.000$ .*
- *As to plane tickets, the price of the flight Buenos Aires UAE is USD 28.000 that shall be reimbursed.*
- *Until the date of the termination with just cause, the Club owed the Player the amount of USD 45.833.- as acknowledged in the DRC decision.*

- *In January 2020 the player signed an employment contract with Estudiantes for a total amount of \$AR 16.500.000.- until June 2021.*
- *The amount represents currently USD 226.362.- since the value of the Argentine peso depreciated since the date of the signature.*
- *These amounts shall be deducted from the compensation owed for the breach.*
- *Interests: Irrespective of the final amount the panel establishes as compensation, it must bear interests at a 5% annual rate from the date of the breach i.e. January 11, 2020.*
- *In summary, the requested amounts are the following or any other the Panel finds appropriate:*

<i>a) January salary:</i>	<b>USD 45.833.-</b>
<i>b) Remaining value:</i>	<b>USD 2.125.000.-</b>
<i>c) Plane tickets:</i>	<b>USD 28.000.-</b>
<i>d) Mitigation - Contract with Estudiantes</i>	<b>USD - 226.362.-</b>
<b>TOTAL</b>	<b>USD 1.972.471.-</b>

- *Only in the unlikely event that the Panel decides that the Player was responsible for the termination or contributed to the termination, still Shabab shall receive no compensation for the termination or, in the alternative, a significant reduction of it.*

44. In its answer, Shabab seeks the following relief:

- a) *Upholding the Decision to the extent that: (i) the Player terminated the Contract, without just cause, upon inducement by Estudiantes; and (ii) the Player and Estudiantes are jointly and severally liable for paying compensation to Shabab;*
- b) *Reforming the Decision to the extent of the quantum payable by the Player and Estudiantes to Shabab, and award a compensation in the amount of, at least, US\$ 3,800,000, plus the reasonable market value of the Player, all increased by interest on default at the rate of 5% (five percent) per annum as of 02 March 2020;*
- c) *Condemning the Player and Estudiantes to support all costs associated with this dispute (CAS Administration and Panel fees); and*
- d) *Fixing the sum of CHF25,000 to be paid by the Respondents to contribute towards Shabab's legal fees and costs.*

*Successively, in the event the Panel deems that the Player had just cause to terminate the Contract and the Decision must be reformed to its merit, Shabab requests the Panel to:*

- i. Reject any request for compensation put forwarded by the Player, based on the provisions of article 44 of the SCO and the fact that the deregistration of the Player, which is at the core of this dispute, was unequivocally consensual; or, at least,*
- ii. Take into consideration the Player's absolute lack of effort to mitigate his perceived losses, resort to article 337c, §3 of the SCO, and award a compensation to the Player not exceeding the equivalent of six months' salary, i.e. US\$ 750,000.*

45. Shabab's submissions in CAS 2020/A/7261, in essence, may be summarised as follows:

- Based on the specific language of the Contract and the established jurisprudence of the DRC, Shabab was under no obligation to field the Player. And this was true even before the Player consented to his deregistration.*
- What is more, article 8 of the Contract provided the circumstances under which the Player could request (or declare) the termination of the Contract, none of which was observed in the case at hand.*
- As Shabab had no obligation to field the Player, the parties consensually agreed to his deregistration, and all Player's salaries had been paid by Shabab, it is undisputable that there was certainly no "persistent breach of the Contract" and absolutely no "failure in the payment of the Player's remuneration" during the Contract term.*
- Hence, none of the conditions authorizing the termination of the Contract by the Player, with just cause, was presented.*
- Conversely, it should be noted that the Player breached his contractual obligations, as article 5, items 9 and 11, specifically provided obligations for the Player, including, inter alia, not engaging into negotiations with other clubs (such as Estudiantes, within the Protected Period) and not leaving the United Arab Emirates without a written permission by Shabab.*
- The only justifiable (quod non) claim by the Player to terminate the Contract would have been his deregistration. However, the Player repeatedly admitted that he agreed / consented with such deregistration.*
- Not only the Player disregarded his previous consent and the principle of pacta sunt servanda, but also, incurred into venire contra factum proprium, by changing his mind at sudden and terminating the Contract. In one single unlawful action, the Player buried two principles and the guidelines of good faith. He consented to his deregistration until January 2020 and, before the deadline, changed his mind and terminated the Contract.*

- *It is completely irrelevant the intent of the Parties when negotiating and agreeing up on the Player's deregistration. Shabab was uncertain about the Player's physical abilities to support a demanding season and the Player was insecure to search for a new club within the August-September registration period. This is Shabab's perception of the case and the reason behind the Player's deregistration.*
- *What is relevant is that two consenting parties have freely negotiated, agreed, and consented with the Player's deregistration. Anything else is mere speculation that certainly does not meet the requirements of the burden of proof. And, even if it did, it would not matter! To wrap things up: the parties have agreed to the Player's deregistration. It was not a unilateral act carried out by Shabab. Hence, the consensual deregistration cannot be considered a breach to the Contract.*
- *A contract cannot be terminated by a party without just cause. And even in case there is a just cause, the motive must be either a continued disrespect by the other party to such contract or a severe breach / default, following a proper notice requesting its cure. None happened in this case.*
- *The Player supported the Contract termination on two pillars: (i) his deregistration; and (ii) Shabab's failure to respond his notice dated 23 December 2019.*
- *More importantly, the Panel should observe if the termination by the Player was, in fact, an ultima ratio measure.*
- *The Player was deregistered following a consensual agreement between the parties. At some point, nearly 04 (four) months after such consent – bearing in mind the Player's admission that the deregistration was agreed until January 2020 -, the Player changed his mind, likely due to the induction to breach carried out by Estudiantes, and started to create a narrative with the sole purpose of obtaining his release from Shabab.*
- *In his letter dated 23 December 2019, the Player not only disrespected the provisions of the Contract, his consensual de-registration and the RSTP when establishing a 10-day deadline, but also presented a request which was impossible for the Club to comply with.*
- *The notice ignored that (i) Shabab was under no obligation to re-register him at least until 31 January; (ii) the registration period in the UAE FA was still closed and would not be open until 07 January; and (iii) the minimum term to request a cure by Shabab (if there was anything to be cured) would be 15 (fifteen) days.*
- *The correspondence dated 23 December 2019 does not meet the requirements of a proper notice, being insufficient to constitute any right to the Player.*
- *Despite that, the Player attempted to justify his actions under the excuse that Shabab's failure to respond to such flawed notice would suffice for him to terminate the Contract with just cause.*

- *It is true that Shabab could have answered the Player's letter and reminded him that (i) they had agreed to the deregistration; and (ii) the registration period was closed at that given time, rendering impossible his registration within the incorrectly imposed 10-day deadline.*
- *However, is this lone lapse by Shabab (failing to answer a flawed notice) enough to justify the unilateral termination of the Contract and ignore the principle of maintenance of contractual stability, which is so dear to the football family?*
- *Does this failure by Shabab, to remind the Player of facts he should be (and was) aware of, render the termination by the Player an ultima ratio measure? Absolutely NOT!*
- *The Panel must be aware that the Player (i) knew (and recognized) that he had consensually agreed to his deregistration; and (ii) should acknowledge the UAFA Regulations establishing that he could not be re-registered before the re-opening of the registration period (on 07 January 2020).*
- *Thus, the "failure" by Shabab to remind the Player of circumstances he should be aware of, cannot, ever, be considered a breach severe enough to justify the Contract termination.*
- *In the case at hand, the parties have consensually agreed to the deregistration of the Player, and the Player was fully paid during the entire period of deregistration. Also, the Player participated in every training session when he was medically cleared and physically apt to.*
- *Hence, the deregistration was not a unilateral act by the Club and, more importantly, not permanent. Whilst the Club was not in position to re-register the Player at the moment he demanded so – registration was closed and Club had fulfilled its foreign quota -, the Player was part of the Club's strategy for the remainder of the 2019/2020 season and certainly for the 2020/2021 season, during which he would still be under contract.*
- *At the time Shabab requested the Player's return in mid-January, the registration for the AFC Champions League was still open and the Club had a foreign position to fill.*
- *Despite the Player's deceitful statement that the Club filled its foreign quota upon signing Mr. Pedro Pérez Conde, on 16 January, the Panel will notice that Shabab registered and deregistered several other players until 03 February 2020 (when the registration closed).*
- *By the end of January, Shabab was in full position to register the Player, had not unilaterally terminated the Contract, on 11 January 2020, without just cause.*
- *There was no just cause for the Player to terminate the Contract. As such, the termination carried out by the Player, materialized in his letter of 11 January 2020, was a unilateral termination of contract without*

*just cause, as recognized by the Decision, triggering the application of article 17 of the RSTP and entitling Shabab to receive compensation from the Player and Estudiantes.*

- *What is more, there should be no urgency whatsoever for the Player to sign with Estudiantes as early as 15 January 2020, when the registration period in Argentina was not even open yet! The Player prematurely terminated the Contract, without just cause.*
- *Thus, the Panel must reach the same conclusion found by the DRC: the termination was not, from any perspective, an ultima ratio measure.*
- *When establishing the compensation due to Shabab, the DRC did not account for the “cost of replacement” of the Player, as specifically provided in the Contract.*
- *The Decision considered only 02 (two) basic criterion to establish the compensation: (i) the non-amortized transfer fee; and (ii) remuneration and other benefits due to the Player under the previous and the new contract.*
- *Since the Contract (article 9, §15) provides for consideration of the replacement costs incurred by the Club and the RSTP embodies such provision, Shabab deems necessary to reform the FIFA Decision and increase the compensation payable by the Player and Estudiantes, vis-a-vis the replacement costs incurred by Shabab and his remuneration under the Contract, without regard to his new contract (with Estudiantes).*
- *Shabab rejects the calculation performed by the DRC, as it took into consideration the average amount between the Player’s dues under the Contract (US\$2,204,167) and his salaries under the new contract (US\$396,000), arriving at the sum of US\$1,300,083.*
- *The Panel must consider that (i) the salaries of the Player under the new contract were artificially lowered by the Respondents; and (ii) the Player took a conscious decision to prematurely terminate the Contract (without just cause) and abandon US\$2,250,000 he was due by Shabab to take US\$396,000 from Estudiantes, without even scanning the market to find a more suitable and advantageous solution. Hence, the Player’s decision should not (and cannot) be held against Shabab.*
- *Shabab deems that the Panel should consider only the salaries the Player was due under the Contract (US\$2,500,000) when establishing the compensation payable to Shabab, and not the average salaries of the Player under the Contract and the contract with Estudiantes. Thus, Shabab requests the payment of further US\$2,500,000 by the Player / Estudiantes.*
- *Conversely, there is no reason to apply any financial sanctions to Shabab, since the termination, by the Player, was premature and unjustified.*



- *In the unlikely event the Panel finds, however, that the Player had just cause for terminating the Contract (quod non), it must disregard the request for compensation put forwarded by the Player.*
- *Immediately after terminating the Contract, prematurely and without just cause, the Player executed a “mirror contract” with Estudiantes, exactly matching the term of the Contract, i.e. 30 June 2021.*
- *It is not credible that the Player terminated the Contract, without just cause, on 11 January 2020, and in just 04 (four) days, was able to scan the market, negotiate the best possible deal and sign an employment agreement with Estudiantes, on 15 January 2020. Again, it should be noted that, on 15 January 2020, the registration period in Argentina was not even open.*
- *Nobody, however naïve, can or should believe that Estudiantes and the Player only discussed an employment agreement after the Player had terminated the Contract without just cause.*
- *This not only evidences the inducement to breach by Estudiantes – which was assessed in Shabab’s claim before FIFA – but, more importantly for means of this Answer, shows that the Player did not take proper care or effort to mitigate what he considered to be his losses after terminating the Contract.*

## V. JURISDICTION

46. Article R47 of the Code provides as follows:

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

47. The jurisdiction of CAS derives from Article 58 para. 1 of the FIFA Statutes that provides as follows:

*“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.*

48. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties. It, therefore, follows that CAS has jurisdiction to decide on the present dispute.

## VI. ADMISSIBILITY

49. Article R49 of the Code provides as follows:

*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related*

*body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*

50. Both appeals were filed within the deadline of 21 days set by Article 58(1) of the FIFA Statutes. Both appeals complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

51. It follows that both appeals are admissible.

## **VII. APPLICABLE LAW**

52. 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.*

53. Separately, Article 57 para. 2 of the FIFA Statutes provides the following:

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

54. In view of the choice of the parties to refer their dispute to the FIFA DRC, the Panel finds that the parties accepted the applicability of Article 57(2) FIFA Statutes. In accordance with this provision, the Regulations of FIFA are primarily applicable and, if necessary, additionally, Swiss law.

## **VIII. MERITS**

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

A. Did the Player terminate the contract with just cause?

B. What are the financial consequences of the termination?

### **A. Did the Player terminate the Contract with just cause?**

56. It is undisputed by the Parties that on 11 January 2020 the Player unilaterally terminated the Employment Contract signed with Shabab on 21 June 2018. Previously, on 23 December 2019 the Player sent a letter to the Club asking for his registration. In this letter the Player confirmed

that the agreement regarding the de-registration was temporary and that the Club undertook to register him until January 2020.

57. The registration period in the United Arab Emirates started on 7 January 2020 and remained open until 3 February 2020. There is the exceptional possibility to register a player outside such period in order to play international competitions.
58. Based on those facts the DRC considered that at the time the Player's first correspondence was sent "(a) the mutually agreed deadline for re-registration of the Player had not yet elapsed, and (b) the relevant transfer window was not yet open".
59. Regarding the default letter, the Panel agrees with the DRC that the Player's correspondence of 23 December 2019 cannot be considered as a default notice but rather a reminder.
60. Also the Panel took duly note of the Club's allegation that such communication to be understood as a default notice suffers from another irregularity as it only gave a ten-day period to the other party to cure the alleged default and not fifteen days as the FIFA Regulations on the Status and Transfer of Players (the "RSTP") stipulates.
61. In line with CAS 2014/A/3643, the Player considered that in cases as the one at hand, a short deadline may be applied:

*"Being an exceptional measure, the immediate termination of a contract for just cause must be accepted only under a narrow set of circumstances, only in case of a particularly severe breach of the labour contract. In case of a less serious infringement, an immediate termination is possible only if the party at fault persisted in its breach after being warned. A player who has been hired by a club as foreign player for the club's first team and who is not fielded amongst the foreign players for the first game of the season may immediately terminate his employment contract with the club with just cause, without prior warning, in circumstances where the number of foreign players fielded by the club in the first game of the season reaches the full quota of foreign players of the club. This is even more the case if prior to the 9 first game of the season the club had openly criticised the player's performance and shown an attitude towards the player based on which the player could not have reasonably been expected to carry on the employment relationship.*

*A party prepared to put an immediate end to an employment agreement on the grounds of a just cause only has a short period of reflection, after which it must be assumed that the said party chose to continue the contractual relationship until the expiry of the agreed period. A period of reflection of two to three business days following the event that gives raise to the grounds of just cause is a maximum. An extension of a few days is tolerated only under exceptional circumstances.*

*Under Swiss law, the employer has the obligation to protect the employee's personality. The case law has deduced thereof a right for some categories of employees to be employed, in particular for employees whose inoccupation can prejudice their future carrier development. The employer has to provide these employees with the activity they have been employed for and for which they are qualified, and is not authorised to employ them at a different or less interesting position than the one they have been employed for. A player who has been hired to train and*

*play with a club's first team has a right to be employed under these – contractually agreed – terms. An exclusion from this position may – depending on the circumstances – seriously prejudice the player's career development, if e.g. it deprives the player of the chance to put his talent in evidence and to increase his market value”.*

62. Thus, regarding the default letter and on the grounds of the de-registration the Panel is of the opinion that an employment contract can be exceptionally terminated without a prior warning, in case of a particularly severe breach of the employment contract (see also CAS 2016/A/4590).

63. However, the Panel considers that it remains necessary to determine whether such termination was made with or without just cause.

64. The RSTP do not define what constitutes a “just cause”. The Commentary to the RSTP (N2 to Article 14), however, provides some guidance in this respect:

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

65. The above interpretation of the term “just cause” is also in line with Swiss law, which is applicable to the interpretation of the FIFA regulations. However, it also follows from the jurisprudence of the Swiss Federal Tribunal that only a particularly severe breach of an employment contract will result in the immediate dismissal of or, conversely, in the immediate abandonment of the employment position by the latter (CAS 2013/A/3091, 3092 & 3093).

66. At this stage the Panel considers relevant to draw it attention to the following points:

- The agreed de-registration between the Player and Shabab was to be in effect until January 2020 and the Player “accepted to remain de-registered from the squad at federative level, since the foreign player's quota established by the FA [four foreign players] was completed with other teammates” (quoted from the Players letter dated 23 December 2019);
- The UAE Football Federation Regulation on the Status and Transfer of Players stipulates that foreign players can only be registered within the international registration periods or, exceptionally, outside such periods, provided, however, that these players shall not play in any local competition.

67. In this context, the Panel first notes that it considers the alleged fact that the Player was allegedly forced to tolerate the de-registration in August irrelevant. As to this point, Player (always represented by lawyers and agents) could have reprimanded and warned the Club right away in August 2019 or in the weeks / months thereafter and demanded a clear commitment to re-registration. However, he was silent (almost) the whole time. In other words, the Player

acquiesced / tacitly admitted to his temporarily de-registration “*until January*”.

68. This corresponds to the fact that letters submitted by the Player himself and signed by him, speak of “*tolerated and accepted... until January 2020*” (Annex C of Shabab’s Appeal Brief) and “*...6 meses de-registrado*” [“*de-registered for 6 months*” (free translation)] (Annex F of Shabab’s Appeal Brief). A timely challenge of the de-registration agreement on the grounds of unlawful threat or other reasons is therefore not apparent let alone proven.
69. Apart the de-registration as such, other circumstances could justify the termination.
70. The Player referred in particular to the fact that he had not even received a reply to his communication dated 23 December and that his agents had been completely ignored at the beginning of December, although they had been on Dubai trying to speak with the Club’s representatives.
71. Indeed, such behaviour can be considered good grounds for the termination with just cause. However, in the present case, such Club’s behaviour only took place during December and January months.
72. In fact, during the de-registration period the Player was paid his fully salary, was not dropped to a reserve team (though possible to a certain extent according to the contract), stayed and practiced with the first team and participated in friendly games.
73. He was also provided with appropriate training and medical facilities and services, including an authorization to travel to Barcelona for medical consultation.
74. Unfortunate or unsympathetic the Club’s behaviour during December and January may be, it could only justify termination without notice if it had been preceded by a warning. Player should have made it clear to the club that he would not tolerate any further non-response to his letters, requests, etc., including the Club’s behaviour with his agents.
75. Above all, the Panel is of the opinion that the first mandatory premise for proceeding to the termination of a contract and its qualification as being done with just cause did not exist at the time when the Player sent his 11 January 2020 communication.
76. In fact, the requested registration in the UAE federation in order that the Player could play in the UAE internal competitions, elapsed from 7 January till 3 February 2020 and even considering the exceptional possibility to register the Player outside such period in order the later to play in international competitions, the agreed de-registration period should had lasted until January 2020.
77. That is, the Club at the moment where the termination letter was sent was not in breach.
78. On the other hand, although the de-registration of a Player might constitute a valid reason (just cause) to terminate an employment contract, in this case the de-registration was done by

mutual agreement and, therefore, cannot constitute a reason for the termination of the contract.

79. In the light of the above, the Panel agrees with the Appealed Decision and considers that the Player terminated the employment contract without just cause.

**B. What are the financial consequences of the termination?**

80. The Panel notes that Article R57 of the CAS Code provides it with *de novo* powers to consider the level of compensation afresh.

81. The Panel firstly refers to the RSTP and, in particular, Article 17 of the RSTP is of relevance here:

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

82. The Panel also notes that the Contract did not provide for a liquidated sum or contain a penalty clause. As such, in principle, Article 17 shall apply.

83. Further, numerous other CAS panels over the years have found different ways to apply this Article. In particular, the approaches in *Webster*, *Matuzalem* and *de Sanctis*. What is clear is that the party that breaches the contract without just cause must compensate the other party.

84. Nevertheless, the Panel considers that, in the present case it must be taken into account the actions of the Club. Whilst the RSTP appears silent on the effect of contributory acts by the party that suffers the termination of the contract where there is no just cause, Swiss law is there to fill that lacuna. Article 44 (1) of the SCO states:

*“Where the person suffering damage consented to the harmful act or circumstances attributable to him helped give rise to or compound the loss or damage or otherwise exacerbated the position of the party liable for it, the court may reduce the compensation due or even dispense with it entirely”.*

85. The Panel observes that CAS jurisprudence has, *inter alia*, held the following in respect of the application of Article 44 (1) SCO:

*“[...] according to Article 44 para. 1 CO, compensation may be reduced if there are circumstances attributable to the injured party that helped to give rise to or increase the damage”* (CAS 2014/A/3647-3648, para. 121).

86. At this stage, the Panel deems relevant to refer the following points:
- i. The reasons behind the de-registration;
  - ii. The warnings sent and Shabab's silence;
  - iii. Shabab had no real interest in the Player's services.
87. It is clear from the evidence in the file that the contacts made between Shabab and the Player regarding the de-registration took place very close to the end of the summer transfer window.
88. In other words, if the Player ended the contract at that time, it would be very difficult to get a new contract and subsequent registration with another club, bearing in mind the proximity of the transfer window closing.
89. At the same time, the Club hired a new foreign player. That is, Shabab had under contract more foreign players that the UAE league regulations allowed to be registered.
90. That is, the Player has chosen to agree with de-registration given the uncertainty of being unemployed at least until the winter transfer window.
91. It is also clear from the evidence contained in the file that the Club remained silent after not only the Player's communication dated 23 December 2019 but also after the termination letter.
92. In reference to this point, the Player referred the TAS 2014/A/3900 of which quotes the English translation of paragraphs 59, 62 and 65:

*"59. In this sense, the duty of the parties to a contract to act in good faith is a universal principle of law, giving all the information that is fairly demandable between them and that derives from certain obligations that the contractual relationship imposes on them (TAS 2008/A/1715). In this regard, the Panel fails to understand, under a criterion of reasonableness, neither of the documents accompanied by the process nor of the verbal explanations presented at the hearing by the attorney for the Appellant, the reason or justification that the Club had for not giving an answer, not only to the intimation of payment formulated in writing by the Player, nor to express a discordant position or opinion, regarding a serious and legally relevant accusation, as was the one communicated in the notification by which the contract was terminated.*

*62. The foregoing conclusion is reinforced by the Defendant's disinterest and his probative passivity to contradict the conclusion reached in this regard by the CRD, in that there was a communication of the termination of the contract sent by the Player. The foregoing reveals a lack of diligence on the part of the Club in the protection of its interests, given that a fair measure of reasonableness in terms of obligations indicates that when faced with an accusation of non-compliance made by one of the parties, if it is not effective, it must be at least controverted by the party accused as non-compliant. Moreover, when this situation occurs under the warning of producing adverse legal effects, such as the termination of a contract, prudence indicates that the party must exercise his rights and express a legal position in this regard in order to define responsibilities for the future.*

65. Therefore, the opinion that the Panel has formed is that the Club's silence, first in face of the Player's warning and then in the face of its decision to terminate the employment contract, is an indication of acknowledgment of responsibility, although not definitive, but that does have a special effect in employment-related matters, since it was related to the main obligation that the club had towards the Player, such as the payment of his wages. It is not usual for an employer, in the face of an accusation of non-compliance with this main obligation, to simply remain silent or not to express any position ignoring such assertion. This lack of response, furthermore, prevented the Player from realizing the Club's real interest in it, either as a change of attitude or interest in clarifying economic differences, which induces to sustain, in principle, the existence of a "Just cause" on the part of that, to have terminated the employment contract".

93. In the same line, TAS 2016/A/4382, from which the Panel quotes the English translation of paragraph 82:
- "82. Therefore, the opinion this Sole Arbitrator has in this regard, is that the silence exhibited by the club, repeatedly against the claims and warnings of the player, is in principle an admission of its responsibility, while not definitive, with special relevance in employment matters because it was related to one of the main obligations towards the player, which was to provide him with the agreed job. It is not usual that a company facing a claim of breach by an employee remains silent instead of making a statement denying the claims. Moreover, the lack of answer, prevented the player from acknowledging a real interest in his services, either as a change of mind or as an attempt to clarify the differences expressed by him, which induces to consider in principle the existence of a just cause on his side to consider the contract terminated due to the club's fault".*
94. Furthermore, the Panel took duly note that Shabab only reacted to the Player's communications after Estudiantes asked Shabab to issue the mandatory declaration regarding the Player's economic rights (the Player's Third-Party Ownership Declaration - TPO).
95. In the said letter dated 18 January 2020, the Panel can read at the end: *"If however the Player is unwilling to return, without prejudice to our legal standing, our last offer remains in place"*.
96. From a previous WhatsApp chat between the Club's Representative and the Player Agent, Mr Antico, it can be concluded that the Club was available to pay USD 900,000 to achieve a contract's termination by mutual consent.
97. From the above, the Panel considers that the interest shown by the Club in the professional services of the Player until the end of the Contract was rather scarce.
98. The CAS jurisprudence has also repeatedly stated that for a compensation to be granted, the party seeking for compensation shall demonstrate that it has suffered damages and shall prove its quantification (see *inter alia* CAS 2004/A/662).
99. In this regard, even assuming, for the reasons explained above, that the Player breached the Contract without just cause, the Panel concludes that the termination of the Contract did not cause any direct or indirect damage to the Club.



100. On the contrary, Shabab did not pay the salaries due until the end of the contract as well as the amount it was available to pay (USD 900,000) to reach a termination by mutual consent.
101. As a consequence of the foregoing, the Panel concludes that no compensation shall be awarded to Shabab as regards the termination of the Contract.
102. The same conclusion was reached by the Panels in CAS 2015/A/4292 & 4321 and CAS 2015/A/4352 & 4353, where we can read:
- “147. As a consequence of the foregoing and based on the reasons explained above, the Panel reaches the conclusion that with the termination of the Contract, the Respondent did not suffer any direct or indirect damage (either damnum emergens or luccrum cesans).*
- 148. The Panel finds that its reasoning is also consistent with the specificity of sport that should be taken into account when applying art. 17.1 RSTP. In particular, “based on this criterion, the judging body shall therefore assess the amount of compensation payable by a party under art. 17 para. 1 of the FIFA Regulations keeping duly in mind that the dispute is taking place in the somehow special world of sport. In other words, the judging body shall aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interests at stake, the sporting circumstances and the sporting issues inherent to the single case” (CAS 2008/A/1519-1520). Lazio’s reprehensible conduct towards the Player, excluding him from the team’s dynamics without justified reasons, makes the Panel believe, additionally to the reasons given above, that its decision is correct and appropriate taking into account all the circumstances of the case.*
- 149. As a consequence of the foregoing, the Panel concludes that no compensation shall be awarded to Lazio as regards the termination of the Contract. This conclusion makes it unnecessary for the Panel to consider any further request submitted by the parties and, in particular, any joint and several liability of Vélez in this case”.*
103. Taking into account that no compensation is awarded to Shabab, the Panel considers that there is no need to assess the joint and several liability of Estudiantes in the present matter.
104. Also, bearing in mind that the Player terminated the employment contract without just cause and that according to article 17.1 of the RSTP only the party in breach shall pay compensation, the request for compensation made by Mr Mauro Alberto Díaz & Club Estudiantes de la Plata is dismissed.
105. As a result, the Panel decides that the Appealed Decision shall be set aside, and that neither Shabab nor Mr Mauro Alberto Díaz & Club Estudiantes de la Plata are entitled to any amount as compensation for the termination of the Contract made by Mr Mauro Díaz.

## **ON THESE GROUNDS**

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

1. The appeal filed by Shabab Al Ahli Dubai FC against the Decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA) on 20 May 2020 is dismissed.
2. The appeal filed by Mr Mauro Alberto Díaz and Club Estudiantes de la Plata against the Decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA) on 20 May 2020 is partially upheld.
3. The Decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA) on 20 May 2020 is set aside since neither Mr Mauro Alberto Díaz nor Club Estudiantes de la Plata shall pay any compensation to Shabab Al Ahli Dubai FC for the termination of the contract signed on 11 June 2018.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.