



Arbitration CAS 2020/A/7242 Al Wahda FSC Company v. Mourad Batna & Al Jazira FSC, award of 23 November 2021

Panel: Mr Mark Hovell (United Kingdom), President; Prof. Luigi Fumagalli (Italy); Mr Manfred Nan (The Netherlands)

Football

Termination of the employment contract with just cause by the player

Discretion in the assessment of the Mitigated Compensation

Mandatory awarding of the Additional Compensation

1. According to Article 17(1)(ii) of the FIFA Regulations on the Status and Transfer of Players (RSTP), in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the “Mitigated Compensation”). However, in accordance with Article 44 (1) of the Swiss Code of Obligations, where the person suffering damage consented to the harmful act or circumstances attributable to him helped give rise to or compound the 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.
2. The “Additional Compensation” provided for by Article 17(1)(ii) of the RSTP, applies in the specific scenario of “*early termination of the contract being due to overdue payables*”. In such event, the Additional Compensation bears the force of a mandatory provision and must always be applied. In other words, in the event that a player is deemed to have terminated his contract with just cause due to overdue payables by the club, he must be awarded the Additional Compensation of three monthly salaries.

I. PARTIES

1. Al Wahda FSC Company (the “Appellant” or “Al Wahda”) is a football club with its registered office in Abu Dhabi, United Arab Emirates (the “UAE”). Al Wahda is currently competing in the UAE Arabian Gulf League, which is the highest division in the UAE. It is a member of the UAE Football Association (the “UAE FA”), which in turn is affiliated to Fédération Internationale de Football Association (“FIFA”).
2. Mr Mourad Batna (the “First Respondent” or the “Player”) is a Moroccan citizen and professional football player born on 27 June 1990. He currently plays for Al-Fateh SC in the UAE.

3. Al Jazira FSC (the “Second Respondent” or “Al Jazira”) is a football club with its registered office in Abu Dhabi, UAE. Al Jazira is currently competing in the UAE Arabian Gulf League, which is the highest division in the UAE. It is a member of the UAE FA, which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. The Employment Agreement

5. On 12 February 2017, the Player and Al Wahda entered into an employment agreement valid from 1 July 2017 to 30 June 2020 (the "Contract").
6. The Contract provided the Player with, *inter alia*, the following remuneration provisions:

First Season (1 July 2017 to 30 June 2018):

- EUR 450,000 as a “*signing bonus*” for each contractual year payable “*no later than 30 days from the beginning of the contract year*”,
- EUR 87,500 as monthly salary payable “*at the end of each calendar month*”,

Second Season (1 July 2018 to 30 June 2019)

- EUR 375,000 as a “*signing bonus*” for each contractual year payable “*no later than 30 days from the beginning of the contract year*”,
- EUR 93,750 as monthly salary payable “*at the end of each calendar month*”,

Third season (1 July 2019 to 30 June 2020)

- EUR 375,000 as a “*signing bonus*” for each contractual year payable “*no later than 30 days from the beginning of the contract year*”,
- EUR 93,750 as monthly salary payable “*at the end of each calendar month*”.

7. In addition, the Player was entitled to:

- annual leave of 30 days per year;

- 4 round trip business class air tickets from Rabat to Abu Dhabi per season;
- a car; and
- free accommodation.

8. The Contract contained the following relevant provisions related to financial penalties and player obligations:

“Article (4) [Player] Obligations

7- *Notify [Al Wahda] of his injury or sickness immediately and may not go for any medical treatment without the knowledge of [Al Wahda] physician with the exception to the emergency cases and abide by the prescribed medical treatment with [Al Wahda] approval.*

[...]

Article (7):

[Al Wahda] may take any decisions and disciplinary action against [the Player] upon the latter's violation of his obligations provided for herein without contradiction with club regulations, provided that [the Player] shall be notified in writing whereupon the latter shall have the right to appeal the same before the competent committees at the association or FIFA, as per the following rules¹:

[...]

No.	Violation	Penalty	Remarks
2	Unexcused absence in daily training	Salary deduction of 10%	The Penalty increases with the same percentage in case of repetition”.

9. The Contract provided the Player with the following termination provisions:

“Article (10):

- 1- *The contract may not be terminated during the sport season.*
- 2- *The contract may be amended during its validity by mutual consent and signature of both parties on any addition or deletion.*

¹ The Contract contained a table of 26 separate violations and resulting consequences, but the Panel has only quoted in this Award the violations which are relevant to the matter at hand.

- 3- *Any of the two parties can agree to terminate the contract before the expiry of its period. However, if the contract is terminated by [Al Wahda] before the expiry of its entire period, in this case [Al Wahda] undertakes to pay the [Player] all the dues payable under this contract, till the end of the contract.*
- 4- *[Al Wahda] has the right to terminate this contract during its validity and before its actual date of expiry, without previous warning if the [Player] repeated his violation to his obligations specified in article (4) of this contract, in spite of the written warnings from [Al Wahda], or if committed a crime in violation of the general politeness or dignity or breach of trust. In this case the [Player] will be cashed his monthly salary till the end of contract without any compensation”.*
10. On 12 September 2018, Al Wahda paid the Player his August salary, due on the last day of August, late.
 11. On 11 October 2018, Al Wahda paid the Player his September salary, due on the last day of September, late.
 12. On 18 October 2018, Al Wahda paid the Player EUR 200,000 out of the signing bonus that was due on 31 July 2018.
 13. On 1 November 2018, the Player allegedly refuses to play in the club’s match against Al Alhy. The coach prepares a report on this incident the next day.
 14. On 13 November 2018, Al Wahda paid the Player his October salary, due on the last day of October, late.
 15. On 6 December 2018, the Player allegedly leaves the UAE for a week.
 16. On 8 January 2019, Al Wahda paid the Player EUR 91,843 corresponding to his December 2018 salary, due on the last day of December, late.
 17. On 10 February 2019, the Player plays in the match against Al Ain FC.
 18. On 11 February 2019, the Player is contacted by his landlord, as Al Wahda had failed to pay him the rent due on the Player’s apartment.
 19. On 12 February 2019, the Player wrote to Al Wahda stating that his rent had not been paid since November 2018, 50% of his signing bonus was unpaid and the payment of his salaries for December 2018 and January 2019 and 50% of his match winning bonuses were delayed.
 20. On 13 February 2019, Al Wahda paid the Player EUR 95,165 corresponding to his January 2019 salary, due on the last day of January, late.
 21. On 21 February 2019, the Player refused to play in the match against Al Wasl.
 22. On 22 February 2019, an administrator of Al Wahda sent the club a medical report of the Player, alleging that the Player was faking an injury, not respecting the rehabilitation procedure and had received medical treatment in Morocco without the club’s permission.

23. On 23 February 2019, the Player wrote to Al Wahda stating that the Player had received an individual training programme from an administrative staff member via WhatsApp. The Player stated that he deemed this unofficial communication as null and void.
24. On 25 February 2019, Al Wahda wrote to the Player stating that he did not attend a technical meeting with the team trainer and invoked Article 7 of the Contract, allowing Al Wahda to impose penalties on the Player, deducting 20% of the Player's February monthly salary.
25. On 28 February 2019, the Player wrote to Al Wahda stating that he was "*very tired, and don't feel good* [sic]".
26. On 7 March 2019, the Player wrote to Al Wahda stating that he never received notification of the technical meeting referred to in their letter of 25 February 2019 and therefore rejected the deduction of pay.
27. On 8 March 2019, the Player wrote to Al Wahda stating that he had complied with the individual training programme set until 8 March 2019 and was available to train with the first team.
28. On 11 March 2019, the Player was paid EUR 73,098 corresponding to part of his February 2019 salary, due on the last day of February, late.
29. On 12 March 2019, Al Wahda wrote to the Player stating that he did not attend training on 1 and 2 March 2019 due to "*pretending sickness*" without presenting a medical report. Accordingly, Al Wahda warned the Player it would charge him with "*the penalty related to this infraction*" unless such medical evidence was provided.
30. On 13 March 2019, the Player wrote to Al Wahda stating that the dates that he did not attend training were 27 and 28 February 2019 and that he complied with Article 4 paragraph 7 of the Contract. He stated that he was continuing to train without an official program or instructions from the technical staff. On this basis he asked for Al Wahda to reconsider the warning of a penalty issued by Al Wahda.
31. On 28 March 2019, the Player wrote to Al Wahda President summarising the situation, denying any disrespect to the Player's contractual obligations and requesting for the President to intervene to allow the Player to regain his contractual rights.
32. On 2 April 2019, the Player wrote to Al Wahda stating that he was refused entry to the training field on 27 March 2019, has not had a training program since 8 March 2019 and that his salary and signing bonuses remained outstanding.
33. On 29 April 2019, the Player wrote to Al Wahda, in response to an invitation to discuss loan offers from Al Dhafra Club and Emirates FC, stating that this is not the correct timing to have such discussions and the Player wished to continue with Al Wahda until the end of the Contract term.

34. On 3 May 2019, Al Wahda wrote to the Player stating that the Player has disrespected the first team operating systems by repeatedly acting injured, did not manage to get back to his technical level after his training program, attended an unclear fitness and healing program in Morocco without Al Wahda's permission and did not respond with a convincing argument to "*many offers from Al Wahda*". As a result, "*the subject was sent to the league of professional affairs. Hence, the late and difficulty to comply with your financial benefits [sic]*".
35. On 6 May 2019, the Player wrote to Al Wahda, stating he:
 - i. denied feigning injury;
 - ii. never received any program beyond that of the initial 15 days;
 - iii. maintained his technical level until his suspension;
 - iv. considered Al Wahda gave its tacit agreement to attend medical treatment in Morocco by verbal agreement of the President and Al Wahda purchasing his plane ticket;
 - v. asked for the discussions of a loan to be postponed; and
 - vi. requested for all late and unpaid payments to be made to him and all penalties to be revoked.
36. On 6 May 2019, the Player was paid EUR 72,866 as monthly salary for April 2019, due on the last day of April, late.
37. On 26 May 2019, Al Wahda claimed that it paid the Player EUR 93,750 for his salary from November 2018.
38. On 29 May 2019, Al Wahda wrote to the Player attaching a plane ticket and stating that his holiday would begin on 30 May 2019 and last for two weeks.
39. On 30 May 2019, the Player was paid EUR 93,750, corresponding to the salary of May 2019.
40. On 14 June 2019, Al Wahda claimed that the Player announced on his Facebook page that his relationship with Al Wahda was at an end.
41. On or around 14 June 2019, the Player refused loan offers made by Hatta FC and Khorfakkan FC.
42. On 16 June 2019, the Player returned from his holidays and was made to train alone again.
43. On 30 June 2019, the Player wrote to Al Wahda referencing late payment of salaries, the non-payment of his November 2018 salary, financial penalties applied to the Player's February and April 2019 salaries and the alleged exclusion of the Player from the team training.

44. On 3 July 2019, the Player received EUR 16,159, corresponding to part of the salary of June 2019 and leaving EUR 77,591 outstanding.
45. On 3 July 2019, the Player requested that Al Wahda pay his November 2018 and the unpaid part of his June 2019 salaries within 15 days.
46. On 17 and 18 July 2019, Al Wahda wrote to the Player stating that the November 2018 salary had already been paid.
47. On 19 July 2019, the Player wrote to Al Wahda terminating the Contract (the “Termination Letter”), citing breach of contract, in particular, abusive conduct, the pending salaries of November 2018 and June 2019, the unpaid signing bonus of EUR 375,000 payable in July 2019 and two unjustified financial penalties. The Player also notified Al Wahda of a complaint being lodged with the FIFA Dispute Resolution Chamber (the “FIFA DRC”).
48. Also on 19 July 2019, the Player bought his own flight ticket to leave the UAE, costing MAD 47,530.
49. On 22 July 2019, Al Hazem Sports Club (“Al Hazem”) made an offer to Al Wahda for “*your professional Player, the Moroccan Player: (Murad Patna) for transfer fee (\$1,000,000) One Million U.S dollars*”.
50. On 23 July 2019, Al Wahda wrote to the Player stating that it deemed his unilateral termination of the Contract to be null and void.
51. On 26 July 2019, Al Wahda wrote to the Player stating that it has received an offer from the Saudi club Al Hazem to sign him for the next season. Al Wahda had accepted this offer (including a EUR 1,000,000 transfer fee) and requested the Player’s response.
52. On 31 July 2019, the Player’s agent contacted Al Jazira about the Player.
53. On 1 August 2019, the Player signed a contract with Al Jazira valid from 1 August 2019 to June 2020 (the “Al Jazira Contract”), under which the Player was entitled to a total remuneration of EUR 1,200,000.

B. Proceedings before FIFA

54. On 25 July 2019, the Player filed a claim at the FIFA DRC against Al Wahda for breach of contract, and requested damages totalling EUR 2,275,377.
55. On 29 August 2019, Al Wahda filed a counterclaim at the FIFA DRC against the Player and Al Jazira, claiming compensation for breach of contract.
56. On 23 April 2020, the FIFA DRC rendered its decision as follows (the “Appealed Decision”):

“1. *The claim of the [Player], is partially accepted.*”

2. *The counterclaim of [Al Wahda], is rejected.*
3. *[Al Wahda] has to pay the [Player] EUR 1,012,877 plus MAD 47,530, plus interest at the rate of 5% p.a. as follows:*
 - *on the amount of EUR 93,750 as from 30 November 2018 until the date of effective payment;*
 - *on the amount of EUR 20,652 as from 28 February 2019 until the date of effective payment;*
 - *on the amount of EUR 20,884 as from 30 April 2019 until the date of effective payment;*
 - *on the amount of EUR 77,591 as from 30 June 2019 until the date of effective payment;*
 - *on the amount of MAD 47,530 as from 19 July 2019 until the date of effective payment;*
 - *on the amount of EUR 800,000 as from 25 July 2019 until the date of effective payment.*
4. *Any other requests for relief from the parties are rejected. [...]"*

57. The grounds of the Appealed Decision were notified to the parties on 15 June 2020.

C. Proceedings before the UAE FA Dispute Resolution Chamber

58. On 3 August 2019, Al Wahda lodged a claim against the Player and Al Jazira before the Dispute Resolution Chamber of the UAE FA ("UAE FA DRC").
59. On 26 August 2019, the Player was informed by the UAE FA that a meeting took place on 26 August 2019 before the UAE FA DRC.
60. On 1 June 2020, the UAE FA DRC rendered a decision, dismissing Al Wahda's claim.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

61. On 6 July 2020, in accordance with Article R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"), Al Wahda filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") challenging the Appealed Decision. In its Statement of Appeal, Al Wahda requested the appointment of Prof. Luigi Fumagalli, Attorney-at-Law, Milan, Italy, as arbitrator.
62. On 16 July 2020, in accordance with Article R51 of the CAS Code, Al Wahda filed its Appeal Brief.
63. On 20 July 2020, the Player wrote to the CAS Court Office confirming that he and Al Jazira had jointly agreed to nominate Mr Manfred P. Nan, Attorney-at-Law, Arnhem, the Netherlands, as arbitrator.
64. On 24 September 2020, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to this case was constituted as follows:

President: Mr Mark A. Hovell, Solicitor, Manchester, United Kingdom
Arbitrators: Prof. Luigi Fumagalli, Attorney-at-Law, Milan, Italy
Mr Manfred P. Nan, Attorney-at-Law, Arnhem, the Netherlands

65. On 21 October 2020, in accordance with Article R55 of the CAS Code, the Player and Al Jazira filed their respective Answers with the CAS Court Office.
66. On 29 October 2020, the CAS Court Office wrote to the Parties inviting them to state whether they would prefer for a hearing to be held in the present matter.
67. On 30 October 2020, Al Wahda wrote to the CAS Court Office confirming its preference for a hearing to be held in this matter.
68. On 4 November 2020, the Player wrote to the CAS Court Office confirming his preference for a hearing to be held in this matter. On the same date, Al Jazira wrote to the CAS Court Office stating that it had no objection to a hearing being held in this matter.
69. On 16 November 2020, the CAS Court Office wrote to the Parties confirming that the Panel had determined that a hearing would be held in this matter, and requested their availability for a hearing on 15 January 2021. Further, on behalf of the Panel the CAS Court Office requested the Player to file a copy of the Al Jazira Contract (and other relevant documents), and requested Al Wahda to confirm which witnesses would be testifying and to produce a witness statement for each.
70. On 24 November 2020, the Player filed a copy of the Al Jazira Contract with the CAS Court Office.
71. On 26 November 2020, Al Wahda wrote to the CAS Court Office stating the names of the witnesses it wished to call at the hearing and outlined the scope of their testimonies.
72. On 4 December 2020, the CAS Court Office wrote to the Parties confirming that a hearing would be held in this matter on 15 January 2021.
73. On 11 December 2020, Al Wahda wrote to the CAS Court Office outlining the expected testimonies of its five witnesses.
74. On 14 December 2020, the CAS Court Office wrote to the Parties requesting they sign and return the Order of Procedure enclosed.
75. On 18 December 2020, the Player submitted a signed copy of the Order of Procedure.
76. On 21 December 2020, Al Wahda submitted a signed copy of the Order of Procedure.
77. On 21 December 2020, Al Jazira wrote to the CAS Court Office providing its list of participants at the hearing and submitted a signed copy of the Order of Procedure.

78. On 21 December 2020, Al Wahda filed witness statements for the witnesses it was calling for the hearing.
79. On 24 December 2020, Al Jazira filed a witness statement for its witness.

IV. HEARING

80. A hearing was held on 15 January 2021 over video conference facilities. The Parties did not raise any objection as to the composition of the Panel. The Panel were all present and was assisted by Fabien Cagneux, Counsel to the CAS. Furthermore, the following persons attended the hearing:
- i) Al Wahda: Messrs Primicerio and La Porta, both counsel along with Messrs Khalid Rashed Al Hanaei, Abdulbaset Mohamed Alhamadi, Mohamad Moussa, Henk Ten Cate and Ahmat Hamdi Caglar, all witnesses;
 - ii) The Player: Ms Bruin, counsel, along with Mr Chakib Laraki, as a witness; and
 - iii) Al Jazira: Ms Costa Dias and Messrs Palmeiro and Louis, as counsel, along with Mr Ahmed Fattah, as a witness.
81. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. The hearing was then closed and the Panel reserved its detailed decision to this written Award.
82. Upon closing the hearing, the Parties expressly stated that they had no objections in relation to their respective rights to be heard and to be treated equally in these arbitration proceedings. The Panel has carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the Parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.

V. THE PARTIES' SUBMISSIONS

83. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. Al Wahda's submissions

84. In its Appeal Brief, Al Wahda requested the following prayers for relief:

- a. the appeal of [Al Wahda] is admissible;*
- b. the [Appealed Decision] is set aside;*

- c. *the Player terminated the [Contract] unilaterally without just cause and thus breached the terms and conditions of the [Contract];*
- d. *therefore, (i) no sum whatever is to be paid by [Al Wahda] to the Player, (ii) the Player and his new club Al Jazira are jointly and severally liable to compensate [Al Wahda] in the amount of 2 million Euros;*
- e. *sporting sanctions are to be imposed by FIFA on both the Player and Al Jazira;*
- f. *the Player and Al Jazira are liable to bear all costs and expenses relating to these arbitration proceedings, including the reimbursement of the [Al Wahda's] legal fees and costs”.*

85. In summary, Al Wahda submitted the following arguments in support of its Appeal:

i. No just cause to terminate the Contract according to Article 14 of the FIFA Regulations on the Status and Transfer of Players (the “RSTP”)

86. Al Wahda argued that the Player was not entitled to terminate the Contract with just cause for outstanding salaries according to Article 14bis of the RSTP and therefore the Panel should find that the Player did not have just cause to terminate the Contract.

87. Pursuant to Article 82(3) of the Swiss Code of Obligations (the “SCO”), Swiss Law provides that *“a party to a bilateral contract may not demand performance until he has discharged or offered to discharge his own obligation, unless the terms or nature of the contract allow him to do so at a later date”.*

88. In his letter of 3 July 2019 and the Termination Letter, the Player stated that Al Wahda had failed to pay him at least two monthly salaries. Al Wahda disputed that it was at any time in default of two monthly salaries, as the November 2018 monthly salary was paid and the June 2018 monthly salary had been legitimately withheld (in part) following the Player showing his explicit intention to breach the Contract and leave Al Wahda through a social media post.

89. Al Wahda disputed that the letter of 3 July 2019 was a ‘proper default letter’ in the sense of Article 14 of the RSTP as its content only partly matched the grounds on which the Contract was terminated, to the extent that:

- i. The letter of 3 July 2019 requested the payment of the 2019/2020 signing bonus. This was not due until the end of July 2019 and in any event was not due at all due to the Player publicly announcing that his relationship with Al Wahda was over on social media.
- ii. The Termination Letter, unlike the 3 July 2019 letter, referenced penalties imposed on the Player.

90. It is established in FIFA jurisprudence that the termination of an employment agreement is the *extrema ratio*, i.e. the last resort that one of the parties can seek only when the relationship is so compromised that it cannot go on any longer.

91. Al Wahda argued that the Player terminated the Contract unilaterally, acted in bad faith and likely left because he wanted to join another club. This was not an *extrema ratio*, sought to react to an irredeemable situation, but rather an instrument used in bad faith to get rid of Al Wahda and sign with another club.
92. This was evidenced by the Player's letters in June and July 2019 depicting the Player as a victim, asking for sums already paid and refusing to negotiate a settlement whilst simultaneously making a public statement that he was leaving Al Wahda lodging a claim with the FIFA DRC.
93. Contrastingly, Al Wahda showed good faith and consistently paid the Player even though they did not receive the benefit of his sporting performances.
94. The penalties applied by Al Wahda complied with the relevant procedure under Article 7 of the Contract. It was the Player's lack of professionalism and efforts that led to his fitness levels requiring a personalised schedule.
95. It was the Player's irrevocable decision to leave Al Wahda and force Al Wahda to negotiate the Player's transfer that led to not involving him in the summer training camp in the Netherlands.
96. The Player terminated the Contract without just cause and Article 17 of the RSTP therefore provides that the Player and Al Jazira, as the 'new club', shall pay compensation to Al Wahda.

ii. Damages sought by Al Wahda

97. Due to the Player's termination of the Contract without just cause, Al Wahda is entitled to compensation arising from the Player's breach. The Contract does not address such a scenario, therefore the general principles enshrined by Article 17 RSTP must be applied.
98. The objective elements to consider are, the value of the Contract, the value of the Al Jazira Contract and the offer of "1,000,000 Euros submitted to Al Wahda for the transfer of the Player".
99. Further, Al Wahda stated: "To the sum calculated in application of said principles/elements, a sum must be added in consideration of the specificity of sport and a further sum in consideration of the fact that the breach occurred during the protected period (as the Contract was signed when the Player was 27 years of age and the breach occurred between the second and third contractual year)".
100. In relation to the specificity of sport, Al Wahda stated: "in the case 2007/A/1358, the CAS has recognized that "in the world of football, players are the main asset of a club, both in terms of their sporting value in the service for the teams for which they play, but also from a rather economic view" and concluded that "the asset comprised by a player is obviously an aspect which cannot be fully ignored when considering the compensation to be awarded for a breach of contract by a player"".
101. Al Wahda therefore claimed compensation of EUR 2 million, on the basis that:

- i. the remaining value of the contract was EUR 1,250,000;
- ii. the Player was the best player on the team and after terminating the Contract without just cause, he signed for the rival club of Al Jazira; and
- iii. the fact that the breach occurred during the protected period deserved an increase of the compensation awarded.

102. Due to the Player's unilateral termination of the Contract without just cause during the protected period, Al Wahda stated that sporting sanctions should be imposed on both the Player and Al Jazira in accordance with Articles 17(3) and 17(4) of the RSTP. However, Al Wahda recognised that the Panel could not impose such sporting sanctions and therefore only requested that the Panel make a declaration that "*sporting sanctions are, in principle, to be imposed on both respondents, due to the Player's breach of Contract*".

iii. Mitigated compensation

103. In the alternative, if the Player is found to have had just cause to terminate the Contract:
- i. Article 17(1)(ii) of the RSTP states that the value of the Al Jazira Contract should be taken in to account as a mitigating factor in any damages awarded. Al Wahda therefore requested that all remuneration paid from Al Jazira to the Player for the 2019/2020 season be set off;
 - ii. No additional compensation was due to the Player according to Article 17(1)(ii) of the RSTP as the Contract was not terminated according to Article 14bis of the RSTP for overdue payables.

B. The Player's submissions

104. In his Answer, the Player requested the following prayers for relief:

1. *Reject the Appeal lodged by [Al Wahda],*
2. *Partially upheld the [Appealed Decision],*

Consequently,

1. *Order [Al Wahda] to pay to the Player EUR 587,877 as outstanding salaries as well as MAD 47,530, plus 5% interest p.a. until the date of effective payment as follows:*
 - *5% p.a. as of 30 November 2018 on the amount of € 93,750*
 - *5% p.a. as of 28 February 2019 on the amount of € 20,652*
 - *5% p.a. as of 30 April 2019 on the amount of € 20,884*

- 5% p.a. as of 30 June 2019 on the amount of € 77,591
 - 5% p.a. as of 19 July 2019 on the amount of MAD 47,530.
2. Order [Al Wahda] to pay to the Player EUR 978,272 as compensation for breach of contract, plus 5% interest p.a. as of 25 July 2019 until the date of effective payment;
 3. Order [Al Wahda] to bear the entire costs of proceedings before the Court of Arbitration for Sport;
 4. Award a contribution to be established at its discretion to cover the legal fees and expenses of the Player before the FIFA DRC and before the Court of Arbitration for Sport”.
105. In summary, the Player submitted the following arguments in support of its Answer to Al Wahda’s Appeal:
- i. Breach of Contract by Al Wahda***
- a) Outstanding salaries*
106. The Player stated that he did not receive his salary for November 2018, or the remainder of the salaries of February, April, and June 2019.
107. The Player sent Al Wahda several reminders and default notices in order to settle the present case in an amicable manner, as set out below.
108. On 12 February 2019, the Player sent Al Wahda an email asking for the payment of his signing bonus payable on 31 July 2018, the salaries of December 2018 and January 2019, as well as the remaining payment of “his winning bonuses for the late season”.
109. The Player admitted that the salary of December 2018 was paid on 9 January 2019 and that the salary of January 2019 was paid on 13 February 2019.
110. At the time of sending the email of 12 February 2019, the Player believed that the November 2018 salary had been paid on 8 January 2019. However, it has now been established that the payment of 8 January 2019 corresponded to the December 2018 salary and therefore the salary for November 2018 remained outstanding.
111. On 11 March 2019, the Player sent Al Wahda an email reminding it that sums were still outstanding, stating: “delay up to this day of two months for a sum of 187 500 euros. (...) signature bonus that amounts to a sum of 187 500 Euros (...) winning bonuses for the last matches of each sports season (...)”.
112. The Player’s lawyer sent Al Wahda two default notices:
- i. On 30 June 2019, stating that part of the Player’s remuneration remained outstanding and requesting Al Wahda, *inter alia*, to pay the Player’s salary of November 2018 within 10 days; and

- ii. On 3 July 2019, requesting Al Wahda to pay the salaries of November 2018 and June 2019 within 15 days.
113. The Player stated that at this time Al Wahda acknowledged that several salaries were outstanding in letters to other clubs to which Al Wahda tried to transfer the Player.
114. However, Al Wahda did not reply to the Player's lawyer and refused to pay to the Player his outstanding salaries.
115. The Player stated that the bank receipt of 30 May 2019 which was submitted as supporting evidence for Al Wahda's payment of the November 2018 salary, was available to Al Wahda during the proceedings before the FIFA DRC. However, this evidence was not submitted before the FIFA DRC. Therefore, the Player argues that this evidence should be excluded pursuant to Article R57(3) of the CAS Code, which states that *"The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered"*.
116. The Player confirmed that he did receive a payment on 30 May 2019, however that this corresponded to the May 2019 salary as it does not reference 'November', whilst all other salary payments indicate the month to which each refers.
117. Regardless, even if the payment made on 30 May 2019 was considered to correspond to the outstanding payment for the November 2018 salary, the following payments were still outstanding on 19 July 2019:
 - i. EUR 20,652 corresponding to the remaining balance of the monthly salary of February 2019,
 - ii. EUR 20,884 corresponding to the remaining balance of the monthly salary of April 2019,
 - iii. EUR 77,591 corresponding to the remaining balance of the monthly salary of June 2019.
118. The unpaid amounts in relation to the February and April 2019 salaries were argued to be as a result of legitimately imposed penalties on the Player. The Player claimed that the penalties imposed were unjustified and did not follow the procedure as set out in Article 7 of the Contract.
119. The penalty deducted from the February 2019 salary payment was imposed due to the Player missing an unspecified meeting with the team trainer; however, the Player claims that he was never invited to the meeting.
120. The penalty deducted from the April 2019 salary payment was imposed due to the Player allegedly missing training sessions on 1 and 2 March 2019. The Player attended training on 1 and 2 March 2019 and was absent for training on 27 and 28 February 2019 due to medical reasons which Al Wahda were informed of.

121. The Player claimed that: *“In any case, those penalties are null and void, since Al Wahda breached Article 7 of the Contract, whereby the Player “shall be notified in writing whereupon the later shall have the right to appeal the same before the competent committees at the association or FIFA”. Indeed, on the one hand, the Player was never informed by Al Wahda of his right to challenge the penalty, and, on the other hand, the penalty was deducted from the Player’s salary, in February 2019, before he had even been informed of a penalty”.*
122. The deduction to the June 2019 salary was allegedly justified on the grounds that the Player allegedly announced on several occasions his will to leave Al Wahda. The Player claimed that this deduction was unjustified.
123. Al Wahda claimed that the Player announced his intention to leave Al Wahda during a camp in Bahrain, but no evidence was submitted in support of this statement.
124. Al Wahda claimed that the Player posted a picture on Facebook on 14 June 2019 announcing the end of his career with Al Wahda. However, the Player claimed that he does not have a Facebook page and this post was not made by him. The Player also claimed that he *“always remained at Al Wahda’s disposal and never announced his will to leave Al Wahda”.*
125. The Player stated that:
- “We submit that the Appealed Decision, whereby the FIFA DRC held that “Al Wahda did not file any proof of payment of the player’s salaries of November 2018, or the remainder of the salaries of February, April, and June 2019. Contrarivise, the DRC noted that the player’s submissions are a lot more substantiated, and concluded that he particularly met his burden of proof”, should be upheld in this regard”.*
- b) *Exclusion of the Player*
126. The Player stated that he was excluded from the team as follows:
- i. On 11 February 2019, the Player was evicted from his home because Al Wahda has not paid his rent for four months.
 - ii. From 24 February 2019, the Player was denied access to the training field, forced to train separately from the rest of the team and ordered to respect an individual training plan.
 - iii. On 24 February 2019, Al Wahda publicly excluded the Player from the Asian Championship for feigning injury, which was false.
127. Al Wahda claimed that it imposed an individual training to the Player in order for him to *“regain suitable fitness conditions”.* Al Wahda pretended that the long-lasting exclusion of the Player was allegedly justified by his lack of performance but the club has not submitted any proof of this fact and therefore has not met the burden of proof required when claiming a right form an alleged fact, as per Article 12(3) of the FIFA Procedural Rules.

128. The Player submitted that regardless of such proof, according to FIFA jurisprudence (DRC 11 March 2005, no. 3542), a player's lack of performance cannot justify a reduction of the salary or a long-lasting exclusion from the team.
129. The Player stated that the length of time that a player is excluded from a club and whether payments to the player are pending at the time of the exclusion are considered by FIFA deciding bodies as important in the assessment of whether a player was excluded legitimately and whether a club's behaviour constitutes a breach of contract (DRC 26 April 2012, no. 412871).
130. In June 2019, the Player was only granted a two-week holiday in contrast to the rest of the team being granted a one-month holiday.
131. On 17 June 2019, Al Wahda notified the Player of a new individual training programme which required the Player to train alone, without any football coach, outside under extreme conditions (40 degrees) in Abu Dhabi in June and July 2019, whereas the rest of the team was training in Holland, in a training camp, from 25 June 2019 until 20 July 2019.
132. The Player disputed the assertions of Al Wahda and stated that: *"the Player always respected his obligations towards Al Wahda. He always attended the trainings and never left Al Wahda without the Appellant's authorization"*.
133. The Player noted that Al Wahda has claimed that the Player:
 - i. breached the Contract by going back to his country without authorization between 10 and 13 October 2018;
 - ii. refused to play during the match against Shabab Al Ahly Dubai on 1 November 2018;
 - iii. travelled without authorization on 6 December 2018; and
 - iv. feigned injury during a match against Al Wasl on 21 February 2019.
134. In response the Player stated that Al Wahda has not provided sufficient evidence in relation to any of these statements and have therefore not met the required burden of proof.
135. In relation to settlement negotiations in June 2019, the Player agreed to consider Al Wahda's proposals to move to another club. However, after meetings, the Player found out that Al Wahda was trying to transfer him under any conditions without his consent. The Player refused to join another club under the conditions imposed by Al Wahda such as renouncing his outstanding salary payments and joining a club in a lower division with a lower salary.
136. The Player stated that he and Al Jazira were not in contact before August 2019 and that the termination of the Contract was only due to the repeated breaches committed by Al Wahda.
137. The Player noted that:

“In its Decision, the FIFA DRC observed in particular:

“that the Player granted Al Wahda in writing, on 3 July 2019, with a deadline of 15 days to cure its default, to no avail” (...)

“that at all times the player questioned the conduct of Al Wahda, and requested that the situation (either financial or training- related) be solved by Al Wahda, to no avail. The Chamber further noted that the player did not refrain from taking part in individual training sessions, but still was separated from the remainder of the squad during a camp in the Netherlands as he was forced to stay in the UAE”.

In continuation, the FIFA DRC “took due consideration of the fact that Al Wahda, for its part, did not submit any comprehensive evidence to effectively rebut the player’s claim. In particular, the Chamber outlined that no sufficient evidence was produced by Al Wahda to justify the player’s alleged sanctions and salary deductions” (...), that “even if the player was in default, - which it highlighted was not the case as per the evidence on file – the player’s actions could not subject him to further reprimands from Al Wahda”.

Finally, the FIFA DRC concluded that “it noteworthy that Al Wahda did not file any proof of payment of the player’s salaries of November 2018, or the remainder of the salaries of February, April, and June 2019”. (...). Contrariwise, the DRC noted that the player’s submissions are a lot more substantiated, and concluded that he particularly met his burden of proof”.

ii. Termination of the Contract with just cause by the Player

138. In his Answer the Player relied on Article 14 of the RSTP:

“in the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s)”.

139. The Player additionally noted that according to Article 14 of the RSTP, any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty to terminate the contract with just cause.

140. The Player submitted that he had just cause to terminate the Contract due to:

“- the Player had put Al Wahda in default by letter dated 30 June 2019 to pay his pending remuneration, and that, on 3 July 2019, the Player granted Al Wahda in writing, on 3 July 2019, with a deadline of 15 days to cure its default.

- despite those default notices, Al Wahda did not pay the requested salaries and does not submit any tangible proof in support of the justification of the penalties and the deductions made on the Player’s remuneration.

- the Player always respected the Contract and Al Wahda’s instructions and never expressed his will to leave Al Wahda.

- through its conduct, Al Wahda clearly tried to force the Player to terminate the contract”.

141. The Player therefore claimed that he was entitled to terminate the Contract on 19 July 2019 based on Articles 14 and 14bis of the RSTP.

iii. Outstanding salaries and compensation for breach of contract with just cause to be paid by Al Wahda

142. The Player stated that at the time of the termination of the Contract, EUR 212,877 was outstanding, in relation to the following payments:

- i. EUR 93,750 corresponding to the salary of November 2018;
- ii. EUR 20,652 corresponding to the remaining balance of the monthly salary of February 2019;
- iii. EUR 20,884 corresponding to the remaining balance of the monthly salary of April 2019; and
- iv. EUR 77,591 corresponding to the remaining balance of the monthly salary of June 2019.

143. The Player claims that “Al Wahda should be ordered to reimburse the amount of MAD 47,530 corresponding to the flight ticket Abu Dhabi (UAE) / Casa (Morocco) of 19 July 2019 bought by the Player in accordance with Article 2.2 [sic] of the Contract”.

144. The Player claimed that as the Contract does not refer to an amount of compensation payable in the event of a breach of contract, he is entitled to compensation in accordance with Article 17 of the RSTP.

145. In calculation of such compensation, the Player calculated that the remuneration due to the Player until the end of the Contract was EUR 1,500,000 under the Contract. The Player signed a contract with Al Jazira, covering the period until the end of the term of the Contract, in which the Player was entitled to reimbursement of EUR 1,200,000. However, the Player only received EUR 1,021,728 due to non-payment and salary reductions allegedly because of the COVID-19 pandemic.

146. The Player therefore calculated that he should be compensated the difference of EUR 478,272.

147. Further, the Player claimed that “based on, Article 17.1. lit ii of the FIFA regulations, which states that “subject to the early termination of the contract being due to overdue payables, the player shall be entitled to an additional compensation in addition to the compensation, corresponding to three monthly salaries, and, in case of egregious circumstances, the additional compensation may be increased up to a maximum of six monthly salaries”, we submit that the Player should be entitled to an additional compensation of six months in view of:

- the chaotic situation in which the Player was placed for many months;

- the recurring bad faith opposed by Al Wahda which tried by any means to avoid having to pay the Player's wages".

148. The Player noted that: "[i]n its decision, the FIFA DRC observed that the Player "was put in a strained situation by Al Wahda, whereby he was deliberately excluded from Al Wahda's camp in the Netherlands and forced to remain in the UAE". Additionally, the Chamber considered that allowing the player only 15 days of vacation whilst awarding the rest of the players 30 days, as well as the player's eviction from his apartment due to Al Wahda's lack of payment of the player's rent in line with the contract, amounted to egregious circumstances as per art. 17. par. 2 of the Regulations".

149. The FIFA DRC decided to award the Player EUR 500,000 (corresponding to four monthly salaries). The Player requested for the Panel to partially set aside the Appealed Decision and find that Al Wahda should be ordered to pay the total amount of EUR 978,272 calculated as follows:

- i. EUR 478,272 as compensation for breach of the Contract;
- ii. EUR 500,000 as additional compensation.

150. In his concluding remarks, the Player asked the Panel to consider the following:

- i. "Through its conduct, the Appellant repeatedly breached the contract and deliberately tried to force the Player to terminate the contract, thus enabling the Respondent 1 to terminate the Contract with just cause on 19 July 2019 in accordance with Article 14 of the FIFA regulations".
- ii. "In spite of formal notices to pay within 15 day, the Appellant unlawfully failed to pay the Player more than two monthly salaries, allowing the Player to terminate the Contract accordance with Article [14bis] of the FIFA regulations and the FIFA and the CAS jurisprudence".

151. The Player requested the Panel to partially uphold the Appealed Decision, and order that Al Wahda should pay him in accordance with his prayers for relief.

C. Al Jazira's submissions

152. In its Answer, Al Jazira requested the following prayers for relief:

- (i) Find that [the Player] terminated his employment contract with Al Wahda Club with just cause;
- (ii) In the unlikely event that it is considered that [the Player] terminated his employment contract with Al Wahda Club without just cause, find that Al Jazira established that it has not induced the Player to terminate his employment contract with Al Wahda Club;
- (iii) Find that as the Player was not induced by Al Jazira to terminate his employment contract with Al Wahda Club, no compensation shall be awarded to the latter and no sanctions shall be imposed on Al Jazira from the application of article 17.4 of the RSTP.

(iv) *In any case, Al Wahda to bear the cost of this Arbitration Proceedings in full, and Al Jazira to be awarded EUR 12,000 as a contribution to the attorney fees”.*

153. In summary, Al Jazira submitted the following arguments in support of its Answer to Al Wahda’s Appeal:

i. The existence of just cause

154. Al Jazira referred the Panel to Article 14 of the RSTP in determining when a contract may be terminated: *“where there is just cause”*. Al Jazira referred to Swiss law to determine the meaning of the term ‘just cause’, specifically, Article 337(1) and (2) of the SCO, which state:

“1. *Both employer and employee may terminate the employment relationship with immediate effect at any time for good cause; the party doing so must give his reasons in writing at the other party’s request.*

2. *In particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice”.*

155. Al Jazira stated that the interpretation of what amounts to a “good cause” considers whether *“the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued”*.

156. It is submitted that the failure to pay at least two months salaries, preventing the Player from training with the team and submitting him to absurd training conditions amounts to a situation that *“did not reasonably permit an expectation that the employment relationship between the Player and [Al Wahda] be continued”*.

157. Further, the Player met the requirements of Article 14bis of the RSTP by putting Al Wahda in default in writing and granting them at least 15 days to proceed with the payment of the outstanding amounts, that were then not paid.

158. As the Player had just cause to terminate the Contract, Al Jazira shall not be held to be jointly and severally liable for the payment of any compensation.

ii. Al Jazira did not induce the Player to terminate the Contract with Al Wahda

159. In the event the Panel finds that the Player did not have just cause to terminate the Contract, Al Jazira should not have sporting sanctions imposed upon it.

160. Al Wahda has not explained why Al Jazira should be held as being jointly and severally liable for the payment of compensation. Al Wahda has failed to prove that Al Jazira effectively induced the Player to terminate the Contract.

161. Article 17(4) of the RSTP operates as to presume *“that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach”*.

162. Al Jazira stated that the wording of Article 17(4) of the RSTP suggests that the relevant club would know about the contractual position of the Player at the time of the signing of the new contract. In refuting this, Al Jazira stated:
- i. The Player first contacted Al Jazira through the Player's agent, not the other way around.
 - ii. The Player's new contract with Al Jazira (i.e. the Al Jazira Contract) was entered into several days after the termination of the Contract.
 - iii. The Player did not improve his contractual conditions by terminating the Contract with Al Wahda and signing the Al Jazira Contract. The Player actually reduced his income by EUR 400,000 and only signed until the end of the term of the Contract, therefore did not benefit.
163. Al Jazira therefore submitted that the Player was unlikely to have been induced into termination of the Contract, only to enter into a contract which was less beneficial for him.

iii. *Exhibit 24 of Al Wahda's submissions*

164. Al Jazira also strongly contested the validity and admissibility of Exhibit 24 (alleged payment receipt of the Player's November 2018 salary) to Al Wahda's submissions, arguing that (i) the exhibit should have been submitted before FIFA, and (ii) it considered that the exhibit was fabricated specifically for the purposes of this arbitration as the information contained in the alleged payment receipt contradicts the information in the Player's bank account for that period.

iv. *Conclusion*

165. Due to the above, Al Jazira requested for the Panel to confirm the Appealed Decision in its entirety.

VI. JURISDICTION OF THE CAS

166. Article R47 of the CAS Code provides 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.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".

167. Moreover, Al Wahda relied on Articles 57 and 58 of the FIFA Statutes. The jurisdiction of CAS was not disputed by the parties. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by the parties.
168. It follows that the CAS has jurisdiction to hear this dispute.

VII. ADMISSIBILITY

169. Article R49 of the Code reads as follows:

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

170. Article 58(1) of the FIFA Statutes provides 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”.

171. The grounds of the Appealed Decision were notified to the Parties on 15 June 2020 and the Appellant submitted its Statement of Appeal on 6 July 2020, *i.e.* within the statutory deadline of Article 58(1) of the FIFA Statutes.

172. Furthermore, the Statement of Appeal complied with the requirements of Articles R48 and R64.1 of the Code and the Respondents did not object to the admissibility of the appeal.

173. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

174. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

“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”.

175. The Parties in this dispute agreed that the various rules and regulations of FIFA and Swiss law were applicable in accordance with Article R58 of the CAS Code. The Panel observes that article 57(2) of the FIFA Statutes (2016 edition) stipulates 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”.

176. As such, the Panel is satisfied to primarily apply the various regulations of FIFA, in particular the FIFA RSTP (edition June 2019) and, subsidiarily, Swiss law should the need arise to fill a possible gap or *lacuna* in the various regulations of FIFA.

IX. MERITS OF THE APPEAL

A. The Main Issues

177. The Panel notes that the main issues before it are:

- i. Did the Player have just cause to terminate the Contract?
- ii. What are the financial consequences of the termination of the Contract?
- iii. What sporting sanctions, if any, are applicable?

(i) *Did the Player have just cause to terminate the Contract?*

178. The Panel notes that the March 2020 edition of the RSTP is relevant to the matter at hand. This version contains an example of conduct by a club that would provide a player with “just cause”. Article 14bis states the following:

“1. In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.

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

179. Al Wahda submitted that the Player refused to play in games, feigned injuries, had been legitimately fined for his behaviour, had signalled his intent to leave the club on social media and had insufficient arrears of salary to trigger Article 14bis of the RSTP, having recently been paid his signing on fee balance and the November 2018 salary in May 2019, all prior to the termination.

180. The Player, on the other hand, submitted that he had in excess of 2 months’ salaries due to him, he had been evicted from his apartment as the club had not paid his rent, he had been made to train alone, received half of the holidays that his team mates received, that the fines issued on him by the club were illegitimate and that Al Wahda was looking to transfer him.

181. The Panel heard from a number of witnesses, but gained most from the former coach, Mr Ten Cate, whose statement came across credible and convincing. When the coach arrived at

Al Wahda, in January 2019, the Club was second from bottom of the league and the Player performed well, scoring in the coach's first game. The Player was one of the best players at the club. However, his performances and motivation soon dropped off. Mr Ten Cate spoke to the Player who stated that he had problems with the Club. The Player mentioned that he was having some problems with payments, but that he also wanted to leave. The coach suspected that he was not injured when he said he was, but acknowledged that he is not a doctor. The Player was not participating properly in training either, so the coach left him out, as that type of behaviour can affect the rest of the team.

182. The Panel notes from both Mr Alhamadi and Mr Al Hanaei that the Player had requested a transfer before Mr Ten Cate came to the Club, but his request was turned down. It appears that from around that time, the relationship between Al Wahda and the Player started to deteriorate. The Panel notes that there were a number of late salary payments (including one from November 2018, which Al Wahda claimed it settled in May 2019, however the Panel had doubts about that, as the 30 May payment seemed to relate to the Player's May salary), and that the Player was allowed just 15 as opposed to 30 days of vacation, as was the case with the rest of the squad. However, the Panel was not convinced that the Player was ever evicted from his apartment, rather that the landlord had complained, but was presumably then paid any arrears of rent. Further, any training alone appeared to be more as a result of the Player's own attitude with Mr Ten Cate and his team mates. It was clear to the Panel that Mr Ten Cate thought highly of the Player and wanted him in the team to help avoid relegation, but it was also clear to the Panel that the Player wanted away from the Club, so it could understand why the coach would not want him affecting the other players until or unless his attitude changed.
183. All that noted, the primary question before the Panel is whether the conditions of Article 14bis of the RSTP had been triggered, *i.e.* were there at least 2 months monies due to the Player when he terminated and had he sufficiently notified the Club before he terminated?
184. The Panel notes that despite claiming the second year's signing on bonus in June 2019, it was not payable until 31 July 2019, *i.e.* after the termination date of 19 July 2019. However, as at that date, the Player was due his November 2018 salary (or his May 2019 salary, as only one payment was made in May) along with his June 2019 salary. The Player did receive a small portion of his June 2019 salary, as the Club claimed to have legitimately withheld the rest. However, it appeared to the Panel that the 2 fines that were issued to the Player by Al Wahda were already deducted from his February and April 2019 salaries, so the June 2019 salary was due in full.
185. The Panel considered the evidence as regards the payment made in May 2019. There was nothing that demonstrated it related to the outstanding November 2018 salary, rather it appeared to have been paid in accordance with the Contract at the end of May for the month just worked.
186. As regards the fines, the Panel notes the Contract stipulated that Al Wahda could discipline the Player for many different acts or omissions. However, the first fine in February seemed to be for the Player allegedly missing a day of individual training, which the Player needed as he apparently had to regain his fitness, despite having been selected to play for the team a few

days before. The Player did write to the Club on 7 March 2019 “rejecting the fine”, yet it appears there was no appeal convened in accordance with the Contract to deal with his appeal. The second fine appears to relate to his behaviour in March 2019, but again he was not provided with an opportunity to appeal this either. The Panel agrees with the position of FIFA in the Appealed Decision that these fines should not have been taken and the sums remain due to the Player.

187. As such, the Panel is satisfied that there were in excess of two outstanding monthly salaries as at the termination date and notes that there had been a number of other months that had not been paid on their due date too.
188. The Panel also notes that the Player did issue a demand for his monies on 3 July 2019. That was ignored by the club and the Player terminated his contract 16 days later.
189. Whilst the behaviour of the Player may well have had an influence on the Club, Al Wahda allowed in excess of 2 months salaries to go unpaid and did not react to the 15 days warning by correcting that situation and left the Player with just cause to terminate the Contract, which he duly did.

(ii) What are the financial consequences of the termination of the Contract?

190. The Panel notes that FIFA, in the Appealed Decision awarded the Player the November 2018 salary and the balance of the June 2019 salary, along with the return of the sums deducted by way of the two fines, as his arrears as at the termination date. The Player also had to pay for his own flight ticket home, when flight tickets were to be provided for him under the Contract.
191. The Panel sees no reason to deviate from that part of the Appealed Decision and confirms the obligation on Al Wahda to pay the Player EUR 212,877 plus MAD 47,530, plus interest at the rate of 5% *p.a.* as follows:
- on the amount of EUR 93,750 as from 30 November 2018 until the date of effective payment;
 - on the amount of EUR 20,652 as from 28 February 2019 until the date of effective payment;
 - on the amount of EUR 20,884 as from 30 April 2019 until the date of effective payment;
 - on the amount of EUR 77,591 as from 30 June 2019 until the date of effective payment; and
 - on the amount of MAD 47,530 as from 19 July 2019 until the date of effective payment.

192. Turning next to the question of compensation for the Player, the Panel reminds itself of Article 17 of the RSTP, which states as follows:

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

Bearing in mind the aforementioned principles, compensation due to a player shall be calculated as follows:

i. in case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated;

ii. in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the “Mitigated Compensation”). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the “Additional Compensation”). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract”.

193. The Panel notes that there was no specific provision within the Contract such as a liquidated damages clause or the like; that the normal starting position is to consider the balance of the remuneration under the Contract, less mitigation, but also to see if the Additional Compensation provisions were triggered, as the Player terminated the Contract with just cause, as there were overdue payables.
194. However, Article 17(1) of the RSTP provides the Panel with wide discretion and it can apply any other objective criteria too. The Panel notes the behaviour of the Player was questionable. It seemed clear that he wanted away and once he was denied this, he ceased to fully provide his services to Al Wahda, looking to pressure it to transferring him. His attitude contributed to the ultimate breakdown of the employment relationship between the Club and the Player. In this regard, the Panel considers it disappointing that the Player did not attend the hearing. As a consequence thereof, the Player did not corroborate his legal position nor did he rebut the evidence provided by the club.
195. The Panel notes that the ‘Mitigated Compensation’, i.e. the difference between the value of the Player’s contract with Al Wahda and Al Jazira for the period corresponding to the time remaining on the prematurely terminated contract with Al Wahda amounted to EUR 300,000. However, on account of the Player’s conduct set out above, the Panel is not inclined to award the Mitigated Compensation to the player.

196. Indeed, the Panel's position is supported by Swiss law, specifically, Article 44 (1) of the SCO, which provides as follows.

"Where the person suffering damage consented to the harmful act or circumstances attributable to him helped give rise to or compound the 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".

197. Al Wahda were careless to leave themselves exposed to just cause by not reacting to the Player's Article 14bis RSTP notice, but otherwise, it appeared to the Panel that the Player contributed a fair share towards the relationship coming to an end. This warrants an entire dispensation from the award of 'Mitigated Compensation' to the Player.

198. Nonetheless, with respect to the 'Additional Compensation' provided for by Article 17(1)(ii) of the RSTP, the Panel notes that:

- i. It applies in the specific scenario of *"early termination of the contract being due to overdue payables"*; and
- ii. In such event, the 'Additional Compensation', bears the force of a mandatory provision and must always be applied (*"[...] the player shall be entitled to an amount corresponding to three monthly salaries [...]"*).

199. In other words, in the event that a player is deemed to have terminated his contract with just cause due to overdue payables by the club, he *must* be awarded the 'Additional Compensation' of three monthly salaries, in accordance with Article 17(1)(ii) of the RSTP.

200. Having established (at paragraphs 178-189 above) that the Player was entitled to terminate the Contract with just cause on account of Al Wahda's failure to pay him in accordance with the Contract, the Panel is guided by Article 17(1)(ii) of the RSTP and considers it appropriate to award the Player EUR 375,000, an amount equivalent to three months' salary under the Contract.

201. That being stated, the Panel is aware of the second part of Article 17(1)(ii) of the RSTP, which provides that the 'Additional Compensation' payable to a player may be increased up to six monthly salaries, where there are *"egregious circumstances"*.

202. Clearly, the question of whether such *"egregious circumstances"* exist is one that must turn on the facts of each case. As previously established at paragraphs 182, 194 and 197 above, the Panel notes that the Player was responsible, at least in part, for the breakdown of the employment relationship with Al Wahda.

203. Further, the ability to increase the 'Additional Compensation' is discretionary (*"In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries"* (emphasis added)).

204. The Panel is of the opinion that the egregious circumstances, to the extent that there were any, were effectively 'netted off' by the Player's actions, which contributed to the termination

of the Contract. The Panel therefore does not consider it appropriate to increase the Player's 'Additional Compensation' on account of egregious circumstances, pursuant to Article 17(1)(ii) of the RSTP.

205. In summary, the Panel deems it fit to award the mandatory 'Additional Compensation' aggregating to EUR 375,000, but without increasing it further or awarding any 'Mitigated Compensation', for reasons set out above.

(iii) *What sporting sanctions, if any, are applicable?*

206. The Panel determines that as Al Wahda was unsuccessful in convincing the Panel that the Player had terminated without just cause, then the potential to consider sporting sanctions against the Player and/or Al Jazira falls away.

B. Conclusion

207. In conclusion, the appeal of Al Wahda is partially upheld and the Appealed Decision is amended by the cancellation of the compensation awarded by FIFA, leaving Al Wahda to pay the Player EUR 587,877 plus MAD 47,530, plus interest at the rate of 5% *p.a.* as follows:

- on the amount of EUR 93,750 as from 30 November 2018 until the date of effective payment;
- on the amount of EUR 20,652 as from 28 February 2019 until the date of effective payment;
- on the amount of EUR 20,884 as from 30 April 2019 until the date of effective payment;
- on the amount of EUR 77,591 as from 30 June 2019 until the date of effective payment;
- on the amount of MAD 47,530 as from 19 July 2019 until the date of effective payment; and
- on the amount of EUR 375,000, amounting to three monthly salaries due to the Player, as from the date of this decision until the date of effective payment.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Al Wahda FSC Company on 6 July 2020 against the decision rendered by the FIFA Dispute Resolution Chamber on 23 April 2020 is partially upheld.
2. The decision rendered by the FIFA Dispute Resolution Chamber on 23 April 2020 is partially amended, leaving Al Wahda to pay the Player EUR 587,877 plus MAD 47,530, plus interest at the rate of 5% *p.a.* as follows:
 - on the amount of EUR 93,750 as from 30 November 2018 until the date of effective payment;
 - on the amount of EUR 20,652 as from 28 February 2019 until the date of effective payment;
 - on the amount of EUR 20,884 as from 30 April 2019 until the date of effective payment;
 - on the amount of EUR 77,591 as from 30 June 2019 until the date of effective payment;
 - on the amount of MAD 47,530 as from 19 July 2019 until the date of effective payment;
 - on the amount of EUR 375,000, amounting to three monthly salaries due to the Player, as from the date of this decision until the date of effective payment.
3. (...).
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.