



Arbitration CAS 2020/A/7393 Al Salmiya Club v. Oday Abraham Dabbagh, award of 22 September 2021

Panel: Mr Fabio Iudica (Italy), Sole Arbitrator

Football

Termination of the employment contract with just cause by the player

Release of players to national teams

Consequences of the absence of the player with regards to the financial obligations of the club

- 1. In accordance with Annex 1 of the FIFA Regulations on the Status and Transfer of Players, the release of players to national teams is mandatory for clubs when players receive a call-up from the relevant association.**
- 2. Any absence of a player from a club does not constitute any valid reason for the club not being able to make the relevant payment. The club is not legitimated to impose the physical presence of the player in order to comply with its financial obligations.**

I. INTRODUCTION

1. This appeal is brought by Al Salmiya Club against the decision rendered by the Dispute Resolution Chamber (the “DRC” or the “Chamber”) of the Fédération Internationale de Football Association (“FIFA”) on 16 July 2020 (the “Appealed Decision”), regarding an employment-related dispute arisen with Mr Oday Abraham Dabbagh.

II. PARTIES

2. Al Salmiya Club (the “Appellant” or the “Club”) is a professional football club, based in Salmiya, Kuwait, competing in the Premier League Kuwaiti Football Championship. It is a member of the Kuwait Football Association (the “KFA”) which in turn is affiliated with FIFA.
3. Oday Abraham Dabbagh (the “Respondent” or the “Player”) is a professional football player of Palestinian nationality, born on 3 December 1998 in Jerusalem, Israel.

The Appellant and the Respondent are hereinafter jointly referred to as the “Parties”.

III. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' oral and written submissions on the file and relevant documentation produced in this appeal. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this award only to the submissions and evidence he considers necessary to explain his reasoning.
5. On 23 July 2019, the Club and the Player concluded an employment contract valid as from the date of signing until 30 June 2020 (the "Employment Contract").
6. According to Article 5 of the Employment Contract, the Player was entitled to receive a sign on fee of USD 60,000 as well as an amount of USD 140,000 in ten monthly instalments of USD 14,000 each, payable at the end of each month from August 2019 until May 2020.
7. On 11 November 2019, Mr Hussein Abusarhan, the Player's Intermediary, warned the Club in writing that unless the Player's outstanding amount, corresponding to 4-month salaries was settled on the same day, the Player would take legal actions against the Club.
8. On 16 November 2019, Mr Emad Hanayneh, acting on behalf of the Player, in his capacity of legal attorney, put the Club in default of paying the Player's salaries for August, September and October 2019, corresponding to a total outstanding amount of USD 42,000.
9. By the relevant warning letter, which was also notified to the KFA, the Club was granted a deadline of 15 days to settle the debt by wire transfer to the bank account in the name of the said Player's lawyer, failing which, the Player would terminate the Employment Contract for breach of contract according to the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP").
10. On 4 December 2019, the Club replied to Mr Emad Hanayneh in writing, claiming that the Player had failed to show up at the Club's since 28 November 2019 and refused to receive his salaries. In this respect, the Club affirmed that due to the Player's absence and unavailability, it had contacted his agent several times "*on the need to come to the State of Kuwait and to observe commitment to exercises for receiving the amounts of money owed to him*".
11. According to the content of the letter, the Club had already invited the Player, through his agent, to show up in person in order to receive the outstanding monies in cash, but to no avail. In the letter, it was also affirmed that the Player's agent had requested the Club to transfer the relevant amount to the bank account of the Player's lawyer, which however, had not been confirmed by the Player despite the Club's request. The relevant part of the letter reads as follows: "*Although the contractor was frequently notified of the need for the player to come and to receive the amount owed in cash, the player's contractor insisted on transferring the amount to your Bank Account (which has not been confirmed by the player himself and this account is the same Bank Account to which the amounts owed are transferred to him)*". Finally, the Club concluded that the Player was responsible of the following conducts, in violation of his contractual obligations: a) not

showing up as a way to escape from the hand delivery of the money in order to prevent the Club from meeting the 15 days deadline to remedy its default; b) failing to provide an approved bank account; c) refusing, through his agent, the Club's offer to pay the sums; d) entering Kuwait on 28 November 2019 but refusing to return to his place of work at the Club. As a consequence, the Club formally put the Player in default of performing his sporting services in favour of the Club and receiving his outstanding salaries, granting him a deadline of 24 hours to remedy such breach, failing which, the Club would bring the matter before the relevant sports authorities in order to declare the termination of the Employment Contract for just cause.

12. Also on 4 December 2019, after the expiration of the 15-day deadline, the Player terminated the Employment Contract in writing, in accordance with Article 14bis, paragraph 1, of the FIFA RSTP, claiming that the Club was in default of payment of 4 monthly salaries amounting to USD 56,000.

IV. THE PROCEEDINGS BEFORE THE FIFA DRC

13. On 7 December 2019, the Player lodged a claim in front of FIFA against the Club requesting the following:
 - USD 56,000 as the salaries for August, September, October and November 2019;
 - USD 84,000 as the residual value of the Employment Contract,
 - default interests from each due date until effective payment;
 - The imposition of sanctions on the Club in accordance with Article 12bis of the FIFA RSTP.
14. On 17 December 2019, the Club lodged a counterclaim, requesting the reimbursement of expenses incurred in connection with the Player according to the Employment Contract, as well as the payment of compensation for breach of contract, as follows:
 - an advance payment of USD 60,000;
 - KWD 5,400 corresponding to the apartment rental for the Player for a period of one year from 1 July 2019 until the end of the Employment Contract;
 - KWD 2,4000 corresponding to the car rental for the Player for a period of one year from 1 July 2019 until the end of the Employment Contract;
 - Compensation for breach of contract in line with Article 14, paragraph 2, of the FIFA RSTP;
 - Compensation for *“material and moral damages suffered because of the player’s announcement of joining another club in the state of Kuwait (...) which has damaged our club’s reputation among the club fans and the sports street”*.

15. According to the Player, he had terminated the Employment Contract with just cause, based on Article 14bis of the FIFA RSTP due to the Club's failure to pay his salaries for the months of August, September and October 2019, amounting to USD 42,000, notwithstanding the 15-day deadline granted to the Club to remedy its debt.
16. The Club argued that the letter of formal notice dated 16 November 2019 requesting payment of the Player's salaries to the bank account of the Player's representative was not accompanied by any power of attorney. Moreover, the Club could not verify the identity and legitimacy of such representative due to the Player's absence and unavailability at that time. The Club also contested that the Player refused to provide his bank details and apparently requested the Club to "*hand over the monthly salary of one of his friends to hand it to him by hand*" and that, notwithstanding his return to Kuwait on 28 November 2019, he did not resume work at the Club and did not attend the team trainings. In addition, the Club pointed out that it resulted that the Player had returned to Kuwait to sign with another Club and that the date of signing coincided with the expiry date of the 15-day deadline for payment given to the Club with the letter of formal notice on 16 November 2019. In any event, the Club maintained that the letter of formal notice sent by the Player's alleged representative was invalid because of the absence of any power of attorney and that the Club's failure to make the relevant payment was a consequence of the Player's refusal to endorse the bank account indicated for the payment of the outstanding amount. Finally, the Club maintained that the Player had breached the Employment Contract due to his recurrent absences and failure to participate in some Club's matches. In this respect, it was alleged by the Club that the Player had left Kuwait, in September 2019, because he had an injury and wanted to be treated in his country, "*without abiding the instructions of the team management*". Therefore, according to the Club, he stopped performing his contractual obligations. On the other side, the Club acknowledged that in the meantime, the Palestine Football Association had asked the release of the Player during the period between 11 and 19 November 2019, for the participation in the World Cup and the Asia Cup, and provided evidence that the Player joined his national team for the World Cup qualifiers. The Club further maintained that on 3 December 2019, it tried to contact the Player's agent in order to request the Player's presence, but to no avail and that, allegedly, on 4 December 2019, the Player returned the keys of his apartment and car to the Club, announcing the signing of an employment contract with a new club on his social media account.
17. In his rejoinder, the Player insisted that the Club was in default of paying his salaries and disregarded his request to transfer the relevant amount to his attorney's bank account, as well to pay to him in person.
18. On 16 July 2020, the FIFA DRC rendered the Appealed Decision, by which the Player's claim was partially accepted and the Club's counterclaim was rejected, as follows:
 1. "*The claim of the Claimant/ Counter-Respondent, Oday Abraham Dabbagh, is partially accepted.*
 2. "*The counterclaim of the Respondent/ Counter-Claimant, Al Salmiya Club, is rejected.*

3. *The Respondent/Counter-Claimant has to pay to the Claimant/Counter-Respondent the following amounts:*
- *USD 14,000 as outstanding remuneration plus 5% interest p.a. as from 1 September 2019 until the date of effective payment;*
 - *USD 14,000 as outstanding remuneration plus 5% interest p.a. as from 1 October 2019 until the date of effective payment;*
 - *USD 14,000 as outstanding remuneration plus 5% interest p.a. as from 1 November 2019 until the date of effective payment;*
 - *USD 14,000 as outstanding remuneration plus 5% interest p.a. as from 1 December 2019 until the date of effective payment;*
 - *USD 76,000 as compensation for breach of contract without just cause plus 5% interest p.a. as from 7 December 2019 until the date of effective payment;*

4. *Any further claim of the Claimant/Counter-Respondent are rejected.*

5. *(...).*

6. *(...).*

7. *In the event that the amounts due, plus interest as established above are not paid by the Respondent/Counter-Claimant **within 45 days**, as from the notification by the Claimant/Counter-Respondent of the relevant bank details to the Respondent/Counter-Claimant, the following consequences shall arise:*

The Respondent/Counter-Claimant shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.

8. *(...)” (emphasis in original).*

19. The grounds of the Appealed Decision were served by email to the Parties on 17 August 2020.

V. GROUND OF THE APPEALED DECISION

20. The grounds of the Appealed Decision can be summarized as follows:

21. Firstly, the DRC considered that, in principle, it was competent to deal with the present dispute based on the provision of Article 24 (1) in combination with Article 22 lit. b of the FIFA RSTP, and that, in accordance with Article 26 (1-2) of the FIFA RSRP, the October 2019 edition of the aforementioned regulations was applicable to the substance of the matter.
22. With regard to the merits and with reference to the unilateral termination of the Employment Contract by the Player, the Chamber took note that the Club did not dispute it had an outstanding debt towards the Player, but rather contended that it had been reluctant to make the relevant payment to the player's presumptive representative, as requested, due to the absence of the player's representative's power of attorney. Moreover, the Club maintained that the Player had breached the Employment Contract due to his unauthorized absence and therefore that he terminated the Employment Contract on 4 December 2019 without just cause.
23. As a consequence, the DRC considered that the underlying issue in the present dispute, was to determine whether the Player had just cause to terminate the Employment Contract and to determine the consequences thereof.
24. In accordance with Article 12(3) of the Rules Governing the Procedures of the Player's Status Committee and the Dispute Resolution Chamber, the Chamber clarified that the Club bore the burden of proving either the payment of the Player's salaries or that it had a valid reason for not having done so.
25. In such context, it was established that the Club did not provide any substantial proof of the Player's alleged absence, *"including, but not limited to a request to resume his duties and/or disciplinary proceedings for being absent with authorization"*, nor that the Club had requested the Player's return at all before the date of termination.
26. In addition, the Chamber emphasized that in any case, an alleged absence of the Player from 20 November to 4 December 2019 would not justify the non-payment of the Player's salaries for August, September and October 2019. Moreover, it remained undisputed that the Player had provided the Club with 15 days to remedy its default.
27. Therefore, the DRC concluded that the Club failed to bring any valid reason to justify the delay in paying the Player's remuneration and established that, at the time of termination, four monthly instalments of the Player's salaries were outstanding.
28. Then, the Chamber referred to Article 14bis, paragraph 1 of the FIFA RSTP, which stipulates that 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 just cause to terminate his contract, provided that he has put the club in default in writing, granting the latter at least 15 days to fully comply with its financial obligations.
29. In view of the above, considering that by the date of termination, four monthly salaries were still outstanding despite having the Player granted the Club 15 days to remedy the default, the

DRC concluded that the Player had just cause to unilaterally terminate the Employment Contract. Consequently, the Club's counter claim was rejected.

30. With regard to the consequences of the Club's breach, the Chamber first established that the Player was entitled to receive the amount of USD 56,000 as overdue payables, corresponding to the salaries for August, September, October and November 2019, plus 5% interest *p.a.* as of the day after each due date until the date of effective payment.
31. Secondly, in compliance with Article 17, paragraph 1 of the FIFA RSTP, the DRC decided that the Club had to pay compensation for breach of contract. With this respect, in the absence of a compensation clause in the Employment Contract, and considering the criteria provided under Article 17 of the FIFA RSTP, the Chamber took into account the amount of remuneration payable to the Player under the Employment Contract as from the date of termination until the original date of expiry, *i.e.* 30 June 2020, as the basis for such calculation, corresponding to USD 84,000.
32. In continuation, and in accordance with FIFA's constant practice in connection with the general obligation to mitigate one's damages, the DRC deducted the alternative salaries payable to the Player under the employment contract signed on 4 December 2019 by the latter with the Kuwaiti club, Qadsia SC, amounting to USD 50,000 up until 30 June 2020, leading to a mitigated compensation in the amount of USD 34,000.
33. In addition, and in accordance with Article 17, paragraph 1 lit. ii) of the FIFA RSTP, the Chamber granted the Player an additional amount corresponding to three monthly salaries, because of the early termination of the Employment Contract due to overdue payables, in the amount of USD 42,000.
34. As a consequence, the overall compensation for breach of contract awarded to the Player amounted to USD 76,000 plus 5% interest *p.a.* starting from 7 December 2019, as the date on which the claim was lodged, until the date of effective payment, taking into account the specific request of the Player.

VI. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. On 5 September 2020, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration, 2019 edition (the "CAS Code"). The Appellant requested a) that the present case be submitted to a Sole Arbitrator; b) that the present arbitration proceedings be conducted in French; c) that the time-limit to submit the Appeal Brief be extended by 45 days.
36. On 17 September 2020, the Respondent requested that English instead of French be selected as the language of the present arbitration proceedings, considering that he does not speak or write French and that the Appealed Decision was rendered in English.

37. On 28 September 2020, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.
38. On 12 October 2020, the President of the CAS Appeals Arbitration Division rendered an Order on language, by which, in consideration of all the circumstances of the present case, and principally in consideration of the language of the Appealed Decision, English was selected as the language of the present arbitration proceedings. As a consequence, the Appellant was requested to file an English translation of its Statement of Appeal within ten days as from the notification of the relevant Order.
39. On 13 October 2020, the CAS Court Office informed the Parties that the Appellant had filed two other appeals (CAS 2020/A/7392 and CAS 2020/A/7394) involving the same issues as the present case and requested whether the Parties agreed to submit the present procedure to the same Panel/Sole Arbitrator as the abovementioned cases.
40. On 17 October 2020, the Appellant informed the CAS Court Office that it agreed to submit the present case to the same Panel/Sole Arbitrator as the cases CAS 2020/A/7392 and CAS 2020/A/7394. The Respondent did not submit his position in this respect within the prescribed deadline.
41. On 20 October 2020, the CAS Court Office informed the Parties that the Appellant's request for a 45-day extension to file its Appeal Brief had been granted, in view of the Respondent's silence.
42. On the same day, the Parties were informed that the Respondent in the case CAS 2020/A/7394 had objected to the submission of all three procedures to the same Panel/Sole Arbitrator.
43. On 24 October 2020, the Appellant filed an English translation of its Statement of Appeal.
44. On 5 November 2020, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit the case CAS 2020/A/7392 and the present case to the same Sole Arbitrator.
45. In accordance with Article R51 of the CAS Code, the Appellant filed its Appeal Brief on 25 November 2019.
46. On 26 November 2020, the CAS Court Office informed the Parties that the case CAS 2020/A/7392 had been terminated.
47. On 1 December 2020, the Parties were informed that Mr Fabio Iudica, Attorney-at-law in Milan, Italy, had been appointed as a Sole Arbitrator in the present procedure.
48. On 14 December 2020, the Respondent filed his Answer in accordance with Article R55 of the CAS Code.

49. On 18 December 2020, the CAS Court Office invited the Parties to state whether they preferred a hearing to be held in the present matter or for the Sole Arbitrator to render a decision based solely on the Parties written submissions. On the same day, the Respondent informed the CAS Court Office that he preferred that a hearing be held in the present matter. The Appellant did not provide its position on the issue within the prescribed time limit.
50. On 19 January 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in the present arbitration proceedings which would take place on 22 February 2021 by video-conference due to the restrictions arising from the Covid-19 pandemic.
51. On 3 February 2021, the CAS Court Office forwarded the Order of Procedure to the Parties which was returned in duly signed copy by the Respondent on 3 February 2021 and by the Appellant on 5 February 2021.
52. On 22 February 2021, a hearing took place by video-conference in the present matter.
53. At the hearing, besides the Sole Arbitrator and Ms Delphine Deschenaux-Rochat, Counsel to the CAS, the following persons were attending:

For the Appellant: Mr Habib Grami, Counsel; Ms Charissa Cailan Bertrand and Ms Sarah Gharbi, translators.

For the Respondent: Mr Emad Hanayneh, Counsel.
54. At the outset of the hearing, the Parties confirmed that they had no objections in respect to the composition of the Arbitral Tribunal and that the Sole Arbitrator has jurisdiction over the present dispute. In their opening statements, the Parties reiterated the arguments already put forward in their respective written submissions.
55. Preliminarily, the Appellant contested for the first time that the KFA, instead of FIFA, was the competent body to decide over the present dispute. As to the merits, the Appellant acknowledged having failed to meet its financial obligations towards the Player with respect to his monthly salaries for August and September 2019, while it argued that the Player was not entitled to receive his remuneration for October and November 2019 due to his unauthorized departure from the Club.
56. The Player insisted that the Appellant committed breach of contract by failing to pay his remuneration corresponding to four monthly salaries and moreover, his alleged unauthorized leave from the Club had remained completely undemonstrated.
57. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their rights to be heard and to be treated equally had been duly respected.

VII. SUBMISSIONS OF THE PARTIES

58. The following outline is a summary of the Parties' arguments and submissions which the Sole Arbitrator considers relevant to decide the present dispute and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in the following summary. The Parties' written and oral submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's Submissions and Requests for Relief

59. The Appellant's submissions in its Statement of Appeal and in its Appeal Brief may be summarized as follows.

60. According to the Employment Contract, the Player was not allowed to sign any other employment contract in Kuwait, he had to participate in the Club's team matches and could not take part in other sporting activities without the Club's permission. In addition, it resulted that, at the beginning of December 2019, the Player signed an employment contract with Al Quadsya, another Kuwaiti club after notifying the Club with a letter of default, claiming payment of his salaries for August, September, October and November 2019. The issue in this case is that the Player had left the Club without authorization to go to Palestine where he remained for months without notifying or contacting the Club, under the pretext of an injury.

61. The Club had no contact with the Player and his phone was out of reach. The Club tried on several occasions to contact him even through his national association, but to no avail. Therefore, the Club was even prevented from transferring him his salaries.

62. Moreover, it resulted that the Player had participated in some matches with his national team which shows that he was not injured and, therefore, he arbitrarily refused to perform his sporting activity for the Club. In this respect, the Player did not provide any evidence about his injury and he used this pretext in order to join his national team and escape from his obligations towards the Club.

63. On the other hand, it resulted that the Player had contacted another club in Kuwait and finally signed an employment contract with the latter. When the Player returned to Palestine, he was in bad faith since he was already in contact with Al Quadsya, while he claimed he suffered an injury. Moreover, in view of the signing with the new club, the Player presented a certificate of release which the Club discovered had been forged. Notwithstanding the above, the DRC did not take in due consideration the Club's arguments and wrongly established that the Player had just cause to terminate the Employment Contract.

64. As a consequence, the Appealed Decision is flawed and senseless considering that the Player was awarded the requested amount and especially the compensation for breach to which he was not entitled since had signed a new employment contract.

65. Finally, the Employment Contract was deliberately terminated by the Player with no responsibility of the Club.

66. The Appellant submitted the following requests for relief:

“The appeal submitted bya [sic] al salmya is admissible

The decision taken by the single judge of DRC has ton [sic] be cancelled.

The arbitration costs ton [sic] be carried out by the respondent

To oblige the respondent to reimburse the appellant with the advocacy costs amonzing [sic] to 5000 chf”.

B. The Respondent’s Submissions and Requests for Relief

67. The position of the Respondent is set forth in his Answer and can be summarized as follows.

68. It is not under dispute that the Club received the Player’s agent email letter dated 11 November 2019, urging the payment of the outstanding amounts, as well as the letter of formal notice on 16 November 2019.

69. However, the Club failed to remedy its default with respect to three monthly salaries within the 15-day notice and, therefore, the Player terminated the Employment Contract according to Article 14bis, paragraph 1 of the FIFA RSTP. Moreover, it is also undisputed that, at the time when the Employment Contract was terminated, the overall debt finally included 4 monthly salaries (August, September, October and November 2019).

70. As to the objections raised by the Appellant with regard to the alleged lack of power of attorney of the Player’s representative, it is to be noted that by addressing its letter of 4 December 2019 to the *“Advocate: Imad Al Hanayneh/Representative of Player Oday Dabbagh”*, the Club showed it had acknowledged that Mr Al Hanayneh was acting on behalf and in the name of the Player. In any case, the Club did not even request Mr Al Hanayneh to send any documentation concerning the power of attorney in connection with the warning letter of 16 November 2019.

71. On the other side, the Club’s argument that the Player refused to receive the outstanding monies is undemonstrated. On the contrary, the Player himself asked the team manager in person in order to receive his salaries. Moreover, the content of the Club’s letter of 4 December 2019, shows that the Club had acknowledged that *“the Player’s intermediary approved that the Player had assured him of transferring his financial rights to the lawyer’s account”*.

72. What is true is that the Club did not really want to remedy its debt during the 15-day notice and has tried to use numbers of unreasonable excuses in order to escape payment notwithstanding the Player’s request, as well as the intermediary’s request and the lawyer’s request.

73. In such context, the Player had just cause for termination of the Employment Contract with immediate effect according to Article 337 of the Swiss Code of Obligations but acted in good faith according to Article 14bis of the FIFA RSTP, granting the Club a prior 15-day notice, which was nonetheless disregarded by the Club.
74. With respect to the Appellant's argument concerning his alleged unauthorized absence from the Club, the Player contended that he joined Palestine between 11 and 19 November 2019 with his country's national team to participate in the double qualifiers for the World Cup and the Asian Cup finals, in accordance with FIFA instructions. On the contrary, the Appellant has failed to prove its allegation that the Player was absent for a long time from the Club except for the period he joined his national team in November 2019, which is confirmed by the letter of summons of the Palestine Football Association to the Kuwaiti Association on 22 October 2019, as it has been correctly established in the Appealed Decision. In any event, the Player's alleged absence from 20 November until 4 December 2019, would not justify the non-payment of the Player's salaries for August, September, October 2019.
75. In conclusion, the Respondent submitted the following requests for relief:
1. *To dismiss the appeal;*
 2. *To uphold the Challenged Decision;*
 3. *To condemn the Appellant to the payment in favor of the Respondent of the legal expenses incurred;*
 4. *To establish that the costs of the arbitration procedure shall be borne by the Appellant".*

VIII. JURISDICTION

76. 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".*
77. In its Statement of Appeal, the Appellant relies on Articles 57 and 58 of the FIFA Statutes, in combination with Article R47 of the CAS Code as conferring jurisdiction to the CAS.
78. The jurisdiction of the CAS was not contested by the Respondent.
79. The signature of the Order of Procedure and the Parties' further ratification at the hearing confirmed that the jurisdiction of the CAS in the present case was not disputed.
80. Accordingly, the Sole Arbitrator is satisfied that CAS has jurisdiction to hear the present case.

IX. ADMISSIBILITY OF THE APPEAL

81. Article R49 of the CAS Code provides the following:

“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. [...]”

82. According to Article 58(1) of the FIFA Statutes *“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 notification of the decision in question”*.

83. The Sole Arbitrator notes that FIFA DRC rendered the Appealed Decision on 16 July 2020 and that the grounds of the Appealed Decision were notified to the Parties on 17 August 2020. Considering that the Appellant filed its Statement of Appeal on 5 September 2020, *i.e.* within the deadline of 21 days set in the FIFA Statutes, the Sole Arbitrator is satisfied that the present appeal was filed timely and is therefore admissible.

X. APPLICABLE LAW

84. Article R58 of the CAS Code provides the following:

“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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

85. Both Parties rely on the application of the FIFA RSTP and, subsidiarily, of Swiss law, in accordance with Article 57(2) of the FIFA Statutes.

86. In consideration of the above and pursuant to Article R58 of the CAS Code, the Sole Arbitrator holds that the present dispute shall be decided principally according to FIFA RSTP, Edition October 2019, with Swiss law applying subsidiarily.

XI. LEGAL ANALYSIS

A. Preliminary issue

87. Before entering into the substance of the matter, the Sole Arbitrator first turns his attention to the Appellant’s objection with regard to the alleged lack of jurisdiction of FIFA in the first instance proceedings.

88. As already mentioned before in the present award under para. 55 above, this objection was raised by the Appellant for the first time at the hearing and is based on the provision of Article 22 of the Employment Contract, stating as follows: *“In the event of dispute, God forbids, the Kuwaiti*

Football Association shall be the reference for the solution of this dispute. In case they were unable to solve it, the International Football Federation (FIFA) shall be the reference for the settlement of this dispute without prejudice to the Kuwaiti jurisdiction in this regard”.

89. As a preliminary remark, it appears from the file that the Appellant has failed to object the FIFA DRC’s jurisdiction in the relevant proceedings, which leads the Sole Arbitrator to believe that the Club finally acknowledged that the DRC was competent to adjudicate over the present dispute, renouncing its right, if any, to bring the matter before the KFA.
90. Irrespective of and in addition to the above, it is hereby reminded that, in any case, even assuming that FIFA had no competence to deal with the present matter in the first instance, the filing of the appeal with the CAS would have had a healing effect on the previous instance, due to the CAS panel’s full power of review in accordance with Article R57 of the CAS Code.
91. As a consequence, the Sole Arbitrator believes that the relevant objection is moot.

B. Merits

92. Addressing the merits of the case at issue, the Sole Arbitrator observes that the following facts have remained undisputed between the Parties:
 - a) that, the Employment Contract was unilaterally terminated by the Player in writing on 4 December 2019; b) that, before terminating the Employment Contract, on 16 November 2019, the Player had sent a formal notice to the Club through Mr Imad Hanayneh, attorney representing the Player in the present arbitration proceedings, granting the Club a 15-day notice to remedy its default, which at that time amounted to three monthly instalments of the Player’s salary; c) that, when the Employment Agreement was terminated, the Club had failed to pay to the Player an overall amount of USD 56,000, corresponding to the Player’s monthly salaries for August, September, October and November 2019; d) that the Club failed to remedy its debt by the end of the notice period; e) that, on 4 December 2019 (i.e. the date of termination of the Employment Contract), the Player signed a new employment contract with the Kuwaiti club, Al Quadsya SC, valid from the date of signing until 30 June 2020.
93. With regard to the Clubs’ default, the Sole Arbitrator notes that the Appellant objects to the fact that the Player allegedly refused to receive payment of his outstanding salaries. Specifically, it was argued that due to the Player’s unauthorized absence from the Club for a significant period (“*months*”), and due to the alleged impossibility to reach the Player (his phone was out of reach and “*there was no way to contact him*”), the Club was prevented from complying with its financial obligations.
94. According to the Appellant, the Player had left the Club without authorization to go to Palestine where he remained “*for months*” without notifying or contacting the Club, under the pretext of an injury and never resumed his job at the Club. The Club asserts having tried, on many occasions, to make the Player coming back, to no avail.

95. In this context, the Sole Arbitrator observes that the Appellant completely failed to provide any evidence of the alleged long unauthorized leave of the Player, as well as of the alleged injury, which facts has therefore remained undemonstrated, despite the Appellant's burden of proof in this respect, according to Article 8 of the Swiss Civil Code. Likewise, there is no evidence at all that the Appellant had invited the Player to come back to the Club, as claimed by the latter.
96. In fact, the Sole Arbitrator reminds that neither the Statement of Appeal nor the Appeal Brief were corroborated by any kind of documentation, nor has the Appellant brought any oral testimony in support of its allegations.
97. On the other side, from the documentation submitted by the Respondent, it resulted that, during the term of the Employment Contract, the Player received a call-up from the Palestine Football Association in order to join his national team in the preliminaries for the World Cup and the Asia Cup. In fact, by letter dated 22 October 2019, the Appellant was contacted by the Player's national association in order to release the Player during the period from 11 until 19 November 2019. There is no other evidence on file with respect to a longer absence or with respect to a departure from the Club based on different reasons than the relevant release of the Player to the representative team of his home country.
98. In this respect, the Sole Arbitrator reminds that, in accordance with Annex 1 of the FIFA RSTP, the release of players to national teams is mandatory for clubs when players receive a call-up from the relevant association. The same is confirmed also in the Employment Contract under Article 14 and, in any case, the fact that the Player had to join his national team has remained undisputed.
99. In view of the above, the Sole Arbitrator finds that the Player's alleged violation of his contractual obligations towards the Club has remained completely unsupported and that there was no valid reason in the present case according to which the Club would be legitimated to suspend or withhold payment of the Player's remuneration.
100. The Sole Arbitrator now turns his attention to the Appellant's allegation that the Player would have refused to receive his salaries and therefore, that the Club would have been prevented from performing its financial obligations.
101. The Appellant's argument is inconsistent and unfounded for the following reasons.
102. First, any absence of the Player from the Club does not constitute any valid reason for the Club not being able to make the relevant payment, also considering that payment in cash for salaries is not a usual practice and, in any event, the Club would not be legitimated to impose the physical presence of the Player in order to comply with its financial obligations.
103. Second, the Club's allegation that *"No contact was possible with the player himself so that the club could transfer his salaries to him"* is also unreasonable and inconsistent considering that, *inter alia*, in the letter of formal notice dated 16 November 2016, the Respondent had requested the Club to transfer the outstanding amount to the bank account of his legal representative, Mr Hanayneh.

104. In addition, it also resulted that on 11 November 2019, the Player's agent had already urged the Club to pay the relevant salaries. In such occasion, the Club remained completely unresponsive and showed no proactive behaviour for the purpose of making the relevant payment. On the other side, it resulted from the content of the Club's letter dated 4 December 2019, submitted by the Respondent, that the Appellant also acknowledged having been requested by the Player's agent to transfer the outstanding amount to Mr Hanayneh's bank account.
105. The circumstances above make it clear that the Club did not act in good faith towards the Player and did not take any steps in order to comply with its obligations.
106. It also resulted from the Appellant's letter of 4 December 2019, that the Club had objected that the letter of formal notice was not accompanied by any power of attorney granted to Mr Hanayneh. The Sole Arbitrator does not believe this to be any valid reason for the Club to evade its contractual obligations and, moreover, there is no evidence that the Club requested Mr Hanayneh to submit the relevant power of attorney, which also shows the Appellant's lack of good faith in such circumstance.
107. In any event, the Sole Arbitrator observes that, even admitting the Club's good faith in refusing to transfer the outstanding amount to the bank account indicated by Mr Hanayneh, based on the alleged uncertainty of the power of representation of the latter, the Club could have alternatively made a formal offer or a bank deposit for the benefit of the Player, insofar it really wanted to remedy its default, but failed to do so.
108. As a consequence, the Appellant's allegation with respect to the lack of the power of attorney, as well as the alleged lack of an authorized bank account appears as a mere pretext used by the Club in order not to perform its financial obligations.
109. In view of all the circumstances above, the Sole Arbitrator believes that there is no evidence on file supporting that the Club was prevented from payment, nor that the Club properly offered to perform its financial obligations towards the Player in order to remedy its default.
110. Moreover, it is undisputed that the Respondent gave the Appellant a notice period of 15-day before terminating the Employment Contract, in accordance with Article 14bis of the FIFA RSTP.
111. Furthermore, it is also undisputed that when the Player notified the Club with the termination letter on 4 December 2019, the Club had failed to pay four monthly instalments of the Player's salaries, which also meets the requirements of Article 14bis of the FIFA RSTP.
112. Therefore, the Appellant is responsible of a severe breach of contract which has been repeated over time, thus creating the basis for termination with just cause of the Employment Contract, in accordance with both Articles 14 and 14bis of the FIFA RSTP.

113. In view of the foregoing, the Sole Arbitrator agrees with the Appealed Decision and is satisfied that the Player had just cause to terminate the Employment Contract on 4 December 2019, due to the Appellant's failure to comply with its financial obligations.
114. With regard to the compensation for breach awarded in the Appealed Decision, the Sole Arbitrator abides by the accurate calculation made by the DRC in accordance with Article 17, paragraph 1 lit. ii) of the FIFA RSTP, including both the deduction based on the principle of mitigated damages, according to Article 337c (2) of the Swiss Code of Obligations, and the Additional Compensation.
115. In consideration of the final findings above, the Sole Arbitrator shall not address any other issue and all other motions or prayers for relief are dismissed.
116. In view of all the foregoing, the Sole Arbitrator has reached the conclusion that the appeal filed by the Club shall be entirely rejected and the Appealed Decision shall be confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Al Salmiya Club against the decision rendered by the Dispute Resolution Chamber of FIFA on 16 July 2020 is dismissed.
2. The decision rendered by the Dispute Resolution Chamber of FIFA on 16 July 2020 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.