



**Arbitration CAS 2020/A/7527 Tractor Sazi Tabriz FC v. Kévin Fortuné & AJ Auxerre, award of 10 November 2021**

Panel: Mr Fabio Iudica (Italy), Sole Arbitrator

*Football*

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

*Justification of the late or non-payment of salaries*

*Just cause for a player to terminate the contract*

- 1. Political and/or financial sanctions cannot justify the delay or non-payment of a player's salaries. It is the responsibility of the clubs to face political or financial adversity which cannot burden the position of their employees.**
- 2. Article 14bis of the FIFA Regulations on the Status and Transfer of Players indicates that failure by a club to pay a sum corresponding to at least two monthly salaries of a player is considered by FIFA to be a breach of a certain severity which is to say that there appears to be objective circumstances suggesting that the continuation of the employment contract cannot be reasonably expected.**

**INTRODUCTION**

1. This appeal is brought by Tractor Sazi Tabriz FC against the decision rendered by the FIFA Dispute Resolution Chamber (the "FIFA DRC") of the Fédération Internationale de Football Association (FIFA) on 13 August 2020 (the "Appealed Decision"), regarding an employment-related dispute arisen with the player Kévin Fortuné.

**I. PARTIES**

2. Tractor Sazi Tabriz FC ("Tractor" or the "Appellant") is an Iranian professional football club, based in Tabriz, Iran. It is a member of the Football Federation Islamic Republic of Iran (FFIRI) which in turn is affiliated with FIFA.
3. Kévin Fortuné (the "Player" or the "First Respondent") is a French citizen and professional football player, born in Paris, France, on 6 August 1989. He currently plays for AJ Auxerre in France.

4. AJ Auxerre (“Auxerre” or the “Second Respondent”) is a French professional football club, based in Auxerre, France. It is a member of the Fédération Française de Football (FFF) which in turn is affiliated with FIFA.
5. The Appellant and the Respondents are hereinafter jointly referred to as the “Parties”.

## II. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts and allegations based on the Parties’ 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.
7. On 22 August 2019, Tractor and the Player concluded an employment contract valid as from the date of signature until 30 June 2022 (the “Employment Contract”)
8. According to Article 5 of the Employment Contract, the Player was entitled to receive the following amounts;

*“For 2019/2020 Football Season: 600,000 EURO*

*The aforementioned amount is NET and to be paid to the Player by the Club on the below mentioned dates:*

*As Advance payment, the Club will pay the Player;*

- *100,000 EURO net in cash within 7 days after issue the ITC*
- *50,000 EURO net in cash on January 2020*

*The remaining 450,000 EURO will be paid by the Club to the Player in 10 equal instalments of 45,000 EURO each starting from 30 September 2019 and at the end of each consecutive month until 30 June 2020.*

*The Player agrees and accepts that the abovementioned advance payments in the total of 150,000 EURO are paid by the Club to the Player in return of the Player’s registration with the Club all through the 2019/2020 season. In case the employment contract is terminated unilaterally and/or mutually before the end of 2019/2020 season, the Player agrees to immediately return the Club the part of the Advance payment corresponding to the term starting from the termination date until 30 June 2020, which will be calculated on a pro rata basis. The Club shall also have the right to deduct this amount from the Player’s overdue remuneration from the Club, if any.*

*For 2020/2021 Football Season: 600,000 EURO*

*The aforementioned amount is NET and to be paid to the Player by the Club on the below mentioned dates:*

*As Advance payment, the Club will pay the Player;*

- 100,000 EURO net in cash, before the first official league's match
- 50,000 EURO net in cash on January 2021

*The remaining 450,000 euro will be paid by the Club to the Player in 10 equal instalments of 45,000 euro each starting from 30 September 2020 and at the end of each consecutive month until 30 June 2021.*

*The Player agrees and accepts that the abovementioned advance payments in the total of 150,000 euro are paid by the Club to the Player in return of the Player's registration with the Club all through the 2020/2021 season. In case the employment contract is terminated unilaterally and/or mutually before the end of 2020/2021 season, the Player agrees to immediately return the Club the part of the Advance payment corresponding to the term starting from the termination date until 30 June 2021, which will be calculated on a pro rata basis. The Club shall also have the right to deduct this amount from the Player's overdue remuneration from the Club, if any.*

*For 2021/2022 Football Season: 600,000 EURO*

*The aforementioned amount is NET and to be paid to the Player by the Club on the below mentioned dates:*

*As Advance payment, the Club will pay the Player;*

- 100,000 EURO net in cash, before the first official league's match
- 50,000 EURO net in cash on January 2022

*The remaining 450,000 euro will be paid by the Club to the Player in 10 equal instalments of 45,000 euro each starting from 30 September 2021 and at the end of each consecutive month until 30 June 2022.*

*The Player agrees and accepts that the abovementioned advance payments in the total of 150,000 euro are paid by the Club to the Player in return of the Player's registration with the Club all through the 2021/2022 season. In case the employment contract is terminated unilaterally and/or mutually before the end of 2021/2022 season, the Player agrees to immediately return the Club the part of the Advance payment corresponding to the term starting from the termination date until 30 June 2022, which will be calculated on a pro rata basis. The Club shall also have the right to deduct this amount from the Player's overdue remuneration from the Club, if any".*

9. On 7 December 2019, the Player put Tractor in default of payment, requesting the payment of three-monthly salaries (September, October and November 2019) which were outstanding at that date, within 15 days, failing which the Player would terminate the employment contract with just cause in accordance with articles 14 and 14 bis of the FIFA Regulations.
10. According to the draft of a settlement agreement between the Parties dated 12 December 2019, on the Appellant's letterhead, which has remained unsigned, Tractor apparently proposed the Player an agreement in order to settle any claim of the latter in connection with the Employment Contract against Tractor (the "Settlement Agreement"). Pursuant to the

terms of the Settlement Agreement, the Employment Contract would be mutually terminated as from 12 December 2019, and the Appellant would pay to the Player the total amount of 150,000 in three equal instalments of EUR 50,000 each, as a full settlement. In addition, under article 2.4 of the Settlement Agreement, it is provided that the Player would be free to sign a new employment contract with SASP ES Troyes AC after the date of termination of the Employment Contract, without any compensation in favour of Tractor.

11. On 18 December 2019, Tractor informed the Player that the *“Disciplinary Committee of the club is going to hold a session regarding your Unjustified absences, including 7 training sessions as well 2 Premier League matches (...)”*<sup>1</sup>.
12. By letter dated 20 December 2019, the Player contested the alleged unjustified absences from 5 to 17 October 2019 by explaining that he was called up by his national team to play an international match, in accordance with the FIFA Regulations, mentioning the relevant letter which was addressed to Tractor for that purpose on 25 September 2019 and recalling the clubs’ obligation to release their registered players to the representative teams. In addition, the Player reminded Tractor that it was still in default of payment of his outstanding salaries of September, October, November and that the salary of December would be due soon as well, for a total amount of EUR 180,000 and urged the Appellant to comply with its financial obligations.
13. By letter dated 21 December 2019, Tractor informed the Player of the payment made on 19 December 2019 on his behalf, corresponding to three monthly salaries and half of December’s remuneration, in the total amount of EUR 150,000. In the same letter, Tractor still warned the Player about his alleged unjustified absences from training: *“You have to participate in training sessions from 21<sup>st</sup> December. Your absence is not justified and you would be faced fines or put you in position of gross breaching of employment contract in accordance to jurisprudence of FIFA or CAS and Art. 337(2) Swiss co”*.
14. By letter dated 28 December 2019, Tractor contested that the Player had failed to attend the training session scheduled on the same day at 9:00 am according to *“your special training plan assigned by technical manager”* and also refused to attend the pre-assigned training sessions on 26 and 27 December 2019. The Player was therefore requested to *“be present at the Club’s training pitch and introduce yourself to the assistant coach, Mr. Chalabiyani”*.
15. By letter on 29 December 2019, Tractor disputed it was informed that the Player had left Iran without authorization, alleging the Player’s unjustified absence for 4 days; therefore, the Appellant warned the Player that it would report his absence to the Disciplinary Committee and requested him to be present at the club on 30 December 2019 at 10:00 am.
16. On 31 December 2019, the Player rejected any allegation of unjustified absence, arguing that he was given permission by the members of the board to leave the country for the annual holiday leave and clarified that on 28 December 2019 he was at the club but unable to attend

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<sup>1</sup> According to the Appealed Decision it was on 14 December (see para 6), but the Player’s letter dated 20 December referred to a letter from Tractor dated 18 December 2019.

trainings because he was injured. In addition, the Player complained about the bad treatment he had received from the club in the latest period, referring to non-payment of his salaries and other sort of harassment: *“I was mobbed by the Members of the Club not being able to train and play with the team for weeks”*. The Player also informed Tractor that he was visited by his doctor upon his arrival in France and enclosed a certificate signed by Doctor Jordan Bibas from the Clinique Mont-Louis in Paris, according to which the Player suffered from muscle contraction in his right leg (reported as from 25 December 2019) and anxiety linked to work associated with depressive episode during the last 15 days. The doctor recommended rest for the next 21 days and medical re-evaluation in case of resumption of work. On the other side, the Player informed the club that he was eager to recover in order to get back to the club and resume training.

17. By letter dated 1 January 2020, Tractor insisted that the Player had no permission to leave Iran and, therefore, his absence was unjustified; moreover, the Player was invited to give more details about his medical examination and to return to Iran in order to be treated by the club’s medical staff. Finally, the Appellant rejected the Player’s allegation about his presumed mistreatment and blamed the Player for having left the negotiations concerning the amicable termination of the Employment Contract, in a bad way.
18. The Player replied to the club on 5 January 2020, reminding that he was allowed to leave Iran for the annual holydays, as all the other players, in accordance with the Employment Contract; moreover, he was not able to train at that moment since he was injured and suffered from depression; notwithstanding this, he informed Tractor that he was available to return to the club after the annual leave and requested to be informed of the date of resumption of trainings, inviting the Appellant to provide for his return flight.
19. On the same day, Tractor once more disputed the Player’s departure from the club, alleging the breach of the Employment Contract and requested him to return to Tabriz on 7 January 2020, in order to attend the training camp on 8 January in Antalya, Turkey, failing which, his absence would be reported to the club’s Disciplinary Committee.
20. In its reply dated 11 January 2020, Tractor expressed its concern about the Player’s condition and requested a detailed report of his psychological issue by a professional psychologist instead of a general practitioner, also reminding the Player that, according to the Employment Contract, the supervision of the club’s medical staff was needed; to this end, the Player was invited to the club’s central office on 13 January 2020. Finally, Tractor insisted that the Player had left the club two days before the start of the mid-season break assigned to the team, without permission.
21. By letter of 12 January 2020, the Player charged the club of his health condition (*“threats, impossibility to train with the team, mobbing, repeated late payment of all the salaries...”*) and with regard to his return to the club, he confirmed he was not in the condition to travel due to his health issues. Moreover, he notified Tractor that he was going to have an appointment with a psychologist the following week and would keep the club informed about the results. Finally, the Player invited Tractor to pay his salary for December which was outstanding and the lump sum of January.

22. On the same day, Tractor replied to the Player's allegation of mistreatment as follows: *"First of all considering your absence for many sessions and caring about your health you had to train under a special personal training program under supervision of the coaches which was aimed to make your physical condition ready to participate in intense professional team workouts and training sessions for second half season preparation camp. Furthermore, we stopped to pay until you return into Iran to be under supervision of our technical and physical team. Please instead of repeating the allegations send us valid documents as the proof for following aforesaid allegations claimed by you:*
1. *Threats,*
  2. *Your permission to leave Iran,*
  3. *Detailed Psychologist report"*.
23. On 20 January 2020, Tractor wrote a further letter to the Player, claiming that 21 days had already passed since the medical certificate provided by the Player was issued and therefore, the club was going to buy a flight ticket for the Player from Paris to Istanbul scheduled on 22 January 2020. In any case, his medical condition was not accepted by the club *"because you did not provide a valid document and did not follow your obligations"*. Furthermore, Tractor informed the Player that disciplinary proceedings was going to start in order to investigate the alleged threats reported by the latter.
24. In his reply dated 21 January 2020, the Player reiterated that he was not able to travel and provided a new medical certificate signed by Doctor Erwin Hansconrad from Clinique Mont-Louis in Paris, reporting that due to his mental condition, he could not take planes. The Player also confirmed his will to resume his work at the club once recovered. With regard to disciplinary proceedings, the Player reserved his rights to have an independent authority hearing his case at a later stage. Finally, he insisted in the request of payment of his salary for December 2020 and the lump sum of EUR 50,000 for January, in accordance with the Employment Contract.
25. On 25 January 2020, Tractor replied that it did not acknowledge the latest medical certificate submitted by the Player since it did not contain any detailed medical report, besides the fact that even Doctor Hansconrad was a general practitioner, and in any case, the Player had to be examined by the club's medical staff. In addition, the Player was informed that disciplinary proceedings had started with regard to the threatening allegations. Finally, referring to the Player's alleged request for a termination settlement of the Employment Contract, Tractor informed the Player that the club was not in agreement and that it would perform the Employment Contract until its natural expiry.
26. On 27 January 2020, Tractor provided the Player with a flight ticket from Paris to Istanbul departing the next day, informing the Player that he was requested to be at the club on 28 January 2020 as a final warning.

27. By a further communication dated 4 February 2020, Tractor informed the Player that “*In accordance with your request, we had a negotiation with Troyes but we did not come to an agreement*” and attached a new flight ticket from Paris to Istanbul departing on 6 February.
28. On 8 February 2020, the Player replied and reiterated that he was still unable to travel and train with the club and that it was not the club’s job to establish whether an official medical certificate was acceptable or not; that he was not in breach of the Employment Contract as he was on sick leave and he was still waiting to receive his outstanding salaries for December 2019 and January 2020.
29. On 10 February 2020, Tractor notified the Player with the termination of the Employment Contract alleging that the Player had breached his contractual obligations. In the termination notice, Tractor claimed that the Player left the club on 28 December 2019 without permission and did not take part in matches and training from the same date; that he rejected several invitations to return to the club and resume his activity; that his absence was not justified by any detailed medical report from a specialist and that according to the Employment Contract he had to see the club’s doctor for medical evaluation but failed to do so.

### III. THE PROCEEDINGS BEFORE FIFA DRC

30. On 7 March 2020, the Player lodged a claim with FIFA against Tractor requesting the following:
  - “1. *The claim of the Claimant shall be accepted in its entirety.*
  2. *The Defendant shall be obliged to pay to the Claimant the amount of EUR 140,000.- – net as outstanding salaries, plus interest at a rate of 5% per year over said amount, as from the relevant due dates until the effective date of payment.*
  3. *The Defendant shall be obliged to pay to the Claimant the amount of EUR 1,425,000.- net as compensation for breach of the employment contract, plus 5% interest per annum over said amount as of the date of termination of the Employment contract, i.e. on 10 February 2020.*
  4. *Art. 24bis of the FIFA Regulations on the Status and Transfer (hereinafter: RSTP) shall be applied in the present matter. Consequently, a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods shall be applied against the club Defendant”.*
31. Basically, the Player maintained that Tractor had terminated the Employment Contract without just cause while he was on sick leave (as from 30 December 2019 until 10 February 2020), referring to the first medical certificate dated 30 December 2019 and the second medical certificate dated 21 January 2020. Moreover, his previous absences from the club were all justified, despite the Appellant’s allegations. In fact, in October 2019 he was released to his representative team following the call-up by his national association and in December 2020 he was on annual leave. The Player provided copy of his passport together with an authorisation to leave the country. In addition, at the time of termination, the total amount of EUR 140,000, corresponding to 2.8 salary instalments was outstanding.

32. In its reply, Tractor explained that the delay in paying the Player's salaries for September, October and November 2019 was due to international sanctions imposed on Iran and that, after notification of his default letter, the Player stopped training with the club; that since the Player had shown his intention to terminate the employment relationship with the club, Tractor proposed him a mutual termination on 12 December 2019, which the Player refused. The Appellant maintained that upon payment of the Player's outstanding salaries on 19 December 2019, the Player resumed trainings from 20 to 25 December 2019, following which he failed to attend a specific training session on 26, 27 and 28 December 2019 assigned to him by the club due to his 15-day absence. With regard to the Player's salaries for January and February 2020, Tractor claimed that they were suspended as a consequence of the Player's absence.

33. In view of the above, Tractor lodged a counterclaim, requesting the DRC to decide as follows:

*“A) The DRC is requested to DECLARE that the CLUB terminated the employment-contract with just cause, OR ALTERNATIVELY:*

*A.1) The DRC is requested to DECLARE that the PLAYER terminated the employment-contract without just cause.*

*B) The DRC is requested to DECLARE that the PLAYER is only due to receive 12 (twelve) days of December, because he only attended training from 01 December 2019 until 06 December 2019, then 20 December 2019 until 25 December 2019.*

*C) The DRC is requested to reject the claim of the PLAYER in accordance with the facts and on the grounds described in this counterclaim.*

*D) The DRC is requested to accept this counterclaim and condemn the PLAYER to pay our CLUB a compensation for breach of the employment-contract, fixing an amount in accordance of Article 17, 3 of RSTP.*

*E) The DRC is also requested to determine the claimant to pay the attorney's fees to the counterclaimant's attorneys at the rate of 10% of the value of the conviction”.*

34. The Player contested Tractor's allegations and requested the DRC to reject the counterclaim.

35. On 9 June 2020, the Player concluded a new employment contract with the French club, AJ Auxerre, valid as from 29 June 2020 until the end of season 2021/2022 for an “exceptional bonus” of EUR 40,000 and a monthly salary of EUR 18,000.

36. As an intervening party in the proceedings before FIFA, Auxerre explained that when it started negotiations with the Player, the latter was presented as a free agent.

37. On 13 August 2020, the FIFA DRC rendered the Appealed Decision, by which the Player's claim was partially accepted and Tractor's counterclaim was rejected, as follows:

*1. “The claim of the Claimant/Counter-Respondent, Mr Kevin Fortuné, is partially accepted.*



2. *The counterclaim of the Respondent/Counter-Claimant, Tractorsazi Tabriz, is rejected.*
  3. *The Respondent/Counter-Claimant has to pay to the Claimant/Counter-Respondent the following amounts:*
    - *EUR 140,000 as outstanding remuneration plus 5% interest p.a. as follows:*
      - *On EUR 45,000 as from 1 January 2020 until the date of effective payment;*
      - *On EUR 45,000 as from 1 February 2020 until the date of effective payment;*
      - *On EUR 50,000 as from 1 February 2020 until the date of effective payment;*
    - *EUR 953,000 as compensation for breach of contract without just cause plus 5% interest p.a. as from 7 March 2020 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:*
    1. *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).*
    2. *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”.*
38. The grounds of the Appealed Decision were served by email to the Parties on 22 October 2020.

#### **IV. GROUNDS OF THE APPEALED DECISION**

39. The grounds of the Appealed Decision can be summarized as follows:
40. Firstly, the DRC considered that, in principle, it was competent to deal with the present dispute based on the provision of Article 24 (1, 2) in combination with Article 22 lit. b of the

FIFA RSTP, and that, the March 2020 edition of the aforementioned regulations was applicable to the substance of the matter, considering that the present matter was submitted to FIFA on 7 March 2020.

41. With regard to the merits and with reference to the unilateral termination of the Employment Contract by the Appellant, the Chamber reminded that only a breach or misconduct of a certain severity justifies the termination of a contract, based on objective criteria which do not reasonably permit to expect a continuation of the employment relationship and that a premature termination of an employment contract can only be considered as *an ultima ratio* measure.
42. In consideration of the opposing allegations, and based on the documentation on file, the DRC observed that the Appellant admitted having paid the Player's salaries for September, October and November 2019 late, i.e. on 19 December 2020, following the Player's default notice; that the club also recognized it has suspended the payment of the Player's salaries for December 2019 and January 2020 due to the Player's alleged unjustified absence; that Tractor had offered the Player to mutually terminate the Employment Contract on 12 December 2019.
43. In respect with the Player's absences, the Chamber took note of the fact that the Player had been called up by his national association to play an international match, in accordance with the general principle set out in Article 1 of Annexe 1 of the FIFA RSTP, and also pointed out that the Appellant failed to submit any corroborating evidence in order to demonstrate that the Player had been absent for unjustified reason; with regard to the period from 26 to 28 December 2019, the DRC noticed that the Player had submitted copy of his passport with authorization to leave the country and a confirmation to return to Iran. On the other side, the Chamber deemed that the obligation imposed by Tractor on the Player to be present at a specific training assigned only to him during the club's holidays cannot be justified.
44. In relation to the Player's health issue, the DRC referred to the medical certificates provided by the Player, the first dated 30 December 2019 and the second 21 January 2020, respectively ordering sick leave of 21 days and an extension until 11 February 2020. The Chamber recalled the content of the clause in the Employment Contract providing that any incapacity, injury or illness of the Player shall be reported to the club; that the club's medical staff shall examine the Player in order to establish his condition and that the Player shall act in accordance with the directive of the club's medical staff. In this framework, the Chamber also observed that on various occasions, Tractor had sent flight tickets Paris/Istanbul to the Player.
45. On the other hand, it was considered that the medical certificates provided by the Player were valid documents and that, according to the certificate dated 21 January 2020, the Player was neither in the condition to resume work nor to travel by plane.
46. In light of the above, the DRC decided that Tractor had not demonstrated that the Player's absences were unjustified. In addition, the Appellant's insistence with regard to the return of the Player in order to be examined by the club's doctor was not considered to be justified or to reflect the club's genuine interest in the Player's services.

47. In view of the above, *“the Chamber emphasised that the circumstances of the present matter, namely that the player’s remuneration was paid late, that Tabriz had offered a mutual termination of the contract to the player on 12 December 2019 and the uncontested fact that the monthly salaries of December 2019 and January 2020, as well as the payment of EUR 50,000 due in January 2020, were still outstanding to this day, tended to demonstrate that Tabriz was in fact no longer genuinely interested in the services of the player”*. Moreover, the club had not provided any valid justification with regard to its default of payment of the Player’s outstanding monies for December 2019 and January 2020.
48. Therefore, the Chamber concluded that Tractor did not have just cause to terminate the Employment Contract on 10 February 2020.
49. As a consequence, the Appellant counterclaim was rejected.
50. Besides, taking into consideration Article 17 (1) of the FIFA RSTP, the Chamber established that Tractor was liable to pay compensation for breach to the Player, in addition to any outstanding payments which at the time of termination amounted to EUR 140,000, corresponding to the monthly salaries of December 2019 (i.e. EUR 45,000) and January 2020 (i.e. EUR 45,000) as well as EUR 50,000 due in January 2020 according to the Employment Contract, plus 5% interest p.a. from each due date until the date of effective payment.
51. In order to determine the amount of compensation, in the absence of a specific provision in the Employment Contract, the DRC observed that the Player would be entitled to receive a total amount of EUR 1,425,000 under the terms and until the natural expiry of the Employment Contract, corresponding to EUR 225,000 as the remuneration from February 2020 to June 2020, EUR 600,000 for the season 2020/2021 and EUR 600,000 for the season 2021/2022; which was considered as the basis for calculation of the final amount of compensation payable to the Player according to Article 17 of the FIFA RSTP.
52. In accordance with the constant practice of the DRC, the Chamber further applied the deduction of the alternative salaries earned by the Player after termination of the Employment Contract, in connection with the general obligation of the aggrieved party to mitigate its damages.
53. In this respect, the DRC noted that the Player had signed a new employment contract with AJ Auxerre on 9 June 2020, valid as from 29 June 2020 until 30 June 2022, under which he was entitled to receive an “exceptional bonus” of EUR 40,000 as well as a monthly salary of EUR 18,000; therefore, for the overlapping period, the Player had been able to mitigate his damages in the amount of EUR 472,000 which were deducted from the original amount of EUR 1,425,000.
54. As a consequence, the DRC deemed the amount of EUR 953,000 to be a reasonable and proportionate compensation for breach payable to the Player and also decided to award interests over the said amount, as from the date of claim (i.e. 7 March 2020) until the date of effective payment.

**V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

55. On 12 November 2020, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against the First and the Second 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 that the present case be submitted to a Sole Arbitrator and chose English as the language of the arbitration.
56. In accordance with Article R51 of the CAS Code, on 24 November 2020, the Appellant filed its Appeal Brief.
57. On the same date, the First Respondent informed the CAS Court Office that he was not in the position to pay his share of the advance of costs and that the Appellant be invited to substitute for it and that the time limit to file his answer be fixed after the relevant payment by the Appellant, in accordance with Article 64.2 of the CAS Code; in addition, he requested that the present matter be submitted to a panel of three arbitrators.
58. On 8 December 2020, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.
59. On 14 December 2020, the Second Respondent informed the CAS Court Office that it was not going to pay its share of the advance of costs in the present arbitration and requested that the time limit to file its answer be fixed after the payment by the Appellant in accordance with Article 64.2 of the CAS Code.
60. On 21 December 2020, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit the present case to a sole arbitrator in accordance with Article R50(1) of the CAS Code.
61. On 12 and 17 February 2021, respectively, the First Respondent and the Second Respondent submitted their Answers in accordance with Article R55 of the CAS Code.
62. Also, on 17 February 2021, the CAS Court Office invited the Parties to state by 24 February 2021 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.
63. On 24 February 2021, the Appellant informed the CAS Court Office that it did not deem a hearing to be necessary in the present matter but requested to be granted a second round of written submissions. The Respondents failed to provide their positions with regard to the holding of a hearing by the indicated deadline.
64. On 25 February 2021, the First Respondent informed the CAS Court Office that he also considered a hearing not to be necessary in the present matter and objected to the Appellant’s request for a second round of submissions.
65. On 1 March 2021, the Second Respondent also informed the CAS Court Office that it preferred that the present case be decided on the basis of the Parties’ written submissions.

66. On 10 March 2021, the Parties were informed that, pursuant to Article R54 (1) of the Code, Mr Fabio Iudica, Attorney-at-Law in Milan, Italy, had been appointed as Sole Arbitrator by the President of the Appeals Arbitration Division.
67. On 23 March 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided not to hold a hearing in the present case and that he considered there was no exceptional circumstances pursuant to Article R56 of the CAS Code in order to grant a second round of submissions. Therefore, the Appellant request was rejected.
68. On 30 March 2021, the CAS Court Office forwarded the Order of Procedure to the Parties which was returned in duly signed copy by the Respondents on 31 March 2021 and by the Appellant on 6 April 2021.

## **VI. SUBMISSIONS OF THE PARTIES**

69. 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 submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

### **A. The Appellant's Submissions and Requests for Relief**

70. The Appellant's submissions in its Statement of Appeal and in its Appeal Brief may be summarized as follows.
71. With regard to the development of the employment relationship with the Player, the Appellant maintained that a) the payment of the Player's salaries for September, October and November 2019 amounting to EUR 135,000 was delayed due to the sanctions imposed on Iran by the USA embargos; b) as of the notification of the letter of warning dated 7 December 2019, the Player stopped attending the training sessions and official games; c) on 12 December 2019, Tractor presented a proposal for a settlement agreement to the Player in order to amicably terminate the Employment Contract, considering the desire of the Player to leave the club and Iran; however, the relevant negotiations were unsuccessful; d) on 19 December 2019, Tractor paid the Player's overdue amounts of EUR 150,000 (which also included half of the monthly salary for December 2019); e) from that moment on until 10 February 2020, Tractor and the Player held extensive correspondence revolving around the Player's absence from Iran; f) on 10 February 2020, due to the persistent refusal by the Player to come back to the club and resume his activities, Tractor terminated the Employment Contract with just cause after 1 month of unjustified absence.
72. The Appellant claimed that the Player had failed to attend the training sessions on 26, 27 and 28 December and maintained that a specific training plan had been scheduled for him as a consequence of his unjustified absence from the club for 15 days; moreover, the Player left

Iran without permission on 28 December 2019 and disregarded several invitations by the club to return to Iran in order to consult the club's medical staff pursuant to the Employment Contract. Beside this, the medical certificates provided by the Player were not issued by a specialist and were not accompanied by any detailed medical report and therefore, they were not suitable to establish the Player's condition.

73. In fact, according to Article 4 "i" of the Employment Contract, and for the purpose of the assessment of his health condition, the Player was obliged to report to the club, consult the medical team and act in accordance with the indications of the club's medical staff, but failed to do so. Actually, the Player had no health issues and he just used this as a pretext in order to negotiate a settlement agreement with Tractor at better conditions than the ones proposed by the club on 12 December 2019.
74. This is also confirmed by the fact that on 23 January 2020, the Player's agent informed Tractor that the Player had an offer from the French club, Troyes FC, and asked for a mutual termination of the Employment Contract, which was refused by the Appellant.
75. Also, Tractor emphasized that the present case is similar to two other claims lodged before FIFA by two other players against the Appellant (ref 19-01438 and 19-01437), where both claimants, after having received their advance payment, suddenly left the club based on an alleged mental illness according to a medical report, which fact is far from being a mere coincidence. In fact, in both cases, as in the present case, the players referred to difficulties in adapting to Iranian culture and lifestyle, even making use of the same psychological issues and the same terminology used by the Player in the present case. Therefore, the Appellant has been victim of manipulation by players using the excuse of mental illness in order to breach their employment contracts without incurring adverse consequences.
76. In addition, according to the jurisprudence of the DRC, family reasons cannot serve as a justification for players to leave their club and moreover, a player's long absence is a justified reason for a suspension of his payments (decision n. 34460/2006) and also, an absence of more than one month is a valid reason for termination of the employment contract (decision n. 97280/2007).
77. In view of the circumstances above, it is clear that the club and the Player failed to reach an agreement to terminate the Employment Contract; the Player did not have any good reason to leave the club on 28 December 2019 and despite several invitations by the club, he refused to return and consult the club's doctor; therefore, Tractor had just cause to terminate the Employment Contract on 10 February 2020.
78. As a consequence, the Player shall pay compensation to the Appellant because of his reiterated breaches of the Employment Contract; moreover, AJ Auxerre shall be considered jointly and severally liable to pay compensation to Tractor, in accordance with Article 17 (2) of the FIFA RSTP.
79. As an alternative, should the CAS confirm the Appealed Decision, the Player should not be entitled to receive any remuneration for January and February 2020 since payment was

suspended due to the Player's unjustified absence from the club, and, with regard to the month of December 2019, he should only receive salaries for 12 days which is the period of his actual participation.

80. The Appellant submitted the following requests for relief:

*"A) To consider the statement of appeal and the appeal admissible.*

*B) To annul the FIFA DRC decision and decides to:*

*1. Reject all the Player's requests in his claim; OR alternatively*

*2. Determine that the Appellant terminated the Contract with just cause or that the Player terminated the employment contract without just cause to:*

*A) Declare that the Player is only due to receive 12 (twelve) days of December, because he only attended trainings from 01 December 2019 until 06 December 2019, then 20 December 2019 until 25 December 2019;*

*B) Declare that the Player is not entitled to receive any compensation for breach of contract from the Appellant.*

*3. Accept the Counter-Claim of Appellant in front of the FIFA DRC to condemn the Player to pay compensation to Tractor for the just cause of the Club had to terminate the Contract in consideration to the breach of the Contract made by the Player, fixing an amount in accordance of Article 17, 3 of the FIFA RSTP.*

*C) To order the First Respondent and the Second Respondent bear the entire costs and fees of the present arbitration.*

*D) To order the First Respondent and the Second Respondent to reimburse the Appellant and his lawyers for all the expenses incurred in connection with this proceeding.*

*E) To order the First Respondent and the Second Respondent to pay to the Appellant the fix sum of EUR 25.000, to help the payment of attorney's fees and costs".*

## **B. The First Respondent's Submissions and Requests for Relief**

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

82. The Player started his experience at the club in a positive way and was satisfied with his own performance; however, the first months of his stay in Tabriz were challenging as he was alone with no possibility to stay with his family and he also faced difficulties to get used to Iranian culture, lifestyle and workstyle; moreover, he could not communicate with his teammates and members of the club as he only speaks French. In such framework, continuous delays by the club in paying his salaries did not help him to cope with the situation. Moreover, as from December 2019, when he was not well and started feeling depressed, the club obliged him to

train alone in violation of the Employment Contract and finally proposed him a settlement agreement to terminate the Employment Contract, which he refused since, despite the situation, he was willing to continue his job at the club.

83. From this moment on, Tractor started adopting a series of harassment in order to push him to leave the club, mainly ascribing him alleged unjustified absences. In this regard, contrary to the Appellant's allegations, on 25 December 2019 he was allowed to leave the country for the annual holiday break, as it results from the visa on his passport, and, moreover, from 30 December 2019 until 10 February 2020 he was on sick leave as it is demonstrated by the two medical certificates forwarded to the club. As a consequence, the Player had a justified reason to refrain from working and the club still had the obligation to pay his remuneration.
84. Therefore, it results that the Appellant terminated the Employment Contract while the Player was on sick leave and moreover, at that time, the club was in default of payment of his salaries for December 2019 and January 2020 as well as the lump sum of EUR 50,000 due in January 2020, corresponding, as a whole, to 2,8 salaries. This fact individually considered would constitute, *per se*, the Player's right to terminate the Employment Contract with just cause.
85. Tractor violated his contractual obligations towards the Player, tried to force him to leave the club, contested the medical certificates in bad faith, beside the fact the club itself and its environment were the main reasons for his illness and distress.
86. With regard to the Appellant's argument that the Player had to consult the club's doctor and was therefore obliged to return to Iran, the First Respondent reminded that according to the medical certificate, he was not in the condition to travel by plane and in any case, his return to Iran would have worsen his health condition.
87. In consideration of all the circumstances above, the Player is entitled to receive the amount of EUR 140,000 as outstanding payments as well as compensation for breach in the amount of EUR 953,000 corresponding to the residual value of the Employment Contract mitigated by the alternative salaries earned by the Player with the new club, AJ Auxerre, as correctly established by the Appealed Decision.
88. In conclusion, the First Respondent submitted the following requests for relief:

**"A. AS TO THE FORM**

1. *To enforce its jurisdiction and to accept the present submission;*

**B. AS TO THE MERITS ON THE CLAIM**

**Principally**

2. *To dismiss the appeal lodged by the Club as groundless;*
3. *To upheld the FIFA Decision rendered on 13 August 2020;*



4. *To consider the Club liable for breach of contract;*
5. *To condemn the Club to pay the Player EUR 140,000 as outstanding remuneration plus 5% interest p.a. as follows:*
  - *On EUR 45,000 as from 1 January 2020 until the date of effective payment;*
  - *On EUR 45,000 as from 1 February 2020 until the date of effective payment;*
  - *On EUR 50,000 as from 1 February 2020 until the date of effective payment;*
6. *To condemn the Club to pay the Player the total amount of EUR 953,000 net as compensation for breach of contract plus 5% interest per annum as from the date of the claim, i.e. 7 March 2020, until effective payment;*
7. *To reserve for the Player the right to make further reliefs, pleadings, amplify his claim for damages during the whole duration of the proceedings, to supplement and modify the claim set forth herein, and to submit further briefs, documents, exhibit and any other evidence at their own discretion in the course of the proceedings herein;*
8. *To debar the Club from making any other or contrary pleadings.*

**In any cases**

1. *Award any and all costs, expenses and fees arising in connection with the present arbitration proceedings, including but not limited to the attorney's fees of the Player against the Club for an amount of CHF 25,000.*
2. *Such other relief as the CAS shall deem appropriate".*

**C. The Second Respondent's Submissions and Requests for Relief**

89. The position of Auxerre is set forth in its Answer to the Appeal and can be summarized as follows.
90. With regard to the facts of the case, the Second Respondent contended that in May 2020, the Player was introduced to their club by his agent as a free player, explaining that on 10 February 2020 Tractor had terminated the Employment Contract without just cause.
91. Therefore, Auxerre started negotiations with the Player at the end of May 2020, about a possible hiring for the season 2020/2021 and the employment contract with the Player was finally concluded on 30 June 2020, valid until 30 June 2022.
92. In view of the Player's registration, Auxerre contacted the Appellant in order to request the TPO declaration and copy of the document proving the termination of the Employment Contract, but Tractor failed to reply.

93. As a consequence, Auxerre initiated the process at FIFA in order to register the Player, which finally succeeded.
94. From a legal point of view, Auxerre was in complete good faith when negotiations with the Player started, as it genuinely believed that the Player was free at that time; moreover, three months had already elapsed from the termination of the Employment Contract when Auxerre first contacted the Player. Auxerre was not aware of any dispute in relation to the contractual situation between the Player and Tractor and the latter failed to provide any information to Auxerre about the termination of the employment relationship with the Player, nor has Tractor ever contested that the Player was free to sign with Auxerre. In any case, there is no evidence that Auxerre induced the Player to breach the Employment Contract.
95. Moreover, it results that Tractor had breached the Employment Contract and therefore, the Appealed Decision shall be confirmed.
96. The Second Respondent submitted the following requests for relief:

*“A. AS TO THE FORM*

- 1. To enforce its jurisdiction and to accept the present submission;*

*B. AS TO THE MERITS ON THE CLAIM*

***Principally***

- 2. To dismiss the appeal lodged by Tractor as groundless;*
- 3. To uphold the FIFA Decision rendered on 13 August 2020;*
- 4. To consider Tractor liable for breach of contract;*
- 5. To condemn Tractor to pay the Player EUR 140,000 as outstanding remuneration plus 5% interest p.a. to the Player as follows:*
  - On EUR 45,000 as from 1 January 2020 until the date of effective payment;*
  - On EUR 45,000 as from 1 February 2020 until the date of effective payment;*
  - On EUR 50,000 as from 1 February 2020 until the date of effective payment;*
- 6. To condemn Tractor to pay the Player the total amount of EUR 953,000 net as compensation for breach of contract plus 5% interest per annum as from the date of the claim, i.e. 7 March 2020, until effective payment;*
- 7. To reserve our right to make further reliefs, pleadings, amplify his claim for damages during the whole duration of the proceedings, to supplement and modify the claim set forth herein, and to submit further*

*briefs, document, exhibits and any other evidence at their own discretion in the course of the proceedings herein;*

8. *To debar Tractor from making any other or contrary pleadings.*

**In any cases**

1. *Award any and all costs, expenses and fees arising in connection with the present arbitration proceedings against Tractor.*

2. *Such other relief as the CAS shall deem appropriate”.*

**VII. JURISDICTION**

97. 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”.*

98. In its Statement of Appeal, the Appellant relies on Article 58 (1) of the FIFA Statutes, in combination with Article 24 (2) of the FIFA RSTP as conferring jurisdiction to the CAS.

99. The jurisdiction of the CAS was not contested by the Respondents.

100. The signature of the Order of Procedure confirmed that the jurisdiction of the CAS in the present case was not disputed.

101. Accordingly, the Sole Arbitrator is satisfied that CAS has jurisdiction to hear the present case.

**VIII. ADMISSIBILITY OF THE APPEAL**

102. 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. [...]”.*

103. 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”.*

104. The Sole Arbitrator notes that FIFA DRC rendered the Appealed Decision on 13 August 2020 and that the grounds of the Appealed Decision were notified to the Parties on 22

October 2020. Considering that the Appellant filed its Statement of Appeal on 12 November 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.

**IX. APPLICABLE LAW**

105. 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”.*

106. The Appellant relies on the application of the FIFA RSTP and, subsidiarily, of Swiss law; which is not disputed by the Respondents.

107. 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 January 2020, with Swiss law applying subsidiarily.

**X. LEGAL ANALYSIS**

108. 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 Appellant in writing on 10 February 2020; b) that, at the time of termination of the Employment Contract, the following items of the Player’s remuneration were outstanding: EUR 45,000 corresponding to the monthly salary for December 2019; EUR 45,000 corresponding to the monthly salary for January 2020; EUR 50,000 corresponding to the second instalment of the advance payment for the season 2020/2021; c) that prior to the termination of the Employment Contract, the Appellant had also failed to meet the deadlines for the payment of the Player’s salaries for September, October and November 2019 and that the relevant payment was executed by Tractor on 19 December 2019 following the receipt of the Player’s formal notice dated 7 December 2019; d) that on 12 December 2019, the Appellant had proposed a termination agreement to the Player, which was refused by the latter; e) that the Player attended the last trainings with Tractor between 20 and 25 December 2019 and then left Iran between 28 and 29 December 2019 to go back to his country and never resumed his activity at the club nor returned to Iran; f) that on 30 June 2020, the Player signed a new employment contract with the Second Respondent, valid as from the date of signing until 30 June 2022.

109. With regard to the reasons for termination, the Sole Arbitrator recalls that the Appellant invokes just cause based on the Player’s alleged multiple violations of his contractual obligations towards the club and namely: a) his unjustified absences from trainings and official games as from 7 December 2019 (*i.e.* since the notification of the Player’s letter of default);

- b) in particular, his failure to attend the training session on 26, 27 and 28 December 2019 based on an individual schedule specifically planned for the Player due to his 15 days absence; c) his departure from Iran on 28 December 2019 without authorization from the club; d) his persistent refusal to come back to the club alleging a depressive state on the basis of two medical certificates which the Appellant deemed to be invalid or not appropriate; e) his refusal to consult the club's medical staff and be treated by the club's doctor, in violation of Article 4 i) of the Employment Contract.
110. In particular, the Appellant contends that the medical certificates provided by the Player were not issued by a specialist and were not accompanied by any detailed report and therefore, they were not valid document in order to establish the Player's condition. Besides, the Appellant suggests that the Player's health condition was specious and used as a pretext by the Player so that he could breach the Employment Contract without being sanctioned.
111. The Player objects that the Appellant's allegations with respect to his unjustified absences are unsupported; that this argument was an excuse and, actually, Tractor wanted him to leave the club; that he left Iran during the official annual leave of the club and that his departure was authorized as it is demonstrated by the visa on his passport; that he could not return to the club due to his health condition as it emerges from the medical certificates; that since he was advised not to travel by plane, it was impossible for him to consult the club's doctor and receive treatment by the club's medical staff; that when the Appellant notified him with the notice of termination, he was on sick leave and therefore the club terminated the Employment Contract without just cause and was also in default of payment of an amount corresponding to 2,8 monthly salaries.
112. With regard to the individual training sessions, the Sole Arbitrator notes that the Player complained having been separated from his teammates during trainings and that this is a clear indication of the club's abusive conduct aimed at intimidating him; while Tractor alleged that such a decision by the club was merely aimed at supporting the Player's recovery after his alleged "*absence for many sessions*" and in consideration of the club's concern for the Player's health.
113. With regard to the outstanding payments at the time of termination of the Employment Contract, the Sole Arbitrator notes that the Appellant informed the Player, by letter dated 12 January 2020, that the club had stopped any payment due to the Player's alleged unjustified absence from the club since the end of December 2019 and his refusal to come back to Iran.
114. In addition, the Sole Arbitrator recalls that, since the very beginning of the Employment Contract, Tractor has delayed the payment of the Player's salaries and that the monthly instalments for September, October and November 2019 were paid on 19 December, after the notification of a formal notice by the Player. In this regard, the Sole Arbitrator notes that the Appellant's allegations that the relevant delay was due to sanctions imposed on Iran by the USA embargos are undemonstrated, besides the fact that in any case, this would not justify the delay or non-payment of the Player's salaries. In fact, it is the responsibility of the clubs to face political or financial adversity which cannot burden the position of their employees.

115. In this context, the Sole Arbitrator observes that in order to decide the present dispute, it has to be assessed whether the Player's conduct may have offered Tractor a just cause for the unilateral termination of the Employment Contract, as alleged by the Appellant.
116. The Sole Arbitrator recalls that with respect to the Player's absence, which is the reason on which the termination of the Employment Contract was based, it is undisputed that the Player left Tractor between 28 and 29 December 2019 and since then, he never resumed his job at the club, until the day of termination of the Employment Contract (i.e. 10 February 2020).
117. However, although the Appellant affirms that the Player had left the club and the country without leave, the Sole Arbitrator notes that the Player contends that the club authorized him to leave Iran on 25 December 2019 for the annual leave and submitted copy of the relevant page of his passport bearing a visa which apparently allowed the Player to exit the country and return by 27 January 2020. The same document was also submitted before FIFA during the DRC proceedings and has not been contested by the Appellant.
118. Therefore, in the absence of any other evidence to the contrary, the Sole Arbitrator is satisfied that the Player was authorized to leave Iran as from 25 December 2019 and that his departure at the end of December 2019 was not unjustified as maintained by Tractor.
119. For the same reasons, the Appellant's arguments according to which the Player has not fulfilled his contractual obligations since he did not attend the individual trainings scheduled on 26, 27 and 28 December 2019 are baseless, besides the fact that Tractor did not provide any evidence that the request for the Player to attend individual trainings was justified in general (and, in addition, the individual training sessions were scheduled during the annual holidays, which is also unwarranted).
120. This being established, the Sole Arbitrator now turns his attention to the Player's extended absence beyond 21 January 2020, which was the expected date of his return to Iran according to the visa.
121. In this respect, the Sole Arbitrator notes that, according to the first medical certificate submitted by the Player, the clinical examination referred that he suffered from muscle contraction in his right leg and anxiety linked to work associated with depressive episode and the doctor who visited him on 30 December 2019 in France recommended 21 days' rest. In addition, according to the second medical certificate dated 21 January 2020, the Player had not recovered yet and his mental health prevented him to travel by plane; therefore, the doctor prescribed him a further absence from work until 11 February 2020.
122. The Appellant objects that the relevant medical certificates were valid and that the Player's health condition should have been established by the club's medical staff.
123. First, the Sole Arbitrator observes that the Appellant did not provide any convincing evidence that the Player's medical condition was fabricated as alleged in the Appeal Brief and, in consideration of the specific circumstances of the case, and of the fact that the Player was temporarily abroad, the medical certificates provided by the Player cannot be rejected only

based on the fact that as a general rule, it is the responsibility of the Appellant to take care of the Player's health and examine him in accordance to the Employment Contract. In addition, the Sole Arbitrator incidentally notes that Tractor could have contacted the doctors consulted by the Player or even recommend the Player to consult a doctor of its own choice based in Paris if it did not trust the relevant certificates but failed to do so. In this respect, the Sole Arbitrator shares the opinion of the DRC in the Appealed Decision and is not persuaded that Tractor was genuinely interested in making the Player come back to the club.

124. In any case and irrespective of any argument regarding the validity of the medical certificates submitted by the Player, the Sole Arbitrator does not believe that in the specific context of this case, the Player's absence from the club in the period between 21 January 2020 (the date when the Player's return was expected) and 10 February 2020 (the date of termination of the Employment Contract) was a sufficient element to constitute just cause for the unilateral termination by the Appellant.
125. This conclusion derives from the persuasion that, at the time when the Employment Contract was terminated, the Appellant had failed to comply with its financial obligations towards the Player and was in default of payment of the substantial sum of EUR 140,000 corresponding to 2 monthly salaries, and the *pro-rata* value of the second instalment of the advance payment corresponding to more than one monthly salary.
126. In this respect, the Sole Arbitrator recalls that pursuant to Article 14bis of the FIFA RSTP, failure by a club to pay at least two monthly salaries on their due dates would constitute just cause for the player to terminate his contract (providing that other conditions are met by the Player). Such provision indicates that failure by a club to pay a sum corresponding to at least two monthly salaries of a player is considered by FIFA to be a breach of a certain severity which is to say that there appears to be objective circumstances suggesting that the continuation of the employment contract cannot be reasonably expected.
127. In this regard, the Sole Arbitrator notes that in CAS 2006/A/1180, a CAS panel stated the following in this respect:

*"The RSTP 2001 do not define when there is "just cause" to terminate a contract. In its established legal practice, CAS has therefore referred to Swiss law in order to determine the purport of the term "just cause". Pursuant to this, an employment contract which has been concluded for a fixed term, can only be terminated prior to expiry of the term of the contract if there are "valid reasons" or if the parties reach mutual agreement on the end of the contract (see also ATF 110 I 167; WYLER R., Droit du travail, Berne 2002, p. 323 and STAEHELIN/VISCHER, Kommentar zum Schweizerischen Zivilgesetzbuch, Obligationenrecht, Teilband V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, marg. no. 17 ad Art. 334, p. 479). In this regard Art. 337 para. 2 of the Code of Obligations (CO) states – according to the translation into English by the Swiss-American Chamber of Commerce: "A valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship". According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (ATF 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa). Particular importance is thereby attached to the nature of the breach of obligation. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the*

*essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (ATF 101 Ia 545). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus (ATF 5 May 2003, 4C.67/2003 no. 2). According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, 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, such as a serious breach of confidence (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit., p. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., op. cit., p. 364 and TERCIER P., op. cit., no. 3394, p. 495).*

*The non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated as in the present case - constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5 et seq.)" (CAS 2006/A/1180, para. 25-26 of the extract published on the CAS website).*

128. In addition thereto, the Sole Arbitrator also underlines that the Appellant had already been responsible for delayed payment of an amount of EUR 135,000 corresponding to three monthly salaries (September, October and November 2019) and that Tractor did not provide any valid justification for not meeting those contractual deadlines.
129. Moreover, as already mentioned above, the Appellant had also unilaterally decided to separate the Player from the team, assigning him to individual trainings with no valid justification, which the Sole Arbitrator considers an abusive conduct. Finally, the Sole Arbitrator recalls that the Appellant had persistently charged the Player of unjustified absences which ultimately resulted to be groundless.
130. In view of the above, the Sole Arbitrator finds that the Player's alleged violations of his contractual obligations towards Tractor has remained unsupported and that the Appellant has failed to provide evidence according to which the Appellant would be legitimated to suspend or withhold payment of the Player's remuneration.



131. On the contrary, it is undisputed that the Appellant is responsible of a severe breach of contract which has been repeated over time, thus creating the basis for a possible termination with just cause by the Player, in accordance with both Articles 14 and 14bis of the FIFA RSTP.
132. In light of the foregoing, the Sole Arbitrator concurs with the reasoning held by the FIFA DRC in the Appealed Decision and is satisfied that the circumstances of the present case did not provide the Appellant with just cause to terminate the Employment Contract on 10 February 2020.
133. With regard to the compensation for breach awarded in the Appealed Decision, the Sole Arbitrator abides by the calculation made by the DRC in accordance with Article 17, (1) (ii) of the FIFA RSTP, including the deduction based on the principle of mitigated damages, according to Article 337c (2) of the Swiss Code of Obligations.
134. 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.
135. 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 Tractor Sazi Tabriz FC on 12 November 2020 against the decision rendered by the FIFA Dispute Resolution Chamber on 13 August 2020 is dismissed.
2. The decision rendered by the FIFA Dispute Resolution Chamber on 13 August 2020 is confirmed.
3. (...).
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.