



Arbitrations CAS 2021/A/7878 Naim Sliti v. Al Ettifaq Club & CAS 2021/A/7916 Al Ettifaq Club v. Naim Sliti, award of 27 April 2022

Panel: Mr Sofoklis Pilavios (Greece), President; Mr Manfred Nan (The Netherlands); Mr Mark Hovell (United Kingdom)

Football

Performance of a contract of employment under the circumstances of the COVID-19 pandemic

Applicable law

FIFA COVID-19 Guidelines' requirements regarding unilateral contract amendments

COVID-19 pandemic and force majeure

Proportionality of a salary reduction

Consequences of a unilateral amendment of an employment contract in breach of the proportionality principle

Principle of exceptio non adimplenti contractus

1. If a case concerns a dispute around the performance of an employment agreement under the circumstances of the Covid-19 pandemic, the relevant provisions of the FIFA Regulations on the Status and Transfer of Players (the “FIFA RSTP”) in conjunction with the Guidelines issued by FIFA on 7 April 2020 titled as Covid-19 Football Regulatory Issues Document (the “FIFA Covid-19 Guidelines”) and the Covid-19 Frequently Asked Questions Document issued by FIFA on 11 June 2020 (the “FIFA FAQ Covid-19 Document”) should be applicable.
2. In case it is not feasible for the parties to reach amicable settlements where employment agreements cannot be performed as originally anticipated by the parties due to the Covid-19 crisis, the FIFA Covid-19 Guidelines propose that unilateral contract amendments shall be upheld only if recognized by national law, or, in case national law is not relevant, if made in *good faith* and if they are *reasonable* and *proportional*.
3. For FIFA the Covid-19 pandemic is not a situation of *force majeure* in and of itself. Accordingly, a club cannot simply invoke the Covid-19 pandemic as a generic defence of *force majeure*. Besides, force majeure implies an objective (rather than a personal) impediment beyond the control of the obliged party that is unforeseeable, that cannot be resisted and that renders performance impossible. In addition, the conditions of *force majeure* should be interpreted strictly and narrowly, since they may introduce an exception to the binding force of an obligation. The onus of proof lies with the club alleging that the pandemic had rendered the performance of the employment contract impossible. The latter is required to show more than a general economic difficulty in abstract terms. It has to show a real disruption in its financial operation and a total lack of alternative resources that had made it impossible to fulfil its payment obligations to a player.

4. In a context of pandemic, a reasonable, equitable and proportional revenue decrease would need to reflect a balanced allocation of the economic risks of the pandemic between the parties involved. In this respect, a reduction of a player's monthly salary during several months amounting to almost a 50% is excessive and disproportionate, especially where the club's conduct towards the player appears to be grossly discriminatory in comparison with other players.
5. A club's decision purported to amend unilaterally an employment contract in breach of the proportionality requirement and of the principle of equal treatment and non-discrimination is not in compliance with the requirements set by FIFA Covid-19 Guidelines and is therefore devoid of legal effects and not binding on the player.
6. According to the general principle of *exceptio non adimplenti contractus* which is incorporated in Article 82 of the Swiss Code of Obligations, a party to a bilateral contract cannot request the fulfilment of the other party's contractual obligations, until it has discharged, or offer to discharge, its own obligations. Therefore, a club's decision to impose monetary fines on a player for his absence from trainings, while itself remaining in default of its payment obligations towards him, is made entirely in bad faith and in abuse of right and is, therefore, illegal.

I. PARTIES

1. Mr Naim Sliti is a professional football player of French and Tunisian nationality (the "Player").
2. Al Ettifaq Club is a professional football club seated in Saudi Arabia (the "Club"), which is affiliated to the Saudi Arabian Football Federation (the "SAFF"), which in turn is a member of the Fédération Internationale de Football Association ("FIFA").

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the main facts of the dispute, as established by the Panel on the basis of the Parties' written submissions and evidence adduced. Additional facts and allegations found in the Parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows.

4. On 8 August 2019, the Player and the Club entered into an employment agreement for a term of three seasons valid as of 7.08.2019 until 30.6.2022 with an option for an extension for one more season until 30.06.2023 (the “Employment Contract”).
5. According to Article 4 of the Employment Contract (titled as “*Item 4: Obligations of the First Party*”) the Club agreed to pay the Player as remuneration for his services, *inter alia*, the following amounts:
 1. *First advance payment of USD (150,000) One Hundred Fifty Thousand US Dollars on or before August 31, 2019.*
 2. *Second advance payment of USD (150,000) One Hundred Fifty Thousand US Dollars on or before August 31, 2020.*
 3. *Third advance payment of USD (150,000) One Hundred Fifty Thousand US Dollars on or before August 21, 2021.*
 4. *A monthly salary of (USD 125,415) One Hundred Twenty Five Thousand Four Hundred Fifteen US Dollars, including air tickets cost for ten months from end of September 2019 until end of June 2020.*
 5. *A monthly salary of (USD 104,580) One Hundred Four Thousand Five Hundred Eighty US Dollars including air tickets cost for twelve months from end of July 2020 until end of June 2021.*
 6. *[...].*
6. According to Article 8 of the Employment Contract (titled as “*Item 8: Imposition of Sanctions*”) the Club had the right to impose sanctions on the Player in case of violation of his contractual obligations, under the following conditions:

“The first party may take decisions and issue sanctions against the second party in case of violating his obligations stipulated in the contract without prejudice to regulations, provided that he shall inform the second party in writing, and the latter may object according to regulations and rules”.
7. On 15 April 2020, the Club sent an email to the Player and his agent with an attached document of a draft agreement titled as “Covid-19 Pandemic Agreement” (the “Draft Agreement”), inviting the Player to sign it, and, to thereby agree to a reduction in his monthly salary as a result of the adverse effects of the Covid-19 pandemic. More specifically, the proposed Agreement provided, *inter alia*, the following:

“... In concordance with the FIFA recommendations to stop bad effects of this pandemic on the financial situation of the clubs and to guarantee the minimum necessary salary for players and coaches during the suspension of activities, we have to find a common solution to make just equilibria between the necessity to receive a minimum of salary and to guarantee the survival of the club in avoiding financial difficulties and a

bankrupt. Thus, taken in account the very difficult financial situation and in order to preserve our contractual stability we kindly submit these propositions:

1. Decrease monthly salary by 50% of the amount over 20,000 SAR (the player will receive 20,000 SAR + 50% of the rest of the salary which exceeds SAR 20,000). This amount will be paid since the suspended date of activities in Saudi Arabia on 15/3/2020 until the start of the activities.

2. No deduction or detention will be applied on the part of salary received by the player.

3. The other advantages stipulated on the contract namely insurance, care and accommodation will be guaranteed by the club to the player and his family in Saudi Arabia only.

4. All payments related to contractual primes (Signature or others) will be suspended and will be scheduled after restarting competition.

5. When the activities and competitions restart, player will be entitled to receive his full salary and scheduled prime.

6. The club prefers that the player remain at his residence in the Kingdom of Saudi Arabia and the club pledges to provide all his necessities.

7. If the player desire to return to his country, he may do so after coordination with the embassy of his country in the Kingdom.

...”.

8. On 17 April 2020, the Club sent an email to the Player and his agent asking their feedback in relation to the proposed salary reduction and the Draft Agreement communicated on 15 April 2020.
9. On 19 April 2020, the Club sent another email to the Player and his agent asking again their feedback on the matter, and, also, proposing to arrange a conference call to negotiate and discuss further.
10. On 20 April 2020, the Player’s agent replied by email that his lawyer would contact them “tomorrow or the day after tomorrow”.
11. On 27 April 2020, the Club sent an email to the Player and his agent notifying them of the Club’s decision to impose a salary reduction due to the Covid-19 pandemic. The decision stated, *inter alia*, the following:

“... Thus, taken into account the very difficult financial situation and in order to preserve contractual stability the club sent you by email on 15/04/2020 a proposal for decrease your monthly salary. On 17/04/2020 and on 19/04/2020, the club sent to you once again emails in order to remind you that this is a difficult situation and that we must unite at the end to overcome it. Despite that the economic bad effects of COVID

19 will not stop before the end of the year 2020, the club will ensure hardly but surely a part of your salary during the resumption of the sports activity. Due to the fact that no feedback was received on the submitted proposal, we inform you that we are obliged to apply a reduction in your salary from 15/03/2020 until the resumption of sports activity in Saudi Arabia as follows:

1. Decrease monthly salary by 50% of the amount of the amount over 20,000 SAR (the player will receive 20,000 SAR + 50% of the rest of the salary which exceeds 20,000 riyals). This amount will be paid since the suspended date of activities in Saudi Arabia on 15/03/2020 until the start of the activities.

2. No deduction or detention will be applied on the part of salary received by the player.

3. The other advantages stipulated on the contract namely insurance, care and accommodation will be guaranteed by the club to the player and his family in Saudi Arabia only.

4. The contract will be executed until the new date of the end of season and for this new period the player will receive a full monthly salary as indicated in his contract.

5. When the activities and competitions restart, player will be entitled to receive his full salary and scheduled prime until the new date fixed for the end of the 2019-2020 season”.

12. On 6 May 2020, the Player informed the Club that he would travel with his family to his home country, Tunisia, and that he would return before the beginning of the trainings, according to the health rules of the country.
13. On 6 June 2020, the Player’s legal representative sent by email a default notice to the Club requesting payment of the total amount of USD 376,245.00, net, for three outstanding salary instalments of USD 125,415.00, each, for March, April and May 2020, according to Article 4 paragraph 4 of the Employment Contract, within a deadline of fifteen days. By same correspondence, the Player’s legal representative stressed that the Player had never agreed to a reduction in his salaries, and, argued that the Club did not fulfil the conditions set out in FIFA Covid-19 Guidelines that would allow the variation of the Employment Contract on a unilateral basis.
14. On 11 June 2020, the Club made a payment to the Player in the amount of USD 226,136.00 designating payment as “*salary for March, April, May*”.
15. On 28 June 2020, the Club informed the Player in writing of its decision to impose a disciplinary fine equal to a 5% reduction in his monthly salary for his absence from the training session of 26 June 2020.
16. On 29 June 2020, the Club informed the Player in writing of its decision to impose a second disciplinary fine equal to a 5% reduction in his monthly salary, for his absence from the training session of 28 June 2020.

17. On 30 June 2020, the Club informed the Player in writing of its decision to impose a third and a fourth disciplinary fine, each equal to a 5% reduction in his monthly salary for his absence from the training sessions of 29 and 30 June 2020, respectively.
18. On 30 June 2020, the Club made a payment to the Player in the amount of USD 51,930 designating payment as "*June salary*".
19. On 1 July 2020, the Player's legal representative sent a second default notice to the Club requesting payment of the total amount of USD 275,524.00 for outstanding salaries in the period from March until June 2020, after deducting the amount of USD 226,136.00 already paid by the Club, within a deadline of 15 days. By same correspondence, he also cautioned the Club that it was illegal to impose disciplinary sanctions on the Player for his absence from trainings while the Club was in default of its financial obligations under the Employment Contract.
20. On 2 July 2020, the Club informed the Player in writing of its decision to impose a fifth and a sixth consecutive disciplinary fine, each equal to a 5% reduction in his monthly salary for his absence from training sessions of 1 and 2 July 2020 respectively.
21. On 4 July 2020, the Club informed again the Player in writing of its decision to impose a seventh disciplinary fine equal to a 5% reduction in his monthly salary for his absence from the training session of 3 July 2020.
22. On 6 July 2020, the Club informed the Player in writing of its decision to impose an eighth and a ninth disciplinary fine, each equal to a 5% reduction in his monthly salary for his absence from training sessions of 5 and 6 July 2020 respectively.
23. On 7 July 2020, the Club informed the Player of its decision to impose a tenth disciplinary fine equal to a 5% reduction in his monthly salary for his absence from the training session of 7 July 2020.
24. Finally, on 8 July 2020, the Club informed the Player by email of its decision to impose an eleventh disciplinary fine equal to a 5% reduction in his monthly salary for his absence from the training session of 8 July 2020.
25. On 12 July 2020, the Player attended again the training sessions of the Club.

B. Proceedings before the FIFA Dispute Resolution Chamber

26. On 22 July 2020, the Player lodged a claim against the Club before FIFA's Dispute Resolution Chamber (the "FIFA DRC") requesting payment of the amount of USD 150,109 as outstanding balance of his unpaid salaries for April and May 2020, with annual interest at a rate of 5% as of 1 May 2020 on the amount of USD 24,694, and, as of 1 June 2020 on the amount of USD 125,415.

27. On 1 August 2020, the Player amended his claim requesting, in addition, his contractually agreed salaries for June and July 2020. The amended aggregate claim amounted to USD 380,104 with an annual interest of 5% as follows: i) on the amount of USD 24,694 as of 1 May 2020, ii) on the amount of USD 125,415 as of 1 June 2020, iii) on the amount of USD 125,415 as of 1 July 2020 and iv) on the amount of 104,580 as of 1 August 2020.
28. The Club disputed the Player's claim arguing that the unilateral salary reduction was done respecting national law and FIFA's criteria and that the Player received all his financial dues until 30 June 2020 (i.e. USD 277,912) after applying the salary decrease and the disciplinary sanctions. With regard to the July's salary the Player has to notify the updated bank details.
29. On 10 December 2020, the FIFA DRC rendered its decision on the aforementioned claim (the "Appealed Decision") with, *inter alia*, the following operative part:
- "1. The claim of the Claimant Naim Sliti is partially accepted.*
- 2. The Respondent Al Ettifaq Club, has to pay the Claimant the total amount of USD 203,386 plus an annual interest of 5% as follows:*
- on the amount of USD 51,148 from 1 June 2020 until the date of effective payment.*
on the amount of USD 84,261 from 1 July 2020 until the date of effective payment
on the amount of USD 67,977 from 1 August 2020 until the date of effective payment.
- 3. Any further claims of the Claimant are rejected".*
30. On 13 April 2021, the grounds of the Appealed Decision were communicated to the Parties.
31. In passing its judgment the FIFA DRC determined, essentially, the following:
- The Employment Contract refers to FIFA Regulations as applicable law. Consequently, the FIFA Covid-19 Guidelines shall be taken into account to assess the case at hand.
 - The Club had tried several times to discuss with the Player its proposal for a temporary reduction in his monthly salary by 50% over the amount of 20,000 SAR, as a result of the Covid-19 pandemic, yet without success. The Player never objected to the prospect of a reduction at that time. It therefore, follows that the Club's decision to vary unilaterally the payment terms of the Employment Contract was made in good faith, in accordance with the requirements of FIFA Covid-19 Guidelines.
 - As it appears from the exchange of correspondence between the Parties the Player's legal representative had indicated that under the circumstances of the Covid-19 pandemic a salary reduction of 25% would be proportionate.

- Consequently, and also considering that the Club's financial situation was certainly affected as a result of the pandemic worldwide, it appears that a reduction by 25% was reasonable and proportionate.
- Unilateral salary reductions cannot be applied retroactively. Taking into account that the Club's proposal on the matter was communicated to the Player for the first time on 15 April 2020, it follows that the Club cannot implement salary reductions for March and for the first half of April 2020.
- On this basis, the Player was entitled to receive a salary equivalent to 75% of the originally agreed salary in the period from 16 April 2020 until 30 May 2020, corresponding to USD 141,092 and also, 75% of the originally agreed salary for June 2020, corresponding to the amount of USD 94,061. His monthly salary for July 2020 is not subject to any reduction.
- Further than that, Article 8 of the Employment Contract provided for the Club's right to impose disciplinary sanctions on the Player in the event of violation of his contractual obligations, on the condition he was informed in writing. In addition, the Player was aware of the content of the respective SAFF Regulations.
- The Club's decision to impose a fine for the Player's absence from the training of 26 June 2020, which was the first day after trainings had resumed, is not valid as it was made without prior warning. On the other hand, all other fines for the Player's absence from trainings from 27 June 2020 until 8 July 2020 were validly imposed, considering that he had been informed each time and in writing and was made aware of his right to appeal.
- Consequently, the Club had the right to impose three monetary fines for the Player's absence from three training sessions in June 2020 in the total amount of USD 9,800 as a 5% deduction from his salary each time. Thus, his remuneration for June 2020 ultimately amounted to USD 84,261 (*i.e.* USD 94,061 minus USD 9,800 in fines)
- Similarly, the Club had the right to impose seven monetary fines for his absence from seven training sessions in July 2020 in the total amount of 36,603 corresponding to a deduction of 5% on his monthly salary each time. Thus, his remuneration for July 2020 ultimately amounted to USD 67,977 (*i.e.* USD 104,580 minus USD 36,603 in fines).
- In conclusion, the Player was entitled to receive in the period from 30 March until 30 July 2020 the following amounts in salaries: USD 188,122 for March 2020 and the first half of April 2020; USD 141,092 for the second half of April 2020 and May 2020; USD 84,261 for June 2020, and, USD 67,977 for July 2020. After deducting the partial payments of USD 226,136 and USD 51,930 made by the Club on 11 and 30 June 2020, respectively, the Club has to pay the Player a total of USD 203,386 with a default interest at a rate of 5% p.a. from the respective due dates for each of his salary payments.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

32. On 18 April 2021, the Player filed a Statement of Appeal against the Club pursuant to Article R48 of the CAS Code of Sports-related Arbitration (2020 edition) (the “Code”), with the Court of Arbitration for Sport (the “CAS”) with respect to the Appealed Decision. The appeal was registered in the CAS roll as case CAS 2021/A/7878. With his Statement of Appeal, the Player requested that the case be submitted to a three-member Panel and nominated Mr Manfred Nan, Attorney-at-law in Arnhem, the Netherlands, as arbitrator.
33. On 29 April 2021, the Club filed a Statement of Appeal against the Player pursuant to Article R48 of the Code with the CAS, also with respect to the Appealed Decision. The appeal was registered in the CAS roll as case CAS 2021/A/7916. With its Statement of Appeal, the Club requested that the case be submitted to a Sole Arbitrator and nominated Mr Mark Hovell, Solicitor in Manchester, United Kingdom, as arbitrator.
34. On 4 May 2021, the Player informed the CAS Court Office that he objected to the nomination of a Sole Arbitrator and requested that the case be submitted to a Panel of three arbitrators.
35. On 26 May 2021, the CAS Court Office informed the Parties that pursuant to Article R52 of the Code the Deputy President of the CAS Appeals Arbitration Division had decided to consolidate the proceedings in cases 2021/A/7878 and 2021/A/7916, as they concern appeals against the same decision, and that the consolidated proceedings shall be submitted to a Panel composed of three arbitrators.
36. On 29 June 2021, the Club filed its Appeal Brief in the procedure CAS 2021/A/7916 pursuant to Article R51 of the Code, within the extended deadline.
37. On 30 June 2021, the Player filed his Appeal Brief in the procedure CAS 2021/A/7878 pursuant to Article R51 of the Code, within the extended deadline.
38. On 30 June 2021, pursuant to Article R54 of the Code and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the consolidated matters was constituted by:

President: Mr Sofoklis P. Pilavios, Attorney-at-law in Athens, Greece
Arbitrators: Mr Manfred Nan, Attorney-at-law in Arnhem, the Netherlands
Mr Mark Hovell, Solicitor in Manchester, United Kingdom
39. On 18 August 2021, the Club filed an Answer to the appeal in case CAS 2021/A/7878 pursuant to Article R55 of the Code within the extended deadline.
40. On 24 August 2021, the Player filed an Answer to the appeal in case CAS 2021/A/7916 pursuant to Article R55 of the Code within the extended deadline.

41. On 25 August 2021, the CAS Court Office invited the Parties to state whether they prefer a hearing to be held on the matter, or, for the Panel to issue an award based solely on their written submissions.
42. On 25 August 2021, the Player informed the CAS Court Office that he does not deem a hearing necessary.
43. On 27 August 2021, the Club informed the CAS Court Office that it does not object to the case being decided solely on the Parties' written submissions without holding a hearing.
44. On 31 August 2021, the CAS Court Office informed the Parties that pursuant to Article R57 of the Code, the Panel deemed itself sufficiently well-informed to decide both cases solely on their written submissions, without the need to hold a hearing.
45. On 1 October 2021, the Player and the Club returned to the CAS Court Office each a duly signed copy of the Order of Procedure.
46. The Panel confirms that it carefully took into account in its deliberations all of the submissions, evidence, and the arguments presented by the Parties, even if they have not been specifically summarized or referred to in the present award. In addition, by signing the Order of Procedure both Parties confirmed that their respective right to be heard has been respected.

IV. SUBMISSIONS OF THE PARTIES

47. The submissions of the Player, in essence, may be summarized as follows:

In the Appeal CAS 2021/A/7878:

- The dispute should be assessed solely by reference to FIFA Regulations, and more specifically, the FIFA Covid-19 Guidelines, which contain general and non-binding interpretative guidelines to the FIFA Regulations for the Status and Transfer of Players, and not by reference to Saudi law.
- The Club did not demonstrate a situation of *force majeure* and failed to prove the financial hardship allegedly caused by the Covid-19 pandemic to justify a reduction in the Player's salaries.
- In the absence of specific circumstances of *force majeure*, the Player was not obliged to accept the Club's proposal for a reduction, as this right is inherent to his economic freedom and contractual autonomy. At any rate, the Player had made it clear that he would not accept the Club's proposal.

- Consequently, the Appealed Decision decided the matter in violation of the principle of *pacta sunt servanda* and contrary to the contractual freedom of the parties, which are fundamental under Swiss contract law.
- The Appealed Decision also erred in concluding that the Player's representative had indicated that a reduction by 25% would be proportionate in the case at hand. This is an erroneous speculation, as neither the Player, nor his representative had ever implied that any amount of reduction would be appropriate.
- At any rate, the Club failed to comply with the prerequisites outlined in the FIFA Covid-19 Guidelines, as it did not explain the mechanism behind the Player's salary reduction. In addition, the Club did not show that the salary cuts were applied to the entire squad, as the foreign players did not agree to the proposed reductions.
- Lastly, the Appealed Decision erred in concluding that the Club had validly imposed monetary fines on the Player for his absence from trainings from 27 June until 8 July 2020, given that: i) the Club was already in default of its contractual obligations towards the Player, and, ii) the Player's right to be heard had not been duly respected.
- On these grounds, all fines imposed in the form of deductions from the Player's June and July 2020 salaries are illegal, and therefore, the Club cannot offset any such amounts of fines against the Player's entitlements for outstanding salaries.
- In light of the above, the Club has not paid the Player his contractually agreed salaries as per Articles 4.4 and 4.5 of the Employment Contract in the period between March 2020 to July 2020. As a result, up to this date the outstanding balance of salaries due for this period totals to USD 328,174.

In the Appeal CAS 2021/A/7916

- The Covid-19 pandemic is not a situation of *force majeure* as suggested by the Club and the Club did not substantiate any financial hardship suffered thereby.
- The Club's decision of 27 April 2020 is not valid nor legally binding on the Player as it was not made in accordance with the prerequisites outlined in the FIFA Covid-19 Guidelines.
- The fines imposed on the Player were in violation of the principle of due process, and, also in breach of the provisions of the Employment Contract and the SAFF Disciplinary Regulations.
- According to the principle of *exceptio non adimpleti contractus* as enshrined in Article 82 of the Swiss Code of Obligations (the "SCO") the Club cannot impose disciplinary sanctions on the Player for his absence from trainings since 26 June 2020, as it was

already in repeated breach of its contractual obligations towards the Player since May 2020.

- At any rate, the Employment Contract does not authorize the Club to set off fines against salaries.

48. In his Appeal Brief the Player submitted the following requests for relief:

“Mr. Naim Sliti respectfully asks that CAS:

1. Set aside points 1, 2, and 3 of the operative part of the decision issued by the FIFA Dispute Resolution Chamber on December 10, 2020, in case No. 20-01042

2. Issue a new decision as follows:

2.1. Al Ettifaq has to pay Mr. Naim Sliti outstanding wages of USD 328,174 plus interest of 5% per annum until the effective payment date, as follows:

a. On USD 98,179 as of 1 June 2020;

b. On USD 125,415 as of 1 July 2020; and

c. On USD 104,580 as of 1 August 2020.

2.2. Al Ettifaq has to pay the outstanding salaries above to Mr. Naim Sliti on a net basis, free of any taxation. It is responsible for filing and paying all taxes relating to the wages due to Mr. Naim Sliti.

3. Confirm points 4 to 6 of the operative part of the decision rendered by the FIFA Dispute Resolution Chamber on December 10, 2020, in case No.20-01042

4. Order the Respondent to bear all costs incurred with the present procedure.

5. Order the Respondent to pay the Appellant EUR 30,000 to contribute to his legal and other expenses of two counsels”.

49. In his Answer to the appeal in case CAS 2021/A/7916 the Player submitted the following requests for relief:

“On these grounds the Respondent respectfully asks that CAS:

1. Dismiss the Appellant’s appeal.

2. Order the Appellant to bear all costs incurred with the present procedure.

3. *Order the Appellant to pay the Respondent EUR 30,000 to contribute to his legal and other expenses for two counsels”.*

50. The submissions of the Club, in essence, may be summarized as follows:

In the Appeal CAS 2021/A/7916

- The Club’s decision to apply a reduction of 50% on the Player’s monthly salary over the amount of 20,000 SAR during the suspension of its sporting activities due to the Covid-19 pandemic was fair, proportional and in compliance with all requirements set out in FIFA Circulars No 1714 and 1720.
- The Covid-19 pandemic qualifies as a situation of *force majeure* in Saudi Arabia given that nearly all business activities, including football activities, were suspended as of 15 March 2020.
- As a result, the Club suffered in the first six months of 2020 a drop in its revenues by 60%, which placed it in a very difficult financial situation.
- The Club acted in good faith and fulfilled all criteria laid down by FIFA Guidelines before imposing a unilateral salary reduction on the Player, particularly in view of the fact that: i) the Club had previously tried to initiate negotiations, ii) the amount of the reduction was fair and proportional, iii) the reduction was intended for a limited time, and, iv) 83% of its employees had accepted salary reductions to a level of 50% over the amount of 20,000 SAR.
- Contrary to the findings of the Appealed Decision, the reduction should be applied as of 15 March 2020, namely as of the suspension of football activities in Saudi Arabia, and should be calculated with a rate of 50% on the amount of the Player’s salary over 20,000 SAR. In this way the Player’s salary for April, May and June 2020 amounts to USD 65,371.
- The Club was entitled to impose disciplinary sanctions on the Player for his unjustified absence from eleven training sessions in June and July 2020 equal to a 5% deduction from his monthly salary each time.
- The Appealed Decision was wrong in concluding that the Club could not impose a fine for the Player’s first absence from the training session of 26 June 2020, as he had already been invited to fly back to Saudi Arabia on 25 June 2020 and he was made aware of his obligation to attend trainings. At any rate, the Club’s decision was made in accordance with the contractual and regulatory provisions that govern the employment relationship and the Player did not exercise his right to appeal.

- On this basis, the Club imposed a valid fine of USD 13,088 to be deducted from the Player's salary for June 2020 and a valid fine of USD 36,603 to be deducted from the Player's salary for July 2020.
- In conclusion, the Club has duly discharged all its financial obligations towards the Player until the end of June 2020 and acknowledges that it still owes only the amount of USD 67,977 for his remuneration in July 2020 after the deduction of the monetary fines of USD 36,603.

In the Appeal CAS/A/7878

- The Player's absence from the training sessions after the reopening of the Club's activities was unjustified, as he had refused to take a flight back to Saudi Arabia on 25 June 2020.
- All disciplinary sanctions were notified by email. Besides, the Player knew the content of the SAFF Regulations and he was represented by his lawyer throughout this period, so he could have taken the necessary steps to challenge the disciplinary sanctions by filing an appeal.
- The Club ultimately paid the Player his salary for July 2020, after deducting the corresponding amounts of monetary fines. In this way, the Club has fully discharged its financial obligations to the Player until July 2020, and so up to this day there are no overdue amounts of salaries to the Player.

51. In its Appeal Brief, the Player submitted the following requests for relief:

"The appellant respectfully asks the honorable panel to:

- *Admit the appeal against the decision of the DRC rendered on 10 December 2020.*
- *Annul partially the decision rendered by the DRC FIFA and condemn the club to pay only USD 67,977 as a July salary.*
- *Subsidiarily, order an accountant expertise by independent expert to decide whether the decrease was in accordance with the accountant documents and the financial situation of the club or not.*
- *Condemn the respondent to pay 10,000 CHF as attorney's fee and costs.*
- *Condemn the respondent to pay all CAS costs".*

52. In its Answer to the appeal in case CAS 2021/A/7878, the Club submitted the following requests for relief:

"The respondent respectfully asks the honorable panel to:

- *Dismiss the appeal submitted by the player against the decision of the DRC rendered on 10 December 2020.*
- *Annul totally the decision rendered by the DRC FIFA.*
- *Subsidiarily, order an accountant expertise by independent expert to decide whether the decrease was in accordance with the accountant documents and the financial situation of the club or not.*
- *Condemn the respondent to pay 10,000 CHF as attorney's fee and costs.*
- *Condemn the respondent to pay all CAS costs".*

V. JURISDICTION

53. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with 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".

54. Article 58 para. 1 of the FIFA Statutes provides as follows:

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

55. The jurisdiction of CAS in the present case derives from Article 58 para. 1 of the FIFA Statutes and Article R47 of the Code and it is further confirmed by the Order of Procedure duly signed by the Parties. It, therefore, follows that CAS has jurisdiction to decide on both appeals.

VI. ADMISSIBILITY

56. The grounds of the Appealed Decision were notified to the Parties on 13 April 2021. The Player filed his Statement of Appeal on 18 April 2021 and the Club filed its Statement of Appeal on 29 April 2021. Therefore, the 21-day deadline to file the appeal set by Article 58 para. 1 of the FIFA Statutes was met in both cases. Further, the appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.

57. It follows that both appeals are admissible.

VII. APPLICABLE LAW

58. Article R58 of the Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

59. Article 57 para. 2 of the FIFA Statutes stipulates the following:

“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

60. The Panel notes that Article 3 of the Employment Contract (titled as *“Item 3: Complying with Regulations and Rules”*) provides as follows:

“The two parties shall comply with and implement the laws, circulars and regulations issued by FIFA”.

61. In addition, Article 14 paragraphs 1 and 3 of the Employment Contract (titled as *Item 14: General Provisions*) provide as follows:

“1. The two parties declare that they have taken note of the SAFF and FIFA regulations and circulars before signing this contract, and that they are obliged to implement them.

...

3. The provisions of Professional Player’s status and transfer regulations shall apply to all matters not provided for in this contract”.

62. In light of the above-mentioned provisions, and in view of the express choice made by the Parties in relation to the law governing the Employment Contract, the Panel is satisfied that FIFA Regulations and the SAFF Regulations are applicable in the present dispute, and, Swiss law shall be applied subsidiarily. More specifically, and also considering that the case concerns a dispute around the performance of an employment agreement under the circumstances of the Covid-19 pandemic, the Panel shall apply the relevant provisions of the FIFA Regulations on the Status and Transfer of Players (the “FIFA RSTP”) in conjunction with the Guidelines issued by FIFA on 7 April 2020 titled as Covid-19 Football Regulatory Issues Document (the “FIFA Covid-19 Guidelines”) and the Covid-19 Frequently Asked Questions Document issued by FIFA on 11 June 2020 (the “FIFA FAQ Covid-19 Document”).

VIII. MERITS

63. The central issue of contention in this dispute is whether the Club had the right to vary unilaterally the financial terms of its Employment Contract with the Player without his prior agreement, or consent, and effectively pay him reduced monthly salaries in the period from 15 March 2020 until 30 June 2020, as a result of the outbreak of the Covid-19 pandemic and the subsequent shutdown of all football activities in Saudi Arabia.
64. In this respect, the Club argues that the suspension of all football activities in the country since 15 March 2020 caused an unforeseen plunge in its revenues by 60% which qualifies as a situation of *force majeure*.
65. For this reason, on 27 April 2020 the Club notified the Player its decision to implement salary cuts effective from 15 March 2020 until the resumption of all activities, following which his monthly salary instalments would ultimately amount to USD 65,371, instead of the contractually agreed amount of 125,415 USD. The Club maintains that this decision was made in accordance with all requirements set forth in FIFA Covid-19 Guidelines that allowed it to vary unilaterally the Employment Contract as a result of the pandemic, and was thus binding on the Player. It therefore argues that by paying these reduced amounts it had duly discharged its financial obligations *vis a vis* the Player and there is no valid claim.
66. At this point, the Panel notes that the Club does not dispute its obligation to pay the Player the contractually agreed salary for July 2020, as provided in Article 4 para. 5 of the Employment Contract, but contends that it is entitled to deduct the amounts of monetary fines levied on the Player as disciplinary measures. These contentions however, will be reviewed as a separate matter in this award.
67. The Player on the other hand, denies in the strongest terms the Club's allegations about a situation of *force majeure*. On this basis, he argues that he was under no circumstances obliged to accept a reduction in his salaries based on the principle of *pacta sunt servanda* and that at any rate the Club did not fulfil the conditions provided in the FIFA Covid-19 Guidelines that could allow it to amend unilaterally the Employment Contract. As such, the Club still owes him a part of his salary for May 2020, and the entire amount of his June and July 2020 salaries.
68. As already pointed out, the Employment Contract does not contain any reference to national law. Hence, the Panel shall decide the matter without regard to the employment legislation of Saudi Arabia, but solely by reference to the guiding principles included in FIFA Covid-19 Guidelines and the FIFA Covid-19 FAQ Document.
69. FIFA Covid-19 Guidelines contain a set of principles and recommendations with the aim to address situations, where employment agreements cannot be performed as originally anticipated by the parties due to the Covid-19 crisis. In principle, the Guidelines advocate strongly for a spirit of cooperation and consensus, encouraging the parties to reach amicable settlements. However, in case this is not feasible, the Guidelines propose that unilateral

contract amendments shall be upheld only if recognized by national law, or, in case national law is not relevant, if made in *good faith* and if they are *reasonable* and *proportional*.

70. In this light, the Panel, having determined that national law is not applicable to the matters at hand, shall review whether in the specific circumstances of this case, the Club's decision to reduce by nearly 50% the Player's monthly salary instalments for a period of three and a half months was actually made in *good faith*, namely in a spirit of honesty and fairness, and also whether it was *reasonable* and *proportional*, namely whether it was dictated by a sound economic rationale and was appropriate in its measure. For this purpose, and, in line with the indicative criteria set out in FIFA Covid-19 Guidelines, the Panel shall examine the following set of issues:
- a) the steps taken by the Club with a view to reach an agreement with the Player before applying unilateral salary cuts;
 - b) the consequences of the Covid-19 pandemic on the Club's financial situation in the period from March until June 2020 and the degree of disruption caused to contract performance;
 - c) the size of the salary reduction and the economic purpose served thereby;
 - d) the Player's overall economic situation, and,
 - e) the uniform application of similar pay cuts on the entire squad.
71. On the first point, the Panel observes that since 15 April 2020 the Club had informed in writing both the Player and his agent in three different occasions about its proposal to apply a reduction of 50% on the amount of over 20,000 SAR in his salary, and, called him to agree thereupon by signing the Draft Agreement. Oddly enough, the Player did not reply at all to the relevant correspondence sent by the Club. It was only after the Player's total inaction, that the Club decided to issue a unilateral decision on the matter. In this way, the Panel is satisfied that the Club was clear and straightforward in its intentions towards the Player, and it had taken all necessary steps to initiate some sort of negotiations in good faith in the hope to reach a mutual agreement on the matter.
72. Next, the Panel turns its focus on the consequences of the Covid-19 pandemic on the financial state of the Club and its impact on the performance of the Employment Contract.
73. The Panel finds it an undeniable fact that the first outbreak of the Covid-19 pandemic in March 2020 and the restrictions imposed in each country on almost all economic activities for the protection of public health created an unforeseen and extraordinary situation that affected the performance of employment contracts in many sectors of the economy worldwide, including the football industry. Having said so, the Panel is mindful that in the introduction of its Covid-19 FAQ Document, FIFA clarified that the pandemic should not be considered by clubs and employers in football as a *force majeure* situation in general, but this should rather be assessed on a case - by - case basis, in light of the particular circumstances of each individual employment relation, and, each country. Consequently, for FIFA the Covid-19 pandemic is not a situation of *force majeure* in and of itself.

74. Accordingly, the Panel holds that the Club cannot simply invoke the Covid-19 pandemic as a generic defence of *force majeure* without substantiating exactly how the pandemic affected its financial situation to such extent that it had rendered the performance of the Employment Contract allegedly impossible.
75. Besides, according to a general and well accepted definition formulated by previous CAS Panels “*force majeure implies an objective (rather than a personal) impediment beyond the control of the obliged party that is unforeseeable, that cannot be resisted and that renders performance impossible*” (CAS 2013/A/3471 § 49). In addition, according to a consistent approach taken by CAS case law, the conditions of *force majeure* should be interpreted strictly and narrowly, since they may introduce an exception to the binding force of an obligation (CAS 2013/A/3471§ 50, CAS 2015/A/3909 § 74). The onus of proof in this respect lies with the Club.
76. For this purpose, the Club submitted a report suggesting that in the period from 1 January to 30 June 2020 its aggregate revenues from ticketing, sponsorships, donations, advertising, state financing, sales of merchandise and transfer agreements had plummeted by an average of 60%. The Panel considers the data presented by the Club to be credible and reasonable and finds this an admittedly negative circumstance. Notwithstanding these considerations, however, the Panel does not see how this drastic, yet short - term, drop in revenues had derailed the Club’s financial planning to such an extent that the performance of the Employment Contract was no longer possible in the way originally envisaged. In other words, the Club is required to show more than a general economic difficulty in abstract terms. It has to show a real disruption in its financial operation and a total lack of alternative resources that had made it impossible to fulfil its payment obligations to the Player. Additionally, this report was prepared after the events. For the players to know whether a 50% reduction was justified or needed, the Club should have produced a report at that time it made the request, predicting the effects of the pandemic and showing why the players needed to accept such a reduction (i.e. the Club would fall into insolvency otherwise, as there was no other alternative funding available etc). The Panel could understand that an arbitrary cut, without any financial report justifying the same, could be unattractive to the players.
77. In the absence of more specific information or data, other than the temporary drop in its revenues, the Club did not prove sufficiently that the Covid-19 crisis had put such a tremendous strain on its finances that threatened its solvency and its financial viability. Similarly, the Panel finds no evidence to suggest that during the lockdown period the Club was essentially deprived of any access to alternative sources of liquidity, either via bank lending, or state aids, or through private and public financing, or through the use of contingency funds. Hence, in the circumstances invoked, the Panel finds that the financial operation of the Club was not shown to have been disrupted to an extreme effect.
78. On the other hand, the Panel cannot overlook the fact that during the suspension of the football activities in Saudi Arabia the Player’s obligation to provide his services was also suspended, as he was no longer required to participate in any official matches and training sessions during this time. In fact, as it appears from the case file, the Player requested

permission and left Saudi Arabia with his family in the beginning of May and he was invited to return only by 25 June 2020, with the resumption of trainings. Therefore, the Panel considers that in principle, the Club's decision to apply a reduction in the Player's salaries during the lockdown period was made in good faith and was based on reasonable grounds.

79. Further, the Panel shall review the proportionality requirement, namely the size of the decrease in the Player's monthly salary and the economic purpose served thereby. The Club effectively applied a reduction of 47,9%, as according to its contentions the contractually agreed amount of USD125,415 was reduced to USD 65,371. Yet, it did so without ever explaining why this precise percentage was deemed appropriate. Indeed, the Panel is unable to discern the economic rationale behind these numbers. A reasonable, equitable and proportional decrease would need to reflect a balanced allocation of the economic risks of the pandemic between the parties involved. In this way, the Player and the Club would share to some extent its adverse effects. This does not seem to be the case in the present dispute. Taking into account that its revenues had dropped by 60% during the lockdown period, it becomes apparent that the Club tried to compensate its loss of revenue directly through salary cuts and to thereby transfer the economic risks of the pandemic almost entirely to its players.
80. Therefore, the Panel concludes that the Club's decision to reduce the Player's monthly salary by a percentage of 47,9% for a term of three and a half months is excessive and disproportionate as it does not reflect a fair and balanced risk allocation between the parties.
81. As a final point, the Panel finds important to stress that based on the information disclosed by the Club, the Player was in the top-three of the highest paid players of the team. However, this fact alone is not sufficient to justify unilateral pay cuts as there needs to be an element of equal treatment amongst all players.
82. According to the Club's contentions the proposed salary reductions were initially intended to apply to all its employees, yet, only 28 out of the 35 players of the squad agreed to the reduced payments. In fact, as it appears from the evidence presented before the Panel, the foreign players of the squad did not sign amendments to their contracts. In addition, the Club did not show that it insisted on applying reductions on a unilateral basis to the other foreign players of the squad, in an analogous manner as it did with the Player in this case. Against this background it appears that the Club did not follow a consistent and coherent policy of salary reductions to all its players. In this respect, the Club's conduct towards the Player appears to be grossly discriminatory.
83. In light of the foregoing analysis, and after reviewing carefully the facts of the case, the Panel concludes that the Club's decision of 27 April 2020 by means of which it purported to amend unilaterally Article 4 of the Employment Contract and to thereby pay the Player reduced monthly salaries in the period from 15 March 2020 until 30 June 2020 was not in compliance with the requirements set by FIFA Covid-19 Guidelines, as it was in breach of the proportionality requirement and also in breach of the principle of equal treatment and non-

discrimination. Consequently, this decision is devoid of legal effects and it is not binding on the Player.

84. In view of the particular facts of this case, and contrary to the findings of the Appealed Decision, the Panel considers that the Player cannot be subject to any reduction in his salaries, even at a lesser rate. On this issue the Panel disagrees with the conclusion contained in the Appealed Decision that a salary reduction of 25% was reasonable and proportionate because the Player's legal representative had indicated that a reduction of this scale appeared to be proportionate. The Panel found no evidence to support the conclusion that the Player, or his legal representative, had ever suggested that a salary reduction of 25% was proportionate in the case at hand, or, that it would be acceptable by the Player. Therefore, the Panel cannot uphold a unilateral salary reduction of 25%.
85. As a result, the Panel confirms that the Player has a legal entitlement to receive his contractually agreed monthly salaries in the period from March until June 2020, in their entirety, in accordance with Article 4 para. 4 of the Employment Contract without any reduction whatsoever.
86. The second issue of contention in this dispute is whether the Club had the right to impose eleven monetary fines on the Player in the form of salary deductions by a rate of 5% from his monthly salary, each time, as disciplinary measures for his absence from four training sessions in June 2020 and seven training sessions in July 2020. The Club maintains that these fines were imposed in accordance with the respective provisions of the Employment Contract and the SAFF Regulations. On this premise, it contends that it had a legitimate right to withhold the amount of USD 13,088 from the Player's June 2020 salary, (i.e. a deduction of 20%) and the amount of USD 36,603 from his July 2020 salary (i.e. a deduction of 35%).
87. The Panel recalls that the Player had sent a default notice to the Club on 6 June 2020 requesting the outstanding amount of USD 376,245, at the time, for his unpaid salaries for March, April and May 2020 and set a fifteen - days deadline for full payment. With same correspondence, he made it explicitly clear that the Player insisted on payment "*without any deduction whatsoever*" and emphasized that he did not recognize the Club's unilateral decision of 27 April 2020.
88. Notwithstanding this explicit warning, the Club did not pay the requested outstanding amount in full. On the contrary, it made a partial payment of USD 226,136 on 11 June 2020 on the arbitrary assumption that it was entitled to pay only reduced amounts of salaries for March, May and June 2020, even though the matter was already disputed.
89. And further than that, on 23 June 2020 the Player's legal representative sent a new reminder to the Club warning that the Player would not attend the soon to resume trainings unless the Club would pay in full his overdue salaries by 25 June 2020 without any reductions. This means that the issue was still highly contentious and far from settled.

90. Besides, as confirmed in the present award the Club had no legitimate right to vary unilaterally the financial terms of the Employment Contract. Hence, by 26 June 2020, namely the day of the first training following the lockdown period, the Club was already in breach of its fundamental contractual obligation to make full and timely salary payments to the Player.
91. According to the general principle of *exceptio non adimplenti contractus* which is incorporated in Article 82 of SCO, a party to a bilateral contract cannot request the fulfilment of the other party's contractual obligations, until it has discharged, or offer to discharge, its own obligations. Previous CAS Panels have already confirmed the application of this principle in the realm of football contracts along with the remedies offered by the FIFA RSTP in case of overdue salaries [CAS 2013/A/3089 § 61-63].
92. In line with this principle, the Player had duly notified the Club that he would not attend trainings for as long as it remained in default of its payment obligations and, at the same time, he reserved his right to terminate the Employment Contract in accordance with Article 14bis of FIFA RSTP. The Panel finds that under these circumstances the Player's decision not to attend the trainings, particularly after having previously put the Club on default notice, was perfectly justified and legal in accordance with Article 82 of SCO and also in line with his rights under FIFA RSTP. This is especially so considering that he was placed in an extremely unusual and unprecedented situation where the Club persisted in the unilateral amendment of his Employment Contract in the most pressing manner, leaving him with no option but to use all legal remedies available.
93. Under these circumstances, the Panel considers that the Club's decision to impose monetary fines on the Player for his absence from trainings, while itself remained in default of its payment obligations towards him, even after the expiration of the 15-days deadline, and while knowing his anticipated reaction to this, was made entirely in bad faith and in abuse of right and was, therefore, illegal.
94. Consequently, all monetary fines levied on the Player for his absence from training sessions in the period from 26 June 2020 until 8 July 2020 are completely null and void and the Club has no right to offset these amounts against the Player's outstanding salaries.
95. As a final point, the Panel remarks that during the course of the present proceedings the Club submitted that it ultimately paid the Player his salary for July 2020. However, the proof of payment on which the Club relies is not conclusive in this respect, as it does not constitute bank confirmation of the purported transfer of funds, and it does not serve as evidence for the date of the purported transfer, the exact amount transferred, and the recipient of the supposed payment. Hence, the Panel cannot confirm if such payment was actually made and therefore, it shall not take it into account for the purposes of the present award.
96. In view of these considerations, and after taking into account the two payments made by the Club in the period from March to July 2020, the first on 11 June 2020 in the amount of USD 226,136, and the second on 30 June 2020 in the amount of USD 51,930, the Panel confirms

that the Player is entitled to receive in accordance with Article 4 paragraphs 4 and 5 of the Employment Contract the following amounts:

- a) USD 98,179 as remainder of unpaid salary for May 2020, due on 1 June 2020
 - b) USD 125,415 as unpaid salary for June 2020 due on 1 July 2020, and,
 - c) USD 104,580 as unpaid salary for July 2020 due on 1 August 2020.
97. All amounts should be paid with a default interest at a rate of 5% per annum starting from the due date of payment of each item, until effective payment.
98. In light of the above, the Panel decides to amend the Appealed Decision accordingly.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Naim Sliti on 18 April 2021 against the decision passed on 10 December 2020 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is upheld.
2. The appeal filed by Al Ettifaq Club on 27 April 2021 against the decision passed on 10 December 2020 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.
3. Part. 2 of the decision passed on 10 December 2020 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is amended as follows:

Al Ettifaq Club is ordered to pay Naim Sliti the amount of USD 328,174 (USD three hundred and twenty-eight thousand one hundred and seventy four) with interest at a rate of 5% per annum:

- a) on the amount of USD 98,179 from 1 June 2020 until full payment;
 - b) on the amount of USD 125,415 from 1 July 2020 until full payment; and
 - c) on the amount of USD 104,580 from 1 August 2020 until full payment.
4. (...).
 5. (...).
 6. All other motions or prayers for relief are dismissed.