



Arbitration CAS 2021/A/8139 Ittihad FC v. Anice Badri, award of 26 September 2022

Panel: Mr Fabio Iudica (Italy), Sole Arbitrator

Football

Termination of the employment contract with just cause by the player

Legitimate grounds for club exemption

FIFA COVID-19 guidelines

Disciplinary measures and bank order

Compensation for damages

- 1. Pursuant to Article 14bis of the FIFA Regulations on the Status and Transfer of Players (RSTP), a player is deemed to have a just cause for termination when his club failed to pay him at least two consecutive monthly salaries, provided that he previously sent a default notice, with a 15-day deadline to remedy its debt. However, the player cannot prevail himself of this article if his club had legitimate grounds to reduce his salary as a result of a pandemic, disciplinary action, and/or if some payments were executed on the last day of the deadline.**
- 2. Whether or not a club is entitled to reduce a player's salary on the basis of the COVID-19 pandemic is a question of law and fact, which must be dealt with on a case-by-case basis in accordance with the FIFA COVID-19 guidelines. The relevant conditions are not met when the club did not attempt to reach an amicable agreement with its player in good faith, merely unilaterally imposed a national league's regulation without demonstrating compliance with the relevant state legislation and did not substantiate its financial loss.**
- 3. A salary reduction is unlawful when it is based on a disciplinary measure that was taken in violation of the adversarial process and the employment contract. A bank payment order is of no avail, if it was not executed until after the expiration of the deadline set for this purpose and various working days interspersed with public holidays.**
- 4. The compensation for damages shall be calculated, in the absence of any liquidated damage clause, considering the remuneration due to the player in accordance with the employment contract and its residual duration, subject to any financial gains made after the early termination. It cannot be waived on the basis of a document intended solely to declare the return of certain assets at the end of the contractual relationship, nor can it be reduced judicially on the principle of *clausula rebus sic stantibus*, in the absence of any serious disruption of the contractual balance.**

I. INTRODUCTION

1. The present appeal is brought by Ittihad FC against the decision rendered by the Dispute Resolution Chamber of the Fédération International de Football Association (FIFA) on 20 May 2021 (the Appealed Decision), regarding an employment-related dispute with the football player Anice Badri.

II. PARTIES

2. Ittihad FC (hereinafter, the “Appellant” or the “Club”) is a professional football club based in Jeddah, Saudi Arabia. It is affiliated with the Saudi Arabian Football Federation (hereinafter, “SAFF”) and participates in the Saudi Professional League, the top tier of Saudi Arabian professional football.
3. Anice Badri (hereinafter, the “Respondent” or the “Player”) is a French and Tunisian professional footballer born in Lyon, France, on 18 September 1990.
4. Jointly, Appellant and Respondent will be referred to as the “Parties”.

III. BACKGROUND FACTS

5. Below is a summary of the main relevant facts, as presented in the Parties’ written and oral submissions and evidence adduced in the present proceedings. Additional facts may be set out, where relevant, in connection with the 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 its reasoning.

A. The Employment Contract

6. On 14 January 2020, the Club signed an agreement with the Tunisian club, Espérance Sportive de Tunis, for the transfer of the Player against the payment of a transfer fee of 750,000 USD.
7. On the same date, the Player entered into an employment contract (hereinafter, the “Employment Contract”) with the Club, valid for 2 and a half years, from the date of signing until 30 June 2022.
8. The financial terms of the Employment Contract provide as follows:

Sign on fee	200,000 USD to be paid no later than 25/1/2020
Monthly salary from 14/1/2020 to 30/6/2020	200,000 USD
Monthly salary from 1/7/2020 to 30/6/2021	166,666 USD
Monthly salary from 1/7/2021 to 30/6/2022	183,333 USD
Total basic remuneration under the Employment Contract (for a total of 30 months)	5,600,000 USD
Contingent Benefits for each season	<p>200,000 USD net for winning the Saudi Professional League</p> <p>80,000 USD net for winning the King Cup</p> <p>100,000 USD net for winning the Arabian Cup</p> <p>100,000 USD net for winning the Asian Champion League</p> <p>100,000 USD net upon the first team achieve the 2nd or 3rd position at the end of the season</p> <p>100,000 USD net upon achievement of the Player's 20 goals or assists in the Saudi Professional League or the King Cup for a full season (50,000 USD in case of 10 goals/assists)</p> <p>50,000 USD net upon the Player make total assist or score 20 goals at the end of the season</p> <p><i>"It is agreed that in the event the Player reaches such bonus the Club shall automatically increase his annual salary for the agreed amount; it is understood that if the Player reaches such aim further to the first season, this provision shall remain in force for the season after"</i>.</p>

9. In addition, the Club agreed to provide the Player "high quality furnished" accommodation for a maximum cost of 50,000 USD per year, a car with full insurance cover (running costs to be borne by the Player) and a total of 8 business class return air tickets Tunis-Jeddah-Tunis per season.
10. On 2 February 2020, the Parties signed an amendment to the Employment Contract establishing a contribution by the Club towards the Player's children school fees for a maximum of 40,000 SAR (Saudi Riyal) per year for each child.

11. On 13 April 2020, the Club sent a circular letter to all his players and staff (the “Circular Letter”) whereby, making reference to the suspension of football activity decided by the Ministry of Sports in the Kingdom of Saudi Arabia on 14 March 2020, due to the Covid-19 outbreak, it pointed out the financial impact of the pandemic on the Club and relevant consequences on the performance of the employment contracts: *“The COVID-19 had affected all clubs financially including Al Ittihad SFC. The suspension of sport activities as described earlier adversely impacted the club resulting in losses of revenue streams such as the ticket sales, payments from sponsors, TV rights and many others. As such, the club is currently unable to continue the payments of the monthly salaries and other payments as expected. One-to-one emails or phone call maybe communicated with you to explain more on basis of individual employment contracts”*.
12. On 22 April 2020, the Player sent a letter to the Club through his legal counsel in which he claimed having not received payment of his salaries for February and March 2020, corresponding to USD 200,000 each. The Player also made reference to the Circular Letter and to an ensuing phone call by the Club’s Vice President concerning the Club’s decision to cut the Player’s salaries by 50% and argued that he had not agreed to such reduction and that the Club’s decision was unjustified and not in line with the FIFA Covid-19 guidelines. Finally, the Player objected that, in any case, any reduction of his salaries could only have been accepted on condition that, at least, the Club first paid all the outstanding monies (i.e., the February 2020 and March 2020 instalments).
13. On 3 June 2020, the Player’s counsel sent a letter of formal notice to the Club, granting the latter a deadline of 10 days to pay the total amount of 800,000 USD net as overdue salaries for the months of February, March, April and May 2020 according to the Employment Contract (the “First Default Notice”).
14. The Club replied with a letter dated 12 June 2020 through its legal counsel, acknowledging that there had been delays in the payment of all the players’ salaries due to the financial consequence of the Covid-19 pandemic on the Club and that nevertheless, a substantial payment would be made in the following days and *“Moreover, the funds that are further required will be made available at the latest by the end of the current month, so that by that time, we can settle all pending financial obligations”*. The letter further read *“We would also like to maintain our on-going discussions with you as to how the current COVID-19 crisis can be addressed within the current employment relationship between our clients, in a transparent manner and based on good faith”*.
15. On 14 June 2020, the Club’s legal counsel informed the Player in writing that a substantial first payment was going to be executed on the same day or the following day.
16. On 17, 18 and 19 June 2020, the Club made three bank transfers to the Player of 204,244 USD 150,000 USD and 200,000 USD respectively, totally amounting to 554,244 USD.
17. On 20 June 2020, the Club sent a letter to the Player by which it informed the latter of the resumption of sports activities in the country, inviting him to join the Club by enclosing flight tickets from Paris to Dubai on 25 June 2020 and further indications for a private flight from Dubai to the Kingdom of Saudi Arabia on the next day.

18. On 27 June 2020, the Club notified the Player the decision to deduct 15% of his salary based on his failure to attend trainings on the same day: *“According to a statement from the administrative that informed you did not present for the first team training on Saturday 27/06/2020 without any prior excuse which constitutes a punishable offence. Therefore, the management of the club confirms its dissatisfaction of that behavior mentioned above, so we kindly inform to consider this (15%) deduction from salary of June 2020. In additional, advising you to not repeat this behavior, and to abide by what is stated in the regulations”*.
19. On 28 June 2020, the Club notified a further order deducting 15% of the Player’s salary for not attending training also on that day.
20. By a new letter to the Club dated 4 September 2020 (the “Second Default Notice”), the Player’s counsel objected that the previous request of payment was only partially performed and that the amount of 245,756 USD still remained unpaid and, moreover, the Club was also in default of payment of the Player’s salaries for June, July and August 2020, amounting to 532,000 USD. Therefore, the Club was granted a deadline of 15 days to pay the total amount of 777,756 USD to the Player, failing which the latter would refer the matter to FIFA pursuant to Article 14bis of the FIFA Regulations on the Status and Transfer of Players (the “FIFA RSTP”).
21. On 22 September 2020, the Player sent a termination notice to the Club by which he terminated the Employment Contract with just cause based on the Club’s failure to comply with its financial obligations with respect to the amount of 777,756 USD (the “Letter of Termination”).
22. On 23 September 2020, two bank transfers were executed by the Club in favor of the Player and namely, a payment of 86,804 USD for the salary of June 2020 and a payment of 166,666 USD for the salary of July 2020, according to the relevant bank receipts.
23. On 25 June 2020, the Player signed a document on the Club’s letterhead reading as follows: *“I am the player / ANICE BADRI, a professional player at Al-Ittihad Club, as the car key was handed over, a plate number (DQB 3619), BMW 520 model 2020. As well as the handover of my key housing during the period of residence professional club I do not have any obligation or custody of the club”* (the “Return Report”).
24. On 26 September 2020, the Club sent a letter to the Player arguing that the latter had no just cause to terminate the Employment Contract; that all his salaries up to July 2020 had been paid as the relevant payment orders were issued and executed before the Letter of Termination; that the Player could not claim full payment of his salaries as from March 2020 due to the mandatory reduction which was applied by the competent Saudi Arabian football authorities in compliance with the FIFA Covid-19 guidelines, according to the following terms:

March 2020 25% reduction;
April 2020 50% reduction;
May 2020 50% reduction;

June 2020 50% reduction;
July 2020 100% payment.

B. The proceedings before the FIFA DRC

25. On 8 October 2020, the Club lodged a claim before the FIFA DRC against the Player for breach of contract. The Club argued that the Player had no just cause for termination and that the only outstanding salary was the one for August 2020, since the installments of June and July 2020 were paid by the Club on 22 September 2020, i.e. on the first available working day immediately after the deadline set by the Player in the Second Default Notice (which was also a non-working day). The Club requested that the Player be ordered to pay compensation in the amount of USD 8,224,986 broken down as follows:
- USD 525,000 for the non-amortized transfer fee;
 - USD 3,000,000 for the lost value of the Player;
 - USD 3,699,990 for the lost services of the Player;
 - USD 999,996 for the aggravated circumstances considered under the “specificity of sport”.
26. The Club claimed that the Player’s termination was without just cause. In this respect, it maintained that at the time of the Second Default Notice, only the following amounts were outstanding: a) 50% of the salary for June 2020; b) the entire salary for July 2020 and c) the entire salary for August 2020, and that the Player could not claim full payment of his salaries from March until June 2020 due to mandatory reduction imposed according to FIFA and SAFF Covid-19 guidelines. In this respect, the Club contended that it was forced to take a unilateral decision notwithstanding having made the best efforts to find an agreement with the Player, to no avail. Moreover, according to the Club, the Player’s salary for June 2020 was also subject to a further reduction due to a sanction imposed on the Player because of contractual violations. The salaries for June and July 2020 were paid on the first available working day immediately after the deadline set in the Second Default Notice. As a result, when the Player terminated the Employment Contract, only the salary for August 2020 was outstanding. Besides, by means of the Return Report, the Player has waived his claims towards the Club.
27. On 13 October 2020, the Player also lodged a claim before the FIFA DRC against the Club for outstanding remuneration and compensation for breach of contract, as follows:
- A total amount of 634,412 USD as outstanding salaries of which 245,756 USD corresponding to the balance of the remuneration between February 2020 until May 2020; 113,196 USD corresponding to the remaining part of the salary for June 2020; 166,666 USD corresponding to the salary for August 2020; 105,555 USD corresponding to the *pro rata* salary for September 2020 until termination of the Employment Contract; 3,239 USD as housing costs until 22 September 2020;

- A total amount of 3,761,101 USD as compensation for breach of contract broken down as follows: 61,111 USD for the remaining salary for September 2020; 1,499,994 USD for the remaining salaries between October 2020 and June 2021; 2,199,996 USD for the remaining salaries between July 2021 and June 2022;
 - 87,500 USD as housing allowance;
 - 130,644 USD for the rental costs of a car between October 2020 and June 2022.
28. The Player insisted that the unilateral decision of the Club to impose reductions on his salaries was unjustified and not consistent with FIFA Covid-19 guidelines and that the Club failed to make payment of the outstanding monies within the deadline of 19 September 2020 granted in the Second Default Notice.
29. The relevant claims were consolidated into the same procedure before the DRC.
30. On 20 May 2021 the DRC issued the Appealed Decision ruling as follows:
- “1. The claim of Mr Anice Badri is partially accepted.*
 - 2. Ittihad Club has to pay to Mr Anice Badri, the following amounts:*
 - USD 525,618 as outstanding remuneration plus 5% interest p.a. as from 22 September 2020 until the date of effective payment.*
 - USD 3,866,662 as compensation for breach of contract without just cause, plus 5% interest p.a. as from 20 May 2021 until the date of effective payment;*
 - 3. Any further claims of Mr Anice Badri are rejected.*
 - 4. The claim of Ittihad Club is rejected.*
 - 5. Mr Anice Badri is directed to immediately and directly inform Ittihad Club of the relevant bank account to which the latter must pay the due amount.*
 - 6. Ittihad Club shall provide evidence of payment of the due amount in accordance with this decision to psdfifa@fifa.org, duly translated, if applicable, into one of the official FIFA languages (English, French; German, Spanish).*
 - 7. In the event that the amount due, plus interest as established above is not paid by Ittihad Club within 45 days; as from the notification By Mr Anice Badri of the relevant bank details the following consequences shall arise:*
 - 1. Ittihad Club 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.

8. This decision is rendered without costs”.

31. The grounds of the Appealed Decision were notified to the Parties on 16 June 2021.

C. The grounds of the Appealed Decision

32. First of all, the DRC considered that it was competent to deal with the present matter in accordance with Article 24 (1) in combination with Article 22 lit. b) of the FIFA RSTP and that the June 2020 edition of the RSTP was applicable to the present dispute.

33. As to the substance, the Chamber pointed out that it was undisputed that the Player's salary for August 2020 had remained unpaid when the Employment Contract was terminated. Regarding the salaries of June 2020 and July 2020, the DRC rejected the Club's allegations that the payment was made within the relevant deadline set in the Second Default Notice (i.e. 19 September 2020), since the bank receipts submitted by the Club (although without English translation) showed that the bank transfer was executed on 23 September 2020, which is one day after the termination notice. As a consequence, the Club failed to pay in due time the Player's salaries for June, July and August 2020 either in part, or in full, and therefore, the Player had just cause to terminate the Employment Contract according to Article 14bis of FIFA RSTP.

34. With regard to the 15% deduction applied by the Club to the Player's salary of June 2020 based on disciplinary reasons, the DRC considered that it was arbitrary, as the Player was not granted any fair disciplinary proceedings by means of which he could submit his position.

35. Moreover, the Club's contention that the Return Report represented a waiver in relation to the Club's financial obligations was rejected, as the Chamber considered it was a document by means of which the Player merely returned certain belongings to the Club upon termination of the Employment Contract.

36. With regard to the salary's deductions made by the Club on the basis of the Covid-19 emergency, the DRC considered that such a unilateral decision was not consistent with the FIFA Covid-19 guidelines since the Club has failed to prove that it attempted to conduct a negotiation with the Player in good faith and therefore, the Player was entitled to his remuneration as originally agreed under the Employment Contract. As a consequence, the Chamber established that the following amounts shall be paid by the Club as outstanding remuneration:

- USD 245,756 corresponding to the balance of the salaries between February 2020 and May 2020;

- USD 113,196 corresponding to the balance of the salary for June 2020;
 - USD 166,666 for the Salary of August 2020.
37. With regard to the compensation for breach payable to the Player according to Article 17 (1) of the FIFA RSTP, the DRC took into consideration the remaining value of the Employment Contract from the time of termination until June 2022 and concluded that the Player would have received a total amount of USD 3,866,662; which amount was considered to serve as the basis for determining the final compensation for breach.
38. Furthermore, it was considered that after termination of the Employment Contract, the Player signed a new employment agreement with the Tunisian club, Espérance Tunis, valid as from 18 January 2021 until 30 June 2021 under which he was entitled to receive a monthly salary corresponding to approximately 18,000 USD, and therefore the value of the contract, i.e. 99,000 USD was deducted from the value of the Employment Contract in accordance with the principle of mitigation of damages. As a consequence, the DRC determined that the mitigated compensation for breach amounted to 3,767,662 USD.
39. In addition, considering that the matter at stake concerns an early termination of contract based on overdue payables, the Chamber also established that the Player would also be entitled to an amount corresponding to three additional salaries, i.e., 564,999 USD in accordance with Article 17 (1) ii of the FIFA RSTP. Therefore, given that the additional compensation exceeds the mitigation, the Chamber established that the compensation for breach in the present case shall correspond to the residual value of the Employment Contract, i.e., 3,866,662 USD.
40. As a further consequence, the DRC rejected the Club's request for compensation.
41. Lastly, pursuant to Article 24bis (1) and (2) of the FIFA RSTP, the Chamber pointed out that the consequence of the Club's payment failure in due time would be a ban from registering any new players either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

42. On 7 July 2021, the Club filed a Statement of Appeal according to Article R47 et seq. of the Code of Sports-related Arbitration, edition 2020 (hereinafter, "Code") with the Court of Arbitration for Sport (hereinafter, "CAS") against the Player concerning the Appealed Decision. The Appellant chose English as the language of the arbitration and requested that the present proceedings be submitted to a sole arbitrator. In addition, the Appellant applied for an extension of the time limit to file the Appeal Brief until 6 August 2020.
43. On 13 July 2021, the Respondent informed the CAS Court Office that he agreed with the appointment of a sole arbitrator and did not object to the Appellant's request for an extension of the time limit to file its Appeal Brief but requested that the present proceedings be conducted in both English and French.

44. On 15 July 2021, the Appellant informed the CAS Court Office that it preferred that the present arbitration proceedings be conducted in English but did not object to the possibility for the Respondent to file documents in French, if any, without the need of official translation.
45. On 19 July 2021, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.
46. By letter to the CAS Court Office on 3 August 2021, the Appellant requested a 5-day extension of the time limit to file its Appeal Brief, which was granted on the same day.
47. On 11 August 2021, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code. The Appellant submitted evidentiary request in order for the CAS to order the Respondent to disclose all information and documents in relation to the new employment contract signed by the latter with the club Espérance Tunis.
48. On 24 August 2021, the Respondent requested that the time limit to file his Answer be fixed once the advance of costs had been paid by the Appellant in accordance with Article R64.2 of the CAS Code.
49. By letter on 22 September 2021, following the Appellant's payment of the advance of costs in the present arbitration proceedings, the CAS Court Office invited the Respondent to file his Answer within the following 20 days.
50. On 8 October 2021, the Respondent requested the CAS Court Office an extension of the time limit to file his Answer until 22 October 2021, which was granted on 11 October 2021.
51. On 21 October 2021, the Respondent filed his Answer, pursuant to Article R55 of the CAS Code. With the Answer, the Respondent also submitted copy of the employment contract signed with the club Esperance Tunis.
52. On 22 October 2021, the CAS Court Office informed the Parties that Mr Fabio Iudica, Attorney-at-Law in Milan, Italy, had been appointed as a sole arbitrator in the present proceedings by the Deputy President of the CAS Appeals Division.
53. On 5 November 2021, after having consulted the Parties, the CAS Court Office informed them that the Sole Arbitrator had decided to hold a hearing by videoconference on 14 January 2022.
54. On 12 January 2022 the CAS Court Office forwarded the Order of Procedure to the Parties, which was returned in duly signed copy by the Appellant on 13 January 2020 and the Respondent on 14 January 2022, respectively.
55. On 14 January 2022 a hearing took place in these proceedings, with the participation of the following persons, in addition to the Sole Arbitrator and Mr Giovanni Maria Fares, Counsel to the CAS, all attending remotely via videoconference:

For the Appellant: Mr Jan Kleiner and Mr Jonâs Gürtler, Counsel;

For the Respondent: Mr Anice Badri, the Respondent himself, and his Counsel, Mr Adam Taylor, Mr Anton Sotir, Ms Hortense Douard, and Mr Léo Zimero.

56. At the outset of the hearing, the Parties confirmed that they had no objection in relation to the composition of the Arbitral Tribunal and that the Sole Arbitrator has jurisdiction over the present dispute. In their opening statements, the Parties reiterated the arguments already put forward in their respective written submissions.
57. Before the hearing was concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Sole Arbitrator and that their rights to be heard and to be treated equally had been duly respected.

V. SUBMISSIONS OF THE PARTIES

58. This section of the award does not contain an exhaustive list of the Parties' contentions; it aims to summarize the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section or the discussion of the claims below.

A. The Appellant's position

59. The Appellant's submissions may be summarized, in essence, as follows:
60. The Player had no just cause to terminate the Employment Contract on 22 September 2022. In particular, the preconditions set forth under Article 14bis of FIFA RSTP were not fulfilled as, at that time, only the salary for August 2020 was overdue. According to FIFA and CAS jurisprudence, such circumstance is not sufficient to give a player just cause to terminate the employment contract.
61. The remaining outstanding amount had already been settled by the Club at the time when the Player terminated the Employment Contract. In fact, the Club prepared all the relevant documentation on time and the payment order was issued on 19 September 2020, i.e., within the deadline set in the Second Default Notice; however, there was a short delay in the processing of the international bank transfer since the deadline set by the Player expired on a weekend and the following day was a national public holiday in Saudi Arabia according to bank regulations. Therefore, the relevant payment orders could not be processed until 23 September 2020 (which was also not a working day in Saudi Arabia). In fact, according to the applicable legal principle, when a deadline falls on a holiday or a non-working day (like the one set by the Player), the time limit shall expire on the first following working day. Moreover, according to Swiss legal doctrine and Swiss jurisprudence, the date of issuance of a payment order is sufficient to meet a payment deadline, while the date of receipt on the designated bank account is not relevant. As a result, by issuing the payment order on 19 September 2020, the Club met the applicable payment deadline.

62. The amounts paid were those really due, i.e., 50% of the salary for June 2020 and the full instalment of July 2020.
63. The Player's request concerning the balance of his salaries is unfounded since the Club had made legitimate and valid reductions due to the Covid-19 emergency. However, the DRC disregarded that the salary reductions were applied in compliance with the relevant regulatory framework within the guidelines issued by FIFA and SAFF.
64. The Club suffered severe financial difficulties because of the suspension of the sporting season 2019/2020 as well as the suspension of state fundings to clubs in the relevant period and therefore, the Appellant was not able to fulfill its contractual obligations in full: *"It simply cannot be disputed that Appellant suffered an extreme and unprecedented financial hardship"*. The adverse impact of Covid-19 pandemic on the Club was promptly notified to the Club's players and staff in good faith by means of the Circular Letter. Notwithstanding this, the Player *"never approached the management of the Club. He did not proactively discuss how he would see an appropriate solution to this complex and difficult situation"* but, on the contrary, he suddenly decided to put the Club in default of payment and did not accept any reduction on his salaries, although almost all other players did and although the Club tried its best to find an agreement with the Player. Finally, the Club was forced to apply a reduction of 50% on all the players' monthly salaries exceeding the amount of SAR 20,000 (approximately 5,000 USD), in accordance with the Directive of the Saudi Arabian Pro League. In fact, unilateral reductions of players' salaries were even mandatory under such Directive. Although this was a proportionate remedy, the Club did not always apply the entire reduction to the Player (the salary of March 2020 was only reduced by 25%) and, in any event, reductions were applied only during the suspension of the sporting season, i.e., from March 2020 until June 2020. The Club maintained the following with respect to the proportionality of the measure: *"Every employee had a guaranteed basic salary of SAR 20,000.- Only amounts in excess of this basic salary were reduced by 50%. In other words, to protect the weakest, the employees with the highest income had to make an effort for the benefit of all staff workers of the club"*. Moreover, the reduction was not applied in a discriminatory way against the Player and in addition, the latter still benefited of an extremely high salary despite the reduction (more than 1 million USD for half of the season 2019/2020). Therefore, all the conditions for the validity of the salary reduction were present.
65. In addition, the salary for June 2020 was subject to a further reduction due to disciplinary sanction imposed on the Player in accordance with the Typical List of Penalties and Sanctions issued by the SAFF which was expressly referred to in the Employment Contract. The sanction was justified on the Player's failure to take the flight to Jeddah and to attend trainings on 27 June 2020 and on 28 June 2020, notwithstanding the Player had been summoned by the Club which had also provided the necessary travel documents and arrangements. The application of that sanction was in compliance with Item 8 of the Employment Contract and, therefore, it was not arbitrary. The Player was also informed that he could lodge appeal against the Club's decision but failed to do so.
66. As a consequence of the foregoing, the Player's request in the Second Default Notice to receive the balance of his salaries for March, April, May and June 2020 up to 100% remuneration was unjustified.

67. As a consequence, the DRC's conclusion that "*several monthly salaries were still overdue to the Player at the moment of termination, namely, the salaries of June, July and August 2020*" is not correct.
68. Beside this, by signing the Return Report, the Player also declared he had no more claims towards the Club.
69. Therefore, the Player committed breach of the Employment Contract and, conversely, it is the Appellant that is entitled to compensation.
70. In this respect, the following criteria must be applied pursuant to Article 17 of FIFA RSTP in order to determine the amount of compensation due to the Appellant, taking into consideration the principle of the "positive interest":
 - a) The non-amortized transfer fee paid to the Tunisian club, amounting to USD 525,000 (for a period of 21 months);
 - b) The transfer value of the Player resulting from the Employment Contract under item 10 para 5 providing a "buy-out clause" corresponding to USD 3,000,000;
 - c) The loss of the Player's services, to be calculated on the basis of the Player's remuneration under the new employment contract i.e., 18,000 USD multiplied for the time remaining of the Employment Contract until its natural expiration, which is 21 months, for a total amount of 378,000 USD;
 - d) An additional penalty payment of six-monthly salary (108,000 USD) based on the "specificity of sport" in consideration of the fact that the Player's termination occurred within the "protected period" and only after half a season.
71. The total amount of compensation to be paid by the Player for breach of contract is therefore 4,011,000 USD plus 5% interest p.a. as from 22 September 2020 according to Article 102(1) of the Swiss Code of Obligations (the "Swiss CO").
72. In the unlikely event that the CAS confirms the Appealed Decision, the compensation awarded to the Player must be annulled (because of the waiver of claims based on the Return Report) or significantly reduced according to the principle of *rebus sic stantibus* due to the new circumstances and conditions which affected the Employment Contract after the signing due to the Covid-19 pandemic, causing a disruption of the contractual balance.
73. In fact, all the conditions for the application of the principle *rebus sic stantibus* are met in the present case and therefore, an adjustment of the Employment Contract is required: the restrictive measures imposed as a consequence of the sanitary emergency seriously affected the Appellant's possibility to perform its contractual obligations in comparison with the original circumstances at the time when the Employment Contract was concluded (Subsequent change in circumstances); the Appellant would essentially have faced bankruptcy proceedings in case it would have to adhere to the original financial terms of the Employment Contract (Serious disruption in contractual balance); the above mentioned change in the circumstances was not foreseeable when the Employment Contract was concluded (Lack of

predictability).

74. As a consequence, the amount awarded by the FIFA DRC in the Appealed Decision is excessive and must be reduced.

75. In its Appeal Brief, the Appellant submitted the following requests for relief:

“1) To set aside in its entirety the Decision issued by the FIFA Dispute Resolution Chamber (Ref. Nr. 20-01464) on 20 May 2021;

2) To order Mr. Anice Badri to pay the amount USD 4,011,000.00, plus interest of 5% p.a. as from 22 September 2020, to Ittihad FC.

3) To charge all costs of these proceedings to Mr. Anice Badri and to grant a contribution to the legal fees of Ittihad FC of CHF 25,000”.

B. The Respondent’s position

76. The submissions of the Respondent may be summarized, in essence, as follows.

77. First of all, the Respondent pointed out that, after having paid the first monthly instalment, the Club ceased to fulfil its obligations since the beginning of the Employment Contract, and namely, since February 2020, (i.e., before the Covid-19 outbreak). This led the Player to send the First Default Notice on 3 June 2020 for the payment of 800,000 USD corresponding to the salaries from February to May 2020. This means that the Player was not paid any salary from February 2020 until June 2020, i.e., for more than 4 months, with no justification whatsoever.

78. After that, the Appellant took the unilateral and illegal decision to apply reductions on his salaries for the period from March until June 2020. Such a decision was abusive and not consistent with the FIFA rules and regulations which are applicable to the Employment Contract and shall prevail over any other regulations issued by the SAFF or the Saudi Professional League, in accordance with Item 3 of the said contract. In fact, it results that the decision taken by the SAFF to apply a reduction by 50% on all the players’ salaries during the suspension of the sporting season was not in compliance with the FIFA Covid-19 guidelines. Indeed, FIFA recommended that clubs find appropriate collective agreements with their employees regarding employment conditions during the suspension of sporting activities, or, alternatively, FIFA would consider a unilateral decision to vary contractual terms to be reasonable, provided that a club has attempted to reach a mutual agreement with its employee(s). On the contrary, the Club has never been able to provide evidence of an attempt to reach an amicable agreement with the Player concerning the amendment of the Employment Contract, or any attempt to negotiate in good faith. In fact, the Player was contacted by the Club only to be informed of the decision already taken to impose the relevant reduction in accordance with the decision of the Council of the Saudi Professional League, with no previous consultation. The Player also contested the Appellant’s interpretation of the FIFA Covid-19 guidelines according to which, the consent by the majority of players to a

salary reduction would entitle the interested club to impose the same cut on the players who were not in agreement, considering that FIFA gives priority to reaching an amicable agreement with each player. It is also important to note that, when the reduction was decided, the Appellant was already in default of payment of the Player's salaries of February and March 2020. Finally, the Club also failed to provide evidence of the financial difficulties and risk of bankruptcy allegedly suffered as a result of the pandemic. As a consequence, the Club's unilateral decision to reduce the Player's salaries is arbitrary and unreasonable and manifestly disregards the FIFA Covid-19 guidelines.

79. From 1 July 2020, despite the resumption of trainings and the restart of the sporting season, the Club still persisted in not paying the Player's salaries for June, July and August 2020 amounting to 533,332 USD (200,000 USD + 166,666 USD + 166,666 USD), so that, at the end of August 2020, the total amount of 779,088 USD was outstanding, including the balance of the salaries from March until May 2020 amounting to 245,756 USD which had also remained unpaid.
80. It is against this background that the Player decided to terminate the Employment Contract on 22 September 2020 pursuant to Article 14bis of FIFA RSTP after the expiry of the 15-day deadline set in the Second Default Notice. In any event, the termination of the Employment Contract was justified by the substantive and repeated nature of the Club's breaches which caused the loss of trust in the Club's future performance of its contractual obligations.
81. Contrary to the Club's submissions, the Player did not terminate the Employment Contract precipitately, considering he sent two default notices and taking into account that the Club was in default since February 2020.
82. The Club's allegation that the relevant amounts were paid within the deadline is false since the Player did not receive any payment by 19 September 2020. The document submitted by the Club shows that the relevant payments were initiated only on 23 September 2020, after the Club received the Letter of Termination. The Appellant's allegation that the payment was made "*immediately once this was possible*" is false, given that the bank transfer could have been processed on Monday 21 September or on Tuesday 22 September, if the Bank could not proceed with it on Sunday 20 September 2020 (which the Respondent assumes being a working day in Saudi Arabia). Moreover, the Appellant's document does not demonstrate that the bank transfer was instructed before the end of the 15-day deadline. In addition, the Club could have immediately informed the Player of the issuing of the payment order. And, in any case, the Club showed lack of intention in performing all of its contractual obligations since the payment was partial (and moreover, no explanations were given about the failure to pay the salary for August 2020).
83. In fact, the Player only received the Club's payments on 25 September 2020 which were initiated on 23 September 2020; such payments were therefore belated and partial since because only the amount of 253,470 USD was paid, instead of 777,756 USD. Therefore, the Club was still in default of payment of the amount of 525,618 USD broken down as follows:

- 245,756 USD corresponding to the outstanding balance of the salaries from February to May 2020;
 - 113,196 USD corresponding to the outstanding balance of the salary for June 2020;
 - 166,166 USD corresponding to the outstanding salary for August 2020.
84. Furthermore, the disciplinary sanction imposed on the Player in June 2020, consisting in a 15% reduction of his salary is also arbitrary since the Club did not respect the necessary procedure in accordance with the Employment Contract. In fact, the Player was not previously informed, nor was he granted the possibility to reply before the application of the sanction so that he was prevented to exercise his right to defense, in clear violation of the adversarial principle. Moreover, the amount of the sanction also exceeds the maximum amount set forth under item 8 of the Employment Contract which provides that *“the parties agree that the maximum amount in every season that the First Party can deduct from the Second Party is 10% of each monthly salary”*.
85. As a consequence, the CAS should confirm the Appealed Decision and order the Club to pay to the Player 525,618 USD as outstanding salaries under the Employment Contract.
86. In addition, the Player is also entitled to compensation for breach in accordance with Article 17 of FIFA RSTP in the amount of 3,866,662 USD established in the Appealed Decision.
87. Finally, the Appellant’s request for compensation must be rejected due to the club’s breach of contract; on a subsidiary basis, should the CAS establish that the Player had no just cause for termination, the present case should be send back to FIFA for reconsideration; in any event, the Appellant’s claim for compensation is disproportionate and unjustified for the following reasons: a) the Club did not prove that it paid the full transfer fee to the Tunisian club and therefore, the request for the non-amortized costs is unfounded; b) the request concerning the loss of the Player’s value cannot be based on the value of the buy-out clause since the latter is not a compensation clause; in addition, the Club also failed to prove that it had a real opportunity to obtain a certain amount as consideration for the Player’s transfer; c) the request for the loss of the Player’s services based on the remaining salaries under the Employment Contract for 21 months is unjustified since this amount were indeed saved by the Club because of the early termination and therefore the Club cannot claim compensation for salaries it did not have to pay; d) finally, the “specificity of sport” would rather justify a reduction and not an increase of the compensation claimed by the Appellant, considering the Club’s defaulting conduct during the employment relationship and minimal interest in the Player.
88. In his Answer, the Respondent submitted the following requests for relief:
- “TO DISMISS the appeal filed by Ittihad FC on 7 July 2021 in its entirety.*
- TO CONFIRM the decision of the FIFA Dispute Resolution Chamber (case ref. 20-01464) dated 20 May 2021.*
- TO ORDER Ittihad FC to pay the full CAS arbitration costs.*

TO ORDER Ittihad FC to make significant contribution to the legal and other costs of Mr Anice BADRI in connection with these proceedings”.

VI. JURISDICTION

89. 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”.

90. In its Statement of Appeal, the Appellant relies on Article 58(1) of the FIFA Statutes, as conferring jurisdiction to the CAS reading as follows:

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

91. The jurisdiction of the CAS was not contested by the Respondent and was further confirmed by the signature of the Order of Procedure and at the hearing by both Parties.

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

93. According to Article R57 of the Code, the Arbitral Tribunal has *“full power to review the facts and the law”*. As repeatedly stated in the jurisprudence of the CAS, by reference to this provision, the CAS appeals arbitration procedure entails a *de novo* review of the case's merits and is not confined merely to deciding whether the ruling appealed was correct or not (see CAS 2007/A/1394).

VII. ADMISSIBILITY

94. 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”.*

95. The Sole Arbitrator notes that the FIFA DRC rendered the Appealed Decision on 20 May 2021 and that the grounds of the Appealed Decision were notified to the Parties on 16 June 2021.

96. Considering that the Appellant filed its Statement of Appeal on 7 July 2021, 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.

97. Furthermore, the Appeal complied with all other requirements of Article R48 of the CAS Code and is therefore admissible.

VIII. APPLICABLE LAW

98. Article R58 of the CAS Code provides the following:
99. *“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”.*
100. The Appellant relies on the application of the relevant FIFA Regulations, namely the FIFA RSTP and subsidiarily, Swiss law.
101. 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 the FIFA RSTP, Edition June 2020, with Swiss law applying subsidiarily.

IX. MERITS – LEGAL ANALYSIS

102. The Sole Arbitrator observes that it is undisputed that the Employment Contract was early terminated on 22 September 2020 at the initiative of the Player, due to the alleged failure by the Club to pay a total amount of 777,756 USD as outstanding salaries. The question is whether the Player had just cause for termination or not, which is contested by the Appellant.
103. The Appellant admits having made partial payments of the Player’s salaries for March, April, May and June 2020, but maintains that such reductions were justified as a consequence of the Covid-19 pandemic or as a result of the application of disciplinary sanctions to the Player in accordance with the Employment Contract and therefore, there is no outstanding amount with respect to these instalments. The Club recognizes that when the Employment Contract was terminated by the Player, the entire salary for August 2020 had remained unpaid, although it provided no reasons for such default. At the same time, the Club contends that the salary for August 2020 was the only outstanding amount at the time of termination, since the other overdue payments were settled within the deadline granted in the Second Default Notice. In addition, the Sole Arbitrator notes that it is also not contested that there were delays in payment of the Player’s salaries as from February 2020.
104. According to the Respondent, the Club was not entitled to withhold part of his salaries on the basis of the Covid-19 impact on the Employment Contract because the requirements under the FIFA Covid-19 guidelines were not met, mainly because the Club did not attempt to reach an agreement with the Player. In addition, the Club’s imposition of a fine which was deducted from the salary of June 2020 was abusive since the Player was not granted the guarantee of a disciplinary proceedings. The Player also argues that the Club failed to meet the 15-day deadline set in the Second Default Notice and the relevant payment was received only after the Letter of Termination; moreover, the Club failed to prove that the bank was instructed to execute the payment order within the end of the deadline.
105. Therefore, in the present case, the issue to be resolved by the Sole Arbitrator, is whether the

partial withholding by the Club of the Player's salaries for March, April, May and June was justified on the basis of legitimate reductions applied as a consequence of the Covid-19 pandemic on the one side, and as a result of the application of a disciplinary sanction, on the other side, as maintained by the Appellant. In this respect, the Sole Arbitrator will further assess what amount was still outstanding at the time when the Employment Contract was terminated.

106. Should the Sole Arbitrator find that the reductions applied by the Club were abusive or unjustified, it will be further necessary to establish whether the ensuing failure to fulfill the payment obligations triggers the application of Article 14bis (1) of the FIFA RSTP as contended by the Respondent, for having reached the corresponding amount of at least two unpaid salaries.
107. The Sole Arbitrator recalls that the relevant provision reads as follows: *"In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered"*.
108. In the event that it is established that, notwithstanding the Club's violations, Article 14 bis (1) of FIFA RSTP is not applicable to the present case, the Sole Arbitrator will further establish whether the failure by the Club to fulfill its financial obligations otherwise constitutes a just cause for the Player to early terminate the Employment Contract under the provision of Article 14 of FIFA RSTP.
109. The Sole Arbitrator recalls that, as from the signing of the Employment Contract, the Player has received payment of the full amount of his salaries for January 2020 in the amount of 200,000 USD, February 2020 in the amount of 200,000 USD (delayed) and July 2020 in the amount of 166,666 USD (delayed). On the other hand, the following monthly instalments (of 200,000 USD each) were subject to Club's reductions and were also delayed:
 - March 2020, amount paid 150,000 USD;
 - April 2020 + May 2020, total amount paid 204,244 USD;
 - June 2020, amount paid 86,804 USD.
110. The Appellant maintains that the relevant salary cut was decided because of the Covid-19 pandemic's adverse impact on the Club's financial situation and was fully in line with the applicable FIFA Covid-19 guidelines and the SAFF Covid-19 guidelines. In this respect, the main reasons put forward by the Appellant are the following: a) unilateral salary reductions are expressly foreseen under the FIFA Covid-19 Football Regulatory Issues and the corresponding SAFF Covid-19 guidelines; b) in addition, the salary reduction by 50% was even mandatory for the Club, based on the Directive issued by the Saudi Pro League on 13 April 2020; c) the Club suffered severe financial difficulties because of the suspension of the sporting season 2019/2020 and the suspension of state fundings to clubs and therefore, the Appellant was not able to fulfill its contractual obligations in full; d) the Club tried its best to find an agreement with the Player but the latter did not accept any reduction on his salaries,

although almost all other players did; e) the reduction was applied only during the suspension of sports activities, it was a proportionate remedy, and the Player still benefited from a high net income.

111. The Sole Arbitrator recalls that the relevant part of the Directive issued by the Saudi Pro League, submitted in translated copy by the Appellant, reads as follows: *“The members of the Board of Directors of Saudi Pro League discussed the impact of the new coronavirus pandemic and the necessary precautionary measures taken in this respect in addition to the decision to suspend all sports activities in the Kingdom as of 15/3/2020 until further notice. This includes all competitions of Saudi Football Federation and the League, as a result of which, the clubs incurred financial losses that affected their budgets. Therefore, the Board members unanimously agreed to reduce the salaries by 50% for players, trainers and members of the technical staff during the suspension period of the football competitions as follows:*
1. *If, as per contract, the basic salary is equal or less than SAR 20,000 or its equivalent in another currency, no reductions will be made.*
 2. *If, as per contract, the basic salary is above SAR 20,000 or its equivalent in another currency, a 50% reduction will be made on the amount of the salary exceeding SAR 20,000”.*
112. The Sole Arbitrator observes that in the Covid-19 Football Regulatory Issues and relevant FAQs, FIFA has tried to find solutions to several issues concerning the adverse impact of the pandemic on football activities. Among these, FIFA also addressed the issue of *“Agreements that cannot be performed as the parties originally anticipated”* as a result of Covid-19 and has proposed some guiding principles in order to guarantee some form of salary payments to clubs’ employees, avoid litigation and protect contractual stability while ensuring that clubs do not face bankruptcy.
113. The Sole Arbitrator notes that one of the main leading principles laid down in FIFA Covid-19 guidelines is cooperation between clubs and employees which is strongly encouraged by FIFA. Moreover, according to FIFA Covid-19 FAQs, the guiding principles applicable to *“Agreements that cannot be performed as originally anticipated”* are listed in the preferred order in which FIFA believes clubs and employees should address variation of existing employment contracts.
114. In this respect, collective agreement on a club or league basis are considered the best option to amicably adapt employment conditions for any period of suspension of competitions (such as remuneration including salary deferral or limitation).
115. Further, it is established that *“Unilateral decisions to vary agreements will only be recognised where they are made in accordance with national law or are permissible within CBA structures or another collective agreement mechanism”*.
116. Thirdly, FIFA considers unilateral decisions to vary contracts where national law does not address the situation and a collective agreement is not an option or is not applicable and establishes that in such cases *“Unilateral decisions to vary terms and conditions of contracts will only be recognised by FIFA’s Dispute Resolution Chamber (DRC) of Players’ Status Committee where they were made in good faith, are reasonable and proportionate”* and further lists certain not exhaustive parameters to be

considered when assessing whether a decision is reasonable”.

117. In consideration of the foregoing, and based on the documentation on file, the Sole Arbitrator notes that the Appellant did not submit any evidence nor any arguments with respect to the following circumstances: a) that the Club has tried to negotiate a solution on a collective basis with its players, within the club or the league, which is to say, an agreement with the relevant players’ union. In this regard, the Sole Arbitrator incidentally observes that the document submitted by the Appellant under exhibit 21 does not serve the purpose, given that it is a mere internal document (even with no date) where the Club listed the Players who apparently accepted the unilateral imposition of the salary reduction; b) the decision taken by the Saudi Pro League by means of its Directive on 13 April 2020 is irrelevant, since the Club did not demonstrate that such regulation was issued in compliance with national employment law. Moreover, such decision would only be recognized by FIFA whether it was agreed among social partners, which circumstance does not result from the document, nor has the Appellant provided any other evidence in this respect; c) further, even the conditions set forth under the third guiding principle above (iii) are not met, since the Appellant has failed to establish to the Sole Arbitrator’s satisfaction that such contractual variation could not be addressed by the applicable national employment law nor that collective agreement with the players union was not an option or could not be applicable, which are preconditions for unilateral variations to be recognized by FIFA. Besides this, the Sole Arbitrator notes that, in any case, the Club also did not prove that any of the parameters suggested by FIFA were met, in order to assess whether the unilateral change of the Employment Contract could be considered reasonable. In fact, the documents submitted by the Club are not sufficient to demonstrate that the latter had attempted to reach a mutual agreement with the Player with regard to salary reduction or other alternative solution, such as a deferral. The Player’s denial to adhere to the Club’s proposed 50% salary cut does not show that the Appellant had entered into negotiations in good faith with the Player, nor that the Club had made all of its best efforts in order to find an agreement with the Respondent. In addition, the Club did not provide any documentation to prove the alleged financial loss and impossibility to fulfill the original contractual obligations towards the Player, which also results in the failure to demonstrate that such reduction was proportionate to the specific situation of the present case. Moreover, the Sole Arbitrator considers that the Club’s persistent delay in paying the Player’s remuneration as from February 2020 could hardly support the Appellant’s argument that the Club’s unilateral variation of the Player’s salary was reasonable in the present case within the context of FIFA Covid-19 guidelines.
118. The Sole Arbitrator believes that the elements above are sufficient to exclude that the Appellant’s decision to impose the relevant reductions to the Player’s salaries from March 2020 until June 2020 based on the Covid-19 consequences on the Employment Contract, was adopted in compliance with the FIFA Covid-19 guidelines. Therefore, the relevant reductions were unjustified and as a consequence, it results that the Club has illegitimately withhold payment of the Player’s salaries.
119. Furthermore, the Sole Arbitrator rejects the Appellant’s argument that the disciplinary sanction applied to the salary of June 2020 was lawful, since it resulted that the Club failed to comply with the requirements of a regular disciplinary proceedings in accordance with Item 8

of the Employment Contract and with the general principles of law and namely, with the principle of the adversarial process. In fact, from the documentation submitted by the Appellant, it results that the Player was sanctioned straight away without being notified in writing beforehand and therefore, without having the possibility to reply and to defend his position before the sanction was applied. Moreover, according to Article 18/2 of the applicable Typical List of Penalties and Sanctions (which is integral part of the Employment Contract) the Club's decision should have been also notified to the Committee of Professionalism and Player's Status of the SAFF, which fact has remained undemonstrated. In addition, it turns out that the Club decided to apply a 15% fine on the Player's salary for June 2020, although the Employment Contract provides for a maximum 10% deduction.

120. Therefore, the Sole Arbitrator believes that the decision to impose a sanction on the Player by deducting the relevant fine from the salary for June 2020 was also arbitrary.

121. In view of the above, it follows that the following amounts were outstanding when the Player terminated the Employment Contract:

- 245,756 USD corresponding to the balance of the instalments of March, April and May 2020 which had remained unpaid after the First Default Notice,
- 113,196 USD corresponding to the balance for June 2020;
- 166,666 USD corresponding to the salary for August 2020,

totaling an amount of 525,618 USD which is equivalent to more than two monthly salaries under the Employment Contract.

122. Beside this, the Sole Arbitrator observes that the Appellant's payment was not only partial, but it was also executed after the end of the 15-day deadline set in the Second Default Notice (19 September 2020).

123. In fact, from the documentation submitted by the Parties, it results that the bank transfers were initiated and processed on 23 September 2020, which is even after the notification of the Letter of Termination. In this respect, the document submitted by the Appellant under Exhibit 26 (credit transfer order dated 19 September 2020 filled out by the Club) does not demonstrate that the relevant payment order was forwarded to the interested bank, nor did the Appellant otherwise prove that the bank was instructed accordingly within the relevant deadline. The fact alleged by the Appellant that the deadline fell on a weekend and that 22 September 2020 was also a national holiday, does not change the substance of the matter, given that the Club could have proceeded to make the payment, at the latest, on 21 September 2020 which was the first working day after the deadline. Moreover, according to the document submitted by the Appellant under Exhibit 27, it also appears that Tuesday 22 September 2020 was also a working day for the bank. Incidentally, the Sole Arbitrator also notes that the Appellant's argument was somehow contradicting, given that it claims that 23 September 2020 was National day in Saudi Arabia and at the same time it confirms that the bank transfer was executed on that day. Finally, one could observe that if the Club was concerned about a late

payment due to the deadline falling on a holiday, it could have tried to avoid the termination of the Employment Contract by informing the Player that the payment order had been forwarded to the bank on 19 September 2020 (as alleged by the Appellant), but the Club failed to do so.

124. In view of all the preceding considerations, the Sole Arbitrator agrees with the Appealed Decision that the Player had just cause for termination based on the provision of Article 14bis of the FIFA RSTP.
125. With regard to the consequences of the Club's breach of contract, the Sole Arbitrator considers that there are no reasons for departing from the calculation of compensation made by the FIFA DRC in the Appealed Decision according to Article 17 of FIFA RSTP and that the amount of 3,866,662 USD is justified.
126. The Sole Arbitrator rejects the Appellant's argument that the Player had waived all his financial claims towards the Club by signing the Return Report, reading as follows: *"I am the player / ANICE BADRI, a professional player at Al-Ittihad Club, as the car key was handed over, a plate number (DQB 3619), BMW 520 model 2020. As well as the handover of my key housing during the period of residence professional club I do not have any obligation or custody of the club"*. In fact, although the syntax in the statement may be not appropriate, the Sole Arbitrator is persuaded that this document was only directed at declaring the return of certain goods which were at disposal of the Player during the validity of the Employment Contract and only refers to possible obligations of the Player towards the Club and not the contrary.
127. Furthermore, the Sole Arbitrator notes that the Appellant maintains that the amount of compensation should be decreased on the basis of the principle of *rebus sic stantibus*, which would allow the judge to *"adapt a contract to new circumstances and conditions"*. In this respect, the Sole Arbitrator recalls, that according to the applicable regulations, and in particular, pursuant to the FIFA COVID-19 guidelines, any amendment of the contractual terms and conditions would only be permitted or recognized by the judging authority, provided that the requirements set by FIFA are met under the same guidelines, which has already been excluded in the previous paragraphs of the present award. Moreover, the Appellant has not provided any evidence whatsoever to demonstrate that the financial position of the Club has been affected so severely by the pandemic that paying the Player's salaries had become impossible or severely hampered. Therefore, the Appellant failed to demonstrate that due to the Covid-19 pandemic there was a serious disruption of the contractual balance. The relevant Appellant's claim is therefore rejected.

X. CONCLUSION

128. In light of the foregoing, the Sole Arbitrator dismisses the Club's appeal. As a result, the DRC Decision is confirmed.
129. The Sole Arbitrator shall not address any other issue and all other motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Ittihad FC against the decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association on 20 May 2021 is dismissed.
2. The Decision issued on 20 May 2021 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.