



Arbitration CAS 2021/A/8360 Saba Dia v. Guangzhou R&F Football Club, award of 9 June 2022

Panel: Mr Rui Botica Santos (Portugal), Sole Arbitrator

Football

Termination of a settlement agreement

Burden of proof of the damage

Duty to sufficiently prove the damage

1. **When calculating the compensation due, the judging body will have to establish the damage suffered by the injury party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.**
2. **As required under Article 42 of the Swiss Code of Obligations, a person claiming damages must prove that damage occurred. It is not enough to simply allege, in a generic and vague way, the existence of damages. The delay in the payment of a pecuniary obligation is compensated with interest for late payment, but any additional damage arising from the delay in performance of a pecuniary obligation must be proved by the injured party.**

I. PARTIES

1. Saba Dia (the “Appellant” or the “Player”) is a professional football player of Israeli nationality who is currently registered with Al-Nasr SC (the “Al-Nasr Club”), an Emirati professional football club based in Dubai, United Arab Emirates.
2. Guangzhou R&F Football Club (the “Respondent” or the “Club”) is a Chinese professional football club based in Guangzhou, China. The Respondent is currently competing in the Chinese Super League. It is a member of Chinese Football Association, which in turn is affiliated to Fédération Internationale de Football Association (the “FIFA”); The Appellant and the Respondent shall be jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions. Additional facts and allegations may be set out, where relevant, in connection

with the legal discussion that follows. This factual background information is given for the sole purpose of providing a synopsis of the matter in dispute. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Introduction – The object of this appeal proceedings

4. This appeal proceeding (the “Appeal”) is related to the challenging of the decision adopted by the Dispute Resolution Chamber of FIFA (the “FIFA DRC”) on 21 August 2021 and notified with grounds on 9 September 2021 (the “Appealed Decision”), which ordered:
 - the Player to pay the Club the amount of CNY 7,054,791.80 plus 5% interest *p.a.* starting from 9 December 2020; and
 - The Club to pay to the Player EUR 234,566 plus 5% interest *p.a.* starting from 5 October 2020
5. The Appellant is challenging the Appealed Decision ordering him to pay to the Club the amount of CNY 7,054,791.80 plus 5% interest *p.a.* starting from 9 December 2020. The Respondent has not challenged the Appealed Decision.

B. The employment relation between the Player and the Club

6. On 26 January 2019, the Parties signed an employment contract for the sporting seasons 2019, 2020 and 2021 (the “Employment Contract”). The Employment Contract took effect on 1 February 2019 and was valid until 31 December 2021.
7. Amongst other contractual duties between the Parties, Clause 2 of the Employment Contract establishes that the Club should be responsible for all matters relating to personal income tax of the Player in China and that the Player should reimburse the Club for all relevant withholding taxes that he gets back from the Chinese Tax Authorities (referred to as “subsidies” by the Parties, also commonly referred to as “tax refunds”).

C. The termination of the Employment Contract – The Settlement Agreement

8. After having received an offer from the Emirati club Al-Nasr Club and after the Player demonstrated an interest in accepting the offer, the Parties mutually agreed to terminate the Employment Contract.
9. On 27 September 2020, Parties signed a “*Settlement Agreement to the Football Player Employment Contract*” (the “Settlement Agreement”), in order to terminate the Employment Contract and settle the financial arrangements between the Parties. The included the following relevant clauses (for the sake of the present decision):

Clause Whereas (para 4):

“At the time of signature of this Agreement, the Parties agree that the following is still due to the Player (...), namely the bonus of 150,000 EUR net, in addition to the monthly salary of August and September 2020, corresponding to 333,334 EUR (net after any kind of taxes withheld in China) (...) for a total of 483,334 EUR net – which will be paid within 1 week from the signature”.

Clause Whereas (para 6):

“In 2019, relevant departments of the Guangzhou municipal government and national tax authorities issued the financial subsidies policy according to which (...) some government subsidies will be granted and deducted from part of the taxes withheld and remitted by Party A for Party B in the fiscal years 2019 and 2020. However, according to the settlement procedures and due to personal information protection issues, the Subsidies shall be transferred to Party B personal bank account directly under the Subsidies Policy;”

Clause Terms (para. 4):

“Party B hereby agrees and confirms that the Subsidies shall be transferred to a domestic bank account under his own name and that, subsequently, such amount shall be transferred to Party A as follows:

Upon Party B receives the Subsidies for the fiscal year 2019 (“2019 Subsidies”), for the amount estimated of 886,323.82 EUR, Party B will immediately transfer the entire amount of 886,323.82 EUR to the bank account designated by Party A within 5 working days after receipt of such Subsidies;

Upon Party B receives the Subsidies for the fiscal year 2020 (“2020 Subsidies”), for the amount estimated of 752,284.83 EUR, Party B will immediately transfer the entire amount of 752,284.83 EUR to the bank account designated by Party A within 5 working days after receipt of such Subsidies.

Clause Terms (para. 5):

“If Party B fails to transfer the Subsidies to Party A within the prescribed deadline, Party A shall put Party B in default by means of written notification and deadline of 10 days for compliance. After expiration of such deadline, Party A has the right to claim the relevant amount from Party B, which shall be paid in full to Party A plus a penalty equals to 330,000 EUR for the breach of the Agreement which is considered fair and proportionate from both Parties”.

Clause Terms (para. 8)

“The Parties expressly agree and confirm that any and all rights and obligations under this Agreement in relation to the Subsidies shall not expire or cease upon expiration or termination of this Agreement and/ or the Employment Contract for whatever reason – unless agreed in writing by the Parties at a later stage – and that they shall remain in force until the effective and fully fulfilment by the Parties. This shall be understood in the widest possible way”.

D. The dispute between the Parties

10. On 30 October 2020, the Club made a payment of EUR 248,767 which corresponded to more than 50% of the amount it accepted to pay to the Player, according to Clause Whereas para. 4 of the Settlement Agreement.
11. On 1 November 2020, the Player accused the Club of breaching the Settlement Agreement and put the Club in default of the payment for the remaining agreed amount: of EUR 234,335 (the “Player’s Credit”). The Player asked the Club for the immediate payment of the outstanding amount.
12. On 3 December 2020, the Player received the total amount of CNY 7,054,791.80 (approximately 981.156,77 EUR) directly from the Chinese Tax Authority referring to the financial subsidy for the fiscal year 2019.
13. On 5 January 2021, via e-mail, the Club proposed to the Player to pay the refund of the subsidy after a set-off of the amount still due to it, asking for so the Player to pay CNY 5,851,814.34 (the “Club’s Credit”).
14. On 26 January 2021, the Player informed the Club that the Settlement Agreement was deemed null and void, for reason of the Club’s breach.
15. On 5 February 2021, the Club put the Player in default of payment of CNY 5,851,814.34 as outstanding fiscal subsidy in accordance with the Settlement Agreement and granted a 10-day period to the Player to remedy the default.

E. The Parties’ dispute before the FIFA DRC

16. On 27 January 2021, the Player filed a claim arguing that the Club had partially failed to perform the financial obligation agreed to in the Settlement Agreement - namely the payment of the remaining EUR 234,567 out of EUR 483,334. For this reason, the Player argued that he was entitled to seek the termination of the Settlement Agreement and to receive the amount of EUR 234,567 – as outstanding remuneration – under the Employment Contract.
17. In response, the Club lodged a counterclaim against the Player.
18. The Club argued that the Player had breached the Settlement Agreement by not complying with the deadline thereto stipulated, and, because the Player should have remitted to the Club the amount received from the Chinese Tax Authorities within 5 days from the date of receipt (*i.e.* 8 December 2021), which the Player had failed to do.
19. The Club also stated that after paying EUR 248,767 on 30 October 2020, it suspended the payment of the amounts due to the Player until he complied with his obligation.

20. The Club also pointed out that the Player had shown bad faith in claiming his outstanding amounts after receiving the amount from the Chinese Tax Authorities and by ignoring the Club's proposal for setting off the outstanding credits.
21. The Club is of the opinion that the Player breached the Settlement Agreement, and that he should be responsible for the agreed penalty of EUR 330,000.

F. The Appealed Decision

22. As a preliminary matter, the FIFA DCR considered whether the Settlement Agreement was valid and binding on the Parties.
23. It was decided that the non-compliance of one of the Parties did not invalidate the Settlement Agreement, and consequently, the Club's delay in paying the sums agreed did not lead to the Settlement Agreement's nullity.
24. The Appealed Decision held that the Club was the first party in breach of the Settlement Agreement, as it failed to pay the entire amount of EUR 483,334 within the agreed term.
25. The operative part of the Appealed Decision stated the following:

“(…)

2. *The [Club] has to pay to the [Player], the following amount:*
 - *EUR 234,566 as outstanding remuneration plus 5% interest p.a. as from 5 October 2020 until the date of effective payment.*
3. *The counterclaim of the [Club] is partially accepted.*
4. *The [Player] has to pay to the [Club], the following amount:*
 - *CNY 7,054,791.80 as outstanding sum plus 5% p.a. interest as of 9 December 2020 until the date of effective payment.*
5. *Full payment (including all applicable interest) shall be made to [Player's] bank account set out in the enclosed Bank Account Registration Form.*
6. *Pursuant to article 24bis of the Regulations on the Status and Transfer of Players if full payment (including all applicable interest) is not paid **within 45 days** of notification of this decision, the following **consequences** shall apply:*
 1. *The [Club] shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of three entire and consecutive registration periods.*

2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not paid by the end of the of the three entire and consecutive registration periods.*
7. *The consequences **shall only be enforced at the request of the** [Player] in accordance with article 24bis paragraphs 7 and 8 and article 24ter of the Regulations on the Status and Transfer of Players.*
8. *Full payment (including all applicable interest) shall be made to the [Club's] bank account indicated in the enclosed Bank Account Registration Form.*
9. *Pursuant to article 24bis of the Regulations on the Status and Transfer of Players if full payment (including all applicable interest) is not paid **within 45 days** of notification of this decision, the following **consequences** shall apply:*
 1. *The [Player] shall be restricted from playing in official matches up until the due amounts are paid. The overall maximum duration of the restriction shall be of up to six months on playing in official matches.*
 2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not paid by the end of the six months restriction on playing in official matches.*
10. *The consequences shall only be enforced at the request of the [Club] in accordance with article 24 bis paragraphs 7 and 8 and article 24ter of the Regulations on the Status and Transfer of Players.*
11. *This decision is rendered without costs”.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 29 September 2021, pursuant to Article R47 of the Code of Sports-related Arbitration (the “Code”), the Appellant filed his Statement of Appeal at the Court of Arbitration for Sport (the “CAS”) against the Respondent, challenging the Appealed Decision and asking the dispute to be decided by a Sole Arbitrator. The Appellant designated his Statement of Appeal as his Appeal Brief.
27. On 6 October 2021, the Respondent objected to the matter being submitted to a Sole Arbitrator and informed the CAS Court Office it would not pay its share of the advance of costs.
28. On the same day, the Deputy President of the CAS Appeals Arbitration Division (the “Deputy President”) decided to submit the matter to a Sole Arbitrator, pursuant to Article R50 of the Code.

29. On 4 November 2021, CAS Court Office informed the Parties that pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President, the Panel had been constituted as follows:

Sole Arbitrator: Mr Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal

30. On 9 December 2021, the Respondent filed its Answer, pursuant to Article R55 of the Code. On the same day, the CAS Court Office invited the Parties to inform by 16 December 2021 whether they requested a hearing. Both Parties requested an award be issued based solely on their written submissions.
31. On 21 December 2021, the CAS Court Office informed the Parties that the Sole Arbitrator suggested the Parties hold a conciliation meeting, pursuant to Article R56 of the Code.
32. On 30 December 2021, following the Parties' agreement, the CAS Court Office confirmed that a conciliation meeting would be held on 12 January 2022 by video-conference.
33. On 11 January 2022, as a result of unforeseen circumstances preventing the Appellant's counsel from attending the conciliation meeting, such meeting was postponed to 18 January 2022.
34. On 17 January 2022, in view of the impossibility to hold the conciliation meeting, that both Parties did not deem necessary the holding of a hearing, and that the Sole Arbitrator considered himself sufficiently well informed with the Parties' written submissions, the CAS Court Office informed the Parties that the Sole Arbitrator would issue an award based on the written submissions.
35. On the same day, the CAS Court Office issued the Order of Procedure, which was duly signed by the Parties. In the Order of Procedure, the Parties confirmed their agreement that the Sole Arbitrator could decide this Appeal based on their written submissions and that their right to be heard had been duly respected.

IV. PARTIES' SUBMISSIONS

36. The following summary of the Parties' main positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Sole Arbitrator has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows. The Parties' written submissions, the documentary evidence and the contents of the Appeal Decision were all taken into consideration and such reference will be made in the merits section, if and when appropriate.

A. The Appellant's submissions

37. The Appellant requested the following reliefs in his Statement of Appeal serving as his Appeal Brief:

“(…)

- 2.1. *Accept this Appeal against the FIFA’s DRC’s Decision.*
- 2.2. *Determine that due to the Club’s (...) violation of the agreement between the parties with no justifiable reason (or any other reason), the Player had the right to cancel the agreement.*
- 2.3. *Determine that the termination of the agreement between the parties by the Player was lawful, legal and justified.*
- 2.4. *To Order and to obtain significant financial penalty on the Club (compensation to the Player) due to the Club’s breach of agreement with significant financial penalty.*
- 2.5. *To Cancel, under this case specific circumstances, the Player’s obligation to pay the Club any kind of interest and/or any kind of tax (...) due to the Club’s bad faith conduct and due to the fact that the Club (and only him) is the party that breached the agreement (for the first and before it was lawfully cancelled).*
- 2.6. *To Order the Club and to obtain on it to pay (compensate) the Player for (...) all of the legal expenses the Player had to pay in order to submit this lawful claim against the Club, which was submitted after several unanswered early inquiries (letters) by the Player.*
- 2.7. *To condemn the Club to the payment of the whole CAS administration and the Arbitrators fees” (Emphasis added by the Appellant).*

At the end of its submission, the Appellant reiterated the following requests:

“(…) the Appeal should be **accepted**.

*The Honorable CAS is requested to cancel the honorable FIFA’s DRC’s Decision and to **accept the Player’s Appeal**.*

Without derogating from the above, the Honorable CAS is further requested to determine that the Club must compensate the Player in respect of all of its expenses incurred as a result of this procedure, inter alia, fees, legal expenses etc. (...)” (emphasis added by the Appellant).

38. The Player argues that the Club failed to perform its financial obligation under the Settlement Agreement – namely the payment of the Player’s Credit – and, as a consequence, he was entitled to terminate the Settlement Agreement. The Player’s Credit was agreed to be paid by the Club until 4 October 2020 and was related to mandatory unpaid salaries.
39. Concerning the tax amounts reimbursed by the Chinese Authorities, the Player states that:
 - a. According to the Chinese law, the employee is the sole eligible party of these funds; and
 - b. Due to personal information protection issue, the tax refund should be transferred directly to the Player.

40. The Player further states that the Club only paid part of the Player's Credit and decided to ignore its obligations.
41. Concerning the Appealed Decision, the Appellant argues that:
- a. The Appealed Decision has not addressed the Club's faults and their obligations. FIFA DCR did not deal with and did not consider the principle of positive interest because: "*(...) FIFA DCR's decision does not put the Player (injured party) in the position he would have had in case the Agreement was performed properly by the Club. The Player had to pay legal expenses; he was ordered to pay interest (due to the Decision); and he will bear a significant amount of tax to be paid*".
 - b. The Appealed Decision was wrong as it did not recognize the Player's rights to be compensated. As per Article 17 of the Regulation on the Status and Transfer of Players (the "RSTP"), the Player has to be compensated. The purpose of the RSTP "*(...) is basically to reinforce contractual stability, to strengthen the principle of pacta sunt servanda in the world of international football, by acting as a deterrent against unilateral contractual breaches, be it breaches committed*".
 - c. The FIFA DCR Decision put the Club, as the breaching party, in a better position than it was in before breaching the Settlement Agreement, since the Player was ordered to pay the Club more than he would have had to pay before the Club's breach of the Settlement Agreement.

B. The Respondent's Submissions

42. In its Answer, the Respondent seeks the following prayers and requests from the CAS:
- I. *Dismiss the appeal brought by the Player (...);*
 - II. *Confirm the FIFA DRC decision;*
 - III. *Order the Appellant to bear the entire amount of the procedural costs of this arbitration procedure;*
 - IV. *Order the Appellant to pay a contribution of the legal expenses afforded by the Respondent in light of these appeal proceedings to be established by Sole Arbitrator;*
 - V. *Grant any other relief or orders it deems reasonable and fit to the case at stake.*
43. The Al-Nasr Club's delay in paying what it owed the Club was the cause of the Club's default in paying the Player's Credit.
44. Nevertheless, the Player was in bad faith because he undertook the obligation to pay the Club's Credit, which he did not do. The Player received the tax refund from the Chinese Authorities at the beginning of December 2021 and refused to transfer such amount to the Club as agreed under the Settlement Agreement.

45. The Club had a serious concern about the Player's intention not to pay the amount he received from the Chinese Tax Authorities of around EUR 1,638,606.65.

46. The evidence shows that the Player received the tax refund for the 2019 financial year on 3 December 2020 (CNY 7,054,791.80, which equals to EUR 983,527.37 according to the exchange rate on the filing of the Answer), and deliberately defaulted in returning it to the Club.

47. Moreover, the Club states that:

"i) the Club did fulfil its obligations with good faith, even if partially,

ii) the alleged partial breach of a contract for 4 months does not represent a legally valid argument to unilaterally cancel the Settlement Agreement,

iii) there is no provision in the Settlement Agreement which entitles the Player to unilateral cancel it, and

iv) according to article 8 – Term of the Settlement Agreement, the Parties agreed that

"any and all rights and obligations under this Agreement in relation to the Subsidies shall not expire or cease upon expiration or termination of this Agreement and/or the Employment Contract for whatever reason – unless agreed in written by the Parties at a later stage – and that they shall remain in force until the effective and fully fulfilment by the Parties. This shall be understood in the widest possible way" (...)

48. The Club further states that the "cancellation" of the Settlement Agreement invoked by the Player on 26 January 2021 has no basis, as Article 8 of the Settlement Agreement states:

"The Parties expressly agree and confirm that any and all rights and obligations under termination of this Agreement and/or the Employment Contract for whatever reason – unless agreed in written by the Parties at a later stage – and that they shall remain in force until the effective and fully fulfilment by the Parties. This shall be understood in the widest possible way"

49. The Club therefore reaffirms that it had the right to set-off the Player's Credit against any amounts that it owed to the Player. This understanding is supported by Article 120.1 and 2 of the Swiss Code of Obligations ("SCO") and Article 124.2 of the SCO which provide:

Article 120:

- 1. "Where two persons owe each other sums of money or performance of identical obligations, and provided that both claims have fallen due, each party may set off his debt against his claim."*
- 2. The debtor may assert his right of set-off even if the countervailing claim is contested".*

Article 124:

"(...)

2. *To the extent that they cancel each other out, the claim and countervailing claim are deemed to have been satisfied as of the time they first became susceptible to set-off*’.

50. Finally, the Club argued that the Player intentionally ignored the Club’s proposal for setting off the outstanding amounts. Instead of fulfilling the Settlement Agreement, the Player decided to cancel the Settlement Agreement with the view to obtain an undue enrichment, and that the Club’s delay has not caused any financial loss to the Player.

V. JURISDICTION

51. Article R47 of the Code stipulates:

“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”.

52. In addition, Article 57.1 of the FIFA Statutes states:

“FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and Players’ agents”.

53. Furthermore, Article 58.1 of the FIFA Statutes establishes:

“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”.

54. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the Code and Article 58.1 of the FIFA Statutes in connection with Article 24.2 RSTP. Furthermore, the jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by all Parties.

55. It follows that CAS has jurisdiction to hear this matter.

56. According to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law of the case and can decide the dispute *de novo*. The Sole Arbitrator may issue a new decision which replaces the decision challenged, may annul the decision, or refer the case back to the previous instance

VI. ADMISSIBILITY

57. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

58. Article 58 (1) of the FIFA Statutes reads 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”.

59. The Sole Arbitrator notes that the admissibility of the Appeal is not contested by the Parties. The grounds of the Appealed Decision were notified to the Appellant on 9 September 2021 and the Statement of Appeal was filed on 29 September 2021, *i.e.* within the 21-day deadline fixed under Article 58 of the FIFA Statutes.

60. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

61. Article R58 of the Code provides as follows:

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

62. In addition, Article 57.2 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”.

63. The Sole Arbitrator therefore applies the various regulations of FIFA, in particular the Regulation on the Status and Transfer of Players (the “RSTP”), and, subsidiarily, Swiss law.

VIII. MERITS

A. The object of the Appeal

64. The object of the Appeal is related to the challenging of the Appealed Decision ordering the Player to pay the Club the amount of CNY 7,054,791.80 plus 5% interest *p.a.* starting from 9 December 2020. The Player’s main argument in relation to this matter is based on his right to cancel the Settlement Agreement.

65. As the Club has not appealed the Appealed Decision, it is the Sole Arbitrator's understanding that its claim for compensation of its credit with the amount owed to the Player should be dismissed.
66. In fact, since the Club did not appeal the Appealed Decision, the part of such decision whereby the Respondent is ordered to pay to the Appellant the amount of “(...) EUR 234,566 as outstanding remuneration plus 5% interest p.a. as from 5 October 2020 until the date of effective payment” becomes *res judicata*. Consequently, by deciding on the issue of the credit's setoff, the Sole Arbitrator would have to consider and could end up changing a part of the Appealed Decision which became definitive and unappealable.
67. In addition, the Sole Arbitrator notes that the argument of setoff presented by the Club constitutes a counterclaim, since it is essentially challenging a part of the Appealed Decision and goes beyond the Appellant's claim in the present appeal. In line with the well-established CAS jurisprudence, counterclaims are not admissible in appeal proceedings (CAS 2020/A/7227). As per the referred grounds, the Sole Arbitrator is prevented from deciding on the argument of the Club which concerns the setoff.
68. Considering the above, the object of the Appeal concerns only (i) the right of the Player to cancel the Settlement Agreement; and (ii) the award of compensation to the Appellant for the Respondent's breach of the Settlement Agreement. These issues will be analysed and decided by the Sole Arbitrator in the next subsections.

B. Did the Player have the right to cancel the Settlement Agreement?

69. On 1 November 2020, the Player sent a letter to the Club stating that the Club had failed to fulfil its obligations and therefore the Player considered that the Settlement Agreement ceased to have any effect due to the Club's breach.
70. The Player stated that he only accepted to sign the Settlement Agreement because he “(...) totally relied on the Club's obligations and statements, concerning the mandatory employment payments he was entitled for (from the Club) due to his employment relationship period (as the Club employee)”.
71. The Sole Arbitrator considers that the legal arguments presented by the Player are manifestly unsound as:
- a. There was no provision in the Settlement Agreement foreseeing the situation in which there could be a termination of this contract. The FIFA DCR Decision itself correctly states “no disposition under the settlement agreement established that a default would result in said contract being deemed null and void”. The Player has failed to demonstrate that the absence of a termination provision should not be considered relevant.
 - b. The Player also failed to prove the existence of an applicable legal provision that could justify the termination of the Settlement Agreement and the just cause to cancel his financial obligations under the Settlement Agreement.

- c. The Club's breach does not represent a valid legal argument to unilaterally terminate the Settlement Agreement and/or to terminate the Player's obligations towards the Club.
 - d. The Player's agreed financial obligations under the Settlement Agreement have an autonomous and distinct nature from each other and there was no contractual or legal justification for the Appellant to cancel his payment obligation, at least in the amount exceeding its credit/claim towards the Club. From the moment the Parties assumed their obligations under the Settlement Agreement the Player knew, or ought to have known, that he would pay a considerably higher amount than what was due by the Club to him. This fact and obligation could not be ignored by the Appellant in his subsequent actions. At most, the Player could have retained or offset the amount of his credit with the debt owed to the Club. Therefore, the Player's alleged right to terminate the Settlement Agreement has no effect on the Player's obligation to reimburse the Club of the refunded taxes by the Chinese Tax Authorities.
 - e. In the unidentified FIFA case law referred to by the Appellant, it is almost certain that the issue was likely related to the breach of a contract with continuing and inter-related bilateral obligations. In the case in question, the Respondent's breach should lead to the enforcement of the financial obligation, plus default interest, as FIFA rightly decided.
 - f. Even if by scholar's *vaccinium* one would accept the possibility of the termination of the Settlement Agreement, its "cancellation" would have the automatic consequence of restabilizing the obligations that were revoked and replaced, *i.e.* the Player would always have to fulfil the payment of the Club's Credit according to the Employment Agreement; and the Club would always have to fulfil the payment of the Player's remuneration and bonus. The Settlement Agreement did not affect the obligations in itself, but only the manner in which the Parties were supposed to comply with it. In other words, the Settlement Agreement established "how" the Parties would have to comply with the obligations to pay one another but it did not "create" nor was it the "source" of such obligations, which had already emerged during the employment relationship. This understanding is also supported by Clause Terms (para. 8) of the Settlement Agreement (see para. 9 above), which even expressly states that the termination or expiry of the Settlement Agreement does not affect the obligations under that contract.
72. The Appellant contends that he was entitled to cancel the agreement because he warned the Respondent of that possibility so that the Club could have a chance to comply with its obligations. However, this premise is once again based on facts that do not correspond to reality because as admitted by both parties the Settlement Agreement was signed with the aim of terminating an employment relationship and with a view of both parties assuming the credits towards the other party. Again, it should be highlighted that the Settlement Agreement was not the source of a "new" obligation, but rather the confirmation of the remaining pending obligations associated with the termination of the employment relationship.
73. In this dispute, it was often discussed whether the Club or the Player was in bad faith. As seems to have been the understanding embodied in the FIFA DCR Decision, the Club admitted that it owed the amount claimed by the Appellant while the Player demonstrated

(and continued demonstrating) an inexplicable reluctance to pay the Club's Credit, a debt that is related to the funds received from the Chinese Tax Authority as a result of taxes paid by the Club on its behalf. Although the Club has not complied with its financial obligation, it still proposed a setoff of the credits with the immediate positive consequence to satisfy the Player's Credit. Therefore, if there is contractual bad faith, it seems that it is on the Player's side and not on the Club's side, since the Player received – and still retains – the refund of the excess taxes paid by the Club, on behalf of the Player, to the Chinese Tax Authorities.

74. Thus, the Sole Arbitrator concurs with the FIFA DCR that the Player had no right to cancel the Settlement Agreement.

C. Did the Player have the right to receive any compensation for the Respondent's breach of the Settlement Agreement?

75. The Player claimed he was entitled to receive *“additional compensation due his damages and (...) due to the breach of agreement which caused him financial damages and expenses”*. The Player also argued that the Appealed Decision *“did not considered the principle of “positive interest” (...) in order to determine the compensation to be awarded (...)”* and, moreover, did *“(...) not put the Player (injured party) in the same position he would have had in case the [Settlement Agreement] was performed properly by the Club. In short, the Player claimed that he “had to pay legal expenses; he was ordered to pay interest (due to the [the Appealed Decision]); and he will bear a significant amount of tax to be paid”*.
76. As stated in the CAS jurisprudence quoted by the Appellant CAS 2012/A/3033, para. 75: *“[w]hen calculating the compensation due, the judging body will have to establish the damage suffered by the injury party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof”* (emphasis added by the Sole Arbitrator).
77. The Sole Arbitrator fully agrees with the position expressed in the above CAS decision and emphasises the fact that it is the Appellant who bears the burden of proof in demonstrating and quantifying the damages incurred.
78. In the above context, the Sole Arbitrator finds that neither in the FIFA proceedings, nor in this appeal's proceedings, did the Appellant prove the alleged incurred damages, other than the fact that he has not been able to dispose of the funds to which he was entitled.
79. As required under Article 42 of the Swiss Code of Obligations (“SCO”): *“[a] person claiming damages must prove that damage occurred”*. It is not enough, as the Appellant did, to simply allege, in a generic and vague way, the existence of damages. The delay in the payment of a pecuniary obligation is compensated with interest for late payment, but any additional damage arising from the delay in performance of a pecuniary obligation must be proved by the injured party, and the Appellant has not satisfied this requirement.
80. Again, the Appellant merely alleges - without proof of the amounts incurred - that the Appellant had to incur lawyers' fees, costs of the FIFA proceedings and other expenses

incurred in connection therewith. The Sole Arbitrator does not question the fact that Appellant has incurred certain expenses. However, as stated above, these have to be quantified and proven, otherwise they cannot be granted.

81. Moreover, to justify the award of the additional compensation claimed, the Player invokes the application of Article 17 RSTP, namely the fact that contracts between football players and clubs must be respected – principle of contractual stability and *pacta sunt servanda*. Also based on Article 17 RSTP, the Appellant suggested the award of an amount not exceeding “*six-months salaries (...), which can constitute (...) a warning fine (penalty) for clubs*”.
82. As regards the application of Article 17 RSTP, the Sole Arbitrator points out that this regulatory provision is not designed for the case in question, as it can only be applied in cases of termination of employment contracts without just cause. The Player's interpretation of this provision is wrong as it is not applicable to the present matter; in fact, in this case, it was the Player the party which decided to terminate the Settlement Agreement but as explained in the preceding section, such termination was without just cause.
83. Additionally, the Player's claim that the Club benefited from its default, as the Appealed Decision orders the Player to pay the debt to the Club with default interest is groundless. As previously mentioned, the Player's obligation to pay the Club is not connected, related, or conditioned to the prior performance of the Club's pecuniary obligation to the Player. The obligations are independent and autonomous and, as such, the non-fulfillment of the Player's pecuniary obligation must have legal consequences which, in this case, also result in the obligation to pay default interest.
84. The Sole Arbitrator finally highlights that the Appellant cannot defend himself by invoking the principle of *pacta sunt servanda* as a reason to request compensation when it has also been in manifest breach of his obligations.
85. Therefore, and since the Appellant failed to prove any damages suffered, the Sole Arbitrator reject the Appellant's claim for damages.

D. Conclusion

86. Based on the foregoing, the Sole Arbitrator finds that the Player's appeal shall be dismissed and therefore, the Appealed Decision is fully confirmed.
87. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Saba Dia against the decision rendered by the Dispute Resolution Chamber of FIFA on 12 August 2021 is dismissed.
2. The decision passed by the Dispute Resolution Chamber of FIFA on 12 August 2021 is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.