Arbitrations CAS 2013/A/3091 FC Nantes v. Fédération Internationale de Football Association (FIFA) & Al Nasr Sports Club & CAS 2013/A/3092 Ismaël Bangoura v. Al Nasr Sports Club & FIFA & CAS 2013/A/3093 Al Nasr Sports Club v. Ismaël Bangoura & FC Nantes, award of 2 July 2013 (operative part of 3 June 2013)

Panel: Prof. Martin Schimke (Germany), President; Mr Manfred Nan (the Netherlands); Prof. Luigi Fumagalli (Italy)

Football
Termination of a contract of employment without just cause
Termination of a contract between a player and his club and burden to prove just cause
Just cause according to the FIFA RSTP and Swiss law
Termination of an employment contract for good reason according to the Swiss Federal Tribunal
Just cause for the termination of a contract in case of material breaches of the contract
Failure of a club to pay part of the player's salary and termination of a contract with just cause
Deregistration of a player and infringement of personality rights
Deregistration of a player as a valid reason justifying termination of the contract
Limits to the application of Article 15 RSTP on the sporting just cause
Amount of compensation for breach of contract stipulated in the contract under Article 17 par. 1 RSTP
Inducement to breach a contract under Article 17 par. 4 RSTP

1. **If it is undisputed that the player terminated the employment contract with the club, the burden of proof is on the player to prove that he had just cause to do so.**

2. **Pursuant to the principle *pacta sunt servanda*, obligations deriving from contracts which are validly entered into must be executed pursuant to the contract's terms until the parties consensually adopt a new contractual arrangement. While the FIFA rules do not define the concept of "just cause", reference should be made to the applicable law. When Swiss law applies, Article 337 para. 2 of the Swiss CO provides that *"any circumstances which, according to the rules of good faith, mean that the party who has given notice of termination cannot be required to continue the employment relationship, shall be deemed good reason"*. The concept of "just cause" as defined in Article 14 RSTP must therefore be likened to that of "good reason" within the meaning of Article 337 para. 2 CO.**

3. **According to the Swiss Federal Tribunal, an employment contract may be terminated immediately for good reason when the main terms and conditions, under which it was entered into are no longer implemented. The circumstances must be such that, according to the rules of good faith, the party terminating the employment relationship cannot be required to continue it. When immediate termination is at the initiative of the employee, a serious infringement of the employee's personality rights, consisting, for example, in unilateral or unexpected change in his status which is not related either to**

company requirements or to organization of the work or the failings of the employee, or even, in certain circumstances, a refusal to pay all or part of the salary, may be deemed "good reason".

4. **According to CAS jurisprudence, only material breaches of a contract can possibly be considered as "just cause" for the termination of the latter. Furthermore, for a party to be allowed to validly terminate an employment contract, it must have warned the other party, in order for the latter to have had the chance, if it deemed that the complaint to be legitimate, to comply with its obligations.**

5. **Not every breach of contract justifies early termination of a contract. There has to be a just cause for such termination. Non-payment or late payment of a player's salary by his club may constitute "just cause" for terminating the employment contract. The employer's payment obligation is his main obligation towards the employee. The only criterion is whether the breach of the obligation is such that it causes the loss of confidence of the one party in the future performance of the contract. In this respect, the failure of a club to pay its player should amount to a persistent and material non-fulfilment of the club's contractual obligations justifying the early termination of the contract of employment.**

6. **According to Articles 28 et seq. of the Swiss CC, any infringement of personality rights caused by another is presumed to be illegal and subject to penalties unless there is a justified reason that overturns this presumption. Personality rights apply to the world of sport. For athletes, personality rights encompass in particular the development and fulfilment of personality through sporting activity, professional freedom and economic freedom. An athlete who is not actively participating in competitions depreciates on the market and reduces his future career opportunities. Athletes have therefore a right to actively practice their profession. To the extent that Articles 28 et seq. CC protect parties from negative actions and require offending parties to refrain therefrom, but do not grant rights to positive actions, such right to actively practice one's profession is resolved notably by labour law.**

7. **The deregistration of a player could in principle constitute a breach of contract since it *de facto* prevents a player from being eligible to play for his club. If a party to a contract believes that the other party is in breach of such contract, it must make the party allegedly in default aware of this concern in order to allow it, if it so wishes, to rectify the alleged breach. If a player was actually practising with the club's professional team during the deregistration period, if he was still receiving his monthly salary during this period and if he did not complain about the situation in a timely manner, such temporary deregistration might not constitute a valid reason justifying termination of the contract.**

8. **Article 15 RSTP on the sporting just cause is applicable only if the player in question has terminated *"his employment contract during the 15 days following the final official***

***match in the season of the club with which he was registered"*. Article 15 RSTP is obviously not applicable in a case in which a player terminates his employment agreement in the course of a season.**

9. **In accordance with Article 17 par. 1 RSTP, parties to an employment contract may stipulate in the contract the amount of compensation for breach of contract. Where such a clause exists, the wording of such clause should leave no room for interpretation and must clearly reflect the true intention of the parties. If the clause is drafted in vague and ambiguous terms which do not allow for the Panel to establish the true intention of the parties, the Panel may decide to disregard the application of the relevant clause.**

10. **A club inducing a player to breach his contract as referred to in Article 17 para. 4 RSTP *"is an influence that causes and encourage a conduct"*. The club must overturn the presumption by e.g. providing that the player had left his club of his own free will, without being induced or influenced by the respondent club. One of the decisive points related to the fact that the decision of the player to leave the club had anyway been made before he even met the representatives of the respondent club.**

I. THE PARTIES

1. FC Nantes is a French football club which was competing at the time of the events in the French Championship of Ligue 2 (second division). It is a member of the Fédération Française de Football ("FFF"), which is affiliated to the Union des Associations Européennes de Football ("UEFA") and the Fédération Internationale de Football Association ("FIFA").

2. Mr Ismaël Bangoura is a Guinean professional football player born on 2 January 1985 ("Mr Bangoura" or "the Player").

3. Al Nasr Sports Club ("Al Nasr") is an Emirati football club which competes in the United Arab Emirates ("UAE") Etisalat Pro League (first division). It is a member of the United Arab Emirates Football Association ("UAEFA"), which is affiliated to FIFA.

4. FIFA is the governing body of football at the worldwide level and has its registered office in Zurich, Switzerland.

II. THE DECISION AND ISSUES ON APPEAL

5. FC Nantes, the Player and Al Nasr all appealed a decision of the FIFA Dispute Resolution Chamber ("the FIFA DRC") dated 16 November 2012 (the "Appealed Decision") imposing the payment of compensation to Al Nasr jointly on FC Nantes and the Player of EUR 4,500,000, as well as sporting sanctions on FC Nantes (ban for registering players for the next two consecutive transfer windows) and the Player (suspension of four months) following the termination by the Player of his employment contract with Al Nasr without just cause during the protected period, pursuant to Article 17 of the FIFA Regulations on the Status and Transfers of Players.

6. FC Nantes and the Player consider that they should not be sanctioned as the Player terminated his employment contract with just cause. FC Nantes further contends that in no circumstances did it induce the Player to terminate his employment contract and that it should, therefore, not be sanctioned. As regards Al Nasr, it considers that the Player terminated his employment contract without just cause, that FC Nantes induced the Player in this regard, that the FIFA DRC wrongly calculated the compensation amount and that the sporting sanction imposed on the Player should be increased.

III. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts and allegations based on the parties' written submissions and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in the present award only to the submissions and evidence it considers necessary to explain its reasoning.

8. Mr Bangoura is a Guinean player who started his international career in 2003 in Gazélec Football Club Olympique Ajaccio. He has since 2005 been regularly selected to represent his national team and had become one of the Guinean team's top players.

9. In 2009, after a career in France and Russia, the Player signed a contract with Stade Rennais FC ("Rennes"), a French team playing in Ligue 1 (first division).

10. On 1 September 2010, Al Nasr concluded a transfer agreement with Rennes in order to secure the services of the Player.

11. Al Nasr and Rennes agreed to a transfer fee of EUR 7,000,000 (seven million Euros), which was paid by Al Nasr.

12. On 2 September 2010, Al Nasr and the Player signed a four-year employment contract (the "Employment Contract"). The most relevant part of the Employment Contract reads as follows:

"1. The contract value for First year is (1,200,000) Euro, (240,000) Euro will be paid as advance payment on 1/9 First year.

And the rest total amount will be paid as monthly salaries, paid on first week of the next month.

2. The contract value for Second year is (1,200,000) Euro, (360,000) Euro will be paid as advance payment 1/9 Second year.

And the rest of the total amount will be paid as monthly salaries, paid on first week of the next month".

13. On 28 November 2010, Al Nasr and the Player amended para. 16 of the Employment Contract by concluding a "Contract Extension", which reads as follows:

"In the case the player terminates the aforementioned contract by himself for any reason, he will be entitled to pay to Al Nasr Football Company (10,000,000) euro and the player is entitled for (10%) from the amount (3,000,000) euro will be paid from the company to the player.

Also in case the company receives more than (10,000,000) euro then the extra amount above (10,000,000) euro will be divided equally between the company and the Player".

14. During the first season (2010-2011) with Al Nasr, the Player scored ten goals in seventeen league matches.

15. Al Nasr hired a new coach for the 2011/2012 season, Mr Walter Zenga.

16. On 26 September 2011, Al Nasr paid half of the advance salaries to the Player, in the amount of EUR 180,000.

17. By October of the season 2011/2012, the Player had participated in four of Al Nasr's first five matches of the season, being on national team duty for one match. The four matches consisted of three matches in the Etisalat Cup and one match in the Etisalat Pro League. The Player played the entirety of these matches.

18. On 7 October 2011, the Player participated in a friendly match with the national team of Guinea against Gabon.

19. On 16 October 2011, during an Etisalat Pro League match, the Player was shown two yellow cards by the referee and, after being sent off the pitch, received a further red card for unsporting behaviour. As a result, the UAEFA Disciplinary Committee issued a decision, on 24 October 2011, imposing a three-match suspension on the Player (in addition to the one-match

suspension resulting from the two yellow cards that he received during the match) and a fine of 10,000 Dirhams.

20. The UAEFA decision provided for a suspension from all official matches. Therefore, as a result of his suspension, the Player was not eligible to play in the Etisalat Pro League matches against Ajman (21 October 2011), Al Wahda (29 October 2011), Dubai (4 November 2011) nor the Etisalat Cup match against Al Ahli (13 November 2011).

21. On 24 October 2011, last day of the fall transfer window in the UAE, Al Nasr deregistered the Player from the list of foreign players allowed to play for its team.

22. On the same day, Al Nasr hired Mr Rodrigo Vergilio, a Brazilian football player. Mr Vergilio had already been hired on loan during the 2010/2011 season and was released at the end of that season. Mr Vergilio was assigned the jersey number 10, previously worn by the Player.

23. On 26 October 2011, a news article was published in the Gulf News entitled *"Al Nasr release star striker Bangoura until January"*. The relevant part of this article is the following:

"Guinean international Bangoura, 26, scored 17 goals from 31 league and Cup games last season and was widely admired for his contribution which led the club to third in the table from the tenth. Rival Al Ahli chairman Abdullah Al Naboodah even said not signing the former Ajaccio, Le Mans, Dynamo Kiev and Rennes attacker was his biggest mistake.

Al Nasr team manager, Khalid Obaid explained:

"Bangoura has a three-match suspension and the he will be missing for the African Cup of Nations [January 21 – February 12]. It was decided he would be away for too long and this wouldn't be of use of the team. He has effectively been granted international leave to prepare for the competition. He's not been released, he will train with us and there is a view to bring him back after January".

24. On 25 November 2011, a meeting took place between the Player, his agent Mr Pascal Carbon, and Al Nasr's representatives, to discuss the Player's situation with Al Nasr.

25. On 10 December 2011, Mr Carbon met with Mr Jean-François Klatovsky, an attorney-at-law recommended by Mr Valdemar Kita, who is Mr Carbon's friend and the President of FC Nantes.

26. In a letter dated 13 December 2011, the Player requested permission from Al Nasr to travel to Paris *"to rest before the CAF Championship"* before the initially agreed leave date.

27. On 18 December 2011, Al Nasr informed the Player that his request was refused and that he would be allowed to leave on 25 December 2011, as originally agreed.

28. On 20 December 2011, the Player left Dubai for Paris, without the authorization of Al Nasr, to meet with Mr Klatovsky regarding his situation with Al Nasr.

29. On 3 January 2012, the Player filed a claim against Al Nasr with the FIFA DRC, seeking a finding that the Employment Contract had been unilaterally breached by Al Nasr and requesting, in particular, that he be compensated an amount equal to the salaries he was due until the end of the contract, *i.e.* EUR 3,400,000, and authorized to "*sign in a club of his choosing without transfer fee*".

30. On 11 January 2012, Al Nasr made initial contact with Mr Klatovsky by e-mail, and on 22 January 2012, Al Nasr e-mailed a letter dated 21 January 2012 to Mr Klatovsky complaining about the conduct of the Player in leaving Dubai without any authorization.

31. On 23 January 2012, Mr Klatovsky sent an e-mail to Al Nasr explaining that the Player was not at fault and that, on the contrary, Al Nasr had not provided any explanation regarding the following matters:

"- why he [the Player] *has not been paid the balance of his salary amounting to 180,000 euros to which he is contractually entitled and which should have been paid on 1st September 2011,*

- the reason why he has been banned from training with the professional group of players".

32. In the same letter, Mr Klatovsky informed Al Nasr that the Player had decided to refer the matter to FIFA.

33. In response to this e-mail, Al Nasr sent a letter, mistakenly dated 5 January 2012, to Mr Klatovsky, which read in pertinent part as follows:

"1. It is not true that Al Nasr Sports Club is in default of its contractual obligations towards the said player, but the truth is that the Club has paid all the due salaries in the right time for the period form the beginning of the second year on September 2011 till the end of December 2011, (attached are the pay slips for the whole period), while the Player left the club since 20th December 2011 without the permission and did not come back to date.

2. The balance of Euros 180,000 which mentioned in Lawyer's letter as unpaid salaries and the consequently the lawyer gone to opinion that the Club is in default, in fact this is not part of the player's salaries but is a part of down payment which equal Euros 360,000 and the player is already received 50% of it and accepts to receive the balance before the end of the current season which is in progress. Moreover the fact of registering other foreign player/s is not affecting the other foreign players, like the player, right and entitlements as long as they are sticking to their contracts and its obligations thereof. Despite and although this is the first time for the Club to receive such notice form this player in relation to this matter but as matter of courtesy and good gesture the Club is ready to pay this balance, which equal Euros 180,000, to the player forthwith.

3. Concerning the training sessions the player participate in all training sessions with the first team until the date of 20th December 2011 when the player depart from country without a written permission from the club management. The first team player attend schedule proof this.

4. On the other end and without prejudice to the club's legal rights and grounds regarding this dispute, the Club would like to state the default from the player's side as follows:

i. The Player is in clear breach of his contractual obligations, as he left UAE without permission form the Club.

ii. The Player is in clear breach of his contractual obligations as well as FIFA rule, as he enters into a negotiations with FC Nantes and proceeds with the Transfer to the same through TMS while his contract is still valid with the Al Nasr Sports Club.

Finally, if this matter is not peacefully settled the Club reserves its right to instigate all the legal procedures to resort its legal rights".

34. In the meanwhile, the Player had joined his national team to take part in the CAF Africa Cup of Nations ("CAN"), where he played in matches against Mali (24 January2012), Botswana (28 January 2012) and Ghana (1 February 2012).

35. On 26 January 2012, FC Nantes wrote to Al Nasr to express its interest in signing the Player, and enquiring about the potential transfer fee and the name of the Player's agent.

36. On the same day, Al Nasr replied, in pertinent part, to FC Nantes as follows:

"We would like to inform you that we have no objection to transfer the Player/Ismail Bangoura to your Club in fee of (4,500,000) € Four million five hundred thousand Euros.

Also we want to inform you the monthly salary of the player around (70,000) € Seventy thousand Euros.

The Player Agent: Mr. Carbon Pascal".

37. On 28 January 2012, a meeting was held in Dubai to discuss the Player's future. Representatives of Al Nasr as well as Messrs Carbon and Klatovsky were present.

38. On 29 January 2012, Al Nasr hired Mr Luca Toni, an Italian football player.

39. On 31 January 2012, the Player signed an employment contract with FC Nantes.

40. Following a request from the FFF, the UAEFA indicated via TMS on 2 February 2012, and subsequently to FIFA on 9 February 2012 that as the Player was still under contract with Al Nasr, it could not issue the ITC as requested. Following the denial of the ITC by the UAEFA, the FFF asked FIFA to issue a temporary ITC.

41. On 9 February 2012, the Single Judge of the FIFA Players' Status Committee authorised the FFF to provisionally register the Player with its affiliated club FC Nantes.

42. On 16 December 2012, after claims were filed with the FIFA DRC by FC Nantes, the Player and Al Nasr, the FIFA DRC issued the Appealed Decision, which was notified with grounds to the parties on 1 February 2013.

IV. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

43. On 21 February 2013, FC Nantes filed an appeal before the Court of Arbitration for Sport (the "CAS") against the Appealed Decision pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code").

44. On 22 February 2013, the Player and Al Nasr also filed appeals before CAS against the Appealed Decision.

45. Together with their appeals, FC Nantes and the Player requested the stay of the execution of the Appealed Decision.

46. On 4 March 2013, the CAS Court Office informed the parties that, in light of their agreement, the three procedures would be submitted to the same Panel. The parties were further informed that the Deputy President of the CAS Appeals Arbitration Division had decided to partially grant FC Nantes' and the Player's requests for extension of the deadline to file their appeal briefs, and had decided to grant Al Nasr's request that it be subject to the same deadline, namely 22 March 2013, to file its appeal brief.

47. On 14 March 2013, the Player withdrew his request for a stay of the execution of the Appealed Decision, as he had already served the four-month suspension imposed on him by the Appealed Decision.

48. On 22 March 2013, in accordance with Article R51 of the Code, FC Nantes, the Player and Al Nasr filed their respective appeal briefs.

49. Following several requests from the parties for the extension of their respective deadlines to file their answers, the following deadlines were set:

- FC Nantes, the Player and FIFA were set a deadline until 26 April 2013 to file their answers;

- Al Nasr was set a deadline until 8 May 2013 due to the date on which it received the appeal briefs of the Player and FC Nantes by courier.

50. The parties were informed that, in any event, the answers filed would not be transmitted to the parties before CAS was in receipt of all of the answers.

51. On 26 April 2013, FC Nantes, the Player and FIFA filed their respective answers.

52. Together with its answer, the Player requested the following evidentiary measures:

"- Invite Mr. Pascal Carbon, author of the witness statement filed together with Mr. Ismaël Bangoura's appeal as exhibit B-6, to be heard orally at an evidential hearing at the Court of Arbitration for Sport.

- Order Al Nasr to file its relevant 2011 contract with the player Rodrigo Vergilio so that the actual contract duration is made known (see §§16 and 21 above).

- Order Al Nasr to file correspondence (with Juventus and/or club's and/or player's agents) preceding its contract with the player Luca Toni in view of his transfer to Al Nasr so that the date of the first related contract between Al Nasr and one of its counterparties is made known and evidenced as premeditated and not finding its source in an emergency situation (see §31 above).

- Order Al Nasr to file the letter received from the Guinean national Federation announcing Mr. Bangoura's convocation in view of his participation to the CAN 2012 so the Mr Bangoura will be in a position to show that Al Nasr illegitimate excuse to deregister him was made up, notably for the purposes of the FIFA proceedings, (see §§43 and 48 above).

- Allow Mr. Bangoura, within a short deadline of not less than three weeks after the filing of the present brief, to file documentary evidence with the CAS regarding Mr. Pascal Carbon's telephone listing (already requested three weeks ago, but not yet received from Orange) showing that it is Al Nasr that contacted him to amend the employment agreement and that he tried on several occasions to reach Mr. Humaid Al Tayer to complain about Al Nasr repeated contractual violations and about Mr Bangoura's status at the club (§§28 and 52 above)".

53. On 8 May 2013, Al Nasr filed its answer.

54. On 10 May 2013, the CAS Court Office transmitted the respective answers to the parties. Furthermore, Al Nasr was granted a deadline until 15 May 2013 to provide its position with regard to the evidentiary measures requested in the Player's answer and Al Nasr and FIFA were granted a deadline until 15 May 2013 to provide their respective position on the Player's request to file additional evidence also contained in his answer.

55. On 15 May 2013, both FIFA and Al Nasr opposed the new deadline requested by the Player to file new evidence, in essence on the basis that the Player had ample time to take the necessary actions in order to prepare his case and file evidence and that in this context the conditions of Article R56 of the Code were not fulfilled.

56. On the same day, Al Nasr stated the following with regard to the Player's request for document production:

"In light of the absence of exceptional circumstances, there is no basis for Mr Bangoura to submit any additional documentation at this stage in the proceedings. Consequently, there is no reason for Mr Bangoura to request Al Nasr to provide him with such documentation, as it would not be admissible.

Furthermore, Mr Bagnoura's request is entirely unreasonable. As stand above, Mr Bangoura commenced these proceedings on 3 January 2012, yet has never previously requested this documentation from Al Nasr, nor made any other effort to obtain the documentation, yet he now requests a formal production order. Al Nasr respectfully submits that the CAS should actively discourage such procedural behaviour, and certainly should not reward it by issuing an order to produce additional documents.

Any such order by the Panel would heavily prejudice Al Nasr, as it received a copy of Mr Bangoura's request yesterday and the oral hearing is taking place in one week, with the involvement of several witnesses, which requires a lot of organisation. At the time when Al Nasr and the undersigned counsel intended to prepare for the oral hearing, we cannot be reasonably expected to spend significant parts of the coming days searching for elderly documents and correspondence, in order to provide them to Mr Bangoura, especially as he will not be able to submit them and should have asked for them almost a year and a half ago if he had any doubts regarding the veracity of Al Nasr's submissions before FIFA".

57. On 16 May 2013, Al Nasr informed the CAS that it might be accompanied at the hearing by a co-counsel, and provided the following list of witnesses who would be heard by tele-conference:

- *"Mr Ibrahim Al Fardan, member of the Board of Directors of Al Nasr*
- *Mr Khalid Obaid, first team Director of Al Nasr*
- *Mr Ali Ibrahim, member of the Board of Directors of Al Nasr*
- *Mr Walter Zenga, head coach of the professional team of Al Nasr*
- *Mr Leonardo Lima, professional player of Al Nasr*
- *Mr Fahad Sabel Obaid, professional player of Al Nasr*
- *Mr Mahmud Hassan, professional player of Al Nasr*
- *Mr Rodrigo Vergilio, former player of Al Nasr*
- *An additional former player of the 2011-2012 Al Nasr first team squad, whose name will be communicated shortly*
- *Mr Samer Awni Yousef, Al Nasr's Chief Accountant".*

58. On 17 May 2013, the parties were informed that the Panel had decided to deny the Player's requests for evidentiary measures and for filing additional evidence and that the reasons thereof would be included in the final award.

59. In a letter dated 17 May 2013, the Player stated, in pertinent part, the following:

"1) Mr Bangoura is not in a position to argue on the Panel denial of his request for evidentiary measures and for filing additional evidence since the Panel is not offering him the opportunity to do so within the frame of the above captioned arbitral proceedings and wants to state the reasons thereof only at the stage of the final award. Mr Bangoura has then no other choice but to formally oppose to such modus operandi and to reserve his rights of due process and right to be heard. Indeed, Mr. Bangoura explained clearly (in his answer to Al Nasr appeal brief) to which highly relevant factual elements the request for evidentiary measures and for filing additional evidence was related and what he precisely intended to prove, respectively to refute.

2) As regards Al Nasr correspondence on hearing attendance dated 16th May , 2013, Mr. Bangoura opposes to the Panel potential acceptation of any surprises by Al Nasr less than three working days before the 23rd May, 2013 hearing. Mr Bangoura is notably not aware of the existence of any co-counsel to Al Nasr and if a representative of Al Nasr, not listed in the list of attendees, is present, he should not be able to testify. Besides, also on equal treatment grounds, Al Nasr should not be allowed to call any "additional former player of the 2011-2012 Al Nasr first team squad" whose name has not been communicated in the witness list and who, additionally, has not filed a witness statement".

60. On 21 May 2013, FC Nantes informed the CAS Court Office that it supported the Player's submission that Al Nasr should not be allowed to call any witness whose name had not been communicated and who additionally had not filed a witness statement.

61. On the same date, the CAS Court Office informed the parties that:

"Mr Bangouras' Counsel is advised that further information from the Panel on his requests for disclosure and for filing additional evidence will be given by the Panel at the beginning of the hearing.

With respect to the second point by Mr Bangoura and FC Nantes, I hereby indicate that Al Nasr being a party, one of its representatives may attend the hearing and be heard as such. With respect to the "additional former player", further instructions and a decision from the Panel will be provided at the beginning of the hearing".

62. On 22 May 2013, the day before the hearing, at 7:45 p.m., Al Nasr informed the CAS that as the Player and FC Nantes opposed the presence of a co-counsel with its designated co-counsel, the latter would represent it alone at the hearing. Furthermore, in light of the Player and FC Nantes' objections, Al Nasr's Chairman would refrain from attending the hearing but would remain available throughout the hearing should the Panel wish to contact him. Al Nasr also voluntarily provided the documents requested by the Player in his answer, even though the Player's request was denied by the Panel. The following documents were filed:

- Mr Rodrigo Vergilio's contract with Al Nasr;
- Correspondence between Al Nasr and Juventus regarding the player Luca Toni;
- Convocation of the Player by the Guinean Football Association for the CAN.

63. Al Nasr also informed the CAS that in view of FC Nantes' and the Player's objection, it would refrain from calling any additional witness. Al Nasr however requested the following: *"the* Panel *to take into consideration the fact that FC Nantes and Mr Bangoura have been notified in Exhibit 52 of exactly what the witness will testify to (that Al Nasr players agreed to receive their 2011-2012 advance in two instalments), and they have objected to having the witness provide such testimony in person".*

V. THE CONSTITUTION OF THE PANEL AND THE HEARING

64. By notice dated 17 April 2013, the CAS notified the parties that the Panel had been constituted as follows: Mr Petros Mavroidis, Professor, as President of the Panel, and Messrs Manfred Nan, attorney-at-law and Luigi Fumagalli, Professor and attorney-at-law as co-arbitrators.

65. On 8 May 2013, the parties were informed that in view of the resignation of Mr Mavroidis in the present case, the President of the CAS Appeals Arbitration Division, or his Deputy, would appoint a new President, in accordance with Articles R36 and R54 of the Code.

66. On 10 May 2013, the parties were informed that the Deputy President of the CAS Appeals Arbitration Division had appointed Prof. Dr Martin Schimke, attorney-at-law, as President of the Panel.

67. The parties did not raise any objections as to the constitution and composition of the Panel then or at the hearing.

68. On 14 May 2013, an Order of Procedure was issued. Al Nasr, the Player, FC Nantes and FIFA signed the Order of Procedure respectively on 14, 15, 16 and 21 May 2013.

69. On 23 May 2013, a hearing was duly held at the CAS Headquarters in Lausanne.

70. The following persons attended the hearing:

For the Player:	Mr Juan Carlos Landrove, counsel.
For FC Nantes:	Messrs Saverio Lembo and Vincent Guignet as well as Mrs Louise Aellen, counsels.
For Al Nasr:	Mr David Casserly, counsel.
For FIFA:	Messrs Omar Ongaro, Head of Player's Status & Governance, and Mr Roy Vermeer, Legal Counsel of the Players' Status Department.

71. Mr William Sternheimer, Managing Counsel and Head of Arbitration for CAS, and Mr Serge Vittoz, *ad hoc* clerk, assisted the Panel at the hearing.

72. Shortly before the hearing, the parties were provided with Al Nasr's letter dated 22 May 2013.

73. At the beginning of the hearing, the President of the Panel addressed the issue of the Player's pending requested evidentiary measures and, after having given the opportunity to the parties to comment, decided to uphold the Panel's decision of 17 May 2013 to deny the filing by the Player of new evidence, and reject Al Nasr's production of documents annexed to its letter dated 22 May 2013. The Panel considered that the Player and Al Nasr did not demonstrate the existence of exceptional circumstances to allow them to file new documents, in accordance with Article R56 of the Code.

74. In this regard, the Panel notes that the Player commenced these proceedings on 3 January 2012 before the FIFA DRC, and yet had not previously requested the relevant documentation from Al Nasr, nor made any other effort to obtain such documentation. As to the production of the requested documents by Al Nasr one day before the hearing, the Panel considers that such filing would be procedurally unfair towards the Player and FC Nantes, who both objected to their production at the hearing, and therefore this late filing was denied.

75. The Panel heard the detailed submissions of counsel as well as the evidence of the witness called by the Player and FC Nantes, Mr Carbon. The parties agreed not to hear any of Al Nasr' witnesses.

76. At the conclusion of the hearing, FC Nantes, Al Nasr and FIFA agreed that due process had been fully observed. The Player confirmed that due process had been observed, except with regard to his requests for evidentiary measures contained in his answer, which were denied by the Panel.

VI. JURISDICTION OF THE CAS, ADMISSIBILITY AND SCOPE OF REVIEW OF THE PANEL

77. Pursuant to Article R47 of the Code:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".

78. The jurisdiction of the CAS to hear this dispute derives from Articles 66 and 67 of the FIFA Statutes, which state in particular that CAS has jurisdiction to consider appeals against a decision of the FIFA DRC.

79. In particular, Article 67.1 of the FIFA Statutes provides as follows:

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

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

81. The motivation of the Appealed Decision having been notified to the parties on 1 February 2013, the appeals filed by the parties on 21 and 22 February 2013 are therefore admissible.

82. Under Article R57 of the Code, the Panel has the full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the appealed one.

VII. APPLICABLE LAW

83. Article R58 of the Code provides that:

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

84. Article 66.2 of the FIFA Statutes provides as follows.

"The provision 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".

85. Article 13(D) of the Employment Contract provides that *"[t]he provision of the FIFA and UAE Association regulations shall be applicable for any matter not included herein"*. The Employment Contract does not expressly confirm the applicability of any specific national law.

86. In view of the above, the Panel considers that this appeal is governed by the FIFA Statutes and regulations, the UAEFA and Etisalat Pro League regulations, and Swiss law where appropriate.

VIII. OVERVIEW OF THE PARTIES' SUBMISSIONS

87. The following outline of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel, however, has carefully considered all the submissions made by the parties, even if no explicit reference has been made in what immediately follows. The parties' written submissions, their verbal submissions at the hearing and the contents of the Appealed Decision were all taken into consideration.

A. Mr Ismaël Bangoura

88. The Player made a number of submissions in his statement of appeal, in his appeal brief, in his answer and at the hearing. These can be summarized as follows:

a. *The contract between the Player and Al Nasr*

i. *The Employment Contract*

89. On 2 September 2010, the Player and Al Nasr signed a four-year contract.

90. Less than two months after the signature of the employment agreement, Al Nasr approached the Player with an amendment request. On 28 November 2010, upon Al Nasr's request, the Employment Contract was amended by adding Clause 16, "Contract Extension". This poorly drafted addendum to the original contract constituted a compulsory exit for the Player in case a club would offer to Al Nasr EUR 10,000,000 or more for the Player's transfer. As compensation for declining to object to his transfer, the Player would receive 10% of the transfer sum above EUR 7,000,000.

91. This contract extension represented the first shift by Al Nasr from a normal employer's behaviour.

ii. The 2010-2011 season

92. From a sporting point of view, the first season of the contract (the 2010/2011 season) went very well. The Player scored seventeen goals in thirty-one league and cup matches and was regarded as one of the most talented strikers in Emirati football.

93. As of March 2011, Al Nasr hired the services of a new coach, Mr Walter Zenga, who quickly showed hostility towards keeping the Player in the team. Mr Zenga repeatedly declared that he had trouble composing a team in which the Player would form a part.

94. At the end of the first season, on 30 June 2011, the Player noted that he had received the total amount of AED 5,243,934 (= EUR 1,008,448 at the rate of 5.20 as an average rate for the whole contract period) instead of the contractually agreed sum of EUR 1,200,000 (AED 6,240,000). Al Nasr was therefore late in paying EUR 191,551.

95. This violation of Al Nasr's payment obligations combined with the Employment Contract amendment and the arrival of a new hostile coach made the Player start to wonder about Al Nasr's intentions towards him, from the beginning of September 2011.

iii. The 2011-2012 season

96. On 16 October 2011, the Player was sent off the pitch after receiving two yellow cards in a match between Al Nasr and Al Ain and, after being sent off the pitch, received a further red card for unsporting behaviour. The Player was sanctioned with a four-match suspension.

97. The Player's suspension should have affected the following matches:

- 21 October 2011:	Etisalat League	Al Nasr v. Ajman
- 29 October 2011:	Etisalat League	Al Nasr v. Al Whada
- 4 November 2011:	Etisalat League	Dubai v. Al Nasr
- 13 November 2011:	Etisalat Cup	Al Nasr v. Al Ahli

98. Thus, the Player could have come back to competition as of 18 November 2011 in an Etisalat League game against Al Ahli.

99. However, a new management team was put in place which decided to change two foreign players: the Player (shirt n°10) and Mr Carlos Tenorio (shirt n°11) by hiring Mr Rodrigo Vergilio and Mr Amare Diane, who were, respectively, Brazilian and from the Ivory Coast.

100. Unjustifiably, Al Nasr excluded the Player from the club by deregistering him, unbeknownst to him, from the UAEFA list of players on 24 October 2011. 24 October 2011 was the very last day of the first transfer window's registration period in the UEAFA's FIFA TMS system, and registration periods in other FIFA affiliated associations were already long closed.

101. Al Nasr did not temporarily replace the Player by registering Mr Vergilio, but it did so on a permanent basis by assigning the Player's shirt number (10) to Mr Vergilio.

102. The competition regulations of Etisalat Pro League are very clear regarding the numbers worn by players on their shirts: a player must keep the same number during the whole season and it is strictly forbidden to change number during the season.

103. The Player understood that Al Nasr was bullying him in hopes of pushing him to leave the club and that Al Nasr could not validly reregister him until the end of the 2011-2012 season.

104. Al Nasr had no intention whatsoever to reintegrate the Player by the end of the January transfer window (1 January – 31 January 2012). Indeed, speaking about the fate of the Player at Al Nasr, it was reported in a news article that: *"Al Nasr team manager, Khalid Obaid explains: "[…] there is a view to bring him back after January"*.

105. On 24 October 2011, at the time of the deregistration, the Guinean Football Federation had not yet sent any mail or request to Al Nasr to confirm any participation of the Player in the CAN. It was therefore impossible for Al Nasr, on such date, to be certain that the Player would be selected for the final round of the 2012 CAN.

106. The Player was prevented from training with the professional team by Mr Zenga. The latter automatically excluded the Player from all tactical trainings, video projections and every pre-game preparation. On the match days, the Player was not invited to attend and was therefore completely excluded from the daily life of the professional team.

107. The Player informed his agent, Mr Carbon, of Al Nasr's violations and asked him to contact the club in his name. The contact person at Al Nasr, Mr Humaid Al Tayer, was called on numerous occasions by Mr Carbon without success. Later on, the Player learned that Mr Al Tayer was no longer working for Al Nasr.

b. *The discussions between the Player and Al Nasr*

108. On 25 November 2011, the Player and Mr Carbon could finally meet two Board members of Al Nasr to request that it complies with its contractual obligations and reregister the Player as of 1 January 2012.

109. Al Nasr argued that the Player would not be available between 20 January and 12 February 2012 as he would be participating in the CAN with the Guinean team. The Player's qualification for this competition was however decided after the deregistration.

110. In any event, the Player could have participated in seven official matches previous to joining the Guinean team 14 days before the beginning of the CAN:

- 18 November 2011:	Etisalat Cup	Al Ahli v. Al Nasr
- 25 November 2011:	Etisalat League	Al Nasr v. Al Ahli
- 3 December 2011:	Etisalat League	Al Sharjah v. Al Nasr
- 10 December 2011:	Etisalat League	Al Nasr v. Bani Yas
- 23 December 2011:	Etisalat League	Al Wasl v. Al Nasr
- 25 December 2011:	Etisalat League	Al Nasr v. Al Jazeera
- 4 January 2011:	Etisalat League	Emirates v. Al Nasr

111. Concerning the lack of payments, Al Nasr argued the supposed existence of an agreement with certain players regarding receiving the payment in two instalments. However, exhibits filed by Al Nasr do not demonstrate that such agreement existed.

112. Al Nasr rectified its non-payment of salaries with all its players except the Player in December 2011, which should be considered as another act of bullying in order to push the Player to leave the club.

113. The Player asked Mr Carbon for advice on how to handle the situation and Mr Carbon approached Mr Valdemar Kita, FC Nantes' President, asking him to recommend a sports lawyer. Mr Kita strongly recommended Mr Klatovsky, the attorney-at-law of FC Nantes and a member of its Board.

114. The Player followed Mr Kita's advice and subsequently had Mr Carbon meet Mr Klatovsky, on 10 November 2011, in order to find out how to raise a claim in respect of his legitimate rights towards Al Nasr deriving, *inter alia*, from the Player's deregistration, Al Nasr's non-payments, lack of training with the first team and loss of shirt number, that amounted to serious violations of the Employment Contract.

115. After obtaining information from Mr Carbon on Mr Klatovsky's legal analysis of the situation, on 18 December 2011, the Player tried to ask for explanations from Al Nasr. The only answer

he got from Al Nasr was that he should give the club his passport in order to enable it to perform some "administrative" tasks.

116. As a result of this response, the Player understood that Al Nasr had no intention of solving the situation and he was scared about Al Nasr's passport request, because he knew his administrative situation was perfectly clear. The Player then took the decision to leave the UAE two days later, on 20 December 2011, to go to Paris to consult with his lawyer before Christmas and the end of year celebrations. The Player waited until the FIFA DRC reopened on 3 January 2012 in order to file his claim.

c. *The claim before FIFA*

117. On 3 January 2012, the Player filed a claim before FIFA against Al Nasr for breach of contract based on both his deregistration and the violation of Al Nasr's financial obligations towards him. The Player requested that FIFA recognize the violations of the Employment Contract by Al Nasr and condemn the latter to pay him EUR 3,400,00 as aggregate compensation.

d. *The events after the filing of the claim before FIFA*

118. On 7 January 2012, unbeknownst to the Player or to Mr Carbon, Al Nasr hired the services of two agents, Mr Najim Mohamad and Mr Lamine Fofana to negotiate a contract on behalf of Al Nasr with French football clubs interested in hiring the services of the Player.

119. In a press article dated 24 January 2012, it was stated that the Player had *"fell of the radar after being de-registered"* by Al Nasr. *"Al Nasr officials declared they would prefer to release the Guinean goalscorer Ismail Bangoura on a six-month loan deal to English Premier League club Bolton Wanderers"*. Al Nasr's first team director, Mr Khalid Obaid, told Gulf News: *"it's undecided if he'll move out on loan or via transfer, but loan is definitely our first and preferred option"*. Mr Obaid added: *"It will be difficult to lose Bangoura permanently. We accepted he'd missing for the African Nations and so registered other players for the next six months, but we'd like him to come back and start the next season with us. He's a good player for sure and has shown a lot of potential"*.

120. The Player did not know about the letter dated 26 January 2012 addressed to Al Nasr by FC Nantes inquiring about a possible transfer of the Player to FC Nantes.

121. Mr Carbon and Mr Klatovsky travelled to Dubai on 28 January 2012 to meet with Al Nasr's representatives. They asked them to rectify the situation of the Player with regard to his deregistration and the payments of salaries, bonuses and the advance of EUR 180,000. The Player's representatives indicated to Al Nasr that the Player would withdraw its complaint before FIFA if he was reregistered before the last day of the transfer window in UAE, *i.e.* 30 January 2012.

122. On 29 January 2012, Al Nasr hired Mr Luca Toni, an Italian football player. In order to register him, Al Nasr deregistered Mr Vergilio.

123. By registering Mr Luca Toni, Al Nasr ensured that the Player would not be in a position to practice his profession until, at the earliest, the end of the 2011/2012 season.

124. On 31 January 2012, the Player signed an employment contract with FC Nantes.

B. FC Nantes

125. FC Nantes made a number of submissions in its statement of appeal, in its appeal brief, in its answer and at the hearing.

126. As to the merits, FC Nantes largely adopted the same position as the Player (namely that the Player terminated the Employment Contract with just cause). The Panel therefore refers to section VIII A. above in this regard.

127. The Panel notes FC Nantes' argument with regard to the letter sent on 26 January 2012 to Al Nasr. FC Nantes asserts that this letter was not sent in order to actually show its interest in hiring the Player, but was only sent at the request of Messrs Carbon and Klatovsky in order to glean some information, in particular with regard to the agent representing the Player.

128. As to FC Nantes' alleged inducement of the Player to breach the Employment Contract, the former's position is the following:

"147. If, contrary to all probability and despite the extremely clear statement of facts and the reasoning set out above, CAS were to hold that the existence of a good reason allowing for termination of the contract is doubtful, FC Nantes intends to prove that it did not, under any circumstances, induced the Player to commit a breach of his employment contract.

148. The situation in the present matter is similar to the one ruled by CAS on 26 May 2008 in the case 2007/A/1358. In that decision, the CAS noted that the inducement referred to in Article 17 para. 4 RSTP "is an influence that causes and encourages a conduct". In that case, the CAS held that the respondent club had overturned the presumption by providing that the player had left his club of his own free will, without being induced or influenced by the respondent club. One of the decisive points related to the fact that the decision of the player to leave the club had anyway been made before he even met the representatives of the respondent club.

149. In the present matter, the facts of the case prove that FC Nantes cannot, under any circumstances, be accused of having adopted an attitude that would have caused or encouraged Mr. Bangoura to leave Al Nasr.

150. First, the financial situation of FC Nantes at the time of the facts made it impossible to even think of Mr. Bangoura's transfer on the terms he previously enjoyed at Al Nasr (see Exhibit A-12, Decision of the DNCG dated December 5, 2011). It is therefore totally inconceivable that FC Nantes could have premeditated the hiring of the Player.

151. Second, the only offer made by FC Nantes to the Player was on 31 January 2012, when both Mr. Bangoura and Al Nasr considered that their contractual relationship had ended. Indeed, the transfer window

had closed on 30 January 2012 in the United Arab Emirates without Mr. Bangoura having been re-registered and another foreign player had been registered in his place (see above n. 65)

152. Third, the offer made by FC Nantes to the Player on 31 January 2012, when the Player was no longer under contract with Al Nasr was in no way competitive, given the conditions previously enjoyed by the Player with the Respondent Club. To recap, the Player's salary was EUR 1,200,000 when he was working at Al Nasr (Exhibit a-4, Art. 4, letter A, n. 2) and EUR 120,000 under the contract signed with FC Nantes (Exhibit A-5). It is ridiculous to claim that such a poor offer could have been a manoeuvre aimed at encouraging Mr. Bangoura to leave Al Nasr or which could have caused such a departure, given the disproportion of the amounts involved.

153. Fourth, whereas the Player was previously playing in the premier division with Al Nasr, FC Nantes was offering Mr. Bangoura a place in a second division club, with reduced visibility and with no guarantee of one day again finding a level of competition equivalent to the level the Player previously knew.

154. Under these circumstances, the conclusion must be that the only reasons that could have motivated the Player to join FC Nantes are the precarious situation in which he found himself with Al Nasr and the absolute necessity of being involved again in competition, from which he had been arbitrarily excluded. There is nothing, on the other hand, that suggest that the offer from FC Nantes, which occurred on the last day of the transfer window in France at a tie when the Player found himself without a contract, can be blamed for an attitude aimed at encouraging Mr. Bangoura to leave Al Nasr or that could have cause such a departure.

155. For all these reasons, FC Nantes has not under any circumstances induced Mr. Bangoura to commit a breach of his employment contract. Accordingly, it would be wrong to sanction FC Nantes and therefore also in this point the DRC Decision must be set aside".

129. FC Nantes therefore concludes that (i) the Player terminated the Employment Contract with just cause, and (ii) in no circumstances did FC Nantes induce the Player to terminate this contract.

C. Al Nasr

130. Al Nasr made a number of submissions in its statement of appeal, in its appeal brief, in its answer and at the hearing.

a. *The contract between the Player and Al Nasr*

i. The Employment Contract

131. On 2 September 2010, the Player and Al Nasr signed the Employment Contract.

132. On 28 November 2010, Al Nasr and the Player amended Clause 16 of the Employment Contract by concluding a "Contract Extension". This addendum to the original contract contained both a compensation clause and a transfer clause.

ii. The 2010-2011 season

133. During the season 2010/2011, the Player played a very important role for Al Nasr. He scored ten goals in seventeen league matches and was regarded as one of the most talented strikers in Emirati football.

134. From a contractual point of view, Al Nasr complied in full with its commitments for the 2010/2011 season. In particular, Al Nasr made each and every payment that it was obliged to make under the Employment Contract.

135. In light of the fact that the Player was entitled to an aggregate amount of EUR 1,200,000, this means that he was to be paid a monthly salary of EUR 80,000 (EUR 1,200,000, less the advance payment of EUR 240,000, divided by 12 months). Al Nasr submitted the following table containing all the payments made to the Player between 27 September 2010 and 18 September 2011, based on the Player's bank account extract submitted by the Player.

Date	Amount AED	Conversion Rate	Amount Euros
27.09.10	1,134,662	4,95	229,225
11.10.10	414,400	5,11	81,095
01.11.10	404,800	5,11	79,217
06.12.10	384,400	4,92	78,130
08.01.11	387,580	4,76	81,424
08.02.11	406,014	4,98	81,528
16.03.11	413,280	5,12	80,718
02.04.11	418,898	5.20	80,557
05.05.11	435,286	5,45	79,868
30.05.11	418,193	5,25	79,655
06.07.11	426,421	5,31	80,305
30.07.11	422,448	5,26	80,313
18.09.11	430,400	4,95	86,949
Total	**6,096,782**		**1,198,984**

136. As can be seen from this table, there is only a minor overall difference of EUR 1,016 to the amount owing pursuant to the Employment Contract for the season (EUR 1,200,000) which amount corresponds to approximately 0,08% of the total amount owed and which may be accounted for by bank transaction fees, and there can be no doubt that all amounts due to the Player were made in full.

137. Furthermore, during the almost two years since he allegedly became aware of those missed payments in the 2010/2011 season, the Player never raised this issue, despite being involved in a dispute before the FIFA DRC with potentially very serious consequences for him.

iii. The 2011-2012 season

138. In advance of the 2011/2012 season, Mr Ali Ibrahim, a Board Member of Al Nasr, met with the Player and informed him that it was Al Nasr's intention to pay the players' advances for the season in two instalments, and the Player happily agreed to that arrangement. This was the same practice employed with all players. In accordance with this standard practice, the Player's advance was to be paid in two instalments. Indeed, on 26 September 2011, the Player was informed that the first instalment (EUR 180,000) had been transferred to his bank account, and that, as agreed, the second instalment would be paid later in the season, to which the Player had no objection.

139. By October of the 2011/2012 season, the Player was again playing a very important role for Al Nasr and had participated in four of Al Nasr's first five matches of the season (he was on national team duty for one match). He played these four matches in full, except for the match on 16 October 2011, in which he was sent off the pitch.

140. Indeed, on 16 October 2011, the Player was shown two yellow cards and, after being sent off the pitch, received a further red card for unsporting behaviour. As a result, the UAEFA Disciplinary Committee issued a decision on 24 October 2011, imposing on him a three-match suspension (in addition to the one-match suspension resulting from the two yellow cards he received during the match).

141. In view of his suspension, the Player was ineligible to play with Al Nasr for the following games: Pro League matches against Ajman (21 October 2011), Al Wahda (29 October 2011) and Dubai (4 November 2011) and Etisalat Cup match against Al Ahli (13 November 2011).

142. In addition, the Player was due to play with the national team of Guinea during the CAN, which was taking place between 21 January and 12 February 2012, which meant that he would not return to Dubai until 11 p.m. on 14 February 2012.

143. As a consequence of his combined suspension and call-up for the CAN, the Player was going to be available for selection for a maximum of 5 of the upcoming 17 matches to be played by Al Nasr.

144. As Article 23 of the Etisalat Professional League Competition Regulations provides that a maximum of three foreign players are eligible to participate in League matches, and given the Player's temporary unavailability, Al Nasr decided that the best approach would be to temporarily exclude him from the list of foreign players registered to play in the League between the first and second transfer windows, *i.e.* between 24 October 2011 and 30 January 2012.

145. This deregistration was conducted with the agreement of the Player.

146. The Player was aware that his deregistration was a tactical decision to restrict the effect of a suspension that he needlessly caused, he was aware that a player of lesser quality was being brought in during his absence, he was aware that it was only preventing him from playing in 5

matches in the entire season, and he was looking forward to playing in the most important continental tournament of his career during his period of deregistration.

147. The Player was due to leave for the CAN on 25 December 2011 and would therefore not be able to participate in Al Nasr's matches on 25 December 2011 and 4 January 2012.

148. By temporarily removing the Player from the list of eligible players during a period in which he was mostly unavailable to play anyway, Al Nasr obtained the ability to avail itself of the sporting performances of another foreign player, albeit a player of lower standard, during the period of the Player's temporary unavailability.

149. At all times, the Player remained Al Nasr's employee and the Employment Contract was in no way affected by the temporary registration of another player during his unavailability. In the two months following the first transfer window, until his premature departure, the Player continued to train regularly with Al Nasr, and the latter continued to remunerate the Player in accordance with the provisions of the Employment Contract.

150. It is correct that Al Nasr planned to reregister the Player on the last day of the window, 31 January 2012, as the Player would still be at the CAN at this stage.

151. Mr Ali Ibrahim, Al Nasr's Board Member, discussed the situation with the Player's agent in person when he met the agent with the Player after the Al Ahli match against Al Nasr on 25 November 2011.

152. With regard to the departure of the Player for the CAN, arrangements had been made by Al Nasr for the Player to return home to Guinea on 25 December 2011 until 14 February 2012.

153. However, despite the fact that (i) the Player was already being permitted to return to Africa a full month before the CAN, and (ii) he had only been training since his suspension, the Player requested, on 13 December 2011, permission to travel to Paris *"to rest before the CAF Championship"*.

154. Al Nasr did not grant permission to the Player to go on a trip to France while he was supposed to be training with the first team, but instead granted permission for him to leave Dubai on 25 December 2011, as originally agreed.

155. On 20 December 2011, the Player left Dubai without permission from Al Nasr, failing to attend training sessions scheduled on 20, 21, 22, 23 and 24 December 2011.

156. Having been unable to contact the Player, Al Nasr contacted his agent, Mr Carbon, who advised Al Nasr to make contact with Mr Klatovsky, a lawyer in France who was representing the Player. Al Nasr did not realize at that time that Mr Klatovsky was also FC Nantes' lawyer and Board Member.

157. On 11 January 2012, believing him to be the Player's lawyer, Al Nasr made initial contact with Mr Klatovsky by e-mail, and on 22 January 2012, Al Nasr e-mailed a letter dated 21 January

2012 to Mr Klatovsky complaining about the conduct of the Player in leaving Dubai without any authorization from Al Nasr, which constituted a breach of the Employment Contract.

158. On 23 January 2012, Mr Klatovsky sent an e-mail to Al Nasr with a list of accusation against Al Nasr.

159. Al Nasr sent a letter (mistakenly dated 5 January 2012) responding to Mr Klatovsky's e-mail in which Al Nasr addressed all the queries in his e-mail, including confirming that the Player had indeed been training with the first team until he left Dubai, and correcting Mr Klatovsky's misunderstanding of the sum of EUR 180,000 and explaining him that it was actually the second instalment of the advance which was not yet due for payment. Al Nasr also stated that *"despite and although this is the first time for the Club to receive such notice from this player in relation to this matter but as matter of courtesy and good gesture the Club is ready to pay this balance with equal Euros 180,000, to the player forthwith"*.

160. In the meantime, the Player had joined his national team to take part in the CAN, where he played in matches against Mali (24 January 2012), Botswana (28 January 2012) and Ghana (1 February 2012).

161. On 26 January 2012, FC Nantes wrote to Al Nasr to express its interest in signing the Player, and enquiring about the potential transfer fee.

162. The explanation that FC Nantes has presented as to why it sent a letter enquiring about transferring the Player, *i.e.* to check if Al Nasr would use different agents for the Player, cannot be taken seriously.

163. Upon receipt of the letter of 26 January 2012 from FC Nantes, Al Nasr realised that the Player had made up his mind to leave Al Nasr for FC Nantes and that created huge pressure on Al Nasr to resolve this issue as quickly as possible so as to have the possibility of signing a permanent replacement for the Player during the transfer window, as Mr Vergilio was only hired on a temporary basis. Due to this rather desperate situation, Al Nasr was willing to accept a reduced transfer cash amount for the Player and therefore replied to FC Nantes, on 26 January 2012, indicating that Al Nasr was willing to transfer the Player for the amount of EUR 4,500,000.

164. Also on 26 January 2012, when it appeared certain that the Player would go to FC Nantes, Al Nasr contacted Juventus regarding the availability of Mr Luca Toni, and made a proposal for his transfer to Al Nasr.

165. On 28 January 2012, a meeting was held in Dubai to discuss the Player's future. Al Nasr's representatives met with Mr Carbon and Mr Klatovsky.

166. At that meeting, Al Nasr's representatives reminded Messrs Carbon and Klatovsky that Al Nasr had a valid and binding Employment Contract with the Player, that it had been Al Nasr's intention to reregister the Player during the next transfer window and that the Player's acts were

in breach of the Employment Contract. Rather than stating that the Player would be prepared to withdraw his claim with the FIFA DRC if Al Nasr agreed to comply with its obligations, Messrs Carbon and Klatovsky stated that the Player would not come back to the UAE and also informed Al Nasr that a French club would make an offer for the Player shortly. This constitutes clear evidence that Mr Klatovsky attended the meeting in Dubai on 28 January 2012 not to resolve any issue on behalf of the Player, but to continue to orchestrate the Player's transfer to FC Nantes.

167. On 29 January 2012, Al Nasr reached an agreement with Juventus regarding the transfer of Mr Toni.

168. With regard to the claim by the Player that by registering Mr Toni on 30 January 2012, Al Nasr ensured that the Player would not be able to play until the end of the 2011/2012 season, Al Nasr noted that almost one month prior to Mr Toni's registration, the Player had already filed a claim with the FIFA DRC unilaterally terminating the Employment Contract and had already confirmed such termination through his representatives in the meeting of 28 January 2012 by expressly stating that he would not be returning to Al Nasr.

169. The Club never heard from FC Nantes or any other French club again, and on 31 January 2012, notwithstanding the fact that (i) the Player was under contract with Al Nasr and (ii) FC Nantes did not conclude any transfer agreement with Al Nasr, FC Nantes apparently entered into an employment contract with the Player.

b. The calculation of the compensation

170. With regard to the calculation of the compensation, Al Nasr shall be awarded compensation in the amount of EUR 9,700,000, in view of the Player's breach of contract without just cause, relying on the compensation clause provided for in clause 16 of the Employment Contract.

171. Alternatively, the compensation shall be calculated by applying the usual criteria of Article 17 of the FIFA Regulations on the Status and Transfer of Players, in particular (i) the value of the Player's services, (ii) the fees and expenses incurred by Al Nasr, (iii) the lost earnings (missed transfer fee), (iv) the specificity of sport, (v) the fact that the termination without just cause occurred during the protected period, and (vi) the time remaining in the Employment Contract. In applying those criteria, Al Nasr considers that the compensation due from the Player is EUR 8,206,736.

c. Sporting sanctions against the Player

172. With regard to the sanction to be imposed on the Player, Al Nasr contests the reasoning in the Appealed Decision and considers that the sanction should be increased to six months, considering that there are aggravating circumstances.

D. FIFA

173. FIFA made a number of submissions in its answer and at the hearing.

174. FIFA mainly referred the Panel to the Appealed Decision passed by the FIFA DRC as it considers that the motivation is complete, clear, very detailed and addresses all the relevant issues at stake.

IX. THE PARTIES' REQUESTS FOR RELIEF

A. The Player

175. The Player's requests for relief, in his answer, are the following:

"Based on the facts and legal argument stated above and/or referred to in his appeal brief dated 22nd March, 2013 filed in the consolidation CAS 2013/A/3092 proceedings, Mr. Ismaël Bangoura respectfully requests the Court of Arbitration for Sport to:

X. ***On the Admissibility:***

- Issue a finding that Mr. Ismaël Bangoura's present appeal complies with the CAS Code requirements, was notably timely filed, and is therefore admissible.

XI. ***On the Evidentiary measures:***

- Invite Mr. Pascal Carbon, author of the witness statement filed together with Mr. Ismaèel Bangoura's appeal as exhibit B-6, to be heard orally at an evidential hearing at the Court of Arbitration for Sport.

- Order Al Nasr to file its relevant 2011 contract with the player Rodrigo Vergilio so that the actual contract duration is made known (see §§16 and 21 above).

- Order Al Nasr to file correspondence (with Juventus and/or club's and/or player's agents) preceding its contract with the player Luca Toni in view of his transfer to Al Nasr so that the date of the first related contract between Al Nasr and one of its counterparties is made known and evidenced as premeditated and not finding its source in an emergency situation (see §31 above).

- Order Al Nasr to file the letter received from the Guinean national Federation announcing Mr. Bangoura's convocation in view of his participation to the CAN 2012 so the Mr Bangoura will be in a position to show that Al Nasr illegitimate excuse to deregister him was made up, notably for the purposes of the FIFA proceedings, (see §§43 and 48 above).

- Allow Mr. Bangoura, within a short deadline of not less than three weeks after the filing of the present brief, to file documentary evidence with the CAS regarding Mr. Pascal Carbon's telephone listing (already requested three weeks ago, but not yet received from Orange) showing that it is Al Nasr that contacted him to amend the employment agreement and that he tried on several occasions to reach Mr. Humaid Al Tayer to complain about Al Nasr repeated contractual violations and about Mr Bangoura's status at the club (§§28 and 52 above)".

XII. ***On the Merits:***

- Integrally reject Al Nasr request for relief included in §235 of its appeal dated 22nd March, 2013 filed in the consolidated CAS 2013/A/3093 proceedings.

- Annul points 5 to 12 of the operative part of the FIFA Dispute Resolution Chamber's decision (Case ref. 1200987), dated 16th November, 2012, and notified on 1st February, 2013.

- Confirm points 1 to 4 and 13 of the operative part of the FIFA Dispute Resolution Chamber's decision (Case ref. 1200987), dated 16th November, 2012, and notified on 1st February, 2013.

- Reject in its entirety the claim filed with the FIFA DRC by Al Nasr Sports Club on 27th April, 2012.

- Uphold the claim filed with the FIFA DRC by Mr. Ismaël Bangoura on 3rd January, 2012.

- Issue a finding that Al Nasr SC substantially breached its contract with Mr. Ismaël Bangoura on numerous occasions, allowing him to unilaterally terminate the employment agreement with just cause.

- Issue a finding that Mr. Ismaël Banogoura was authorized to sign, on 31st January, 2012 (and would have been, at the latest, as of 24th October, 2011), with a new football club without any form of transfer indemnification in favour of Al Nasr.

- Order Al Nasr to indemnify Mr. Ismaël Bangoura to the extent of unpaid financial obligations (every type of remuneration, including all bonuses, as well as fringe benefits) running up to the end of the employment agreement on 30th June, 2014.

- Order, in particular, Al Nasr SC to compensate, as to the salaries only (excluding all bonuses, as well as fringe benefits, but including a six months salary additional indemnity pursuant to art. 337c III CO), Mr. Ismaël Bangoura in the minimum amount of € 4'497'737.- plus interest of 5% from 24th October, 2011, to be paid within 10 calendar days of the issuance of the Court of Arbitration for Sport's award.

- Order, in particular, Al Nasr SC to compensate, as to bonuses and fringe benefits (excluding salaries), Mr. Ismaël Bangoura in an amount of € (Euros) to be determined during the course of the arbitral proceedings, plus interest of 5% from 24th October, 2011, and to be paid within 10 calendar days of the issuance of the Court of Arbitration for Sport's award.

- Impose suitable sporting sanctions on Al Nasr SC.

- Rule that all costs in these arbitral proceedings are to be paid by Al Nasr SC and FIFA.

- Order Al Nasr SC and FIFA to reimburse, or pay a significant contribution towards, Mr. Ismaël Bangoura's legal costs and expenses".

B. FC Nantes

176. FC Nantes' requests for relief, in its answer, are the following:

"Accordingly, FC NANTES respectfully requests the Court of Arbitration for Sport to:

- *Dismiss AL NASR SPORTS CLUB's appeal in full;*
- *Set aside points 6 to 12 of the operative part of the Decision of the FIFA Dispute Resolution Chamber rendered between the parties on 16 November 2012 and notified with grounds on 1 February 2013;*
- *Uphold points 1 to 4 of the operative part of the Decision of the FIFA Dispute Resolution Chamber rendered between the parties on 16 November 2012 and notified with grounds on 1 February 2013;*
- *Order AL NASR SPORTS CLUB and FIFA to pay all costs and expenses related to theses proceedings".*

C. Al Nasr

177. Al Nasr's requests for relief, in its answer, are the following:

"328. Al Nasr Football Company respectfully requests the Court of Arbitration for Sport to:

(i) Uphold the finding in the FIFA Decision that Mr Ismael Bangoura breached his contract with Al Nasr without just cause;

(ii) Amend the terms of the FIFA Decision to order an increase of the amount of compensation to be paid by Mr Bangoura and FC Nantes to €9,700,000 (nine million, seven hundred thousand Euros) plus interst of 5% from 20 December 2011, to be paid within two weeks of the issuance of the CAS Award,

(iii) or in the alternative,

(iv) order Mr Bangoura and FC Nantes to pay another amount to Al Nasr, to be determined by the CAS, in excess of €4,500,000;

(v) Impose a suspension on Mr Bangoura of no less than four months;

(vi) Uphold the finding in the FIFA Decision that FC Nantes is banned from registering any new players, either nationally or internationally, for the next two registration periods (summer 2013 and winter 2013/2014);

(vii) Order Mr Bangoura and FC Nantes to pay the full amount of the CAS arbitration costs;

(viii) *Order Mr Bangoura and FC Nantes to pay a significant contribution towards the legal costs and other expenses of Al Nasr, at least in the amount of €30,000".*

D. FIFA

178. FIFA's requests for relief, in its answer, are the following:

"1. That the CAS rejects the present appeals and confirm the presently challenged decision passed by the Dispute Resolution Chamber on 16 November 2012 in its entirety.

2. That the operative part of the award of the CAS in the present appeal arbitration procedure be communicated to the parties prior to the reasons, within a maximum of 30 days after the conclusion of the exchange of the written submissions, or, in case a hearing be held in the present procedure, within a maximum of five days after the date of such hearing, and in any case, prior to the start of the next registration period fixed by the French Football Federation.

3. That the CAS orders the Appellants to bear all the costs incurred with the present procedure.

4. That the CAS order the Appellants to cover all legal expenses of FIFA related to the proceedings at hand".

X. MERITS OF THE APPEALS

179. The central issue to be determined in the present matter is which party was in breach of the Employment Contract and thus whether the Player unilaterally terminated the Employment Contract without just cause or whether Al Nasr breached the Employment Contract, entitling the Player to unilaterally terminate the contract with just cause.

180. In considering this question, it is important to note that it is undisputed that the Player terminated the Employment Contract. As such, the burden of proof is on him to prove that he had just cause to do so.

181. Before going into the substance of the case, the Panel notes that the Player and FC Nantes put forward, in the present proceedings, various arguments to legitimize the termination by the Player of the Employment Contract. However, the Panel notes that some of these arguments were not put forward before the FIFA DRC, as before the DRC only two arguments were raised, i.e. the non-payment of part of the Player's salary (i.e. EUR 180,000 being half of the contractual advance payment for the 2011/2012 season) and the deregistration of the Player (combined with alleged exclusion from team practices, etc.).

A. The Player's appeal

a. *The termination of the Employment Contract*

182. As set out above, it is undisputed between the parties that the Player terminated the Employment Contract.

183. In this respect, the Panel notes that it is only disputed whether, during the meeting held on 28 January 2012, the representatives of the Player informed the representatives of Al Nasr that the Player would not return to Dubai. However, it is not contested that the Player did not return to Dubai after leaving without permission on 20 December 2011 and that subsequently, on 31 January 2012, he signed an employment contract with FC Nantes.

184. It is at this juncture that the parties have divergent positions. In fact, while the Player considers that he had just cause to unilaterally terminate the contract, Al Nasr, on the other hand, sustains that not only did the Player not have just cause, but that he (as opposed to Al Nasr) had already breached the Employment Contract at this point.

b. *Was the Employment Contract terminated with just cause?*

i. *The Concept of "just cause" as defined in Article 14 RSTP 2010*

185. As rightly pointed out by FC Nantes, pursuant to the principle *pacta sunt servanda,* obligations deriving from contracts which are validly entered into must be executed pursuant to the contract's terms until the parties consensually adopt a new contractual arrangement (ATF 135 III 1, c. 2.4 = JdT 2011 II 524).

186. Article 14 of the FIFA Regulations on the Status and Transfer of Players 2010 (the "RSTP") provides for the possibility of terminating a contract with just cause as follows:

"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause".

187. The Commentary on the RSTP states the following with regard to the concept of "just cause": *"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. Behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist over a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally"* (RSTP Commentary, N2 to Article 14).

188. The CAS has had the opportunity of specifying in its jurisprudence that while the FIFA rules do not define the concept of "just cause", reference should be made to the applicable law (CAS 2006/A/1062; CAS 2008/A/1447). When Swiss law applies, as in the particular case, Article 337 para. 2 of the Swiss Code of Obligations ("CO") provides that *"Any circumstances which, according to the rules of good faith, mean that the party who has given notice of termination cannot be required to continue the employment relationship, shall be deemed good reason"*. The concept of "just cause" as defined in Article 14 RSTP must therefore be likened to that of "good reason" within the meaning of Article 337 para. 2 CO.

189. The CAS has adopted the jurisprudence of the Swiss Federal Tribunal, according to which an employment contract may be terminated immediately for good reason when the main terms and conditions (either general/objective or specific/personal), under which it was entered into are no longer implemented (ATF 101 Ia 545). The Swiss Federal Tribunal stipulates in this regard that the circumstances must be such that, according to the rules of good faith, the party terminating the employment relationship cannot be required to continue it (ATF 101 Ia 545; Judgment 4C.240/2000 of 2 February 2002; Judgment 4C.67/2003 of 5 May 2003; WYLER R., *Droit du travail*, Berne 2002, p. 364; TERCIER P., *Les contrats spéciaux*, Zurich 2003, N 3402, p. 496).

190. The Swiss Federal Tribunal also holds that when immediate termination is at the initiative of the employee, a serious infringement of the employee's personality rights (Judgment 4C.240/2000 of 2 February 2001), consisting, for example, in unilateral or unexpected change in his status which is not related either to company requirements or to organization of the work or the failings of the employee (Unpublished judgments of October 7, 1992 in SJ 1993 I 370, of November 25, 1985 in SJ 1986 I 300 and of 16 June 1981 in case C.40/81), or even, in certain circumstances, a refusal to pay all or part of the salary (STAEHLIN A., *Kommentar zum Schweizerishcen Zivilgesetzbuch, Obliagtionenrecht*, V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, N 27 ad Art. 337 CO; BRUNNER/BÜHLER/WAEBER/BRUCHEZ, *Commentaire du contrat de travail*, Lausanne 2010, N 7 ad Art. 337 CO), may be deemed "good reason".

191. According to CAS jurisprudence, only material breaches of a contract can possibly be considered as "just cause" for the termination of the latter (CAS 2006/A/1062; CAS 2006/A/1180; CAS 2007/A/1210; CAS 2006/A/1100).

192. Furthermore, for a party to be allowed to validly terminate an employment contract, it must have warned the other party, in order for the latter to have had the chance, if it deemed that the complaint to be legitimate, to comply with its obligations. In this regard, in other CAS jurisprudence, the Panel stated that *"[s]econdly, a prerequisite for terminating because of late payment is that the Appellant should have given a warning. This follows from the principle of good faith; for the breach of duty is – objectively – from the outset not so grave that it would have been unreasonable to expect the Appellant to continue the employment. However, if that is the case the Appellant must – before he terminates the Contract – let the Respondent know firstly that he is complaining that the Respondent's conduct is not in accordance with the Contract and secondly that he is not prepared to accept such breaches of contract in future. With regard to employment contract relationships in the world of football, according to the principle of contractual stability, the unilateral termination of a contract must be considered as an absolute last resort, where, given the particularities of the situation at stake, it could not be expected that one of the parties could reasonably continue to be bound by the contractual relationship"* (CAS 2006/A/1180).

ii. The failure to pay part of the Player's salary

193. Regarding the Player's allegation that Al Nasr had failed to pay him 50% of the advance payment for the season 2011/2012, as set out above, Al Nasr alleges that the Player agreed to receive the advance payment in two instalments, as apparently was normal practice at Al Nasr. Al Nasr also contends that if the Player had not agreed to the payment in two instalments, he would have complained at an earlier stage. Al Nasr alleges that the first time the Player complained to it about this issue was in an email sent by Mr Klatovsky on 23 January 2012.

194. According to the Employment Contract, the Player was entitled to receive, for the first year of contract, a total amount of EUR 1,200,000, with EUR 360,000 being due as advance payment on 1 September 2011, and the rest being due as monthly salaries payable in the first week of the next month.

195. The Panel considers that, absent any express rule to the contrary, an agreement between two parties does not have to follow any specific form and may, in fact, simply result, for example, from a verbal agreement (Article 11 CO). However, parties opting to conclude non-written agreements may obviously face increased challenges in terms of proof.

196. In light of the aforementioned and of the burden of proof principle contained in Article 12 par. 3 of the Procedural Rules (according to which any party deriving a right from an alleged fact shall carry the respective burden of proof) the Panel stresses that it is clearly up to Al Nasr to provide compelling evidence demonstrating that, despite what had been explicitly agreed in the Employment Contract, the parties had, in fact, agreed on an amendment of the contractual provision at stake and, specifically, on payment of the advance agreed for the 2011/2012 season in two instalments.

197. In this regard, Al Nasr provided several written statements from members of its organisation as well as from Al Nasr players.

198. The Panel considers that if it was common practice at Al Nasr to pay the advance salaries set forth in the players' contracts in two instalments, Al Nasr should have included this in the employment contracts proposed to its players. In view of the absence of any clause in the Employment Contract in this regard, the Player's constant denials and the evidence provided by Al Nasr (*i.e.* written statements from people all linked to the club) the Panel is not comfortably satisfied that an agreement on this issue existed between the Player and Al Nasr.

199. In addition, although the Panel considers the fact that the Player did not raise the issue with regard to the payment of the relevant advance before January 2012 is somewhat odd, this does not constitute sufficient evidence to conclude that the agreement expressly laid down in the Employment Contract had been amended by mutual agreement.

200. The Panel notes however, that it was established that as soon as the issue of the payment of the EUR 180,000 was brought to its attention, via Mr Klatovsky's email dated 23 January 2012, Al Nasr offered to pay it immediately, even though it considered that an agreement existed with the Player in this regard. Mr Klatovsky remained silent to this proposal, although he stated the following in the above mentioned email: *"I remain, however, open to discussion with you in order to find an amicable solution to this dispute"*.

201. In light of the above, the Panel, together with the FIFA DRC, considers that, by not making the advance payment agreed for the 2011/2012 season in full on its contractual due date, i.e. 1 September 2011, Al Nasr did not fully fulfil its contractual obligations towards the Player.

202. However, not every breach of contract justifies early termination of a contract (CAS 2006/A/1180) and, as noted above, there has to be a just cause for such termination. The Panel shall therefore determine whether the failure by Al Nasr to pay half of the advance payment constituted a "just cause" allowing the Player to have terminated the Employment Contract.

203. As set out above, based on well-established jurisprudence of the CAS, non-payment or late payment of a player's salary by his club may constitute "just cause" for terminating the employment contract (CAS 2006/A/1180; CAS 2008/A/1589; Judgement 4C.240/2000 dated 2 February 2001). In this regard, the CAS specifies:

> *"[…] the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the later non-payment, is irrelevant. The only relevant criteria is whether the breach of the obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee"* (CAS 2006/A/1180).

204. The RSTP Commentary takes the same line: to illustrate the concept of "just cause" it refers to the situation of a player who has not been paid his salary for more than three months, despite

having informed his club of its default. In this case, the RSTP Commentary points out that: *"The fact that the player has not received his salary for such a long period of time entitles him to terminate the contract, particularly because persistent noncompliance with the financial terms of the contract could severely endanger the position and existence of the player concerned"* (RSTP Commentary, N3 to Art. 14).

205. In the case at hand, the Player and FC Nantes' position with regard to the non-payment of the second instalment of the advance salary amounting to EUR 180,000 is that it corresponds to approximately three times the monthly salary of the Player, i.e. an identical proportion to the one referred to in the RSTP Commentary or in case CAS 2006/A/1180 (in which three months delay in payment of the salary had been held to constitute just cause for the player to have terminated his employment contract).

206. The Player and FC Nantes also assert that the non-payment of the second instalment was a deliberate action by Al Nasr to sideline the Player. Both of these parties also refer to the witness statement of Mr Carbon, who allegedly complained in particular about the late payment of the advance salary in a meeting with Al Nasr on 25 November 2011.

207. The Panel cannot follow the Player and FC Nantes' position with regard to the fact that the non-payment of the second instalment of EUR 180,000 should be considered as a just cause for the termination of the Employment Contract by the Player. Established jurisprudence of CAS in this regard, and the Commentary on Article 14 RSTP, refers to an important factor (in cases in which non-payment was held to constitute just cause) being persistence or repetition of the non-payment of the salary. In the case at hand, there is no repetition in the non-payment, the advance of salary consisted of one single payment, albeit one which was not timeously made by Al Nasr. Moreover, there is no evidence of any official/written advance warning from the Player as regards his intention to terminate the Employment Contract should he not receive payment forthwith. As noted above, this is (another) prerequisite for valid termination for just cause due to late payment.

208. It should also be noted that throughout the period when the Player was allegedly nervous about receiving the payment of the second instalment of the advance of salary, he was still being paid his monthly salaries, which demonstrates that Al Nasr was still fulfilling its other regular financial obligations towards the Player. At this point, Al Nasr had paid the Player approximately EUR 2,000,000 from the outset of the Employment Contract.

209. The Panel, therefore, considers that the non-payment of half of the advance of salary amounting to EUR 180,000 cannot be considered, in itself, as a sufficient basis for the unilateral termination of the Employment Contract by the Player. In other words, the Panel agrees with the FIFA DRC in the Appealed Decision, which rightfully came to the conclusion that such failure alone on Al Nasr's part did not amount to a persistent and material non-fulfilment of Al Nasr's contractual obligations justifying the early termination of the Employment Contract.

iii. The alleged other payment failures

210. While before the FIFA DRC, the Player only referred to the delayed payment of half of the advance of salary amounting to EUR 180,000, in his appeal before CAS he alleged that Al Nasr underpaid him over the course of the whole first season he played for Al Nasr.

211. In this regard, the Player contends that at the end of the first season, on 30 June 2011, he had received the total amount of AED 5,243,934 (= EUR 1,008,448 at the rate of 5.20 as an average rate for the whole contract period) instead of the contractually agreed sum of EUR 1,200,000 (AED 6,240,000). Al Nasr was therefore late in paying EUR 191,551.

212. According to the Employment Contract, *"[t]he contract value for the First year is (1,200,000) Euro, (240,000) Euro will be paid as advance of payment on 1/9 First year. And the rest of the total amount will be paid as monthly salaries, paid on first week of the next month"*.

213. There is a dispute between the parties whether this clause of the Employment Contract provides for the "First year" in question to end in June 2011 (the Player's position) or August 2011 (Al Nasr's position).

214. The Panel considers that it does not have to decide on this particular issue as the payment table submitted by Al Nasr, based on the bank account extracts submitted by the Player, demonstrates that following the payment of the advance salary, the Player received each month, over the course of twelve months, approximately EUR 80,000, and that the Player did not complain, at the time, about this procedure.

215. Furthermore, the Panel notes that the salary which was meant to be received by the Player according to the Employment Contract is set in EUR, while the payments were made in AED into the Player's bank account. It is not stipulated in the Employment Contract, or in any other agreement, what exchange rate would be applicable in this regard. The Player used, for his calculation, an average rate of 5.20, while Al Nasr, in its answer, provided a table of all the payments made to the Player in AED, with a conversion into EUR, at the exchange rate in force at the time of each payment.

216. With its calculation, Al Nasr calculated a total payment amount of EUR 1,198,984, i.e. a difference from the sum due of EUR 1,016. Al Nasr asserts that this sum is minimal compared to the sum due (approx. 0,08%) and that this difference may have been accounted for by bank transaction fees. Al Nasr further notes that no agreement with regard to who should be responsible for paying the bank transaction fees is included in the Employment Contract and that therefore it should be considered that all payments for the 2010/2011 season were made in accordance with the Employment Contract.

217. The Panel notes that it seems there was no agreement between the Player and Al Nasr with regard to the exchange rate to be applied nor in relation to which party should be responsible for paying the bank transactions fees.

218. The Panel, however, considers that if such an agreement existed, or if the salaries received by the Player were less than equal to the actual rate of exchange, the Player would have surely noticed and complained when he was allegedly underpaid or, if not then, at the latest when filing his initial claim before the FIFA DRC.

219. Considering the above, the Panel deems that Al Nasr respected its financial obligations towards the Player for the season 2010/2011 and that, therefore, the Player and FC Nantes's arguments in this regard are rejected.

iv. The deregistration

220. The Player and FC Nantes delivered lengthy submissions regarding the issue of the Player's deregistration on 24 October 2011 from UAEFA, asserting that this fact alone constituted an infringement of the Player's personality rights entitling him to unilaterally terminate the Employment Contract with just cause. Furthermore, the Player and FC Nantes attempt to demonstrate that the Player was prevented from training and was consecutively replaced by two players, facts which they allege would support the position that the Player had grounds to believe that the was no longer bound to Al Nasr when signing an employment contract with FC Nantes.

221. As set out above, according to Al Nasr, the deregistration of the Player was temporary, given that the Player would be allegedly reregistered during the January 2012 transfer window. Al Nasr's argument to explain the deregistration is that as a result of his four-match suspension and his participation with his national team in the CAN, he would be unavailable to play for Al Nasr for almost the entire duration of the deregistration period.

222. With regard to the deregistration as such, the Panel agrees with the FIFA DRC's position in the Appealed Decision, that it may infringe upon the Player's personality rights.

223. According to Articles 28 *et seq.* of the Swiss Civil Code ("CC"), any infringement of personality rights caused by another is presumed to be illegal and subject to penalties unless there is a justified reason that overturns this presumption.

224. As stated by FC Nantes, it is generally accepted in jurisprudence (ATF 120 II 369; ATF 102 II 211; ATF 137 III 303; Judgment of the Swiss Federal Tribunal 4A_558/2011, dated March 27, 2012) and among legal scholars (BADDELEY M., *Le sportif, sujet ou objet?*, in: Revue de Droit Suisse; 1996 II, pp. 135 *et seq.*, p. 162; LUDWIG/SCHERRER, Sportsrecht, eine Begriffserläuterung, Zürich 2010, p. 212; AEBI-MÜLLER/MORAND, *Die personlichkeitsrechtlichen Kernfragen der "Causa FC Sion*", CaS 2012, p. 234-235) that personality rights apply to the world of sport. For athletes, personality rights encompass in particular the development and fulfilment of personality through sporting activity, professional freedom and economic freedom (BADDELEY, *op. cit.*, p. 171). Under this definition, personality rights protect the right of movement, which comprises in particular the right to practice a sports activity at a level that accords with the abilities of the athlete (BUCHER A., *Personnes physiques et protection de la personnalité*, Basel 1999, N 467). When the sport is practised professionally, a suspension or any other limitation on access to the sport may impede the economic development and fulfilment of the

athlete, the freedom of choosing his professional activity and the right to practice it without restriction (OSWALD D., *Le règlement des litiges et la repression des comportement illicites dans le domaine sportif*; in: Mélanges Grossen, Basel 1992, p. 74). This freedom is particularly important in the area of sport since the period during which the athlete is able to build his professional career and earn his living through his sporting activity is short (AEBI MÜLLER/MORAND, *op. cit.,* p. 236). In football in particular the length of a career is appreciably shorter than in other sports (AEBI MÜLLER/MORAND, *op. cit.*, p. 237).

225. Professional freedom, in particular for professional athletes, therefore includes a legitimate interest in being actually employed by their employer (REHBINDER/STOCKLI, *Berner Kommentar*, 2010, N 13 to Art. 328). Indeed, an athlete who is not actively participating in competitions depreciates on the market and reduces his future career opportunities (Judgment of the Cantonal Court of Valais, decision of November 16, 2011, CaS 2011, 359). It is thus widely accepted in jurisprudence and among legal scholars that athletes have a right to actively practice their profession (ATF 137 III 303). To the extent that Articles 28 *et seq*. CC protect parties from negative actions and require offending parties to refrain therefrom, but do not grant rights to positive actions, such right to actively practice one's profession is resolved notably by labour law (ATF 137 III 303).

226. Upholding this approach, the Swiss Federal Tribunal stated with regard to a professional football player that *"it is obvious that a professional football player playing in the premier division must, in order to retain his value on the market, not only train regularly with players of his level but also compete in matches with teams of the highest possible level"* (Judgment 4A_53/2001 of March 2011).

227. Furthermore, legal scholars (BADDELEY, *op. cit.*, p. 182), and jurisprudence (ATF 137 III 303; ATF 120 II 369) acknowledge that decisions relating to selection, qualification and suspension, as well as licensing refusals, may constitute an infringement of the personality rights of the athlete from the standpoint of his economic freedom (BADDELEY, *op. cit.*, p. 182).

228. In view of the above-mentioned jurisprudence of the Swiss Federal Tribunal and Swiss legal scholars, the Panel agrees with the FIFA DRC, which, in the case at hand, concluded that *"among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow team mates in the team's official matches"* and that *"by "de-registering" a player, even for a limited time period, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, is violating one of his fundamental rights as a football player"* and that therefore *"the de-registration of a player could in principle constitute a breach of contract since it de facto prevents a player from being eligible to play for his club"*.

229. The Player and FC Nantes agree with such conclusion, but contest the findings in the Appealed Decision in this regard according to which, in the case at hand, the deregistration did not constitute a valid reason for the termination of the Employment Contract by the Player.

230. In order to conclude that the Player had just cause to terminate the Employment Contract in view of his deregistration, the Player and FC Nantes argue that Al Nasr did not deregister the

Player on a temporary basis, but permanently. They support their position with the following arguments:

- Al Nasr hired Mr Vergilio, another foreign player, and gave him the Player's shirt number;

- the Player was barred from any activity of Al Nasr's professional team;

- the Player was preventing for playing in any official competition;

231. Al Nasr hired a new foreign player at the end of January 2011, Mr Luca Toni, therefore making any possible reregistration impossible. Al Nasr mainly asserts the following with regard to the deregistration of the Player:

- the deregistration was temporary and was due to the four-match suspension of the Player and his participation in the CAN;

- the Player kept participating in the first team's practices and kept receiving his salary in accordance with the Employment Contract.

232. Article 23 of the Etisalat Professional League Competition Regulations provides that a maximum of three foreign players are eligible to participate in League matches.

233. Al Nasr asserts that as a consequence of his combined suspension and call-up for the CAN, the Player would have been available for a maximum of 5 of the upcoming 17 matches to be played by the Club.

234. The Player and FC Nantes contend that, at the time of the deregistration, one could not be sure that the Player would be selected to play in the CAN with the Guinean team as he had not yet been selected (i.e. as at 24 October 2011) and that Al Nasr could not be certain that he would be selected by the Guinean Football Federation until an official notice in this respect had been sent.

235. The Panel deems that this final argument from the Player and FC Nantes is rejected. It was evident that the Player was a star player in the Guinean team, that he had consistently been called up for all of his national team's games while playing for Al Nasr and had been performing well for his country, scoring 13 goals in 47 matches. The Panel therefore considers that Al Nasr's assumption that the Player would be called up for the CAN was correct. The reasonable nature of Al Nasr's assumption is further underlined by the fact the Player was indeed called up for the CAN and played in every match. Moreover, the Player's agent in his witness statement noted that when Al Nasr was signing the player it was foreseeable for the club that the Player would play in the CAN.

236. Another element allegedly taken into consideration by Al Nasr when deciding to temporarily deregister the Player is the fact that in view of his suspension (from 21 October to 13 November 2011) and his participation in the CAN (competition from 19 January 2012 to 10 February

2010), he would only miss 5 games for which he would be available (18 and 25 November 2011 and 3, 10 and 23 December 2011).

237. There is a dispute between the parties as to how many matches the Player would have been available to play.

238. The Player asserts on his side that he could have participated in 7 official matches with Al Nasr during the deregistration period (18 and 25 November 2011, 3, 10, 23, and 25 December 2011 as well as 4 January 2012).

239. As regards the matches that Al Nasr played on 25 December 2011 and 4 January 2011, Al Nasr alleges that the Player would anyway not have played these matches as it had been agreed that he would leave Dubai for the CAN on 25 December 2011 and return on 14 January 2012. In this regard, Al Nasr provided, in particular, an invoice from a travel agency demonstrating that the Player was to leave on 25 December 2011.

240. As no convincing evidence to the contrary was provided by the Player in this regard, the Panel considers that Al Nasr's position shall be followed. This demonstrates that Al Nasr's initial assumption that the Player would only miss 5 matches played by Al Nasr's professional team as a result of his deregistration was correct.

241. The Player and FC Nantes also contend that the Player was prevented from participating in Al Nasr's professional team's practices. The only documentary evidence provided in this regard were two separate witness statements from the Player's agent, Mr Carbon, in which he explains the whole situation. It is interesting to note that in only one of these witness statements does Mr Carbon mention that the Player was barred from practising with Al Nasr's professional team during the deregistration period.

242. With regard to this issue, Al Nasr contends that the Player attended all training sessions with the first team until his unauthorised departure on 20 December 2011. In terms of proof in this regard, Al Nasr submitted both monthly extracts from the "Daily Attendance for the First Team 2011-2012" schedule and photographic evidence. This evidence remained unchallenged in the course of the present proceedings and therefore the Panel is comfortably satisfied that it reflects the reality of the facts.

243. The Panel, therefore, considers that Al Nasr did not prevent the Player from taking part in its professional team's practices during the period of the deregistration, and that the Player actually practised during this period until his departure from Dubai on 20 December 2011.

244. Furthermore, not only was the only sporting outcome of the deregistration the fact that the Player missed five official matches, but the monthly salaries from the day of his deregistration until his departure from Dubai on 20 December 2011 were, as set out above, duly paid in accordance with the Employment Contract.

245. Finally, there is a dispute between the parties as to when the Player, or one of his representatives, complained for the first time about the situation to Al Nasr. Mr Carbon alleges that the Player complained to him on 1 November 2011, as he was coming back from holidays, about the fact that his number was given to another new foreign player. Mr Carbon then allegedly attempted, unsuccessfully, over the course of 20 days to reach his contact at Al Nasr via telephone and that 25 November 2011 in Dubai was the first time that the Player and Mr Carbon could meet with Al Nasr's representatives. Al Nasr firstly contends that the Player never complained at any time directly to the club's management. Al Nasr further asserts that in the meeting held on 25 November 2011, Al Nasr's representative confirmed to the Player and Mr Carbon the temporarily nature of the Player's deregistration and that the first time the Player really complained about the situation was through Mr Klatovsky's email dated 23 January 2012. With regard to the list of the telephone calls the Player was prevented by the Panel from filing (late) in the present procedure, the Panel notes that, had it accepted such filing, the Player's position would not have been strengthened as evidence of an attempt to reach a person is not evidence regarding what was to be the subject of the attempted calls.

246. The Panel, therefore, confirms Al Nasr's position that it is not proven that the Player ever complained about the situation directly to Al Nasr's management. Furthermore, there is no documentary evidence (letter, email, fax, etc.) that one of his representatives complained about the situation before Mr Klatovsky's email dated 23 January 2012, i.e. more than one month after the Player's unauthorized departure from Dubai.

247. In accordance with the above mentioned jurisprudence, if a party to a contract believes that the other party is in breach of such contract, it must make the party allegedly in default aware of this concern in order to allow it, if it so wishes, to rectify the alleged breach.

248. In view of the fact that, (a) the Player was actually practising with Al Nasr's professional team during the deregistration period until his departure from Dubai, (b) he was still receiving his monthly salary during this period and (c) he did not complain about the situation before 23 January 2012, the Panel concludes that the Player acquiesced to his temporarily deregistration as from 24 October 2011. As such, while deregistration might in principle constitute a valid reason justifying termination, the Panel concludes that in the specific circumstances of the case at hand it does not.

249. In light of this conclusion, the Panel is of the view that it is not necessary for it to address in detail in the present award the remainder of FC Nantes' and the Player's arguments regarding the nature of the deregistration (namely the hiring of Mr Vergilio to replace the Player, the fact that the Player's number was given to Mr Vergilio, the timing of the deregistration, the hiring of Mr Toni, and other side arguments).

v. Sporting just cause

250. The Player alleges that he also had sporting just cause to terminate his contract with Al Nasr.

251. Article 15 RSTP 2010 reads as follows:

"An established professional who has, in the course of the season, appeared in fewer than ten per cent of the official matches in which his club has been involved may terminate his contract prematurely on the ground of sporting just cause. Due consideration shall be given to the player's circumstances in the appraisal of such cases. The existence of sporting just cause shall be established on a case-by-case basis. In such a case, sporting sanctions shall not be imposed, though compensation may be payable. A professional may only terminate his contract on this basis in the 15 days following the last official match of the season of the club with which he is registered".

252. The Player alleges that he played only 3 matches out of 33 matches played by his team in the 2011/2012 season and that, therefore, he had just cause to terminate the Employment Contract.

253. The Panel does not need to consider this matter in depth in order to reject the Player's argument in this regard, as CAS jurisprudence states in particular that this provision is applicable only if the player in question has terminated *"his employment contract during the 15 days following the final official match in the season of the club with which he was registered"* (CAS 2007/A/1369), which is not the case in the present matter.

254. As Article 15 RSTP is obviously not applicable in a case in which a player terminates his employment agreement in the course of a season, the Player's argument in this regard is rejected.

vi. Interim Conclusion

255. In view of the above, the Panel concludes that the Player did not have just cause to terminate the Employment Contract and shall, therefore, be sanctioned accordingly.

c. Compensation in accordance with Article 17 RSTP

256. In the Appealed Decision, the FIFA DRC concluded that the Player, jointly with FC Nantes, had to pay Al Nasr the amount of EUR 4,500,000, plus 5% interest, as compensation for the early termination without just cause of the Employment Contract.

257. The Panel has carefully analysed the various arguments raised by the parties aimed at demonstrating that the FIFA DRC's calculation was wrong. However, the Panel is of the opinion that the FIFA DRC's reasoning was correct and shall be confirmed.

258. Al Nasr contends that it should be awarded compensation in the amount of EUR 9,700,000, alternatively, EUR 8,206,736, in view of the Player's breach of contract without just cause, relying on the alleged compensation clause provided for in clause 16 of the amendment to the Employment Contract signed between Al Nasr and the Player on 28 November 2010, which clause stipulates the following:

"[I]n case the player terminated the aforementioned contract by himself for any reason; he will be entitled to pay to [Al Nasr] (10,000,000) euro and the player is entitled for (10%) from the amount (3,000,000) euro will be paid from [Al Nasr] to the player. Also, in case [Al Nasr] receives more than (10,000,000) euro then the extra amount above (10,000,000) euro will be divided equally between [Al Nasr] and the Player".

259. In accordance with Article 17 par. 1 RSTP, parties to an employment contract may stipulate in the contract the amount of compensation for breach of contract. As stated in the Appealed Decision, where such a clause exists, the wording of such clause should leave no room for interpretation and must clearly reflect the true intention of the parties. In this regard, it needs to be pointed out that the clause as quoted above is drafted in vague and ambiguous terms which do not allow for the Panel to establish the true intention of the parties. In particular, contrary to a genuine arbitration clause, the provision at stake seems to provide for involvement by the player in terms of the compensation payable. This element prohibits the clause being a compensation clause in terms of the Regulations.

260. Therefore, the Panel follows the FIFA DRC in deciding to disregard the application of the relevant clause.

261. With regard to the amount of EUR 4,500,000, the Panel also agrees with the FIFA DRC which, in essence, decided that offers made by third parties may be relevant for the evaluation of the damage suffered by the club, as they provide important information regarding the potential market value of the player. The amount of EUR 4,500,000 corresponds to the offer made by Al Nasr to FC Nantes on 26 January 2012regarding the potential transfer of the Player.

262. The position of the FIFA DRC in this regard shall therefore be confirmed.

d. The sporting sanctions

263. According to Article 17.3 RSTP:

"In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any player found to be in breach of contract during the protected period. This sanction shall be a four-month restriction on playing in official matches. In the case of aggravating circumstances, the restriction shall last six months".

264. FC Nantes and the Player did not raise any arguments in relation to the sporting sanction to be imposed on the Player, if any. Al Nasr's main argument against the reasoning in the Appealed Decision is that the sanction should be increased to six months considering that there are aggravating circumstances.

265. In view of the facts of the case, the Panel considers that the FIFA DRC was correct in the assessment of the case, and that no aggravating circumstances are applicable. Therefore, the Appealed Decision shall be confirmed in this regard as well.

e. Conclusion

266. In view of all the above, the Panel considers that the Player terminated the Employment Contract with Al Nasr without just cause, that the latter shall, therefore, be compensated for such termination and that sporting sanctions shall be applied to the Player. The Panel further deems that the FIFA DRC, in the Appealed Decision, was correct in its appreciation of all the aspects of the case and that the Appealed Decision with regard to the Player's case shall, therefore, be upheld.

267. The Player's appeal is therefore dismissed.

B. FC Nantes' appeal

a. *The termination of the Player's contract*

268. As seen above, the essential part of FC Nantes' appeal aimed at demonstrating that the Player terminated the Employment Contract with just cause and that the compensation due to Al Nasr was incorrectly calculated by FIFA.

269. In view of the Panel's conclusion in the Player's case, the Panel considers that the only issue which is still at stake in FC Nantes' appeal relates to the sporting sanctions to be applied to FC Nantes, if any.

b. *The Sporting sanctions*

270. Article 17 par. 4 RSTP reads as follows:

> *"In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract during the Protected Period. It shall be presumed, unless established to the contrary, that any club signing a Professional who has terminated his contract without just cause had induced that Professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two Registration Periods".*

271. In view of the Panel's conclusion in the Player's case and in application of Article 17 par. 4 RSTP, FC Nantes bears the burden of proof to demonstrate that it should not be held liable for having induced the Player to breach the Employment Contract.

272. In this regard, FC Nantes's position is the following:

> *"148. The situation in the present matter is similar to the one ruled by the CAS on 26 May 2008 in the case CAS 2007/A/1358. In that decision, the CAS noted that the inducement referred to in Article 17 para. 4 RSTP "is an influence that causes and encourage a conduct". In that case, the CAS held that the respondent club had overturned the presumption by providing that the player had left his club of his own free will, without being induced or influenced by the respondent club. One of the decisive points related to the fact that the decision of the player to leave the club had anyway been made before he even met the representatives of the respondent club.*
>
> *149. In the present matter, the facts of the case prove that FC Nantes cannot, under any circumstances, be accused of having adopted an attitude that would have caused or encouraged Mr. Bangoura to leave Al Nasr.*
>
> *150. First, the financial situation of FC Nantes at the time of the facts made it impossible to even think of Mr. Bangoura's transfer on the terms he previously enjoyed at Al Nasr […]. It is therefore totally inconceivable that FC Nantes could have premeditated the hiring of the Player.*

151. Second, the only offer made by FC Nantes to the Player was on 31 January 2012, when both Mr. Bangoura and Al Nasr considered that their contractual relationship had ended. Indeed, the transfer window had closed on 30 January 2012 in the United Arab Emirates without Mr. Bangoura having been re-registered and another foreign player had been registered in his place […].

152. Third, the offer made by FC Nantes to the Player on 31 January 2012 when the Player was no longer under contract with Al Nasr, was in no way competitive, given the conditions previously enjoyed by the Player with the Respondent Club. To recap, the Player's salary was EUR 1,200,000 when he was working at Al Nasr […] and EUR 120,000 under the contract signed with FC Nantes […]. It is ridiculous to claim that such a poor offer could have been caused such a departure, given the disproportion of the amounts involved.

153. Fourth, whereas the Player was previously playing in the premier division with Al Nasr, FC Nantes was offering Mr. Bangoura a place in a second division club, with reduced visibility and with no guarantee of one day again finding a level of competition equivalent to the level the Player previously knew.

154. Under these circumstances, the conclusion must be that the only reasons that could have motivated the Player to join FC Nantes are the precarious situation in which he found himself with Al Nasr and the absolute necessity of being involved again in competition, from which he had been arbitrarily excluded. There is nothing, on the other hand, that suggests that the offer from FC Nantes, which occurred on the last day of the transfer window in France at a time when the Player found himself without a contract, can be blamed for an attitude aimed at encouraging Mr. Bangoura to leave Al Nasr or that could have caused such a departure.

155. For all these reasons, FC Nantes has not under any circumstances induced Mr. Bangoura to commit a breach of his employment contract. Accordingly, it would be wrong to sanction FC Nantes and therefore also in this point the DRC Decision must be set aside".

273. As rightly pointed out by FC Nantes, it is considered in CAS jurisprudence (CAS 2007/A/1358) that an inducement is *"an influence that causes and encourage a conduct"*.

274. The Panel agrees with FC Nantes that neither (a) the financial situation of FC Nantes at that time, (b) the offer made to the Player on 31 January 2012, (c) the financial value of this offer nor (d) the level of play in Ligue 2 can be considered to be factors likely to have induced, influenced or encouraged the Player to terminate the Employment Contract in order to join FC Nantes.

275. However, FC Nantes did not, in either its written submissions or during the hearing, address the crucial issue of its own role in the case at hand (*i.e.* the active role played by its President, Valdemar Kita, its General Director, Franck Kita and its Board Member and legal counsel, Mr Klatovsky [specifically including the fact that Mr Klatovsky initiated proceedings on the Player's behalf before the DRC on 3 January 2012]).

276. As set above, at the beginning of December 2011, Mr Carbon approached FC Nantes' President for a referral to a sports lawyer. Mr V. Kita strongly recommended the services of Mr Klatovsky. The latter subsequently represented the Player in relation to Al Nasr and before the FIFA DRC.

277. It is worth mentioning at this point that, as set out above, it was established in the course of these proceedings that the Player never directly complained about his situation to Al Nasr and that the first person who did complain to Al Nasr on his behalf was Mr Klatovsky (via his email dated 23 January 2012).

278. It appears, therefore, that Mr Klatovsky had a certain influence in this case as he met with Mr Carbon on 10 December 2011, the Player then wrote a letter to Al Nasr requesting to be allowed to travel to Paris *"for having a time of rest before the CAN"* (such request was refused by Al Nasr) and then the Player left Dubai without authorization from Al Nasr in order to meet Mr Klatovsky in Paris. After this last event, the Player never returned to Dubai.

279. The facts of the case demonstrate that there is no doubt that FC Nantes had, for quite a time, been well aware of the Player's contractual situation with Al Nasr. Mr F. Kita even sent a letter to Al Nasr, on 26 January 2012 to enquire about the possibility of the Player's transfer to FC Nantes, which demonstrates precisely that the latter club was aware that, at the time, there was still a valid employment agreement between the Player and Al Nasr; otherwise it would have signed the Player as a free agent without attempting to negotiate the terms of a possible transfer of the Player with Al Nasr.

280. In light of the above and given that FC Nantes did not provide any specific or plausible explanation as to its alleged non-involvement in the Player's decision to unilaterally terminate the Employment Contract, the Panel concludes that FC Nantes was not able to reverse the presumption contained in Article 17 par. 4 RSTP and that, accordingly, the latter induced the Player to unilaterally terminate the Employment Contract.

c. Conclusion

281. As stated by the FIFA DRC in the Appealed Decision and for the same reasons, FC Nantes shall therefore be banned from registering any new players, either nationally or internationally, for the next two entire and consecutive registration periods.

C. Al Nasr's appeal

282. The grounds for Al Nasr's appeal are the following:

- The compensation awarded by the FIFA DRC in the Appealed Decision is not correct;

- The Player shall be sanctioned with a six-month suspension, *in lieu* of the four-month suspension imposed by the FIFA DRC in the Appealed Decision.

283. The Panel considers that its conclusions above with regard to the Player and FC Nantes' appeals cover the issues raised by Al Nasr in its appeal.

284. As the Appealed Decision was confirmed with regard to the amount of compensation to be paid jointly by the Player and FC Nantes to Al Nasr and with regard to the four-month

suspension imposed on the Player, the Panel concludes that Al Nasr's appeal shall also be dismissed.

XI. GENERAL CONCLUSION

285. In light of the above, the Panel considers that Al Nasr's position, with regard to the effect that the Player acquiesced to his temporarily deregistration, which was consistent since the very beginning of the event leading to the present arbitration procedure, shall be followed, in the sense that (a) the Player was actually practising with Al Nasr's professional team during the deregistration period until his departure from Dubai, (b) he was still receiving his monthly salary during this period and (c) he did not complain about the situation before his lawyer's letter to Al Nasr dated 23 January 2012.

286. Furthermore, the incident with regard to the non-payment of half of the advance of the Player's salary for the 2011/2012 season was not material enough to allow the Player to terminate the Employment Contract with just cause, in particular considering that the Player was still receiving, in parallel, his monthly salary and that Al Nasr offered to pay the amount immediately after the issue of payment was brought to its attention, via Mr Klatovsky's email dated 23 January 2012.

287. As to the compensation due to Al Nasr, the latter's position cannot be followed, in particular in view of the offer it made to FC Nantes to transfer the Player for an amount of EUR 4,500,000.

288. In view of the Player and FC Nantes' position, which evolved substantially in the course of the proceedings, and the lack of convincing evidence provided by those two parties, the Panel does not have any option than to reject their arguments.

289. As regards the sanctions, the Panel would like to stress that it found the Appealed Decision to be well reasoned and based on a careful examination of the evidence presented to it and, as such, despite having full power of review of the disputed facts and law it followed the *obiter dictum* in CAS 2009/A/1870 §125 pursuant to which *"the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules can be reviewed only when the sanction is evidently and grossly disproportionate to the offence"*. As has been clearly set out above, the Panel does not find the sanctions contained within the Appealed Decision to be disproportionate and, as such, is confident in its decision to not interfere therewith.

290. The Panel therefore considers that the appeals filed by the Player, FC Nantes and Al Nasr shall be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 21 February 2013 by FC Nantes against the decision rendered by the FIFA Dispute Resolution Chamber on 16 November 2012 is rejected.

2. The appeal filed on 22 February 2013 by Mr Ismaël Bangoura against the decision rendered by the FIFA Dispute Resolution Chamber on 16 November 2012 is rejected.

3. The appeal filed on 22 February 2013 by Al Nasr Sports Club against the decision rendered by the FIFA Dispute Resolution Chamber on 16 November 2012 is rejected.

4. The decision rendered by the FIFA Dispute Resolution Chamber on 16 November 2012 is confirmed.

(…)

7. All other motions or prayers for relief are dismissed.