Arbitration CAS 2020/A/6753 Wydad Athletic Club v. Souleymane Diarra & Ujpest 1885 Futbal Kft, award of 14 May 2021

Panel: Mr Alexander McLin (Switzerland), Sole Arbitrator

Football
Termination of the employment contract
Definition of the "event giving rise to the dispute"
Conditions for an event to give rise to a dispute
Distinction with the conditions necessary to the establishment of termination with just cause

1. **In order to determine whether the claim before FIFA was time-barred, the time at which the event giving rise to the dispute arose must be determined. Article 25.5 of the FIFA Regulations on the Status and Transfer of Players (RSTP) does not make a specific reference to contract termination, nor does it set the time limit for filing a claim before FIFA to two years after the moment of termination of a contract. The term used is broader than this: the *"event giving rise to the dispute"* can presumably refer to the alleged non-fulfilment of a contractual obligation which may or may not constitute a breach, which in turn may or may not be deemed as termination, or indeed grounds for termination with just cause. There is no requirement that termination be explicitly declared or notice of termination be received in order to constitute an event giving rise to a dispute. Indeed, such a narrow interpretation would mean that no claim could be brought before FIFA unless termination had been effected, going against the principle of maintenance of contractual stability. The resolution of a dispute within the scope of a contract such that the parties' adherence to negotiated and agreed contractual terms can be preserved is generally to be favoured over one which occurs over the issue of performance or compensation following the demise of the contractual relationship.**

2. **For a dispute to exist – whether or not the dispute is directly about termination of the contract – the parties to said contract must somehow be aware that such a dispute is extant, or, at the very least, one party must know that circumstances exist that the other party is likely to consider to be violative of the terms and/or the spirit of their agreement. For an event to give rise to a dispute, it is therefore necessary (i) that these circumstances exist, and (ii) that the parties are aware of them.**

3. **The conditions necessary to the establishment of termination with just cause for reasons of ensuing liability are not identical to those needed to establish the existence of the event giving rise to the dispute. The issue of whether termination occurred with or without just cause can only be examined, whether *de novo* by CAS or, if remanded, by the FIFA Dispute Resolution Chamber (DRC), once it has been established that the claim is not time-barred. For this purpose, it must be determined when a club became aware that circumstances existed which a player would consider to be a breach by the club of its obligations under the contract.**

I. PARTIES

1. Wydad Athletic Club (the "Appellant" or the "WAC"), seated in Casablanca, Morocco, is a Moroccan professional football club affiliated with the Royal Moroccan Football Federation (the "FRMF"), itself a member of the Fédération Internationale de Football Association ("FIFA"), the international governing body for the sport of football.

2. Mr Souleymane Diarra, (the "First Respondent" or the "Player"), is a Malian football player who was employed by the WAC prior to being employed by Ujpest.

3. Ujpest 1885 Futbal Kft (the "Second Respondent" or "Ujpest"), seated in Budapest, Hungary, is a Hungarian professional football club affiliated with the Hungarian Football Federation (the "MLSZ"), itself a member of FIFA.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence it he considers necessary to explain his reasoning.

5. On 8 January 2015, following his transfer from the Malian Club AS Real de Bamako to the WAC, the Player and the WAC entered into an employment contract valid from 8 January 2015 until 30 June 2019 (the "Contract").

6. The Contract provided that the Player would receive a monthly salary of 23,000 Moroccan Dirhams (MAD), and a signing bonus of:

   - MAD 100,000 for the remainder of the 2014/2015 season;
   - MAD 250,000 for the 2015/2016 season;
   - MAD 300,000 for the 2016/2017 season;
   - MAD 350,000 for the 2017/2018 season;
   - MAD 400,000 for the 2018/2019 season.

7. The Contract also provided for a match bonus to be calculated in accordance with the Player's participation, and for a return flight ticket Casablanca-Bamako-Casablanca.

8. The termination provision of the Contract stated the following:

"Article 7: Résiliation du contrat

Les causes de résiliation du contrat doivent être conformes aux dispositions du règlement du statut et du transfert des joueurs de la FRMF.

En cas de la non convocation du joueur par le Coach pour 10 matchs du championnat « PRO » durant chaque saison, le Club se réserve le droit de résilier purement et simplement, sans indemnités de part ni d'autre le présent contrat".

"Article 7: Termination of the contract

The grounds for termination of the contract must comply with the provisions of the FRMF Players' Status and Transfer Regulations.

In case of the player not being summoned by the Coach for 10 matches of the "PRO" championship during each season, the Club reserves the right to terminate the present contract altogether, without compensation by or to either party" (free translation).

9. The Contract also included the following conditional release clause:

"Article 14: Clause libératoire

D'autre part, le WAC peut répondre à toute offre de transfert dudit joueur a un autre Club de son choix, en contre partie d'une somme minimale de 2.000.000 Euros (deux Millions Euros) en faveur de la trésorerie du WAC – Section football".

"Article 14: Release clause

On the other hand, Wydad may respond to any offer to transfer the player to another Club of his choice, in return for a minimum amount of 2,000,000 (two Million Euros) in favour of the Wydad treasury – Football section" (free translation).

10. On 2 July 2015, the Player sent a letter signed by himself and his agent by fax to FIFA, in which he stated that he was owed an unspecified amount by the Club and that he was requesting FIFA to unilaterally terminate *"this so-called contract"* (*"ce sois disant contrat"*). The Club claims that it did not receive this letter.

11. On 6 July 2015, the Player drafted a letter apparently addressed to the Club, apparently signed in Luxembourg and entitled *"request to terminate a contract"* (*"solicitation d'une résiliation de contrat"*), stating the following:

"Je vous écris dans le but de vous rappeler que depuis le mois de janvier 2015 je n'ai perçu aucun de mes salaires fixe ni le solde de ma prime de signature. En tout et pour tout j'ai perçu la somme de 6 millions de franc CFA à titre d'avance sur ma prime de signature […] *et un mois de salaire fixe équivalent à 1.5 millions de franc CFA* […]

De plus, malgré de nombreuses demandes je n'ai encore jamais reçu une copie de mon contrat de travail.

Par ces motifs, je voudrais que l'on résilie mon contrat de travail avec effet immédiat".

"I am writing to remind you that since January 2015 I have not received any of my fixed salaries or the balance of my signing bonus. In all, I received the sum of 6 million CFA francs as an advance on my signing bonus and one month's fixed salary equivalent to 1.5 million CFA francs […]

In addition, despite many requests, I have never received a copy of my employment contract.

For these reasons, I would like my employment contract to be terminated with immediate effect" (free translation).

12. On 7 July 2015 Mr Prosper Uwizeye, a.k.a. Prosper Issa Uwieye Keita, allegedly acting on behalf of the Player:

- informed FIFA of the Club's alleged non-compliance of its contractual obligations to the Player and of the fact that the Player felt threatened by virtue of having to live with an "agent" by the name of "Youssef" whom he understood to be aligned with the WAC. In his letter, Mr Uwizeye notes that he and the Player will be sending formal notice of termination to the Club for non-payment of salaries over the course of the previous six months (*"…Je vous reviens en vue de vous informer que nous allons bien adresser une letter de résiliation de contrat pour non paiement de salaires au cours des 6 derniers mois au club"*);

- Sent a letter to the FRMF from Luxembourg stating the following:

  *"**OBJET; Lettre de résiliation de contrat***

  En ma qualité d'agent du joueur Souleyman Diarra affilié au WAC de Casablanca, je vous adresse les présents documents dans le but de mettre fin avec effet immédiat au contrat le lien avec le club du WAC de Casablanca pour non respect du contrat de travail depuis désormais 6 mois. Pourriez vous également me transmettre une copie du contrat de travail qui a été enregistrè [sic] *auprès de votre fédération au mois de janvier 2015. Car le joueur n'a jamais reçu ce contrat malgré de multiples demandes.*

  Vous trouverez en annexe les documents suivants;

  2 lettres adressés à la F.I.F.A
  ainsi que les accusés de réception des fax adressés à la F.I.F.A

  Une lettre de résiliation à l'intention du club

  Une copie du passeport du joueur […]*".*

  *"**SUBJECT; Contract Termination Letter***

  In my capacity as agent of the player Souleyman Diarra affiliated to the WAC of Casablanca, I am sending you the present documents in order to terminate with immediate effect to the contract the link with the club of the WAC of Casablanca for non-respect of the work contract since 6 months. Could you also

send me a copy of the work contract that was registered with your federation in January 2015. Because the player has never received this contract despite multiple requests.

You will find enclosed the following documents;

2 letters addressed to F.I.F.A.
as well as the delivery receipts of the faxes addressed to F.I.F.A.

A letter of cancellation to the club

A copy of the player's passport [...]*"* (free translation, emphasis original).

13. On 9 July 2015, FIFA responded to the Player's agent that any party many terminate a contract in accordance with Article 14 of the FIFA Regulations on the Status and Transfer of Players ("RSTP") if it deems to have just cause, and that FIFA would decide, if necessary, on the consequences of early termination.

14. While in Lisbon, Portugal with the WAC team for a pre-season training camp as of 23 July 2015, the Player left the team hotel in the presence of Mr Prosper Issa Uwieye Keita and Ms Malika El Bahri. According to the Appellant, he was "kidnapped" and brought to Madrid, Spain during the night from 28 to 29 July 2015.

15. On the morning of 29 July 2015, the WAC filed a statement of disappearance of the Player with the Lisbon police.

16. Between 30 July 2015 (date appearing on the letter) and 31 July 2015 (postmark visible on the registration receipt of the Portuguese post), the Player sent a letter (the "Lisbon Letter") to the WAC address in Casablanca, stating as follows:

"Objet; résiliation du contrat de travail

Par la présente, je vous annonce que je souhaite mettre fin à mon contrat de travail au sein de votre club pour non paiement de salaires depuis maintenant 7 mois successifs.

De bonne foi, après le document de resiliation adressè à la fédération je me suis déplacé à Casablanca car Monsieur Youssef (qui a organisè mon transfert) m'a écrit par message que j'allais recevoir mon salaire ainsi que mon logement une fois sur place. Je suis resté à Casablanca du 15.07.2015 au 23.07.2015 (date à laquelle nous sommes allé à Lisbonne). Durant toute cette période j'ai eu des promesses de paiements tout les jours mais rien n'a été honoré. D'ailleurs, le club a seulement fait mon permis de séjour le 22.07.2015 alors que j'ai signè mon contrat en janvier. [sic]

Pour ces motifs, je souhaite confirmer le courrier adressé à la fédération en date du 07 juillet 2015 qui relate mon souhait de résilier le contrat avec effets immédiat".

"Subject matter; termination of employment contract

I hereby announce that I wish to terminate my employment contract with your club for non-payment of wages for 7 successive months.

In good faith, after the termination document was sent to the federation, I moved to Casablanca because Mr. Youssef (who organised my transfer) wrote to me by message that I would receive my salary as well as my accommodation once I was there. I stayed in Casablanca from 15.07.2015 to 23.07.2015 (date on which we went to Lisbon). During this whole period I had promises of payments every day but nothing was honoured. Moreover, the club only made my residence permit on 22.07.2015 whereas I signed my contract in January.

For these reasons, I would like to confirm the letter sent to the federation dated 07.07.2015 which relates my wish to terminate the contract with immediate effect" (free translation).

17. On 30 July 2015, the Player telephoned Mr Merbah, a WAC director, and asked to be picked up from a hotel in Madrid. Mr Merbah and the WAC team doctor travelled to Madrid, and determined that the Player was no longer at the hotel he had indicated, nor was he answering his telephone.

18. On 31 July 2015, the WAC notified the FRMF of the Player's disappearance from the training camp without the team managers' consent.

19. Sometime between 31 July 2015 and the night of 1 to 2 August 2015, the Player contacted Mr Merbah asking to be picked up from Figueria da Foz, 240km away from Lisbon. In the early morning hours of 2 August 2015, Mr Merbah, accompanied by three to four persons according to the Player, went to pick up the Player, whom he found in the presence of Mr Keita and Ms El Bahri. They had the Player's passport in their possession, which the Appellant claims *"they finally returned to the WAC manager after discussions"*.

20. On 2 August 2015, after the Player had returned to the WAC training camp, Mr Keita and Ms El Bahri apparently once again showed up at the team hotel in Lisbon and, claiming that they were with the WAC delegation, attempted once again to get the Player to leave with them. The WAC summoned the police to have Mr Keita and Ms El Bahri leave the hotel, which they did during the night.

21. On 3 August 2015, the Player participated in the training session at the camp. He returned with his teammates to Morocco on 5 August 2015 and attended training sessions in Casablanca on 6 and 7 August 2015.

22. On 10 August 2015 the Player left for Bamako, Mali in order to see his father whom he claimed had a health problem.

23. On 14 August 2015, the Player sent a letter to the FRMF, explaining that he had only received the amount of EUR 12,000 and that the Club owed him an amount of EUR 29,000.

24. On 23 August 2015, the Player sent a handwritten letter, apparently to FIFA, from Budapest, Hungary informing that he had found a new club, Ujpest, and that he will be requesting an International Transfer Certificate ("ITC").

25. On 24 August 2015, the WAC apparently sent the Player a warning letter reminding him of his commitments to his employer and asking him to return. The WAC also notified FIFA and the FRMF the same day.

26. On 26 August 2015, the Player and Ujpest concluded an employment contract, valid from the date of signature until 30 June 2018. On the same day, Ujpest entered a transfer instruction in the FIFA Transfer Matching System ("TMS") and uploaded a copy of the Lisbon Letter of 30 July 2015.

27. On 27 August 2015 the WAC sent the FRMF a report of the Player's situation during the summer. As the MLSZ had issued an ITC request for the Player in favour of Ujpest and the FRMF had asked the WAC for clarification, the WAC stated that it had been fulfilling its obligations towards the Player until contract termination.

28. The issuance of the ITC having been refused by the FRMF and the WAC on 7 September 2015 on the basis that the WAC honoured its obligations towards the Player and that *"there has been no mutual agreement regarding early termination of the employment contract between the former club and the professional player"*, the MLSZ referred the matter to the FIFA Players' Status Committee (the "FIFA PSC").

29. On 29 September 2015, the Sole Judge of the FIFA PSC granted the issuance of a provisional ITC, allowing for the provisional registration of the Player with Ujpest, and invited the WAC to assert its right to compensation.

30. The Player then went on to register with the French club RC Lens on 31 August 2017, and with the Turkish club Gaziantep BBK as of 2 August 2019.

31. On 3 August 2017, the WAC filed a claim with the FIFA Dispute Resolution Chamber (the "FIFA DRC") seeking compensation from the Player and from Ujpest jointly and severally, and sporting sanctions, for termination of the Contract without just cause.

32. On 31 October 2019, the FIFA DRC declared the WAC's claim inadmissible (the "Appealed Decision").

33. On 23 January 2020, FIFA communicated the grounds of the Appealed Decision which specified that the claims of the parties were time-barred by Article 25 para. 5 RSTP, which specifies that the FIFA DRC shall not hear any dispute if more than two years have elapsed since the event giving rise to the dispute arose, and that the members of the FIFA DRC had established that the event giving rise to the dispute had occurred at the very latest on 30 July 2015.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

34. On 11 February 2020, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the "Code"). In its Statement of Appeal, the Appellant requested that a sole arbitrator be appointed by the CAS, and also requested a bilingual (English/French) procedure.

35. On 14 February 2020, the CAS Court Office informed the Parties that the proceeding had been initiated and provided a copy of the statement of appeal to FIFA, in accordance with Article R52 of the Code, setting a ten-day deadline for FIFA to state whether it intended to join the proceedings as a party further to Article R41.3 of the Code.

36. On 18 February 2020, the Respondents responded that they did not agree to the appointment of a Sole Arbitrator and opposed the Appellant's request for a bilingual procedure, requesting that it be conducted solely in English.

37. On 19 February 2020, the CAS Court Office notified the Parties that in the absence of an agreement on language, the CAS Appeals Division President would decide, pursuant to Article R29 of the Code, whether the procedure would be conducted exclusively in French or exclusively in English and would decide on the matter of the whether the case would be submitted to a Sole Arbitrator pursuant to Article R50 of the Code. The Respondents were further invited to specify whether they intended to pay their shares of the advance of costs.

38. On 21 February 2020, the Appellant contested the Respondents' request to sole application of English to the procedure, requested the use of French and asked for a suspension of the deadline to file its Appeal Brief pending the decision on language.

39. On 21 February 2020, the CAS Court Office wrote to the Parties and invited the Respondents to indicate whether they maintained their objection to the conduct of a bilingual procedure. It also informed the Parties that time limit for the filing of the Appeal Brief was suspended until further notice from the CAS.

40. On 24 February 2020, the Respondents indicated that they did not intend to pay their share of the advances of costs and reiterated their request for a panel of three arbitrators.

41. On 24 February 2020, the CAS Court Office wrote to the Parties and acknowledged the Respondents' letter.

42. On 26 February 2020, the Respondents reiterated their request for a procedure in English.

43. On 26 February 2020, the CAS Court Office wrote to the Parties and acknowledged the Respondents' letter.

44. On 27 February 2020, FIFA informed CAS that it renounced its right to request to be a party to the procedure and also provided a clean copy of the Appealed Decision.

45. On 17 March 2020 the CAS Court Office provided the Parties with the Order on Language issued by the President of the CAS Appeals Arbitration Division, stating that English should be the language of the procedure and that the time limit for the filing of the Appeal Brief resumed as of the receipt of its letter.

46. On 17 March 2020, the Appellant requested an extension of 21 days to file its Appeal Brief on various grounds, including the effect of the Order on Language, the COVID-19 lockdown in France and the associated CAS Emergency Guidelines applied as of 16 March 2020.

47. On 18 March 2020, the CAS Court Office invited the Respondents to comment on the request of extension, stating that in the absence of any objection, it would be considered that the Respondents agree to an extension until 9 April 2020 for filing of the Appeal Brief, and that the deadline for filing of the Appeal Brief remained suspended until further notice.

48. On 22 March 2020, the Respondents stated that they objected to the granting of any extension and questioned the validity of the suspension of the deadline for filing of the Appeal Brief, stating that it considered that the suspension was last lifted on 17 March 2020, that the deadline had therefore passed on 22 March 2020, and that the appeal should therefore be deemed withdrawn.

49. On 1 April 2020, the CAS Court Office wrote to the Parties and stated that in light of the Respondents' objection to the requested suspension, the Appellant's request had been submitted to the President of the CAS Appeals Arbitration Division. It also noted that in her Order on Language of 17 March 2020, the Division President had noted that the time limit for the filing of the Appeal Brief had not yet expired and was still suspended. It stated that the Division President had decided that the circumstances justified an extension for filing the Appeal Brief until 9 April 2020, such extension being duly granted.

50. On 8 April 2020, the Appellant filed its Appeal Brief.

51. On 17 April 2020, the CAS Court Office informed the Parties of the receipt of the Appeal Brief, setting a deadline for filing of the Respondents' Answer by 27 May 2020. The CAS Court Office sent a second letter the same day indicated that the first letter contained a typographical error and corrected the deadline for the filing of the Respondents' Answer to 7 May 2020.

52. On 18 April 2020, the Respondents wrote to the CAS and asking for the case to be dismissed, on the basis that the Division President had, in her Order on Language dated 17 March 2020, ruled that the time limit for the filing of the Appeal Brief resumed as from receipt of that order.

53. On 28 April 2020, the CAS Court Office wrote to the Parties, referred the Respondents to its letter of 1 April 2020 and informed them that the issue would be decided by the Panel in due time. The Respondents were nevertheless invited to submit their Answer by 7 May 2020.

54. On 1 May 2020, the Respondents filed their Answer, requesting that, further to Article R55 of the Code, the Answer not be forwarded to the Appellant until the payment by the Appellant of its share of the advance of costs pursuant to Article R64.2 of the Code. Together with their

Answer, the Respondents also submitted a challenge to admissibility, a request for the exclusion of some exhibits and counter-claims.

55. On 6 May 2020, the CAS Court Office wrote to the Parties and acknowledged receipt of the Respondents' Answer and request, stating that the Answer would be notified to the Appellant later.

56. On 5 June 2020, the Parties were informed on behalf of the President of the CAS Appeals Arbitration Division that the Sole Arbitrator appointed to decide the present matter was constituted as follows:

Sole Arbitrator: Alexander McLin, Attorney-at-law in Geneva, Switzerland

The Parties were informed by the CAS Court Office that the Appellant had paid the requested advance of costs, a copy of the Respondents' Answer was being sent to the Appellant, and the Parties were asked whether they preferred for a hearing to be held or for the Sole Arbitrator to issue an award on the basis of the Parties' written submissions.

57. On 7 June 2020, the Respondents indicated that they did not request a hearing.

58. On 11 June 2020, the Appellant requested a hearing to be held.

59. On 18 June 2020, on behalf of the Sole Arbitrator, the CAS Court Office wrote to the Parties and invited the Appellant to file comments solely on the issues of admissibility and the Respondents' request for exclusion of evidence by 29 June 2020. It also informed the Parties that the Sole Arbitrator had taken note of the Respondents' counterclaims submitted on a subsidiary basis, that these were in any event inadmissible, and that the reasons for this would be further developed in the Award.

60. On 29 June 2020, the Appellant filed its additional observations.

61. On 24 July 2020, the CAS Court Office wrote to the Parties on behalf of the Sole Arbitrator and informed them that the Respondents' request, made in its Answer, for the exclusion or new exhibits provided by the Appellant, was dismissed, and that the reasons therefor would be provided in the Award. The Sole Arbitrator also indicated that the Respondents' new exhibits provided in its answer were admitted, and that these procedural decisions were without prejudice to any decisions on the admissibility of the appeal or on the merits of the case. The Parties were further invited to return a duly signed copy of the Order of Procedure issued on the same day.

62. On 27, respectively 28, July 2020, the Respondents and the Appellant signed the Order of Procedure.

63. On 28 July 2020, the CAS Court Office wrote to the Parties and informed them, on behalf of the Sole Arbitrator, that Mr Diarra would be heard by telephone at the hearing in French without translation, as counsel for the Appellant is French-speaking.

64. On 31 July 2020, a hearing was held by videoconference.

Present for the Appellant were:

- Mr Nicolas Bône, counsel;
- Mr Hugo Morel, legal intern acting as translator

Present for the Respondents were:

- Mr Roderick Duchatelet, Managing Director, Ujpest;
- Dr Csongor Visontai, counsel;
- Mr Souleymane Diarra, partially, by telephone.

65. At the close of the hearing, the Sole Arbitrator asked the parties whether they considered that their right to be heard had been respected, to which both Parties responded affirmatively.

66. On 31 July 2020, the Sole Arbitrator informed the Parties that he had requested the file concerning the Appealed Decision from FIFA, thereby granting the Appellant request to that effect.

67. FIFA complied with this request on 13 August 2020 and the FIFA file was duly forwarded to the Parties and to the Sole Arbitrator on 17 August 2020.

IV. SUBMISSIONS OF THE PARTIES

68. The Appellant's submissions, in essence, may be summarized as follows:

- The WAC holds that the FIFA DRC erred in considering that, for purposes of the two-year limitation period in Article 25.5 RSTP, the dispute arose at the latest on 30 July 2015.
- The 7 July 2015 letter allegedly sent by Prosper Uwizeye on behalf of the Player was sent to FIFA and to the FRMF, but not to the WAC. CAS jurisprudence holds that for a contract to be terminated, it is essential that the party affected by the termination has full knowledge and awareness of the other party's will to terminate (CAS 2016/A/4606). The Player, who bears the burden of proof, has not established that the WAC received the letter of 7 July 2015, so the date cannot be taken into account as the starting point of the dispute.
- Even if it were considered that the 7 July 2015 letter had been received by the WAC, the Player's behavior was inconsistent with having given notice of termination as he participated in the training camp in Portugal with the WAC team from 23 July 2015 to 5 August 2015. Such participation should be deemed at least a manifestation of his wish to carry on with the WAC under the Contract, and at most a retraction of any desire that might have been expressed earlier to terminate the Contract, which the Appellant holds is

in accordance with the provisions of Articles 1 and 40.V.1 of the Swiss Code of Obligations (SCO).

- Likewise, the Lisbon Letter dated 30 July 2015 does not fulfil the requirements for termination of the Contract, which include valid notification of termination to the WAC and cessation of performance of contractual obligations towards the WAC. The Player has not proven that the WAC received the Lisbon Letter. Given that the WAC has never acknowledged having received it, the date of 30 July 2015 cannot be considered the starting point of the dispute either.

- Moreover, even if it were established that the Lisbon Letter had been received by the WAC, his behavior nevertheless demonstrated his intention carry on with the WAC under the Contract until his departure from Morocco on 10 August 2015. The Player is therefore estopped from claiming the Lisbon Letter as justification.

- The starting point of the dispute was the signing by the Player of a new employment contract with Ujpest on 26 August 2015, which violated Article 18.5 RSTP's prohibition on multiple contracts. The Player had been put on formal notice by the WAC on 24 August 2015 when he did not return to Morocco from his trip to Mali, demonstrating the WAC's understanding that he was still bound by the Contract.

- Since the two-year statute of limitations runs from 26 August 2015 and the WAC referred the matter to the FIFA DRC on 3 August 2017, it was not time-barred and the FIFA DRC was competent to rule.

- The termination of the Contract by the Player by signing of the new contract with Ujpest on 26 August 2015 occurred without just cause, for which two cumulative criteria must be present: (i) the persistent failure of the Club to pay salary during a certain period (usually two or three months), and (ii) a written warning prior to termination sent to the Club by the Player (CAS 2015/A/3955 & 3956). These conditions are not met in the present case.

- In the FIFA DRC proceedings, the Player held that his letter of 7 July 2015 to the FRMF constituted formal notice, and that the Lisbon Letter constituted termination. If the 7 July 2015 letter were to constitute a warning, it should have not only formally notified the WAC of the Player's intent to terminate for non-payment of salaries but should also have granted him at least 15 days to meet these obligations (CAS 2016/A/4884).

- The 7 July 2015 letter, which was sent to FIFA and the FRMF but not to the WAC, merely expressed a wish to terminate while not making an explicit request for payment. It does not mention the sums owed to the Player, does not set a deadline and does not contain the word "warning". It can therefore not be construed as such.

- The Lisbon Letter dated 30 July 2015 does not meet the requisites of a formal termination. Firstly, it is not established that it was received by the WAC. Alternatively, it only expresses a wish to terminate (as opposed to intent to do so). As such it cannot produce the legal effects of a termination (CAS 2016/A/4606).

- Moreover, even if the Lisbon Letter had the effect of a termination, the Player by virtue of his return to Casablanca and participation in training sessions on 6 and 7 August 2015 essentially retracted the expression of any intent to terminate.

- The non-payment of salaries cannot be considered a just cause for the Player's termination as, by the Player's effective termination of the Contract on 26 August 2019, WAC had paid all salaries and bonuses owed to the Player, the last payments (associated with signature bonuses) having been made on 5 August 2015.

- Article 17 RSTP, which provides as follows, applies to the financial consequences of the Player's breach:

  "1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annex 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

  2. Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties".

- Given that the Player terminated the Contract without just cause and in application of Article 17.1 RSTP, the release clause in Article 14 of the Contract applies, meaning that the Player is liable to the WAC for the sum of EUR 2,000,000. According to Article 17.2 RSTP, Ujpest, as the Player's new club, is jointly and severally liable for payment of this indemnity (CAS 2009/A/1840, CAS 2013/A/3149, SFT 4A_32/2016).

- Subsidiarily, the WAC considers that, should the amount of the release clause not be deemed applicable, the following factors should be considered applicable in determining the amount of compensation owed:

  - The termination occurred during the protected period;

  - The residual value of the Contract is MAD 1,061,024.66;

  - A release clause set the Player's sporting value at EUR 2,000,000;

  - A transfer fee of EUR 52,500 was paid by the WAC to the Player's previous club;

  - The value of the contracts signed by the Player during the period covered by the Contract with the WAC.

- Considering the factors above, the WAC considers that the amount of compensation should also be set at EUR 2,000,000.

- The Appellant makes the following requests for relief:

"The WAC requests the CAS to […]:

- *RULE ON AND STATE that its claim before FIFA was submitted during the time limit*

Consequently,

CANCEL the FIFA Dispute Resolution Chamber decision rendered on the 23rd of January 2020;

Mainly:

Ruling de novo (article R. 57 of Code of Sports-related Arbitration):

- *RULE AND STATE that the football Player Souleymane Diarra was liable for the termination without just cause of his contract with WAC.*
- *RULE AND STATE that this termination took place during the protected period.*
- *RULE ON AND STATE that UJPEST will be held responsible in solidarity with the football Player Souleymane Diarra for the indemnity payment that will be pronounced against him.*

Consequently:

- *ORDER the Player and his new club F.C. UJPEST to jointly and severally pay the WAC the amount of 2 000 000 Euros in application of article 17 RSTP:*
- *RULE ON AND STATE that this sum will include interest at a rate of 5% from the date of the termination, meaning the date of signing the contract with UJPEST on 26 August 2015;*
- *REFER BACK the case to FIFA to impose sporting sanctions provided for in Article 17 of the Regulations on the Status and Transfer of Players and UJPEST.*

Subsidiary:

REFER the matter to FIFA for a decision on the merits.

In any event:

- *ORDER the Player to disclose all employment contracts signed with football clubs during the period covered by his employment contract with the WAC (Article 44.3 of the Code of Sports-related Arbitration);*
- *REQUEST [from] FIFA the communication of the file before FIFA DRC (Article 57 of the Code of Sports-related Arbitration);*

- *ORDER the Respondents to be responsible for the full costs of the CAS proceedings and the reimbursement of the costs and fees of the Appellant's lawyer for an amount of 15,000 € excluding taxes".*

69. The Respondent's submissions, in essence, may be summarized as follows:

- The present appeal procedure before CAS should be considered as withdrawn as the Appellant's Appeal Brief was submitted late and the appeal should be deemed withdrawn in application of Article R51 of the Code. This is due to the fact that since Article R32 of the Code provides that, if the Panel is not yet constituted, *"the President of the relevant Division may, upon application on justified grounds, suspend an ongoing arbitration for a limited period of time"*, CAS Counsel cannot suspend a time limit and that the applicable limit passed on 22 March 2020. An extension cannot be granted after a time limit has already expired.

- The present appeal procedure before CAS should be dismissed on the basis that the Respondents' *"fundamental rights of defense and equality are severely damaged"* by the extensions granted to the Appellant to file its Appeal Brief and pay the advance on costs in contrast to the amount of time granted to the Respondents to file their answer, such determinations not respecting the "CAS regulations".

- The Appellant has brought forward new evidence which should be disregarded as it was available to it at the time of the procedure before the FIFA DRC.

- To the extent that the Appellant's new exhibits are admitted, the Respondents' new evidence in the form of an audio recording should also be allowed. This recording attests to the culture within the WAC team and management.

- The Appellant's claim is time-barred given that the Player sent letters, either personally or via an intermediary, on 2, 6, 8 and 30 July 2015 requesting termination of the Contract. He also sent a letter on 14 August 2015 to the FRMF from Bamako in which he explained that he had only received EUR 12,000 in cash and that the Club still owed him EUR 29,000, and another letter on 23 August 2015 from Budapest informing that he had found a new club and that he would be requesting an ITC.

- The Respondents hold that the sending of the Libson Letter by registered mail on 31 July 2015 was sufficient to effect termination (CAS 2014/A/3584), and that the Appellant did confirm reception of the letters sent to FIFA and FRMF.

- The signing of a new employment contract in and of itself is insufficient to effect termination of another. Swiss law does not exclude the possibility of an individual holding two employment contracts at the same time, and the Appellant has failed to demonstrate that termination occurred on 26 August 2015 as it did not produce any official warnings or termination letters in support of this. It also did not provide proof of payment of the Player's salary as of August 2015. As a result, the only possibilities are that termination on 30 July 2015 was accepted by the Appellant, or that the Contract continued and naturally expired on 30 June 2019. Either way, Appellant's claim is time-barred.

- To the extent that the claim is deemed not to be time-barred, it should be sent back to the FIFA DRC given that the latter, having excluded it as late, did not examine the merits. For the CAS to rule de novo would be unnecessarily costly.

- To the extent that the CAS decides to rule de novo, the Player wishes to lodge a counterclaim, already submitted before the FIFA DRC. The Respondents counterclaim that the Appellant induced the Player to breach his Contract, and that the Player therefore has a right to claim damages. He calculates that he is owed the sum of EUR 120,959 plus 5% interest, representing the difference in value of the Contract with WAC and the new contract with Ujpest, plus the amount still owed and unpaid to him by the WAC.

- The Player terminated his Contract with just cause. It is uncontested that at the end of July 2015 — less than seven months into the Contract — the WAC was in arrears of payments totaling the equivalent of more than ten months' salaries. This is more than enough to justify termination with just cause (inter alia CAS 2017/A/5180, CAS 2009/A/4874). The Player took the necessary steps to avoid unnecessary termination as he sent several official warnings, with the Appellant acknowledging having received the one sent on 7 July 2015.

- The Player was living illegally in Morocco until his departure for Lisbon as the WAC did not obtain his residence permit until 21 July 2015. Prior to this, it was not possible for him to have a bank account in Morocco and to cash a cheque. The Appellant produced as evidence a non-endorsable cheque in the amount of MAD 240,000 which would have been made available to the Player via "Youssef", the agent he was forced to live with in Casablanca as his status did not allow him to live elsewhere. The Player would have been unable to cash such a cheque, nor deposit it. Moreover, its amount is not compatible with the payment slips produced by the Appellant as the total amount does not correspond to the amounts owed to the Player.

- Generally, the authenticity of the payment slips is disputed produced by the Appellant is disputed. The Respondents request that the Appellant provide the originals of the slips so that they may be examined by an independent graphologist. They also request that the Sole Arbitrator verify with the FIFA DRC as to whether such originals were ever received by the FIFA DRC. In any event, even if the payment slips were to be authentic and the Player had been able to deposit or cash the corresponding cheques, the salaries would still be sufficiently in arrears so as to justify termination of the Contract by the Player with just cause.

- The Player contests having received the amounts which the Appellant states it paid on 5 August 2015. If he had done so, he would not have had to sign a new contract with conditions that were less advantageous to him.

- If the termination were determined to have occurred without just cause, the amount of EUR 2,000,000 in the release clause cannot be applied as it is precisely a unilateral, non-binding release clause and not a buy-out clause, the latter allowing the Player to terminate the Contract for a set amount.

- The appropriate determination of damages would be the application of *De Sanctis v. Udinese* (CAS 2010/A/2145-47), namely the amount of money that was spent by the Appellant to find a replacement for the Player, minus the amount it would need to spend to pay to the player until the end of his contract, including salaries, premiums and bonuses. In this case no information is available to support the notion that the Appellant spent anything to replace the Player, meaning the Player's value is negative. In any event, the Player was never selected to play on the "PRO" team, not even on the bench. The Appellant only showed interest in the Player when it became apparent that he was about to terminate his contract. As such, the Appellant did not incur any damages.

- Since the Player terminated the Contract for non-payment of salaries, Ujpest cannot be considered to have induced the Player to have breached the Contract. The contract with Ujpest was signed over two weeks after the termination of the Contract and was the result solely of the Player's own decision and free will, after it was difficult to find a club who would take him given the risk associated with his unilateral termination of the Contract.

- The Respondent requests the application of Article 24 of the FIFA Code of Ethics should the examination of the documents brought forward by the Appellant reveal that one or more of them were forged or falsified, with an associated fine and sporting sanctions.

- Since Appellant was responsible for the breach of contract, the Respondents request the imposition of sporting sanctions. The fact that the breach occurred during the protected period constitutes an aggravating factor that should lead to the application of a more severe penalty.

- The Respondent makes the following requests for relief:

  "[…] *Respondents request the Honorable Panel to:*

  - *Consider the procedure of appeal in front of CAS is withdrawn by the Appellant.*
  - *Dismiss the procedure of appeal in front of CAS.*
  - *Disregard new evidence brought forward by the Appellant in bad faith.*
  - *Confirm the FIFA DRC decision: the claim is time-barred.*
  - *If the decision is not confirmed: send it back to the First instance.*
  - *If the Panel wishes to Rule "De Novo": Accept the Player's Counterclaim and award 120.935,- EUR of damages to the Player, with the standard late payment interest of 5%.*
  - *Confirm that the Player terminated his employment agreement with Appellant with just cause.*
  - *Consequently, do not award any damages to Appellant.*
  - *Condemn WAC to the payment of the entire CAS procedure costs and fees.*

- *Award 15.000 CHF to the Player and 15.000 CHF to Ujpest 1885 to cover their legal costs.*
- *The case being, penalize Appellant and apply sporting sanctions.*
- *Apply sporting sanctions on WAC, taking account of the 'protected period' and 'aggravating circumstances' if applicable".*

V. JURISDICTION

70. Article R47 of the Code provides as follows:

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

71. The Appellant relies of Article 58 of the FIFA Statutes as conferring jurisdiction on the CAS.

72. The jurisdiction of the CAS was not contested by the Respondent and the Order of Procedure was signed by both Parties.

73. Accordingly, the CAS has jurisdiction to decide this appeal.

VI. ADMISSIBILITY

74. Article 58.1 of the FIFA Statutes (2019 ed.) states:

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

75. Article 58.2 of the FIFA Statutes (2019 ed.) states:

"Recourse may only be made to CAS after all other internal channels have been exhausted".

76. The Parties received the grounds of the Appealed Decision from FIFA on 23 January 2020.

77. The Appellant submitted its Statement of Appeal on 11 February 2020, accordingly within the applicable deadline.

78. The Respondents dispute that the Appeal Brief was timely filed. Article R51 of the Code provides as follows:

"Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely. Alternatively, the Appellant shall inform the CAS

Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief. The appeal shall be deemed to have been withdrawn if the Appellant fails to meet such time limit".

79. According to the Respondents, the Appellant had a total of 31 days as of 23 January 2020 to file its Appeal Brief. A suspension of the deadline was pronounced on 21 February 2020 by a CAS Counsel (the validity of which is questioned without apparently being considered determinative) and lifted on 17 March 2020 by the President of the CAS Appeals Division. By the time a further extension of the deadline was granted retroactively by the Division President on 1 April 2020, the appeal was to have been deemed already withdrawn, meaning the deadline could no longer be extended.

80. The Appellant, which had initially requested that the procedure take place in French and English and had filed its Statement of Appeal in French calculates that its Appeal Brief should have been submitted on 24 February 2020. Further to the Respondents' request on 18 February for a procedure to be conducted exclusively in English and to Appellant's objection thereto on 21 February 2020, the CAS Court Office, upon request from the Appellant, suspended the deadline for filing of the Appeal Brief the same day in light of the uncertainty on the language of the procedure and set a deadline of 26 February 2020 for a final response from the Respondents on the holding of a bilingual French/English procedure. It was therefore technically impossible for the Appellant to file its Appeal Brief by 24 February 2020, not knowing the language in which the submission should be written. CAS Counsel necessarily had the authority to suspend the deadline as it needed to await the decision on language of the Division President.

81. When the Division President issued her Order on Language on 17 March 2020, the CAS Court Office informed the Parties that the time limit for filing resumed as of that date. The same day, the Appellant requested a 21-days extension to file its Appeal Brief, as well as a suspension of the time limit for filing until receipt of the answer from the CAS. The CAS Court Office responded on 18 March 2020 by indicating that the time limit remained suspended until it provided further notice, and that in the absence of an objection from the Respondents by 23 March 2020, an extension would be granted until 9 April 2020. As the Respondents objected on 22 March 2020, the Division President finally communicated her decision on 1 April 2020 that the extension was granted until 9 April 2020, and the Appeal Brief was filed on 8 April 2020.

82. Article R32 of the Code, (underlined where modified by the CAS emergency guidelines valid as from 16 March 2020), provides that:

"[…] the President of the relevant Division […] may extend the time limits provided in these Procedural Rules, with the exception of the time limit for the filing of the statement of appeal, any request for a first extension of time of a maximum of <u>2 weeks</u> can be decided by the CAS Secretary General without consultation with the other party or parties".

83. The Sole Arbitrator finds, in light of the language of R32 of the Code, that the Division President appropriately exercised her authority and that there was no lapse of the time limit to file the Appeal Brief. The latter was therefore filed in timely fashion.

84. Alternatively, the Respondents request that the appeal be dismissed on the grounds that, by virtue of the extensions granted to the Appellant to file its Appeal Brief and pay the advance of costs (the latter in light of the lockdown in Morocco due to the COVID-19 pandemic), an imbalance was created that provided the Appellant with significantly more time to submit both its written submission and the requisite payment.

85. The Sole Arbitrator finds the arguments raised by the Respondents to be unconvincing in this respect, notably because he finds that the Code provisions regarding deadlines were fully respected, and that the Respondents could have availed themselves of the same mechanisms to request extensions should they have deemed it necessary.

86. The appeal is therefore admissible.

VII. APPLICABLE LAW

87. Article 187(1) of the Swiss Private International Law Act ("PILA") provides as follows:

"The arbitral tribunal shall decide on the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection".

88. Article R58 of the Code provides more specifically as follows:

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

89. Article 57 para. 2 of the FIFA Statutes provides as follows:

"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss Law".

90. As a result, the applicable FIFA regulations and statutes will be applied primarily, and Swiss law shall apply subsidiarily.

91. Other than the Code and the RSTP, the Appellant makes no explicit reference to other specifically applicable law. The Respondent refers to the Code, FIFA regulations and Swiss law.

92. Considering that the original claim before the FIFA DRC was lodged on 11 February 2020, according to Article 26 para. 1 of the RSTP 2020 ed., the RSTP 2018 ed. et seq. apply to the dispute.

VIII. PROCEDURAL DETERMINATIONS

A. As to the Respondents' Request for Exclusion of Certain of Appellant's Exhibits, and the Admission of an Exhibit from the Respondents

93. The Respondents allege that new evidence is brought by the Appellant in bad faith and should therefore be disregarded.

94. Article R57(3) of the Code, which is an exception to the CAS Panel's full power of review, provides as follows:

> *"The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply".*

95. As such, R57(3) is discretionary and allows for the exclusion of certain evidence to prevent abuse. While the Panel may exclude certain evidence if its nature is such that it would be inappropriate to admit it, it may do so.

96. In the instant case, the Sole Arbitrator finds that while at least some of the evidence referred to by the Appellant could have, and perhaps should have been produced before the FIFA DRC proceedings, fairness is nevertheless better served by admitting it and giving it appropriate weight.

97. The Respondents' request to exclude the specified exhibits to the Appeal Brief is therefore dismissed.

98. The Respondents' request for the admission of an audio recording of a telephone conversation between the Player and Mr Merbah *"if the Panel allows new exhibits"*. Likewise and independently of the decision to allow Appellant's contested exhibits, the Sole Arbitrator considers it fair and appropriate to allow the recording into evidence. He does so noting that the Appellant has not objected to this, that the legality of the recording has not been questioned, and that in any event he considers the recording's probative value to outweigh any potentially legally protected interests of those on the recording that may be at issue (CAS 2011/A/2426, *see also* GUROVITS/LIVSCHITZ/FRENKEL, Admissibility of Illegally Procured Evidence in CAS Proceedings – Some Comments to the Adamu Decision, Online Publication, www.sportslawcircle.com, 14 January 2013).

B. As to the Respondents' Counterclaims

99. In their Answer, the Respondents make a number of counterclaims which go beyond the request to confirm the Appealed Decision.

100. As already indicated in the letter of the CAS Court Office dated 18 June 2020, counterclaims are not admissible in appeal arbitration proceedings before CAS.

101. The Sole Arbitrator observes that legal scholars have commented as follows in respect of the possibility to file a counterclaim in appeal arbitration proceedings before CAS following the 2010 revision of the CAS Code:

"It must be noted that, since 2010, counterclaims are no longer possible in appeal procedures. This means that, if a potential respondent wants to challenge part or all of a decision, it must file an independent appeal with the CAS within the applicable time limit for appeal" (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 249 and 488, with further references to CAS 2010/A/2252, para. 40, CAS 2010/A/2098, para. 51-54, CAS 2010/A/2108, para. 181-183; see also CAS 2013/A/3432 para. 54-57 with reference to a decision of the Swiss Federal Tribunal).

102. The Sole Arbitrator shares the view cited above and finds that Respondents' claims seeking compensation from the Appellant for having induced a breach of contract with associated procedural requests, as well as to assess associated damage, the application of the FIFA Code of Ethics to the Appellant for alleged forgery, and the application of sporting sanctions on the Appellant go beyond a mere statement of defence. Accordingly, such claims are declared inadmissible. In order for the Respondents to have validly raised such claims they should have filed an independent appeal against the Appealed Decision.

C. As to the Appellant's Request for the Disclosure by the Player of All Employment Contracts Signed with Football Clubs During the Period Covered by the Contract with the WAC

103. The Sole Arbitrator finds that this request being relevant solely to the calculation of potential damages in the event that (a) he finds that the claim before the FIFA DRC was not time-barred and (b) he finds that the contractual release clause is not applicable, the request is dismissed in light of his finding on the issue of prescription, which is dispositive.

IX. MERITS

104. The issues to consider are the following: (a) Was the claim before the FIFA DRC time-barred? (b) If not, should the question be remanded to the FIFA DRC for a decision on the merits? (c) If not, was the Contract terminated by the Player with just cause? (d) If not, what compensation, if any, is owed to the Appellant?

A. Was the claim before the FIFA DRC time-barred?

105. Article 25.5 RSTP states the following:

"5. The Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case".

106. In order to determine whether the claim before FIFA was time-barred, the time at which the event giving rise to the dispute arose must be determined. The Appellant contends that the dispute cannot have arisen prior to when it had received notice of the Player's termination, which did not occur until it received notice that he had signed a new employment contract with Ujpest. The Respondents contend that a number of written warnings had been sent during the course of July 2015, including a termination letter sent by registered post on 31 July 2015 which was the time at which the FIFA DRC determined the dispute had arisen, at the latest.

107. Article 25.5 RSTP does not make a specific reference to contract termination, nor does it set the time limit for filing a claim before FIFA to two years after the moment of termination of a contract. The term used is broader than this: the *"event giving rise to the dispute"* can presumably refer to the alleged non-fulfilment of a contractual obligation which may or may not constitute a breach, which in turn may or may not be deemed as termination, or indeed grounds for termination with just cause. There is no requirement that termination be explicitly declared or notice of termination be received in order to constitute an event giving rise to a dispute. Indeed, such a narrow interpretation would mean that no claim could be brought before FIFA unless termination had been effected, going against the principle of maintenance of contractual stability. The resolution of a dispute within the scope of a contract such that the parties' adherence to negotiated and agreed contractual terms can be preserved is generally to be favoured over one which occurs over the issue of performance or compensation following the demise of the contractual relationship.

108. It is established CAS case law that, where a player is seeking payment of monies owed under a contract, the statute of limitations in Article 25.5 runs from the day the claim fell due (i.e. the date at which the amount should have been paid), the triggering moment being the maturity of the debt (CAS 2015/A/4350).

109. This does not mean, however, that the issue of termination, including when (if at all) it occurred is irrelevant to determining the genesis of the dispute for purposes of the time limitation in Article 25.5 RSTP. The Appellant correctly points out that the general rule which holds that, *"for a contract to be terminated, it is essential that the party affected by the termination has full knowledge and consciousness of the termination will of the other party"* (CAS 2016/A/4606).

110. Likewise, for a dispute to exist — whether or not the dispute is directly about termination of the contract — the parties to said contract must somehow be aware that such a dispute is extant, or, at the very least, one party must know that circumstances exist that the other party is likely to consider to be violative of the terms and/or the spirit of their agreement. For an event to give rise to a dispute, it is therefore necessary (i) that these circumstances exist, and (ii) that the parties are aware of them.

111. The Appellant's stance that termination needs to be perfected by a warning, duly received together with a reasonable time limit to cure an alleged breach is indeed established CAS case law (CAS 2015/A/3955 & 3956, 2015/A/4042, 2015/A/4217, 2015/A/4322, 2016/A/4403, 2016/A/4843, 2018/A/6005). It is also now codified in Article 14bis of the RSTP (2020 ed.). When it concerns amounts owed by an employer to an employee,

"The non-compliance with the employer's obligation to pay the employee can only constitute a just cause for the employee under two conditions. Firstly, the amount paid late by the employer may not be 'insubstantial' or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning, i.e. the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract" (CAS 2013/A/3331).

112. However, as noted above, the conditions necessary to the establishment of termination with just cause for reasons of ensuing liability are not identical to those needed to establish the existence of the event giving rise to the dispute. The issue of whether termination occurred with or without just cause can only be examined, whether *de novo* by CAS or, if remanded, by the FIFA DRC, once it has been established that the claim is not time-barred. For this purpose, it must be determined when the Appellant became aware that circumstances existed which the Player would consider to be a breach by the Appellant of its obligations under the Contract.

113. The Player's primary complaint is the late and/or lack of payment of compensation owed under the Contract. He also asserts that he did not receive a residency permit until the day before the WAC team departed for Lisbon, resulting in the inability to open a bank account in Morocco or secure his own accommodation, thereby having to live in the apartment of Youssef Zaher, the agent *"close to the WAC president"* responsible for his original transfer from Bamako to the WAC in Casablanca. He notes that despite various requests, he was unable to receive a copy of his employment Contract from the WAC. Finally, he highlights the lack of playing time *"even on the bench"* received during his time with the WAC. The Player contends that all of this amounted to inducement by the WAC for the Player to ultimately terminate the Contract. While the Appellant does not contest the date on which the Player obtained his residency permit or the circumstances of the Player's accommodation, the assertion that this amounted to inducement to terminate is unproven and, as explained below, this question can in any event be left unanswered. Indeed, the primary issue is that of the extent of the Player's compensation (or lack thereof), the Sole Arbitrator thus firstly examines the issue of when payments were or were not made.

114. The Parties disagree as to if and when a number of salary payments were made. The Player contends that a number of alleged payment slips produced by the WAC are forgeries and that he did not receive the amounts that are purported to have been paid.

115. The WAC states that that it made certain payments late attributable to temporary financial difficulties, namely one in the amount of MAD 120,000 as a signature bonus for the 2014-2015 season, paid on 5 August 2015 as opposed to upon the signature of the Contract on 8 January 2015. This payment was allegedly made in consideration of a contractual obligation amounting to MAD 100,000. Altogether, the amounts that the WAC claims to have paid on 4 and 5 August 2015 amount to MAD 205,500, or the equivalent of nearly 10 months' salary.

116. The WAC contends that at the time it deems the Player to have terminated the Contract (26 August 2015), it had paid all outstanding amounts owed to him thereunder. The Player denies having received the corresponding amounts.

117. It is a primary responsibility for the Club to pay the salaries owed to its employees:

"A lack of payment entitles the Player to unilaterally terminate the contract with his club with just cause. In addition to the FIFA Commentary to Article 14 of the FIFA Regulations, CAS case law has also considered that continuous breaches by the employer of its duty to comply with its financial commitments towards the player can constitute just cause for termination. The non-payment or late payment of remuneration by an employer does in principle – and particularly if repeated – constitute "just cause" for termination of the contract. The employer's payment obligation is his main obligation towards the employee. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost" (CAS 2013/A/3331).

118. It is common sense that for termination to ultimately result from non-payment of salaries, the dispute over the unpaid wages must necessarily have arisen before termination occurred. In this case, even if the various correspondence sent by the Player in July 2015 may or may not be considered sufficient (by virtue of the issues raised concerning receipt of each of the letters by the WAC) to conclude that termination occurred by the end of July 2015, the WAC knew, by its own admission, that substantial sums were owed to the Player and had been overdue since they had signed the Contract (since a large part of the overdue amount concerned the initial signing bonus). This was bound to cause friction between the Parties was likely to last until it was resolved. The letters from the Player and his representative attest to existence of this dispute at the very least.

119. The events which took place on the Iberian Peninsula in July 2015 and in Morocco in early August appear to have been a manifestation of the loss of trust that the Player had in his employer. While it cannot be excluded that the "intermediaries" who facilitated the Player's temporary departure from the WAC team during the Lisbon training camp were motivated to encourage him to leave the Club and seek employment elsewhere, this does not change the fact that the dispute over wages already existed, as evidenced inter alia by the telephone call on 29 July 2015 between the Player and Mr Merbah, the WAC director tasked with locating and returning the Player to the training camp in Lisbon, as well as the subsequent exchange of instant messages with Youssef Zaher concerning payment.

120. The WAC takes the view that the Player willingly returned to training in Lisbon after his escapade to Madrid, and also returned to Casablanca with the WAC team where he participated in training with them in early August 2015. This essentially amounted to a retraction of any previously expressed intention to terminate the Contract. As such, he is estopped from relying on the Lisbon Letter with respect to the timing of the Contract termination.

121. In the Sole Arbitrator's view, and for the reasons set forth above, this does not mean however, that whatever dispute may have existed that ultimately led to termination was essentially extinguished by the Player's return to training. The facts of the Iberian events paint a different picture. The Player was clearly seeking overdue payments and had lost confidence that he would receive them from the WAC. The conversation with Mr Merbah as contrasted with the documentation provided by the WAC indicates that the WAC was, on the one hand seeking the return of the Player while informing him that he had been granted permission by the Club president the leave the training camp, while on the other it was filing police reports and obtaining a statement from the hotel and to document the Player's unauthorized absence. (A

similar approach was taken by filing a report to the FRMF after the Player's departure to Bamako in August). Likewise, the Player was told by Mr Merbah that he would not have to be brought back "by force", intimating that this might happen if he did not comply willingly. According to the Player's testimony at the hearing, which the Sole Arbitrator deems credible, when Mr Merbah came to pick up the Player in Figueira da Foz after his Madrid escapade, he was accompanied by three or four other men. This suggests that the use of force was at least a possibility and that this was likely intimidating to the Player.

122. The difficulties that the Player experienced in obtaining a copy of his Contract, a residence permit and — at times — his passport, combined with the fact that he had difficulty obtaining his duly owed compensation all indicate that, as a young football player relatively inexperienced in negotiation and in a vulnerable position, he was seeking to make a living in a manner that could reasonably have been expected of anyone in a similar situation. The Sole Arbitrator does not accept the WAC's position that his return to Morocco indicated a retraction of intent to terminate the Contract, or indeed and more relevantly any claims to unpaid compensation. The evidence regarding the control of the Player's passport by the WAC indicates that, as a young Player apparently unpaid and illegally in the country, he was at the mercy of his employer had little choice but to comply with the WAC's wishes until he found a new employer. His compliance with his contractual obligations cannot therefore be interpreted as a revocation of his rights to claim what was rightfully his. Moreover, the provisions of the SCO invoked by the Appellant (Articles 1 and 40.V.1) are not directly applicable given that they apply to contracts involving transactions other than employment relationships and deal with the conclusion and revocation of contract formation as opposed to the existence of a dispute or claim within the scope of an existing contractual relationship.

123. Finally, the suggestion that the Player's money had been given to "Youssef" and the latter's messaging to him a picture of a non-endorsable cheque in the amount of MAD 240,000 dated 24 July 2015 suggests that either the cheque or the payment slips produced by the Appellant cannot be relied upon as, taken together, they are incompatible with the amounts owed under the Contract. What this correspondence shows, however, is that the WAC had knowledge, well before the end of July 2015 of its overdue debt to the Player.

124. All of these elements taken together demonstrate that a dispute had clearly arisen by the end of July at the latest, and that the WAC was aware of the existence not only of the circumstances which were likely to cause the dispute, but of the dispute itself, well before the end of July 2015. Whether or not the Contract was terminated on 31 July 2015 or later is immaterial to the existence of the dispute, the earlier non-payment of compensation to the Player being its genesis.

125. As a result of the foregoing, the Sole Arbitrator does not have a basis to depart from the Appealed Decision, nor to address the remaining issues, all of which are dependent on a different finding on the issue of prescription.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Wydad Athletic Club on 11 February 2020 against the decision issued by the FIFA Dispute Resolution Chamber of 31 October 2019 is dismissed.

2. The decision issued by the FIFA Dispute Resolution Chamber on 31 October 2019 is confirmed.

3. The counterclaims filed by Souleymane Diarra and Ujpest 1885 Football Kft are inadmissible.

4. (…).

5. (…).

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