Arbitration CAS 2018/A/5802 Al Masry Sporting Club v. Fédération Internationale de Football Association (FIFA), award of 17 January 2019

Panel: Prof. Martin Schimke (Germany), Sole Arbitrator

Football
Disciplinary sanction for failing to comply with a CAS award
Aim and scope of Article 64 FIFA Disciplinary Code
Force majeure
Proportionality of a fine and of points deduction

1. **Article 64 of the FIFA Disciplinary Code serves to ensure the respect of all final and binding decisions rendered by a FIFA body, committee or instance or by a subsequent CAS appeal decision, thereby safeguarding the creditors' rights. In this respect, Article 64 provides the FIFA Disciplinary Committee powers to assess sanctions on debtors should a monetary decision not be complied with. Such sanctions are imposed to induce debtors to swiftly fulfil their financial duties towards their creditors. The sole task of the FIFA Disciplinary Committee is to ascertain whether the debtor duly complied with the previous decision or not with no possibility to address the merits of the previous decision. The application of Article 64 of the FIFA Disciplinary Code is subject to an exception, namely Article 107. Pursuant to this provision, disciplinary proceedings may be closed (or suspended) (a) if the parties reach an agreement, (b) if a party declares bankruptcy, or (c) if the proceedings become baseless.**

2. **The *force majeure* concept refers to extraordinary events occurring beyond the parties' control, which could not reasonably have been foreseen or provided against. A party can therefore be excused from liability for failure or delay in the performance of a contractual obligation due to a situation of *force majeure*. Generally speaking, the burden of proof rests upon the party seeking to rely on a situation of force majeure when asserting force majeure as a basis for non-payment. Financial problems or the lack of financial means of a club can generally not be invoked as a justification for the non-compliance with an obligation.**

3. **A fine is reasonable where it complies with the terms of Article 64(1) FIFA Disciplinary Code and is in line with the well-established FIFA practice in comparable cases. Moreover, a reviewing panel should give a certain degree of deference to decisions of sports governing bodies in respect of the proportionality of sanctions. Regarding points deduction, the number of points deducted must be proportionate to the amount owed. The range of disciplinary points sanctions handed out by the FIFA Disciplinary Committee over the course of its established practice in the past, including those which have been unsuccessfully challenged before CAS is relevant in this respect.**

I. PARTIES

1. Al Masry Sporting Club (the "Appellant" or the "Club") is a professional football club based in Port Said, Egypt, affiliated with the Egyptian Football Association (the "EFA"), which in turn is a member of the Fédération Internationale de Football Association ("FIFA").

2. FIFA (or the "Respondent") is the international federation governing the sport of football worldwide. It is headquartered in Zurich, Switzerland.

II. BACKGROUND FACTS

3. Below is a summary of the main relevant facts, as presented in the parties' written submissions, pleadings and evidence adduced in the course of the present proceedings and at the hearing. Additional facts may be set out, where relevant, in connection with the legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings he refers his Award only to the submissions and evidence he considers necessary to explain his reasoning.

A. The Contracts

4. On 29 August 2012, an agreement was signed between the Club and Warri Wolves FC regarding the transfer of the player, Mr Jude Aneke Ilochukwu (the "Player"), in the amount of USD 200,000.00.

5. On 1 September 2012, the Player concluded an employment contract with the Club, valid as of the date of signing until the end of the sporting season 2014/2015 (the "Employment Contract").

6. In accordance with the Employment Contract, the Club undertook to pay the Player the following remuneration:

   a) USD 150,000.00 for the sporting season 2012/2013, of which USD 75,000.00 payable on 1 September 2012, USD 3,750.00 as monthly remuneration payable as from 1 October 2012 until 12 July 2013, and USD 37,500.00 payable on 1 August 2013;

   b) USD 250,000.00 for the sporting season 2013/2014;

   c) USD 300,000.00 for the sporting season 2014/2015.

7. During the sporting season 2012/2013, the Player was duly registered with the Club, in compliance with the EFA.

8. On 5 September 2012, the Club, the Player and El Dakhlia Sporting Club ("El Dakhlia") reached a trilateral agreement according to which the Player was transferred to the latter on loan for the sporting season 2012/2013, i.e. from September 2012 until the end of football season 2012/2013 (the "Loan Contract").

9. It was agreed that the Player would receive *"five hundred and sixty-two thousand and five hundred Egyptian Pound"* in 12 monthly instalments of 22,500.00 Egyptian Pound, with the exceptions of the first instalment in the amount of 196,875.00 Egyptian Pound and of the last instalment in the amount of 140,625.00 Egyptian Pound.

10. On 6 August 2013, the Player unilaterally terminated the Employment Contract in writing on the basis that the Club failed to fulfil its financial obligations during the football season 2012/2013. In total, the Club failed to pay more than 11 monthly payments of the Players' remuneration.

11. In his notice of termination of the Employment Contract, the Player added that he *"cannot carry on his sportive career in the club because of the civil war in Egypt and he hasn't got any safety under the conditions of the country.* (…) *"Under these circumstances, the Player has no choice but to unilaterally terminate his employment contract with just cause with immediate effect".*

B. The FIFA Dispute Resolution Chamber Decision

12. On 2 January 2014, the Player filed a claim against the Club before the FIFA Dispute Resolution Chamber ("DRC"), seeking the following relief:

- Outstanding remuneration as per the Employment Agreement in the amount of USD 150,000.00, with regard to the sporting season 2012/2013 plus interest from the relevant deadlines;

- Compensation for breach of contract based on the Player's termination of the Employment Contract with just cause, in the amount of USD 550,000.00, corresponding to the residual value of the Employment Contract;

- Additional compensation in the amount of USD 50,000.00 relating to the Club's bad faith and for lost bonuses.

13. On 18 February 2016, the DRC rendered the following decision (the "DRC Decision"):

1. The Claim of the Claimant, Jude Aneke Ilochukwu, is partially accepted.

2. The Respondent, Al-Masry Sporting Club, has to pay to the Claimant, within 30 days from the date of notification of this decision, outstanding remuneration in the amount of USD 150,000, plus interest p.a., until the date of effective payment as follows:

a. 5% p.a. as of 2 September 2012 on the amount of USD 75,000.00;

b. 5% p.a. as of 2 October 2012 on the amount of USD 3,750.00;

c. 5% p.a. as of 2 November 2012 on the amount of USD 3,750.00;

d. 5% p.a. as of 2 December 2012 on the amount of USD 3,750.00;

e. 5% p.a. as of 2 January 2013 on the amount of USD 3,750.00;

f. 5% p.a. as of 2 February 2013 on the amount of USD 3,750.00;

g. 5% p.a. as of 2 March 2013 on the amount of USD 3,750.00;

h. 5% p.a. as of 2 April 2013 on the amount of USD 3,750.00;

i. 5% p.a. as of 2 May 2013 on the amount of USD 3,750.00;

j. 5% p.a. as of 2 June 2013 on the amount of USD 3,750.00;

k. 5% p.a. as of 2 July 2013 on the amount of USD 3,750.00;

l. 5% p.a. as of 2 August 2013 on the amount of USD 37,500.00.

3. In the event that the amounts due the Claimant in accordance with the aforementioned number 2. are not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

4. The Respondent, has to pay to the Claimant, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of USD 250,000.

5. In the event that the amount due to the Claimant in accordance with the aforementioned number 4. is not paid by the Respondent within the stated time limits, interest at a rate of 5% p.a. will fall due as of expiry of the aforementioned time limits and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

6. Any further claim lodged by the Claimant is rejected.

7. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received.

14. On 3 March 2016, the findings of the DRC Decision were communicated to the Parties.

15. On 7 June 2016, the grounds of the DRC Decision were notified to the Parties.

16. The relevant points of the DRC Decision can be summarized as follows:

- The DRC stated that it is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Nigerian player and an Egyptian club. The provision of article 3 para 1 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber in conjunction with article 24 para 1 and 2 (the "Procedural Rules"), as well as article 22 lit. b) of the FIFA Regulations on the Status and Transfer of Players, edition 2015 (the "FIFA Regulations") are applicable as to the substance.
- On 6 August 2013, the Player terminated the Employment Contract in writing, and he subsequently lodged a claim against the Club in front of the DRC, due the Club's failure to fulfil its financial obligations during the contractual relationship.
- The DRC acknowledged that the Club did not send its response to the Player's claim within the prescribed time limit during the FIFA proceedings, regardless of an invitation

to do so. Thus, the DRC disregarded the Club's response and ruled upon the Player's submissions only, in accordance with Article 9, para 3 of the Procedural Rules.

- The DRC concluded that the Player had just cause to terminate the Employment Contract on 6 August 2013, on the basis of outstanding payments.
- As a result, the Club was liable to pay to the Player the outstanding amounts at the moment of termination, i.e. USD 150,000.00 representing the monthly instalments due for the sporting season 2012/2013, and interest at the rate of 5%, accrued from the relevant deadline until the date of effective payment.
- Pursuant to Article 17, para 1 of the FIFA Regulations, the DRC decided that the Player was also entitled to a compensation for the breach of contract. In accordance with the Player's general obligation to mitigate his damages, the remaining value of the Employment Contract at the time of termination (i.e. USD 550,000.00) shall be reduced to USD 250,000.00 (i.e. the salary for the sporting season 2013/2014).

C. The Club's Various Appeals of the DRC Decision

17. On 27 June 2016, the Club appealed the DRC Decision before the Court of Arbitration for Sport (the "CAS") against the Player in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "Code").

18. On 24 April 2017, the CAS rendered its Arbitral Award in the matter *CAS 2016/A/4693 Al Masry Sporting Club v. Jude Aneke Ilochukwu* (the "CAS Arbitral Award"), which reads as follows:

> *1. The appeal filed by Al Masry Sporting Club against Jude Aneke Ilochukwu is partially upheld.*
>
> *2. The item 2 of the decision rendered by the FIFA Dispute Resolution Chamber on 18 February 2016 is amended as follows:*
>
> *Al Masry Sporting Club is ordered to pay to Jude Aneke Ilochukwu the amount of USD 116,250.00 as outstanding salaries together with interest at the rate of 5% per annum from each single due date until the date of effective payment.*
>
> *3. The other elements of the FIFA DRC decision are confirmed.*
>
> *4. (…)*
>
> *5. (…)*
>
> *6. All other motions or prayers for relief are dismissed.*

19. On 26 April 2017, the FIFA Players' Status Department obtained from the Player his account number to which the remittances in accordance with the CAS Arbitral Award were to be made.

20. On 2 May 2017, the FIFA Players' Status Department received confirmation that the Player's bank details were provided to the Appellant on 26 April 2017. The Appellant, however, had not made any payment of the amounts due. As a result, the Player requested the intervention of the FIFA Disciplinary Committee to impose sanctions on the Appellant.

21. On 4 May 2017, the FIFA Players' Status Department urged the Appellant to immediately pay the relevant amounts to the Player and to provide a copy of the payment receipt by no later than 26 May 2017. In addition, the FIFA Players' Status Department requested the Player to provide evidence that the bank details were forwarded directly to the Appellant.

22. On 8 May 2017, the FIFA Players' Status Department acknowledged a fax confirmation dated of 26 April 2017, proving the communication of the bank details from the Player to the Appellant. The intervention of the FIFA Disciplinary Committee was therefore solicited.

23. On 29 May 2017, the FIFA Players' Status Department noted that the Appellant had failed to pay the amounts due and again, requested the intervention of the FIFA Disciplinary Committee.

24. On 13 June 2017, the Appellant filed an appeal against the CAS Arbitral Award dated 24 April 2017 before the Swiss Federal Tribunal.

25. On 28 August 2017, the Swiss Federal Tribunal rejected the appeal. Therefore, the CAS award dated 24 April 2017 became final and binding.

D. Proceedings before the FIFA Disciplinary Committee

26. On 6 February 2018, the Secretariat of the FIFA Disciplinary Committee opened disciplinary proceedings against the Appellant with respect to its failure to comply with the CAS Arbitral Award of 24 April 2017.

27. The Secretariat of the FIFA Disciplinary Committee ordered the Appellant to pay by 20 February 2018 the outstanding amounts, or failing that, the case would be submitted to the FIFA Disciplinary Committee. Should the Appellant fail to submit any statement or pay the outstanding amounts by 20 February 2018, the FIFA Disciplinary Committee would take a decision based on the documents in its possession.

28. The Appellant, however, never replied to the Secretariat of the FIFA Disciplinary Committee on the matter.

29. On 21 February 2018, the Secretariat was informed the Appellant had not paid the amounts due to the Player, who requested the FIFA Disciplinary Committee to take a decision in this matter.

30. On 6 March 2018, the FIFA Disciplinary Committee issued its decision 171122 PST EGY ZH on the aforementioned matter (the "Appealed Decision") with the following operative part:

1. The club AI-Masry Sporting Club is pronounced guilty of failing to comply with the decision passed by the Court of Arbitration for Sport on 24 April 2017 and is, therefore, in violation of art. 64 of the FIFA Disciplinary Code.

2. The club Al-Masry Sporting Club is ordered to pay a fine to the amount of CHF 20,000. The fine is to be paid within 60 days of notification of the present decision. Payment can be made either in Swiss francs (CHF) to account no. […] or in US dollars (USD) to account no. […], with reference to case no. 171122 sus.

3. The club Al-Masry Sporting Club is granted a final period of grace of 60 days as from the notification of the present decision in which to settle its debt to the creditor, the player Jude Aneke Ilochukwu.

4. If payment is not made by this deadline, the creditor may demand in writing from the secretariat to the FIFA Disciplinary Committee that six (6) points be deducted from the debtor's first team in the domestic league championship. Once the creditor has filed this request, the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee. The order to implement the points deduction will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee.

5. If the club Al-Masry Sporting Club still fails to pay the amount due even after deduction of the points in accordance with point 4 above, the FIFA Disciplinary Committee will decide on a possible relegation of the debtor's first team to the next lower division.

6. As a member of FIFA, the Egyptian Football Association is reminded of its duty to implement this decision and, if so requested, provide FIFA with proof that the points have been deducted. If the Egyptian Football Association does not comply with this decision despite being ordered to do so, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to expulsion from all FIFA competitions.

7. The costs of these proceedings amounting to CHF 2,000 are to be borne by the club Al-Masry Sporting Club and shall be paid according to the modalities stipulated under point 2 above.

8. The creditor is directed to notify the secretariat to the FIFA Disciplinary Committee of every payment received.

31. On 14 March 2018, the Appealed Decision was notified to the Appellant, the Player and EFA.

32. On 16 May 2018, the Player requested a six-point deduction from the Appellant's first team and a transfer ban.

33. On 30 May 2018, the grounds of the Appealed Decision were notified to the Parties.

34. Upon receipt of the grounds of the Appealed Decision, the Player reiterated to the FIFA Disciplinary Committee his request to implement a transfer ban. However, on 6 June 2018, the Secretariat informed the Parties that the Appealed decision did not include a transfer ban as a possible sanction to be imposed on the Appellant.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. On 20 June 2018, the Appellant filed a Statement of Appeal pursuant to Article R47 *et seq.* of the Code with the CAS against FIFA with respect to the Appealed Decision. In its statement of appeal, the Appellant requested that this procedure be referred to a Sole Arbitrator and that the matter be conducted in English. In addition, the Appellant requested provisional relief

against the Appealed Decision.

36. On 28 June 2018, the Appellant requested a fifteen-day extension of the time limit to file its Appeal Brief pursuant to Article R32 of the CAS Code.

37. On 3 July 2018, the CAS Court Office informed the parties that the Appellant's request for a fifteen-day extension to file its Appeal Brief was granted, with the Respondent's agreement, in accordance with Article R32 of the CAS Code.

38. On the same day, the Appellant modified its request for a Sole Arbitrator in favour of three-member Panel.

39. On 5 July 2018, the Respondent confirmed its agreement to submit the proceedings to a Sole Arbitrator. As for the language of the procedure, however, the Respondent requested that the French documents used before the Swiss Federal Tribunal not to be translated into English. As for the Appellant's request for the stay of execution, the Respondent noted that a *"decision of financial nature issued by a private Swiss association is not enforceable while under appeal"* and therefore, such a request by the Appellant was moot.

40. On 6 July 2018, under separate correspondence, the Respondent reiterated his preference to submit the proceedings to a Sole Arbitrator and the Appellant withdrew its request for provisional measures. Furthermore, the Appellant agreed that documents in French contained in the FIFA file should not be translated.

41. On that same day, the CAS Court Office confirmed the language of the procedure as English, with the caveat that documents in French contained in the FIFA file should not be translated.

42. On 15 July 2018, the Appellant filed its Appeal Brief pursuant to Article R51 of the Code.

43. On 18 July 2018, the CAS Court Office acknowledged the receipt of the Appellant's Appeal Brief, highlighting that a request for stay of the Appealed Decision was again filed by the Appellant (despite previously withdrawing its initial request). Thus, the Appellant was invited to clarify its position in this respect.

44. On 27 July 2018, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division decided to submit the dispute to Prof. Martin Schimke, Attorney-at-law/Professor of Law in Düsseldorf, Germany as Sole Arbitrator in accordance with Article R54 of the Code.

45. On the same day, the Appellant withdrew its request for provisional measures.

46. On 8 August 2018, the Respondent filed its Answer in accordance with Article R55 of the Code.

47. On 3 September 2018, the CAS Court Office sent the Parties the Order of Procedure, which was returned duly signed, on 5 and 7 September 2018, by the Respondent and Appellant, respectively.

48. On 10 September 2018, the CAS Court Office confirmed the appointment of Ms. Marianne Saroli, Attorney-at-Law in Montreal, Canada as *ad hoc* clerk.

49. On 1 October 2018, a hearing was held in Lausanne, Switzerland. The Sole Arbitrator was assisted throughout the procedure by Mr. Daniele Boccucci, Legal Counsel to the CAS, and Ms. Marianne Saroli, *ad hoc* clerk. At the hearing, the Sole Arbitrator was joined by the following:

For the Appellant:	Mr Nasr Eldin Azzam, attorney-at-law
	Dr Aly Awad Mohamed Abdou Eltarabily, Board Member of the Club
For the Respondent:	Ms Alejandra Salmerón García and Ms Deborah Thuer, FIFA Disciplinary Department.

50. At the outset of the hearing, the parties confirmed that they had no objection to the appointment of the Sole Arbitrator. At the conclusion of the hearing, the parties confirmed that their right to be heard was fully respected.

IV. SUBMISSIONS OF THE PARTIES

51. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

A. The Appellant

52. In its Statement of Appeal, the Appellant seeks the following relief:

1. To accept this Appeal against the decision rendered by the Respondent.

2. To determine that the grace period of 60 (sixty) days established by the Respondent shall automatically remain suspended until the existence of a final and binding award and consequently no further sanctions can be applied to the Appellant.

3. To determine that the failure to comply with the award rendered by CAS on 24 April 2017 was due to a force majeure cause and, in any event, such failure can never be attributed to the Appellant.

4. To determine that no violation of Article 64 or the FIFA Disciplinary Code was committed and therefore no sanction shall be imposed to the Appellant.

5.To determine that the Appellant shall not pay any costs derived from the proceedings before the FIFA Disciplinary Committee.

6. To determine any other measure of relief that the Panel may deem appropriate.

7. To condemn the Respondent to the payment of the whole CAS administration Costs and the Arbitrators fees.

53. In its Appeal Brief, the Appellant amended its request for relief as follows:

1. To accept this Appeal against the decision rendered by the Respondent.

2. To determine that the grace period of 60 (sixty) days established by the Respondent shall automatically remain suspended until the existence of a final and binding award and consequently no further sanctions can be applied to the Appellant.

3. To determine that the failure to comply with the award rendered by CAS on 24 April 2017 was due to a force majeure cause and, in any event, such failure can never be attributed to the Appellant.

4. To determine that no violation of Article 64 or the FIFA Disciplinary Code was committed and therefore no sanction shall he imposed to the Appellant.

5. To determine that the Appellant shall not pay any costs derived from the proceedings before the FIFA Disciplinary Committee.

6. To determine any other measure of relief that the Panel may deem appropriate.

7. To fix a sum of CHF 15,000.00/-(Fifteen Thousand Swiss Francs) to be paid by the Respondent to the Appellant, for the payment of its legal fees and costs.

8. To condemn the Respondent to the payment of the whole CAS administration Costs and the Arbitrators fees, if any.

54. The submissions of the Appellant, as contained in its written submissions and oral pleadings, may be summarized, in essence, as follows:

- The Appellant failed to comply with the payment schedule provided in the CAS Arbitral Award, due to unexpected and unforeseen incidents, and more specifically due to the restrictions imposed by the Central Bank authorities and the internal bank procedures in Egypt.
- In fact, the transfer of the required sum could not be completed due to a force majeure situation in Egypt where the international monetary transfers were limited to the import of basic goods. The Central Bank specifically implemented several restrictions regarding international payments and foreign currency. For instance, international transfers were limited to a yearly amount of USD 100,000 or the equivalent in another currency as well as the establishment of a new cap on depositing foreign currency in all bank accounts in Egypt with a maximum of USD 10,000 per day and a maximum of USD 50,000 per month.
- In November 2016, the economic crisis in Egypt worsened due to the shortage of resources and foreign currency. The Government took critical decisions to save the country from entering into insolvency, such as overhauling Egypt's ailing economy through the International Monetary Fund which offered it a money loan (requiring Egypt to devaluate its currency by 48 percent). Therefore, the Egyptian pound reached 13 EGP

against the American dollar instead of 8.8 EGP before devaluation. A few days later, the currency hovered around 17.5 to the dollar.

- Due to the unavailability of foreign currency at banks for importers, the government ceased importation for more than 3 months. In addition, the Chamber of Commerce limited importations to only the production of basic goods for 3 months.
- Moreover, on 2 November 2016, the Sports Minister stopped hiring foreign coaches or players and limited international travel for Egyptian national teams, in an attempt to save around USD 900,000 for the country every year.
- The foregoing demonstrates the existence of a force majeure situation, i.e. unexpected measures which fall outside of the Appellant's control.
- The Appellant's failure to comply with the CAS Arbitral Award was not due to its fault or negligence but was rather caused by a force majeure situation which cannot be attributed to the Appellant.
- With regards to force majeure, the Appellant relies upon the Article 1051 of the Swiss Code of Obligations and CAS jurisprudence which provides the definition of force majeure, *inter alia*, as follows: *"Where insuperable obstacles (statutory provisions enacted by a state or some other instance of force majeure) militate against the timely presentation of the bill of exchange or timely protest, the time limits for such actions are extended"* (*CAS 2015/A/3909).* In addition, the Appellant relies upon *CAS 2010/A/2144* to define the force majeure at issue.
- In the dispute at hand, the Appellant's situation was caused by a general measure adopted by the Egyptian State, which falls under *"factum principis"*. Due to one of the most severe crises occurring in Egypt's history, the Egyptian Government adopted a unilateral public action that placed the Appellant in an extraordinary and unforeseeable situation.
- During the hearing, the Appellant alleged it requested foreign currencies on different occasions, but the Egyptian banks rejected its demands.
- Additionally, the Appellant indicates its bank account was seized by the Egyptian Tax Authorities. Notwithstanding, it intended to pay the outstanding amounts by international transfers through third parties because of the international transfers limitations imposed by the Government and the Central Bank as well as the difficulties in obtaining foreign currency in Egypt. These circumstances are the result of an outright ban on all international transfers of capital through national banks after two revolutions. Therefore, the Appellant's failures are legitimately caused by a force majeure.
- The Appellant further notes its proposal to the Player for alternative payment methods to fulfill its obligations, namely:
    - Opening a bank account in Egypt to which the Appellant could deposit directly the outstanding amounts in cash;
    - Travelling to Egypt with his legal representative to receive the outstanding amounts in cash, with the Appellant covering their travel costs.

  The Player refused the said suggested payment forms and required a payment by international bank transfer. This proposed payment method was used by other Egyptian

clubs with their players, such as Mr. Ricardo Alves, who accepted this new proposal and received his payments in a timely manner. In this regard, the Appellant further relies upon the principle of *"substantial performance"* as it showed good intentions, since it tried every way possible to fulfill its obligations towards the Player, despite the unpredictable nationwide crisis.

- According to normal practice and Swiss law, a creditor must help the debtor to pay its debt. Since the Appellant was prevented from paying through international bank transfer, the Player should have accepted one of the alternative payment forms or, at least, propose another possible means of transfer with which the Appellant could reasonably comply.
- The Respondent should not have submitted the matter to the Disciplinary Committee, since the Appellant had exhausted all means available in order to make the requested payments.
- Under these circumstances the sanctions imposed are disproportionate.

B. The Respondent

55. In its Answer, the Respondent requests CAS:

1. To reject the Appellant's in its entirety.

2. To confirm the decision 171122 PST EGY ZH rendered by a member of the FIFA Disciplinary Committee on 6 March 2018 hereby appealed against.

3. To order the Appellant to bear all costs and legal expenses incurred with the present procedure.

56. The submissions of the Respondent, as contained in its written submissions and oral pleadings, may be summarized, in essence, as follows:

a) Submissions regarding the Appellant's non-compliance of the CAS Arbitral Award

- The Respondent emphasizes that the Appellant was duly informed of the risk that disciplinary proceedings could be opened in the event of its non-compliance with the CAS Arbitral Award. Notwithstanding, the Appellant failed to comply with its financial obligations. Furthermore, the Appellant was informed of the opening of the disciplinary proceedings on 6 February 2018 and was warned about the possible consequences for failing to comply with the CAS Arbitral Award by 20 February 2018. Still, the Appellant chose not to participate in the disciplinary proceedings and remained silent. The Appellant, therefore, never showed its willingness to comply with its financial obligations and had plenty of time to pay its debt to the Player.
- The Respondent further emphasises that five months have passed between the issuance of the decision by the Swiss Federal Tribunal and the opening of the case to the Disciplinary Committee. Such a delay is unacceptable and shows the Appellant's disrespect towards the legal authority of the CAS Arbitral Award.

- Regarding the Appellant's argument about the absence of banking details or concrete bank account details in the employment contract, the Respondent refers to point 7 of the DRC Decision, according to which the Player was directed to inform the Appellant *"of the account number to which the remittance is to be made"*. Therefore, the decision of the DRC allowed the Player to choose on which bank account the outstanding amounts had to be paid. The feasibility of any such alternative payment methods for a person that is not domiciled in Egypt is questionable.
- As to the formula followed by another Egyptian club, Zamalek Sporting Club, with the player Mr. Ricardo Alves, no evidence has been provided by the Appellant to prove its allegation.
- The Respondent relies upon CAS 2013/A/3323 to justify its position. In this case, a debtor requested the creditor to travel to the debtor's country to collect the outstanding amount whereas the CAS concluded that *"it is to the discretion of the creditor to determine the details and the place of the bank account into which the amount due is to be transferred.* (…) *it is the responsibility of the debtor to do all relevant efforts to comply with its payment obligation in accordance with a FIFA decision and according to the creditor's wishes. The latter is therefore free not to accept a payment which would not be made on the bank account which details he has been requested to provide, which obligation he met"*.
- The Disciplinary Committee correctly applied Article 64 of the FIFA Disciplinary Code and imposed disciplinary measures on the Appellant, which did not fulfil its financial obligations towards the Player pursuant to a final and binding decision passed by a deciding body of FIFA.

b) Submissions regarding the Appellant's arguments about force majeure

- The Respondent questions the Appellant's allegations about the Central Bank of Egypt's restriction on the international payments to a maximum of USD 100,000 per year. Indeed, the Appellant made international payments to other creditors, which exceed the cap imposed by the Central Bank, in the period of time during which it was allegedly prevented from making international payments to the Player, i.e. January 2014 until August 2018. For instance, the disciplinary case number 180028 in which the Appellant was ordered to pay to a creditor EGP 808,500 and EGP 1,933,334 (approximately USD 155,000) plus 5% interest p.a. in accordance with the decision passed by the DRC on 23 March 2017. These amounts were paid by December 2017 even though the total payment exceeded USD 100,000. Also, in the disciplinary case number 160057, the Appellant was ordered to pay to a creditor USD 200,000 plus 5% interest p.a. to be calculated in accordance with the decision passed by the Players' Status Committee on 20 November 2013 as well as CHF 4,000 for procedural costs and CHF 5,000 as a contribution towards the legal costs incurred in connection with the arbitration proceedings. The Appellant paid a total of USD 228,407 within less than six months.
- In addition, the Respondent highlights that five different Egyptian clubs were able to transfer sums higher than USD 100,000 between January 2014 and July 2018.

- On 14 June 2017, the Central Bank removed some restrictions to allow Egyptian banks to perform international payments without maximum limits. The CAS Arbitral Award was rendered a few months before the removal of such restriction and therefore, the Appellant was no longer restricted from paying the amounts owed to the Player as from June 2017. Therefore any such non-payment was simply deliberate.
- The justifications provided by the Appellant do not satisfy the conditions for the occurrence of force majeure. In this respect, CAS confirmed the definition of force majeure as it: *"implies an objective rather than a personal impediment, beyond the control of the "obliged party", that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible (CAS 2002/A/388, published in Digest of CAS Awards III 2001-2003, p. 516 ff.) In addition, the conditions for the occurrence of force majeure are to be narrowly interpreted, since the force majeure introduces an exception to the binding force of an obligation"* (CAS 2014/A/3533).
- Restrictions imposed by the Central Bank did not render the performance of the obligation impossible for the Appellant. This does not constitute a force majeure. The Respondent relies upon CAS jurisprudence, according to which financial difficulties or the lack of financial means of a club cannot be invoked as a justification for non-compliance with an obligation (CAS 2014/A/3533; CAS 2013/A/3358; CAS 2006/A/1110; CAS 2005/A/957).
- Moreover, pursuant to Article 2 of the Swiss Civil Code, *"every person is bound to exercise his rights and fulfil his obligations according to the principle of good faith"* (CAS 2010/A/2144). Even if the Appellant was affected by the economic crisis of its country, it does not exonerate it from its obligations to pay the outstanding amounts due to the Player.
- No evidence was presented to support the Appellant's assertions that the Egyptian Tax Authorities seized its bank account. Even if it were to have occurred, it could be possible that the seizure resulted from other debts that the Appellant had, unrelated to the restrictions imposed by the Central Bank on international payments.
- In sum, the alleged seizure of the Appellant's bank account cannot be considered as a situation of force majeure justifying the non-compliance with the CAS Arbitral Award. The circumstances adduced by the Appellant are not causes of force majeure, whereas the Appellant was at all times in a position to transfer money internationally. As a consequence, the Appellant is liable for failing to comply with the CAS Arbitral Award and the Disciplinary Committee correctly applied Article 64 of the FIFA Disciplinary Code.

c) Submissions regarding the proportionality of the sanctions imposed on the Appellant

ca) Fine

- The Sole Arbitrator shall amend a disciplinary decision of a FIFA judicial body only in cases in which it finds that the relevant FIFA judicial body exceeded the margin of discretion afforded to it by the principle of association autonomy, i.e. only if the sanction is evidently and grossly disproportionate to the offence (see e.g. CAS 2014/A/3562,

par. 119; CAS 2009/A/1817 and CAS 2009/A/1844, par. 174; CAS 2004/A/690, par. 86; CAS 2005/A/830, par. 10.26; CAS 2006/A/1175, par. 90; CAS 2007/A/1217, par. 12.4; CAS 2009/A/1870, par. 125, and CAS 2005/C/976 & 986, par. 143).

- According to Article 15 of the FIFA Disciplinary Code, the Disciplinary Committee is refrained from imposing a fine lower than CHF 300 and higher than CHF 1,000,000. Imposing financial sanctions above a certain limit would be counterproductive. The intention of the Committee or the logic behind Article 64 is not to impose sanctions that create additional financial difficulties to the debtor. The fine serves as a deterrent to parties who refuse or neglect to comply with decisions of, among others, FIFA bodies (CAS 2010/A/2148).
- In the dispute at stake, the Disciplinary Committee considered the outstanding amounts due, namely CHF 356,354 plus interest (USD 116,250 and USD 250,000 plus 5% interest per annum as well as CHF 4,000). Thus, a fine in the amount of CHF 20,000 is appropriate and proportionate in the light of the amount of the outstanding debt. In this respect, the Respondent highlights that the Appellant has never contested the fine's proportionality.

cb) Six-point deduction

- Pursuant to Article 64 par. 1 lit. c) of the FIFA Disciplinary Code, the Disciplinary Committee can also impose further sanctions such as deduction of points, relegation to a lower division and even transfer bans. The Appealed Decision included sanctions for which enforcement could be requested by the Player in case of persistent failure by the Appellant to comply with the CAS Arbitral Award. Therefore, the imposition of the six-point deduction always depends on the Appellant's conformity with the Appealed Decision.
- The six-point deduction has not been commented on by the Appellant in its Appeal on the merits, instead only appearing in its moot request for provisional measures. If the Appellant has not settled its debt with the Player before the Appealed Decision is passed, a six-point deduction is to be considered an appropriate sanction, which complies with the principle of proportionality as well as with the Disciplinary Committee's longstanding practice.
- In support of its position, the Respondent notes *inter alia* that the CAS has regularly confirmed the legality and the proportionality of the enforcement system created by FIFA and the sanctions related thereto, in particular the deduction of points (CAS 2005/A/944, CAS 2011/A/2646 and CAS 2012/A/3032).

V. JURISDICTION

57. 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 the 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 him prior to the appeal, in accordance with the statutes or regulations of that body.

58. The jurisdiction of CAS derives from Article 67 par. 1 of the FIFA Statutes that provides as follows: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"* and Article R47 of the Code.

59. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by both parties. It therefore follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

60. Article R49 of the Code provides as follows:

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

61. The motivated part of the decision of the Appealed Decision was delivered to the Appellant on 30 May 2018 and the Appellant filed its Statement of Appeal on 20 June 2018. Therefore, the 21-day deadline to file the appeal was met. The appeal further complied with the other requirements stipulated by Articles R48 and R51 of the Code.

62. The Sole Arbitrator, therefore, finds that the appeal is admissible.

VII. APPLICABLE LAW

63. Article R58 of the Code provides as follows:

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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

64. The Sole Arbitrator notes that Article 57 para. 2 of the FIFA Statutes provides the following:

The provisions of the CAS Code of Sports related Arbitration shall apply to the proceedings. CAS shall apply the various regulations of FIFA and additionally Swiss law.

65. Both parties agree to the application of Article 57 para. 2 of the FIFA Statutes as set forth above.

66. The Sole Arbitrator, therefore, finds that the relevant FIFA rules and regulations, and more specifically the FIFA Disciplinary Code, as in force at the relevant time of the dispute, shall

be applied primarily, and Swiss law shall be applied subsidiarily.

VIII. MERITS

A. Main Issues

67. The Sole Arbitrator focuses his award on three principal issues, namely: (i) Did the Appellant breach Article 64 of the FIFA Disciplinary Code for having failed to comply with the Appealed Decision?; if yes, (ii) Is force majeure a valid excuse for such non-compliance?; and if no, (iii) Were the sanctions imposed on the Appellant proportionate?

68. The Sole Arbitrator will address each question in sequence below:

a) Did the Appellant breach Article 64 of the FIFA Disciplinary Code for failing to comply with the CAS Arbitral Award?

69. The Appealed Decision is based on Article 64 (1) of the FIFA Disciplinary Code. Such article provides as follows:

> *"1. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (financial decision), or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS (subsequent appeal decision):*
>
> *a) will be fined for failing to comply with a decision;*
>
> *b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;*
>
> *c) (only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or relegation to a lower division ordered. A transfer ban may also be pronounced;".*

70. Article 64 of the FIFA Disciplinary Code serves to ensure the respect of all final and binding decisions rendered by a FIFA body, committee or instance or by a subsequent CAS appeal decision, thereby safeguarding the creditors' rights. In this respect, Article 64 provides the FIFA Disciplinary Committee powers to assess sanctions on debtors should a monetary decision not be complied with. Such sanctions are imposed to induce debtors to swiftly fulfil their financial duties towards their creditors.

71. Since the CAS Arbitral Award became final and binding, the sole task of the Disciplinary Committee was to ascertain whether the Appellant duly complied with the relevant decision or not, with no possibility to address the merits of the previous dispute between the Appellant, the Player and the Respondent. This narrow task of the Disciplinary Committee was reinforced by CAS 2013/A/3323, where it was stated that: *"[T]he Panel finds that the FIFA Disciplinary Committee was limited to determine if the outstanding amount, as defined by the FIFA DRC decision, had been paid to the creditor, i.e. the Player, or if for whatever reason the above mentioned amount*

was still due".

72. In this respect, the Sole Arbitrator acknowledges that the Appellant does not contest the outstanding amount of its debt towards the Player established under the CAS Arbitral Award. Indeed, the Appellant admits having failed to pay the outstanding amounts since then.

73. Moreover, the Sole Arbitrator bears in mind that the application of Article 64 of the FIFA Disciplinary Code is subject to an exception, namely Article 107. Pursuant to this provision, disciplinary proceedings may be closed (or suspended) only in three specific cases, namely: (a) if the parties reach an agreement, (b) if a party declares bankruptcy, or (c) if the proceedings become baseless. However, and since none of the Article 107 exceptions are triggered here, the Sole Arbitrator determines that the Disciplinary Committee had no legal grounds to close or suspend the disciplinary proceedings in the present case.

74. Consequently, the Sole Arbitrator agrees with the Disciplinary Committee that since the Appellant failed to comply with the payment ordered in the CAS Arbitral Award, the criteria for the application of Article 64(1) of the FIFA Disciplinary Code as set forth above were met.

b) Is force majeure a valid excuse for failing to comply with the CAS Arbitral Award?

75. Notwithstanding the above, the Appellant challenges the Appealed Decision before the CAS on the basis that the sanctions should be lifted due to the existence of a *force majeure* situation. In particular, the Appellant asserts that: (1) the restrictions on international payments in foreign currencies imposed by the Central Bank authorities and the internal bank procedures in Egypt resulting from the economic crisis in Egypt; and (2) the impossibility of making international money transfers due to the seizure of its bank account by the Egyptian Tax Authorities, are reasonable excuses for non-payment of the outstanding monies to the Player.

76. In light of the circumstances invoked by the Appellant, the Sole Arbitrator addresses the question as to whether a situation of *force majeure* can be used as a valid excuse for failing to comply with the CAS Arbitral Award and consequently, as a reasonable basis to lift the Appealed Decision.

77. The *force majeure* concept refers to extraordinary events occurring beyond the parties' control, which could not reasonably have been foreseen or provided against. A party can therefore be excused from liability for failure or delay in the performance of a contractual obligation due to a situation of *force majeure*.

78. Whereas *force majeure* is a universally known legal practice, it is also an established principle under Swiss law. Since Swiss law applies to the present case, existing jurisprudence at the Swiss Federal Tribunal can be used to define the concept of *force majeure*. For instance, a relevant definition of *force majeure* is found in the decision *2C_579/2011* where it was observed that *"il y a force majeure en présence d'événements extraordinaires et imprévisibles qui surviennent en dehors de la sphère d'activité de l'intéressé et qui s'imposent à lui de façon irrésistible"*. That can be freely translated into English as follows: *"Force majeure takes place in the presence of extraordinary and unforeseeable*

events that occur beyond the sphere of activity of the person concerned and that impose themselves on him/her in an irresistible manner" (CAS 2015/A/3909).

79. Pursuant to CAS jurisprudence, *"Force majeure implies an objective rather than a personal impediment, beyond the control of the (obliged party), that is unforeseeable, that cannot be resisted, and that renders the performance of the obligation impossible"* (CAS 2014/A/3533).

80. Generally speaking, the burden of proof rests upon the party seeking to rely on a situation of force majeure when asserting force majeure as a basis for non-payment (in this case, the Appellant). In CAS 2007/A/1380, the panel indicated as follows:

> *"According to the general rules and principles of law, facts pleaded have to be proven by those who plead them, i.e. the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proven by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based.*
>
> *This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code "Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right" (free translation from the French original version – "Chaque partie doit, si la loi ne prescript le contraire, prouver les faits qu'elle allègue pour en déduire son droit').*
>
> *It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites include the concept of 'burden of proof' are (i) the 'burden of persuasion' and (ii) the 'burden of production of the proof'. In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party".*

81. In its appeal, the Appellant asserts that its failure to comply with the CAS Arbitral Award is due to *force majeure*, i.e. to the adoption of a unilateral public action by Egyptian Government during one of the most severe crises occurring in Egypt's history. The Appellant notes that international transfer limitations were imposed by the Government and the Central Bank during this time, resulting in difficulties in obtaining foreign currency in Egypt. The Appellant also alleges its bank account was seized by the Egyptian Tax Authorities. Newspaper printouts and other evidence such as internet postings were offered by the Appellant to support its arguments.

82. The Sole Arbitrator does not dispute that Egypt suffered from political and financial turmoil during the relevant period of this dispute. The Respondent seems to agree as well. But be that as it may, the Appellant's undisputed financial obligation existed and therefore, the Sole Arbitrator must consider whether the restrictions on international transfers and the seizure of the Appellant's bank account constituted a qualifying event for the existence of a *force majeure* situation.

83. The Sole Arbitrator notes that despite assertions to the contrary, the Appellant was aware that international payments exceeding the cap imposed by the Central Bank were indeed possible during the period in which it was allegedly prevented from making international payments to the Player. For example, the Respondent submitted into evidence correspondence concerning the Appellant's failure to comply with a different FIFA decision, namely a decision passed by the Players' Status Committee on 20 November 2013, whereby the Appellant was ordered to pay to a foreign creditor in excess of USD 200,000. Such outstanding debt was paid by the Appellant through international financial transfers in the amounts of USD 100,000 on 16 March 2015, USD 64,407 on 24 April 2015, USD 40,000 on 3 June 2015 and USD 24,000 on 2 September 2015. Accordingly, despite the alleged restriction on transferring more than USD 100,000 per year abroad, the Sole Arbitrator can at least make an objective assessment that the Appellant paid USD 228,407 in such transfers in the year 2015.

84. Moreover, even considering the financial difficulties it encountered during the economic crisis in Egypt, the Appellant's failure to adhere to its financial obligation toward the Player is not legitimate pursuant to well-established CAS jurisprudence. In this respect, the Sole Arbitrator recalls that *"financial problems or the lack of financial means of a club can generally not be invoked as a justification for the non-compliance with an obligation"* (see CAS 2017/A/5496; CAS 2016/A/4402; CAS 2014/A/3533; CAS 2016/A/5496).

85. Furthermore, the Sole Arbitrator concurs with CAS 2016/A/4402 where the Panel stated as follows:

> *"Strict regulatory restrictions placed on the operation of a national banking sector requiring specific authorisation and approval for the transfer of capital but not resulting in an outright ban on all international transfers of capital through national banks may involve a bureaucratic procedure but does not entail an undue burden ultimately making it impossible or extremely difficult to make payments abroad and cannot therefore be invoked by a party as a situation of force majeure, especially if these restrictions were enacted after the party had defaulted on its financial obligations".*

86. Even recognizing that Egypt faced an economic crisis in recent years and that strict controls on the movement of foreign currency were indeed put in place by the Egyptian government, the Sole Arbitrator takes note that the Central Bank removed the limits on international currency transfers on 14 June 2017. Since the CAS Arbitral Award was rendered on 24 April 2017 and that the Appellant was no longer restricted from paying the amounts owed to the Player as of 14 June 2017, the Appellant had plenty of time to comply with its financial obligations towards the Player before the issuance of the Appealed Decision dated 6 March 2018.

87. Indeed, the Appellant could have proposed a reasonable alternative payment plan to the Player with payments by instalments. Yet the Appellant did not do this. Instead, the Appellant allegedly suggested that the Player open a bank account in Egypt in which it could directly deposit the amounts due or that it could fly him and his legal representatives to Egypt to collect the outstanding amounts in cash.

88. It is, of course, the Player's prerogative as to whether he accepts any of these proposals. But

in the Sole Arbitrator's opinion, requiring the Player to open an Egyptian bank account or to fly back to Egypt with his legal advisors to obtain such cash are unrealistic and overly burdensome options. In this regard, the Sole Arbitrator agrees with the Panel's view in CAS 2013/A/3323 whereby it was declared *"that it is to the discretion of the creditor to determine the details and the place of the bank account into which the amount due is to be transferred. (…) the utmost obligation of the debtor is to duly transfer the amount to the bank account provided by the creditor, and, therefore, it is the responsibility of the debtor to do all relevant efforts to comply with its payment obligation in accordance with a FIFA decision and according to the creditor's wishes. The latter is therefore free not to accept a payment which would not be made on the bank account which details he has been requested to provide, which obligation he met"*.

89. Additionally, and tellingly, the Sole Arbitrator notes that the Appellant did not provide tangible evidence or any document confirming the impossibility of it making international transfers or the seizure of its bank account. It based its failure to pay on its own word.

90. In sum, the Sole Arbitrator is of the opinion that the particular circumstances of this case surrounding the financial climate in Egypt possibly made the Appellant's financial obligation to execute international payments more burdensome, but not impossible (see CAS 2016/A/4402). The Appellant failed to meet its burden of proof and as a result, the Sole Arbitrator rules it was not confronted with a situation of *force majeure*, as it did not provide sufficient evidence to substantiate its claim that the seizure of its bank account and the international transfer restrictions were an impediment beyond its control.

91. Therefore, the Sole Arbitrator holds that the events cited by the Appellant are not sufficiently supported and cannot be legitimately invoked in order to escape disciplinary responsibility for its failure to pay the outstanding amount under the CAS Arbitral Award. Thus, the Sole Arbitrator concludes that the Appellant cannot rely on the *force majeure* defence to excuse its failure to fulfil its financial obligations towards the Player. Nor may it be used to suspend or delay the time for performance, considering that the limits on international currency transfers were scrapped on 14 June 2017 and that disciplinary proceedings were officially opened against the Appellant by the Disciplinary Committee on 6 February 2018.

c) Are the sanctions imposed on the Appellant proportionate?

92. Having determined that *force majeure* was not a valid excuse for the Appellant's failure to comply with the CAS Arbitral Award, the Sole Arbitrator next turns to whether the sanction imposed by the Disciplinary Committee was proportionate.

93. In accordance with the provisions of Article R57 of the Code, the power of review of the present appeal *"is limited to the issues addressed in the challenged decision and not to the decision prior to that"* (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, 2015, p. 522). As a result, the Sole Arbitrator's power to review is restricted to the sanction imposed by the Disciplinary Committee, with respect to its legal basis and *quantum*.

94. At the hearing, the Appellant objected to the calculation set forth in the CAS Arbitral Award,

namely in assessing compensation using gross rather than net payments. More precisely, the Appellant requested the Respondent to interpret the amount due and to revise its position in order to deduct the taxes that were included in the CAS Arbitral Award. In other words, the Appellant preferred a calculation on a net amount basis with a view to facilitating the settlement of its obligations towards the Player.

95. The Respondent, rightly so, expressed its disappointment with the Appellant's request considering that the Appellant had significant time to contact FIFA and suggest this proposition prior to the hearing of the present dispute. Such a submission at the time of the hearing is not resourceful, and simply too late.

96. Nevertheless, the Sole Arbitrator confirms that such a request, i.e. whether or not to consider net or gross payment when calculating the compensation due to the Player, is not only beyond the scope of the parties' legal arguments but also beyond the scope of his power of review.

97. Article 64(1) of the FIFA Disciplinary Code dictates that in case of a violation such as the one committed by the Appellant in this case: i) the club concerned will be fined; ii) the club concerned will be granted a final deadline before sanctions are implemented; and iii) the club concerned will be warned and notified that in case of continued failure to comply with the decision, points will be deducted, relegation to a lower division may be ordered, and/or a transfer ban may be pronounced.

98. The Sole Arbitrator observes that the FIFA Disciplinary Committee complied with the terms of Article 64(1) FIFA Disciplinary Code in the sense that it imposed a fine of CHF 20,000 on the Appellant and warned and notified the Appellant that in case of persistent failure to comply with the DRC Decision, six points would be deducted from the first team of the Appellant in the domestic league championship.

99. According to Article 15, para 2 of the FIFA Disciplinary Code, the fine associated with any such sanction *"… shall not be less than CHF 300, or in the case of a competition subject to an age limit not less than CHF 200, and not more than CHF 1,000,000"*.

100. The fine imposed on the Appellant is reasonable and in line with the well-established FIFA practice in comparable cases. Any reduction of the fine would compromise the deterrent effect of the sanction and would therefore discourage the prompt fulfilment of the Appellant's obligations. And as it appears from consistent CAS jurisprudence, a reviewing panel should give a certain degree of deference to decisions of sports governing bodies in respect of the proportionality of sanctions (CAS 2016/A/4595; CAS 2004/A/690; CAS 2005/A/830; CAS 2006/A/1175; CAS 2009/A/1917).

101. Regarding the six-point deduction, the Sole Arbitrator notes that Article 64, para. 3 of the FIFA Disciplinary Code is applicable, whereby the number of points deducted must be proportionate to the amount owed. Considering the amount owed in this case, the Sole Arbitrator deems that a six-point deduction is well within the range of disciplinary points sanctions handed out by the FIFA Disciplinary Committee over the course of its established practice in the past, including those which have been unsuccessfully challenged before CAS.

Further, the Sole Arbitrator's reasoning applied in paragraph 100 above regarding the proportionality of the fine also applies equally to that of the associated six-point deduction.

102. Moreover, the Sole Arbitrator recalls that *"the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rule can be reviewed only when the sanction is evidently and grossly disproportionate to the offence"* (CAS 2012/A/2762; CAS 2013/A/3139; CAS 2009/A/811-844).

103. The Sole Arbitrator is not convinced by the arguments put forward by the Appellant to justify its request to lift the fine and/or six-point deduction. In consideration of the Appellant's blatant failure to meet its financial obligations, together with all the other specific circumstances of the present case, the Sole Arbitrator is of the opinion that the fine and six-point deduction imposed on the Appellant was *"not evidently and grossly disproportionate"*.

104. Therefore, the Sole Arbitrator finds that the disciplinary sanction imposed on the Appellant by the Disciplinary Committee is proportionate and shall be confirmed.

105. Any other claims or requests for relief are rejected.

IX. CONCLUSION

106. The Sole Arbitrator concludes that the Appealed Decision of the Disciplinary Committee shall be affirmed in its entirety as the Appellant violated Article 64 of the Disciplinary Code.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Appellant on 20 June 2018 against the Decision issued on 6 March 2018 by the Disciplinary Committee of the Fédération Internationale de Football Association is dismissed.

2. The Decision issued on 6 March 2018 by the Disciplinary Committee of the Fédération Internationale de Football Association is confirmed.

3. (…).

4. (…).

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