

# Decision of the Dispute Resolution Chamber

passed on 15 December 2022

regarding an employment-related dispute concerning  
the player **Diego Fernando Dorregaray**

## COMPOSITION:

**Omar Ongaro (Italy)**, Deputy Chairperson  
**Daan De Jong (The Netherlands)**, member  
**Alexandra Gomez Bruinewoud (Uruguay/The Netherlands)**, member

## CLAIMANT / COUNTER-RESPONDENT:

**Ismaily SC, Egypt**  
Represented by Nasr El Din Azzam

## FIRST RESPONDENT / COUNTER-CLAIMANT:

**Diego Fernando Dorregaray, Argentina**  
Represented by Ricardo Alipaz

## SECOND RESPONDENT:

**Club Nea Salamina Famagusta, Cyprus**  
Represented by George Christofides

## I. Facts of the case

1. On 14 January 2022, the Egyptian club Ismaily SC (hereinafter: *Ismaily*) and the Argentinean player Diego Fernando Dorregaray (hereinafter: *the Player*) concluded an employment contract (hereinafter: *the Contract*) valid until the end of season 2025/2026.

2. Art. 2 of the Contract reads *inter alia* as follows:

*"The two parties agreed on value of the contract gross amount of USD 1,506,666 to be distributed as follows:*

*First season value 2021/2022 an amount of USD 173,333 divided as follows:*

*1<sup>st</sup> instalment an amount of USD 86,666 paid on 14/01/2022*

*2<sup>nd</sup> instalment an amount of USD 10,666 paid on 01/02/2022*

*3<sup>rd</sup> instalment an amount of USD 10,666 paid on 01/03/2022*

*4<sup>th</sup> instalment an amount of USD 10,666 paid on 01/04/2022*

*5<sup>th</sup> instalment an amount of USD 10,666 paid on 01/05/2022*

*6<sup>th</sup> instalment an amount of USD 10,666 paid on 01/06/2022*

*7<sup>th</sup> instalment an amount of USD 33,337 paid on 01/08/2022*

*Second season value 2022/2023 an amount of USD 293,333 divided as follows (...)*

*Third season value 2023/2024 an amount of USD 320,000 divided as follows (...)*

*Fourth season value 2024/2025 an amount of USD 346,666 divided as follows (...)*

*Fifth season value 2025/2026 an amount of USD 373,333 divided as follows (...)"*

3. Art. 6 of the Contract reads *inter alia* as follows:

*"The player shall receive an amount of EGP 7,000 only per month for accommodation.*

*The player acknowledges that he has read all the terms of the financial and administrative regulation for the first football team and has received a copy of it. He also acknowledges that comply with all the obligations and penalties in this regulation."*

4. The Ismaily Sporting Club Financial Regulations for the First Team (hereinafter: *Ismaily's Financial Regulations*) include *inter alia* the following provisions:

*"This regulation is complementary and complementary to the-player's contract with the club during the term of the contract and shall be deemed an integral part thereof*

*(C) Participation Rate:*

*25% of the value of the player's contract is set aside and paid after the end of the season, in case he participates in 80% of the matches."*

5. On 17 January 2022, Ismaily paid the amount of USD 60,000 to the Player.
6. On 23 May 2022, the Player sent a default notice to the Ismaily requesting the amount of USD 42,998 granting a deadline of 15 days to comply, to no avail, calculated as follows:

	Payment due date	Amount
Remaining 25% of the 1st Installment	04 of January of 2022	Remaining of \$us. 21.666
100% of the 2nd Installment	01 of February of 2022	\$us. 10.666
100% of the 3th Installment	01 of March of 2022	\$us. 10.666
<b>Total Debt</b>		<b>\$us. 42,998.-</b>

7. On 27 May 2022, the Player's representative sent a notice to Ismaily requesting *inter alia* the return of the Player's passport, to stop the harassment against him and to provide an explanation for training separated from the main squad.
8. On 5 June 2022, Ismaily invited the Player to a meeting on the following day.
9. On the same day, the Player sent a default notice requested to be returned his passport and to be paid the amount previously requested.
10. On 7 June 2022, Ismaily sent a notice stating that the Player attended the meeting and rejected to received his financial dues in the amount of USD 21,325, that it was the Player who failed to comply with his contractual obligations.
11. On the same day, the Player replied stating that Ismaily owed him the amount of USD 40,000 net, requested the tax certificates, to have his passport returned and that the Player had committed several breaches such as: *"a) to separate the player training alone in the training sessions, b) illegally withholding the passport, c) not fulfilling its financial obligations for more than 60 days d) violating his fundamental rights by trying to force him to sign documents without the presence of a translator and locked in a room."*

	Payment Day	Gross Amount	Net Amount (Minus 25%)
100% of the 2nd Installment	01 of February of 2022	USD. 10.666	USD. 8.000
100% of the 3th Installment	01 of March of 2022	USD. 10.666	USD. 8.000
100% of the 4th Installment	01 of April of 2022	USD. 10.666	USD. 8.000
100% of the 5th Installment	01 of April of 2022	USD. 10.666	USD. 8.000.-
100% of the 6th Installment	01 of April of 2022	USD. 10.666	USD. 8.000
<b>Total Debt</b>		<b>USD 53.330</b>	<b>USD.- 40.000</b>

12. The Player granted *"5 more days to the Club in order to fulfill your financial obligations, by paying USD 40,000.- or at least USD 24,000 (due payments). You can pay the Player with a Check."*
13. On 9 June 2022, Ismaily replied stating that the amount requested was wrongly calculated that *"the net value of the Contract for the Player for the first half season is USD 130,000 and he received 50% on signing the contract for net value USD 65,000 and USD 37,500 to be on hold and will be released at the end of the season 2021/2022 on 31 of August 2022, and he will be entitled to receive this amount if the player participate for 80% of matches as per Ismaily SC terms and conditions of regulations"*. Furthermore, Ismaily offered the amount of USD 24,000 as final settlement amount and that the cheque is available for collection by the Player *"without any force"* at any time from today.
14. On 12 June 2022, the Player received a cheque of USD 30,000 and signed a document titled *"declaration"* (hereinafter: *the Declaration*). In this document, the Player confirmed he had received all his due amounts until 12 June 2022 after deducting due taxes and expenses. The Player further states that *"I am cancelling all the previous notices that I sent to the club"*.
15. On 19 June 2022, the Player sent a notice of termination adducing just cause. In this notice the Player states that he had not been able to cash the cheque given by the club due to insufficient funds in the club's account.
16. On 20 June 2022, Ismaily replied to the notice of termination contesting the grounds of such termination and informing that the passport will be returned within 48 hours.

17. On 23 June 2022, a representative of Ismaily handed the passport of the Player at the Argentinean Embassy in Egypt.
18. On 29 July 2022, the Player signed an employment contract and an image rights contract with the Cypriot club Nea Salamina Famagusta (hereinafter: *Salamina*) with a total remuneration of EUR 110,000.

## II. Proceedings before FIFA

19. On 2 August 2022, Ismaily filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

### a. Position of Ismaily

20. According to Ismaily, the Player terminated the contract without just cause.
21. Ismaily states that it *"was trying hardly to settle any conflict with the Player, the Club already showed its willingness to settle the due payments with the Player until the end of the season 2021/2022 whereby the Club fulfilled its financial obligation towards the Player by sending the Player a check with an amount of USD 21,325 followed by a transfer of amount USD 30,000"*.
22. In the view of Ismaily, by means of the Player's acceptance and declaration of 12 June 2022, the Player waived his right to claim or object on the same payments. Ismaily underlines that the Player explicitly stated that: *"Secondly, I agreed and confirm that I am cancelling all my previous notices that I sent to the Club whether from me or from my representatives."*
23. Since the Player waived his right in the previous notices, he should have sent another notice with a new duration in order to provide the Club with sufficient period of time to fix any default.
24. In relation to the rejection of the bank cheque, Ismaily states that *"the Club's bank ("CIB") has declared that Club's bank account as of 19 June 2022 had EGP 3,010,295.85 which covers sufficiently the due amount for the Player equivalent to USD 21,325."*
25. In regard with the Player's accommodation, Ismaily states that it has been paying the hotel accommodation for the Player through more than 5 months whereby the Contract stated that the Player should receive EGP 7,000 per month for accommodation.
26. It further states that *"since the Player was accommodated with his family in a 5-star hotel costs around USD 2,000, the Club was paying the amount stated in the Contract while the Player bore the rest amounts USD 1,500 that was deducted from his salary"*.

27. For all the above, Ismaily deems that the Contract was terminated without just cause by the Player and therefore, Ismaily is entitled to a total compensation of USD 2,753,623 plus interest, calculated as follows:

- USD 1,366,669 as residual value of the Contract.
- USD 222,222 as unamortised transfer fee.
- USD 1,018,066 as "loss profit amounts the current market value of the Player"
- USD 146,666 equivalent to six-month salary

28. Ismaily filed the following requests for relief:

1. *The Claimant's claim to be held admissible*
2. *The Player's termination of the contract is without just cause*
3. *The Player has breached the Employment contract through his bad faith acts*
4. *The Claimant is entitled to financial compensation from the Player of total amount of USD 2,753,623*
5. *The Respondent shall be sanctioned by a sporting sanction 6 months.*

#### **b. Position & Counterclaim of the Player**

29. According to the Player, the signature of the Declaration "*was executed before he presented the cheque at a bank to collect the money*" and the cheque could not be cashed because the cheque account had insufficient funds. In proof of the foregoing, the Player provides a copy of the Bank Report which states that the reason for rejection was "*Insufficient Funds, partial Payment Refused Without any responsibility Related to Commercial International Bank*".
30. The Player further states that after more than 15 days had elapsed since the default notice of 23 May 2022, plus the 5 additional days granted, "*when it became clear that [Ismaily] had no funds to pay the agreed amount, that the tax certificate was still not delivered, and that the passport was still withheld, there was no choice but to terminate the employment relationship.*"
31. In the view of the Player, "*the fact that the PLAYER had signed that he declared himself settled and waived his claims when collecting the cheque that settled the dispute, preventing the PLAYER from claiming regardless of the fact that the cheque had no funds, is an argument that should not be taken into account as ridiculous and contrary to any professional practice of law*".
32. The Player sustains that on 1 February, 1 March, 1 April and 1 May, he should have received USD 10,666, thus he was owed 4 months' salary.

33. The Player further sustains that at the time of the termination of the Contract, Ismaily owed him 5 monthly salaries, corresponding to the months of February until June 2022. Moreover, from the time of the default notice until the termination, more than the 15 days required by the regulations had elapsed.
34. In the view of the Player, despite all its arguments, Ismaily had acknowledged owing him USD 30,000 at the time of the Declaration, *"which is unequivocally equivalent to more than 2 months' salary. The application of art 14bis is objective."*
35. The Player states that the allegation that he did not want to be paid are a false, reckless and unfounded assertion.
36. For the above, the Player deems that he terminated the Contract with just cause on 19 June 2022 and he is entitled to outstanding remuneration and compensation
37. The Player requests the amount of USD 53,330 plus 5% interest from the relevant dates as outstanding remuneration.
38. The Player further requests that Ismaily is ordered to pay as compensation the sum of USD 1,426,669,000 plus the corresponding interest, for the following concepts:
  - Residual value of the contract: USD 1,366,669.
  - Mitigated Compensation: USD 1,256,669.
  - *"Damages for Specificity of Sport"*: USD 63,996.
39. The Player filed the following requests for relief:

*"By virtue of all of the above, this Court is requested to reject all the arguments and petitions presented by Club Ismaily SC, and in accordance with the regulations in force and application of the aforementioned precepts and the jurisprudence of this court, to order the Club to:*

*1. To pay the sum of USD 1,373,998, to Player*

- a. USD 1,320,665 as compensation for termination with just cause for non-payment of wages*
- b. USD 53,330 for wages due for the months of February to June 2022.*

*2. To pay 5% interest from*

- a. 5% on the 1,320,665 from 19th June 2022*
- b. 5% on the 10,666 corresponding to the February payment, from 1 February 2022*
- c. 5% on the 10,666 corresponding to the March payment, as from 1 March 2022*
- d. 5% on the 10,666 corresponding to the April payment, as from 1 April 2022*
- e. 5% on the 10,666 corresponding to the May payment, as from 1 February 2022*

*f. 5% on the 10,666 corresponding to the May payment, as of 1 February 2022*

*3. Provide the tax certificates proving the payment of the withholdings made on the amounts paid to the player.*

*4. That the Club be condemned to the appropriate sporting sanctions due to the termination with just cause during the protected period in accordance with art 17.4 of the RETJ.*

*5. That, in accordance with article 24bis of the RETJ, when the CLUB is ordered to pay the sum claimed, at the same time it should stipulate the consequences of the failure to pay them on time; consequences which should be included in the operative part of the decision and which should be "the prohibition to register new players, both at national and international level, until the amounts owed are paid", for up to three complete and consecutive periods and additionally impose fines for the failure to pay.*

*6. Order the Club to pay the PLAYER an amount equivalent to USD 20,000 as a contribution to legal costs.*

*7. The Club is ordered to pay all legal costs of these proceedings."*

### **c. Position of Salamina**

40. Salamina states on 17 August 2022, after the signature of its employment contract with the Player, it signed a private agreement which provides that in case that an employment or any other kind of dispute arise between the Player and his former Club, the Player is responsible to pay any possible financial or any kind of penalties. He also confirmed that the Club did not induce the Player to terminate its contract with Ismaily.

41. Salamina further states that pursuant to the documents on file, *"it appears that the termination of its contract with [Ismaily] was made with just cause due to the unpaid salaries owed by [Ismaily] and the abusive behavior that the player faced in Egypt by the officials of [Ismaily]. Therefore, the football tribunal must reject in its totality the Claim of [Ismaily]. The player did not breach its contract with [Ismaily] and therefore, no inducement can be established".*

42. Salamina filed the following requests:

*1. Reject the Claim of the Claimant as described in para 50 sub-paras 1, 2, 3, 5 &6.*

*2. Declare that the first respondent has terminated its contract with the Claimant with just cause.*

*3. Declare that the second respondent did not induce the player to terminate its contract with the Claimant*



#### d. Ismaily's answer to the Counterclaim

43. Ismaily states that it *"fulfilled its obligations related to the accommodation and paid to the Player an amount of EGP (7,000) which is equivalent to an amount of USD 445-/ at the exchange rate when the contract has signed, but the Player who was putting the Club on the pressure when he asked the Club to pay for the accommodation more than they agreed by article 6 of the Contract "i.e. more than he entitled to", which consider bad faith from the Player's side" Whereas, the Player insisted to stay in a villa at five stars "Mercurie Hotel", the rent to this hotel is an amount of USD 2000 per month."*
44. Ismaily sustains that *"those amounts should be deducted from the Player's salary since it was the Player's desire to stay on this hotel upon his agreement with the Club and as finally confirmed by his signature for receiving all his due amounts remaining from the Club before he terminated his contract without just cause"*.
45. Ismaily argues that the Player denied his knowledge that *"there is a percentage of 25% of the total value of the Contract for each season as variable salary to be pending until the end of the season and will be released to the Player at the end of the season after the Player participating in 80% of the official matches during the season, although, the Player himself acknowledged by the article 6 para 7 of the Contract that he has read all the terms of the financial and administrative regulation of the Club's first team and he accepted these regulations and its terms and received a copy of these regulations, hence, it is became an integral part from the Employment Contract and all its terms contractually agreed"*.
46. Ismaily sustains the Player refused to receive the balance of his dues which was corresponding to an amount of USD 21,325. Ismaily further sustains that afterwards it *"tried to transfer the payment through the Player's bank account in "CIB BANK" but the Club was surprised, without any reason, that the Player's bank account has been closed by the Player himself, which is proved the bad faith of the Player, as he tried to put more obstacles in front of the Club until not to be able to fulfill its financial obligations"*.
47. Ismaily underlines that on 7 June 2022, after the Player was aware that he had requested the wrong amounts on 23 May 2022, he sent another letter to request the Club to pay him an amount of USD 40,000 and *"the Club was granted just (5) days by the Player, although, he changed his claims that requested by the letter dated 23 May 2022, and thus, he should have been granted the Club a new deadline of (15) days according to article 14bis of FIFA-RSTP"*.
48. Ismaily is of the opinion that the net value of the first half season of the Contract is USD 130,000 and the Player has already received 50% of it, which amounts USD 65,000.
49. The remaining USD 37,500 are to be on hold and released at the end of the season 2021/2022 on 31 August 2022 if he participated for 80% of the matches as per Ismaily's Financial Regulations.
50. At the time of the signature of the Declaration, the Player received the cheque of USD 30,000 and confirmed that all his dues amount has been settled until the end of the season, after deducting

the taxes and all expenses bore by the Club on his behalf *"as well as he waived and cancelled of all his previous notices"*.

51. Ismaily sustains that the problem cashing the cheque was due to the fact of cashing the amount in a different currency to the original country currency. In this regard, Ismaily deems that the Player should have informed Ismaily to resolve any required internal procedures with the bank since Ismaily *"had enough funds in its accounts at the bank but in light of the global economic problems and especially in Egypt providing foreign currency may need additional procedures"*. Notwithstanding the above, the Player chose to terminate the Contract directly without informing Ismaily of any problem cashing the cheque.
52. Ismaily argues that after the cheque was not cashed, it tried to make a transfer into the Player's account but was informed that the Player had closed his bank account *"this clear bad faith proves the Player intentional unilateral termination without just cause, just to move to new club and he is fully aware of his breach and never raised any claim against the Club after he terminated the Contract and only after receiving the claim of the Club after 3 months of his breach he filled this unfounded counterclaim to try escape from his clear violations."*
53. Ismaily submits evidence issued its bank CIB proving that the Club's credit, until 19 June 2022, was an amount of EGP 3,010,295.85 and *"if the Player merely informed the Club of this minor procedural problem"* it could have been resolved.
54. On the other hand, Ismaily provides a certificate of the Egyptian Football Association stating that *"all player's employment contracts are subject to income taxes according to Egyptian laws, and all contracts above of 400,000-/ Egyptian Pounds shall subject to 25% of income taxes"*.
55. Ismaily submits that *"it sufficiently proved and established that not only the Player accepted as per the Contract that all his payments are subject to applicable taxes, but also that the Club did remit such taxes to the Taxes Authority."*
56. Regarding the matter of the passport, Ismaily underlines that it *"never intended to retain his passport for any unlawful or illegitimate purpose, the Club provided back the Player with his passport after he unilaterally terminated the Contract when it was no longer needed to be with the Club although the latter was able to retain the Player's passport on the basis that it does not recognize the Player's unlawful unilateral termination"*.
57. Regarding the separation from training, Ismaily states that *"the Player was merely instructed to train with a small group of unfit players for only a few days as an assistance for him to lose some weight and be fit again in order to contribute to the Club's matches regularly"*.
58. As for the imposition of fines, Ismaily states that its *"head coach (at that time), Mr. Hamad Ibrahim, informed all the 36 players on the pitch before the next training session that they got sanctioned with EGP 50,000, and assured to them that increasing the training sessions is a temporary decision until the"*

*Claimant escapes from the relegation zone, and told them that any player, anyways, wants to contest this disciplinary decision shall contact the [Ismaily's Board of Directors]"*.

59. Ismaily sustains that *"No single player, including the Player, contested this disciplinary sanction,"* and *"Accordingly, after the Claimant's players kept all silent towards the financial sanction of EGP 50,000 for approximately ten days, the Claimant proceeded with implementing the sanction to keep its reputation intact since the incident was a trendy rebellion incident on media."*
60. Ismaily argues that the Player falsely alleged that the Club failed to pay his salaries for 6 instalments, which is *"totally untrue, as the Club fulfilled all its financial obligations towards the Player"*, itemized as follows:
- *"According to article 2 para 1 that the total value of the Contract GROSS amount of USD 1,506,666- /, divided into 4 seasons. For the first season 2021/2022, the Player shall receive GROSS amount of USD 173,333.*
  - *According to article 4 para. 6 of the Contract, the Player should bear the income taxes arisen by the Contract according to Egyptian law, and thus, a percentage of 25% shall be deducted. Consequently, after deducting the taxes the total value of the contract is equal an amount of USD 130,000.*
  - *After the Player signed the Contract, an amount of USD 65,000 has been paid by cheque which has been cashed from the bank by the Player without facing any issues, which is means that the Player received 50% of the total value of his contract.*
  - *According to article C of the Club's financial regulation:*  
  
*"25% of the value of the Player's contract is set aside and paid after the end of the season, in case he participates in 80% of the matches"*
  - *According to the above-mentioned article, a percentage of 25%, equivalent to USD 32,500 should be hold and will be released in case the Player participates in 80% of the matches during the season.*
  - *An amount of USD 3,175 has been deducted for the sanctioned imposed on the Player on 28 March 2022.*
  - *An amount of USD 7,500 has been deducted for the Player's accommodation."*
61. In line with all the above, *"until the date of the first letter 24 March 2022, the remaining amount was equal to USD 21,325, while the Player, in bad faith, demanded from the Club to pay him an amount of USD 42,998"*.

62. Ismaily deems that the Player justified his termination *“by unreasonable reasons”*.
63. Ismaily insists that the Player *“waited for 7 days without cashing the said amount, although he and his representative knew very well that currently Egypt has a huge problem regarding cashing the foreign currency. Therefore, if he faced an expected a problem like this, he should have notify (sic) the Club to solve this problem, not to exploits the situation to justify his escaping from implementing the contractual obligations and terminate the contract in order to sign with another club.”*
64. Ismaily further insists on the fact that the Player had waived his right in the previous notices, therefore *“he should have sent another notice with a new duration in order to provide the Club with sufficient period of time to fix any assumed problem, and thus, the termination made by the Player on 19 June 2022 is considered invalid and without just cause”*.
65. As an alternative request, if the DRC finds that the Club is in a default, the Player shall not be entitled to any compensation.
66. Ismaily argues that *“Since it was super easy for the Player to join another club in Egypt or the MENA Region with at least the same salary he was collecting from the Club, and since he insisted to return home to Always Ready FC, he shall be deemed to be in breach of his duty to mitigate his damages. Consequently, the Player’s compensation, if any, shall be significantly mitigated based on his breach of his obligations to mitigate his damages according to all the aforementioned.”*
67. Ismaily amended its requests for relief as follows:
- 1) *To admissible this claim.*
  - 2) *To Consider that the Player’s termination of the contract is without just cause.*
  - 3) *To Condemn the Player and the new club jointly or individually to pay Al Ismaily Club an amount of USD (2,753,623) plus 5% interest, as compensation due to termination of the Contract without just cause.*
  - 4) *The Player shall be sanctioned by a sporting sanction 6 months according para 3 article 17 of FIFA RSTP.*
  - 5) *The New Club shall be sanctioned by sporting sanction banning from registering any new player whether national or international for two transfer window, as the new club induced the player to terminate his contract prior to its expiry date with Al Ismaily SC, according to para 4 article 17 of FIFA RSTP.*
  - 6) *To reject the counter-claim.*
  - 7) *Alternatively, if it is ruled that the Player terminated the Contract with just cause, he should not be entitled to any compensation of any kind whatsoever.*

8) *Alternatively, if any compensation has to be awarded to the Player, it shall be significantly mitigated as detailed and explained above.*

9) *As a consequence of the above, to condemn the Player to pay all expenses and costs of the present proceedings, if any.*

### **III. Considerations of the Dispute Resolution Chamber**

#### **a. Competence and applicable legal framework**

68. First of all, the Dispute Resolution Chamber (hereinafter also referred to as Chamber or DRC) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 2 August 2022 and submitted for decision on 15 December 2022. Taking into account the wording of art. 34 of the October 2022 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: the Procedural Rules), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
69. Subsequently, the members of the Chamber referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (October 2022 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an Argentinean player and an Egyptian club.
70. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (October 2022 edition), and considering that the present claim was lodged on 2 August 2022, the October 2022 edition edition of said regulations (hereinafter: the Regulations) is applicable to the matter at hand as to the substance.

#### **b. Burden of proof**

71. The Chamber recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Chamber stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

### **c. Merits of the dispute**

72. Its competence and the applicable regulations having been established, the Chamber entered into the merits of the dispute. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

#### **i. Main legal discussion and considerations**

73. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly dispute the justice of the early contractual termination made by the Player on 19 June 2022.

74. In this context, the Chamber acknowledged that it its task was to determine whether the Player had just cause to terminate the Contract and in the affirmative, what consequences shall arise.

75. The Chamber emphasised that the first point which shall be determined is what specific amount was due to the Player at the time of the default notice(s) and at the time of termination considering the conflicting positions of the parties in this regard.

76. Firstly, the Chamber referred to the provision contained in Article C of Ismaily Financial Regulations which states that:

*“(C) Participation Rate:-*

*25% of the value of the player’s contract is set aside and paid after the end of the season, in case he participates in 80% of the matches”.*

77. In view of the foregoing, the Chamber deemed that it was necessary to first analyse whether intended reduction of the player’s salary made by the club was indeed lawful. In this context, the Chamber highlighted that, in general, potestative clauses – i.e. clauses dependent on an event which can only be triggered by one of the contractual parties and upon the latter’s wish – cannot be applied, as they limit the rights of the contractual counterparty in an excessive manner and lead to an unjustified disadvantage of the latter.

78. The Chamber understands that clause C of Ismaily Financial Regulations is clearly potestative as it unilaterally provides all the power to the club to decide upon a considerable reduction of the Player’s salary by 25% by deciding to field the Player in matches or not. In spite of the fact that the aforementioned clause is included in a valid agreement complementary to the Contract voluntarily signed by both parties, the Chamber acknowledges the usual imbalance in the bargaining power of the employer and of the employee and therefore decided that such clause has a clearly abusive nature and shall not have any legal effect in the relevant employment relationship.

79. On account of the aforementioned, the Chamber decided that Ismaily's argument in favour of the reduction of 25% of for calculating the Player's remuneration is to be rejected. As a consequence, the salary of the Player should be calculated based on the terms of the Contract exclusively.
80. Secondly, the Chamber turned to the conflicting position of the parties regarding the tax liability and the entitlement of Ismaily to deduct 25% of the salary at source.
81. In this regard, the Chamber observed that art. 2 of the Contract clearly specifies that the remuneration of the Player is "gross". Thus, notwithstanding the parties' respective positions in this regard, based on the principle of *pacta sunt servanda* and *in claris non fit interpretatio*, the Chamber was comfortable in the determination that the remuneration agreed in the Contract is to be paid to the Player and he is responsible for the payment of all his tax liabilities towards the Egyptian tax authorities.
82. Subsequently, the Chamber turned to the arguments regarding the signature of the Declaration and the cheque which the Player was not able to cash.
83. The Chamber deemed that, despite the Declaration being poorly drafted, all concessions and waivers made by the Player were conditional upon him receiving the money agreed therein. Thus, the possession of the cheque is not the relevant fact and Ismaily's obligations would not be fulfilled until the Player was able to receive the money committed to him.
84. The Chamber further observed that Ismaily had changed its initial position in this regard. Whilst at the initial claim Ismaily deems that it had sufficient funds to cover the amount specified in the cheque, in the answer to the counterclaim Ismaily acknowledges the existence of a "*minor procedural mistake*".
85. Furthermore, the Chamber turned to the evidence on file and noted that the Player had provided sufficient evidence regarding his impossibility to cash the cheque (i.e. the certificate of the bank) and, on the opposite, Ismaily had not provided evidence that its account had enough funds to cover the amount committed in the cheque, in the currency specified therein (i.e. USD). Consequently, the Chamber confirmed that the Declaration shall be set a side and produce no legal effect.
86. Having established the above, the Chamber underlined that the amount specified in the cheque, USD 30,000. Thus, by issuing the cheque, the Respondent admitted tacitly owing an amount equivalent to almost 3 monthly salaries under the Contract.
87. Furthermore, based on the evidence on file, the Chamber underscored that the Player had sent four default notices between May and June 2022 and that with the impossibility of cashing the cheque at that point, the Player could reasonably believe that Ismaily was not going to comply with its financial obligations.

88. Thus, the Chamber concluded that the Player had a just cause to unilaterally terminate the Contract, based on art. 14 of the Regulations due to outstanding salaries.

## ii. Consequences

89. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by Ismaily.

90. The Chamber observed that the outstanding remuneration at the time of termination was equivalent to 5 monthly salaries under the contract, amounting to USD 53,330.

91. At this point, the Chamber turned to the allegation of Ismaily that the amount due shall be reduced due to a disciplinary fine imposed on the Player. In this regard, the Chamber underscored that Ismaily did not provide any consistent evidence that the Player was duly informed or whether a disciplinary process had been followed (if any) against the Player. Hence, the Chamber decided that no deduction could validly be made for based on this concept.

92. The Chamber moved to the accommodation costs and observed that based on art. 6 of the Contract, the Player was entitled to EGP 7,000 as accommodation allowance.

93. However, Ismaily states that it incurred in costs of USD 2,000 per month due to the Player's choice of accommodation. In support of this, Ismaily provides an invoice from the hotel which includes a total debit of EGP 130,811.85, equivalent to approximately USD 6,965.

94. The Chamber underlined that the aforementioned figure does not match the figure Ismaily intends to deduct. Furthermore, the Chamber was convinced that whilst it was true that Ismaily incurred on higher costs regarding the accommodation of the Player, however Ismaily had failed to produce any reasonable explanation or evidence which could justify the over-payment above the amount the Player was entitled to for this concept. Therefore, the Chamber was comfortable in the determination that no deduction could validly be made for this concept either.

95. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that Ismaily is liable to pay to the Player the amounts which were outstanding under the contract at the moment of the termination, i.e. USD 53,330 (i.e. 5 times USD 10,666).

96. In addition, taking into consideration the Player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Player interest at the rate of 5% p.a. on the outstanding amounts as from the respective due dates until the date of effective payment.

97. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the Player by the club in the case at stake. In doing so, the Chamber firstly recapitulated



that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including 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, and depending on whether the contractual breach falls within the protected period.

98. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
99. As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the Player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
100. Bearing in mind the foregoing as well as the claim of the Player, the Chamber proceeded with the calculation of the monies payable to the Player under the terms of the contract from the date of its unilateral termination until its end date. Consequently, the Chamber concluded that the amount of USD 1,366,669 (i.e. the residual value) serves as the basis for the determination of the amount of compensation for breach of contract.
101. In continuation, the Chamber verified as to whether the Player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the Player's general obligation to mitigate his damages.
102. Indeed, the Player found employment with Salamina. In accordance with the pertinent employment contract and image rights agreement, the Player was entitled to EUR 110,000, equivalent on the date of signature to USD 111,992. Therefore, the Chamber concluded that the Player mitigated his damages in the total amount of USD 111,992.
103. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a Player is entitled to an amount corresponding to three or more monthly salaries, depending on the presence of egregious circumstances, as additional compensation, should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the termination took place due to the existence of overdue amounts and therefore

the Player shall be entitled to additional compensation, in accordance with art. 17 par. 1 lit. ii) of the Regulations.

104. As for the circumstance of the termination, the Chamber was convinced that Ismaily had conducted in a way which qualifies as egregious conduct, such as withholding the passport of the Player for several months and forcing him to train in isolation in addition to the lack of payment of the salaries as specified above. Thus, the Chamber deemed that the additional compensation applicable in the present case exceeds the standard threshold of three months and thus decided to award the amount of additional compensation of USD 53,330, i.e. five times the monthly remuneration of the Player.
105. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that Ismaily must pay the amount of USD 1,308,007 to the Player (i.e. USD 1,366,669 minus USD 111,992 plus USD 53,330), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
106. Lastly, taking into consideration the Player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Player interest on said compensation at the rate of 5% p.a. as of 3 October 2022 until the date of effective payment.

### **iii. Compliance with monetary decisions**

107. Finally, taking into account the applicable Regulations, the Chamber referred to art. 24 par. 1 and 2 of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
108. In this regard, the DRC highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
109. Therefore, bearing in mind the above, the DRC decided that Ismaily must pay the full amount due (including all applicable interest) to the Player within 45 days of notification of the decision, failing which, at the request of the Player, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on Ismaily in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
110. Ismaily shall make full payment (including all applicable interest) to the bank account provided by the Player in the Bank Account Registration Form, which is attached to the present decision.

111. The DRC recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24 par. 8 of the Regulations.

#### **d. Costs**

112. The Chamber referred to art. 25 par. 1 of the Procedural Rules, according to which "*Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent*". Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.


113. Likewise, and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.

114. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

#### IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant / Counter-Respondent, Ismaily SC, is rejected.
2. The counterclaim of the First Respondent / Counter-Claimant, Diego Fernando Dorregaray, is partially accepted.
3. Ismaily SC has to pay to Diego Fernando Dorregaray, the following amount(s):
  - **USD 53,330 as outstanding remuneration** plus 5% interest *p.a.* as follows:
    - On USD 10,666 from 1 February 2022 until the date of effective payment;
    - On USD 10,666 from 1 March 2022 until the date of effective payment;
    - On USD 10,666 from 1 April 2022 until the date of effective payment;
    - On USD 10,666 from 1 May 2022 until the date of effective payment;
    - On USD 10,666 from 1 June 2022 until the date of effective payment;
  - **USD 1,308,007 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 4 October 2022 until the date of effective payment.
4. Any further claims of the parties are rejected.
5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
6. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:
  1. Ismaily SC shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.
  2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.
7. The consequences **shall only be enforced at the request of Mr Dorregaray** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.
8. This decision is rendered without costs.

For the Football Tribunal:



**Emilio Garcia Silvero**

Chief Legal & Compliance Officer

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**NOTE RELATED TO THE APPEAL PROCEDURE:**

According to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

**NOTE RELATED TO THE PUBLICATION:**

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 17 of the Procedural Rules).

**CONTACT INFORMATION**

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