CAS 2024/A/10279 Al Raed Sport Club v. JSC Football Club Rostov
CAS 2024/A/10280 JSC Football Club Rostov v. Mathias Antonsen Normann & Al Raed Sport Club & Fédération Internationale de Football Association (FIFA)
CAS 2024/A/10281 Mathias Antonsen Normann v. JSC Football Club Rostov

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Stephen Sampson, Solicitor in London, United Kingdom

Arbitrators: Mr Manfred Nan, Attorney-at-law in Amsterdam, the Netherlands

Mr Efraim Barak, Attorney-at-law in Tel Aviv, Israel

in the arbitration between

Al Raed Sport Club, Kingdom of Saudi Arabia

Represented by Mr Pedro Macieirinha and Mr Joaquim de Almeida Pizarro, Attorneys-at-law in Vila Real, Portugal

Appellant in CAS 2024/A/10279 / Respondent in CAS 2024/A/10280

and

JSC Football Club Rostov, Russia

Represented by Ms Anna Antseliovich and Mr Artem Patsev, Attorneys-at-law in Moscow, Russia

Appellant in CAS 2024/A/10280 / Respondent in CAS 2024/A/10279

and

Mathias Antonsen Normann, Norway

Represented by Mr Loizos Hadjidemetriou, Attorney-at-law in Nicosia, Cyprus

Appellant in CAS 2024/A/10281 / Respondent in CAS 2024/A/10280

and

Fédération Internationale de Football Association (FIFA), Switzerland

Represented by Mr Miguel Liétard, FIFA Litigation Department in Coral Gables, United States of America

Respondent in CAS 2024/A/10280

I. PARTIES

1. Al Raed Sport Club ("Al Raed") is a Saudi Arabian professional football club affiliated to the Saudi Arabian Football Federation ("SAFF") which is a member of the Fédération Internationale de Football Association ("FIFA").

2. JSC Football Club Rostov ("Rostov") is a Russian professional football club affiliated to the Football Union of Russia ("FUR"), which is a member of FIFA.

3. Mr Mathias Antonsen Normann (the "Player" or "Mr Normann") is a Norwegian professional football player born on 28 May 1996, currently playing for Al Raed.

4. FIFA is the international governing body of football. It is an association under Articles 60 et seq. of the Swiss Civil Code ("SCC") with its headquarters in Zürich, Switzerland.

5. Unless the context otherwise requires, in this Award Al Raed, Rostov and the Player are jointly referred to as the "Parties".

II. INTRODUCTION

6. The present appeal arbitration has its roots in the conflict caused by the invasion of Ukraine in February 2022 by Russian armed forces, at which time the Player was employed by Rostov. Approximately two and a half weeks before the expiry of his loan to FC Dynamo Moscow ("Dynamo"), on 3 August 2023, the Player terminated his employment contract with Rostov. On 16 August 2023, he entered into an employment contract with Al Raed.

7. The Player contends that the termination was with just cause whether because of the facts and circumstances that existed at that time or relying upon the legal principles of *force majeure* or *clausula rebus sic stantibus*. Rostov disagrees and filed a claim with the FIFA Dispute Resolution Chamber ("FIFA DRC"). The FIFA DRC agreed with Rostov and found the termination to be without just cause and the Player and Al Raed jointly and severally liable to pay Rostov EUR 2,923,507 plus interest at 5% *p.a.* from 3 August 2023 until the date of payment.

8. In brief summary, as the Player maintains his contention, he filed his appeal challenging both the finding of liability and, should this Panel find against him on liability, the quantum of the compensation, contending that it is too high. Rostov also filed an appeal challenging the quantum of the compensation, contending that it is too low. Al Raed also filed an appeal contending that the termination was with just cause, that the compensation awarded is too high and that it should not be jointly and severally liable. FIFA, as is its right, declined to submit any substantive comments on the dispute or to participate in the joined proceedings, instead referring the Panel to the reasoned decision of the FIFA DRC and requesting that the Panel resolve this "horizontal" dispute between the Player, Al Raed and Rostov.

III. FACTUAL BACKGROUND

9. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matters in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion that follows.

A. The Player's Employment with Rostov, Loans and Termination of his Contract

10. On 31 December 2019, the Player and Rostov entered into a fixed-term employment contract for the five-year period from 1 January 2020 until 31 December 2024 (the "First Employment Agreement"). The Player was accordingly 23 years old when he signed the First Employment Agreement.

11. On 28 August 2021, Rostov and the Player entered into a further fixed-term employment contract, for the one-year period from 1 January 2025 to 31 December 2025 (the "Second Employment Agreement"). The First Employment Agreement and Second Employment Agreement are jointly referred to as the "Employment Agreements".

12. According to the Employment Agreements, Rostov agreed to pay the Player:

    a. EUR 25,000 net per month from 31 December 2019 until 31 December 2025.

    b. Additional payments of EUR 255,000 net on 30 June and 31 December of each year.

13. On 30 August 2021, the Player, Rostov and the English club, Norwich City FC ("Norwich") entered into a loan transfer agreement (the "Norwich Loan Agreement"), under which the Player's registration and services were transferred on a temporary basis from Rostov to Norwich until 30 June 2022.

14. The Norwich Loan Agreement included, *inter alia*, a fixed loan fee of EUR 3,000,000 payable by Norwich to Rostov, contingent fees of EUR 2,000,000 and an option for the permanent transfer of the Player's registration and services against payment of a fee of EUR 13,000,000. Norwich did not exercise the option.

15. On 24 February 2022, the Russian Federation launched an armed invasion of Ukraine.

16. On 9 March 2022, FIFA issued Circular Letter no. 1787 and Annexe 7 to the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP" or the "Regulations") ("Annexe 7"), under which, *inter alia*, with immediate effect, a foreign player (like Mr Normann) was granted the right to suspend his employment contract with a club affiliated to the FUR (like Rostov) until 30 June 2022 and register with a new club. Annexe 7 was entitled *"Temporary rules addressing the exceptional situation deriving from the war in Ukraine"*; Circular Letter no. 1787 was entitled *"Temporary amendments to the [RSTP] addressing the exceptional situation deriving from the war in Ukraine"*. It stated "*[t]he temporary amendments approved as a result of the war in Ukraine will be periodically reviewed and removed accordingly.*"

17. On 20 June 2022, FIFA issued Circular Letter no. 1800 notifying that it had, *inter alia*, with immediate effect, extended the effect of Annexe 7 so that a foreign player was granted the right to suspend his employment contract with a club affiliated to the FUR until 30 June 2023 and register with a new club. Article 3 para. 1 of Annexe 7 (June 2022 edition) read as follows: "(...) *unless otherwise agreed between the parties, a contract of an international dimension between a player or a coach and a club affiliated to the FUR can be unilaterally suspended until 30 June 2023 by the player or the coach, provided that a mutual agreement with the club could not be reached before or on 30 June 2022*". Circular Letter no. 1800 stated "*[t]he temporary amendments approved as a result of the war in Ukraine will be periodically reviewed and removed accordingly.*"

18. On 24 June 2022, following the request from Rostov to the Player to return to the club no later than 1 July 2022, the Player notified Rostov of the suspension of his Employment Agreement per Annexe 7 until 30 June 2023.

19. On 2 September 2022:

    a. The Player signed a notice asking Rostov to "*renew the employment agreement*" from 5 September 2022;

    b. Rostov agreed to "*reactivate*" the employment agreement from 5 September 2022, so that it was no longer suspended;

    c. Rostov, the Player and Dynamo entered into a loan agreement by means of which the Player's services were transferred on a temporary basis from Rostov to Dynamo from 6 September 2022 until 20 August 2023 (the "Dynamo Loan Agreement").

20. The Dynamo Loan Agreement included, *inter alia*, a fixed loan fee of EUR 1,000,000 payable by Dynamo to Rostov, two contingent payments of EUR 250,000 payable if (a) the Player did not suspend his contract, and (b) he played in 60% of matches, and, by an Addendum, an option for the permanent transfer of the Player's registration and services for a fee of EUR 8,500,000. Dynamo did not exercise the option.

21. The Player and Dynamo signed an employment agreement valid for the duration of the Dynamo Loan Agreement.

22. On 10 May 2023, the international media reported drone attacks on three sites in Russian territory bordering Ukraine, in the Voronezh, Belgorod and Kursk regions.

23. On 22 May 2023, FIFA issued Circular Letter no. 1849 notifying regulatory amendments to Annexe 7. In particular, *inter alia*, with immediate effect foreign players who had left the territory of Russia were permitted to suspend their employment contract with a club affiliated to the FUR until 30 June 2024. But Annexe 7 now included certain limitations so that, *inter alia*, with immediate effect, the right to suspend no longer applied to foreign players who were currently registered with a club affiliated to the FUR. Circular Letter no. 1849 stated "*[t]he underlying rationale is that players and coaches who have, despite the escalation of the war in Ukraine, decided to stay in Ukraine or Russia, start employment in Ukraine or Russia or return to one of those*

countries in the meantime, cannot rely on Annexe 7 to suspend an ongoing contract. Therefore, Annexe 7 does not apply to: foreign players who, at the time this annexe enters into force and thereafter, are registered with a club affiliated to the UAF or FUR…"

24. On 4 June 2023, the Player left Russia for a period of holiday.

25. On or around 23 June 2023, international media reported an apparent insurrection by the Wagner Group, a mercenary or paramilitary group in the service of the Russian government. The Wagner Group were reported to have taken control of the headquarters of the Russian army's Southern Military District facilities in Rostov-on-Don. The Russian News Agency (TASS) reported that the Governor of the Rostov Oblast asked residents of Rostov-on-Don to remain at home and not travel into the city.

26. On 28 June 2023, the Player's agent, Mr Giovanni Santoro, contacted Rostov's Sporting Director, Mr Valery Ryskin, and sought to discuss the terms of a sale of the Player to Dynamo. Mr Ryskin stated that this was a matter between the clubs.

27. On 29 June 2023 the Player returned to Moscow. He had been informed by Rostov that he had to return by 1 July 2023. He considered the journey time from the airport to his residence took far longer than usual due to roads being closed and the presence of military personnel on some streets. The Player considered that Moscow was no longer a safe place to live.

28. Around the end of June 2023, Dynamo changed its Head Coach and notified Rostov that it would not exercise its option in the Dynamo Loan Agreement.

29. On 5 July 2023, the Player's representative sent a letter to Rostov, which stated:

"*The Law firm Monsen, by the undersigned, has been contacted by Mr. Mathias Normann (hereinafter the "Player"), through the Norwegian Players Association (NISO), and will assist the Player in the following. I kindly request that further correspondence related to the content of what is described below, is directed to the undersigned, preferable by e-mail: [...].*

Please find attached a duly signed Power of Attorney in this regard.

As well known for the Joint Stock Company Football Club Rostov (hereinafter the "Club"), the parties concluded an employment contract on 28 August 2021, valid until the end of 2024, but extended until 31.12.2025, by a renewed employment contract.

As also well known for the Club, the parties concluded a loan agreement with Dynamo Moscow (hereinafter "Moscow") from 6 September 2022 until the end of August 2023 – a tripartite loan agreement which the Player currently is subject to.

By the time of the conclusion of the tripartite loan agreement, the Player had the possibility to unilaterally suspend the employment contract with the Club in accordance with the FIFA RSTP Annexe 7, due to the ongoing conflict in Russia/Ukraine. However,

by that time, the Player felt sufficiently safe to stay in Russia, after which the loan agreement was concluded for one contractual year.

Due to the Players decision to stay in Russia for the 2022/23-season, he is now prevented from making use of the FIFA RSTP Annexe 7 for the upcoming season, based on the amendments made by the FIFA Bureau of Council, expressed in its Circular no. 1849, dated 22 May 2023.

Firstly, the Player disagree with the amendments made by FIFA to the Annexe 7, given that players were never informed of those consequences. Should the player have known that by staying in Russia to comply with his contract he – at a later stage – would not have the possibility to suspend the contract if the situation on Russia deteriorated, he might have decided differently.

Secondly, the situation in Russia has since May 2023 evolved rapidly in an unfortunate and uncertain direction, a situation clearly not foreseen by FIFA when amending FIFA RSTP Annexe 7 in May this year. The current events with the ongoing tension in Russia have caused the Player to feel unsafe and to fear for his own life.

The feeling of fear was amplified when the Player had to return to Moscow last week, as he met a city completely changed from what he left before the summer holiday. We do not find it necessary to elaborate on this any further, as the Club is well known with the current situation in Russia, both in the city of Moscow and the city of Rostov.

Further it shall be mentioned that the Ministry of Foreign Affairs in Norway strongly advises against all travels to Russia, due to the ongoing situation in the country. This is clearly contributing to the fear and uncertainty the Player is experiencing.

To our understanding, the current situation in Russia clearly is an event of force majeure. There is an ongoing tension beyond the parties' control. A tension which can escalate quickly. There is an event which the parties could not reasonably provided against before entering into the contract. An event which could not reasonable have been avoided or overcome, and which is not attributable to any of the parties.

The current situation has an uncertain outcome, making it impossible for the Player to conduct his services as a footballer in a safe and stable environment. The Clubs (both Moscow and Rostov) are not in a position where they can guarantee for the Players health and safety due to the current circumstances and the Player express great concern for his welfare and life.

Even though we are of the clear opinion that the current situation legitimates a unilateral termination of the contract, we address this matter in an attempt to find an amicable solution with the Club and Moscow.

A letter is also addressed to Moscow, in this regard.

In this respect we invite the Club for discussions to see whether it is possible to find a common ground on this delicate and difficult matter, for all parties involved.

Due to the urgency of the matter at hand, we kindly ask the Club to give the matter priority and respond as soon as possible.

For the sake of good order, all rights of our client are reserved.

Best regards
Advokatfirmaet Monsen AS
Eirik Monsen"

30. On 10 July 2023, Rostov replied to the Player's representative as follows:

"*Dear Mr. Monsen,*

We acknowledge receipt of your letter of 05 July 2023 and in response we would like to inform you the following.

We remind you that in September 2022 your client, the player Mathias Normann, voluntarily renewed the employment contract with FC Rostov, which he had previously suspended in accordance with the Decision taken by FIFA regarding foreign players. Then, Mathias returned to Russia and signed a tripartite transfer agreement with FC Dynamo (Moscow) and FC Rostov, according to which Mathias spent the entire sports season 2022/23 on loan at FC Dynamo.

We remind you that your client's period of loan expires on 20 August 2023, and therefore, the employment relationship between Mathias Normann and FC Rostov is resumed on 21 August 2023, according to the concluded employment contract of 31.12.2019, which expires on 31 December 2024.

We also remind you that an employment contract has been concluded between FC Rostov and your client of 28.08.2021, the term of which expires on 31 December 2025, thus Mathias Normann is bound by an employment relationship with FC Rostov until 31 December 2025.

In your letter, you correctly stated that your client has lost the right to suspend the employment contract with FC Rostov in accordance with the amendments of the FIFA Bureau of Council set out in Circular No. 1849 of 22.05.2023.

In our opinion, the information contained in the letter regarding the deterioration of the situation in Russia does not correspond to reality. No special regimes, restrictions or other measures restricting the lives of citizens, including foreigners, have been adopted. In the city of Rostov-on-Don, normal daily civilian life continues, there is no danger to the life and health of citizens. It is also worth emphasizing that a calm atmosphere remains in the team, coaching staff and administration, preparations are underway for the start of the sports season 2023/24. The team includes foreign players (for example, David Toshevski) and newcomers of the team who have recently signed contacts with FC Rostov (A. Ionov, R. Akbashev).

First of all, we ask you and your client to calmly assess the situation and accept information only from verified sources. Foreign media deliberately escalate the situation and present information in a distorted form.

FC Rostov, for its part, also assures you and guarantees that all possible efforts and means will be made to ensure the safety and well-being of Mathias Normann during his stay in Rostov-on-Don and Russia as a whole.

Based on the above, we remind you that Mathias Normann needs to arrive at the whereabouts of the Club's team in Rostov-on-Don on 21 August 2023 to prepare and participate in the matches of the sports season 2023/2024.

We also want to note that Mathias is an important part of our team (or family) and we are counting on him very much in the upcoming sports season 2023/2024.

Please note that in the contract of each player in the Article "Rights and obligations of the player" there are at least the following obligations of the player:

- Diligent execution of its obligations in accordance with the terms of the Contract;

- On the instructions of the head coach or the coach of the team, take part in football matches (games) of the corresponding team, training sessions and training camps of the team, trainings;

- Strictly comply with the orders and instructions of the General Director, Head Coach and coaches of the Club, medical staff, the Rules of internal labor regulations, comply with the decisions of governing bodies of the Club, observe labor and game discipline;

- Strictly observe all instructions of the Club concerning the tactical plans for football matches (games), and the general plans for travels, meetings, etc.

We also want to note that in case of a later arrival at the location of the Club, salary for the period of delay will not be paid, and maximum sanctions will be applied to you individually according to the terms of your personal employment contract, as well as FIFA regulatory documents."

31. On 20 July 2023, the Player's representative sent a letter to Rostov, as follows:

"*We refer to your letter dated 10 July 2023, as a response to our letter dated 5 July 2023. We appreciate your prompt reply on this urgent matter. However, we take note that The Joint Stock Company Football Club Rostov (hereinafter the "Club) has not responded to our request for dialogue due to the ongoing circumstances in Russia. Thus, we once again allow ourselves to address the Club in an attempt for such dialogue.*

First, for the sake of good order, we are fully aware of the employment contract between Mr. Mathias Normann (hereinafter the "Player") and the Club, which we also referred to in our previous correspondence.

Our main concern is not the content of the employment contract, but the current situation in Russia, which we, as stated in our previous letter, are of the opinion constitute an event of force majeure. The current situation in Russia represents a possible danger to life and well-being, and to our understanding, the Club cannot guarantee for the Player health and safety due to the current circumstances.

In this respect we take note and respect that the parties have a different understanding and position as for whether the current events in Russia in fact constitute a danger or possible danger. Our view on the situation in Russia is supported by credible sources and the Players own experiences and we urge the Club to respect the Players own experience in this regard.

As mentioned in our previous correspondence, the Player met a completely changed Russia when he returned after the summer holiday. Military blockades had been put in place due to the ongoing tension within Russia, which in addition to cause concern and fear, contributed to hours of waiting and controls.

The Player is in frequently touch with friends living in Rostov, which report on an unstable and unsafe environment.

Further, we disagree that media outside Russia deliberately escalate the situation and present information in a distorted form, as you claim.

To our understanding the headquarters of Russia´s Southern military district is located in Rostov, where military from both sides have been observed. Several independent reports state that the opposition grouping has seized control of all militaries in the city. Although not verified, media in general reports of an ongoing turmoil in the region, which is so strategically important due to its location. It has also been numerous reports of drone attacks, explosions, and fires in the region. Governments describe the situation as unpredictable and that it could escalate further without warning.

Media reports further state that the governor of the region in Rostov has asked people to refrain from travelling to the city center and, if possible, not to leave their homes.

Due to the geographical location of Rostov and being the house of command center in the conflict with Ukraine, it was of vital interest of the Player to go on loan last season.

Unfortunately, the situation has not improved, rather the contrary due to the ongoing internal tension.

The Player appreciates that the Club assures and guarantees that all possible efforts and means will be made to ensure his safety and well-being. Unfortunately, this guarantee is not felt to be sufficient, as the parties have a different understanding on whether there is safe to stay in Rostov.

For your information, we have had a constructive dialogue with Dynamo in this regard. As it is now confirmed that Dynamo will not make use of the contractual buy-out clause,

we take this opportunity to once again approach the Club with our concerns in a final attempt for dialogue.

As our clear position is that the current situation constitutes an event of force majeure which entitle the player to unilaterally terminate the contract with just cause, we inform the Club that the Player must consider taking all necessary steps to protect himself, which ultimately can lead to a unilateral termination of the employment relationship. At the current stage, the Player find it impossible to return to Rostov, due to the ongoing internal tension. Thus, the situation must de-escalate before a return to Rostov is considered sufficiently safe. The Player will pay close attention to the ongoing situation.

It should be in both parties' interest to see whether the parties can find a common understanding. Thus, we kindly repeat our request for dialogue and appreciate your respond hereto."

32. On 26 July 2023, Rostov replied as follows:

"*Dear Mr. Monsen,*

We acknowledge receipt of your letter of 20 July 2023 and inform you that we have duly taken of its content.

Please note that the Football Club Rostov is always open and ready for dialogue with you as the official representative of Mathias Normann and Matthias himself, however, based on your letters we do not understand the subject for discussion and your proposals.

Nevertheless, to accelerate the process, we are ready to participate in a video conference between you, Mathias and representatives of our club to remove any misunderstanding between the parties.

We highly appreciate that you confirm the fact that Mathias Normann has an employment relationship with our Club until 31 December 2025 and, according to FIFA Circular No. 1849 of 22.05.2023, does not have the right to unilaterally suspend the employment contract with FC Rostov.

The Management of the club respects the position of the Player set out in your letters, but cannot agree and accept the information contained in them as objective and justified.

The Management of the club does not consider the situation in Russia in general and in the city of Rostov-on-Don in particular to be force majeure due to the following circumstances.

1. Since the summer of 2022, when Mathias Normann voluntarily returned to Russia, resumed his employment relationship with FC Rostov and moved to FC Dynamo on the basis of the "loan" agreement, the situation in Russia and Rostov-on-Don has not changed, there are no objective reasons to worry about the danger to life and health of the Player. As we wrote earlier in our letter, the Club will make every possible effort

and means to ensure the safety and well-being of Mathias Normann during his stay in Rostov-on-Don and Russia in general;

2. All sports football competitions in Russia are held in accordance with the established procedure, including women's and youth competitions. There are no restrictions on their holding in Rostov-on-Don and the region. Matches of the Championship and Cup of Russia of the sports season 2023/24 with the participation of FC Rostov are held at the stadium Rostov-Arena with a mass visit by fans of the club;

3. All players of FC Rostov are in Rostov-on-Don and take part in matches and training process. There are foreign players in the club (Macedonian forward - David Toshevski). In July 2023 the Club signed a contract with another foreign player of the Portuguese club "Santa Clara" - Mohammad Mohebbi, negotiations are underway with other foreign players. Other Premier League teams also have many foreign players including clubs located in close proximity to Rostov-on-Don - FC Krasnodar, FC Sochi;

4. We ask you to calmly and objectively assess the situation in Russia and the city of Rostov-on-Don, to perceive information exclusively. from verified, official sources. Do not trust foreign media that purposefully escalate the situation and present the situation in Russia in a deliberately distorted negative way. We invite you to personally arrive in Russia and Rostov-on-Don and see for yourself that there are no threats to life and health, to communicate with the players and the coaching staff of the team, residents of the city;

5. Regarding the events that took place in the city of Rostov-on-Don in June 2023, we inform you that not a single resident was injured, there were no riots or pogroms. In Rostov-on-Don and the region, no martial or state of emergency was introduced, no special regimes, restrictions and other measures restricting the lives of citizens, including foreigners, were adopted, any information about the unstable or unsafe situation in Rostov is a "fake" and does not correspond to reality. As you know, in June-July 2023 in France there were riots and pogroms, which resulted in hundreds of wounded, thousands of arrests, unfortunately, there were casualties. However, even in this situation, the players and coaches of the French teams do not declare force majeure circumstances that may affect the stability of the contracts concluded with the clubs.

In addition, we would like to note that Mathias is one of the most important and most experienced players in our team, for the club and its fans Mathias Normann is part of our friendly football family. The head coach of the club Valery Georgievich Karpin, the coaching staff and the players of the club, as well as numerous fans of the team, are looking forward to the return of Mathias and are counting on his help to the team in the 2023/2024 sports season.

I kindly ask you to inform Mathias that he needs to arrive at the location of the Club's team in Rostov-on-Don no later than 21 August 2023 in order to prepare and participate in the matches of FC Rostov in the 2023/2024 sports season."

33. On 26 and 27 July 2023, the Player's representative sent Rostov emails seeking to fix a video conference imminently.

34. On 27 July 2023, Rostov replied suggesting a call "*next week*" and asking if it will need to be attended by "*a lawyer or a sports director*". Later that day the Player's representative replied stating:

"*From our side it will be me, as Matthias lawyer and his agent who will participate in the meeting. As the parties have a different understand on the legal matters and the parties' position has been pointed out in previous correspondence, we find it necessary to discuss this briefly at the meeting. As we want to discuss the possibilities for an amicable solution, you know best whether you should invite the sporting director to the meeting. Our purpose with such meeting is to see whether it is possible to find common ground – as a basis to discuss a possible amicable solution.*"

35. On or around 28 to 30 July 2023, the international media reported missile and drone attacks into Russian territory.

36. On 30 July 2023, the Ukrainian President, Mr Volodymyr Zelenskyy, stated "*…war is gradually returning to Russia's territory…*", a Ukrainian government minister stated there would be more drone attacks on Russia and a Ukrainian Air Force spokesman stated "*[t]here's always something flying in Russia, as well as in Moscow.*"

37. In or around late July 2023, Mr Santoro contacted Mr Ryskin and raised the Player's concern for his safety if he were to remain in Russia. Mr Ryskin replied that this was a subject to discuss with the club's lawyer, but he was willing to discuss the loan or transfer of the Player to another club. Further, Mr Ryskin received a call from a long-time acquaintance, the President of a Serbian club, and spoke with Mr Normann's former agent and another agent, in order to see whether the club could arrange a loan or transfer of the Player. Each of those persons informed him agents of the Player were offering the Player "*for free*" to various European clubs. Mr Ryskin stated that the Player was not available without a fee, but the club was ready to consider offers for the Player.

38. Still on 30 July 2023, the Player's representative wrote to Rostov as follows:

"*Dear Sir,*

We refer to the email below and allow ourselves to stress the importance of having a video meeting as soon as possible, due to the ongoing situation, which escalated in a very negative direction last night.

As you probably are fully aware of, new drone attacks happened in the city of Moscow last night. One attack occurred approximately 50 – 100 meters away from Mathias home, 10 meters from the Supermarket which Mathias use regularly! We have seen videos from the attack which is disturbing. As previous held, and which now is amplified by last night attack, is the ongoing situation, which is beyond the parties' control, something that cause great concern for the life of Mathias.

We appreciate the clubs' previous guarantees that you will take all necessary measures to provide for a safe and healthy environment for your players. However, when an

explosion occurs less than 100 meters from the home of Mathias, where he was asleep, on what seem to be a random building, the club is not in a position where any guarantees can be given, neither now, nor for the future as long there is an ongoing conflict. Media reports also informs us that new attacks can be expected, but it seems impossible to foreseen where and when.

This attack has clearly amplified an already existing fear for his own life, and we find the situation unsustainable. Due to the urgency of the matter and the need to put life before football, we kindly ask the club to respond on when we can have an urgent meeting. We will make ourselves available on Monday (and Tuesday, if Monday is impossible)."

39. On 31 July 2023, Rostov proposed a video meeting on 3 or 4 August 2023, as club personnel were absent on a business trip.

40. On 1 August 2023, there was a second drone attack on a building the Player considered was not more than 100m from his residence.

41. On 3 August 2023, the video conference took place between, on the Player's side, his lawyer Mr Monsen and his agent Mr Santoro and, on Rostov's side, its lawyer Mr Sapyanichenko. Neither the Player nor Mr Ryskin attended the call. During the call the Player and the club recited and discussed the positions already set out in correspondence. The Player's representatives raised his concerns about his safety if he were to return to Rostov. Mr Sapyanichenko invited them to visit Rostov to assess the situation for themselves. The Player's representatives did not make any specific proposal for a loan or transfer of the Player's registration and services.

42. On the same date, the Player discussed the outcome of the call with his representatives and took the decision to leave Russia immediately and terminate the contract. Prior to so doing he had a long conversation with his lawyer about the position.

43. Still on 3 August 2023, the Player's representative sent a notice of early unilateral termination of his contract with Rostov. The letter stated as follows:

"*NOTICE OF TERMINATION - MATHIAS NORMANN*

We refer to our previous correspondence regarding the ongoing and highly uncertain situation in Russia. A situation which now has escalated to a level that makes a continuation of the employment relationship with the Joint Stock Company Football Club Rostov (the "Club") impossible.

We hereby inform the Club that Mr. Mathias Normann (the "Player") unilaterally terminate the employment relationship with the Club with immediate effect – with just cause.

By our correspondence, dated 30 July 2023, we informed the Club on the most recent developments, even though it was well-known for the Club. On the night of Sunday, 30 July 2023, the city of Moscow was attacked by drones, after which one of these

explosions occurred approximately 50 – 100 meters away from where the Player is living during his loan period at Dynamo Moscow.

By email dated 31 July the Club replied to our email of 30 July, without mentioning the concerns that was raised by the Player, where he had informed the Club that the attack had caused great concern for his life. The Club only informed the Player that due to a business trip a meeting couldn't be held before Thursday or Friday.

On the night to Tuesday, 1 August 2023, a new drone attack hit the very same building! The explosion woke up the Player. The incidents clearly shook the Player. According to media sources several other drones shall have been shot down before they reached the city of Moscow. To our understanding, this has been verified by Russian media as well.

As also well known for the Club we have repeatedly requested for dialogue due to the ongoing conflict and tension in Russia, which has created great concern for the life of the Player. First by our letters dated 5 July and 20 July 2023, respectively. Thereafter by email dated 26 July 2023, where we suggested to hold a video-meeting on the 27 July or 28 July 2023. By email dated 27 July we informed the Club that we were available for a meeting on 28 July or at the beginning of the following week. In said email we informed the Club that we wanted to discuss the legal matters and the possibilities for an amicable solution due to the ongoing conflict. We stressed that the Club should know best whether it should invite the sporting director to said meeting. The Club replied on the same day that it was ready to discuss all issues "next week at your convenience". The Player replied, also on the same day and asked for a meeting to be held on Monday or Tuesday. No reply was received before we sent the mail referred to above on 30 July. As also mentioned above, the following day the Club informed us that due to a business trip they could not held a meeting before Thursday or Friday. We were finally able to conduct a video-meeting today, Thursday, 3 August 2023.

In our meeting of today, 3 August 2023, we once again expressed our deepest concern for the life of the Player, referring to the ongoing conflict and the latest events that had occurred in Moscow. Further, we referred to the events that have taken place in or near the city of Rostov. As held in our meeting, we are of the clear opinion that the situation is an event of force majeure which entitles the Player to unilaterally terminate the contract with just cause.

The Club on its side argue that the area of Rostov is completely safe and that the incidents in Moscow is of the responsibility of Dynamo alone.

As the Club choose to not invite their sporting director to the meeting, the Club argued that it was in no position to discuss a possible amicable solution. Thus, the Club couldn't accept our suggestion that the Player could go on a loan for one year (upcoming season), so the situation in Russia hopefully could improve. The Club reiterated that the Player needed to return to Rostov on the 21 August and that it is completely safe.

Unfortunately, we experience that the Club do not give the matter its necessary attention and that the Club has persistently postpone a matter that deserves the highest priority.

We regret that the parties have a very different understanding of the circumstances and ongoing situation in Russia, which unfortunately makes it impossible to agree on an amicable solution. We regret that the Club do not take the concerns raised by the Player seriously.

While the Club has given its insurances that there is no danger to life and health of the citizens, the Player has experienced the opposite.

The current situation is unbearable for the player. The attacks of Sunday and Tuesday confirms that the situation and the ongoing conflict has escalated to a level where the player no longer can feel safe and where he expresses great concern for his own life. The development is both dangerous and unpredictable, as it is impossible to know where or when a new attack can be expected.

The Club has in its letters dated 10 July and 26 July, respectively, informed the Player that it will make every possible effort and means to ensure the safety and well-being of the Player during his stay in Rostov-on-Don and Russia in general. We appreciate the Clubs expressed willingness and desire to protect the Player. Unfortunately, it is not satisfactory, as the situation is clearly outside the parties` control. Either the Player, nor the Club knows where and when a new attack will be.

In this context we stress what was highlighted in our letter dated 20 July 2023, where we, inter alia, refer to the fact that the headquarters of Russia´s Southern military district is located in Rostov. That is has been reported several drone attacks, explosions, and fires in the region. That the government has described the situation as unpredictable and that is could escalate further without warning.

The geographical location of Rostov, being the house of command center in the conflict with Ukraine, is an additional element which cause fear on the Player, a fear that has been amplified by the latest events of drone attacks. As referred to in our meeting of today, 3 August 2023, CNN reported on 28 July 2023, that "Russia said it shot down a Ukrainian missile over the southern Russia city of Taganrog and the fragments from the blast injured several civilians…The Russian Ministry of Health later said that 14 people had been injured". This is just one example, given to substantiate the current uncertainty, not only in Moscow, but in the regions in and around Rostov.

Further, it shall be mentioned that as a professional footballer you would need to travel around the country to play matches during the season. Although it can be argued that some of the cities which the players will visit is considered safe, the same cannot be said on other cities, e.g., Moscow, which now has been hit by several drone attacks.

As previously stressed and now reiterated, the Club cannot guarantee for the Players safety, as the situation is outside the parties` control. As either the Player, nor the Club knows where or when a new attack will be, a move from Moscow to Rostov will not contribute to the Player feeling safe.

The Club is unfortunately not in a position where it can guarantee for the Players health and safety.

We are no longer in a position where the Player can just hope that everything will be ok, when several drone attacks has hit just outside his own home, when it is impossible to foresee the next hit and when we can't see any measures being implemented by the Club.

As held in our letter dated 5 July 2023, and which are considerable amplified by the latest development, we are of the clear opinion that the current situation in Russia is an event of force majeure. In our letter dated 5 July 2023, we argued that the tension could escalate quickly. Unfortunately, that has already happened, and verified sources indicates that it may escalate further.

To reiterate why we consider the matter to be an event of force majeure: The current and ongoing tension is beyond the parties´ control. The tension has escalated quickly and can easily escalate further. There is an event which the parties could not reasonably provided against before entering into the contract. An event which could not reasonable have been avoided or overcome, and which is not attributable to any of the parties.

In this context we refer to the FIFA Circular no. 1849, dated 22 May 2023 and the FIFA RSTP Annexe 7, which is related to the war in Ukraine – and not the war in Russia. The now escalated situation in Russia was not foreseen by FIFA when they first made the amendments to the FIFA RSTP in March 2022 (Circular no. 1787 and Circular no.1788), and when they later amended the RSTP by its Circular no.1849 in May this year.

The situation in Russia makes it impossible for the Player to conduct his services as a footballer in a safe and stable environment.

Despite our several attempts to go in dialogue to find an amicable solution with the Club, and the fact that the parties have a very different understanding of the ongoing situation in Russia, we see no other choice than to inform the Club that the Player by this notice must unilaterally terminate the contract with the Club with just cause, with reference to the abovementioned."

44. On 4 August 2023, the Player left Russia.

45. On the same date, Rostov informed the Player's representative, the FUR and FIFA of its rejection of the Player's termination notice and its request to respect contractual stability and not to issue or accept the International Transfer Certificate ("ITC") for the Player.

46. Still on 4 August 2023, Rostov wrote to the Player's representative as follows:

"*With respect to the receipt of your notification of 03 August 2023 on the early unilateral termination of the employment contract by the player M. Normann with FC Rostov, we consider it necessary to state the following.*

Football Club Rostov considers the actions of the player, M. Normann, (represented by his legal representative) as a gross and material violation of the terms of the

employment contract concluded between the player and the club without just cause and legal grounds with numerous violations of the FUR and FIFA Regulations.

The reasons given in the notification cannot be recognized as justifiable and force majeure. We can clearly see that the player seeks to find a reason under any unreasonable and far-fetched pretext not to renew the employment contract with FC Rostov and to avoid financial and disciplinary sanctions for terminating it without just cause.

Taking into account the absence of any violations of the employment contract by FC Rostov, you interpret any incident that occurs on the territory of the Russian Federation as a direct and obvious threat to the life and health of your client which is unacceptable.

FC Rostov has a negative attitude towards any attempts to undermine the system of contractual stability between professional players and clubs under far-fetched and absurd reasons.

Information contained in the notification of 03 August 2023 concerning the difficulties in the dialogue with FC Rostov does not correspond to reality, since the Club has repeatedly stated its constructive position regarding the player in writing (in letters of 10.07.23 No. 813, 26.07.23 No. 903) and orally (at a video conference on 03.08.2023).

FC Rostov has not yet received information from the player's representatives concerning specific proposals for a temporary or permanent transfer (indicating the names of clubs, duration, amounts), which makes it absurd to accuse the Club of refusing such offers.

For FC Rostov the issue of player safety is important and relevant, and therefore, in our letters above mentioned we have given you exhaustive explanations on this matter. We also have suggested that the player's representatives personally come to Rostov-on-Don and visit the city, the training base, the next match with the participation of the team at the Rostov-Arena stadium in order to make sure that there is complete safety and there are no threats to the life and health of M. Normann, but our proposal has remained unanswered.

We completely reject the fact that the club is not interested in the health of the player after the incident in Moscow. FC Rostov was constantly in contact with FC Dynamo and also watched the player's quite "happy" life through materials posted by the latter on his social networks.

We draw special attention to the fact that in refutation of your position the amendments in FIFA Annex 7 apply not only to Ukraine, but also to the Russian Federation, which is directly mentioned in paragraph 1.

Thus, FIFA, by prohibiting the suspension of employment contracts for players with existing contracts with Russian clubs, indicates clearly and definitely that the situation in Russia has not changed for the worse and there are no grounds for its interpretation as "force majeure".

We remind you that in September 2022 your client, the player Mathias Normann, voluntarily renewed the employment contract with FC Rostov which he had previously suspended in accordance with the decision made by FIFA in relation to foreign players.

Then, Mathias returned to Russia and signed a trilateral transfer agreement with the participation of FC Dynamo (Moscow) and FC Rostov according to which the entire sports season 2022/23 Mathias spent on loan at FC Dynamo.

We consider that possibly the lack of interest on the part of FC Dynamo to continue cooperation with the player may have "prompted" the player or his representatives at the end of the "loan" to look for reasons to terminate employment contracts in FC Rostov and FC Dynamo.

We inform you that the Football Club Rostov will protect its legitimate rights and interests in the manner prescribed by the FUR and FIFA regulatory documents including by requiring financial and disciplinary sanctions to be imposed on the player."

47. On 5 August 2023, the Player visited his doctor suffering from anxiety. The doctor offered to prescribe him anxiolytics and sleep aid medication.

48. Prior to 16 August 2023, the Player travelled to the Kingdom of Saudi Arabia and undertook a medical examination for Al Raed.

49. On 16 August 2023, the Player entered into an employment agreement with Al Raed for the period from 21 August 2023 to 30 June 2025 (the "Al Raed Agreement"). Mr Santoro acted as agent for the Player in the negotiation of the agreement.

50. Under the Al Raed Agreement the Player was entitled to the following salary and fixed bonuses:

    - A net salary of USD 41,056 for the period 21 August to 31 August 2023;
    - A monthly net salary of USD 127,273 for the period September 2023 to June 2024;
    - A monthly net salary of USD 141,667 for the period July 2024 to June 2025; and
    - A fixed net payment of USD 300,000 due on 1 September 2023.

51. On 20 August 2023, Al Raed announced via its social media channels that it had signed a contract with the Player until 30 June 2025.

52. On 22 August 2023, Rostov wrote to Al Raed and stated, *inter alia*, that the Player was required to return to Rostov on 21 August 2023 after the expiry of his loan with Dynamo, the Player was prohibited from concluding an employment contract with Al Raed, the termination of his employment agreement with Rostov was without legitimate reason and it was preparing a claim for compensation and sanctions. Al Raed did not reply.

53. On 26 August 2023, the FUR notified FIFA of its refusal to issue an ITC for the Player at the request of the SAFF.

54. By decision dated 29 August 2023, the Single Judge of the FIFA Players' Status Chamber passed a decision by means of which the Player's registration with Al Raed was authorized "*without prejudice to any possible decision (...) on the substance of the potential contractual dispute between the [Player] and the [Club] (as well as [Al Raed])".*

55. On 29 August 2023, Rostov wrote again to Al Raed in similar terms to the letter of 22 August 2023 and stated that it intended to submit a claim to FIFA. Al Raed did not reply.

B. Proceedings before the FIFA Dispute Resolution Chamber

56. On 1 September 2023, Rostov lodged a claim against the Player and Al Raed before the FIFA DRC. It claimed that the Player had terminated his employment without just cause and entered into a new employment contract with Al Raed on 20 August 2023. Rostov requested, *inter alia*, that the Player be ordered to pay EUR 8,500,000 as compensation, that Al Raed be ordered jointly and severally liable and that the Player be subject to a sanction of a six-month suspension.

57. In accordance with the FIFA DRC procedure, the Player and the Al Raed submitted their respective positions.

58. On 15 November 2023, the FIFA DRC rendered its decision (the "Appealed Decision"), partly granting Rostov's claim, with the following operative part:

1. The claim of the Claimant, FC Rostov, is partially accepted.

2. The Respondent 1, Mathias Antonsen Normann, must pay to the Claimant EUR 2,923,507.00 as compensation for breach of contract without just cause plus 5% interest p.a. over said amount as from 3 August 2023 until the date of effective payment.

3. The Respondent 2, Al Raed, is jointly and severally liable for the payment of the aforementioned compensation.

4. Any further claims of the Claimant 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:

a. The Respondent 1 shall be imposed with a restriction on playing in official matches up until the due amounts are paid. The overall maximum duration of the restriction shall be of up to six months on playing in official matches.

b. The Respondent 2 shall be banned from registering any new players, either nationally or internationally, the due amounts are paid. The overall maximum duration of the restriction shall be of up to six months on playing in official matches.

c. 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 the Claimant 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.

59. On 18 December 2023, the grounds of the Appealed Decision were communicated to the Parties, determining, *inter alia*, the following:

- The FIFA DRC has jurisdiction over the dispute, which must be analysed on the basis of the FIFA RSTP May 2023 edition, as to the substance, and the usual rules on the burden of proof.

- There was essentially no factual dispute save for the seriousness of the war-related events that took place in Moscow in late July/early August 2023. The issue was whether the Player had just cause to terminate the contract due to *force majeure* and the corresponding consequences.

- The First Employment Agreement and Second Employment Agreement jointly governed the employment relationship of Rostov and the Player , as in essence the latter extended the term of the former and formed a unified contract.

- The Player bore the burden of establishing that the *force majeure* existed, i.e. an unforeseen, extraordinary and exceptional circumstance beyond the party's control which justified the early termination.

- The majority of the members of the FIFA DRC were not persuaded by the Player's position because the war, by the time the Player was on loan at Dynamo Moscow, was not unforeseen: it had been already happening for a few months.

- The Player expressly recognised that situation in his letter to the club of 5 July 2023, as follows:

  "*By the time of the conclusion of the tripartite loan agreement, the Player had the possibility to unilaterally suspend the employment contract with the Club in accordance with the FIFA RSTP Annexe 7, due to the ongoing conflict in Russia/Ukraine. However, by that time, the Player felt sufficiently safe to stay in Russia, after which the loan agreement was concluded for one contractual year.*"

- The majority of the FIFA DRC highlighted that the Player correctly indicated that he had been entitled to suspend his contract per Annexe 7, but deliberately chose not to do

so and was engaged by another Russian club. He therefore deliberately chose to remain playing in a country at war, in the capital city of that country, and he could not subsequently change his course of action alleging that a new, unforeseen circumstance (which in fact was already present) arose in line with the legal principles of *venire contra factum proprium* and *estoppel*.

- The Player argued that the May 2023 edition of the RSTP prevented him from suspending his contract with Dynamo. This was indeed the case because the main goal of the special provisions under Annexe 7, from their outset, was to protect players and coaches that wanted to leave the warzone – which was clearly not the case of the Player.

- Accordingly, the majority of the FIFA DRC found that at the time of signing for Dynamo, the Player could reasonably have been expected to prudently evaluate the situation, also accepting that such an unprecedented event could present variable factors, and, in any case, it would not be reasonable to exclude that a potential escalation of the war could also occur in the near future.

- The Player waived his regulatory protection to flee the area under Annexe 7 when choosing to stay in Russia by signing the Dynamo Loan Agreement.

- The majority of the FIFA DRC rejected the argument that it was impossible for the Player to fulfil his contractual obligations due to a *force majeure* event, and thereby found that the Player did not have just cause to terminate the contract.

- In accordance with Article 17(1) of the FIFA RSTP, the amount of compensation due to a club must be calculated, unless otherwise provided for in the contract, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria. This includes 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, as well as the fees and expenses paid or incurred by the former club. The date of termination of the contract should also be taken into account, if it falls within the protected period.

- There was no liquidated damages clause in the contract.

- The residual value of the contract amounts to EUR 1,975,000.

- The Player found new employment with Al Raed. The value of that contract for the relevant period is USD 3,313,790.

- Given that the Player's new employment contract with Al Raed was shorter than the contract with Rostov, the original duration of the new employment agreement must be fictionally extended to match the residual period as follows:

    a. Original duration of the new employment agreement: 679 days from 21 August 2023 to 30 June 2025 = USD 3,313,790

    b. Extended (fictional) duration of the new employment agreement: 863 days from 21 August 2023 to 31 December 2025 = USD 4,211,783.

- Upon conversion of USD 4,211,783 to euros on 21 August 2023 equaling approximately EUR 3,872,014, the date of early termination of the contract and its original expiry date, the average between the Player's remuneration with Rostov and his current remuneration with Al Raed corresponds to EUR 2,923,507, that is (EUR 1,975,000 + 3,872,014) / 2.

- Loan fees earned by Rostov were not to be taken into account as they should be considered as a mitigating factor in case a club is also trying to recover unamortised transfer fees, which was not the case here.

- Consequently, the Player must pay the amount of EUR 2,923,507 to Rostov, which was a reasonable and justified amount of compensation. Further, he must pay interest at a rate of 5% p.a. as of the date of termination until the date of effective payment.

- In accordance with Article 17(2) of the FIFA RSTP, Al Raed, as the Player's new club, is jointly and severally liable for the payment of this compensation.

- The Player was born on 28 May 1996 and the First Employment Agreement with Rostov was concluded on 31 December 2019, subsequently amended on 28 August 2021. The Player terminated his employment without just cause on 3 August 2023. The breach of contract by the Player therefore occurred outside the protected period. Therefore, by virtue of Article 17(3) of the FIFA RSTP, sporting sanctions should not be applied on the Player, and consequently, not on Al Raed either.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

60. On 5 January 2024, Rostov filed a Statement of Appeal with CAS against the Player, Al Raed and FIFA with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the 2023 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). Rostov nominated Mr Efraim Barak, attorney-at-law, Tel Aviv, Israel as arbitrator. This matter was docketed as *CAS 2024/A/10280*.

61. On 8 January 2024, Al Raed filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS") against Rostov with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the CAS Code. Al Raed named the Player as an intervening party and requested the appointment of a sole arbitrator. This matter was docketed as *CAS 2024/A/10279*.

62. On the same date, the Player filed a Statement of Appeal with CAS against Rostov with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the CAS Code. The Player nominated Mr Mark Hovell, Solicitor, Manchester, United Kingdom as arbitrator. This matter was docketed as *CAS 2024/A/10281*.

63. On 19 January 2024, FIFA informed the CAS Court Office that it cannot be considered a respondent in proceedings CAS 2024/A/10280 and requested to be excluded from the proceedings.

64. On 20 January 2024, Rostov confirmed that it agreed to the consolidation of the three appeals and objected to the resolution of the appeals by a sole arbitrator. On 22 January 2024, the Player provided his confirmation to the consolidation, with Al Raed providing its confirmation on 25 January 2024.

65. On 28 January 2024, Al Raed filed its Appeal Brief within the deadline prescribed by Article R51 of the CAS Code.

66. On 30 January 2024, FIFA informed the CAS Court Office that it renounced its right to request to intervene in the proceedings CAS 2024/A/10281, whilst confirming its availability to answer any specific questions from CAS or the Panel.

67. On 13 February 2024, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided to submit the consolidated proceedings to a panel of three arbitrators.

68. On 16 February 2024, Rostov affirmed its nomination of Mr Efraim Barak, Attorney-at-Law, Tel Aviv, Israel as arbitrator.

69. On 19 February 2024, the Player and Al Raed notified the CAS Cout Office that they jointly nominated Mr Manfred Nan, Attorney-at-Law, Amsterdam, the Netherlands as arbitrator.

70. On 4 March 2024, and following extensions of time, the Player and Al Raed filed their respective Appeal Briefs in accordance with R51 of the CAS Code.

71. On 22 March, 25 March and 6 May 2024, Al Raed, FIFA, Rostov and the Player filed their respective Answers in accordance with R55 of the CAS Code. In his Answer, the Player challenged the admissibility of certain documents relied upon by Rostov, as to which see paragraph 109 below.

72. On 25 March 2024, FIFA informed the CAS Court Office that it maintained its prior position in relation to CAS 2024/A/10280, stating that Rostov had failed to justify the necessity for FIFA's presence as a party or that FIFA had any legal interest in relation to its requests for relief. FIFA therefore declined to submit any substantive comments on the horizontal dispute between the other Parties that should be resolved by the Panel in the proceedings.

73. On 7 May 2024, in accordance with R54 of the CAS Code, the CAS Court Office informed the Parties that the arbitral tribunal appointed to decide the consolidated appeal proceedings was constituted as follows:

    President: Mr Stephen Sampson, Solicitor, London, United Kingdom

    Arbitrators: Mr Manfred Nan, Attorney-at-Law, Amsterdam, the Netherlands
    Mr Efraim Barak, Attorney-at-Law, Tel Aviv, Israel

74. On 13 August 2024, an in-person hearing was held at CAS headquarters in Lausanne, Switzerland (the "Hearing").

75. The following persons attended the Hearing in person or remotely, in addition to the Panel, and Mr Björn Hessert, CAS Counsel:

    a) For the Player:

        1) Mr Mathias Normann
        2) Mr Loizos Hadjidemetriou, Legal Counsel
        3) Mr Eirik Monsen, Legal Counsel, witness (by video link)

    b) For Rostov:

        1) Ms Anna Antseliovich, Legal Counsel
        2) Mr Artem Patsev, Legal Counsel
        3) Mr Aleksei Sapyanichenko, Head of Legal Department of Rostov, witness
        4) Mr Alexandre Ponomarev, interpreter
        5) Mr Valeriy Karpin, Head Coach, witness (by video link)
        6) Mr Aleksei Ryskin, Sports Director, witness (by video link)
        7) Mr Pavel Altukhov, interpreter (by video link).

    c) For Al Raed:

        1) Mr Pedro Macieirinha, Legal Counsel
        2) Mr Joaquim de Almeida Pizzaro, Legal Counsel
        3) Mr Fahd Al-Motawa, Chairman, witness (by video link)

76. At the outset of the Hearing, all Parties confirmed that they had no objection to the constitution and composition of the Panel.

77. All witnesses were invited by the President of the Panel to tell the truth subject to the sanction of perjury under Swiss law. They were cross-examined and could provide explanations regarding relevant factual evidence and their own witness statements, where provided. All of their testimonies have been taken into account. The Panel may refer to parts of their respective testimonies in the relevant merit sections.

78. The Parties were given full opportunity to present their cases, submit their arguments in opening and closing statements, and to answer the questions posed by the members of the Panel.

79. Before the Hearing concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

80. On 8 October 2024, Al Raed notified the CAS Court Office of the judgment of 4 October 2024 from the European Court of Justice of the European Union in case C-650/22 Fédération Internationale de Football Association (FIFA) v BZ (the “Diarra” case).

81. On 5 November 2024, on behalf of the Panel, the CAS Court Office notified the Parties that the evidentiary proceedings were reopened and set a procedural timetable for the Parties to provide written submissions, limited to four pages, in answer to certain

questions concerning the relevance, if any, of the judgment in the Diarra case to the determination of the appeals in these proceedings.

82. On 11, 18 and 19 November 2024 respectively, Rostov, Al Raed and the Player provided their written submissions. On 12 November 2024, FIFA informed the Panel that its position throughout the proceedings is that it does not have a legal interest to be an active party in these proceedings and thus it does not take a position on the Diarra case, while drawing attention to FIFA's official press release of 14 October 2024.

V. SUBMISSIONS OF THE PARTIES

83. Below is a summary of the facts and allegations raised by the Parties. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

84. As Al Raed, Rostov and the Player all filed appeals against the Appealed Decision, they were also offered the right to submit an Answer, as was FIFA. In order to avoid unnecessary repetition and facilitate understanding, the Parties' submissions are summarised below jointly rather than chronologically.

A. The Player

85. In his Appeal Brief, the Player requests the following relief:

"*i. Uphold the present appeal, set aside the decision of FIFA DRC and declare that the Appellant terminated the CoE with just cause and is not liable to pay any compensation to the Respondent.*

ii. Alternatively to point (i) in case CAS concludes that the Appellant terminated the CoE without just cause, decide that he should not pay any compensation to the Respondent.

iii. Alternatively to point (ii) in case CAS concludes that the Appellant terminated the CoE without just cause and he must pay compensation to the Respondent, mitigate this compensation as much as possible.

iv. Order the Respondent to pay the procedural and all other costs arising out of the present proceedings and to reimburse the Appellant with the CAS Court Office Fee.

v. Order the Respondent to pay a contribution toward the Appellant's legal fees incurred in connection with the present proceedings."

86. In his Answer to the Appeal filed by Rostov, the Player requested CAS *"to reject the present appeal and order* [Rostov] *to fully cover all procedural costs and also pay a contribution towards the* [Player's] *legal expenses"* .

87. The Player's submissions, in essence, may be summarised as follows:

(i) Applicable law

- This dispute shall be decided in accordance with the FIFA RSTP and, subsidiarily, Swiss law.

- Swiss law includes protection of a player's personality rights, including under Article 28 of the SCC and Article 328 of the Swiss Code of Obligations ("CO"), upholding human rights as per the Universal Declaration on Human Rights and the European Convention on Human Rights, and the principles of *force majeure* (per Article 119 of the CO and CAS jurisprudence) and *clausula rebus sic stantibus* (which the Swiss Federal Tribunal has recognised can be applicable to an employment relationship if an employee's personality rights are unreasonably restricted, BGE 128 III 428).

(ii) Whether there was Just Cause to Terminate the Contract

- The Panel needs to consider whether on the facts and circumstances that existed at 3 August 2023 it was reasonable for the Player to feel that his safety was in danger, whether the Player's loss of trust in Rostov was justified and whether the continuation of his employment in good faith was no longer possible; separately whether the termination could be justified under the principles of *force majeure* or *clausula rebus sic stantibus.*

- In assessing the facts and circumstances, no reasonable person can, in good faith, disagree with the Player that the situation in Moscow and Rostov-on-Don changed in the summer of 2023, i.e. there was an escalation of the conflict and it became present in Russia rather than in Ukraine, which constituted grave and direct danger to the Player's safety and well-being.

- When the Player decided to reactive his contract with Rostov it was under the condition that he would be granted a loan to Dynamo and there were no attacks in Russia, especially in Moscow which was far from the Ukrainian border. This situation changed rapidly in the months preceding the termination when Ukraine began launching missile and drone attacks in Russia including Moscow, and in June the Wagner Group temporarily seized military facilities in Rostov-on-Don. When the Player returned to Moscow at the end of June 2023 he found a totally different city, with military blockades indicating an imminent threat or attack. Friends in Rostov-on-Don told him the situation was even more serious there due to its proximity to the Ukrainian border and location of the military facility; the Norwegian government advised against travelling to Russia.

- The Player expressed his concern to Rostov from the beginning of July 2023, seeking a solution that would allow him to leave to safety. These concerns were raised before Dynamo decided not to seek to exercise the option or otherwise extend his contract. In late July and early August 2023, there was a missile attack on a town next to Rostov-on-Don, the drone attacks close to the Player's

residence in Moscow and the statements from the Ukrainian government and military representatives that further attacks would follow, such that both Moscow and Rostov-on-Don were not safe places for a foreigner to live and work.

- The Player spent almost one month trying to make Rostov realise the seriousness of the situation, understand his legitimate and reasonable fears and find a solution that would not jeopardise his safety. After exchanges of correspondence, a video conference took place on 3 August 2023, nearly one month after it had been requested. During that conference, Rostov gave no indication that it understood the Player's concerns and fears for his safety and stated that the attacks could not be verified, and it was not in a position to discuss a loan or mutual termination of his employment despite being informed of these proposals long before.

- The video conference and behaviour of Rostov, in conjunction with the urgency of the situation and dangerous escalation of events was therefore "*the straw that broke the camel's back*" leaving the Player with no alternative. The Player could no longer stay in Moscow under drone attack and could not move to Rostov-on-Don, closer to the border at a time when Ukrainian officials declared that they would launch a counteroffensive. It was clear that Rostov had no intention of showing any understanding of the situation or acting to protect the Player. Rostov failed to have due regard to the Player's health and safety and showed an unwillingness to observe this legal obligation. Instead, the Player was threatened that if he did not return, he would be in breach of contract and sanctioned. Rostov was acting with a blatant breach of trust and contrary to Article 328 of the CO.

- The exceptional circumstances which existed in July and August 2023 rendered the continuation of the employment in good faith impossible. No reasonable person, especially a foreigner, could be expected to stay in a country on the brink of war.

- The Player is not to blame for the invasion, nor the Ukrainian counteroffensive. He exercised his regulatory right to suspend the First Employment Agreement but later agreed with Rostov to return and be sent out on loan to stay away from the dangers at the Russian border, which was to the benefit of Rostov as it earned a loan fee of EUR 1,000,000.

- The FIFA DRC was misguided when it considered only if there was an event of *force majeure* or not and failed to examine if the exceptional circumstances which existed on the termination date were such that the Player had just cause to terminate. The Player had a fundamental human right to leave Russia.

(iii) Force majeure and clausula rebus sic stantibus

- Separately an event of *force majeure* had occurred entitling the Player to terminate his employment, as all of the necessary elements were satisfied. The

Russian invasion and recent counterattacks were beyond the control of the contractual parties. They could not be resisted or overcome by the parties. They were not attributable to the parties. They undoubtedly rendered performance of the contract impossible, at least to the ordinary, reasonable person, especially a foreigner.

- The only other element is that of foreseeability. The majority of the FIFA DRC disagreed that the event was one which was unforeseeable when the Player reactivated his contract in September 2022. That is the wrong starting point, as the parties entered into the First Employment Agreement in December 2019 and the Second Employment Agreement in August 2021. At both these dates, the parties cannot have foreseen the Russian invasion or the escalation of the conflict. Even when the contract was suspended it still created obligations for the Player and obstacles to his signing for another club, given the limited nature of the suspension right. But even if one takes September 2022 as the starting point, the events cannot have been reasonably foreseeable as (i) it was not reasonable to foresee that FIFA would impose restrictions on Annexe 7 rights, and (ii) the threshold in deciding whether the Player should have foreseen the escalation of the conflict and restrictions in Annexe 7 rights has to be adjusted to a level appropriate to an ordinary person.

- The FIFA DRC failed to assess and take into account the existence of Annexe 7 which unequivocally protected foreign players and coaches in Russia providing them with a temporary way out of contracts if they should fear for their safety and well-being. When the Player reactivated his contract, he had a legitimate expectation that if the conflict did not settle and the situation became more dangerous, FIFA would extend the application of Annexe 7 into the next season as it had done for the previous two seasons. It was not reasonably foreseeable that the next amendment to Annexe 7 would impose exceptions and restrictions which would lock him into his contract with Rostov, especially in a situation where his life was endangered.

- When assessing foreseeability, the Panel should consider that it is not sensible nor reasonable to expect an ordinary person with no special knowledge or expertise in political or military issues to be in a position to predict future developments in complex political and military disputes. When the Russian invasion was launched, the whole world considered it would be over in a matter of weeks or months given Russia's military prowess over Ukraine. Thus, the escalation was not one that the Player could reasonably have predicted.

- Separately, the legal principle of *clausula rebus sic stantibus* is also applicable, as the personality rights of the Player are unreasonably restricted. None of the parties was responsible for the invasion or counterattacks, when signing the contract neither of the parties expected the conflict, when reactivating the contract, the parties did not expect escalation that would create a direct and imminent threat to the Player's safety nor was it reasonably foreseeable that FIFA would restrict Annexe 7 rights. The escalation of the conflict and the drone and missile attacks had shaken the essential foundations of the contractual

relationship to such an extent that its continuation was unreasonable and by prohibiting the Player to leave Russia and obliging him to continue his employment in Rostov-on-Don there was an unreasonable and unacceptable restriction on his personality rights, especially those related to his health and safety.

(iv) Compensation

- The Player does not seek an award of compensation in his favour.

- If the Player terminated without just cause, given the specific circumstances that existed, he should not be ordered to pay any compensation or, in the alternative, it should be considerably lower than the quantum decided by the FIFA DRC, which applied the wrong methodology, and ordered an amount that was excessive and disproportionate to the circumstances and the actual damage to Rostov.

- Article 17(1) of the FIFA RSTP requires due consideration to be made to the specificity of the sport and any other objective criteria, including, but not limited to, remuneration and other benefits due to the Player under the existing contract and whether the breach falls within a protected period.

- The FIFA DRC applied the incorrect methodology to calculate compensation. *CAS 2020/A/7443 – 7446* found that the approach of only calculating the net difference between the two employment contracts was not in accordance with Article 17 of the FIFA RSTP, as it did not take into account all of the objective circumstances and was predictable, so contrary to the deterrent effect and core rationale of Article 17 of the FIFA RSTP.

- The starting point for the correct methodology is to determine the value of the Player's service when the termination occurred. That takes account of transfer offers and annual loan fees received. Only offers made in good faith may be an indicator of a player's value (see also CAS 2008/A/1519 & 1520, no. 104). Rostov has not submitted any transfer offers but relies on the option fees in the loan agreements. Neither club exercised their option, so these amounts are not indicative of the Player's value, which was considerably lower. In *CAS 2020/A/7443 – 7446,* the annual loan fee was held to be a more reasonable indicator of that player's value, and the value of a Player decreases as the contract nears its end.

- The amount of the loan fee paid by Dynamo (i.e. EUR 1,000,000) is the starting point. As Rostov was not interested in a loan for the Player for the forthcoming season (i) it would have had to pay him EUR 1,975,000 until the end of his contract, and (ii) the only loan fee would have been for season 2024/25, the last year of his contract, during which his market value decreases. Thus, the value of any loan fee should be no more than EUR 500,000. Further, as the Second Employment Agreement expired on 31 December 2025, for the last six months the Player would be more of a liability than an asset. Therefore (a) the

value for seasons 2023/24 and 2024/25 is a total of EUR 1,500,000, (b) there is no value for the six months of season 2025/26, (c) Rostov would have paid the Player EUR 1,975,000 of which EUR 375,000 is applicable to the last six months, and (d) Rostov has not asserted any sporting damage. Thus, before mitigation, the damage sustained cannot be more than EUR 1,125,000 (i.e. EUR 1,500,000 – EUR 375,000).

- Article 43 of the CO states that compensation is determined with due regard to the circumstances and degree of culpability. Article 44(1) of the CO states that compensation may be reduced or dispensed with where circumstances attributable to Rostov compounded its damage or if it exacerbated the position of the Player that led him to terminate.

- The Player was left with no alternative but to terminate. Contrary to Rostov's allegation, the termination was not practically at the end of the registration period in Russia, as there were 42 days remaining. The Player has always acted in good faith. The present dispute is not a typical contractual dispute but expands into issues of personal safety and security. In summer 2023, the Player was trapped in an unprecedented situation for him. The situation was the actual and worrying reality in Russia. By ordering the payment of compensation, CAS would be sanctioning him for trying to protect his human and personality rights.

- Further, following the reactivation of the contract, Rostov earned a loan fee of EUR 1,000,000. If CAS adopts the position that the Player waived his rights by returning to Russia, it must take into account the corresponding benefit to Rostov.

- Further, there are numerous other reasons which amount to mitigating factors including the decision to terminate was due to safety and security concerns which, unlawfully, were not taken seriously by Rostov, it was taken after a month of seeking a resolution when Rostov failed to enter into any sincere discussions and delayed a video conference, the Player had proposed a loan which would have given Rostov a benefit, and Rostov was not honest with the Player.

- As to Rostov's methodology and calculations in seeking compensation of EUR 5,524,975.92 (i) the Player objects to the admissibility of the transfer agreement under which the Player's registration was transferred from Brighton and Hove Albion FC to Rostov (the "BHA Transfer Agreement") and the corresponding agent's agreement (the "BHA Agent Agreement"), as they were not produced or referred to before the FIFA DRC and therefore did not form part of Rostov's claim at the FIFA proceedings, (ii) Rostov's calculation of the unamortised acquisition costs is wrong as the calculation should be based on the duration of the First Employment Agreement only, (iii) the methodology applied by Rostov is that used in the Appealed Decision but with additional amounts and must be rejected, (iv) there is no explanation for an uplift of 50% based on the specificity of sport nor for the addition of the unamortised costs and outstanding instalment of the loan fee from Dynamo (i.e. EUR 250,000).

- As to Rostov's methodology and calculations in seeking compensation of EUR 8,500,000, based on the option fee in the Dynamo Loan Agreement, this was never exercised, Dynamo was not willing to negotiate, there is no evidence about how that figure was reached and it was merely speculative, more of a "safety clause" in case Dynamo wanted to extend the loan or sign the Player permanently.

(v) Protected Period and Sporting Sanctions

- Russian law is not applicable to the dispute, but if it was, Rostov would have needed expert evidence to prove it, or have the Panel take account of and apply it. The arguments raised are new as they were not presented before the FIFA DRC and so should not be considered. In any event, the Player agrees with and adopts the reasoning in the Appealed Decision.

- To the extent that there is a claim that the Player should be subject to sporting sanctions, the termination was outside the Protected Period, so Article 17(3) of the FIFA RSTP is not applicable. Even if it was inside, the sanction is not automatic (see CAS 2017/A/4935 regarding "shall" being read as "may" meaning that it is always at the discretion of the judging body whether sporting sanctions are to be applied).

(vi) Relevance of the Diarra Judgment

- The decision of the ECJ is of no relevance. That case concerned EU competition law and free movement law as applicable to an EU citizen seeking employment in an EU member state, whereas the present case does not concern an EU citizen or a transfer between EU member states. Further the applicable law in these proceedings is the FIFA RSTP and, subsidiarily, Swiss law. Lastly, whilst the Player is a EEA citizen, decisions of the ECJ are not automatically binding on EEA member states. Even if it was, the judgment could not be applied in a manner that disadvantages such citizen as against a non-EU or non-EEA citizen.

B. Rostov

88. In its Appeal Brief, Rostov requests the following relief:

"*i. This appeal is lodged by FC Rostov is admissible*

ii. The appeal of FC Rostov is upheld.

iii. The decision rendered on 15 November 2023 by the FIFA Dispute Resolution Chamber in the matter of FC Rostov versus Mr Mathias Antonsen Normann and FC Al Raed is amended.

iv. Mr Mathias Normann is ordered to pay to FC Rostov a compensation for termination of the employment contract without just cause in the amount of EUR 8,500,000 plus 5% interest p.a. over said amount from 3 August 2023 until the date of effective payment.

v. Or alternatively, Mr Mathias Antonsen Normann is ordered to pay FC Rostov compensation for termination of the employment contract without just cause in the amount of EUR 5,524,975,92 plus 5% interest p.a. over said amount as from 3 August 2023 until the date of effective payment.

vi. FC Al Raed is jointly and severally liable for the payment of the aforesaid compensation for termination of the employment contract without just cause by Mr Mathias Antonsen Normann during the Protected period.

vii. A sporting sanction of restriction of six months on Mr Mathias Antonsen Normann's eligibility to play in official matches is imposed on the Player for termination of the Contract without just cause during the Protected Period.

viii. FC Al Raed is banned from registering any new players, either nationally or internationally, for two entire consecutive registration periods for inducing a breach of contract by Mr Mathias Normann during the Protected Period.

xi. The arbitration costs shall be borne by the FC Al Raed and the Player jointly and severally.

x. FC Rostov is granted a fair contribution to its legal and other costs incurred with these proceedings."

89. In its Answer, Rostov requests the following relief:

"*i. This Answer deemed admissible.*

ii. The Appellant's Appeal is dismissed in its entirety.

iii. The Appellant bears the entirety of the arbitration costs for the present proceedings.

iv. The Appellant is ordered to pay the Respondent a fair contribution towards the legal fees and other costs incurred by it in the framework of these proceedings, in an amount to be determined at the discretion of the Panel."

90. Rostov's submissions, in essence, may be summarised as follows.

(i) Applicable law

- In relation to the dispute between Rostov and the Player, in accordance with Article R58 of the CAS Code, the FIFA and FUR Regulations shall be initially applied and if there is any lacuna the legislation of the Russian Federation applies.

- The preamble to the First Employment Agreement states that the contract is regulated by the labour laws and other statutory laws of the Russian Federation with regard to the FUR and statutory documents of FIFA, Union of European Football Associations ("UEFA") and FUR. Therefore, the contractual parties agreed that Russian Law and the regulations of FIFA, UEFA and FUR shall be applied to the relationship deriving from the employment contract.

- Specifically, Article 348.12 of the Labour Code of the Russian Federation (the "LCRF") provides: "*An athlete, a coach have the right to terminate the employment contract at their own request (at their own free will) by notifying the employer in writing no later than one month, except when the employment contract is concluded for a period of less than four months.*"

- In relation to the dispute between Rostov and Al Raed, since there is no contractual relationship between the parties, in accordance with Article R58 of the CAS Code, the FIFA Regulations shall be applied and if there is any lacuna Swiss law applies.

(ii) Whether there was Just Cause to Terminate the Contract and Force Majeure

- The starting point in the FIFA RSTP is that a contract must be respected. It can only be terminated for just cause or sporting just cause. The FIFA RSTP establish two main just causes, abusive conduct and outstanding salaries; other reasons may exist and have been established. The Commentary on the FIFA RSTP (the "Commentary") provides that the existence of just cause shall be assessed in each individual case taking account of the specific circumstances.

- Players must respect contracts signed by them. Based on decisions of the FIFA DRC and CAS jurisprudence, there are two main reasons for a player to sign an employment contract which reflects the interest to be protected, to receive remuneration and other benefits and to improve their sports skills in order to keep their value.

- The FIFA DRC and CAS have held that the termination of a contract should always be the action of last resort (an *ultima ratio* action), thus only a breach or misconduct of a certain severity justifies termination, i.e. only when there are objective criteria which do not reasonably permit a continuation of the employment relationship.

- The termination by the Player of the contract at the end of July or beginning of August 2023 cannot be considered an *ultima ratio* action; it was without just cause. A large number of foreigners still play for or work for Russian clubs including several for Rostov.

- In relation to the dispute between Rostov and the Player, an assessment of the alleged existence of *force majeure* consequent upon the military conflict in Ukraine requires a two-phase approach: first assess whether the contract includes a *force majeure* clause that is applicable; second review the situation in the light of the applicable law and regulations.

- As there is no *force majeure* clause in the Employment Agreements, Russian statutory law applies. The term is not used in Russian labour law, but Article 83 of the LCRF establishes a separate ground for termination. Some extraordinary circumstances must be present, i.e. an unforeseeable event beyond the control of the parties. This is similar to Swiss law which requires that a *force majeure* event must be unexpected and unpredictable.

- Numerous CAS awards have confirmed that the conditions for the occurrence of *force majeure* are to be interpreted narrowly since it introduces an exception to the binding force of a contract. The Player's behaviour can in no way be considered as a reaction to an "exception".

- War/hostilities may amount to *force majeure*, but the facts and circumstances of this case do not establish *force majeure*. After suspending the First Employment Agreement in June 2022, the Player voluntarily renewed his contractual relationship with Rostov in September 2022. The Player's statements that he was assured of his absolute safety are false or not reasonable. The statements by the Player that the situation changed significantly in June 2023 and he had serious concerns for his safety may reasonably be doubted.

- Prior to the extension of the employment contract in September 2022, missile attacks had already taken place on Russian territory. The media articles and statements of the Ukrainian leadership cited by the Player were not known to him and not taken into account at the time he took the decision to terminate the contract.

- It is wrong and misleading for the Player to insist that when he returned in the summer of 2023 he found a completely different Moscow and did not feel safe. Moscow and Rostov-on-Don have not changed in any way since February 2022. The video presented as evidence was taken after the terrorist attack on Crocus City Hall in Moscow in March 2024 and all measures were cancelled after the capture of the four terrorists, a few hours later. The Player felt safe enough to invite his girlfriend to Moscow in July 2023.

- Rostov continued to play all its matches as scheduled, with no restrictions on the attendance of fans. There were, and are, a large number of foreigners playing and working in Rostov's and Dynamo's teams, none other of whom terminated their contracts and several of whom have confirmed that they felt, and still feel, safe in Russia.

- The Player alleges that the FIFA DRC incorrectly determined the start date of the contractual relationship and accordingly incorrectly applied the principle of foreseeability, as when he signed the employment contract in 2019, he could not have been aware of the situation that would arise in the summer of 2023. However, Annexe 7 defines the starting point (the time of its entry into force) and the eligibility criterion (players who are not registered with clubs affiliated to the Ukrainian Association of Football ("UAF") or FUR). The Player exercised his right granted by Annexe 7 in suspending the First Employment Agreement in the summer of 2022 and then, having a full picture of what was happening in Russia and realising all the risks, voluntarily renewed his contract. At the time the relevant version of Annexe 7 came into force, the Player was registered for a club that was affiliated to the FUR.

- Rostov is not responsible for the Player's failure to find a club in the summer of 2022. It was a conscious and voluntary decision to return to Russia, apparently the result of negotiations between the Player and Dynamo.

- Thus, the escalation of the conflict on Russian territory cannot be considered a *force majeure* event due to the foreseeable possibility of such a scenario in September 2022 when the Player voluntarily returned to Russia and renewed his employment contract. The escalation of the war, if there was escalation, was not unforeseeable and extraordinary.

- The Player alleges that he did not expect that in May 2023 FIFA would change Annexe 7. In May 2023 a new edition of Annexe 7 introduced some limitations to protect contractual stability. Rostov concedes that the Player did not anticipate the introduction of these limitations. The provisions did not change the position of those players or coaches who had chosen not to work in Russia or Ukraine during the conflict. However, providing players and coaches who initially agreed to work in Russia despite the existence of hostilities a right to withdraw at any time puts Russian clubs at a disadvantage and jeopardises relations with foreign employees. It is unrealistic to assert that *"nobody expected that FIFA would impose any restrictions"* as Russian and Ukrainian clubs insisted on protecting their interests. To continue to permit termination at any time was in direct conflict with the principle of contractual stability. To accept that as he did not foresee the limitations of Annexe 7 it should not apply to him is nonsense because in such case any player can argue that s/he cannot have expected something, so they are not subject to any limitations.

- *Estoppel* may prevent a person from making assertions or going back on his word, or bringing a particular claim particularly if a promise is relied upon by the other party. *Nemo potest venire contra factum proprium* has an equivalent effect of prohibiting inconsistent conduct, stipulating that a party to a contract may not set itself in contradiction to its previous conduct if the other party has relied on said conduct. As per the CAS award in *CAS 2003/O/410* "*[t]his principle provides that when the conduct of one party has led to raise legitimate expectations on the part of the second party, the first party is barred from changing its course of action to the detriment of the second party…"*. Thus, the estoppel principle was applied correctly by the FIFA DRC in the Appealed Decision.

- The Player's personality rights have not been infringed by, as alleged, Rostov failing to take measures to safeguard his health and personal safety. Russian labour law, not Swiss law, governed the employment relationship but it is stricter in safeguarding employee's rights than Swiss law. The Player failed to adduce any evidence that it was Rostov who infringed the Player's rights in any way, i.e. that it was Rostov who induced the Player to breach his contract, or violated any payment obligations, or did not help him to move to Rostov-on-Don where any "*safety measures*" he wanted could have been arranged, or who broke the contract, or refused to negotiate with the Player, or declined any reasonable solution offered by the Player.

- Had the Player thought only about his own safety he would have offered Rostov options such as a loan or transfer to another club, or special conditions for his safety measures, or to buy out his contract. Instead, the Player insisted on a free termination only, whilst Rostov was always ready and willing to negotiate. Rostov strongly

believes that its conversations with the Player were just a preparation of evidence for a subsequent termination by the Player. Rostov did discuss a possible loan in June / July 2023 and waited for specific offers from the Player's agent, as it was not Rostov's responsibility to look for a new club. The club's only interest could have been the commercial component of the deal. Mutual termination could also have been discussed, but not the release of an expensive player for free. The club did not delay negotiations but was in constant contact with the Player's counsel and agents and arranged a video conference at the earliest opportunity taking account of the end of the transfer window and availability and business schedule of the club's management.

- In relation to the dispute between Rostov and Al Raed, as there is no definition of *force majeure* in the FIFA regulations, Swiss law should be applied, as per decisions of the Swiss Federal Tribunal ("SFT") and CAS. The Player voluntarily renewed his contractual relationship with the club in September 2022, at which time the escalation of the war was undoubtedly not unforeseeable and extraordinary for the Player. Al Raed relies on *CAS 2022/A/8708* to establish that the war in Ukraine was a *force majeure* event. However, that case is clearly irrelevant as it concerned a decision by other clubs and national associations to refuse to play matches against Russian clubs and the national team. It was therefore the refusal to play which allowed FIFA to rely upon the principle of *force majeure.*

(iii) The Consequences of Termination without Just Cause

- As the contract does not provide for the amount of compensation, compensation and sanctions shall be assessed in accordance with Article 17 of the FIFA RSTP. The club disagrees with the FIFA DRC's conclusion in the Appealed Decision, and the arguments of the Player. CAS jurisprudence regularly stresses a wide margin of discretion, each case shall be dealt with on its own merits and the Panel should be free to find the appropriate method, always applying Article 17 of the FIFA RSTP to find the correct solution for a case. The Panel will initially follow the criteria indicated in Article 17 of the FIFA RSTP, with in this case Russian law being the law of the country concerned, but those criteria are illustrative and not exhaustive. CAS panels often modify decisions of the FIFA DRC and consider other elements not taken into account.

- As for the law of the country concerned, Article 348.12 of the Labor Code of the Russian Federation entitles a player or coach to terminate a contract on one month's notice. Thus by submitting a notification on 3 August 2023 and signing an employment contract with Al Raed on 16 August 2023, the Player grossly violated the Russian legislation.

- The FIFA RSTP and the Commentary state that the FIFA DRC shall duly consider the *"specificity of sport"* but it failed to do so. The following factors due to the specific nature of football were relevant and should have been taken into account:

- Firstly, the Player and Al Raed acted in extremely bad faith as the Player's agents actively attempted to negotiate with Dynamo in June 2023 (i.e., "*long before any*

drone attacks to the nearby buildings") to negotiate with Rostov to acquire the Player's registration on a permanent basis. The Player had not expressed any concerns about staying in Russia and in Moscow in particular at this point. Such concerns were only expressed once it was known that Dynamo would not renew the Player's contract. Rostov believes that, after receiving this information, the Player started an active search for a new club as he did not want to return to Rostov due to a lack of sporting interest in playing for the team.

- Rostov attempted to discuss the Player's concerns and offer him some options and guarantees, but the Player refused to discuss any practical steps to address his safety concerns. As he realised, he could not exercise the Annexe 7 right granted previously by FIFA, the Player created the appearance of "*new circumstances*" that would have justified "*grounds*" for termination.

- Al Raed could not have been unaware of the Player's contract with Rostov but made no attempt to contact the club and clarify the Player's status. Rostov informed Al Raed that the Player still had a valid contract with Rostov. CAS 2018/A/5607, has established that "*Ill-advised manners on its side (lack of consistency/transparency/correctness) can lead to an increase of the amount of compensation due to the otherwise damaged party*".

- Secondly, the Player terminated the contract practically at the end of the registration period in Russia (i.e. on 14 September 2023), thus giving Rostov a limited opportunity to find a replacement. Rostov's coaching staff, with whom he had a good relationship, assumed in good faith that the Player would return, as did the fans.

- Thirdly, the Player terminated the contract 2.5 years before its end date which meant that Rostov had 5 registration periods until 31 December 2025 to sell or loan the Player on favourable terms. This caused a loss of a possible transfer fee or loan fees.

- The assessment of a Player's market value is the starting point of the calculation. The FIFA DRC was wrong to use the general formula without consideration of other facts such as the specificity of sport or the direct loss of an instalment on the loan fee of EUR 250,000 from Dynamo. Additional factors were relevant, such as the time remaining on the existing contract, the fees and expenses paid or incurred by Rostov and whether the violation occurred during the "protected period".

- Rostov purchased the rights for the Player from Brighton and Hove Albion FC for a fee of EUR 2,194,709.97 and an agent fee of EUR 300,000. Accordingly, the costs of acquiring the Player amounted to EUR 2,494,709.97 for the period from 21 February 2019 to 31 December 2025 (i.e. 82 months). The Player's early termination of the contract resulted in 29 months remaining x 100% / 82 = 35.37%. Consequently, the unamortised cost of acquiring the Player due to early termination of the Second Employment Agreement, the purchasing rights and agent's fee is 2,194,709.97 x 35.37% = EUR 776,268.92 and agent's fee EUR 300,000 x 35.37% / 100% = EUR 106,110. These agreements were not provided to the FIFA DRC as they were not considered relevant but should be declared admissible as they have

not been hidden from the Player and Al Raed and are so not deployed in a manner which is abusive.

- Rostov considers that the termination occurred during the protected period, which may result in an increase in the compensation.

- The purpose of awarding compensation is not only to punish the infringer, but (in general) to restore the injured party's financial condition to a level at which it should have been if such infringement had not occurred (see *Matuzalem* and *Suarez*).

- The economic value of the Player's services is an essential factor. That value is how much he can be sold/leased for. In general, the FIFA DRC's practice is to assume that the remuneration from the new club is another reliable indicator. However, the Player's new employment contract is not a reflection of the true market value as the Player was in difficult circumstances in July-August 2023. He was looking for a new club to sign him, recognising the real possibility of entering lengthy legal proceedings for compensation for termination of his previous contract without just cause, while Al Raed must have realised that it would be found jointly and severally liable for compensation if awarded.

- In the absence of such an indicator, it is necessary to use the third party offer that Rostov received as the one closest to the date of the Player's termination of the Employment Agreements. CAS jurisprudence states that "*only a third party offer made in good faith may be a relevant indicator of the Player's value because only that type of offer confirms the amount that a club would actually be willing and ready to pay for acquiring the Player's services*." (CAS 2018/A/5607 & 5608, para. 18). A transfer fee may also constitute the true market value of the player determined by the player's former club (CAS 2009/A/1960 & 1961). The offer to buy the Player closest in time to the termination came from Dynamo, less than a year before the termination by the Player. That amount was EUR 8,500,000 which is slightly less than the EUR 13,000,000 offered in August 2021. Dynamo only did not buy the Player due to a change in Head Coach, but that does not mean that the amount offered did not correspond to the true market value of the Player.

- In the event that the Panel disagrees with Rostov's argument that compensation should be determined by market value, the compensation should be calculated as follows: EUR 2,928,398 as the average between the Player's salary at the old and new club at the end of the Second Employment Agreement. 50% of sport specific factors should be added (i.e. EUR 1,464,199), unamortised expenses (EUR 882,378.92), plus the unreceived payment of EUR 250,000 from Dynamo due to the Player's termination of the contract. The total compensation due under these circumstances is EUR 5,524,975.92. The EUR 1,000,000 loan fee received from Dynamo should not be deducted.

- Thus, Rostov should be awarded compensation of EUR 8,500,000, or in the alternative EUR 5,524,975.92, plus interest at 5% *p.a.* from 3 August 2023 until the date of payment.

(iv) The Protected Period and Sanctions

- Rostov disagrees with the FIFA DRC's conclusions that "*both the First Employment Agreement and Second Employment Agreement jointly governed the employment relationship of the parties in that they formed a unified contract*" and that the breach occurred outside the protection period.

- In Russia, all relations between an employer and an employee are regulated by the LCRF. This defines mandatory terms of an employment contract and the procedure for its conclusion. Article 61 of the LCRF states that the effective date of the contract should be distinguished from the start date of work, which date is determined by the parties in the employment contract.

- The Second Employment Agreement was signed by Rostov and the Player on 28 August 2021. The preamble to the contract stated that it is entered into on 28 August 2021. However, Article 5.2 of the Second Employment Agreement provides that the date of commencement of work shall be 1 January 2025. Consequently, the Player was to commence his work as a football player under this contract with effect from 1 January 2025.

- The protected period must be calculated anew when a new version of the employment contract comes into force (Article 17(3) of the FIFA RSTP and Article 1 of the FUR Regulations on the Transfer of Football Players, no. 35).

- Under Russian law, the First and Second Employment Agreements should be read as two separate contracts. The Player's early termination of the Second Employment Agreement which started again from the date of conclusion of the Second Employment Agreement (i.e. on 28 August 2021). As the contract was therefore terminated without just cause during the protected period, the Panel may impose sporting sanctions on the Player.

- To avoid sporting sanctions being imposed in accordance with Article 17(4) of the FIFA RSTP on the new club, it must provide some convincing evidence that it did not induce the termination, rather than a repeated declaration of its non-involvement to the breach of the existing contract.

- If the new club was not acting in bad faith and did all it could do to check on the Player's status at the time of the approach, then it would not be deemed to have induced the Player's breach of their contract with the old club.

- During the proceedings at the FIFA DRC, Al Raed failed to provide any conclusive evidence in support of its declaration that the club never induced the Player to terminate his contact without just cause. For example, there was a failure to provide evidence to confirm that the first contact between Al Raed and the Player was made after 3 August 2023, evidence that Al Raed was genuinely unaware of the valid employment contract between Rostov and the Player, or evidence to confirm that Al Raed tried to contact Rostov but could not reach Rostov's management to discuss a possible transfer/contract with the Player.

- Although the FIFA DRC did not consider imposing a sporting sanction on Al Raed, Rostov believes Al Raed should provide all the evidence it has at its disposal to rebut the presumption of inducement.

(v) Joint and Several Liability

- Al Raed is the new club for the purpose of establishing joint and several liability under Article 17(4) of the FIFA RSTP. The purpose of the provision was to provide the old club with a guarantee that the compensation would be paid. Without liability Al Raed would profit from the breach of contract by the Player. Joint and several liability is not dependent on the new club being proven to have induced the breach.

(vi) Relevance of the Diarra Judgment

- Al Raed failed to identify any exceptional circumstances to justify it supplementing its case, further to Article R56 para. 1 of the CAS Code. Nowhere in its Appeal Brief or Answer had it referred to EU law. There are therefore no grounds to permit new evidence on to the case file.

- Where (as in these proceedings) none of the Parties is domiciled in an EU member state one would have trouble understanding how EU law may govern or affect the Parties' relationships. Further the judgment was not a court decision *stricto sensu* since the ECJ was providing interpretation on Articles 45 and 101 of the TFEU further to the request for a preliminary ruling by the Belgian Court.

- With regards to joint and several liability, the facts in Diarra are completely different to those in the present proceedings. The offer made to Diarra was six months after the termination of his contract and with conditions that he be confirmed as eligible and there would be no joint and several liability. In contrast, the Player entered an agreement with Al Raed two weeks after his termination with Rostov and Al Raed ignored official correspondence from Rostov.

- With regards to the calculation of compensation, the preliminary ruling found that the criteria in Article 17(1) of the FIFA RSTP are compatible with EU law unless their application goes far beyond what is necessary for the pursuit of the objective of ensuring the regularity of interclub football competition while maintaining a certain degree of stability in player rosters of the professional football clubs.

- The decision of the ECJ is therefore of no relevance.

C. Al Raed

91. In its Appeal Brief, Al Raed requests the following relief:

"*a. The Appealed decision shall be dismissed.*

b. The Player terminated the employment contract with the Respondent Club with just cause.

c. Appellant Club shall not be liable for the unilateral termination of the Employment Agreement signed between the Respondent and the Player.

d. The Appellant Club shall not be liable for unilateral termination of the Employment Agreement signed between the Respondent and the Player.

e. The Respondent Club shall not be entitled to any compensation, nor in the amount of to the Claimant EUR 2,923,507.00 as compensation for breach of contract without just cause plus 5% interest p.a. over said amount as from 3 August 2023 until the date of effective payment.

f. The Appellant Club is not jointly nor severally liable for the payment of an adequate compensation to the Respondent, nor in the amount of to the Claimant EUR 2,923,507.00.

g. The Appellant Club shall not be ordered to pay interest p.a. calculated over the amount of compensation, nor 5% interest p.a. over said amount as from 3 August 2023 until the date of effective payment.

If not so, subsidiarily:

f.1 Taken the special circumstances of the matter at hand into consideration, the compensation would be zero if the termination was considered without just cause.

f.2 But, even if not so, as the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the 'Mitigated Compensation')." (emphasize omitted)

92. In its Answer to the Appeal filed by Rostov, Al Raed requests the following relief:

"a. The Appeal shall be dismissed.

b. The Player terminated the employment contract with the Appellant Club with just cause.

c. The Respondent Club shall not be liable for the unilateral termination of the Employment Agreement signed between the Appellant and the Player.

d. The Respondent Club shall not be liable for inducement to the unilateral breach of the Employment Agreement signed between the Appellant and the Player.

e. The Appellant Club shall not be entitled to any compensation, nor in the amount of EUR 8,500,000 (Eight million five hundred thousand Euro) plus 5% interest p.a. over said amount as from 3 August 2023 until the date of effective payment, nor in the amount of EUR 5,524,975.92 (Five million five hundred twenty four thousand nine hundred and seventy five Euro 92 eurocents) plus 5% interest p.a. over said amount as from 3 August 2023 until the date of effective payment

f. The Respondent Club is not jointly nor severally liable for the payment of an adequate compensation to the Respondent.

g. The Respondent Club shall not be imposed sporting sanctions.

If not so, subsidiarily:

f.1 Taken the special circumstances of the matter at hand into consideration, the compensation would be zero if the termination was considered without just cause.

f.2. But, even if not so, as the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the 'Mitigated Compensation').

f.3. The Respondent Club shall not be imposed sporting sanctions."

(emphasis omitted)

93. Al Raed's submissions, in essence, may be summarised as follows:

(i) Applicable law

- This dispute shall be decided in accordance with the FIFA Statutes and Regulations and Swiss law subsidiarily.

(ii) Whether the Player terminated the contract with just cause and force majeure

- Article 14(1) of the FIFA RSTP states "*A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.*" *"Just cause"* is undefined in the FIFA RSTP, but CAS jurisprudence, with reference to Swiss law, indicates that an early unilateral termination must have a certain level of severity to be admitted as "cause" (CAS 2006/A/1180; CAS 2014/A/3684).

- The Player acknowledged that termination should always be an action of *last resort, ultima ratio* (cf. CAS 2016/O/4684; see also Commentary (2023 edition), pp. 128-129).

- A breach will be considered sufficiently serious when there are objective circumstances that would render it unreasonable to expect the employment relationship between the parties to continue (CAS 2016/O/4684; CAS 2013/A/3091).

- The concept of "just cause" as defined in Article 14 of the FIFA RSTP must be likened to that of "*good reason*" within the meaning of Article 337 para. 2 of the CO (cf. CAS 2013/A/3091, para.188).

- The Player returned from his summer holiday to a dangerous, war-stricken Russia with military blockades and controls which directly impacted his daily life and caused great concern. This was reinforced by numerous media reports.

- The Player expressed his concern with his representatives and subsequently Rostov by letters dated 5 July 2023, 20 July 2023 and 30 July 2023 in which the Player attempted to engage with Rostov to find common ground for discussions and reach an amicable conclusion. By the date of termination of the contract the Player feared for his life. His concerns were not taken seriously by Rostov, so the Player saw no alternative other than to flee from Russia; he could not find common ground with Rostov.

- Rostov stated that there was no cause for concern and disagreed with the Player who asserted that the escalation of the situation constituted a *force majeure* event. The Player argued that the escalation of the war was beyond the parties' control, could not be avoided or overcome, and was not attributable to any of the parties. Accordingly, it must be possible to terminate the contract with just cause and without further consequences.

- The present case is an exception to the general rule of Article 17(2) of the FIFA RSTP. FIFA DRC decisions and CAS jurisprudence, with reference to Swiss law, indicates which criteria or threshold should be met to consider a unilateral termination to be with just cause, taking due consideration of the specific circumstances of the case at hand.

- In CAS 2013/A/3091, para. 188, the CAS panel held, with reference to the Swiss Code of Obligations that, "*Any circumstances which, according to the rules of good faith, mean that the party who has given notice of termination cannot be required to continue the employment relationship, shall be deemed good reason.*" Accordingly, the Panel stated, *"The concept of 'just cause' as defined in Article 14 RSTP must therefore be likened to that of "good reason" within the meaning of Article 337 para. 2 CO.*".

- The war had a significant impact on Moscow and Rostov-on-Don which gave rise to the Player's concerns that he communicated with Rostov in the aforementioned letters exchanged between him and the club.

- The Player was risking his life by staying in Russia during the war. The duration of the war remains undetermined and continues to escalate.

- CAS has previously considered war to be a *force majeure* event in a previous award. In *CAS 2022/A/8708*, the CAS panel noted that "*military conflict is considered a classic force majeure event, and has been accepted as such by previous CAS Panels (*see CAS 2020/A/7065, para 111; CAS 2014/A/3463 & 3464, para. 80)." In this case, the majority of the panel found that military action was the catalyst for a series of extraordinary and unforeseen circumstances that in themselves created a *force majeure* event in the context of the justification for the exercise of FIFA's discretion in circumstances for which its Statutes did not specifically provide. It was stated that

the *force majeure* event was not so much the military conflict per se, as the extraordinary and unprecedented consequences that followed, including: the widespread condemnation of the military conflict by international organisations and governments, the reaction of the international sports community, the imposition of sanctions and travel bans on Russian people and business, and the exceptional widespread international public reaction against it.

(iii) The Consequences of Termination without Just Cause

- The case is unique in that it is not a case where the Player seeks compensation from their former club even though he has a just cause to prematurely terminate the contract. Conversely, the Player terminated the contract with just cause based on a genuine and real fear over his safety and well-being in the context of the rapidly deteriorating circumstances in Russia.

- The purpose of Article 17 of the FIFA RSTP is to reinforce contractual stability, acting as a deterrent against unilateral breaches and terminations (CAS 2018/A/6017; CAS 2014/A/3735; CAS 2014/A/3573; CAS 2008/A/1519-1520).

- Under Article 17(1) of the FIFA RSTP, "*in all cases the party in breach shall pay compensation*". CAS jurisprudence on the calculation of compensation due to a club in the event of breach of contract emphasises the wide margin of discretion when applying Article 17 of the FIFA RSTP. Other objective factors must be considered i.e., the ongoing conflict and war between Ukraine and Russia; the counteroffensive in both Ukraine and Russia and the several attacks this caused on Russian territory, including but not limited to Rostov-on-Don and Moscow; the numerous attacks on the cities in the days prior to the unilateral termination; the escalation of the conflict which caused a great concern for the life and safety of the Player, thus giving rise to a situation of *force majeure*.

- Article 17(1)(ii) of the FIFA RSTP applies as the Player signed a new contract by the time of the decision. Therefore, the value of the new contract with Al Raed for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early.

- Given the specific circumstances of this case there should be no award of compensation. If compensation is to be paid, the amount of EUR 1,975,000 serves as the basis for the determination of the amount of compensation.

- According to Article 17(1) part 1 of the FIFA RSTP, such remuneration under a new employment contract shall be taken into account on the calculation of the amount of compensation for breach of contract due by a player to his former club. When calculating the average between the Player's remuneration with Rostov and his remuneration with Al Raed for the same period of time, the Player was entitled to a total remuneration of USD 3,313,790.00. Therefore, the value of the new contract for the period corresponding to the time remaining of the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated

early. As such, compensation to Rostov should not be higher than USD 1,388,790.00 (USD 3,313,790/00 – USD 1,975,000.00 = USD 1,338,790.00).

(iv) Joint and Several Liability

- Article 17(2) of the FIFA RSTP establishes the financial responsibilities of a player's new club in the event the player is ordered to pay compensation to their former club for breach of contract.

- The FIFA RSTP makes clear that the new club will be held liable, together with the player to pay the compensation due to the player's former club, regardless of whether the club induced the player to breach the contract, whether in good faith or bad faith. This is strict liability and it is automatic.

- However, this case is an exception to the general rule of Article 17(2) of the FIFA RSTP. The Panel may order an exception to the principle. As there was no breach of contract there is no liability to pay compensation. Al Raed took no part in inciting the Player to terminate his contract. Any form of order against Al Raed would be legally unsound as it would bring the system partially back to the pre-Bosman days.

(v) Sporting Sanctions

- For Al Raed to be sanctioned in this case, (i) the breach must have occurred during the protected period; and (ii) there must be no evidence that the new club acted in good faith (Article 17(4) of the FIFA RSTP).

- The wording of Article 17(4) of the FIFA RSTP expressly provides that a club can prove it did not induce the athlete to breach the relevant agreement, in order to avoid having sporting sanctions imposed on them. This has been confirmed in several CAS decisions (CAS 2017/A/3953; CAS 2015/A/3953 & 3964). In accordance with this, CAS has well-established jurisprudence determining that the new club has to play a relevant role concerning the breach of contract by the player to be sanctioned for inducement to breach (CAS 2008/A/1568).

- Al Raed did not induce the Player to terminate the contract. When his contract expired, he was not connected with Al Raed and nor had he received an offer. The terms of the contract make clear that the Player was a free agent. Article 18(4) of the FIFA RSTP allows a player to conclude a new contract with another club if the contract with his current club has expired or will expire within the next six months. This rule was designed to preclude a club from secretly contacting a player. However, the evidence on file demonstrates that Rostov did not produce any supporting documents to prove that Al Raed induced the Player to terminate the Second Employment Agreement.

- Accordingly, Al Raed cannot have sporting sanctions imposed upon it.

(vi) Relevance of the Diarra Judgment

- Independently of the law applicable to the dispute, an arbitration tribunal with a seat in Switzerland has to take account of mandatory norms of another legal system if there is a close connection between the controversy and if, according to the Swiss legal concept, these norms protect interests worthy of protection. Therefore, Articles 45 and 101 of the TFEU can be of great relevance in arbitration procedures before the CAS in relation to the exercise of regulatory power by federations.

- The ECJ emphasised the nature of the restriction as particularly disconcerting and the "*classic mechanism of contract law*" such as the right to receive compensation are sufficient to ensure the long-term presence of a player and the normal operation of market rules to proceed with recruitment of a player.

- With regard to joint and several liability, certain aspects of FIFA's rules are incompatible with Article 45 of the TFEU. The risk of sporting sanction deprives recruitment of practical interest. With regard to the calculation of compensation, there is an incompatibility with Articles 45 and 101 of the TFEU.

- Even though, in these proceedings, neither club is in the EU or EEA and the Player is an EEA citizen it will have an impact in such kind of international relationship. Some elements of the settlement with the European Commission will now have to be revisited to bring the FIFA RSTP into line with EU law. It can only be concluded that such conclusions will be applied worldwide under the FIFA RSTP.

VI. JURISDICTION

94. Article R47 para. 1 of the CAS Code provides that: "*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 it prior to the appeal, in accordance with the statutes or regulations of that body.*"

95. Considering that Rostov lodged its claim with the FIFA DRC on 1 September 2023, the 2022 edition of the FIFA Statutes are applicable to the present proceedings. Article 56(1) of the FIFA Statutes provides that: "*FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, football agents and match agents*".

96. Article 57(1) of the FIFA Statutes provides that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"*

97. The Appealed Decision provides as follows: "*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.*"

98. Finally, none of the Parties has contested the jurisdiction of the CAS and each has confirmed it in the Order of Procedure, duly signed by each of them.

99. It follows from all of the above that the Panel has jurisdiction to decide the present appeals.

VII. ADMISSIBILITY

100. Article R49 of the CAS 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.*"

101. Article 57(1) of the FIFA Statutes (2022 edition) provides as follows:

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

102. The Appealed Decision was notified with grounds to Al Raed, Rostov and the Player on 18 December 2023. Al Raed, Rostov and the Player filed their Statements of Appeal with the CAS Court Office on 8 January 2024, 5 January 2024 and 8 January 2024 respectively i.e. within the twenty-one days allotted under the aforementioned provision.

103. The three appeals complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

104. It follows that the appeals filed by Al Raed, Rostov and the Player are admissible.

VIII. APPLICABLE LAW

105. Article R58 of the CAS 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

106. Article 56(2) of the FIFA Statutes (2022 edition) provides as follows:

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

107. The Parties agree that the FIFA regulations, and in particular the FIFA RSTP, shall apply primarily. Considering that Rostov lodged its claim with the FIFA DRC on 1 September 2023, the Panel notes that the March 2023 edition of the FIFA RSTP is applicable to the present proceedings, further to Article 29 of the said FIFA regulations.

108. As to the law to be applied subsidiarily, the Player, Al Raed and Rostov - in relation to the dispute with Al Raed - agree that Swiss law shall apply.

109. In relation (only) to its dispute with the Player, Rostov submits that Russian law shall apply subsidiarily. Rostov submits that the preamble to the First Employment Agreement provides that the club and the Player agreed that: "*their rights and liabilities are regulated by the labor laws and other statutory acts of the Russian Federation containing the norms of labor law, collective bargaining agreements, other accords and the local regulatory acts adopted by the Employer, with regard to the regulations of the [FUR] and the statutory documents of FIFA, UEFA and [the FUR].*" The Panel notes that this same choice of law clause appears in the preamble to the Second Employment Agreement.

110. With regards to the issue of which law shall apply subsidiarily, the Panel notes that whilst the choice of law, as stated in the Employment Agreements, is Russian law, Article 56(2) of the FIFA Statutes states that CAS *"shall additionally"*, i.e. in addition to the primarily applicable law, apply Swiss law. As such, the Panel must decide if Russian law, as the choice of law as stipulated in the Employment Agreements, or Swiss law, as the indirect choice of law stipulated in the FIFA Statutes, shall apply subsidiarily.

111. This issue has been addressed by Professor Ulrich Haas (HAAS U., Applicable law in football-related disputes: The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, in CAS Bulletin 2015/2, p. 14):

> "*This view, which ignores the reference in Art. 66 (2) of the FIFA Statutes, is contradicted by the clear wording of Art. R58 of the CAS Code. In appeal arbitration proceedings this provision assumes that the federation regulations take precedence. Consequently, the rules and regulations of a federation also take precedence over any legal framework chosen by the parties – e.g. – in their contract. If, therefore, the federation rules provide that Swiss law is to be applied additionally (to the rules and regulations of FIFA) then this must be complied with by the Panel. To this extent the Swiss law referred to in Art. 66 (2) of the FIFA Statutes is part of the – according to Art. R58 of the CAS Code – mandatorily applicable rules and regulations of the federation.*"

112. The Panel agrees with the consideration of Professor Haas, and holds that Swiss law, as referred to in the FIFA Statutes, shall apply additionally, in case of lacuna in the FIFA Regulations. In addition, the Panel may have regard to principles of Russian law as per the terms of Article 17(1) of the FIFA RSTP.

IX. PRELIMINARY ISSUE – REQUEST TO RULE DOCUMENTS INADMISSIBLE

113. In his Answer, the Player requested that the Panel rule as inadmissible the following two documents:

    a. The BHA Transfer Agreement (being exhibit A27 to Rostov's Appeal Brief); and

    b. The BHA Agent Agreement (being exhibit A28 to Rostov's Appeal Brief)

    (the "Challenged Documents").

114. In support of that application, the Player relied on the fact that the Challenged Documents were not put in evidence before the FIFA DRC in the underlying proceedings, the inference being that the amounts paid by Rostov under those agreements did not form part of Rostov's case before the FIFA DRC and so cannot form part of the claim before CAS. At the Hearing, Al Raed adopted the same position for the same reason.

115. In his evidence, Mr Sapyanichenko stated that the Challenged Documents had not been filed with the FIFA DRC as they had not at that stage been considered relevant to that claim. However, Rostov submitted that the Challenged Documents should be admitted as they were relevant to these appeal proceedings, to their alternative case on quantum. The Panel had the power to review the case *de novo*, the Challenged Documents were not contradictory to other evidence filed and there had not been conduct that was abusive.

116. Article R57 para. 3 of the CAS Code stipulates that "*the Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered.*" The CAS Commentary specifies *"the rationale of that rule as to avoid evidence being submitted in an abusive way or being retained by parties in bad faith in order to bring it for the first time before CAS"* (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials, 2015, p. 520) . CAS jurisprudence has confirmed that an appeal body has a wide discretion to exclude or admit evidence based on their own assessment of the case. This power to exclude evidence may be exercised, *inter alia*, in circumstances where a party has displayed abusive procedural behaviour, or in any other circumstances where the Panel deems the request to admit new evidence either as unacceptable procedural conduct or to be unfair or inappropriate in the light of the overall circumstances as well as the rights and interests of all the parties (cf. CAS 2015/A/3923, at para. 66).

117. Applying these principles, the Panel holds that the Challenged Documents are admissible. Whilst they were in existence and available to the Rostov prior to the commencement of the proceedings before the FIFA DRC, the Panel does not consider that Rostov has behaved abusively, unreasonably or inappropriately or caused unfairness to the Player or Al Raed by including the Challenged Documents as exhibits to the Appeal Brief, when Rostov concluded that they are relevant to the appeal. There is nothing to suggest that the documents have been *"held back"* in order to surprise the Player or Al Raed, both of whom were able to take account of the Challenged Documents in preparing their Answers and in their oral submissions at the Hearing, and to have asked questions of Rostov's witnesses at the Hearing about the documents if they wished to do so. Each has therefore had ample opportunity to take account of their content and address them to the extent they wished to do so and has therefore been heard in relation to them.

X. MERITS

118. The Panel notes that the case concerns an employment-related dispute between a football player and a football club and his new club, more specifically if the Player had just cause to terminate his employment relationship with Rostov on 3 August 2023.

119. Consequently, the main issues to be resolved by the Panel are:

- Was the Player's unilateral termination of his employment agreement justified?

- What are the consequences of the answer to the first issue?

120. Before turning to these issues, the Panel notes that the Parties have different views concerning some of the facts of the case. In this regard, as per Article 13.5 of FIFA's Procedural Rules Governing the Football Tribunal, the burden of proof sits with the party seeking to prove the fact that is asserted. This is consistent with Swiss law. Article 8 of the SCC provides that: *"Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right."*

121. As to the standard of proof, this is not provided for in the FIFA regulations. The Panel notes the terms of CAS 2021/A/8277, at para 92.

"The standard of proof describes the degree to which a judge / arbitral tribunal needs to be persuaded in order to accept or not to accept an alleged fact. The question of the standard of proof is a procedural question governed in an international arbitration by Article 182 of the Swiss Private International Law Act. Absent any provision agreed upon by the Parties, the Sole Arbitrator is inspired by Swiss law when determining the applicable standard of proof. According thereto absolute certainty is not required. Instead, it suffices if the judge / arbitral tribunal has no serious doubt about the existence of the alleged facts or if any remaining doubt appears to be tenuous (SFT 130 III 321, consid. 3.3)."

122. The Panel considers it appropriate to apply such standard to these appeals.

A. Did the Player have Just Cause to Terminate the Contract on 3 August 2023?

123. Article 13 of the FIFA RSTP defends the principle of contractual stability, stating as follows:

"*A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.*"

124. Articles 14 of the FIFA RSTP read, *inter alia*, as follows:

"*Article 14*

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

2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause."

125. The Panel notes that Article 14(1) the 2025 edition of the FIFA RSTP (including the interim regulatory framework promulgated consequent upon the Diarra Judgment), provides for the first time a definition of *"just cause"* within those regulations. However, as the 2023 edition of the regulations is applicable to these proceedings, which did not include such or any other definition of *"just cause"*, it is necessary to consider and apply the definition under Swiss law. Under Swiss law, good cause (i.e. the equivalent of just cause) exists whenever the terminating party cannot be expected in good faith to continue the employment relationship (Article 337 para. 2 of the CO). Just cause thus may exist when the fundamental terms and conditions of the employment relationship are no longer respected by one of the parties to the employment contract.

126. The Commentary (2023 Edition) explains the position further as follows:

"*When assessing whether a unilateral contract termination is justified the following general criteria may be applied, considering the specific circumstances of each individual matter:*

- *Only a sufficiently serious breach of contractual obligations by one party qualifies as just cause for the other party to terminate the contract.* (CAS 2006/A/1180; CAS 2013/A/3091; CAS 2014/A/3706; CAS 2018/A/6017)

- *In principle, the breach is considered sufficiently serious when there are objective circumstances that would render it unreasonable to expect the employment relationship between the parties to continue, such as a serious breach of trust.* (CAS 2017/A/5180; CAS 2017/A/5402; CAS 2019/A/6306 & 6316; CAS 2019/A/6171; CAS 2019/A/6175)

- *The termination of a contract should always be an action of the last resort (an ultima ratio action).*" (CAS 2014/A/3684)

127. It is up to the Player to discharge the burden of proof to establish he had just cause to terminate the employment relationship.

Loss of Trust in Rostov

128. The correspondence sent to the club on behalf of the Player, as set out above, repeatedly stated that the circumstances amounted to an event of *force majeure*, and that is how the Player's case was put before the FIFA DRC. Nevertheless, before CAS the Player advanced an additional preliminary claim, asserting that due to Rostov's allegedly failing to address the legitimate concerns raised by the Player over the period of one month, the continuation of the employment relationship was impossible as there was a justified loss of trust in Rostov. Rostov did not raise any objection in principle to the Player advancing this claim, instead dealing with it on its substance.

129. The Panel accepts the Player's evidence that he had concern for his safety and security, due to his perception of the development, or escalation, of the war over June and July 2023. That concern appears to have been amplified by the reaction of his parents to a situation where their son was about to embark upon another season playing in Russia.

130. The Player alleged that the club failed to take seriously his concern over his safety and security. He says that is evidenced by both the denials from the club about the content of some of the media reports relied upon by him to form his assessment of the situation and that it took one month for a video conference to be arranged. The Panel accepts that this will have caused some loss of confidence for the Player, but it does not consider that such a loss of confidence is objectively sufficient to amount to a loss of trust necessary to amount to just cause. Rostov was operating a football club that was situated in a country which was (and is) at war with Ukraine. There was no evidence that the operations of the football club were affected in any way at that time; further subsequent events have shown that the season 2023/24 proceeded in the usual way, with training and the playing of matches in the Russian competitions and with fans attending matches. The correspondence shows that Rostov was willing to discuss specific measures with the Player in order to accommodate his concerns, but none were raised by him, and Rostov repeatedly invited his representatives to Rostov-on-Don in order to assess the situation together, an offer that was not accepted. The Panel does accept that it may have been better for the club to have held a video conference with the Player's representatives sooner than nearly one month after the first correspondence was sent on behalf of the Player but, for a few days at least, club officials were absent on other business and the Player was not due to return to Rostov-on-Don until 21 August 2023.

131. Further, the Player had chosen to reactivate his contract and return to Russia in September 2022, to play for Dynamo. At that time, the country to which he was returning was in a state of war. The Panel accepts the Player's evidence that he was only willing to return as he was to be loaned to Dynamo, and so resident in Moscow, but the Player has not established that such a decision was based solely on issues of safety and security, rather than footballing reasons. Further, having returned to a country that was at war, it was of course foreseeable that the events of the war may cause an increased risk of circumstances arising that would not be present in a country that was not at war. The Player asserts, rightly, that his personality rights are protected under Swiss law, by

the application of Article 28 of the SCC and, more particularly in the context of an employment relationship, by Article 328 of the CO. There is therefore, as he states, a legal obligation on the club, as employer, to safeguard and protect his personality rights. However, in this case, the club's obligations to him are to be understood in a context where he has willing to accept, and accepted, an increased risk when he chose to return.

132. The Player alleges that the club failed to discuss or agree a further loan or his permanent transfer. Nowhere does the correspondence from him explicitly state that such was a necessity. Instead, the correspondence sought "*discussions to see whether it is possible to find common ground"* and stated, "*it should be in both parties' interests to see whether the parties can find common understanding*". However, Rostov did, through Mr Ryskin's conversation with Mr Santoro in late July 2023, know that the Player did not want to return to play for the club. Mr Ryskin took steps to identify another club that may be willing to employ the Player by contacting agents and clubs to make it known that the Player was available for loan or transfer. Mr Ryskin was not notified of any specific proposal for a loan or transfer by Mr Santoro. The Panel observes at this point that it regrets that Mr Santoro did not provide evidence in these proceedings, as it appears likely to the Panel that his evidence would have been relevant to both the circumstances of the termination and the employment of the Player by Al Raed. It understands the practical difficulty arising from the fact that Mr Santoro is no longer the agent of the Player and the Panel does not draw any adverse inference from the absence of his evidence.

133. The Player complained to the club that his options were fettered due to the promulgation by FIFA on 22 May 2023 of the then latest iteration of Annexe 7, by FIFA Circular Letter no. 1849. He alleges that at the time he reactivated his contract in September 2022 he had a legitimate expectation that FIFA would, as it had done previously, extend similar provisions as existed previously into the 2023/24 season. It may have been the case that the Player assumed the *status quo* would remain, but the Panel does not accept the submission that he had a legitimate expectation upon which he could rely, and nor does it consider that he could rely upon it as against Rostov.

134. Each FIFA Circular under which Annexe 7 was communicated stated "*[t]he temporary amendments approved as a result of the war in Ukraine will be periodically reviewed and removed accordingly.*" It was therefore the case that, rather than a specific representation being made to the Player that the state of affairs would remain as they were first promulgated, it was made explicit that the exceptional and temporary regulatory rights granted to players affected by the war could be removed by FIFA at any time. In any event, if the Player has a claim for legitimate expectation the Panel observes that such a claim would be addressed to FIFA, the drafter of the Annexe 7.

135. On 3 August 2023 the video conference between Rostov's and the Player's representatives took place. The evidence given to the Panel was that the Player did not attend that call as his representatives understood his position perfectly well. The Panel is surprised that for such an important call, that was requested on behalf of the Player nearly one month previously, and about which the Player was informed, the Player was not in attendance to personally hear from the club what arrangements it was willing to make and to give instructions to those acting on his behalf. In fact, the content of the

call was consistent with the preceding correspondence and no "*common ground*" or "*common understanding*" was found. The evidence given by the Player's lawyer was that neither he nor Mr Santoro (the Player's agent) made any concrete proposal to Rostov about a possible loan or transfer of the Player. The evidence of the Player's lawyer was that following the call he considered that the parties were "*so far away from each other*" that they would "*never be able to find a solution*" and that the Player and his advisors discussed the options available to him. The outcome was that the Player considered he had two options, either terminate the contract or return to Rostov. The Player's lawyer advised his client on the position and possible consequences of terminating his contract *("we had a long discussion about the position*"). The Player instructed that the notice of termination be sent, and he left Russia the next day.

136. As of 3 August 2023, the Player had been informed that he needed to return to Rostov no later than 21 August 2023 "*in order to prepare and participate in the matches of FC Rostov in the 2023/24 sports season.*" There was nearly three weeks until he was therefore expected back in Rostov-on-Don and nearly one month until the closure of the registration periods in Europe and many other countries. The Player had an agent acting for him and a lawyer advising him. In contrast to the steps taken by the Player's then agent to arrange the loan to Dynamo, which was proposed to Rostov by the Player, the Player had not proposed any loan or transfer to Rostov. Instead, the evidence given by Mr Ryskin, which is accepted, is that the club made some enquiries to secure a loan or transfer but was informed that the Player was being offered to clubs "*for free*" i.e. without the payment of a transfer or loan fee, by an agent or agents stated to be acting on behalf of the Player.

137. The Panel disagrees that the Player had only two options at the point of termination. Whilst the Player's concern was genuine and honestly held, and his immediate departure from Moscow may be justified given the drone attacks in the near proximity of his residence, based on the foregoing, the Panel does not find that Rostov was in breach of contract to the Player, or that the Player has established that there was an objective basis to conclude that the continuation of the employment relationship was impossible due to a loss of trust. In fact, there was a third option available to the Player: return home to Norway, continue dialogue with his representatives and the club, and seek a loan or transfer away from Russia in the weeks that were still available to do so. The Player's agent was well informed that Rostov would listen to offers, and its prior agreement to both of the Norwich loan and, more recently, the Dynamo loan was evidence that it would deal with matters consensually, provided that there was some level of commercial benefit to it.

138. The Panel therefore finds that the termination of the contract was premature. Unless the Player was excused further performance due to the legal principles of *force majeure* or *clausula rebus sic stantibus* that termination was without just cause.

Force Majeure

139. The legal principle of *force majeure* under Swiss law and in CAS jurisprudence is summarised in CAS 2021/A/7826, which states as follows:

"*91. The legal concept of force majeure is widely and internationally accepted and, in particular, is valid and applicable under Swiss law (cf. CAS 2021/A/7673&7699, no. 85), which is the applicable law to the present dispute. Under Swiss law, there is no statutory definition of force majeure. However and according to the Swiss Federal Tribunal ('SFT'), there is force majeure in the presence of an unforeseeable and extraordinary event that occurs with irresistible force (WERRO, in Commentaire Romand 2nd ed., Art. 41 CO no 46 and references).*

92. The concept of force majeure is also known in CAS jurisprudence. In CAS 2015/A/3909 the panel held that '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'. According to other Panels, '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 2018/A/5537; CAS 2017/A/5496; CAS 2013/A/3471; CAS 2006/A/1110; CAS 2002/A/388).

93. In CAS 2010/A/2144, the panel stated that 'force majeure is an event which leads to the non performance of a part of a contract due to causes which are outside the control of the parties and which could not be avoided by exercise of due care. The unforeseen event must also have been unavoidable in the sense that the party seeking to be excused from performing could not have prevented it. (…) Moreover, force majeure is not intended to excuse any possible negligence or lack of diligence from a party, and is not applicable in cases where a party does not take reasonable steps or specific precautions to prevent or limit the effects of the external interference.'

94. It follows from all of the above that '[t]he conditions for the occurrence of force majeure are to be narrowly interpreted, since force majeure introduces an exception to the binding force of an obligation' (CAS 2018/A/5537; CAS 2015/A/3909; CAS 2006/A/1110; CAS 2021/A/7673&7699)."

140. Similarly CAS 2021/A/7826 summarises the consequences of an event of force majeure affecting the performance of a contract. It states as follows:

"95. According to Swiss law the legal consequences of non-performance of a contract depend on whether the impossibility to discharge the obligation because of force majeure is temporary or permanent and whether one of the contractual parties is at fault (cf. CAS 2021/A/7673&7699, no. 87 et seq).

− Should the impossibility be of a permanent nature, Article 119 of the Swiss Code of Obligation ("CO") applies. The provision reads as follows:

"1 An obligation is deemed extinguished where its performance is made impossible by circumstances not attributable to the obligor.

2 In a bilateral contract, the obligor thus released is liable for the consideration already received pursuant to the provisions on unjust enrichment and loses his counter-claim to the extent it has not yet been satisfied.

3 This does not apply to cases in which, by law or contractual agreement, the risk passes to the obligee prior to performance."

– Should the impossibility to fulfil the obligations be only temporary, Articles 107 to 109 CO apply. According to these provisions, the counterparty can, at its discretion, a) set an appropriate time limit for subsequent performance or ask the court to set such time limit (Article 107 CO), b) under certain circumstances, insist on performance without delay (Article 108 CO), c) waive performance and claim damages (Article 107(2) CO or d) terminate the agreement and demand the return of any performance already made. In addition, it may claim damages for the lapse of the contract, unless the debtor can prove that he was not at fault (Article 109 CO). In accordance with Article 97 CO, the debtor's fault is presumed. Pursuant to Article 99(1&2) CO, the debtor is generally liable for any fault attributable to him. The scope of such liability is determined by the particular nature of the transaction and in particular is judged more leniently where the obligor does not stand to gain from the transaction."

141. The Panel will first consider whether an event of force majeure occurred. In relation to that issue, the written and oral submissions of the Parties in this case establish that each of them views the principle in a manner consistent with that set out above. It is therefore for the Player to substantiate and prove to the required standard that the escalation of the war and, in particular, the events which arose over June and July 2023 upon which he relies and which caused him to leave Russia, were unforeseeable and it was either temporarily or permanently impossible for him to meet his obligations under his contract.

142. The Player submits that further performance of the contract was "*impossible, at least to the ordinary, reasonable person, especially a foreigner*". He submits that the escalation and circumstances were not foreseeable at the time of entry of the First Employment Agreement, which he submits is the relevant date for assessment of foreseeability, or in September 2022 when the contract was reactivated. He submits that the Panel should not expect an "*ordinary person*" to "*predict future developments in political or military disputes.*"

143. Al Raed effectively adopts and develops the submission of the Player and relies upon CAS 2021/A/8708 as already having established that the war between Russia and Ukraine amounts to an event of *force majeure.*

144. Rostov accepts that war or conflict may amount to an event of *force majeure*, but submits that the escalation upon which the Player relies, the specific facts of which are not admitted, was not unforeseeable in September 2022, that CAS 2021/A/8708 does not establish the principle alleged by Al Raed, and that due to the application of the legal principes of *estoppel* and *nemo potest venire contra factum proprium* the Player may not act contrary to his previous conduct.

145. In its discussion of this issue, the Panel does not wish to understate the tragic consequences arising from the Russian invasion of Ukraine and the ensuing human, social, economic and geopolitical consequences felt, in particular, by the peoples of Ukraine and Russia. The Panel, however, finds that the Player and Al Raed have not established that the facts and circumstances upon which the Player and Al Raed rely amount to a *force majeure* event, thereby excusing further performance of the contract or justifying a termination of the contract.

146. First, and as fairly set out by Al Raed in its written submission by citing the relevant paragraphs from the authority on which it relies in full, CAS 2021/A/8708 does not establish that the war between Russia and Ukraine amounts to a *force majeure* event. In fact, that decision provides that it was the *"extraordinary and unprecedented consequences that followed"* after the invasion of Ukraine, which entitled FIFA to rely upon the principle for its decision to exclude Russian teams from participation in FIFA events. That decision states:

"*124. The majority finds that the military action was the catalyst for a series of extraordinary and unforeseen consequences that in themselves created a force majeure event in the context of the justification for the exercise of a sports association's discretion in circumstances for which the sports association's Statutes, in this case FIFA's, did not specifically provide. The majority finds, that the force majeure event was in the present case not so much the military conflict per se, as the extraordinary and unprecedented consequences that followed, namely: the widespread condemnation of the military conflict by international organisations and governments; the reaction of the international sports community to the conflict; the imposition of sanctions and travel bans on Russian people and businesses; the uncertainty of the duration and scope of the conflict; and, the exceptional and widespread international public reaction against it. More specifically, from a football perspective: the refusal of the Third, Fourth and Fifth Respondents to play against Russia in the impending Playoffs for the World Cup 2022; the prospect of other FIFA members adopting a similar stance (which, in the event proved to be so); the effect these refusals might have for the organization of the World Cup 2022; and the related security concerns. The majority considers that the Appellant's arguments failed to take sufficient account of these combined matters for collectively the evidence, even if individually of different weight, was compelling. They could point to no event which provided a precedent which should have prompted a decision from FIFA which preserved the Appellant's right to participate in FIFA's competitions.*"

147. Second, the Panel agrees with Rostov that the date upon which it needs to consider the foreseeability of the events was the date of reactivation of the employment agreement in September 2022. The effect of FIFA's promulgation of Annexe 7 in March 2022, as amended in June 2022, was that the Player had a right to suspend his contract for a limited period of time, a right upon which he relied on 24 June 2022. When on 2 September 2022 the Player asked Rostov to renew his contract, it was "reactivated". Had he not done so, it would have remained suspended until 30 June 2023 and further to FIFA Circular Letter no. 1849 issued in May 2023 he could have suspended it again to 30 June 2024. Thus because of his specific request in September 2022, a contract that existed legally but was not in force, entered into force again. The Panel finds that it

would be erroneous to ignore the intervening event of the reactivation and assess the issue as if it had never occurred.

148. The Panel considers that no special knowledge or training is necessary to conclude that a country that is at war with its immediate neighbour may itself be subject to events that affect the safety and security of its citizens and residents. In any event, the Player was clearly educated, informed and well advised and in the knowledge of that information and advice willingly took the decision to return to Russia to continue his career.

149. Third, and in any event, the events upon which the Player relies did not make his performance of the contract temporarily or permanently impossible. The Panel has in mind that "*[t]he conditions for the occurrence of force majeure are to be narrowly interpreted*". The Panel repeats that it accepts the evidence of the Player as to his perception of a risk to his safety and security as honestly held, but he has not adduced any evidence to the effect that he was unable to train or play for Rostov as from 21 August 2023, he did not address the request from the club to identify specific measures that might help allay his concerns and he did not take the club up on its offer that his representatives travel to Russia to assess the situation for themselves. In fact, the club continued to play its competitive matches as usual and other foreign players and staff remained employed by Rostov.

150. Lastly, the Panel agrees with Rostov that due to the principle of *nemo potest venire contra factum proprium* the Player cannot now change his position to the detriment of Rostov. By requesting that his contract be reactivated, the Player raised a legitimate expectation on the part of Rostov that he was ready, willing and able to resume his contract and play football in Russia for the duration of the unexpired term of his contract. Although that reactivation occurred in the context of a loan agreement to Dynamo, there was no reservation, caveat or clarification from the Player at that time seeking to insert any limitation upon the terms of his reactivation.

Clausula Rebus Sic Stantibus

151. Lastly the Player alleges that he is entitled to terminate the contract due to the application of the legal principle of *clausula rebus sic stantibus*. The Player submits that obliging him to continue his employment in Rostov-on-Don was an unreasonable and unacceptable restriction on his personality rights, in particular those affecting his health and safety, such as to shake the essential foundations of the employment relationship. Again, Rostov did not raise any objection in principle to the Player advancing this claim, which was not relied upon before the FIFA DRC. Instead, it addressed the substance of it, in the round, in its submissions.

152. Again, this principle was explained in CAS 2021/A/7826, which, *inter alia*, states as follows:

"*103. In particular in relation to long-term contracts, the problem often arises that the external circumstances under which the contract was concluded (e.g. the economic framework conditions) change in the course of time. Under Swiss law, the starting point for dealing with such a problem is the principle of pacta sunt servanda. According*

thereto, contracts are to be upheld and fulfilled as agreed despite changed circumstances. It is, in principle, up to the party concerned to take all necessary precautions in the original contract for future changes in circumstances by insisting on the inclusion of appropriate clauses that allow for the contract to be adapted. Sometimes the law also provides for adjustment rules in case of changing circumstances (HUGUENIN, Obligationenrecht, 3rd ed. 2019, no. 321). For example, there is – for certain contracts – a right to terminate the contract if the debtor's financial circumstances deteriorate, in particular if bankruptcy proceedings are opened over the debtor's assets (cf. Articles 266h, 297a, 316 CO).

104. However, even in the absence of a contractually agreed or statutory adjustment rule, ***Swiss law – by way of exception – allows the court / arbitral tribunal to adjust a contract in case of a change of circumstances. The change of circumstances may relate to the factual or regulatory framework. A contract can only be amended by the judge / arbitral tribunal when the circumstances under which it was concluded have changed to such an extent that the continuation of the contract cannot be required. Such an intervention by the judge / arbitral tribunal must remain an exception and is acceptable only if subsequent, unforeseen and inevitable circumstances result in an obvious disproportion between performance and consideration that would make one party's insistence on its claim seem abusive*** *(SFT 101 II 17, consid. 1 b). This concept, also known as clausula rebus sic stantibus, arises from the general principles of fairness and good faith based on Article 2 CC (Bénédict Winiger in Commentaire Romand 2nd ed., no 193 ad Art. 18 CO and references, p. 175).* (Emphasis added)

106. In essence, Swiss law provides for the following conditions in order for the judge / arbitral tribunal to adjust the contract (SCHWENZER/FOUNTOULAKIS, Schweizerisches Obligationenrecht – Allgemeiner Teil, 8th ed., no. 35.08; HUGUENIN, Obligationenrecht, 3rd ed. 2019, no. 327 et seq.):

− (i) The change of circumstances must occur after the execution of the contract and must be relevant to the contract.

− (ii) Furthermore, the change of circumstances is only relevant, if it was not foreseeable at the time of the execution of the contract….For the question of whether a development was foreseeable, the test is whether a reasonable person would have expected the change of the corresponding circumstances according to the usual course of events and the general experience of life.

− (iii) Even if the specific circumstance was not foreseeable, a contract adjustment cannot be considered if the risk associated with the changed circumstances is assigned to one party by the contract or by law...

− (iv) Finally, an adjustment of the contract can only be considered if the change in circumstances leads to a serious disruption of the equivalence of the contract, i.e. performance and consideration are grossly disproportionate to each other… The question must be answered on a case by case analysis taking into account the principle of good faith (cf. also CAS 200/A/7422, no. 119)."

153. Although the submission of the Player is hard to follow (and it was not further articulated at the Hearing) he has sought to merge an allegation that his personality rights were restricted with a right to terminate his contract under the application of this principle. Thus, the Player seeks to rely on this principle not to alter or adjust the terms of his continued employment but to legitimise an otherwise unlawful termination. The bar for the application of this legal principle is high.

154. The starting point for the Panel is that Rostov's obligations in relation to the Player's personality rights must be understood in the context that he knowingly and willingly reactivated his contract so as to return to Russia and continue his career whilst it was at war with Ukraine. The Player has not established to the satisfaction of the Panel that there has been any restriction (unreasonable or otherwise) affecting the Player's personality rights at the time of termination in circumstances where he had not returned to Rostov-on-Don, he was not due to return until 21 August 2023, the club was willing to consider offers from other clubs so that he might not return for the forthcoming season or at all, he had not taken up the Club's offer to visit in order to make an assessment of the security situation and he had not raised any specific measures that might alleviate his honestly held concerns.

155. As per the explanation above in the context of the claim of reliance on *force majeure*, the Panel has also found that the change in circumstances caused by an alleged escalation in the war was foreseeable in September 2022. Lastly the Player is not able to establish that there is anything remotely near an "*obvious disproportion between performance and consideration that would make one party's insistence on its claim seem abusive.*" Had the Player returned to Rostov he would have continued to have been paid his salary and benefits for the performance of his services, in the same manner as those other foreign players and other personnel in the employment of the club. Rostov may have been slower to hold a video conference with the Player's representatives than he wished, and not accepted the veracity of the reports on which the Player relied to his obvious frustration, but the Panel does not consider that there is any behaviour of the club that could be considered abusive as at the time of termination.

156. For those reasons, the Panel finds that the Player cannot establish a claim for alteration, adaption or termination of his contract, under this principle.

157. The consequence of the above is that the Panel finds that the termination by the Player of his employment relationship with Rostov was without just cause.

B. What are the Consequences of the Termination of the Contract?

The quantum of Compensation Due payable by the Player to Rostov

158. In the Appealed Decision, the FIFA DRC ordered that compensation be paid of EUR 2,923,507, being the average between the Player's remuneration from Rostov for the unexpired term and his current remuneration with Al Raed, extended to take account of the duration of the Employment Agreements, plus interest at 5% *p.a.* from the date of termination to the date of payment. Each of the Parties disagrees with the method of calculation used by the FIFA DRC and the quantum of the compensation ordered.

159. Rostov submits that the compensation should be EUR 8,500,000, as the option fee in the Dynamo Loan Agreement is the best evidence of the Player's value at the time of the termination, or, in the alternative, EUR 5,524,975.92, calculated by adding the average of the salaries payable to the Player, an uplift of 50% to take account of the specificity of sport, the unamortised acquisition costs and the last instalment of the loan fee due from Dynamo.

160. The Player submits that, in the circumstances of this case, there should be no order for the payment of compensation, or, in the alternative, and also by considering the value of the Player at the time of termination, the level of compensation must be calculated by taking a starting amount of EUR 1,125,000 and then reducing that amount due to mitigation.

161. Al Raed submits that the compensation "*would be zero*" and in any event should not be higher than USD 1,388,790, by deducting the value of the new contract from the residual value of the old contract.

162. Article 17(1) of the FIFA RSTP provides for the consequences of terminating a contract without just cause:

"*The following provisions apply if a contract is terminated without just cause:*

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

163. Where, as in this case, the parties to an employment contract have not agreed on the amount of liquidated damages payable, the compensation due for termination without just cause must therefore be calculated taking into consideration:

- the law of the country concerned;

- the specificity of sport;

- and any other objective criteria, including in particular:

- remuneration and other benefits due to the player under the existing and/or the new contract;

- the time remaining on the existing contract up to a maximum of five years;

- the fees and expenses paid or incurred by the former club (amortized over the term of the contract); and

- whether the contractual breach falls within the Protected Period as defined under the "Definitions" chapter in the FIFA Regulations.

164. The list of criteria set out in Article 17(1) of the FIFA RSTP is not exhaustive. Other objective factors can and should be considered, such as the loss of a possible transfer fee and the replacement costs, if any, provided that there exists a logical connection between the breach and loss claimed.

165. It is for the Panel to assess on the specific facts of this case all the criteria and factors and determine how much weight, if any, each of them should carry in calculating the compensation due to the party not in breach. Any of the factors set out in Article 17(1) of the FIFA RSTP or in CAS jurisprudence may be decisive on the facts of a particular case. The Panel has a "*wide margin of appreciation*" or a "*considerable scope of discretion*", but it must set the amount of compensation in a fair and comprehensible manner. A CAS panel has no duty to analyse and give weight to any specific factor, if the parties do not substantiate their allegations with evidence and arguments based on such factor (CAS 2018/A/5607 & 5608, para. 110).

166. There is a predominant line of CAS jurisprudence, with which the Panel agrees, that the "*positive interest*" principle must apply in calculating compensation under Article 17(1) of the FIFA RSTP: "*Given that the compensation to be granted derives from a breach or unjustified termination of a valid contract, it will be guided in calculating the compensation due by the principle of the so-called 'positive interest' or 'expectation interest' (…) [and] accordingly (…) determin[e] an amount which shall basically put the injured party in the position that the same party would have had if no contractual breach had occurred*" (CAS 2009/A/1880 & 1881, para 80; CAS 2018/A/5607 & 5608, para. 111). This does not involve, as Rostov suggests, any element of "*punishment*"; instead it is a calculation of compensation for the actual loss suffered due in the event of the unjustified termination of a contract.

167. Many CAS panels have tended to use the "residual value" method (namely the average of the residual value of the breached contract and of the new contract for the same timeframe) as a starting point, as did the FIFA DRC in the Appealed Decision. They then pay due consideration to other substantiated elements listed in Article 17 of the FIFA RSTP and/or raised by the parties, if any (see e.g. CAS 2014/A/3489 & 3490, paras. 167ff; CAS 2014/A/3568, paras. 71ff; CAS 2020/A/6744, paras. 94ff; CAS 2020/A/6996, para. 126; CAS 2020/A/7145, paras. 174ff; CAS 2020/A/7310 & 7322, paras. 158ff; CAS 2022/A/8600, 8604 & 8633, paras. 278-280). Some CAS panels, however, adopt a different method, on the grounds that it did not allow for the salary savings made by the club, and/or the specifics of the case submitted to them. In rare cases, no compensation was awarded at all, as the club did not prove its damage (CAS 2018/A/5607 & 5608, paras. 138ff; CAS 2019/A/6325, 6331 & 6332, paras. 225ff; CAS 2020/A/6767, paras. 276ff; CAS 2020/A/7193, para. 114; CAS 2020/A/7253, paras. 126ff; CAS 2020/A/7274, paras. 144ff). The Panel recognises that the "residual value" method as applied by the FIFA DRC is not an uncontested standard method to be applied automatically, and the Panel considers that it is an inappropriate method to calculate the compensation due in this case. This Panel agrees with the finding in CAS 2020/A/7443-6 that if such approach is "*applied 'mechanically' and without due consideration of all*

the objective circumstances of the given case, it is not optimal. In addition, it makes somehow the calculation of the potential compensation due in case of breach quantifiable in advance, which is in principle against the deterrent effect and core rationale of Article 17 FIFA RSTP (cf. CAS 2009/A/159-20, paras. 38 and 43)…".

168. The Panel will therefore consider initially the amount necessary to acquire and keep the services of the Player for the unexpired term of the Employment Agreements (see CAS 2008/A/1519 &1520, at para. 4 of the rubric).

169. The Panel is entitled to consider offers made by third party clubs to acquire the temporary or permanent transfer of the Player's registration. Rostov did not submit evidence of any offers made for the Player during season 2022/23, i.e. in the season preceding the termination, or thereafter. The starting point for Rostov's primary case is the fee agreed in option set out in the Dynamo Loan Agreement of EUR 8,500,000 for the permanent transfer of the Player's registration and services. Rostov submits that this "offer" is the closest offer to the date of termination, and thus best reflects the market value of the Player at such time, and that the option was not exercised due to a change in that club's Head Coach. The Panel disagrees for two reasons. First, an option fee in a loan agreement can be good evidence of an agreed valuation of a player's registration and services at a point in time, or it could be better understood as an offer by the selling club, that grants a right to the prospective buying club, of the amount at which it wishes to transfer the registration and playing services of a player during an agreed period in the future. Second, the option was not exercised by Dynamo. If it was exercised, it would have established an acceptance by Dynamo of the valuation of the Player at EUR 8,500,000. As it was not exercised that evidence is not available to the Panel. The reason (or reasons) why the option was not exercised need not be decided; the fact is it was not exercised. The Panel does not therefore consider that the amount of an option fee recorded in the Dynamo Loan Agreement has the necessary nexus to the situation at the time of termination; it was not an offer from Dynamo and it was a year before the termination.

170. The Player spent the two seasons prior to his termination on loan at other clubs, Norwich and Dynamo. For each season, the Panel finds that the loan fees paid to Rostov and the majority of the Panel finds that the salary paid to the Player whilst on loan give a reasonable indicator of the agreed value of the services of the Player during those periods of time. Of course, a loan fee is a fee paid to acquire such services on a temporary basis, with the registration reverting to Rostov on each occasion. Nevertheless, it is evidence that the Panel should take into account.

171. For season 2021/22, the Norwich Loan Agreement provided for a fixed loan fee to be paid to Rostov of EUR 3,000,000 plus contingent fees of EUR 2,000,000, of which EUR 1,500,000 became due and payable as Norwich did not exercise the option granted to it to acquire the registration and services of the Player for EUR 13,000,000. The file does not contain evidence about the salary and benefits paid to the Player during this season under the terms of the employment agreement between them, provided for by clauses 2 and 5 of the Norwich Loan Agreement. The Panel does not speculate whether the personal terms agreed between Norwich and the Player will have been more or less than the amounts set out in the Employment Agreements. Nevertheless, the majority of

the Panel finds that, during the 2021/22 season, the playing services of the Player were valued at an amount in excess of EUR 4,500,000, with that excess being the amount of the salary and benefits payable to the Player in that season.

172. For season 2022/23, the Dynamo Loan Agreement provided for a fixed loan fee of EUR 1,000,000 plus contingent payments of up to EUR 500,000. One of the payments of EUR 250,000 was payable, under Clause 7.2, if the Player participated in 60% of Dynamo's matches; the other, under Clause 7.3, if the Player did not suspend his contract during the loan period. The file does not contain a copy of the employment agreement between the Player and Dynamo, so there is not conclusive evidence of the salary and benefits paid to the Player during this season under the terms of the employment agreement between them, provided for by Clause 8 of the Dynamo Loan Agreement. The only evidence of the amount of the salary is set out in the letter from Dynamo to the Player and Al Raed dated 19 September 2023 in which it states that Dynamo seeks from Al Raed compensation including EUR 103,517.44 for "*non-amortized Player's salary expense.*" If that equated to the balance of the salary that was due for the period 5 to 30 August 2023 it would create a monthly salary of EUR 119,443.20 and an annual salary of EUR 1,433,318.40. The Panel however has insufficient evidence to allow this speculation to be a basis for any element of its calculation. Nevertheless, the majority of the Panel finds that, during the 2022/23 season, the playing services of the Player were valued at an amount in excess of EUR 1,250,000, combining the loan fee and the contingent payment for the Player honouring the term of the Dynamo Loan Agreement, with that excess being the amount of the salary and benefits payable to the Player in that season.

173. Having considered the above, the Panel concludes that the value evidenced by the Norwich Loan Agreement and the period of the loan at Norwich is too remote for it to form any part of the calculation exercise. The loan period was over a season before the termination by the Player and it is apparent that the value of the Player declined from season 2021/22 to season 2022/23. It does however consider that the value evidenced by the Dynamo Loan Agreement and the period of the loan at Dynamo is, in the absence of offers for the loan or transfer of the Player in that season or in the weeks prior to his termination, one element of the best evidence available to the Panel on which to base its calculation, as it was the season completed by the Player immediately prior to the termination.

174. The Panel notes the evidence at the Hearing from Rostov's Sporting Director was that whilst the Player was on loan at Dynamo he did not perform at the same level as while he was playing at Rostov and that would diminish his value. He explained that (as the Player did not commence providing his services to Dynamo until 6 September 2022) he was not available for the club's pre-season training and he then suffered from injuries during the course of the season, which affected his availability for selection. The Panel takes this evidence into account. It considers that it should therefore discount the value of the loan fee paid by Dynamo and as part of its calculation it should take account of a loan fee of EUR 1,000,000 per season.

175. The majority of the Panel finds that the second element to calculate the value of the working services requires consideration of the salaries payable to the Player during the

unexpired term of the Employment Agreements. The annual salary under the Employment Agreements was EUR 25,000 net per month, plus additional payments each June and December of EUR 255,000 creating a total annual fixed remuneration of EUR 810,000. In the Appealed Decision, the residual value of the Employment Agreement at the date of termination is stated at EUR 1,975,000. However, the figure stated in the Appealed Decision is inaccurate, as the period 4 to 31 August 2023 was omitted from the calculation. In fact, the Panel finds that the residual value was as follows:

August 2023 (28 days from 4th to 31st)	(25,000/31) x 28 = 22,580.65
Balance of 2023 (monthly salary for September to December plus the additional December payment)	(25,000 x 4) + 255,000 = 355,000
2024 Monthly salary and two fixed additional payments in June and December	(25,000 x 12) + (2 x 255,000) = 810,000
2025 Monthly salary and two fixed additional payments in June and December	(25,000 x 12) + (2 x 255,000) = 810,000
Total	**EUR 1,977,580.65**

176. On 16 August 2023, the Player entered into the Al Raed Agreement for the period from 21 August 2023 to 30 June 2025. The fixed salary and signing-on fee payable to the Player was as follows:

Season 2023/24 (salary payment for 21st to 31st August 2023 and monthly to June 2024 plus signing-on fee)	41,056 + (10 x 127,273) + 300,000 = USD 1,613,786
Season 2023/24 applying USD to EUR rate at 4 August 2023 (USD 1 = EUR 0.91361)[1]	EUR 1,474,371.03
Season 2024/25 (salary payments for 12 months from July 2024 to June 2025)	(12 x 141,667) = USD 1,700,004

[1] Applying the USD:EUR rate published by the European Central Bank at https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/eurofxref-graph-usd.en.html

Season 2024/25 applying USD to EUR rate at 4 August 2023 (USD 1 = EUR 0.91361)	EUR 1553,140.65
Total	**USD 3,313,790**
Total applying USD to EUR rate at 4 August 2023 (USD 1 = EUR 0.9136[2])	**EUR 3,027,511.68**

177. As can be seen from the above, the payments due to the Player from Al Raed for the first season, a period of less than one year, were equivalent to EUR 1,474,371.03; the payments due to the Player in the second season, a period of a full year, were equivalent to EUR 1,553,140.65.

178. The evidence therefore available to the Panel provides that the salary and fixed payments due to the Player for a full year during the unexpired term of the Employment Agreements was in the range EUR 810,000 to EUR 1,553,140.65. Whilst the Panel recognises the imperfection of this step, it holds that it should take the midpoint of these two sums to establish the salary and fixed payments due to the Player for the purpose of its calculation of compensation, being an amount of EUR 1,181,570.32.

179. The majority of the Panel therefore holds that, prior to taking account of any other factors, the amount necessary to acquire and keep the Player's service as at the date of termination was an annual amount of EUR 2,181,570.32 (EUR 1,000,000 + EUR 1,181,570.32) and a monthly amount of EUR 181,797.53 (EUR 2,181,570.32 / 12).

180. As at the date of termination, the unexpired term of the Employment Agreements amounted to two years, four months and 28 days (4 August 2023 to 31 December 2025). Applying a straight-line calculation to the annual amount gives a figure of EUR 5,254,534.97.

181. From this amount the majority of the Panel holds that it needs make two deductions: first, Rostov has saved the salary that would otherwise be due to the Player and was no longer payable by it, thus it is a saving to be deducted. As set out above, this amounts to EUR 1,977,580.65. Further, as above, the Panel recognises that the value of a Player reduces as an employment contract runs down. It is the Panel's view that no value should be attributed to the loan fee element of the calculation for the last six months of the Employment Agreements, as Rostov would have been unlikely to secure any loan for such period of half a season. That applies a further reduction of EUR 500,000. Applying those reductions the majority of the Panel reaches a provisional figure of compensation of EUR 2,776,954.32.

182. There is one further element to apply. Due to the Player's early termination, the contingent sum set of EUR 250,000 payable by Dynamo to Rostov under Clause 7.2 of the Dynamo Loan Agreement was not paid. This is a direct loss caused by the Player for which Rostov should be compensated, resulting in a total compensation for breach of contract of EUR 3,026,954.32 (EUR 2,776,954.32 + EUR 250,000).

183. After reaching this interim position, the Panel needs to consider the other elements of Article 17(1) of the FIFA RSTP and the Parties' other submissions.

184. As to the law of the country concerned, Rostov submitted that Russian Law was applicable and drew the Panel's attention to the requirement under Article 348.12 of the Labour Code for a player to give one month's notice of termination, stating that for the Player to therefore sign the Al Raed Agreement only two weeks after his termination was a gross violation of Russian Law. The Panel does not consider that this submission has any bearing on the calculation of the compensation in this case.

185. Similarly, the Panel is not persuaded, as Rostov submitted, that there is any basis to increase the compensation payable by 50% due to the application of the "*specificity of sport*". The Panel considers that it has taken into account fully all relevant facts and circumstances in this case and to apply an increase would be an arbitrary and inappropriate step (see CAS 2008/A/1519). The Panel does not accept the generalised allegation that both the Player and Al Raed acted in bad faith and, as such, compensation should be increased; nor that the termination in early August 2023 gave Rostov "*a truly limited opportunity to find a worthy replacement*" as the evidence at the Hearing was that Rostov, at least in its Sporting department, understood that the Player did not want to return to the club and was making arrangements on that basis. In any event the window in Russia was open until mid-September 2023, a period of some six weeks away. Rostov submitted that the termination occurred during the Protected Period, largely based upon principles of Russian Law. The Panel disagrees with Rostov and agrees with the FIFA DRC in the Appealed Decision that the execution of the Second Employment Agreement on 28 August 2021 for the one-year period from 1 January 2025 to 31 December 2025 did not start the Protected Period afresh, and is thus not a factor for the Panel to take into account. Whilst the Panel recognises that the term of the Player's employment with Rostov was effectively extended, the provision of services under the Second Employment Agreement did not commence until 1 January 2025. This was not an instance in which a contract was renewed or replaced by another. Lastly so far as Rostov's submissions are concerned, as part of its alternative head of claim, Rostov relied upon the unamortised acquisition costs of the Player. The majority of the Panel has, so far, approached its assessment of compensation based upon the positive interest approach taking account of evidence to establish the amount necessary to acquire and keep the services of the Player during the period of the unexpired term. To allow such acquisition costs to form part of the calculation would be to mix both expectation and reliance loss, and so overcompensate the club. In any event, as the club earned loan fees from Norwich and Dynamo, such fees can be seen to have extinguished the acquisition costs for the Player.

186. The majority of the Panel observes that the approach it has adopted to reach its decision (based on the value of the Player's services less the savings it will incur) is similar to

that submitted by the Player as the correct approach. Where the majority of the Panel is not persuaded by the Player is, *inter alia*, (a) that the market value decreased from EUR 1,000,000 in season 2023/24 to EUR 500,000 in season 2024/25, and (b) that the only salary to take into account is that which was payable by Rostov, so that the majority of the residual value should be applied by the Panel as a saving. For the reasons set out above, the majority of the Panel finds that the loan fee payable is only part of the evidence relevant to the assessment of the value of the Player's services in each outstanding season of the Employment Agreements, to establish what has been lost by Rostov. Further, the Player submitted that the sum of compensation should be reduced substantially by the application of Articles 43 and 44(1) of the CO. The basis of that submission is "*it is more than clear…that the [Player] was left with no alternative but to terminate*". He continues that "*[b]y ordering the [Player] to pay any compensation to [Rostov], CAS would, in essence, be sanctioning him for trying to protect his human and personality rights.*" The Panel disagrees. As set out at paragraph 133 above, the Player had an alternative to terminating his employment when he did, namely to return home to Norway, continue dialogue with his representatives and the club, and seek a loan or transfer away from Russia in the weeks that were still available to do so. Further, an award of compensation is not a "sanction" in the sense alleged by the Player; it is an award of a sum of money to compensate an innocent party for the loss it has suffered when a contract to which it was a party is terminated without just cause. There is nothing in the Panel's interim position that penalises or "sanctions" the Player for taking his decision, but he does bear the financial consequences of taking that decision, to compensate the Club for the actual loss it has suffered calculated in accordance with the applicable regulations and law.

187. As for Al Raed's submissions that, based on the specific circumstances of this case, there should be no award of compensation or, if there is an award, it should be calculated by deducting the residual value of the Employment Agreements from the value of the Al Raed Agreement, again the Panel is not persuaded. For the reasons set out above, the Player has been found to have terminated his employment without just cause. There is nothing in the facts of this matter or the conduct of Rostov which would lead the Panel to seek to add these appeals to the list of highly exceptional cases where no compensation is due following such a termination. Further, whilst the Panel does have regard to the sums payable under the two relevant employment agreements, it does not consider that an approach where the balance that is left once the sum due under the old contract is deducted from the sum due under the new contract would be a proper approach under Article 17(1) of the FIFA RSTP or have any logical or legal basis.

188. The Panel recognises that there are alternative approaches to the assessment of compensation, one of which it sets out to test whether its assessment is fair in the circumstances of this case. The position at the time of the termination was that the Player had not provided his playing services to Rostov for the past two seasons, during which period Rostov had earned loan fees for the temporary transfer of his registration and was relieved of any obligation to pay the salary and bonuses provided for in the Employment Agreements. The evidence from Rostov at the Hearing was that, while the Player was contractually obliged to return to provide his services to it, the Sporting Director knew that the Player did not want to return and was therefore seeking an

agreement for the permanent or temporary transfer of his registration. If, *arguendo*, Rostov would have been able to secure further loans for the Player for the remaining two and a half seasons of his contract, on the best available evidence the Panel has found that a straight line calculation would produce a loan fee of EUR 2,500,000 or, accepting that a loan fee might be less likely for the last six months of the contract, EUR 2,000,000. In other words, if the Player's registration and playing services were simply an asset for Rostov from which it could secure income without any cost to be incurred it would have likely earned at least EUR 2,000,000 or EUR 2,500,000. It would also have still to be awarded the contingent sum of EUR 250,000 under clause 7.2 of the Dynamo Loan Agreement, as this is a direct loss to the club; thereby giving a total loss of EUR 2,250,000 to EUR 2,750,000.

189. The Panel considers as relevant that it has found that the ability of Rostov to secure the permanent or temporary transfer of the Player's registration to another club immediately prior to the termination was affected adversely by the fact that agents on behalf of the Player had informed the market that the Player was available without the payment of any fee and it is undisputed that the Player did not, as he had done in relation to both the Norwich and Dynamo loan arrangements, deliver any proposals to Rostov for their consideration. The majority of the Panel therefore considers that, in the circumstances of this case, it should not take the putative loan fees as the sole factor relevant to calculating the compensation due, as factually that scenario would not arise due to the actions taken on behalf of the Player. The majority of the Panel finds that it would be inappropriate to base a calculation solely on a situation where the actions of the contract breaker had determined that such scenario would not arise. The majority of the Panel does however take some comfort from the fact that a straight-line loan fee calculation produces a figure for compensation which is at an amount not too dissimilar to that set out at paragraphs 176 and 177 above.

190. Having considered the other elements of Article 17(1) of the FIFA RSTP and the Parties' submissions in full, and based on the foregoing, the majority of the Panel holds that the Player is liable to pay Rostov compensation of EUR 3,026,954.32 for the termination of his employment agreement without just cause.

191. Rostov claims interest at the rate of 5% interest p.a. from 3 August 2023 until the date of effective payment. The rate and period of interest is not provided for in the FIFA regulations, therefore the Panel needs to apply Swiss law subsidiarily. Under Article 104 (1) of the SCO the rate of interest due for late payment is 5%. In the present matter the Panel notes that the Player terminated the contract on 3 August 2023. In accordance with Article 77 of the SCO interest would therefore start to accrue as per 4 August 2023. Rostov is therefore entitled to interest at 5% on the sum of EUR 3,026,954.32 from 4 August 2023 until the date of effective payment.

Is Al Raed Jointly and Severally Liable?

192. Rostov submits that Al Raed must be held jointly and severally liable, further to Article 17(2) of the FIFA RSTP. Al Raed acknowledges that such provision makes clear that liability is strict and automatic, but submits that the Panel may make an exception

to the principle, as any form of order against Al Raed would be legally unsound as it took no part in inciting the Player to terminate his contract.

193. Article 17(2) of the FIFA RSTP provides:

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

194. The Commentary states:

"*Whenever a professional player must pay compensation to a club for a breach of contract, the player's new club will be jointly and severally liable to pay that compensation*". (p. 204); and

"*The new club will automatically be responsible, together with the player, for paying compensation to the player's former club, regardless of any involvement in, or inducement to, the breach of contract. This means that the joint and several liability is not dependent on any fault, guilt, or negligence on the part of the new club*" (p. 206).

195. CAS panels have repeatedly confirmed that Article 17(2) of the FIFA RSTP requires that the new club be held jointly and severally liable regardless of whether there is evidence that it induced the player to breach his contract (e.g. CAS 2015/A/3953 & 3954, para. 52; CAS 2014/A/3852, paras 110 to 114; CAS 2013/A/3149, para. 99; CAS 2013/A/3411, para. 125; CAS 2018/A/5607 & 5608, para. 161; CAS 2020/A/7443 & 7446, para. 229).

196. The Panel does not consider that the submission of Al Raed that this is an exceptional case, which was asserted but not really developed at the Hearing, provides any basis for it to reconsider the application of the joint and several liability provided for in the FIFA RSTP and applied consistently by CAS panels.

197. In addition, the Panel notes the testimony of Mr Al-Motawa given at the Hearing was that Al Raed was informed by an agent that the Player had terminated his contract with Rostov and so was available for employment as a free agent, but it did not undertake its own due diligence nor contact Rostov and, after it had employed the Player, Al Raed did not respond to the correspondence sent to it by Rostov. The evidence given to the Panel was that rather than considering any possible regulatory and financial consequences of registering the Player, Al Raed was considering only the Player's performance and it did not ask its legal team for advice or engage with Rostov in any way. Further, no documentary evidence of the first and subsequent contacts between the Player's representatives and Al Raed was adduced in these proceedings. Al Raed is a member of the Saudi Professional League and, as such, a club with significant resources available to it. Upon learning from the agent that the Player was available for employment and registration it could have made reasonable enquiry of Rostov; or it could have done so after receiving correspondence from both Rostov and Dynamo. It

chose not to do so, instead proceeding with the registration and employment of the Player.

198. In light of the above, and as Al Raed is the first club with whom the Player was registered after he terminated his employment with Rostov, the Panel finds that Al Raed is jointly and severally liable with the Player to pay compensation to Rostov.

Sporting Sanctions

199. Rostov submits that this Panel should impose sporting sanctions on the Player and Al Raed, further to Articles 17(3) and 17(4) of the FIFA RSTP respectively. The starting point is that it submits that the Employment Agreements are two separate contracts and the execution of the Second Employment Agreement on 28 August 2021 had the effect of starting a new protected period, within the meaning of FIFA RSTP. As for Al Raed, it states that the new club did not undertake any checks on the status of the Player and had failed to disclose evidence to prove that the first contact with or about the Player was after 3 August 2023.

200. The Panel observes that Rostov is an indirect member of FIFA and takes note of "*the constant CAS jurisprudence according to which an indirect member of FIFA has no standing to request that sporting sanctions be imposed on other direct members, such as clubs or players.*" (CAS 2020/A/7054, para. 144)

201. Accordingly the Panel dismisses the request for the imposition of sporting sanctions on either the Player or Al Raed.

Diarra Judgment

202. Following the Hearing, the Panel reopened the evidentiary proceedings and invited submission on the effect, if any, on these appeals of the Diarra Judgment. Whilst the Panel considered the submissions carefully it concluded that, as (a) the underlying dispute to which the Diarra Judgment relates is unresolved, and (b) these appeals concern the registration of a Norwegian player and clubs from Russia and the Kingdom of Saudi Arabia, such judgment has no bearing on the outcome of the present appeals.

C. Conclusions

203. Based on the foregoing the Appealed Decision is upheld in part, but the compensation payable shall be altered.

a. The Panel finds that the Player did not have just cause to terminate his contract with Rostov.

b. The majority of the Panel finds that the Player and Al Raed are jointly and severally liable to pay compensation to Rostov of EUR 3,026,954.32 plus interest at the amount of 5% *p.a.* from 4 August 2023 until the date of payment.

204. Any and all other prayers for relief are dismissed.

XI. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 5 January 2024 by JSC Football Club Rostov against the decision issued on 15 November 2023 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partly upheld.

2. The appeal filed on 8 January 2024 by Mathias Antonsen Normann against the decision issued on 15 November 2023 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.

3. The appeal filed on 8 January 2024 by Al Raed Sport Club against the decision issued on 15 November 2023 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.

4. The decision issued on 15 November 2023 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is confirmed, save that para. 2 is amended as follows:

   "2. The Respondent 1, Mathias Antonsen Normann, must pay to the Claimant EUR 3,026,954.32 as compensation for breach of contract without just cause plus 5% interest p.a. over said amount as from 3 August 2023 until the date of effective payment."

5. (…).

6. (…).

7. (…).

8. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 31 March 2025

THE COURT OF ARBITRATION FOR SPORT

Stephen Sampson
President of the Panel

Manfred Nan
Arbitrator

Efraim Barak
Arbitrator