CAS 2024/A/10519 Al-Ain FC v. Danilo Arboleda Hurtado

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal

in the arbitration between

Al-Ain Football Club, Al-Ain City, United Arab Emirates (UAE)
Represented by Mr Nezar Ahmed, Attorney-at-Law in Chesterfield, United States of America

– Appellant –

v.

Danilo Arboleda Hurtado, Florida, Colombia
Represented by Mr Jirayr Habibian, Attorney-at-Law in Dubai, United Arab Emirates (UAE)

– Respondent –

I. PARTIES

1. Al-Ain Football Club (the "Appellant", "Al-Ain" or the "Club") is an Emirati professional football club with headquarters in Al-Ain City, United Arab Emirates (the "UAE"), currently competing in the Emirati First Division of professional football, affiliated to the UAE Football Association (the "UAEFA"), which in turn is a member association of the Fédération Internationale de Football Association. Fédération Internationale de Football Association (the "FIFA") is the governing body for international football, based in Zurich, Switzerland.

2. Danilo Arboleda Hurtado (the "Respondent", "Danilo Arboleda" or the "Player") is a professional football player of Colombian nationality who is currently playing for the Kuwaiti club Kazma FC, which competes in the Kuwaiti Premier League, the first division of professional football in that country.

3. The Club and the Player are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. This factual background information is given for the sole purpose of providing a synopsis of the matter in dispute. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it is referred in this award (the "Award") only to the submissions and evidence it is considered necessary to explain its reasoning.

(A) Introduction

5. This appeal case (the "Appeal") before the Court of Arbitration for Sport (the "CAS") is related to the challenging of the decision adopted by the FIFA Dispute Chamber of the Football Tribunal (the "FIFA DRC") on 13 March 2024, with grounds communicated to the Parties on 12 April 2024, which ordered the Club to pay to the Player the total amount of USD 1,541,667 plus 5% interest p.a. as from 10 July 2023 until de date of the effective payment (the "Appealed Decision" or the "FIFA Decision").

(B) The contractual relationship between the Club and the Player

6. On 6 June 2022, the Club and the Player signed an employment contract, valid from 1 July 2022 until 30 June 2023 (the "Al-Ain Employment Contract").

7. The main clauses of the Al-Ain Employment Contract are the following:

"(…)

THE FINANCIAL TERMS AND BENEFITS

8. ***Player's Total Remuneration**: for the entire Term of this Contract i.e., from 01/07/2022 until 30/06/2023, the Player will be entitled to the amount (salary) of 1,000,000 USD (One Million USD only) (**Total Contract Value**) to be paid in monthly equal payments each to be paid at the end of each calendar month.*
***(**…)*

12. All amounts of remuneration and bonuses stated in this Contract shall be net of any taxes or fees imposed under the laws of the UAE, however, the Player shall solely bear the liability of all taxes and fees imposed on him under the laws of his home country of his residence.

(…)"

8. On 22 October 2022, during an official match with the Club, the Player suffered a total rupture of the right Achilles tendon and underwent to a surgery on 24 October 2022. The Player recovered from this injury and on 5 May 2023 he had the prosthesis removed.

(C) <u>The Parties' negotiations to extend the Al-Ain Employment Contract</u>

9. On 15 December 2022, the Club sent to the Player – through his agent Mr. Augustine Lorenzetti (the "Agent Lorenzetti") – an offer to extend the Al-Ain Employment Contract (the "Draft Extended Al-Ain Employment Contract").

10. The Club's intention was to extend the Al-Ain Employment Contract for another two seasons (2023/24 and 2024/25) with the option, at the Club's discretion, for a third subsequent season (2025/26).

11. The main clauses of the Draft Extended Al-Ain Employment Contract are the following:
"(…)

THE TERM OF THE CONTRACT AND ITS VALIDITY

5. This Term of this Contract shall be for two years starting from 01/07/2023 and ends on 30/06/2025. With the option for the Club to extend the Contract for one additional year in accordance with clause 12 below.

(…)

THE FINANCIAL TERMS AND BENEFITS

8. Player's Total remuneration: for the entire Term of this Contract (i.e., from 01/07/2023 to30/06/2025), the Player will be entitled to the total amount of 2,900,000 US Dollars (…) (Total Contract Value) divided as follows:

A. *200,000* [USD] *(…) Down Payment of the Contract's Total Value to be paid on or before 31/08/2023.*

B. *the First Contractual Value (i.e, from 01/07/2023 until 30/06/2024): 1,300,000 USD (…) to be paid in monthly equal installments, each to be paid at the end of each calendar month.*

C. *The Second Contractual Year (i.e., from 01/07/2024 until 30/06/2025): 1,400,000 USD (…) to be paid in monthly equal installments, each to be paid at the end of each calendar month.*

(…)

10. The down payment stated in paragraph (A), article (8) above, shall be deemed an integrated part of the Player's actual wages even so they were paid in advance as the Player is only entitled to daily wages. (…).

11. In the event this Contract is terminated by either Party, for any reason including transferring of the Player from Al Ain FC to any other club before the expiration of this Contract Term, the actual wages due to the Player for the services he provided to the Club shall be his daily wage until the date of the termination of this Contract, to the extent that the Player shall be reimburse the Club for any amounts paid to him by the Club above and over said actual wages (including any down payments). For this purpose, the Player's daily wages shall be calculated by dividing the Contract's Total Value by the number of the days of the Contract Term.

Option to Extend the Contract

12. The Player expressly agrees to grant the Club the right to extend the Contract for an additional year from 01/07/2025 until 30/06/2026 (the "Additional

Year") at the will and sole discretion of the Club, in accordance with the following conditions:

A. The Club shall inform the Player of its desire to extend the Contract for the Additional Year, no later than 31/05/2025.
B. The Player shall be entitled for the Additional Year to a total Remunerations of 1,500,000 USD (…) to be paid in monthly equal instalments, each to be paid at the end of each calendar month.
C. The Player's entitlements during the Additional Year shall be deemed within the among the Total Contract Value.

(…)

14. All amounts of remuneration (…) stated in this Contract shall be net of any taxes or fees imposed under the laws of the UAE, however, the Player shall solely bear the liability of all taxes and fees imposed on him under the laws of his home country or country of his residence.

(…)"

12. The Parties – through the Agent Lorenzetti – had several discussions – via WhatsApp and in-person – to discuss and negotiate the extension of the Al-Ain Employment Contract.

13. The Parties have different views in relation to the way that the negotiations progressed and to the conclusion of the extension of the Al-Ain Employment Contract.

14. The Club argues that the offer of the Draft Extended Al-Ain Employment Contract expired as the Player failed to sign it before his trip to Columbia on 20 December 2024.

15. On 20 January 2023, the Parties, accompanied by the Agent Lorenzetti and representatives of the Club had a meeting at the Club's premises to sign the Draft Extended Al-Ain Employment Contract (the "Extended Al-Ain Employment Contract"). However, the Player stated that a copy of the countersigned version was never provided to him.

16. On 9 May 2023, the Club paid to the Player the amount of USD 200,000 via cheque. The Parties dispute the nature of this payment. The Club claims that the payment

was a loan requested by the Player to be repaid with his remaining two salaries and the Player argues that the payment corresponded to the down payment for the Extended Al-Ain Employment Contract.

17. From 20 to 23 June 2023, the Player travelled to London and successfully passed a medical examination related with his recovery from the injury he had suffered (see above para. 8.)

18. In early July 2023, on an unspecified date, the Club announced on social media that the Player would be joining the 2023/2024 pre-season training camp in Spain. The announcement read as follows:

Figure 1 - Exhibit 10 (Respondent's Answer)

(D) The Termination of the Employment Relationship between the Club and the Player

19. On 9 July 2023, the Club approached the Agent Lorenzetti and informed him of their intention to transfer the Player on loan (the "Loan Offer") to Al-Ahli FC (the "Al-Ahli") for the season 2023/2024.

20. The Agent Lorenzetti rejected the Loan Offer on the Player's behalf as the Extended Al-Ain Employment Contract was in effect. In this written communication, the Agent Lorenzetti informed the following:

"(…) After discussing (…) with Danilo he has informed me that he is not willing to go on loan, therefore, if there's a sportive decision or not including him this year he would be open to review an offer regarding the final termination of his contract which was January 2023 (…)."

21. On 10 July 2023, the Club replied to the Agent Lorenzetti's communication arguing that the Draft Extended Al-Ain Employment Contract had not been accepted and signed and communicated that the Club was no longer interested in the Player's services beyond the 30 June 2023. In this written communication, the Agent Lorenzetti informed the following:

"(…)

1. *Contrary to what has been stated in the aforementioned email, at no point in time the Club and the Player Danilo Arboleda have reached an agreement to either extend or renew or enter into a new contractual relationship extending the previous contractual relationship beyond 30 June 2023 nor they signed a new contract of employment nor extended the previous contract of employment that unnaturally expired on 30 June 2023 for additional seasons.*
2. *Due to fact that the ongoing fruitless negotiation between the Player and the Al Ain FC to extend their contractual relationship beyond 30 June 2023 has been taking too long without reaching an understanding on the terms and conditions of signing a new contract, this is to inform that Al Ain FC is no longer interested in signing a new contract with the Player Danilo Arboleda or extending the previous contract that was naturally expired on 30 June 2023 for additional sporting season(s). Thus, Al Ain FC will not engage in any future negotiation with the Player as of the date of this email.*

(…)"

22. On 13 July 2023, the Player sent the email entitled "Letter Before Action" where, *inter alia*, states the following:

"(…)

Therefore, the Player and the Agent hereby declare and notifies the club of the following:

1) The Player and the Agent acknowledges the undue termination of the Agreement by the Club on July 10th, 2023, and therefore the Player is clearly considered free agent.
2) The Player and the Agent considers the Club having terminated the Agreement unduly and in breach of FIFA's regulation, accordingly and based on CAS and FIFA jurisprudence and the principle of Pacta sunt servanda, the Club is invited to compensate the Player by paying him the value of the Contract i.e. 2,900,000 USD as well as the 10% agency fee to the Agent, within 15 days from the date of this letter, otherwise the Player and the Agent shall reserve their rights to bringing proceedings before FIFA claiming their rights and requesting FIFA to impose the relevant sanctions in case of non compliance with its decision.

(…)."

(E) <u>The employment relationship between the Player and the Al-Ahli</u>

23. On 14 July 2023, the Player and Qatari club Al-Ahli signed an employment contract valid from 14 July 2023 to 30 June 2024 (the "Al-Ahli Employment Contract"). The Player's total remuneration under the Al-Ahli Employment Contract was USD 1,000,000.

24. The main clauses of the Al-Ahli Employment Contract are the following:

"(…)

Football Player's Contract 2023-2024

(…)

Article IV
Club's Obligations and Rights

1. The remuneration of the Player shall be set out in the attached Football Player's Contract Schedule 1 signed by the Parties which forms an integral

part of this Contract (hereinafter also referred to as the "Schedule 1"). The Schedule 1 includes all remuneration to which the Player is or may be entitled (…).

2. *(…)*

(…)

Football Player's Contract
SCHEDULE 1

1. *The Contract has a total value of: (1,000,000US dollars) (…).*
2. *Concerning the season 2023-24 the Player shall receive from the Club the total amounts as follows:*

– Monthly salary:

(83,333.33 US dollars) to be paid at the end of each Gregorian month for the period from 01/07/2023 until 30/06/2024.

3. *(…)*
4. *Taxes/Social contribution*

The Player's income refers to net amounts in the State of Qatar.

Any taxes, social costs, contributions or any other amounts the Player may need to pay in the country of his residence or any other country are to be borne by the Player and the Club insofar shall not be obliged to pay any additional amounts to the player as those agreed upon in this Contract.

(…)"

25. On 31 January 2024, the Player and Al-Ahli decided to terminate the employment relationship, and the Player received the remaining salaries owed until the end of the Al-Ahli Employment Contract.

(F) <u>The employment relationship between the Player and the Wuhan</u>

26. On 1 February 2024, the Player and the Chinese club Wuhan signed an employment contract valid from 1 February 2024 to 31 December 2024 (the "Wuhan Employment Contract").

27. The main clauses of the Wuhan Employment Contract are the following:

"(...)

ARTICLE 3: Salary and Bonuses

1. During the term of this Contract [Wuhan] *shall pay* [the Player] *the annual salaries as follows:*
   a. In year 2024 (i.e. from 1 February 2024 to 31 December 2024) USD 406,164 (...) in total before tax in mainland China, USD 250,000 net for reference for the year 2024. In specific, USD 36,924 before tax in mainland China of each month from February 2024 until December 2024 will be paid as monthly salaries.

(...)"

28. In July 2024 the Player and the Wuhan entered into a settlement agreement (the "Wuhan Settlement Agreement"), to prematurely terminate their employment relationship. The most relevant clauses of the aforementioned agreement are the following:

"1. The Parties agree that the Contract shall be mutually and automatically terminated on 15 July 2024 (the "Termination Date") that the following conditions are cumulatively met:
a) The Club signs with another foreign player within the 2024 CFA Summer Transfer Window (i.e. by no later than 15 July 2024 Beijing time), and completes all relevant procedures before CFA, FIFA TMS so that such player is able to participate the second half of season 2024 CFA as a player of the Club; and
b) Be no later than 15 September 2024, an amount of USD 150,000 (in words: one hundred fifty thousand U.S. dollars) net paid by the Player or and third party designated by the Player (hereinafter referred to as "Settlement Amount").

2. By means of the conditions abovementioned in Article 1 of this Agreement are cumulatively met, the Parties will be released from any and all obligations to each other since the Termination Date.

(...)

8. Since the Player expressed that he has no intention to keep perform the Contract, the Parties agree to let the Player leave without pay since 22 June 2024 (i.e. the

Club is not obliged to pay the Player since 22 June 2024, and the Player is not obliged to provide service since the same day). In the event that the Contract remain effective (…) the Parties must resume their obligation since 16 July 2024 (…)"

29. Considering the Wuhan Settlement Agreement, the Player agreed to pay the amount of USD 150,000 to Wuhan to terminate the Wuhan Employment Contract earlier. Moreover, the Player did not render his services from 22 June 2024, this being the moment when he stopped receiving any salaries.

(G) The employment relationship between the Player and the club Kazma FC

30. On 1 October 2024, the Player and the Kuwaiti club Kazma FC (the "Kazma") entered into an employment agreement (the "Kazma Employment Contract"). The main clauses of the Kazma Employment Contract read as follows:

"*2. The* [Player] *accepts to play as a professional football player for Kazma FC for sport season 2024/2025, where the contract will be effective after the* [Player] *passes the medical checkup and receiving the ITC from the national federation. The* [Kazma FC] *has the right to extend this contract for additional sport season with the same terms and conditions.*

3. The [Player] *will be entitled for a monthly salary of $24.000 (twenty-four thousand USD only) after the completion of medical checkup and receiving the ITC from the National federation. Till 31/05/2025 of by the end of season*.

4. Financial Bonuses

The [Player] *is entitled for financial bonus as below:*
- *One-month salaries for winning the league.*
- *One-month salary for winning the Crown Prince Cup.*

One-month salary for winning the Amir Cup."

31. To conclude the Kazma Employment Contract the Player entered into a representation and commission agreement (the "Commission Agreement"), with the Kuwaiti agent Mr Osama Naji Qwaider al Zubi (the " Kuwaiti Agent"). The commission payable to the Kuwaiti Agent under the Commission Agreement was USD 40,000.

(H) The proceedings before the FIFA DRC

32. On 3 November 2023, the Player filed a claim before the FIFA DRC against the Club, and in support of its requests for relief stated, *inter alia*, that he was not handed over the countersigned copy of the Extended Al-Ain Employment Contract – the center of the dispute between the Parties. The Player claimed compensation for breach of contract in the total amount of USD 3,200,000, plus 5% interest as from the respective due date:

i. USD 1,300,000 for the season of 2023/2024.
ii. USD 1,400,000 for the season of 2024/2025; and
iii. USD 1,500,000 for the season of 2025/2026.

33. The Player accepted to deduct from the claimed compensation the down payment already performed by the Club in the total amount of (USD 200,000) and the alleged new income of the Player with his new club Al-Ahli during the overlapping period in the total amount of USD 800,000 (which the FIFA DRC immediately corrected to USD 958,333).

34. The Club filed its answer to the claim, and in support of its requests for relief it stated, *inter alia*, that the Player was employed with the Club until 30 June 2023 as per the Al-Ain Employment Contract and, therefore, any renumeration or order given to the Player was part of the execution of this contractual period and has absolutely nothing to do with the disputed extension of the Al-Ain Employment Contract for two additional seasons. As such, the Club requested the Player to reimburse the amount of USD 200,000 which he received in advancement of his salaries.

35. On 12 April 2024, the FIFA DRC passed the Appealed Decision which states that:

"*1. The claim of the Claimant/Counter-Respondent, Danilo Arboleda Hurtado, is partially accepted.*

2. The Respondent/Counter-Claimant, Al Ain, must pay to the Claimant/Counter-Respondent the following amounts(s):

*– **USD 1,541,667** as **compensation for breach of contract** plus 5% interest p.a. as from 10 July 2023 until the date of effective payment.*

3. Any further claims of the Claimant/Counter-Respondent are rejected.

4. The counterclaim of the Respondent/Counter-Claimant is rejected."

36. The grounds of the Appealed Decision may be summarized as follows:

(1) Even if neither party has not been able to provide firm evidence that the Draft Extended Al-Ain Employment Contract was signed, the following facts were decisive to determine the extension of the employment relationship for another two seasons (2023/24 and 2024/25):

a. The Club payment to the Player of the amount of USD 200,000 which is the exact amount of the first payment due under the Extension Offer.

b. The Club's argument that the payment of USD 200,000 was an advance payment concerning the Player's salaries of May and June 2023 is not convincing since the Club paid said salaries in full and did not request the Player to pay the amount back until it lodged its counterclaim.

c. The Club's announcement in July 2023, on its social media, that the player would be joining the pre-season of 2023/2024.

d. The Player's travel to London on the Club's order to undergo a medical test 7 days prior to the expiration of the Al-Ain Employment Contract.

e. The Club's attitude upon the Player's rejection in accepting his loan to the Club Al-Ahli and the fact that it has never made any reference to reimbursement of the amount of USD 200,000.

(2) The FIFA DRC concluded therefore that the parties accepted to be contractually engaged, and the Player is entitled to compensation for breach of contract.

37. The FIFA DRC calculated the amounts owed to the Player for breach of contract in accordance with Article 17.1 of the FIFA Regulations on the Status and Transfer of Players (RSTP). In the calculation of this compensation, the FIFA DRC took into account the renumeration due to the Player until the end of the Extended Al-Ain Employment Contract for the 2023/2024 and 2024/2025 seasons totaling USD 2,700,000, minus the down payment received in the amount of USD 200,000. FIFA DRC concluded that the Extended Al-Ahli Employment Contract was valid as from 14 July 2023 until 30 June 2024 and that the player was entitled to a total fixed remuneration of USD 958,33 during the whole term of this contract, as he is entitled to 11.5 salaries of USD 83,333 each.

38. Pursuant to Article 17 RSTP, the FIFA DRC then deducted the amount of USD 958,333 due from the Al-Ahli Employment Contract, bringing the total amount of compensation due to the Player to USD 1,541,667. At this moment in time, the FIFA was aware only of the Al-Ahli Employment Contract and not of the subsequent employment relationships.

III. PROCEEDINGS BEFORE THE CAS

39. On 22 April 2024, the Appellant filed with the CAS a statement of appeal (the "Statement of Appeal") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code"), challenging the Appealed Decision. In the Statement of Appeal, the Appellant requested the case to be submitted to a sole arbitrator. Moreover, pursuant to Article R44.3 of the Code, the Appellant requested the production of the termination agreement signed between the Player and Al Ahli and the Wuhan Employment Contract. The Appellant requested also the suspension of the time-limit to file the appeal brief until production of the requested documents.

40. On 29 April 2024, in accordance with Article R50 of the Code and in order to enable the CAS to decide on the number of arbitrators, the Respondent was requested to indicate whether it intended to pay its share of the advance on costs.

41. On 10 June 2024, the Deputy Division President accepted the present dispute to be decided by a sole arbitrator, considering the Respondent's refusal to pay his advance of costs.

42. On 28 May 2024, in accordance with Article R51 of the Code and within the time-limit previously extended, the Appellant filed the appeal brief (the "Appeal Brief") with the CAS.

On 2 July 2024, in accordance with Article R55 of the Code and within the time-limit previously extended, the Respondent filed its answer (the "Answer"). In the Answer the Respondent argues that the Appeal Brief was not filed within the prescribed time limit and, therefore, is in breach of Article 51 of the Code.

43. On 5 July 2024, the CAS Court Office notified the Parties on behalf of the Deputy President of the CAS Appeals Arbitration Division and pursuant of Article R54 of the Code, that Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal, had been appointed as sole arbitrator to decide this Appeal. In this same notice, the Appellant was invited to submit observations on the Respondent's arguments as to the inadmissibility of the appeal brief.

44. On 8 July 2024, the Appellant filed its comments on the Respondent's objection to the admissibility of the Appeal Brief.

45. On 9 July 2024, the CAS Court Office notified the Parties of the Sole Arbitrator's decision regarding the Respondent's objection to the admissibility of the Appeal Brief. After considering the Parties' submissions and conducting a thorough assessment, the Sole Arbitrator determined that the Appeal Brief has been validly filed within the applicable time limit. The reasons for the Sole Arbitrator's decision are set out below at para. …..

46. On the same CAS Court Office notice dated 9 July 2024, and after considering the positions of the Parties, the Sole Arbitrator ordered the Respondent to produce by 12 July 2024:

(i) A copy of the Wuhan Employment Contract; and
(ii) A copy of the termination agreement signed between the Player and the Al Ahli.

47. On 13 July 2024, the Respondent provided the CAS Court Office with a copy of the Wuhan Employment Contract and the termination settlement (a document named "Player Clearance") with Al Ahli (the "Termination Agreement with Al Ahli"). The Termination Agreement with Al Ahi states, *inter alia*, the following:

"(…)

1. The [Al-Ahli] *and the* [Player] *hereby mutually agree that the* [Al Ahli Employment Contract], *entered by and between them coming into force starting from the date of 14/07/2023 and valid until 30/06/2024 will be terminated starting from the date 31-01-2024. The [Player] shall receive the remaining salaries of his contract as per the terms of the employment contract (…)."*

48. On 24 July 2024, the Appellant commented on the documents produced, challenging the authenticity of the scanned copy of the Wuhan Employment Contract due to its low value in contrast to the market value of the Player and his previous contract with Al-Ahli. In this context, the Appellant requested the Sole Arbitrator to order the Respondent (i) to file by courier the original copy of the Wuhan Employment Contract, (ii) to disclose the Player's bank statements into which his remuneration under the Wuhan Employment Contract was paid, covering the period as from 1

February 2024 until the present day and (iii) to produce any and all other contract entered into by the Player with Wuhan.

49. On 2 August 2024, after consultation of the Parties, the Sole Arbitrator decided to hold a hearing on 13 September 2024 at 10:00 am (Swiss time), at the CAS Court Office, in Lausanne, Switzerland.

50. On 2 September 2024, the CAS Court Office sent a notification to the Respondent with the following directions:

"(…)

i. The Respondent is requested to bring the original copy of the employment contract with Wuhan at the hearing, during which it will be considered by the Sole Arbitrator;

ii. The Respondent is invited to comment, by 6 September 2024, on the Appellant's request for disclosure of the "the statement of his bank account into which his remuneration under the Wuhan's contract is being remitted covering the period as from 1 February 2024 until today". The Sole Arbitrator will then decide whether the disclosure order shall be granted or not. Regardless, the Respondent shall of course have the opportunity to voluntarily disclose these documents (with any necessary redaction) within the same deadline;

iii. To produce, by 6 September 2024, any and all contract entered into with Wuhan, respectively to confirm that no additional contract(s) exist(s).

(…)"

51. On 6 September 2024, the Respondent voluntarily produced the requested Player's bank statements and stated that the original Wuhan Employment Contract would be presented at the hearing.

52. On 13 September 2024, at 10:00 am (local time), at the CAS Court Office, in Lausanne, Switzerland, a hearing was held. In addition to the Sole Arbitrator and Mr Giovanni Maria Fares, Counsel to the CAS, the following persons also attended the hearing:

1. <u>For the Appellant</u>
   - Mr Nezar Ahmed – Legal Counsel

2. <u>For the Respondent</u>
   - Mr Jirayr Habibian – Legal Counsel

- Mr Danilo Arboleda Hurtado – the Respondent
- Dr Pablo Alfredo Ortega Gallo – Witness (via videoconference)
- Mr Augustine Lorenzetti – Witness
- Mr Mateus Silva Wanderley de Miranda – Interpreter

53. As a preliminary remark, the Parties were asked to confirm whether they had any objections to the appointment of the Sole Arbitrator. Both Parties confirmed that they had no objections. The Parties were also invited to confirm the jurisdiction of the CAS and to sign the Order of Procedure which they did without objection.

54. Immediately after the opening of the hearing, the Appellant raised the following preliminary objections:

a. The first objection related to a challenge against the Respondent's evidence identified as Exhibit 12 bis (an audio recording), involving a conversation between the Agent Lorenzetti and unidentified third party, apparently connected to the management of the Club. The Appellant contented that the recording was made without the third party's consent and, for this reason, should be disregarded;

b. The second objection concerned the Respondent's proposed witness Mr Rimon Hannouch, who was presented on the day of the hearing.

55. After consulting the Respondent's representative regarding the Appellant's objections, the Respondent agreed to withdraw the audio evidence in question and not to call Mr Hannouch as a witness. As for the witnesses, Dr Alfredo Ortega Gallo and Mr Augustine Lorenzetti, it was agreed that they could testify before this Court. Dr Alfredo Ortega had already submitted a witness statement, and Mr Lorenzetti had expressly requested in the Appeal Brief, with sufficient clarity on the topics about which he would testify.

56. At this preliminary stage, the Parties, along with the Sole Arbitrator, also addressed the issue of the validity of the Wuhan Employment Contract, which had been submitted by the Respondent. The Respondent clarified that it only had a PDF copy of the document, as provided by the Chinese club, and submitted a communication from the Chinese club confirming the authenticity of the produced document. The Appellant was then invited to comment on the bank statements provided by the Respondent and informed the Sole Arbitrator that they had no remarks. Additionally, the Appellant confirmed that it had no objection to the Wuhan

Employment Contract, including in relation to the total remuneration received by the Player.

57. After the closing submissions, the Parties confirmed that they were given full opportunity to present their cases and submit their arguments. Furthermore, the Parties expressly stated that the equal treatment of the Parties and their right to be heard had been respected.

58. On 22 October 2024, the Appellant requested the reopening of the evidentiary phase of the proceedings on the basis of the conclusion of the Kazma Employment Contract.

59. On 25 October 2024, the CAS Court Office ordered the Respondent to produce the Kazma Employment Contract and provide his comments in relation to the relevance of this employment relationship in the Appellant's claim.

60. On 30 October 2024, the Respondent produced the Kazma Employment Contract.

61. On 4 November 2024, the Appellant submitted its comments on the Kazma Employment Contract, which are summarized in Section IV of the Award. Among these comments, the Appellant requested that the Respondent provide a signed copy of the requested contract. All of the Appellant's comments unrelated to the Kazma Employment Contract were disregarded by the Sole Arbitrator.

62. On 7 November 2024, the CAS Court Office requested the Respondent to produce a signed copy of the Kazma Employment Contract, and any expenses/costs incurred in connection with the employment relationship (if any).

63. On 11 November 2024, the Respondent produced the signed copy of the Kazma Employment Contract and, with respect to the costs incurred in connection with the Wuhan and Kazma employments contracts, the Wuhan Settlement Agreement and the Commission Agreement, as well as his comments on those agreements in relation to the Appellant's mitigation claim, which are summarized in Section IV of the Award.

64. On 17 November 2024, the Appellant submitted its further comments on the produced documents. The Sole Arbitrator has not considered any comments/observations not related to these documents. Therefore, the Sole Arbitrator closed the evidentiary proceedings and reserved his decision for the Award.

IV. THE PARTIES' SUBMISSIONS

65. The following summary of the Parties' positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

(A) The Appellant's submissions

66. In its Appeal Brief the Appellant submits the following prayers and requests to the CAS:

"(...)

- ***On evidentiary basis***

1. Grant the evidentiary measures requested (...).

- ***On the merits****:*

2. Set aside the Challenged Decision in its entirety.
3. *Hold that the Al-Ain and the Player have not concluded the* [Draft Extended Al-Ain Employment Contract].
4. Issue a new decision whereby ordering the Player to repay to Al-Ain the cash advance of USD 200,000 plus default interests of 5% per annum to be calculated as from 27 November 2023 until the date of effective payment.
5. In the alternative, in the unlikelihood that the Panel would deem that the Player would be entitled to a compensation, recalculate the amount due with due consideration to the Player's income under his new contracts with the Chinese Club Wuhan Three Towns, signed in February 2024 and with the Qatari club Al Ahli FC, signed on 14 July 2023.
6. Condemn the Player has to bear any and all the costs of the present arbitrations, including the CAS Court fee which was paid by Al-Ain as well as to pay to Al-Ain any and all costs and expenses incurred in connection of this procedure, including – without limitation- legal fee, expenses any eventual further costs.

67. The Appellant advanced the following summarized arguments in support of its position:

(A.1) The Extended Al-Ain Employment Contract was not executed

i. The time limit set by the Club to close the extension of the Al-Ain Employment Contract

a. On 15 December 2022, the Club sent the Draft Extended Al-Ain Employment Contract to the Player for signature.

b. On 17 December 2022, the Club's representative contacted the Agent Lorenzetti and requested that the Draft Extended Al-Ain Employment Contract be signed prior to the Player's travel to Colombia.

c. The Player did not sign the Draft Extended Al-Ain Employment Contract within the required timeframe, thereby releasing the Club from its obligations, pursuant to Article 3 of the Swiss Code of Obligations ("SCO").

d. Even in the absence of a specified time limit, the same conclusion applies, given that the Player failed to sign the Draft Extended Al-Ain Employment Contract promptly. According to Articles 5(1) and 10(1) of the SCO, the Club representative's request implied that a response should be provided within a maximum of two to three days.

e. After 20 December 2022, the Draft Extended Al-Ain Employment Contract would be of no effect for the Club. Consequently, even assuming that the Player did sign the Draft Extended Al-Ain Employment Contract at the Club's premises on 20 January 2023, which is disputed, such an act would only constitute an offer by the Player to enter into a contractual relationship with Al-Ain.

f. The Player acknowledges that he does not have a copy of the allegedly executed Extended Al-Ain Employment Contract, and therefore, no contract exists. In any case, the Player did not provide any evidence to show that he had asked the Appellant to provide him with a signed copy of the Extended Al-Ain Employment Contract.

g. In the FIFA DRC proceedings, the Player submitted a photograph allegedly showing him signing the Extended Al-Ain Employment Contract, in which he is shown holding a blue-ink pen and signing an unrecognized document. However, the Player's signature on the Draft Extended Al-Ain Employment Contract he produced is in black ink.

h. Furthermore, the Appellant argues that the failure to conclude the Draft Extended Al-Ain Employment Contract is further evidenced by the text message sent by the Agent Lorenzetti on 18 June 2023, which reads as follows:

"hello friend, for over a week I sent an email asking for Danilo contractual situation, until now I didn't Heard nothing about it. So Danilo will flight, because we understand he is without contract. Im gonna send a mail today informing This situation. Thank very much".

ii. The USD 200,000 payment on 9 May 2023

a. The Respondent's assertion that the USD 200,000 payment constitute the down payment stipulated in Clause 8(A) of the Extended Al-Ain Employment Contract is false. In fact, this payment represented a loan against the Player's salaries under the Al-Ain Employment Contract, which the Player requested for personal reasons.

b. Internal documents by the Club indicate that the Player initially requested the amount of USD 100,000 and later sough an increase to USD 200,000.

c. The Club further argues that it is against common sense that Al-Ain would pay the down payment on 9 May 2023 when it was only due on 31 August 2023.

d. The payment of the USD 200,000 was via cheque and this document does not refer the nature of the payment. According to UAE Labour Law, all salaries of employees must be electronically transferred to their bank accounts. This requirement further supports the conclusion that the USD 200,000 cheque was indeed a loan, rather than remuneration under the Extended Al-Ain Employment Contract. If it had been remuneration, it would have had to be disbursed via electronic wire transfer.

iii. The alleged Player's loan to Al-Ahli

a. In the FIFA DRC proceedings, the Player based its assertion regarding the existence of negotiations for a loan to the Qatari Club Al Ahli based on a message sent by the Club's physician, which stated:

"I present myself Dr Mohamed Nacef. I am the Ahli club Qatari Football physician. Our management is in discussion to recruit the professional player: Danilo Arboleda Hurtado. We know that he underwent a surgery on October 22, 2022 about an Achelous tendon total rupture. I am pretty sure after more than 6 months of rehab is absolutely fit to play, I would like just if you don't mind a confirmation from your part that everything is going well regarding the recovery from his surgery".

b. The Appellant argues that the above message does not indicate any ongoing negotiations between the Al-Ain and Al-Ahli.

c. The Appellant further asserts that if any negotiations occurred took place they were between the Player and Al-Ahli as the negotiations with the Player ended on 10 July 2023 and less than 96 hours later the Player signed for Al-Ahli.

iv. The medical examination conducted in London in June 2023

a. The medical examination requested by the Club does not establish the existence of an employment contract; on the contrary, under Article 18.4 of the RSTP, the validity of an employment contract cannot be conditioned upon a successful medical examination. This position is further supported by the fact that the examination occurred six months after the alleged signing of the Extended Al-Ain Employment Contract, whereas standard practice is for players to undergo medical examinations prior to signing contracts.

b. The Club requested the Player to undergo this medical examination not as a precondition for the extension of the contractual employment relationship, but rather to assess whether further treatment or rehabilitation — expenses covered by the Club — was required. The Club aimed to protect itself from potential legal claims related to the

Player's injury and to ascertain the Player's medical status prior to engaging in any forthcoming negotiations.

v. *The Player's inclusion in the Spain Training Camp, the references on the Club's social media and the allocation of accommodation and car*

a. The Club included the Player on the training camp list in anticipation of a new employment agreement and as a precautionary measure, given that the visa application process was expected to take 2-3 weeks.

b. The Club denies providing housing to the Player beyond 30 June 2023.

c. As for the car, it was provided to the Player within the timeframe of the Al-Ain Employment Contract. The Club was obliged to provide the car until the end of 30 June 2023 and the car was provided on 29 June 2023 for a period of 48 hours.

(A.2) The mitigation of compensation awarded by the FIFA DRC

68. Alternatively, the Appellant challenges the amount of compensation calculated in accordance with Article 17.1 RSTP with the following arguments:

(1) The residual value of the Extended Al-Ain Employment Contract

a. The Appellant agrees that the residual value of the Extended Al-Ain Employment Contract is USD 2,500,000.

b. The USD 2,500,000 is composed of USD 1,300,000 for the 2023/2024 season; and USD 1,400,000 for the 2024/2025 season minus the amount of USD 200,000 already paid by the Club to the Player in May 2023.

(2) The value of the new contract(s) by the time of the decision

a. The Player has entered into three successive employment contracts prior to the issuance of this Award. The first employment contract (the Al-Ahli Employment Contract) was signed on 14 July 2023 with Al Ahli for a total amount of USD 1,000,000. The second employment contract (the Wuhan Employment Contract) was signed with Wuhan on 24 February 2024 for a gross total salary of USD 406,164,

corresponding to USD 250,000 net. The third employment contract (the Kazma Employment Contract) was signed with Kazma on 1 October 2024 establishing a monthly salary of USD 24,000.

b. The amounts associated with the abovementioned employment contracts must also be deducted from the residual value of the Extended Al-Ain Employment Contract. This reduction is justified because (i) the Player signed these contracts prior to the issuance of this Award and, in accordance with CAS jurisprudence (CAS 2022/A/9004, paras. 82-92) such deductions are permissible when the harmed party, in this case the Player, enters into a new employment contract prior to the issuance of a final decision by CAS.

c. The Appellant calculates the total mitigated compensation due to the Player to be USD 901.836. This figure is derived by deducting the undisputed residual value of the Extended Al-Ain Employment Contract in the amount of USD 2,500,000, from the total remuneration due to the Player under the subsequent contracts: USD 1,000,000 for the Al-Ahli Employment Contract, USD 406,164 for the Wuhan Employment Contract and USD 192,000 for the Kazma Employment Contract.

d. The difference between this amount and the amount awarded by the FIFA DRC (USD 1,541,667) can be attributed to three main factors: (i) the omission of the Wuhan Employment Contract (USD 406,164); (ii) the omission of the Kazma Employment Contract (USD 192,000); and (3) the erroneous determination that the total fixed remuneration under the Al-Ahli Employment Contract was USD 958,333 instead of the actual USD 1,000,000.

e. As per Article 17.1 (ii) RSTP all subsequent employment contracts until the issuance of the Award must be considered for the purposes of mitigation.

f. Also, as per Article 17.1 (ii) RSTP, there is no possibility of reducing the amount of mitigation by the alleged expenses/costs incurred by the Player with concluding his new employment contracts. The Player incurred costs with the signing of the new contracts, as well as the prematurely terminated contracts, thus these costs offset each other, the same being applicable to the income taxes paid by the player.

g. The Wuhan Settlement Agreement clearly states that the Player wished to prematurely terminate the Wuhan Employment Contract without just cause. This is a "textbook example" of failure to mitigate, and, as such, the entire value of the Wuhan Employment Contract must be included in the mitigated amount.

h. The Appellant further submits that this mitigation is insufficient, as the Player was in a position to negotiate an extension of the Al-Ahli Employment Contract for two additional seasons: the 2024/2025 season, valued at USD 1,400,000, and the 2025/2026 season, also valued at USD 1,400,000.

i. Furthermore, the Player's decision to terminate his contract with Al Ahli by mutual consent and to subsequently sign two contracts for a significantly lower amount should be considered as a failure on the Player's part to comply with his duty to mitigate damages, as provided for in Article 17.1 of the RSTP and Article 337c (2) of the SCO. This failure should lead to a substantial reduction or total elimination of the compensation to be paid.

(B) <u>The Respondent's Submissions</u>

69. In his Answer the Respondent submits the following prayers and requests to the CAS:

"(...)

1) Dismiss the current Arbitration and deem the current arbitration as withdrawn since the Appeal Brief was filed outside the time limits set forth in R51 of the Code.

In the Unlikely event, the Tribunal do not consider the current arbitration withdrawn in compliance with R51 of the Code and dismissed:

2) To declare the [Extended Al Ain Employment Contract] *as validly concluded and existent.*
3) To declare the [Extended Al Ain Employment Contract] *having been terminated unduly and contrary to the principle of Pacta sunt servanda by the Appellant*

4) A Compensation to be paid to the Player in compliance with Art. 17 of FIFA RSTP amounting to a total of USD 3,200,000 in addition to an interest of 5% till the full and final payment; alternatively, to confirm FIFA DRC Challenged Decision communicated to the Parties on 12 April 2024
5) To impose the relevant sanctions, as stipulated in Art 17 (4) of FIFA RSTP.
6) To participate in the legal costs and lawyers' fees paid by the Respondent, so far in the range of USD 40,000 and bear the costs of the current arbitration
7) To Reject the Counterclaim filed by the Appellant for it not being founded nor substantiated and for the Player not owing nor requesting any salary advance from the Appellant.

(…)"

70. The Respondent advanced the following grounds in support of its defense:

(B.1) The Extended Al-Ain Employment Contract was duly executed.

(1) The time limit set by the Club to close the extension of the Al-Ain Employment Contract

a. The Club did not set any deadline for the signature of the Draft Extended Al-Ain Employment Contract.

b. The Extended Al-Ain Employment Contract was signed on January 20, 2023, in the presence of Mr. Mohamed Altahrawi, Mr. Abdulla Ali, Mr. Majid Oweiss, Mr. Khalfan Alshamsi (the Club's CEO), and the Agent Lorezentti.

c. After the execution of the Extended Al-Ain Employment Contract, the Player delivered the signed copy of it to the Club, who subsequently disregarded the Player's repeated requests for a countersigned copy.

(2) The USD 200,000 payment on 9 May 2023

a. The amount paid corresponds to the down payment under Clause 8(A) of the Extended Al-Ain Employment Contract.

b. The Club has not presented any evidence that the payment was related to a loan to the Player.

c. The Club argued the loan was a salary advance supported by the last salaries of the Al-Ain Employment Contract first, however, the Player's bank statements clearly indicate that those salaries were paid in full.

d. There is no logic to pay a salary advance just 50 days prior to the expiry of the Al-Ain Employment Contract when only 2 salaries were left and exceeded the amount of the remaining salaries until 30 June 2023 (which were paid in full).

e. The Club's reply on 10 July 2023 to the Agent Lorenzetti's communication does not address the amount in discussion, neither the reply to the "Letter before action".

f. The Club released the Player without ever referring any outstanding amounts.

(3) The negotiations regarding the Player's loan to Al-Ahli

a. The Club required the Player's consent for the loan transfer to Al-Ahli because the Extended Al-Ain Employment Contract had already been signed; without it, the Club could have simply allowed the Player to leave.

b. The Club is not consistent in its arguments. Before the CAS, the Club argues that negotiations with the Player ended on July 10 and, at the same time, claims that the Player did not sign the Draft Extended Al-Ain Employment Contract within the deadline set in December 2022.

(4) The medical examination conducted in London in June 2023

a. The Player views the medical examination requested by the Appellant as evidence supporting the existence of the Extended Al-Ain Employment Contract.

b. The Player argues that it would not make sense for the Club to incur such expenses for a Player who was set to leave in just seven days and was even owed USD 200,000.

(5) The Player's inclusion in the Spain Training Camp, the references on the Club's social media and the allocation of accommodation and car

a. The Player's inclusion in the Spanish training camp at the beginning of July 2023 shall be considered meaningless if the Player would be released by the club at the end of that season.

b. The Extended Al-Ain Employment Contract explicitly mentioned in Clause 15 that a car and a house would be provided and therefore its absurd the Club would provide a new car and house just one day before the expiry of the Al-Ain Employment Contract.

c. There is no sense in the Player coming back from vacation if only one day was left on his contract – the Doctrine of Logical Evidence.

(6) The Wuhan Settlement Contract, the Commission Agreement and the Kazma Employment Contract

a. The Player had to pay Wuhan an amount related to the Settlement Agreement (USD 150,000).
b. In addition, the Player also had to pay his Kuwaiti Agent an amount in connection with the signing of the Kazma Employment Contract, as per the Commission Agreement (USD 40,000).
c. Finally, since the hearing was closed in September 2024, the request of further mitigation submitted by the Appellant should be rejected, and not taken into consideration, as the damage caused by the Appellant to the Respondent is obvious, as well as the Player's career degradation.

(B.2) The mitigation of compensation awarded by the FIFA DRC

a. The Player has not developed any specific legal arguments in relation to the mitigation calculations presented by the Club.

b. As per the Player's requests (i) the Club should be ordered to pay him compensation amounting to USD 3,200,000, plus 5% interest until the

full payment is made, and (ii) face sporting sanctions or, alternatively, the Appealed Decision should be confirmed.

V. JURISDICTION

71. In accordance with Article 186 of the Swiss Private International Law Act (the "PILA"), the CAS has the power to decide upon its own jurisdiction.

72. Article R47 of the Code states the following:

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

(…)"

73. In addition, Articles 56.1 and 57.1 of the FIFA Statutes Ed. May 2022 reads as follows:

"Article 56.1 - FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, members associations, confederations, leagues, clubs, players, officials, football agents and match agents."

"Article 57.1 - 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."

74. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the CAS Code and Articles 56.1 and 57.1 of the FIFA Statutes. Furthermore, the jurisdiction of the CAS is confirmed by the Order of Procedure duly signed by the Parties.

75. It follows that CAS has jurisdiction to hear this matter.

VI. ADMISSIBILITY

76. Article R49 of the Code provides as follows:

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

77. Article 57.1 of the FIFA Statutes reads 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."*

78. The grounds of the Appealed Decision were notified to the Appellant on 12 April 2024 and the Statement of Appeal was filed on 21 April 16, 2024, *i.e.* within the 21-day deadline fixed under Article 57.1 of the FIFA Statutes and Article R49 of the Code.

79. It follows that the Statement of Appeal is admissible.

80. The Respondent, however, objected to the admissibility of the Appeal Brief.

81. In short, the Respondent sustains the following interpretation and arguments in support of his objection:

1. **Filing of the Statement of Appeal**: On 21 April 2024, the Appellant filed the Statement of Appeal within the 21-day time limit prescribed by the Code. In the Statement of Appeal, the Appellant also requested that the CAS suspend the deadline for filing the Appeal Brief, pending a decision regarding the production of certain documents.

2. **Suspension of the Deadline**: On 24 April 2024, the CAS Court Office confirmed the suspension of the deadline for filling the Appeal Brief in accordance with the Appellant's request.

3. **Resumption of the Deadline**: On 13 May 2024, the CAS Court Office notified the Parties that the Appellant's request for a suspension had been denied and that the procedural timelines would resume with immediate effect.

4. **Late Filing of the Appeal Brief**: On 29 May 2024, the Appeal Brief was filed. However, the Appellant was required to submit it within 10 days of the resumption of the deadline, which commenced on 13 May 2024.

5. **Computation of Time Limits**: The Appealed Decision was notified to the Parties on 12 April 2024, which triggered the initial 21-day time limit for filing the Appeal Brief, expiring on 3 May 2024. The CAS suspended the 10-day deadline for filing time limit for the Appeal Brief on 24 April 2024 and resumed it on 13 May 2024. Consequently, the Appellant was required to file the Appeal Brief by 23 May 2024, i.e., within 10 days of the resumption of the timeline.

6. **Conclusion**: Pursuant to Article R51 of the Code, the appeal is deemed withdrawn if the appellant fails to comply with the applicable time limits. Given that the Appeal Brief was filed after the applicable deadline, the appeal shall be considered withdrawn.

82. The Appellant commented on the Respondent's objection as follows:

1. In accordance with Article R49 of the Code and Article 57.1 of the FIFA Statutes in conjugation with Article R51 of the Code, the deadline for filing an appeal (statement of appeal and appeal brief) is 31 days from the notification of the challenged decision.

2. The 31-day period has been suspended for 20 days (from 24 April 2024 until 13 May 2024).

3. As a result, the time limit for the filing the Appeal Brief, considering the suspension period, expired on 2 June 2024.

4. The Appeal Brief was filed on 28 May 2024 and, therefore, it was filed in due time.

83. On 9 July 2024, the CAS Court Office informed the Parties that the Respondent's objection to the admissibility of the Appeal Brief was rejected.

84. As noted above, the Appealed Decision was notified to the Parties on 12 April 2024. Therefore, the Statement of Appeal was due by 3 May 2024 at the latest, and, consequently, the Appeal Brief was originally to be filed on 13 May 2024 (i.e. 10 days after the expiration of the time limit to appeal).

85. However, on 26 April 2024[1], the CAS Court Office suspended the Appellant's deadline until further notice in light of the Appellant's request for production of documents. It is undisputed that by the time of the suspension, both the time limit to lodge Appeal and to file the Appeal Brief were both not yet expired. The time limit to file the Appeal Brief was resumed on 13 May 2024.

86. This means that when the CAS Court Office lifter the suspension of the time limit to file the Appeal Brief on 13 May 2024, the Appellant still had 18 days (8 days pursuant to Article R49 of the Code *juncto* Article 57.1 of the Statutes of FIFA, and 10 days pursuant to Article R51 of the Code) to file the Appeal Brief. This means that the time limit to file the Appeal Brief was to expire on 31 May 2024.

87. Since the Appeal Brief was filed on 28 May 2024, the filing was within the relevant deadline and, therefore, admissible.

VII. APPLICABLE LAW

88. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

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

89. In addition, Article 56 (2) of the FIFA Statutes sets forth 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*".

[1] In this respect, it is noted that both the Appellant and Respondent wrongly assumed that the time limit to file the Appeal Brief was suspended as from 24 April 2024, although the CAS Court Office suspended the Appellant's deadline by letter dated 26 April 2024.

90. The Parties do not dispute the applicability of the FIFA Regulations, with Swiss law being applied on a subsidiary basis. Consequently, the Sole Arbitrator will primarily apply the relevant FIFA regulations, particularly the FIFA Regulations on the Status and Transfer of Players (May 2023 edition). Swiss law shall be applied on a subsidiary basis in the event that it is necessary to fill any gap or omission in the FIFA Regulations.

VIII. MERITS OF THE APPEAL

(A) PRELIMINARY ISSUES

(A.1) THE EXTENT OF THE POWERS OF THE CAS

91. Pursuant to Article R57 (1) of the Code, the Sole Arbitrator has "*full power to review the facts and the law*". As repeatedly stated in the CAS jurisprudence (e.g. CAS 2007/A/1394, among others), by reference to this provision the CAS appeals arbitration procedure entails a *de novo* review of the merits of the case and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Sole Arbitrator to make an independent determination as to merits.

(A.2) THE APPLICABLE BURDEN AND STANDARD OF PROOF

92. Before commencing the analysis of the merits of the case, the Sole Arbitrator notes that it is for the party that derives a claim from a certain fact to prove the existence of such fact. This general rule is applied in several jurisdictions and is explicitly contained in Article 8 of the Swiss Civil Code (the "SCC"), which reads as follows: "*Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.*"

93. As to the standard of proof, it is a well-established practice that lacking a specific legal or regulatory requirement, in a civil dispute, a CAS Panel/Sole Arbitrator has to apply the usual standard of proof for civil matters, i.e. the one of comfortable satisfaction. In the present case, the Sole Arbitrator sees no reason to impose a higher standard of proof than comfortable satisfaction (see CAS 2020/A/7503, para. 95; CAS 2018/A/6075, para. 46), seeing as this case concerns essentially matters of contractual nature.

94. The "comfortable satisfaction" standard of proof may be defined "(…) *as being greater than a mere balance of probability but less than proof beyond a reasonable doubt (CAS 2014/A/3625, with further reference to CAS 2009/A/1920, CAS 2013/A/3258, CAS 2010/A/2267, CAS 2010/A/2172). In particular, CAS jurisprudence clearly established that to reach this comfortable satisfaction, the Panel should have in mind "the seriousness of the allegation which is made" (CAS 2014/A/3625, with further reference to CAS 2005/A/908, CAS 2009/A/1902)*" (CAS 2016/A/4558, para. 70).

(A.3) THE SCOPE OF THE APPEAL

95. Before assessing the legal issues at stake, the Sole Arbitrator deems it useful to clarify the scope of the Appeal.

96. Initially, the issue at the center of the Appeal is whether the FIFA DRC correctly concluded in the Appealed Decision that the Club and the Player validly concluded the Extended Al-Ain Employment Contract and, if so, (i) if the Club terminated the Extended Al-Ain Employment Contract without just cause; and, (ii) if so, what should be the correct compensation to be paid to the Player considering the applicable mitigation.

97. The Sole Arbitrator notes that the Player seeks compensation in the amount of USD 3,200,000 and the imposition of sporting sanctions against the Club (see para. 70 above). However, it is important to note that the Player did not appeal FIFA Decision and that, under the CAS Code, counterclaims are no longer admissible in appeal procedures following the 2010 reform (see MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 249 and 488, with references to CAS 2010/A/2252, para. 40; CAS 2010/A/2098, paras. 51-54; CAS 2010/A/2108, paras. 181- 183; see also CAS 2013/A/3432 paras. 54-57 with reference to a decision of the Swiss Federal Tribunal).

98. In order for the Sole Arbitrator to be able to award more than what the FIFA DRC has granted in the Appealed Decision, the Player should have filed an independent appeal against the FIFA Decision, which did not happen.

99. Therefore, the Sole Arbitrator finds that the Player's requests for an increase in the compensation awarded by the FIFA DRC and for the imposition of any sporting sanctions are inadmissible. Granting these claims would result in an *ultra petita* decision, which could constitute grounds for annulment under Swiss law.

(B) THE SUBSTANTIVE ISSUES TO BE DECIDED

(B.1) THE VALIDITY OF THE EXTENDED AL-AIN EMPLOYMENT CONTRACT

100. The key question in the case at hand is whether the parties concluded the Extended Al-Ain Employment Contract.

101. The FIFA DRC considered that the actions and omissions undertaken by the Parties (see para. 36 above), were enough to conclude the extension of the Al-Ain Employment Contract for two consecutive seasons. In its defense, the Club argues that no evidence has been adduced to prove the existence of the Extended Al-Ain Employment Contract. It also claims that the payment of USD 200,000 was related to a loan or salary advance to the Player and that the other factors supporting the extension of the Al-Ain Employment Contract have been misinterpreted (see para. 68 (A.1)).

102. The Sole Arbitrator must now review the FIFA DRC's Decision and carefully analyze the arguments and evidence submitted by the Club to determine whether there are valid grounds to change or modify the FIFA DRC's interpretation and decision regarding the extension of the Al-Ain Employment Contract. After a thorough review of the evidence and arguments submitted by the Parties, the Sole Arbitrator agrees with the findings of the FIFA DRC and concludes that the Al-Ain Employment Contract was indeed extended for two additional seasons (2023/24 and 2024/25).

103. Although no formal evidence of the conclusion of the Extended Al-Ain Employment Contract has been established, circumstantial evidence, corroborated by the actions and omissions of the Parties, clearly leads to the conclusion that the Al-Ain Employment Contract was extended for a further two seasons. In making this determination, the Sole Arbitrator, in agreement with the FIFA DRC, considers the following to be material evidence that supports the extension:

a) In December 2022, the Parties initiated negotiations with the aim to extend the Al-Ain Employment Contract for the seasons 2023/24 and 2024/25, with the possibility to also extend it to the season 2025/26.

b) The Club drafted and sent to the Player the Draft Extended Al-Ain Employment Contract (complete and clean version), which contains the essential elements of a contract (identification of the parties, object, contractual obligations, duration and remuneration).

c) The Club's clear and consistent interest in the Player until 14 July 2023.

d) The payment of USD 200,000, which corresponds to the initial sum stipulated in Clause 8 A of the Extended Al-Ain Employment Contract.

e) The fact that there is no evidence of the Player's request for any loan and that the Club paid the subsequent salaries without any deduction or retention.

f) The fact that the Club has not requested the Player to pay back the USD 200,000 until it filed its counterclaim in FIFA DRC proceedings.

g) The Player's medical examination conducted in London at the end of June 2023, a few days prior the expiration of the Al-Ain Employment Contract.

h) The Player's inclusion in the Spain Training Camp pre-season of 2023/24, and the references on the Club's social media.

i) The attempted loan of the Player to Al-Ahli at the beginning of July 2023.

104. In addition to the above, the Sole Arbitrator would also like to highlight the testimony of Dr Pablo Alfredo Ortega Gallo. Dr Pablo Ortega testified in a genuine and credible manner, confirming that he was overseeing the Player's recovery process. He further clarified that the Player's medical examination, conducted in London in June 2023, aimed to assess the Player's physical condition in preparation for his continued participation in football and potential loan move to Qatar. Dr Pablo Ortega also confirmed that, towards the end of June and during the first week of July 2023, medical staff from a Qatari football club approached him, indicating that they were in negotiations with Al-Ain for a potential loan transfer of the Player.

105. The Sole Arbitrator did not give significant weight to the testimony of the Agent Lorenzetti, in view of his professional relationship with the Player, which compromised his complete independence in relation to the dispute at hand. Be that as it may, he was in any event unable to provide any additional evidence to substantiate his statements during the proceedings.

106. In consideration of the above actions and omissions of the Parties, the Sole Arbitrator, in line with the reasoning of the FIFA DRC, concludes that the Parties accepted to be contractually engaged under the terms of the Extended Al-Ain Employment Contract.

(B.2) THE CLUB'S CONTRACTUAL LIABILITY FOR BREACHING THE EXTENDED AL-AIN EMPLOYMENT CONTRACT

107. Having established the validity of the Extended Al-Ain Employment Contract, the next step is to analyze the Club's contractual liability for the termination of the

Player's contract on 10 July 2023, as communicated on the same day (see para. 21 above). In the opinion of the Sole Arbitrator, the content of this communication constitutes a unilateral decision by the Club to terminate the Extended Al-Ain Employment Contract without just cause, thereby creating an obligation to compensate the Player.

108. As determined by Article 17.1 of the RSTP the amount of compensation *"(...) 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* (…)".

109. In applying the relevant provisions, the Sole Arbitrator first had to determine whether the Extended Al-Ain Employment Contract contained a clause by which the Parties had agreed in advance the amount of compensation to be paid in the event of a breach of contract. In this regard, the Sole Arbitrator found that the Extended Al-Ain Employment Contract, which forms the basis of the present dispute, did not contain such a compensation clause.

110. Consequently, the compensation must be assessed in accordance with the parameters set out in article 17.1 of the RSTP. Although this provision contains a non-exhaustive list of criteria to be considered when calculating the compensation, the Sole Arbitrator had no reason to deviate from the FIFA DRC's method of calculating the compensation based on the terms of the extended Al-Ain employment contract from its unilateral termination on 10 July 2023 until its original expiry date of 30 June 2025. Accordingly, the Sole Arbitrator concluded that the total fixed remuneration for the seasons 2023/24 and 2024/25 seasons (i.e, USD 1,300,000 for the 2023/24 season and USD 1,400,000 for the 2024/25 season), amounting to USD 2,700,000, serves as the basis for determining the compensation owed for breach of the Extended Al-Ain Employment Contract. Since the Club had already paid USD 200,000 on 9 May 2023, this amount is to be deducted from the compensation and, therefore, the total compensation due to the Player is USD 2,500,000.

(B.3) THE MITIGATION OF THE COMPENSATION DUE TO THE PLAYER

111. In continuation, the Sole Arbitrator has to decide if and how the compensation amount should be mitigated.

112. It is not disputed by the Parties that the Player had three subsequent employment relationships, one with Al-Ahli (see paras. 23 to 25 above), another with Wuhan (see paras. 26 to 29 above) and another one with Kazma (see paras. 30 to 31 above).

113. During the course of the hearing, it was established that the Al-Ahli Employment Contract provided for a global salary of USD 1,000,000, the Wuhan Employment Contract provided for a global gross salary of USD 406,164 (corresponding to a net salary of USD 250,000). In continuation, after the closing of the hearing, the Player entered an employment relation with the Kuwaiti club Kazma. In accordance with the Kazma Employment Contract, the Player is entitled to receive 24,000 USD monthly salary for the original duration of said contract, *i.e*. until 31 May 2025 (total USD 192,000) = 8-months' salary @ USD 24,000).

114. The Parties do not dispute the amounts mentioned above, however, they disagree on how these should be considered for mitigation purposes. The issues leading to disagreement are as follows:

(a) How should the mitigation amount related to the Al-Ahli Employment Contract be treated? Should the mitigation amount related to the Al-Ahli Employment Contract be USD 1,000,000 (as requested by the Club) or only USD 958,333 (as determined by the FIFA DRC and argued by the Player)?

(b) How should the mitigation amount related to the Wuhan Employment Contract be treated, considering the following issues:

- Should the remuneration – for mitigation purposes – correspond to USD 406,164 (*i.e* the total value of the contract) or only to the salaries earned by the Player until the termination of said contract (USD 173,543)?
- Should the net amount or the gross amount be considered (USD 406,164 versus USD 250,000)?
- How should the costs incurred by the Player in connection with the signing of the Wuhan Employment Contract be considered (i.e, the USD 150,000)?

(c) Should the value of the Kazma Employment Contract be considered for mitigation purposes? If so, in what proportion and how should the costs with the Commission Agreement be considered?

(d) Should the mitigation exceed the amounts of the salaries earned because the Player failed to mitigate his damages by mutually terminating the Al-Ahli Employment Contract, thereby missing out on higher earnings he could have

received if he had stayed until the end of the employment relationship, or even for accepting a significantly lower salary than what he could have earned had he not accepted the Wuhan Employment Contract?

115. The Sole Arbitrator will next analyze each of these issues.

(a) Should the mitigation amount related to the Al-Ahli Employment Contract be USD 1,000,000 (as requested by the Club) or only USD 958,333 (as determined by the FIFA DRC and argued by the Player)?

116. As previously mentioned, the value of the salary established under the Al-Ahli Employment Contract, which is USD 1,000,000, is not in dispute. The disagreement between the Parties pertains to how this amount should be considered in the analysis of the Player's damage mitigation. The FIFA DRC determined that the amount to be deducted from the compensation should be USD 953,000, corresponding to 11.5 months of the Player's salary, specifically the salary earned by the Player from 15 July 2023, until the end of the contractual relationship with Al-Ahli. The Player agrees with this understanding; however, the Club contends that the amount to be deducted should correspond to the full value stated in the Al-Ahli Employment Contract of USD 1,000,000.

117. It is now up to the Sole Arbitrator to determine which amount should be considered for the purposes of mitigation: should the total salary amount from the Al-Ahli Employment Contract, which is USD 1,000,000, be deducted, or only the sum of USD 958,333, corresponding to the salary owed for the period between 14 July 2022, and 30 July 2023?

118. The Sole Arbitrator agrees with the FIFA DRC, that the salary of USD 1,000,000 established in the Al-Ahli Employment Contract pertains to the period from July 1, 2023, to 30 June 2024 (Schedule 1 of the Al-Ahli Employment Contract – see para. 24 above). This aspect is further confirmed in the Termination Agreement with Al Ahli, which explicitly states that *"(...) the Club and the football player hereby mutually agree that the (...) "Employment Contract", entered by and between them coming into force stating from the date of 14/07/2023 and valid until 30/06/2024 will be terminated (...)"* – see para. 48 above). In the Sole Arbitrator's opinion, the FIFA DRC was correct to consider the proportional value corresponding to the Player's working period from 14 July 2023, until the end of the contractual period on 30 June 2024.

119. It has not been proven that the Player received the total amount of USD 1,000,000 during the contractual relationship with Al-Ahli. What can be inferred from the Al-Ahli Employment Contract and the Termination Agreement with Al Ahli is that the

Player earned the compensation corresponding to the period from 14 July 2023, to 30 June 2024, which should be the amount considered for mitigation purposes.

120. In the absence of evidence to the contrary, it should be presumed that the Player received only 50% of the salary for July 2023, as he only worked half of that month.

121. Therefore, the Sole Arbitrator agrees with how the FIFA DRC calculated the deduction from the value of the Al-Ahli Employment Contract and, in this regard, rejects the Club's argument. The amount related to the Al-Ahli Employment Contract to be deducted should be USD 958,333.

(b) How should the mitigation amount related to the Wuhan Employment Contract be treated and considered for mitigation purposes?

(b.1) Should the remuneration to consider for mitigation purposes correspond to USD 406,164 (the total value of the contract) or only to the salaries earned by the Player until the termination of said contract ((USD 173,543)?

122. The Sole Arbitrator starts by noting that, according to the Settlement Agreement, the Player stopped receiving any salaries from Wuhan on 22 June 2024 (see above para. 28). It follows that the Player only received from Wuhan USD 147,696 gross (for the months of February to May 2024) plus USD 25,847 referring to the 21 days worked during the month of June 2024, amounting to a gross total of USD 173,543.

123. Based on the available evidence it is possible to ascertain that the concrete amount earned by the Player under the Wuhan Employment Contract was USD 173,543 and this is the amount that shall constitute the value of the mitigation to be applied under such contract.

(b.2) For mitigation purposes, should the net or the gross amount received by the Player under the Wuhan Employment Contract be considered?

124. The Player argues that the mitigation calculations should be based on the net amounts, while the Club is of the opposite opinion that the amounts to be considered should be gross.

125. The Sole Arbitrator wishes to highlight the jurisprudence from CAS 2015/A/4055, where it was stated the following:

"150. The same applies in the case of a claim for damages when the loss consists in the non-payment of remuneration. In such a case, as long as there is the proper causal connection, the claimant is entitled to compensation for all consequential

loss incurred due to the other party's fault by the wrongful premature termination of the employment relationship. The claim is based on the claimant's legitimate interest in having the contract fulfilled. The innocent party must be put in the position he/she would have been in had the employment contract continued in effect. In doing so, the contractual notice period (or the end of the contract in the case of contracts for limited periods of time) constitutes the limit in terms of time for calculating the damages claim. The damage is calculated according to the so-called difference method, i.e. the difference between the actual situation that occurred because of the termination and the hypothetical situation without the damaging event of wrongful termination. The damage consists of the loss of remuneration plus all other contractual entitlements such as special bonuses and any remuneration in kind. ***In calculating damages for loss of earnings, the so-called gross-wage method is to be used, i.e. loss is calculated based on the injured party's loss of gross earnings****. Any advantages obtained by the injured party on account of the damaging event – for example, by tax reduction – must be taken into account by way of corresponding reduction of the damages. The wrongdoer is entitled to raise as part of his/her defence any points which might reduce the damages in that way (see also RSTP Commentary, para. 2 to Article 17 with reference to CAS 2004/A/587 and Article 337c of the Swiss Code of Obligations)."*

(Emphasis added by the Sole Arbitrator)

126. The same logic must apply, *mutatis mutandis*, to the present case: the Player, as the injured party, had a loss of earnings which could be expressed in gross terms. It then managed to mitigate these damages by receiving a wage while employed at another club. While it was true that the Player's wage was determined by reference to a net amount (in this case, USD 250,000), the Player was effectively receiving a gross amount which was defined and clearly stated in the Wuhan Employment Contract. The Player knew exactly how much he would be earning in total and how much would be "withheld" by the tax authorities in China.

127. The obligation to pay taxes is an obligation of the Player, not the Wuhan club. In the end, the "gross" part of the salary is also, and still, a part of that salary. More importantly, it is not even a given that this amount was actually paid to the tax authorities, as the Player could have benefited from tax schemes which allowed it to receive a refund on said amount.

128. Based on the above, and having this information available for the present Appeal, the mitigation of the Player's damages must be made by reference to the gross amounts which he received in light of the Wuhan Employment Contract – in this case, USD 173,543.

(b.3) How should the compensation paid by the Player to Wuhan – under the Settlement Agreement – be treated?

129. The Player and Wuhan terminated their employment relationship by entering into the Settlement Agreement, Clause 1(b) of which provided that the Player would be liable to pay Wuhan the sum of USD 150,000. This amount was due to the termination being characterized as "without just cause" and at the Player's sole discretion.

130. The Club contends that this amount should not be taken into account when determining the Player's mitigation of damages. The Club argues that deducting this amount from the Player's earnings would be illogical as the termination of the Wuhan Employment Contract was initiated by the Player. Conversely, the Player asserts that this amount should be treated as a cost borne by him in the context of securing and concluding the Kazma Employment Contract.

131. After carefully analyzing the matter, the Sole Arbitrator is of the view that the USD 150,000 payment cannot be classified as an eligible cost incurred by the Player. The Settlement Agreement unequivocally indicates that the Player himself opted for the early termination of the Wuhan Employment Contract, rendering this amount a consequence of his own voluntary decision.

132. While the termination of the employment relationship with Wuhan may have indirectly facilitated the Player's subsequent conclusion of the Kazma Employment Contract, the Player has failed to demonstrate a direct causal link between these two events. The absence of a clear cause-and-effect relationship precludes the Sole Arbitrator from adopting a different interpretation.

133. In light of the foregoing, the Sole Arbitrator concludes that the Player's deliberate decision to terminate the Wuhan Employment Contract does not fall within the scope of protection offered by Article 337c (2) of the SCO. Accordingly, the USD 150,000 payment cannot be considered a relevant cost under the Player's duty to mitigate damages.

134. Lastly, the Sole Arbitrator finds that the Player successfully and partially mitigated his damages under the Wuhan Employment Contract by securing a total amount of USD 173,543.

(c) How should the value of the Kazma Employment Contract be used for mitigation purposes?

135. As stated above in para. 59, the Appellant has brought to the attention of the Sole Arbitrator that the Player had signed, after the closing of the hearing, an employment contract with the Kuwaiti club Kazma. The Parties were given the chance to present their comments on this matter.

136. The view of the Appellant is that mitigation is an ongoing matter that may always be brought to the knowledge of the Sole Arbitrator before a final decision is issued; the Respondent, however, has the opposite view, insisting that the Kazma Employment Contract should not be considered for the purposes of mitigation.

137. The Sole Arbitrator will first decide whether the Kazma Employment Contract is to be considered or not. If the answer is positive, the Sole Arbitrator shall then decide how the amounts received by the Player under the Kazma Employment Contract should be considered for the purposes of mitigation.

138. It is undisputed that, subsequent to the hearing, the Player ended into another employment contract and the Sole Arbitrator considers that the remuneration received by the Player under that employment contract entered within the original duration of the contract with the Appellant, should be taken into account for the purpose of mitigating his damages.

139. As such, in light of the Sole Arbitrator's "*de novo*" power of review (Article R57, CAS Code), and considering the long-standing jurisprudence that the mitigation is an ongoing duty that should always be considered until a final decision is rendered by the CAS, the Sole Arbitrator has to consider – for mitigation purposes - the cumulative remunerations received by the Player. This understanding is in line with CAS 2022/A/9004 (para. 82 – 86):

> *"82. The Sole Arbitrator notes that the Player objected that the remuneration agreed with* [Club] *be taken into account for the calculation of the so-called "Mitigated Compensation" since Article 17 (1) FIFA RSTP provides that a deduction from the due compensation is allowed "in case the player signed a new contract by the time of the decision". Therefore, since the Player signed the new employment contract on 22 August 2022, after issuing the Appealed Decision on 9 June 2022, and outside the relevant period, no "Mitigated Compensation" can occur.*

83. The Sole Arbitrator acknowledges the wording of the provision at stake but, oppositely, holds that ***the deduction is always allowed when the Player, before a final decision, enters into a new contract.***

84. A final decision must be understood to be that concluding the proceedings between the parties, i.e., where an appeal is brought, as in the case at stake, the one rendered by the CAS in the relevant proceedings pursuant to the power of de novo review under Article R57 of the Code that is granted to the panels.

85. Otherwise reasoning, a panel's decision would inevitably be affected by the procedural and substantive issues that occurred before first instance bodies (FIFA DRC in this case) and thus limited in its power to assess the dispute "de novo".

86. Furthermore, the wording of Article 17 FIFA RSTP does not provide for any procedural estoppel. Conversely, it appears indisputable that such provision can be applied only to the proceedings before FIFA since, at the time of the relevant decision, the DRC will be bound to the employment situation of the parties at that moment, as it happened in this case." (Emphasis added)

140. Turning to the concrete matter of mitigation and considering the relevant clauses of the Kazma Employment Contract (see above para. 30), it is clear that the Player is set to receive a monthly salary of USD 24,000 while providing his services to Kazma.

141. As per Article 17.1, (ii), RSTP, the Sole Arbitrator must consider, for the purposes of mitigation, the total value of the new contract for the periods which correspond to the time remaining on the prematurely terminated contract (in this case, the "Extended Al-Ain Employment Contract).

142. It is clear that the Extended Al-Ain Employment Contract was valid from 1 July 2023 until 30 June 2025. Moreover, the Kazma Employment Contract duration coincides partially with the duration of that term, namely because it is valid from 1 October 2024 until 31 May 2024. It follows that the Sole Arbitrator must take into consideration the salaries to be received by the Player from the month of October 2024 until May 2025.

143. Based on the Kazma Employment Contract, the Player was entitled to receive a total of USD 192,000 for rendering his services from October 2024 until May 2025 (USD 24,000 x 8-month salaries). While the Kazma Employment Contract sets a few bonuses, which the Player might earn, none of these has been triggered yet and, as such, they cannot be considered for the purposes of mitigation.

144. Finally, it was also revealed that the Player had to pay a commission of USD 40,000 to his Kuwaiti Agent, as per the Commission Agreement, in direct connection with the signing of the Kazma Employment Contract (see above para. 30).

145. According to Article 337c (2) SCO, damages suffered by an employee for being dismissed without just cause are to be reduced by "(…) *any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work*".

146. Since the Player paid the Commission to enter into the Kazma Employment Contract, it is clear such amount has to be "discounted" from the amounts he earned under such contract – in other words, this amount was not "saved" by the Player, as he endured this expense in order to secure another employment.

147. It follows from the above that a total amount of USD 152,000 (USD 192,000 - USD 40,000) shall be also deducted from the compensation to be paid by the Club to the Player.

(d) Should the mitigation exceed the amounts of the salaries earned because the Player failed to mitigate his damages by mutually terminating the Al-Ahli Employment Contract, thereby missing out on higher earnings he could have received if he had stayed until the end of the employment relationship, or even for accepting a significantly lower salary than what he could have earned had he not accepted the Wuhan Employment Contract?

148. The doctrine of duty to mitigate involves the imposition of both positive and negative duties on the injured party, in this case the player. These duties mean that the injured party must refrain from any activity that could aggravate the damage suffered and must also take steps to minimize his losses. The duty to mitigate is not a true duty in the strict sense of the word, but rather a moral duty based on good faith. The purpose of this doctrine is simply to encourage the injured party to make "reasonable efforts", "having regard to the circumstances" of the particular case, to minimize its own losses. It is important to note that the duty to mitigate does not require any greater burden than a "reasonable effort appropriate to the circumstances" to minimize the damage suffered and is not dependent on the success of those efforts.

149. CAS has confirmed this approach in its jurisprudence and the Sole Arbitrator wishes to highlight the words of the CAS 2018/A/6029 Panel:

"*120. According to CAS case law, the duty to mitigate damages shall be regarded in accordance with the general principle of fairness, which implies that, after a breach by the club, the player must act in good faith and seek for other employment, showing diligence and seriousness, with the overall aim of limiting the damages deriving from the breach and avoiding that a possible breach committed by the club could turn into an unjust enrichment for him (CAS 2016/A/4852; CAS 2016/A/4769; CAS 2016/A/4678).*

*121. Furthermore, the duty to mitigate should not be considered satisfied when, for example, the player deliberately fails to search for a new club or unreasonably refuses to sign a satisfying employment contract, or when, having different options, he deliberately accepts to sign a contract with worse financial conditions, in the absence of any valid reason to do so (CAS 2016/A/4582). However**, the circumstance that a player received a higher remuneration under his former contract than he will receive under his new contract is not in itself sufficient to mean automatically that the compensation payable from his former club has to be reduced in the event that the new contract does not pay the player just as well as the original contract did** (CAS 2016/A/4605).*

*122. In view of the foregoing, the Panel believes that the Appellant has failed to fulfil its burden of proof with regard to the alleged Player's violation of the duty to mitigate his damages, and particularly, the Club **failed to demonstrate that the Player deliberately accepted less favourable financial conditions, while he had other better options, and therefore the objection concerning the alleged unjust enrichment by the Player is completely unfounded.** (…)*

150. In this particular case, the Club did not provide any evidence that the Player voluntarily terminated his contractual relation with Al-Ahli or that his acceptance of the employment relation with Wuhan was at the expense of more attractive job opportunities with higher earnings. The Sole Arbitrator does not share the Club's view that the Player acted improperly. On the contrary, the facts clearly show that the Player secured two new employment contracts, albeit under conditions and circumstances that did not produce the desired results.

151. The Sole Arbitrator concludes that the Player has fully complied with the duty to mitigate his losses and that the Club's request for further mitigation beyond that already considered is unfounded.

(C) CONCLUSIONS

152. In light of the above-mentioned considerations and the specificities of this case, the Sole Arbitrator decides that the Club must pay the amount of **USD 1,216,124** (**one million, two hundred sixteen thousand, one hundred and twenty-four North American Dollars)** to the Player (*i.e.,* USD 2,700,000 minus USD 200,000, USD 958,333, USD 173,543 and USD 152,000), plus 5% interest *p.a.* as of 10 July 2023 (date on which the Club terminated the Extended Al-Ain Employment Contract without just cause) until the end of effective payment.

153. The Sole Arbitrator underlines that the FIFA DRC did not err in its assessment of the case, as the mitigation duty is an ongoing obligation and the Wuhan Employment Contract, and the Kazma Employment Contract did not exist at the time of the Appealed Decision and, for this logical reason, could not be taken into consideration by the FIFA DRC.

154. All other and further motions or prayers for relief are dismissed.

IX. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 22 April 2024 by Al-Ain FC against the decision rendered on 13 March 2024 by the Dispute Resolution Chamber of the Football Tribunal of the *Fédération Internationale de Football Association* is partially upheld.

2. Item 2 of the decision rendered on 22 April 2024 by the Dispute Resolution Chamber of the Football Tribunal of the *Fédération Internationale de Football Association* is amended as follows:

   "2. Al-Ain FC is ordered to pay to Danilo Arboleda Hurtado the amount of ***USD 1,216,124 (one million, two hundred sixteen thousand, one hundred and twenty-four North American Dollars)*** *as compensation for breach of contract plus 5% interest p.a. as from 10 July 2023 until the date of effective payment."*

3. The counterclaim filed by Danilo Arboleda Hurtado requesting the payment of USD 3,200,000 (three million two hundred thousand North American dollars) and the imposition of sporting sanctions on Al-Ain FC is not admissible and dismissed.

4. (…).

5. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date of Award: 2 April 2025

THE COURT OF ARBITRATION FOR SPORT

Rui Botica Santos
Sole Arbitrator