CAS 2022/A/9147 Mr Ali Khomand v. Mr Hamed Lak

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Dr Jan **Räker**, Attorney-at-Law, Stuttgart, Germany

in the arbitration between

Ali Khomand, Islamic Republic of Iran
represented by Mr Ali Malihzadeh, Attorney-at-Law, Teheran, Islamic Republic of Iran

Appellant

and

Hamed Lak, Islamic Republic of Iran

Respondent

I. PARTIES

1. Mr Ali Khomand (the "Agent" or the "Appellant") is an Iranian football agent licensed by the Islamic Republic of Iran Football Federation ("the IRIFF").

2. Mr Hamed Lak (the "Player" or the "Respondent") is an Iranian football player, currently playing for the club Mes Rafsanjan in the Persian Gulf Pro League.

3. The Appellant and Respondent are collectively referred to as the "Parties".

II. INTRODUCTION

4. This appeal is brought by the Agent against the Player in relation to the decision rendered by the Appeal Committee of the IRIFF on 17 July 2022, with grounds issued on 29 August 2022 (the "Appealed Decision").

5. Under the aforementioned decision, the Appeal Committee rejected a claim to a payment in the amount of IRL 5,000,000,000 by the Appellant against the Respondent.

III. FACTUAL BACKGROUND

6. Below is a summary of the relevant facts and allegations based – as far as they were submitted and made – on the Parties' written submissions, pleadings and evidence adduced at the remote hearing on 2 July 2024. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in these proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

7. The Appellant provided his services to the Player as the Player's agent from 2017 onwards, assisting him in the context of various transfers of the Player.

8. On 2 December 2019, the Agent and the Player signed an agency contract between them with a duration from 2 December 2019 until 2 December 2021.

9. In summer 2020, the Player negotiated a possible contract with the Iranian Club Persepolis FC by himself, without making use of the Agent's services. The Agent sent notices to Persepolis FC and the IRIFF, warning them that the Player was contractually tied to the Agent and that his conduct constituted a violation of the Player's agency contract with the Agent.

10. On 7 September 2020, the Player went on to sign a contract with Persepolis FC, which had a duration of two seasons and foresaw the payment of a total of IRR 45bn to the Player as his remuneration.

11. On 9 September 2020, the Player filed a claim against the Agent at the IRIFF Player Status Committee (the "IRIFF-PSC"), requesting the termination of the agency contract.

12. On 22 October 2020, the IRIFF-PSC issued an award (the "First PSC Decision"), terminating the agency agreement with effect of 10 August 2020.

13. On 21 November 2020, the Agent filed a claim against the Player at the IRIFF-PSC for payment of an amount of IRR 5bn, which was later reduced to IRR 4.5bn, for the violation of the agency contract. Within this claim, the Agent included as evidence an agency contract with the Player that had a duration from 22 December 2018 until 21 December 2020.

14. On 28 December 2020, upon an appeal by the Appellant, the IRIFF Appeal Committee set aside the First PSC Decision, declaring the termination of the agency agreement invalid.

15. On 17 July 2022, the IRIFF-PSC dismissed the payment claim filed by the Appellant against the Player (the "Second PSC Decision").

16. The Second PSC Decision was, *inter alia*, motivated as follows:

"3- The Player's Status Committee notes that:

[…]

3-2 It is quite obvious and clear that according to sports regulations and customs, the performance bond in football must have two characters: 'opposition' and 'proportion'. In the sense that it will provide the interests of the parties to the contract in a mutual way and also be proportional to the obligations that are the subject of the performance bond, while in the present lawsuit […] the plaintiff included such a condition just for himself.

3-3 […] in addition to this reasoning that 'in terms of being obligated to the means of agent's obligation, determining compensation for him has no meaning' actually makes the agency contract and the agent's responsibility towards the player futile and pointless and to the extent of a contract where one party only benefits from the contract without any responsibility, it degrades.

3-4 The amount of the performance bond also has no proportion with the defendant's financial obligations, because Article 5 of the agency contract is about the claimant's entitlement to only 6% of the defendant's wage, while the performance bond is determined and demanded at the rate of 10%. Therefore, from the point of view of this Committee, the condition cited by the plaintiff for the demand of relief sought, regardless of whether it is set

between 1,000,000,000 Rials or 10% of the compensation and is considered non-definite, according to the aforementioned reasoning, such an exorbitant and one-sided performance bond, contrary to the spirit of the governing regulations, legal principles, customs and fairness is not recognized as valid and do not create entitlement of demand for the claimant."

17. The Agent appealed the Second PSC Decision to the IRIFF Appeal Committee, which on 23 August 2022 issued the Appealed Decision, in which the Agent's appeal was rejected.

18. The Appealed Decision reads as follows (paragraphs added for better readability):

"Regarding the Appeal of Mr. Ali KHOMAND (Agent) against Mr. Hamed Lak (Player), regarding the decision No. 2751 dated 2022-07-17 of the Status Committee of the Players of the Football Federation, according to which the order to dismiss the action of appeal for the relief sought of demand of five billion Rials for the performance of agency related to the contract dated 2018-12-22 and 2020-09-07 was issued and according to its performance bond is set at 10% and the principle of commitment (agency wage) is set at 6%, and on the other hand, the contractual wage is set at 6% and due to the imbalance between penalty clause (10% of the contract amount) with the principle of commitment as well as the contradiction of this clause with general principles governing the football regulations, the honourable primary authority rendered the said decision.

Considered that, firstly, the exorbitant, unconventional and unfair performance bond is not compatible with the spirit of legal regulations and fundamental principles of obligations, especially in the field of sports which is mixed with the spirit of chivalry and Fair Play in the field of legal relations between the parties.

Secondly, according to the principle of balancing the interests of the parties, the sub-obligations of the contractual parties, in addition to flexibility and harmony with the principle of obligation, must be established in a fair framework and one-sided expediency for both parties, and the clause cited by the appellant lacks this desirable quality, therefore considering the total content of the case and arguments contained in the rendered decision, no objection and effective protest was made that would harm the judgment of object of protest, based on Article 17 of the Rules of Procedure of the Player's Status Committee of Football Federation, while dismissing the objection, the rendered judgment is confirmed by amending the order to invalidate the action. This decision is final."

19. On 29 August 2022, the grounds of the Appealed Decision were notified to both Parties.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 16 September 2022, the Appellant filed a Statement of Appeal against the Respondent, with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the 2021

edition of the CAS Code of Sport-related Arbitration (the "CAS Code"). In its Statement of Appeal, he requested, *inter alia*, the CAS to appoint a sole arbitrator.

21. On 18 October 2022, the CAS Court Office acknowledged receipt of the appeal and invited the Appellant to provide the Respondent's e-mail address to the CAS Court Office in view of the impossibility of delivering courier mailing to addresses in the Islamic Republic of Iran.

22. On 24 September 2022, the Appellant requested an extension of its deadline to file the Appeal Brief by ten days, which was granted.

23. On 11 October 2022, after a suspension of the deadline to file the Appeal Brief, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

24. On 11 October 2022, the CAS Court Office acknowledged receipt of the Appellant's Appeal Brief.

25. On 17 October 2022, the Appellant provided the CAS Court Office with the Respondent's e-mail address.

26. On 18 October 2022, the CAS Court Office sent a letter to the Respondent, including the Statement of Appeal and the Appeal Brief with annexes and asked the Respondent to file his Answer within the imposed time limit. It further requested the Respondent to state whether he agreed to submitting the matter to a sole arbitrator. This letter was sent to the Respondent via e-mail to the address indicated by the Appellant. In its letter the CAS Court Office stated that "[t]*he Parties are advised that DHL is unable to deliver any correspondence to Iran. Therefore, all future communications between the CAS Court Office and the Parties will be by email only*." The CAS Court Office did not receive any notice about any possible failure to deliver the e-mail to the address of the Respondent.

27. On the same date, the CAS Court Office invited IRIFF to indicate whether it intended to participate as a party in the present arbitration.

28. The IRIFF never replied to this request.

29. The Respondent did not file any answer or replied in any other way within the granted deadline.

30. On 16 November 2022, the Appellant requested a hearing to be held in this matter.

31. On 15 May 2023, the Appellant requested the dispute to be resolved by mediation if the Respondent agrees.

32. On 16 May 2023, the CAS Court Office requested the Respondent to comment on the Appellant's request to submit the matter to mediation by 19 May 2023. The Respondent did not answer.

33. On 2 June 2023, the CAS Court Office informed the Appellant that the Respondent did not answer and that accordingly, the proceeding shall continue under the CAS Appeals Arbitration rules.

34. On 4 July 2023, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Division had decided to submit the matter to a sole arbitrator and that the Panel would therefore be composed as follows:

    Sole Arbitrator: Dr Jan Räker, Attorney-at-Law in Stuttgart, Germany.

35. On 7 July 2023, after not having received any reaction from the Respondent, the CAS Court Office sent a letter to the Appellant that in light of this circumstance, it cannot be certain that the Respondent is actually receiving its correspondence and invited the Appellant had previously received and answered correspondences sent to the provided e-mail address.

36. On 11 July 2023, the Appellant replied by e-mail, stating that he had not had any previous contact with the Respondent via that e-mail address, but he had communicated with him directly via WhatsApp about the procedure and that, apparently, the Respondent had also been informed by IRIFF about the procedure. Furthermore, the Appellant provided the telephone number and e-mail address of the Player's current club.

37. In July and August 2023, the CAS Court Office sent various letters to IRIFF, requesting the IRIFF to submit the case file to the CAS. The IRIFF did not answer to or comply with these requests.

38. On 25 September 2023, the CAS Court Office sent a letter to the Appellant, requesting the Appellant to provide proof to the CAS that the Respondent can be reached via the provided e-mail address by no later than 2 October 2023.

39. On 27 September 2023, the Appellant provided the CAS with copies of two letters in Persian language and two copies of other letters, neither of which contained any documentation about them having been received by the Respondent via e-mail or any other means.

40. On 11 December 2023, the CAS Court Office sent a letter to the Appellant, granting the Appellant a final deadline to provide proof that the Respondent has received CAS communications, to provide proof that the e-mail address provided by the Appellant is the primary or at least an active e-mail address of the Respondent or to provide an alternative e-mail address of the Respondent, along with proof that this alternative e-mail address belongs to the Respondent, failing which the procedure shall not be continued.

41. With e-mails sent on 22 December 2023, 23 December 2023, 25 December 2023 and 26 December 2023, the Appellant replied, providing various WhatsApp messages, within which he had sent one of the letters sent by the CAS Court Office in this procedure to various representatives of the Respondent's current club, along with pictures of SMS and WhatsApp messages sent to the phone number which the Appellant had indicated to be the Respondent's phone number, with the WhatsApp messages however containing only one grey check indicating that they were not properly received. He further suggested the CAS Court Office to call the Respondent via this mobile number and also provided the contact details of a person who he claimed was the Respondent's lawyer.

42. On 30 January 2024, the CAS Court Office again sent the entire case file, including the Statement of Appeal and the Appeal Brief with annexes and the letter dated 18 October 2022, in which the Respondent was requested to file his answer within 20 days after the receipt of this letter, to the Respondent's postal address via a courier service provided by Swiss Post and requested the Respondent to confirm due receipt and a valid e-mail address for further communications. This communication was received by the Respondent on 18 February 2024.

43. The Respondent did not file an answer to the Statement of Appeal or Appeal Brief within 20 days of receipt of the aforementioned communication, nor at any point later in time.

44. As of 6 May 2024, all CAS Court Office correspondence were sent by Swiss Post to the Respondent's postal address. The Respondent was notified of these mailings, but chose to not pick them up, leading to their return to the CAS Court Office. The Respondent did not reply to any of the letters sent by the CAS Court Office.

45. On 6 May 2024, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing via video conference in the present proceedings, and consulted them about possible hearing dates.

46. On 7 June 2024, the CAS Court Office informed the Parties that, in view of their availabilities, a hearing would take place by video-conference on 2 July 2024. It also invited them to provide a list and contact details of their hearing attendees.

47. On 11 June 2024, the Appellant provided the CAS Court Office with a list and contact details of his hearing attendees.

48. On 2 July 2024, the Appellant returned a signed copy of the Order of Procedure. The Respondent did not submit any signed copy of the Order of Procedure.

49. On 2 July 2024, a hearing was held by video-conference.

50. The Sole Arbitrator was assisted Dr Björn Hessert, CAS Counsel.

51. In addition, the following persons attended the hearing:

For the Appellant:

- Mr Ali Malihzadeh, Counsel;
- Mr Ali Khomand, the Appellant.

For the Respondent:

- no attendance.

52. The Appellant was given a full opportunity to present his case, submit his arguments and submissions and answer the questions posed by the Sole Arbitrator. At the end of the hearing, he confirmed that he was satisfied with the hearing and that his right to be heard had been fully respected.

53. During the hearing, the Sole Arbitrator alerted the Appellant to the fact that the agency contract that he had provided as evidence was incomplete and lacking various insertions and information.

54. On 5 July 2024, the Appellant sent a letter to the CAS Court Office, declaring that he had sent the contract to a translator and that CAS shall receive the full translated document in due course.

55. On 8 July 2024, the Appellant sent an e-mail to the CAS Court Office, referring the CAS to the translated document of the Second PSC Decision, which contained the date of the contract, the brokerage fee and the compensation fee.

56. The Appellant provided the CAS Court Office with no further translations or documents.

V. SUBMISSIONS OF THE PARTIES

A. The Appellant

57. In his Statement of Appeal, the Appellant requested the following relief:

> *"- rule that this appeal brought against Respondent is admissible;*
> *- set aside the decision rendered by IRIFF Appeal Committee;*
> *- establish at least ten (10) percent of the amount of contract concluded between Persepolis F.C. and Respondent as the justified Appellant compensation.*
> *- order in favor of Appellant the amount of 10 percent of the amount of contract concluded between Perspolis F.C. and Respondent as the moral and reputational damages;*

- award that the Respondent is indisputably committed to pay the entire costs and any other expenses whatsoever nature arising out of and/or in connection with the CAS proceedings; and eventually
- order the Respondent to pay any and all legal fees and costs whatsoever nature."

58. This request for relief was confirmed in the Appellant's Appeal Brief.

59. The Appellant's submissions, in essence, may be summarised as follows:

- The applicable law is the Iranian regulations on working with intermediaries, Iranian national law, the FIFA regulations and subsidiarily Swiss law.

- Based on Article 5, para. 1 of the contract concluded between the Parties, the Agent would be due as a commission from the Player an amount of six percent of his total wages under the Player's contract if the agency contract was properly fulfilled by both Parties.

- According to Article 4 para. 4 of the contract concluded between the Parties, in the event that the Player would enter into an employment agreement with a club on his own or with any other intermediary except the Agent, the Agent is entitled to receive ten percent of the Player's income as the compensation.

- According to Article 6 para. 6 of the IRIFF regulations on working with intermediaries, the Parties can stipulate any terms and condition which is not against mandatory Iranian law. In this respect, the prediction of liquidated damages/ penalty clause is permissible under Article 230 of the Iran Civil Code and the judge will not be able to modify the said amount.

- Also based on Article 163 Swiss Civil Code "[t]he parties are free to determine the amount of the contractual penalty".

- The IRIFF Appeal Committee misapplied who has behaved unfairly contrary to the spirit of the agreement/contract.

- A penalty clause amount of ten percent of the Player's salary is not excessive, due to the purpose of this punitive clause which shall serve to force the Player to honor his obligation.

- Even if the amount would be excessive, it would only have to be reduced.

- In football employment agreements, reciprocity is not required to deem a penalty clause valid and enforceable (see CAS 2017/A/5242). This should also apply to agency agreements.

B. The Respondent

60. The Respondent neither filed any comments, arguments or request for relief.

VI. JURISDICTION

61. Article R47 para. 1 of the CAS Code provides as follows:

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

62. Art. 111 of the Procedural Rules of the IRIFF provides:

> "*Article 111. Referring to Court of Arbitration for Sport (CAS)*
>
> *Given the Articles of Association of Football Federation and Articles of Association of FIFA, Irrevocable verdicts (final Verdicts) of judicial body of the federation, may be contestable observing the legal conditions mentioned in Formal and Substantive Regulations of the Court of Arbitration for Sport.*"

63. The Sole Arbitrator notes that the IRIFF Appeal Committee is a legal body of IRIFF and that its decisions are final within the legal framework of IRIFF. Therefore, the Appeal against the Appealed Decision fulfils the requirements of Art. 111 of the Procedural Rules of the IRIFF.

64. Consequently, CAS has jurisdiction to hear and adjudicate this dispute.

VII. ADMISSIBILITY

65. Article R49 of the CAS Code provides as follows:

> "*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document*".

66. The grounds of the Appealed Decision were notified to the Appellant on 29 August 2022. The Appellant lodged his appeal on 16 September 2022, *i.e.* within the 21 days allotted under Article R49 of the CAS Code.

67. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

68. Article R58 of the CAS Code provides as follows:

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

69. In the present case, the regulations applicable to an agency contract concluded between an Iranian agent and an Iranian player in Iran are the IRIFF Regulations on working with intermediaries. As the federation which has issued the Appealed Decision is based in Iran, also Iranian Law shall be applicable to the merits of this case.

IX. MERITS

70. This appeal basically centers on whether the Agent and the Player concluded an agreement under which the Player owes the requested amount to the Agent and whether such agreement is to be considered valid.

A. Interpretation of the Appellant's request

71. The Sole Arbitrator first notes that the Appellant does not request a specific amount to be paid to him. Rather, the Appellant requests "at *least ten (10) percent of the amount of contract concluded between Persepolis F.C. and Respondent as the justified Appellant compensation".*

72. Article R48 of the Code provides as follows:

> *"The Appellant shall submit to CAS a statement of appeal containing:*
>
> - *[…]*
> - *the Appellant's request for relief;*
> - *[…]*
>
> *If the above-mentioned requirements are not fulfilled when the statement of appeal is filed, the CAS Court Office may grant a one-time-only short deadline to the Appellant to*

complete its statement of appeal, failing receipt of which within the deadline, the CAS Court Office shall not proceed."

73. In the present case, the Appellant's requests for relief do not contain a concrete payment amount that is requested. The Appellant only requested CAS to *"establish at least ten (10) percent of the amount of contract concluded between Persepolis F.C. and Respondent as the justified Appellant compensation".*

74. Therefore, the Sole Arbitrator has to examine whether the filed request for relief is sufficiently clear to fulfil the requirements of Article R48 of the CAS Code.

75. It is true that Article R48 of the CAS Code sets forth the elements that any Statement of Appeal must contain in order to entail the instigation of an appeal procedure before the CAS. Otherwise, the appeal may be deemed inadmissible. However, in the Sole Arbitrator's view, the last paragraph of Article R48 makes it clear that this provision shall not be interpreted in a formalistic or strict way. On the contrary, as highlighted by DESPINA MAVROMATI & MATTHIEU REEB[1], *"Article R48 allows for some flexibility for the completion of a statement if appeal if said requirements are not respected when the statement is first filed with the CAS".* This interpretation is consistent with the purpose of Article R48 of the CAS Code, which mainly consists of providing the CAS with full knowledge of the subject-matter of the appeal, giving the Appellant the opportunity to leave for a later stage the filing of the detailed prayers for relief, the submission of all the facts and legal arguments to be considered by the Panel, as well as the relevant evidence upon which the appellant intends to rely.

76. In line with this non-formalistic interpretation of Article R48 of the CAS Code, the CAS panel in *CAS 2003/A/534* at para. 21 held as follows in a case in which the name and full address of the Respondent was not contained in the Statement of Appeal:

"The last paragraph of R48 allows some flexibility for the completion of a statement of appeal if the said requirements are not fulfilled when the statement is first lodged. In the present appeal case, despite the empirical method followed by the Appellant, all the required basic information relating to the dispute and the requested relief have been submitted to the CAS. The CAS is thus fully informed for the purposes of the appeal."

77. In this regard, the Sole Arbitrator notes that this interpretation is the most compatible with the Appellant's right of access to a court and his right to appeal (*in dubio pro actione*) and, at the same time, it does not violate and it is not detrimental to the Respondent's right of defense or its right to be heard, which are guaranteed in any event, amongst other means, by the submission of his Answer to the appeal once the CAS notified him of the grounds for the appeal.

[1] MAVROMATI D. & REEB M.; The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials; Pub. Wolters Kluwer, 2015; p. 407.

78. In view of the requested relief, the Sole Arbitrator, however, deems it required that in such case the requested relief must be clearly determinable by other means, i.e. the interpretation of the Appellant's submissions and the evidence provided by the Appellant.

79. In the case at hand, from the submissions and evidence provided by the Appellant, it became clear that the Player's contract at Persepolis FC contained the agreement that remuneration in a total amount of IRR 45bn would be payable to the Player. This is the concrete amount of which the Appellant requests (at least) 10 percent, which results in the clear and unequivocal requested amount of IRR 4.5bn. This is further confirmed by the Second PSC Decision, which the Appellant submitted as evidence and which was upheld by the Appealed Decision, and in which it was mentioned that the Appellant had reduced his claim from IRR 5bn to IRR 4.5bn.

80. For the foregoing reasons, the Sole Arbitrator considers that the Appellant's requests for relief are sufficiently clear to meet the requirements of Art. R48 of the CAS Code and that therefore the Statement of Appeal filed by the Appellant, as well as the consequent Appeal Brief, is valid and admissible.

B. Did the Parties agree on a penalty clause whose conditions were fulfilled?

81. The Sole Arbitrator then turns to the questions, whether the Parties agreed on a contractual penalty clause, under which the Player would owe the requested amount to the Agent and whether the preconditions for the applicability of such penalty clause were met in the present case.

82. In the case at hand, the Sole Arbitrator is faced with the special situation that the Respondent chose not to file any submission and not to participate in the hearing, leaving the case file left with only the Appellant's submissions and evidence to consider.

83. That said, also in this situation, the rules on the burden of proof remain unaltered.

84. As to the burden of proof, the Sole Arbitrator recalls that, it is "*well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based*" (CAS 2015/A/3904). In order to discharge its burden of proof, a party must "*provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party*" (CAS 2015/A/3904).

85. In the case at hand, the Appellant provided as evidence for the contractual agreement between himself and the Player a contract excerpt, which, *inter alia*, reads as follows:

*"This contract is signed between and between Mr. Ali Khomand licensed player agent at (hereinafter the **Agent**) and Mr.Hamed Lak Nationality **Iranian** born on **24/11/1990** Passport number: x36827032 (Hereinafter the **player**) as follows:*

Article 1 – Duration of the contract:

This contract is valid from the date of signing by both parties on …….. for the duration of …….. competition seasons.

[…]

Article 2 – Subject of the contract

*By this contract, the **player** authorized the **Agent** to act as sole and exclusive representative of the **player** to negotiate on his behalf all contracts in the following matters.*

a) The player is employed by a football clubs……..

[…]

Article 4 – Player's obligations and responsibilities

*a) **Player** undertake that he shall engage no other agent, person or organization of any kind in relation to the subject of this contract mentioned in article 2 unless the **agent** authorizes the **player** in written consent. […]*

*c) **Player** is obliged to notify **Agent** of any approaches, offers or inquiries which **player** receives from other agents, clubs or persons acting directly or indirectly on behalf of clubs, or any other organization that falls within the scope of the subject of this contract and **services**. […]*

f) the player shall not be obliged to use the services of the Authorized Agent during that term of the Representation contract and may represent himself in any transaction or contract Negotiation (as defined in the Agent Regulations) should he so desire subject always to paying or procuring the payment to the Authorized Agent the commission Ten percent – 10% of the sum that the player receives in result of these contracts.

Article 5 – Means of payment and compensation fee of services:

Player undertakes to pay the compensation fee for the services of agent on following basis:

a) In case of player's transfer from one club to another nationwide …….. percent of the total contract price should be paid to agent as compensation (commission) fee. The

basic salary and all bonuses mentioned in the contract of player are included as contract price. […]

b) In case of player's transfer to a non-Iranian club, the agent fee shall be paid as …… percent of the total contract price should be paid to agent as compensation (commission) fee. The basic salary and all bonuses mentioned in the contract of player are included as contract price. […]"

86. The contract excerpt contains signatures and stamps on each page.

87. However, all blank spaces within the English version of the contract do not contain any insertions but were left entirely blank. At least for the contract duration, the same appears to be true for the Arabic language version.

88. From the examination of the provided English version of the provided contract excerpt, it is therefore unclear, even assuming that the signatures contained on the excerpt are indeed the ones of the Parties, from which time the contract dates and for which period it was intended to apply. The same is true for the allegedly agreed remuneration of the Agent's services with a portion of six percent of the Player's salary.

89. In line with Art. 6 of the Order of Procedure, which was duly signed by the Appellant on 2 July 2024, the language of arbitration is English. According to this agreement, all documents provided in any other language, had to be submitted accompanied by a translation, failing which the Sole Arbitrator may decline to consider them.

90. During the hearing, the Sole Arbitrator alerted the Appellant to the shortcomings of the provided evidence, recommending him to provide according further evidence, but the Appellant did not provide any further evidence, instead referring to the Second PSC Decision within which a date for an agency agreement was mentioned as well as the agreed amount for the services of the Appellant and the amount of compensation.

91. Regardless, the Sole Arbitrator remains unable to derive from the evidence provided by the Appellant, that indeed any contract was concluded and in force between the Parties at the respective time.

92. The Sole Arbitrator is well aware that the legal bodies of the IRIFF in the Second PSC Decision and within the Appealed Decision came to the conclusion that such contract did exist, but the Sole Arbitrator is mindful, that in accordance with Art. R57 para. 1 of the CAS Code, the Panel has both the power and the obligation to decide on the matter *de novo*, which means that any factual assumption contained within the Appealed Decision does not suffice as evidence for its correctness, but that the Parties are required to provide sufficient evidence for their factual allegations within the appeal procedure before the CAS. The Appellant failed to do this even after being explicitly pointed to the incompleteness of the provided evidence.

93. The Appellant accordingly failed to meet this requirement.

94. Therefore, the Sole Arbitrator remains unable to consider any valid and current contractual link between the Parties, on which the claim at stake may be based, as established.

95. Accordingly, given that neither a remuneration claim, nor a claim from a penalty clause from any such agreement were sufficiently evidenced, it remains moot to consider the validity of such clause. That said, the Sole Arbitrator notes that the alleged agency agreement contains no obligation on the Agent to actually be active on behalf of the Player in any way comparable to the Player's full and exclusive subjection to the Agent's endeavours, that the Agent's remuneration for the provision of his services is considerably lower than the penalty clause, which incentivizes the Agent to leave the Player alone, thereby securing a higher commission payment than what he otherwise would have received if he had fully rendered his services to the Player. The Sole Arbitrator would therefore have had considerable reservations against the fairness and possibly also the validity of such arrangement.

96. In any event, the Sole Arbitrator holds, that the Appellant does not have a payment claim against the Player from an agency agreement between the Parties.

C. Conclusion

97. As the Appellant already failed to establish an according contractual agreement between the Parties, the Appellant's claim must therefore be rejected and accordingly, his Appeal must be rejected.

X. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Ali Khomand against the decision rendered by the IRIFF Appeal Committee on 23 August 2022 is rejected.

2. The decision rendered by the IRIFF Appeal Committee is upheld.

3. (…).

4. (…).

5. All further and other claims and requests are rejected.

Seat of arbitration: Lausanne, Switzerland

Date: 31 March 2025

THE COURT OF ARBITRATION FOR SPORT

Jan Räker
Sole Arbitrator