CAS 2020/A/7056 Jonathan Boareto dos Reis v. Al Gharafa SC

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Jordi **López Batet**, Attorney-at-law in Barcelona, Spain

Ad hoc Clerk: Mr. Yago **Vázquez Moraga**, Attorney-at-law in Barcelona, Spain

in the arbitration between

Mr. Jonathan Boareto Dos Reis, Brazil

Represented by Mr. Breno Tannuri, Attorney-at-law, Tannuri Ribeiro Advogados, São Paulo, Brazil

- Appellant -

and

Al Gharafa SC, Qatar

Represented by Mr. Nilo Effori and Ms. Liz Soutter, Attorneys-at-law, Effori Sports Law, London, UK, Mr. Marc Cavaliero, Attorney-at-law, Cavaliero & Associates, Switzerland and Mr. Botond Pinter, Attorney-at-law, Spain

- Respondent -

* * * *

I. PARTIES

1. Mr. Jonathan Boareto dos Reis ("Mr. Boareto", the "Player" or the "Appellant") is a Brazilian professional football player who, at the time of the facts of this case, was employed by Al Gharafa SC.

2. Al Gharafa SC ("Al Gharafa", the "Club" or the "Respondent") is a Qatari professional football club based in Doha, competing in the Qatar Stars League, the top-level football league in Qatar.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations 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 the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

4. On 3 August 2017, the Respondent submitted an employment offer to the Appellant, who at the time was playing for Football Club Vardar AD FK Vardar ("FK Vardar"). Together with other benefits, the main conditions of this offer were the following:

   "Cash Compensation.

   The proposed amount for this period shall be paid to you as follows:-

   EUR 800,000/-(Eight Hundred Thousand Euros net) shall be paid by the club to the player for the Season (2017/2018).

   EUR 900,000/-(Nine Hundred Thousand Euros net) shall be paid by the club to the player for the Season (2018/2019)."

5. On 8 August 2017, the Respondent entered into a transfer agreement with FK Vardar by virtue of which the latter transferred the Player to the Appellant for a transfer fee of EUR 600.000, to be paid on the day of the signature of the contract or at the latest on 11 August 2017.

6. On 10 August 2017, the Appellant and the Respondent concluded an employment agreement valid from 10 August 2017 until 30 June 2019 (the "First Contract").

7. Under the First Contract, the Player would receive a total remuneration of EUR 5.775.000 payable in the following manner:

a. For the 2017/2018 season:

"1. The CLUB shall pay The Player the total amount of EUR 2,887,500 (two million, eight hundred eighty-seven thousand, five hundred Euros) NET for the season 2017/2018 as follows:

A) A First payment of EUR 1,143,750 (one million, one hundred forty-three thousand, seven hundred fifty Euros) NET shall be paid by the Club to the Player on or before 01 September 2017; and

B) A Second payment of EUR 1,143,750 (one million, one hundred forty-three thousand, seven hundred fifty Euros) NET shall be paid by the Club to the Player on or before 01 January 2018; and

C) A monthly salary of EUR 55,000 (fifty-Five thousand, Euros) NET shall be paid through equal and 10 monthly instalments by the Club to the Player on or before the end of each calendar month from August 2017 through May 2018 and a month salary of EUR 50,000 (fifty thousand, Euros) NET shall be paid by the club to the player on or before the end of June 2018."

b. For the 2018/2019 season:

"1. The CLUB shall pay The Player the total amount of EUR 2,887,500 (two million, eight hundred eighty-seven thousand, five hundred Euros) NET for the season 2018/2019 as follows:

A) A First payment of EUR 1,093,750 (one million, ninety-three thousand, seven hundred fifty Euros) NET shall be paid by the Club to the Player on or before 01 August 2018; and

B) A Second payment of EUR 1,093,750 (one million, ninety-three thousand, seven hundred fifty Euros) NET shall be paid by the Club to the Player on or before 01 January 2019; and

C) A monthly salary of EUR 60,000 (Sixty thousand, Euros) NET shall be paid through equal and 10 monthly instalments by the Club to the Player on or before the end of each calendar month from July 2018 through April 2019 and a monthly salary of EUR 50,000 (fifty thousand, Euros) NET shall be paid through equal and 02 monthly instalments by the club to the player on or before the end of June 2018."

8. Schedule 1 of the First Contract also stipulated that the Player would receive variable compensation in the form of performance bonuses for team and individual achievements.

9. Article IX of the First Contract reads as follows:

"1- This Contract begins on 10/8/2017 and terminates on 30/6/2019 (day/month/year).

2- It is agreed that the Club exclusively has the option to renew the contract for a third season (2019/2020) in its sole and absolute discretion by service of a notice in writing to the player at any time on or before May 31, 2019.

3- It is agreed that if the player got an offer from any other club for the season (2019/2020) with higher amount than that is offered by the Club, he would be entitled in his sole and absolute discretion to sign for the club or the other club offering the higher amount.

3 (sic)- The validity of this Contract is subject to the specific approval of the QFA and the confirmation that the Player is eligible to play (ratification of the Contract).”

10. Article X of the First Contract reads as follows:

“1- QFA/QSLM regulations governing this matter and, where applicable, FIFA regulations in force from time to time apply.

2- This Contract may be terminated before its expiry by mutual agreement.

3- This Contract may be terminated by either party, without consequences for the terminating party, where there exists just cause at the time of the contract termination.

4- If the Club terminates the Contract without having just cause, the Club shall pay to the Player compensation equal to the remaining (outstanding) salaries calculated from the date in which the termination occurred and the date in which such Contract supposed to expire, i.e. 30 June 2019 (see Article IX, par. 1 above).

5- If the Player terminates the Contract without having just cause, the Player shall pay to the Club compensation equal to the total amount of EUR 5,000,000 (five million Euros)

6- The Parties expressly agree that the compensation amounts stipulated under the provisions of paragraphs 4 and 5 of this Article X above, are fair and respect the principles of parity and reciprocity of the Parties in light of the overall circumstances related to the Contract’s conclusion and execution.”

11. On 17 August 2017, the Appellant became injured in his left knee in a training session with Al-Gharafa. This injury required surgery and left the Player off the pitch for some time.

12. Also on 17 August 2017, the Respondent entered the relevant instruction on FIFA TMS to request the Appellant’s ITC from FK Vardar. However, FK Vardar failed to input the relevant counter instruction, claiming that the transfer agreement stipulated that the transfer fee was to be paid before the conclusion of the procedure on TMS. This gave rise to a claim that FK Vardar filed before FIFA that was ultimately rejected on 19 September 2018.

13. On 14 September 2017, with effect as from 12 September 2017, the Respondent and the Appellant signed an agreement whereby the First Contract was terminated (the “Termination Agreement”). In the Termination Agreement, the Appellant confirmed and agreed that the Respondent did not have any debts towards him and that there was no salary, sign-on fee, outstanding amounts, or any present or future payment to be made by the Respondent to him in connection with the First Contract. Additionally, in the Termination Agreement the Parties reciprocally agreed on (i) granting complete acquaintance of any claims or rights arising from or in connection with the First Contract

and (ii) an express recognition that the Termination Agreement ended any obligations the Respondent had with the Appellant under the First Contract.

14. Also on 14 September 2017, the Parties entered into a new employment agreement valid from 14 September 2017 until 30 June 2019 (the "Second Contract"), with a remuneration of EUR 900.000 payable in the following manner:

    a. For the 2017/2018 season:

    "EUR 450,000 (four hundred fifty thousand Euros) payable by monthly instalments in arrears from September 2017 June 2018, in monthly instalments of EUR 45,000 (forty five thousand Euros)"

    b. For the 2018/2019 season:

    "EUR 450,000 (four hundred fifty thousand Euros) payable by monthly instalments in arrears from July 2018 June 2019, in monthly instalments of EUR 37,500 (thirty seven thousand five hundred Euros)"

15. Annex 1 to the Second Contract also stipulated that the Player would receive variable compensation in the form of performance bonuses for team and individual achievements.

16. Article 10 of the Second Contract states, in its relevant part, the following:

    "10.6 The Player shall be entitled to terminate this contract by fifteen days' notice in writing to the Club if the Club:

    a) Shall be guilty of serious or persistent breach of the terms and conditions of this contract; or

    b) Fails to pay any remuneration or other payments or bonuses due to the Player, after a notice of thirty days, for more than four consecutive months, even the FIFA Dispute Resolution Chamber's and the Court of Arbitration for Sport's Jurisprudence considers three months overdue as a reason to breach the contract, the player agrees to be four consecutive months the reason to breach regarding outstanding payments;

    c) The Player need to give an official notice to the Club with a period of 30 days to cure the default in clause 10.6.b.

    10.7. In case the Player has just cause to terminate the contract based on 10.6 above, he shall receive 70% (seventy percent) of the remaining amount of the contract as compensation, reduced by any outstanding amount from the Club according to this contract. The principle of mitigation of damages must also be applied, where the new contract(s) signed by the Player will reduce the amount of compensation to eventually be paid by the Club."

17. On 15 October 2017, the Appellant, after the surgery and rehabilitation, could resume his sporting activity.

18. On 21 December 2017, the following WhatsApp conversation took place between the Appellant and Mr. Fahad Nasr Al Yahri, Al Gharafa´s first team coordinator and TMS Manager:

Player:	"*I have an agreement to make with you."*
Mr. Al Yahri:	"*Tell me brother"*
Player:	"*You pay me the 4 months of salary."*
Player:	"*Being 150 to sign the termination and 50 in hand because my son will be born and do not know when I go back to play"*
Player:	"*Being that those 150 to 10 days"*
Player:	"*Because I need to pay bills in Brazil and my wife´s exam"*
Player:	"*You agreeing with this, I´ll sign it now"*
Mr. Al Yahri:	"*But already I reached with you to 150,000 Euro to settlement"*
Player:	"*Could understand"*
Mr. Al Yahri:	"*It means you want 50,000 cash and 100,000 in Agreement"*
Mr. Al Yahri:	"*Or what?"*
Player:	"*Yes"*
Player:	"*To finish"*
Mr. Al Yahri:	"*The problem we don´t have money in our account but let me talk to management"*
Player:	"*I wait"*
Player:	"*Because I have a lot of things to pay in Brazil, I´m helping you to help me."*

19. On 24 December 2017, the Player and the Club entered into a settlement agreement whereby the parties terminated the Second Contract and the Club committed itself to pay certain amounts to the Player (the "Settlement Agreement"). In its relevant part, the Settlement Agreement reads as follows:

*"**WHEREAS:***

*(a) The Club and the Player signed employment contract with pre-fixed term between 14/09/2017 and 30/06/2019. (hereinafter: the **"Employment Contract")**;*

(b) The Club sponsored the issuance of the necessary work visa by the immigration and labour authorities of Qatar and consequently become jointly and severally liable for the Player during the term of the Employment Contract;

(c) According to the Qatari laws, by the termination of an employment contract any football player must fulfils with the necessary prerequisites in order to obtain his "Clearance Certificate" before the Qatar Football Association ("QFA"), Qatar National Olympic Committee ("QOC') and QNOC-Professional Players Committee;

(d) The parties reached a mutual agreement regarding the early termination of the Employment Contract, pursuant to the terms and conditions as set out in its Article 2, par. 1;

(e) The Player exceptionally needs to leave Qatar before obtaining said "Clearance Certificate" and requested the Club to provide the necessary steps in his behalf in order to obtain the referenced certificate; and

(f) The parties agree to be bound by the terms and conditions that shall govern this Agreement, as well as the future relationship between them.

THE PARTIES HEREBY TO ENTER INTO THIS AGREEMENT ("Agreement" or "Contract") SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Purpose

1.1. The Parties hereby ratify their relationship is terminated in relation to the Employment Contract granting to each other a full, general and irrevocable release of any and all obligations arising under the Employment Contract.

1.2. Upon the full accomplishment of the obligations as stated in clauses 2 and 3 below, the parties will irrevocably waive and renounce any rights, and/or claims they may have against each other to pursue any legal action and/or initiate any judicial or extrajudicial proceeding against each other, whether concerning fees, salaries, wages, bonus, etc., based on the Employment Contract.

1.3. Upon the full accomplishment of the obligations as stated in clause 2 and 3 below, it is hereby established that the parties will not institute, bring or commence any action at law in any court (ordinary) mostly before the arbitration mechanisms of FIFA and/or the Court of Arbitration for Sport, based upon the Employment Contract.

2. Remuneration

2.1. The Club herein undertakes to pay to the player the total amount of QAR (215,000) (two hundred fifteen thousand Qatari Riyals) Cash by hand and EUR 50,000 (fifty thousand Euros) within 10 (ten) days following conclusion of the 'Clearance Certificate' as set out in clause 3 below.

2.2. The aforementioned amount shall be transferred in the bank account properly indicated by the Player through an invoice to be addressed by facsimile to the Club within the next few days.

3. 'Clearance Certificate'

3.1. The Club herein undertakes to provide the necessary efforts in order to obtain on behalf of the Player the 'Clearance Certificate' issued by the QFA, QNOC and QNOC-Professional Players Committee, as well as any other entitled authority of the State of Qatar.

3.2. If necessary, the Player herein agrees that the Club may deduct money from the salaries indicated in items (i) and (ii) of clause 2.1 above for the reasons that fall into the following categories: (a) outstanding traffic fines; (b) costs of repairing house and/or furniture; (c) outstanding telephone or mobile bill(s); (d) costs of repairing the car provided by the Club; and (e) balance remaining of bill(s), invoice(s) or cheque(s) due to third parties.

3.3. The Club undertakes to provide the Player with the pertinent documentation and/or evidence(s) whatsoever before deduct the necessary amount(s) to repair any pendency(s) or obligation necessary to obtain his 'Clearance Certificate'."

20. Also on 24 December 2017, the Appellant received QAR 215.000 from the Respondent, i.e. the first payment instalment of the Settlement Agreement.

21. On 18 January 2018, the Appellant signed an employment contract with Busan Ipark FC, a South Korean club, valid from 18 January 2018 until 17 January 2019. Pursuant to this new employment agreement, the Appellant would receive USD 400.000 in compensation, as well as a signing fee of USD 150.000 and additional performance bonusses.

22. On 5 March 2018, the following WhatsApp conversation took place between the Player and Mr. Al Yahri, from Al-Gharafa:

Player: "*Good morning fahad*"

Player: "*About my money?*"

Mr. Al Yahri: "*Soon the money is coming, you can double check with breno*"

Player: "*How much time*"

23. On 26 June 2018, the Appellant signed a termination agreement with Busan Ipark FC. As compensation for the early termination of the contract, the club committed to pay to the Appellant the gross amount of USD 166.665, corresponding to five months of salary.

24. On 15 August 2018, the Appellant entered into an employment contract with the Iranian football club Sanat Naft Abadan, valid from 15 August 2018 until the end of the official season, for the total compensation of USD 200.000.

25. On 28 August 2018, the Appellant sent a notification to the Respondent whereby he informed the Club that he would neither honour the Second Contract nor the Settlement Agreement because both documents were the product of duress and/or coercion by Al Gharafa (emphasis in original):

"This is to bring to the SC's notice that on 10th August 2017, I (Jonathan Boareto Dos Reis), signed an 'Employment Contract' (herein termed as the 1st Contract) with Al-Gharafa SC. Under this contract my annual salary was stipulated to be 2,887,500 EUROS. On the given promise, I signed the contract, duly accepting the terms and conditions laid down under the 1st Contract.

Later, I was force assembled by the Sports Ministry of Qatar and the members of Al-Gharafa SC in one room, alongside few other foreign Professional Football Players. I was kept in the room

with absolutely no legal assistance. With absolutely no clue on what the matter was, my state of mind started feeling ***unsafe and harassed****.*

Despite me signing the 1st Contract already, I was forced to sign a new contract based upon the allegation that if do not sign it, I was going to prison. Out of heavy pressure and duress, I signed another 'Employment Contract' dated ***14 September 2017*** *(herein termed as the* ***2nd Contract****).*

Al-Gharafa SC, without even looking into the matter of 'Duress' and 'coercion', drafted the 2nd Contract with a significantly lowered down salary of 450,000 EUROS.

Despite all this, when no remuneration was offered to me by the club (Al Gharafa SC), for almost 4 months and no sign of letting me play for the Club, I decided to leave Qatar and go back to my mother country (Brazil). I was accompanied by my pregnant wife, who was due soon and needed to be back in Brazil for her delivery.

At the Doha Airport, my much needed and desperate attempt of going back to Brazil was stopped by the airport authorities. I was asked to go back to Al-Gharafa SC (my then Employer) and get a 'Clearance Certificate' signed by the club for my safe passage at the Qatari airport.

Upon this, Al-Gharafa SC refused to grant me the 'Clearance Certificate' and conditioned the grant of such upon the signing of yet ANOTHER 'Settlement Agreement' with an even lowered down amount of 50,000 EUROS.

With the threat of not granting me the "Clearance Certificate" which would ultimately lead to not granting me the "International Transfer Certificate", I was further coerced into signing this Settlement Agreement by Al-Gharafa SC.

Given the fact that my entire Professional Football career and my wife's health was never considered by either the Club (Al-Gharafa SC) and the Qatar Sports Ministry, I hereby DECLARE that I will neither honour the 2nd Contract nor the Settlement Agreement.

I believe, and I am sure that I was harassed by both the Club (Al-Gharafa SC) and the Qatar Sports Ministry. My mental, physical and FINANCIAL sphere has been majorly played with by the Club. I feel like I have been part of a conspiracy and herein let you know that I will look for my rights in front of FIFA."

26. On 22 September 2018, the Respondent sent a letter to the Appellant in response to the above notification, rejecting in its entirety the Player's allegations (in particular thos referred to coercion or duress), reiterating the binding nature of the Settlement Agreement, and requesting the Player to provide his complete banking details for the Club to pay him the second instalment under the Settlement Agreement.

27. On 14 October 2018, Mr. Al Yahri sent the following message to the Player by WhatsApp: "*Hi Jonathan Please send us your bank details to transfer to you the second instalment. Thank you*".

28. On 22 October 2018, having received no response from the Appellant, the Respondent sent another letter to the Player requesting him once again to provide the complete banking details to make the payment of the second instalment under the Settlement Agreement.

III. PROCEEDINGS BEFORE FIFA

29. On 1 March 2019, the Appellant lodged a claim before FIFA against the Respondent based on the facts described above, claiming for outstanding remunerations and a compensation. The Appellant contended that the Club had terminated the First Contract without just cause and claimed (i) EUR 1.149.250 as outstanding remuneration corresponding to the payment due under the First Contract on 1 September 2017 and salaries due for August 2017, and (ii) EUR 2.397.000 as compensation corresponding to the residual value of the First Contract. Subsidiarily, the Player claimed to be compensated for the breach of the Second Contract in the amount of EUR 135.000 as outstanding remuneration corresponding to salaries due from September to November 2017, as well as EUR 630.000 corresponding to 70% of the residual value of the Second Contract, pursuant to article 10.7 of such Second Contract.

30. The Appellant's claim was essentially based on the contention that the Termination Agreement and the Second Contract were concluded under duress, and that even after signing the Second Contract, his salary remained unpaid for 3 months and led him to unilaterally terminate the Second Contract with just cause. Furthermore, the Player alleged that he and his wife were being prevented from leaving the country in December 2017 as they needed a a "Clearance Certificate" issued by the Club that the latter was not willing to provide, and that the Player was forced to sign the Settlement Agreement in order to receive such certificate and leave the country with his wife.

31. The Respondent rejected the Appellant's claim and only acknowledged that EUR 50.000 were outstanding from the Settlement Agreement. The Respondent stressed that after the signature of the First Contract, a dispute arose with FK Vardar concerning the transfer fee and the ITC request, which made that the Player could not be registered, and that there was a concrete risk that the First Contract was not valid due to its Article IX para. 3, which led the parties to a discussion about the continuation of their employment relationship. The Respondent averred that both parties wished to continue the relationship and signed the Termination Agreement and the Second Contract out of their own free will, with the Second Contract not containing any clause like Article IX referred to above. Finally, the Respondent submitted the WhatsApp conversation held between the Player and Mr. Al Yahri on 21 December 2017 to prove that it was the Player who approached the Club to terminate the Second Contract, and the WhatsApp conversation between the same interveners dated 5 March 2018 that would in its view confirm that the Appellant considered the Settlement Agreement as valid because in such conversation he was requesting the payment of the second instalment under such Settlement Agreement.

32. On 12 February 2020, the FIFA Dispute Resolution Chamber (the "DRC") issued the following decision (hereinafter the "Appealed Decision"):

"1. The claim of the Claimant, Jonathan Boareto dos Reis, is partially accepted.

2. The Respondent, Al Gharafa SC, has to pay the Claimant the amount of EUR 50,000.

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

4. The Claimant is directed to inform the Respondent, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision of the relevant bank account to which the Respondent must pay the amount mentioned under point 2. above.

5. The Respondent shall provide evidence of payment of the due amount in accordance with point 2. above to FIFA to the email address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).

6. In the event that the amounts due plus interest in accordance with point 2. above is not paid by the Respondent within 45 days as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods (cf. ar. 24bis of the Regulation on the Status and Transfer of Players).

7. The ban mentioned in point 6. above will be lifted immediately and prior to its complete serving, once the due amounts are paid.

8. In the event that the aforementioned sum is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision."

33. On 15 April 2020, FIFA communicated the grounds of the Appealed Decision to the Parties.

34. In its reasoning, the DRC considered in essence that the Player had failed to submit any corroborating evidence to prove his allegations that the Second Contract and/or the Settlement Agreement were signed under duress. On the other hand, the DRC considered that the Club had furnished an explanation supported by WhatsApp conversations, which demonstrated that the Player had approached the Club requesting the termination of the Second Contract and that he regarded the Settlement Agreement as valid. Therefore, the Settlement Agreement was considered valid and the Club had to be ordered to pay the outstanding amount arising out from it (i.e. EUR 50.000).

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. On 6 May 2020, the Appellant filed a Statement of Appeal against the Appealed Decision with the Court of Arbitration for Sport (the "CAS") in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "CAS Code").

36. On 19 June 2020, the Appellant submitted its Appeal Brief in accordance with Article R51 of the CAS Code. In its Appeal Brief, the Appellant requested the Sole Arbitrator to hear the testimonies of two persons as Protected Witnesses or anonymous witnesses, considering that their statement would directly involve members of the royal family and the government of Qatar and that they were scared that their testimonies would result into strong and subsequently retaliations. Furthermore, the Appellant requested the Sole Arbitrator to order the Respondent to produce proof that the Player was registered by the Respondent for the season 2017-2018 of the Qatar Sports League, a request that became

moot as in his Answer to the Appeal, the Respondent acknowledged that the Player had not been registered due to FK Vardar's failure to authorize the release of his ITC.

37. On 22 June 2020, the CAS Court Office acknowledged receipt of the Appeal Brief and invited the Respondent to file its Answer. Furthermore, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided to submit the dispute to a Sole Arbitrator.

38. On 10 August 2020, on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office advised the Parties that, pursuant to Article R54 of the CAS Code, the Sole Arbitrator appointed to decide the present matter was Mr Alexis Gramblat, Attorney-at-Law in Paris, France.

39. On 4 September 2020, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.

40. On 18 September 2020, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter and invited the Respondent to provide its position on the Appellant's request to hear the testimonies of two persons as Protected Witnesses or anonymous witnesses.

41. On 24 September 2020, the Respondent objected to the Appellant's request to hear Protected Witnesses.

42. On 29 September 2020, the CAS Court Office invited the Appellant to submit to the CAS the names of the two persons that he had requested to be heard as Protected Witnesses, as well as a brief summary of their expected testimony or a witness statement, in order for the Sole Arbitrator to decide on the matter, which the Appellant did on 13 October 2020.

43. On 18 December 2020, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to dismiss the Appellant's request for Protected Witnesses and that the grounds of such decision were going to be provided in the final award. Furthermore, the CAS Court Office invited the Appellant, if he wished to hear such witnesses as unprotected witnesses, to provide witness statements signed by them, which the Appellant did on 14 January 2021.

44. On 3 February 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter.

45. On 4 June 2021, the CAS Court Office informed the Parties that the hearing of the present case was going to be held on 23 September 2021.

46. On 14 September 2021, the CAS Court Office issued the Order of Procedure and invited the Parties to return a signed copy to the CAS.

47. On 17 September 2021, the Respondent's counsel sent a letter requesting the postponement of the hearing due to medical reasons. After consulting with the Appellant, the hearing was postponed.

48. On 20 December 2021, the CAS Court Office informed the Parties that the hearing of the present case was going to be held on 19 May 2022.

49. On 1 April 2022, the CAS Court Office sent to the Parties an amended Order of Procedure and requested them to sign and return it to the CAS Court Office, which both parties did.

50. On 18 May 2022, the Appellant sent a letter to CAS indicating that one of the witnesses it had called to the hearing, Mr. Ricardo Valério, would not be able to attend the hearing.

51. On 19 May 2022, a hearing was held by videoconference. In addition to the Sole Arbitrator Mr. Alexis Gramblat and Ms. Sophie Roud, Counsel to the CAS, the following persons attended the hearing:

    a. For the Appellant:

        i. Mr. Jonathan Boareto Dos Reis, the Player

        ii. Mr. Breno Tannuri, Counsel

        iii. Mr. André Oliveira de Meira Ribeiro, Counsel

        iv. Mr. Somaiah Mandepanda Jaya, Counsel

        v. Ms. Gwenn Le Garrec, Counsel

        vi. Mrs. Flavia Oliveira de Andrade, Witness.

        vii. Mr. Rogério de Carvalho, Witness.

        viii. Ms. Caroline de Caldas Bezerra, Attendee

        ix. Ms. Larissa Benevides, Interpreter

    b. For the Respondent:

        i. Mr. Nilo Effori, Counsel

        ii. Mr. Marc Cavaliero, Counsel

52. At the outset of the hearing, the Parties confirmed that they had no objection as to the constitution and composition of the arbitral tribunal. At the beginning of the hearing, the Parties and the Sole Arbitrator discussed on the matter of the capacity in which the Player could be heard. After consulting with the Parties, the Sole Arbitrator determined that the Player should be heard as a party.

53. At the hearing the Sole Arbitrator heard evidence from the witnesses brought by the Appellant. Both Parties were given full opportunity to present their case and submit their arguments.

54. On 12 October 2022, the CAS Court Office informed the Parties that Mr. Yago Vázquez Moraga, Attorney-at-Law in Barcelona, Spain, had been appointed as *ad-hoc* Clerk in this procedure.

55. On 24 October 2023, the CAS Court Office informed the Parties that the Sole Arbitrator Mr. Alexis Gramblat had resigned for personal reasons and that the CAS President of the Appeals Division had decided to appoint Mr. Jordi López Batet, Attorney-at-Law in Barcelona, Spain, as Sole Arbitrator to replace him.

56. On 17 November 2023, the CAS Court Office requested the Parties to inform whether the proceedings should continue without repetition of any aspects prior to the replacement of the Sole Arbitrator.

57. On 23 November 2023, the Appellant requested a new hearing be held in this matter.

58. On 24 November 2023, the Respondent communicated to the CAS Court Office that it did not deem necessary to hold a new hearing.

59. On 4 December 2023, the Parties were informed that the newly appointed Sole Arbitrator has decided to hold a new hearing.

60. On 19 December 2023, after consulting the Parties in this respect, the CAS Court Office informed them that the hearing would take place on 30 April 2024 at the CAS headquarters.

61. On 20 February 2024, upon request of the Parties the hearing was re-scheduled for 30 May 2024.

62. On 27 May 2024, the Parties were requested to sign a revised Order of Procedure, which the Parties did.

63. The hearing took place on 30 May 2024. In addition to the Sole Arbitrator, the *ad hoc* clerk Mr. Yago Vázquez Moraga and Mr. Giovanni Maria Fares, Counsel to the CAS, the following persons attended the hearing:

    a. <u>For the Appellant</u>:

        i. Mr. Jonathan Boareto Dos Reis (on-line)

        ii. Mr. Breno Tannuri, Counsel

        iii. Ms. Gwenn Le Garrec, Counsel

        iv. Mr. Tiago Ribeiro, Witness

        v. Mr Rogério de Carvalho, Witness (on-line)

        vi. Ms. Flavia Oliveira de Andrade, Witness (on-line)

vii. Ms. Larissa Benevides, Interpreter (on-line)

b. For the Respondent:

i. Mr. Nilo Effori, Counsel (on-line)

ii. Mr. Botond Pinter, Counsel

64. At the outset of the hearing, the Parties confirmed that they had no objection as to the constitution and composition of the arbitral tribunal. At the beginning of the hearing and upon request from the Respondent, it was clarified that the Player would be heard as a party. Thereafter, the Parties made their respective opening statements, the witnesses and the Player were heard and finally the Parties made their final statements. Before the end of the hearing, the Parties expressly stated that they had no objection as to how the hearing had been conducted.

V. SUBMISSIONS OF THE PARTIES

V.1. The Appellant

65. The Appellant's submissions, in essence, may be summarized as follows:

a. The Player was under duress in the sense of Article 29 *et seq.* of the Swiss Code of Obligations (the "SCO") when he signed the Termination Agreement and the Second Contract.

The Player was summoned to a hotel in Doha with three other foreign players of the Club, where he was threatened by members of the Club and the Qatar Ministry of Sport and Culture with severe consequences (including prison) if he did not agree to terminate the First Contract and sign the Second Contract containing a significantly lower compensation amount.

The four elements of duress pursuant to Swiss law – threat, founded fear, intention of the threat's author to determine the addressee to make a declaration of will and a causal connection between the fear experienced and the consent given – took place *in casu*. Therefore, the Player is neither bound by the Termination Agreement nor by the Second Contract.

b. The Club also derived an unfair advantage with the signature of the Settlement Agreement in the sense of Article 21 SCO.

When the Player and the Club concluded the Settlement Agreement, the only valid and enforceable employment agreement between the Parties was the First Contract, for the reasons set out above. However, at the time the employment relationship between the Player and the Club was terminated (24 December 2017, with the signature of the Settlement Agreement), the Club had never paid any remuneration whatsoever to the Player under either the First Contract or the Second Contract,

leaving the Player in a difficult financial situation. Furthermore, the Club never registered the Player, in addition to prohibiting him to attend training sessions.

Moreover, the Club was aware that the Player's wife, who was pregnant, had to return to Brazil on account of her tourist visa having expired and her lack of residence permit, as well as to give birth to her baby there. The Club also knew that the Player intended to accompany her but would need a Clearance Certificate to leave the country (for which the Player needed the Club) as well as funds to cover his wife's medical bills and the birth of his baby. The Club orchestrated a situation that drove the Player to conclude that his only means of escaping such a situation and being able to leave Qatar was to sign the Settlement Agreement at any cost, allowing the Club to save EUR 5.675.000.

Hence the three elements of unfair advantage under Swiss law – injured party under straitened circumstances when concluding the contract, the party benefitting has exploited the other party's vulnerability, and a clear disparity between performance and consideration – were present when the Player signed the Settlement Agreement, thus making this agreement null and void.

c. The Termination Agreement, the Second Contract and the Settlement Agreement are also ineffective as per articles 62 (undue enrichment) and 314 SCO (no right of waiver in employment relationships).

d. The Appealed Decision erred in its determination that the Player did not address "*any notification to the club disputing the validity of such document*", as it failed to consider the Player's notification dated 28 August 2018. This notification complies with the one-year requirement foreseen in both article 31 SCO concerning duress and article 21 SCO concerning unfair advantage.

e. The fact that the Player subsequently requested payment of the outstanding second instalment of the Settlement Agreement – EUR 50.000 – did not mean that he was no longer entitled to challenge the agreement's validity at a later stage, or the enforceability of the Termination Agreement and the Second Contract.

f. The Respondent shall pay to the Player the outstanding remuneration under the First Contract, amounting EUR 1.363.750, as well as the remaining remuneration that he was entitled to receive until 30 June 2019 (EUR 4.361.250), plus interest and without any mitigation.

g. On a subsidiary basis, the Appellant contends that if the Sole Arbitrator considered that the amount of the compensation is subject to mitigation, considering the amounts arising out of the contracts with Busan Ipark F.C. and Sanat Naft Abadan F.C., the sum of the compensation shall be EUR 3.784.250 plus interest.

66. Based on the foregoing reasons, the Appellant makes the following requests for relief in his Appeal Brief:

"As to the merits:

FIRST – To accept in full the present Appeal and as such, partially amend the Appealed Decision;

SECOND – To order the Club to pay to the Player the total overdue amount of EUR 1,363,750 as follows:

i. EUR 1,143,750 plus default interest at a rate of 5% (five percent) annually due from 1 September 2017 until the date of effective payment;

ii. EUR 55,000 plus default interest at a rate of 5% (five percent) annually due from 10 September 2017 until the date of effective payment;

iii. EUR 55,000 plus default interest at a rate of 5% (five percent) annually due from 10 October 2017 until the date of effective payment; - 65

iv. EUR 55,000 plus default interest at a rate of 5% (five percent) annually due from 10 November 2017 until the date of effective payment;

v. EUR 55,000 plus default interest at a rate of 5% (five percent) annually due from 10 December 2017 until the date of effective payment; and

vi. EUR 4,361,250 plus default interest at a rate of 5% (five percent) annually due from 25 December 2017 until the date of effective payment.

Alternatively, and only in the event the above is rejected:

THIRD - To accept in full the present Appeal and as such, partially amend the Appealed Decision;

FOURTH – To order the Club to pay to the Player the total overdue amount of EUR 1,363,750 as follows:

i. EUR 1,143,750 plus default interest at a rate of 5% (five percent) annually due from 1 September 2017 until the date of effective payment;

ii. EUR 55,000 plus default interest at a rate of 5% (five percent) annually due from 10 September 2017 until the date of effective payment;

iii. EUR 55,000 plus default interest at a rate of 5% (five percent) annually due from 10 October 2017 until the date of effective payment; - 66

iv. EUR 55,000 plus default interest at a rate of 5% (five percent) annually due from 10 November 2017 until the date of effective payment;

v. EUR 55,000 plus default interest at a rate of 5% (five percent) annually due from 10 December 2017 until the date of effective payment; and

vi. EUR 3,784,250 plus default interest at a rate of 5% (five percent) annually due from 25 December 2017 until the date of effective payment.

At any rate:

FIFTH – To order the Club to pay all arbitration costs and be ordered to reimburse the Player the minimum CAS court office fee of CHF 1,000 (one thousand Swiss Francs) and any other advance of costs paid to the CAS;

AND

SIX – To order the Club to pay to the Player any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in the amount of CHF 20,000 (twenty thousand Swiss Francs).”

V.2. The Respondent

67. The Respondent’s submissions may be in essence summarized as follows:

a. The Termination Agreement and the Second Contract were not signed under duress.

The Parties considered there was a concrete risk that the First Contract would not be valid in view of its Article IX.3 and FK Vardar’s persistent failure to enter the relevant counter instruction on TMS for the Player’s ITC to be transferred. This fact and the Player’s injury on 17 August 2017 led the parties to terminate the First Contract as of 14 September 2017 and conclude the Second Contract also on this day. The fact that the Termination Agreement expressly mentions 12 September 2017 as the date of immediate termination confirms that the matter at stake had been the subject of discussion between the Parties for several days.

The Second Contract omitted Article IX.3 of the First Contract so that the validity of the Second Contract would not depend on the confirmation that the Appellant was eligible, after receipt of the ITC, to participate in matches for the Club.

In any event, the Appellant failed to discharge his burden of proof on the duress he alleged.

b. Until his letter of 28 August 2018, the Player had never voiced any objections, in writing or otherwise, concerning the conclusion of the Termination Agreement or the Second Contract. In fact, it was the Player who reached out via WhatsApp to Mr. Al Yahri and proposed a settlement to the Club on 21 December 2017. Further negotiations between the Parties resulted in the Settlement Agreement dated 24 December 2017 (three days later), a contract that is valid and binding upon the Parties. No duress or unfair advantage can be inferred from this.

c. The Player himself confirmed the validity of the Settlement Agreement after its signature. First, he accepted the first instalment of QAR 215,000. Second, he messaged Mr. Al Yahri on 5 March 2018 (i.e. more than 2 months after the signing

of the Settlement Agreement) inquiring about the payment of the remaining EUR 50.000.

d. The allegations contained in the Player's notification from 28 August 2018 are made up accusations and assertions that are contradictory to his prior behaviour and statements (*venire contra factum proprium*). It was the first time that any allegations of duress or coercion are raised, eight months after the Settlement Agreement was signed, all without any evidentiary support. In the Club's response dated 22 September 2018, these unfounded claims were objected.

e. The Club reiterates its availability to pay the remaining EUR 50.000 under the Settlement Agreement upon receipt of an invoice and the Appellant's banking details, as stipulated in Clause 2.1 of the Settlement Agreement.

f. In sum, the Settlement Agreement is valid and represents the sole and full understanding between the Parties, cancelling all previous agreements. Even if one considered that the Second Contract and the Settlement Agreement are null and void, the Termination Agreement would be the agreement in force between the Parties, and not the First Contract.

68. Based on the foregoing reasons, the Respondent makes the following requests for relief in its Answer to the Appeal Brief:

"In view of the information contained in the Answer, Al Gharafa respectfully requests the CAS to:

i. Reject the Appeal filed by Jonathan Boareto Dos Reis;

ii. Confirm the Decision of the FIFA Dispute Resolution Chamber;

iii. Order Jonathan Boareto Dos Reis for the procedural costs incurred in connection with this arbitration procedure.

iv. Order Jonathan Boareto Dos Reis for the legal costs incurred and to be incurred in connection with this arbitration procedure in the amount of CHF 25,000."

VI. JURISDICTION

69. Article R47 of the CAS Code provides 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."

70. Article 58 of the FIFA Statutes reads as follows:

"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 notification of the decision in question.

2. Recourse may only be made to CAS after all other internal channels have been exhausted."

71. The Respondent did not contest the jurisdiction of CAS and both Parties signed the Order of Procedure.

72. Accordingly, CAS has jurisdiction to decide this appeal.

VII. ADMISSIBILITY

73. Article 58 FIFA Statutes provides that appeals against decisions passed by FIFA's legal bodies shall be lodged with CAS within 21 days of notification of the decision in question, once all other internal channels have been exhausted.

74. The Parties received the grounds of the Appealed Decision from FIFA on 15 April 2020. The Appellant filed its Statement of Appeal before CAS on 6 May 2020 and also complied with all the prerequisites foreseen in Article R48.1 of the CAS Code.

75. The Respondent did not object to the admissibility of the appeal.

76. The appeal is thus admissible.

VIII. APPLICABLE LAW

77. Article R58 of the CAS Code stipulates the following:

"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."

78. Article 57 para. 2 of the FIFA Statutes reads 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."

79. In view of the mentioned provisions and in light of the Parties submissions, the Sole Arbitrator will decide this dispute applying the FIFA regulations and Swiss law.

IX. PRELIMINARY PROCEDURAL ISSUE: THE PROTECTED WITNESSES

80. In its Appeal Brief, the Appellant requested the CAS to hear the testimonies of two persons as Protected Witnesses or anonymous witnesses, considering that their statements directly

involved members of the royal family and the government of Qatar and that they were scared that their testimonies would result into strong and subsequent retaliations. Such request was dismissed by the at time appointed Sole Arbitrator on 18 December 2020 without providing grounds, that were to be explained in the final award as announced to the Parties.

81. Even if this request could be considered moot, as a second hearing was held in this matter in which the presence of Protected Witnesses was not requested, the Sole Arbitrator, for the sake of completeness and after having checked the file, shall state that he shares the former Sole Arbitrator's view of dismissing to hear the Protected Witnesses in the first hearing.

82. This procedure is an international arbitration governed by Chapter 12 of the Swiss Federal Act on Private International Law ("PILA"). Article 184 para. 2 of the PILA provides that "*The arbitral tribunal takes the evidence itself*". As a result, "*evidentiary issues will be determined according to the procedural rules adopted by each CAS Panel, unless the applicable sport regulations contain specific evidentiary rules. In making determinations on evidentiary issues, the CAS arbitrators are in no way bound to apply the procedural rules that would be applicable in a Swiss Court*" (RIGOZZI, A. and QUINN, B.; Evidentiary issues before CAS, BERNASCONI, M. (Ed.); International Sports Law and Jurisprudence of the CAS – 4th Conference CAS & SAV/FSA Lausanne 2012, Editions Weblaw, 2014).

83. In this context, among other evidentiary measures, "*if the circumstances of the case so require, the Panel may adopt the appropriate procedural measures to secure the rights and interests of the parties or third parties, for example, adopting confidentiality measures with regard to certain documents or admitting the testimony of protected witnesses (who shall be examined in a manner that preserves their physical identity, by hiding them behind a screen) or, even, anonymous witnesses, which in certain circumstances are admissible under Swiss law*" (see "Nociones fundamentales de la prueba en el TAS", CAS Bulletin 2022/1, pp. 32-48). Such protective measure would be legitimate, because "*Preventing witness and whistleblower intimidation and harm of any kind and, in general, protecting witnesses whose testimony may be crucial to uncover systematic corruption cases like the Russian doping scheme, is essential to secure their cooperation to this end. Their help is essential to combat and uncover systemic corruption. For obvious reasons, the protection provided cannot be described as a benefit to the witness. To the contrary, by giving his testimony the witness is not taking any advantage of the situation; rather, he is facing an extremely difficult situation. Being a protected witness is not a privilege but a hard burden. Therefore, the Athlete's claims in this regard are flatly rejected*" (CAS 2020/O/6759).

84. The Sole Arbitrator further notes that CAS jurisprudence has established that "*the use of protected witnesses is subject to the following strict conditions: (i) that the witnesses motivate their request to remain anonymous in a convincing manner, (ii) that the court has the possibility to see the witnesses, (iii) that the witnesses would concretely face a risk of retaliation by the party they are testifying against if their identities were known, (iv)*

that the witnesses are questioned by the court itself, which must check their identities and the reliability of their statements, and (v) that the witnesses are cross-examined through an "audiovisual protection system" (see CAS 2011/A/2384 & CAS 2011/A/2386)" (CAS 2019/A/6388).

85. Taking into account these criteria, the Sole Arbitrator finds that in the present case the Appellant failed to duly substantiate and justify at the time, in a convincing manner, that (i) if the witnesses he proposed to be Protected Witnesses gave their expected testimony, they would face a specific risk of retaliation and (ii) the dangers he affirmed that the witnesses would suffer were likely to materialize. The Appellant held that, even though the witnesses did not live in Qatar, if they were heard without guaranteeing their anonymity, they would suffer retaliations because their statements "*may incriminate members of the local royal family, as well as will confirm the direct involvement of members of the local government in crime situation*". However, these allegations are not supported by any tangible evidence that could corroborate this hypothesis and lead to believe that the alleged dangers and risks for the witnesses were likely to occur.

86. The sole evidence on which the Appellant intended to rely in support of his request are the witnesses' own statements which, in the Sole Arbitrators view, without any additional corroborating element, are not sufficient to consider that such alleged risk or threat exist or is at least reasonably plausible. Therefore, the Sole Arbitrator considers that the Appellant failed to accredit the existence of an interest worth of protection that could justify hearing such witnesses as Protected Witnesses and endorses the former Sole Arbitrator's criterion not to admit them.

X. MERITS

A. The Main Issues

87. The Appellant's case mainly consists of challenging the validity of the Termination Agreement, the Second Contract and the Settlement Agreement, being (under such assumption) the First Contract the only truly valid and binding agreement between the Parties and the one on which he sustains his claims against the Club.

88. In essence, the Appellant holds that pursuant to Article 29 SCO, he shall not be bound by the Termination Agreement and the Second Contract because he entered into them under duress, and also bases the ineffectiveness of these agreements on articles 62 and 341 SCO. Concerning the Settlement Agreement, he submits that it is not valid due to unfair advantage (Article 21 SCO), because the Respondent would have taken exploited the Appellant's strained circumstances and a clear disparity between the performance and the consideration under such agreement would exist. In addition, the Player also invokes articles 62 and 341 SCO to sustain the Settlement Agreement's lack of effectiveness.

89. The Sole Arbitrator shall firstly refer to article 9 of the Settlement Agreement, which is the last contract signed between the Parties. In this article, it was stipulated that the Settlement Agreement was the sole and full understanding between the Parties, replacing

and cancelling all previous terms, conditions, correspondence, and documents exchanged between them, in the following terms:

"***9. Entire Agreement***

9.1. This Agreement is the sole and full understanding between the parties.

9.2. The parties expressly agree that this Agreement records all written and oral notices and communications between the parties, replacing and cancelling all previous terms, conditions, correspondences and documents exchange between them, and for all legal effects, only the present instrument, with the exclusion of any source, will govern the relations between the parties with respect to the subject matter hereof."

90. Therefore, the Sole Arbitrator shall firstly address the validity of the Settlement Agreement, as it was the agreement signed the last in time between the Parties and contains a provision in which the Parties agreed that the Settlement Agreement replaced and cancelled all the previous agreements between them. On such basis, if the Settlement Agreement is considered valid, the rest of agreements would become irrelevant for the resolution of the Appeal.

91. The Sole Arbitrator shall start its analysis by examining the content of article 21 SCO, which refers to unfair advantage in the following terms:

"*(1) Where there is a clear discrepancy between performance and consideration under a contract concluded as a result of one party's exploitation of the other's straitened circumstances, inexperience or thoughtlessness, the injured party may declare within one year that he will not honour the contract and demand restitution of any performance already made.*

(2) The one-year period commences on conclusion of the contract."

92. For the consequences of article 21 SCO to apply, "*i) the injured party must have been in straitened circumstances when concluding the contract; ii) the party entitled to benefit from the contract must have exploited the other's vulnerability; and iii) a clear disparity between performance and consideration is required (HONSELL H. (ed.), Obligationenrecht, 2014, p. 106-109)*" (CAS 2020/A/6727).

93. In addition to such substantive requirements, the Sole Arbitrator notes that Article 21 SCO stipulates a deadline for invoking unfair advantage (one year from the occurrence of the facts at stake, in our case one year from the conclusion of the Settlement Agreement). In this respect, the Sole Arbitrator notes that, contrary to the Appealed Decision's conclusion, the Player invoked Article 21 SCO in a timely fashion through his letter dated 28 August 2018, whereby he informed the Club that he would not honour said contract.

94. This being said, the Sole Arbitrator shall determine whether the substantive requirements of Article 21 SCO to consider that unfair advantage exists *in casu* have been established or not.

95. After assessing the evidence of the file, the Sole Arbitrator is sufficiently satisfied that the Player was objectively in a difficult personal and professional situation at the time of signing the Settlement Agreement. He was owed several salaries, he was returning from an injury which required surgery, he had not been registered at the QFA to play because of the issues occurred with his ITC and he had responsibilities and obligations to fulfil as a soon-to-be father. In addition, it is not disputed that the Appellant wanted to leave the Club and return to Brazil, and that to such purpose he needed to terminate his employment relationship and to obtain a clearance certificate to leave Qatar.

96. The Sole Arbitrator shall thus conclude that the Player was in straitened circumstances at the time of signing the Settlement Agreement.

97. Having thus been established in the Sole Arbitrator's view that straitened circumstances existed, the Sole Arbitrator shall now analyze whether Al Gharafa exploited them.

98. The Appellant maintains that the Settlement Agreement was, in essence, forced upon him given the difficult situation in which he found himself with the Club and it was not truly an agreement that he would have made out of his own free will.

99. However, the Sole Arbitrator shall point out that the Respondent has filed evidence, in the form of WhatsApp conversations between the Appellant and Mr. Al Yahri, which provide strong indication that the Settlement Agreement was reached on the Player´s initiative and not as regards of the exploitation by the Club of the Player's difficult situation.

100. It is noted that in the WhatsApp conversation dated 21 December 2017, the Player approached Mr. Al Yahri indicating he has "*an agreement to make*" with him, asking for the payment of 4 months of salary. After further exchanges of messages, Mr. Al Yahri apparently referred to a previous – presumably informal – agreement that had been reached to settle for EUR 150.000, and later on asked whether Mr. Boareto was asking for EUR 50.000 in cash and EUR 100.000 "*in Agreement*," to which Mr. Boareto replied in the affirmative ("*Yes. To finish*"). Furthermore, it is worth noting that in this conversation, the Appellant stated "*I'm helping you to help me*", which does not seem very compatible with a situation of unfair advantage.

101. This WhatsApp conversation, which authenticity is not disputed by the Parties, constitutes in the Sole Arbitrator's opinion convincing evidence that the Settlement Agreement was not imposed upon the Player and that the Club did not intend to exploit the circumstances of the Player.

102. The circumstances of this case stand in contrast to, for example, the circumstances evaluated in CAS 2016/A/4826, where the club was found to have exploited a player's straitened circumstances by obstructing the issuance of the player's ITC in bad faith after it had unilaterally terminated the player's employment agreement and the player had left the country, and later forcing a pre-drafted Settlement Agreement upon the player and his legal representative in the middle of the night after calling them to an in-person meeting in Qatar. Similarly, in CAS 2020/A/6727, the Panel found that the club had exploited the player's circumstances after he unilaterally terminated his employment agreement by

conditioning the issuance of the player's ITC upon the conclusion of a settlement agreement whereby the player waived his entitlement to claim outstanding remuneration and compensation for breach of contract, thereby unjustly obstructing his efforts to seek new employment by holding the player's ITC hostage.

103. This case is definitely not one of the kind described above.

104. Without evidence from the Appellant that credibly proves otherwise, the Sole Arbitrator is satisfied that the Settlement Agreement is not a product of the Respondent exploiting the Player's straitened circumstances, but the consequence of the free will of the Parties.

105. Last but not least, the foregoing conclusion is further supported by the Appellant's own conduct following the signature of the Settlement Agreement. Specifically, the Respondent submitted a second WhatsApp conversation between the Player and Mr. Al Yahri dated 5 March 2018 whereby the Appellant, that at that point of time was out of Qatar playing in South Korea, inquired about the remaining payment due to him under the Settlement Agreement, hence holding with his own acts the validity of this agreement. This messages exchange, far from containing a complaint or an indication that the Player regarded the Settlement Agreement as the product of exploitation of the Player's circumstances, come to confirm that the Player rendered it as valid and wanted it to be fully complied.

106. As the substantive requirements of Article 21 SCO are cumulative, failure to meet any of them suffices to find that no unfair advantage exists. Therefore, it is enough to have determined that the requirement of exploitation of straitened circumstances is not met to conclude that no unfair advantage existed in relation to the Settlement Agreement. For this reason, the Sole Arbitrator deems it unnecessary to consider further requirements under such article.

107. Therefore, the Player's contention that the Settlement Agreement shall not bind him due to unfair advantage is rejected.

108. With regard to the alleged invalidity of the Settlement Agreement based on article 62 and 341 SCO, the Sole Arbitrator shall point out that (i) no enrichment without just cause on the side of the Club can be sustained when as mentioned above, (a) it was the Player the one who approached the Club to terminate their relationship and enter into the Settlement Agreement and (b) the Player claimed for the payment of the Settlement Agreement's amounts more than 2 months after its execution, and (ii) the Parties' free decision to terminate their employment relationship and settle their differences does not imply a waiver to claims arising from mandatory provisions of law. Therefore, none of these two provisions of the SCO can justify in this case that the Settlement Agreement becomes null and void.

109. Consequently, the Sole Arbitrator shares the view of the FIFA DRC that the Settlement Agreement is valid.

110. The confirmation that the Settlement Agreement is valid implies that the analysis of the remaining agreements strikes as academic and merely *ad abundantiam*. Nevertheless, for the sake of completeness, the Sole Arbitrator deems it convenient to deal with the Player's arguments with respect to the alleged invalidity of the Second Contract and the Termination Agreement based on duress and on articles 62 and 341 SCO.

111. With regard to the alleged duress, the Sole Arbitrator shall note that articles 29 to 31 SCO read as follows:

Article 29

"(1) Where a party has entered into a contract under duress from the other party or a third party, he is not bound by that contract.

(2) Where the duress originates from a third party and the other party neither knew nor should have known of it, a party under duress who wishes to be released from the contract must pay compensation to the other party where equity so requires".

Article 30

"(1) A party is under duress if, in the circumstances, he has good cause to believe that there is imminent and substantial risk to his own life, limb, reputation or property or to those of a person close to him.

(2) The fear that another person might enforce a legitimate claim is taken into consideration only where the straitened circumstances of the party under duress have been exploited in order to extort excessive benefits from him".

Article 31 SCO

"(1) Where the party acting under error, fraud or duress neither declares to the other party that he intends not to honour the contract nor seeks restitution for the performance made within one year, the contract is deemed to have been ratified.

(2) The one-year period runs from the time that the error or the fraud was discovered or from the time that the duress ended.

(3) The ratification of a contract made voidable by duress or fraud does not automatically exclude the right to claim damages".

112. In light of the foregoing provisions and of the Swiss related doctrine, a finding of duress, *i.e.*, a defect in consent resulting from the threat of future harm in order to obtain that consent, involves, from a substantive point of view, establishing the existence of (i) a threat directed without right against a party (ii) the resulting duress, (iii) the intention of the author of the threat to determine the addressee to make a declaration of will, and (iv) the causal link between the fear and consent (ATF 111 II 349, 2; unpublished case of the SFT 4A_514/2010, 4.2.2; see also HUGUENIN, no. 550 ff, TERCIER/PICHONNAZ, no. 832 ff).

113. After having checked the evidence in the file, the Sole Arbitrator finds that the Appellant did not sufficiently establish the existence of a threat issued with the intention to coerce his signature of the Termination Agreement and Second Contract, that would warrant a finding of duress.

114. The Appellant's contentions in this respect hinge on the occurrence of a meeting between him, three of his teammates, members of the Club, and members of the Qatar Ministry of Sports and Culture ("QMSC"), apparently convened in a hotel on 14 September 2017 by the Club and QMSC, with the presence of the Qatari police around the hotel. The Appellant avers that in such meeting, he and three other players were forced to sign a termination agreement ending their respective employment contracts and a new employment contract which drastically reduced their remunerations, under threat of imprisonment. According to the Appellant, the members of the Club and the QMSC alleged that the remuneration set out in their initial contracts was not only for the players but also for third parties (insinuating that once the players received their remuneration from the Club, they would apparently transfer part of these funds to third parties).

115. The Player grounds the occurrence of such facts only in his own statement and on the declarations of three witnesses (his wife, his agent and the agent of a third player) that were not present at that meeting or at the hotel where such meeting would have taken place. In fact, witnesses Mr. Pereira and Mr. Ribeiro declared at the hearing that they were not even in Qatar when these alleged facts happened. As confirmed by Ms. Oliveira and Mr. Pereira at the hearing, their knowledge of the events at issue stems exclusively from the Player's explanations.

116. The Sole Arbitrator finds it quite surprising that in spite of the facts allegedly occurred on 14 September 2017, the Player did not file any written evidence that refer or could substantiate them, like exchanges of emails or WhatsApp messages with his agent, lawyer, friends or wife referring to such very serious facts, or communications sent by his agent or lawyer to the Club, the Brazilian Embassy in Qatar or other institution complaining about the situation. The existence of such documents would be logically expected in a sequence of events as the one narrated by the Player, but none of these documents have been produced to the file.

117. It seems also quite strange that Mr. Pereira, the Player's agent, in a situation of such alleged gravity, did not travel to Qatar to try to assist in solving it, and that he did not even enter into contact with the Club (even by email) to such purpose. At least there is no proof of this in the file.

118. Based on the evidence in the file, the Sole Arbitrator concludes that the Appellant has not duly substantiated the facts alleged with respect to duress. While it is understandable that the nature of the allegations at issue may entail evident difficulties in obtaining direct proof of their occurrence, there must be more than indirect witness testimony to deem a duress scenario as proven.

119. For these reasons, the Sole Arbitrator considers that the Appellant has not duly substantiated his contention that he entered into the Termination Agreement and the

Second Contract under duress and hence the submissions made in this regard are dismissed.

120. With regard to the alleged nullity of the Termination Agreement and the Second Contract based on articles 62 and 341 SCO, the Sole Arbitrator considers that (i) a situation of enrichment without just cause did not exist for the same reasons already explained above when dealing with the Settlement Agreement and (ii) the Player failed to substantiate that the execution of the Termination Agreement and entering into the Second Contract entailed a waiver to claims arising from mandatory provisions of law. In consequence, none of these two provisions of the SCO can justify in this case that said agreements could become null and void.

121. Having thus confirmed that the Settlement Agreement is valid and binding, the Sole Arbitrator shall turn its attention to the fulfilment of such agreement, and notes that the second instalment of EUR 50.000 stipulated therein still remains unpaid. Therefore, the Sole Arbitrator, as the DRC did in due time, considers that the payment of such amount shall be made by the Club to the Player.

122. In conclusion, the Sole Arbitrator dismisses the appeal filed by the Player and confirms the DRC decision in its entirety.

XI. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 6 May 2020 by Mr. Jonathan Boareto dos Reis against the decision of the Dispute Resolution Chamber of the Fédération Internationale de Football Association of 12 February 2020 is dismissed in its entirety.

2. The decision of the Dispute Resolution Chamber of the Fédération Internationale de Football Association of 12 February 2020 is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne (Switzerland)

Date: 19 December 2024

THE COURT OF ARBITRATION FOR SPORT

Jordi López Batet
Sole Arbitrator

Yago Vázquez Moraga
Ad hoc Clerk