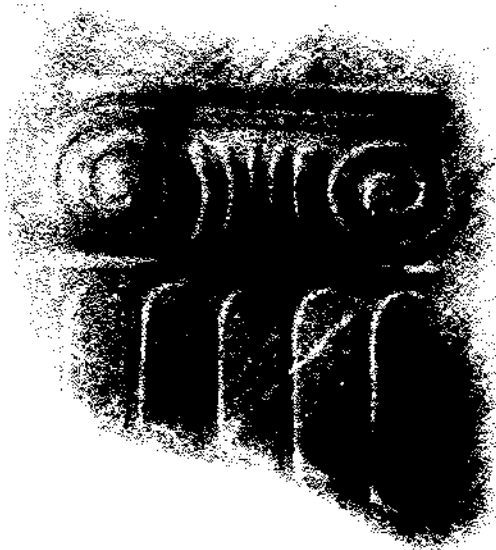


TAS / CAS

Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte



ARBITRAL AWARD

Al Jazira Sporting Club, United Arab Emirates

v.

Mourad Batna, Morocco

CAS 2021/A/7947 - Lausanne, September 2022



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2021/A/7947 Al Jazira Sporting Club v. Mourad Batna

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Alexander McLin, Attorney-at-Law in Geneva, Switzerland

in the arbitration between

Al Jazira Sporting Club, United Arab Emirates

Represented by Messrs. Juan de Dios Crespo Pérez, Alfonso León Lleó and Daniel M. Louis,
Ruiz-Huerta & Crespo Abogados, Valencia, Spain

Appellant

and

Mourad Batna, Morocco

Represented by Ms Audrey Bruin, Aix-en-Provence, France

Respondent

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I. PARTIES

1. Al Jazira Sporting Club (the “**Appellant**” or the “**Club**”) is a professional football club affiliated to the United Arab Emirates Football Association (“**UAEFA**”) with its headquarters in Abu Dhabi.
2. Mourad Batna (the “**Respondent**” or the “**Player**”) is a Moroccan professional football player employed at the time of issuance of this Award by Al-Fateh FC, Saudi Arabia.

II. FACTUAL BACKGROUND

3. On 1 August 2019, the Club and the Player concluded an employment agreement (the “**Contract**”) valid from the signature date until 30 June 2020, with an option to extend for one year.
4. Clause 10 of the Contract provides:

“Without prejudice the termination terms referred to herein this contract shall be valid from the 1st of August 2019 and will expire on the 30 June 2020 with an option granted by the player to [the Club] practicing the extension option on or before 30 June 2021; in the event [the Club] exercises the extension option then the annual salary including the advance payment will be EUR 1,300,000, i.e. [the Club] has the sole discretion to extend the herein contract for one more year if [the Club] sent a letter to the herein email: [...] address to extend the herein contract on or before 30 June 2020, the player grants [the Club] the full right of practicing the extension clause without objection, then the contract duration upon extension starts on the 1st of July 2020 and expires on 30 June 2021.”

5. Clause 5.1 of the Contract provides that the Player would receive the following remuneration:

For the “*first contractual year: EUR 1,200,000*”, payable as follows:

- EUR 100,000 on 1 August 2019;
- EUR 100,000 on 15 September 2019;
- EUR 1,000,000 divided in 11 monthly instalments of EUR 90,909 each, payable as from August 2019 until June 2020 “*on the last calendar day of each month*”.

For the “*second contractual year: EUR 1,300,000*”, payable as follows:

- EUR 300,000 on 1 September 2020;
- EUR 1,000,000 divided in 12 monthly instalments of EUR 83,333 each, payable as from July 2020 until June 2021 “*on the last calendar day of each month*”.

6. Clause 17.8 of the Contract provides that “*the Player shall pay the 1% registration fee at the UAEFA. Upon express consent of the player. Al Jazira will deduct this amount from the first payment owed to the player in every season during the duration of the employment contract.*” [sic]

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7. On 4 June 2020 the Club sent the Player an email informing him of its decision to impose a 40% cut on the salaries of April, May and June 2020, conditioning the payment of the April and May salaries on signing of a consent form by which the Player would have agreed to the 40% salary cut.
8. On 8 June 2020, the Player wrote to the Club stating that the salary cut did not comply with the Contract and put the Club in default of payment for the salaries of April and May 2020, granting the Club 15 days to remedy the default.
9. The Player later acknowledged having received the amount of EUR 47,227 on 1 July 2020, corresponding in his view to partial payment of the April 2020 salary.
10. On 22 June 2020, the Player wrote to the Club putting it in default of payment of EUR 134,590, corresponding to the unpaid part of the April 2020 salary (EUR 43,681) and the unpaid May salary (EUR 90,909), again granting the Club a 15-day deadline to make payment.
11. The Player later received the amount of EUR 47,227, corresponding to partial payment of the May 2020 salary.
12. The Contract expired on 30 June 2020 without exercise of the extension option.
13. On 2 July 2020, the Player put the Club in default of payment in the amount of EUR 178,272.36, composed of:
 - EUR 43,681.36 corresponding to the unpaid part of the April 2020 salary;
 - EUR 43,682 corresponding to the unpaid part of the May 2020 salary;
 - EUR 90,909 corresponding to the June 2020 salary.
14. The Club wrote to the Player on 13 July 2020 informing him that the 40% salary reduction was being applied to all players on an equal treatment basis as some of them had agreed to the cut.
15. On 6 August 2020, the Player wrote to the Club again, pointing out that the Club had ignored his letters of 22 June and 2 July 2020, had not considered the Player's counterproposal (a 10% salary reduction), and was acting against the FIFA COVID-19 Football Regulatory Issues publication (FIFA Circular 1714) released in April 2020 (the "**FIFA Guidelines**") and the associated FAQ document issued on 11 June 2020.
16. Also on 6 August 2020, the Player filed a claim before FIFA seeking the award of EUR 178'272.36 in overdue compensation, plus 5% interest per annum from the original payment due dates.
17. On 11 March 2021, the Single Judge of the FIFA Dispute Resolution Chamber issued a decision (the "**Appealed Decision**") providing inter alia as follows:
 1. *The Claim of [the Player] is accepted.*
 2. *[The Club] has to pay [the Player] the amount of EUR 145,941.61 as outstanding remuneration plus 5% interest p.a. calculated as follows:*

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- *Over the amount of EUR 43,681.36 as of 1 May 2020 until the date of effective payment;*
- *Over the amount of EUR 43,682 as of 1 June 2020 until the date of effective payment;*
- *Over the amount of EUR 58,578.25 as of 1 July 2020 until the date of effective payment.*

[...]

5. *In the event that the amount due, plus interest as established above is not paid by [the Club] within 45 days, as from the notification by [the Player] of the relevant bank details to [the Club], the following consequences shall arise:*

1. [The Club] 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. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid. (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

2. In the event that the payable amount as per in this decision 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 the FIFA Disciplinary Committee.

[...].”

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 6 May 2021, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the “CAS”). The Appellant requested therein that this procedure be referred to a three-member Panel subject to the guarantee by the Respondent that he would pay his share of the advance of costs, in accordance with the Article 40.1 of the CAS Code of Sports-related Arbitration (the “Code”). The Appellant requested a 30-day extension to file its Appeal Brief.
19. On 10 May 2021, the CAS Court Office wrote to the Parties and confirmed receipt of the Statement of Appeal and of the Appellant’s relevant procedural stances. It also wrote to FIFA, providing it with the opportunity to participate as a party further to Article R41.3 of the Code.
20. On 12 May 2021, the Respondent wrote to the CAS Court Office objecting to the request for extension and specifying that he did not intend to pay his share of the advance of costs.
21. On 18 May 2021, the Appellant confirmed to the CAS Court Office that it wished for the appointment of a Sole Arbitrator.

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22. On 19 May 2021, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided to grant the Appellant a ten-day extension to file its Appeal Brief.
23. On 19 May 2021, the Respondent confirmed his agreement with the appointment of a Sole Arbitrator.
24. On 21 May 2021, FIFA indicated that it was renouncing its right to possible intervention in the proceedings.
25. On 4 June 2021, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code. Therein, the Appellant stated its preference for hearing to be held.
26. On 7 June 2021, the CAS Court Office wrote to the Parties acknowledging receipt of the Appeal Brief and inviting the Respondent to file its Answer within 20 days further to Article R55 of the Code.
27. On 8 June 2021, the Respondent requested a ten-day extension to file its Answer. The CAS Court Office confirmed the granting of the extension the same day further to Article 31 of the Code.
28. On 2 July 2021, the CAS Court Office informed the Parties that Mr Alexander McLin, Attorney at Law in Lausanne, Switzerland, had been appointed as Sole Arbitrator by the Deputy President of the CAS Appeals Arbitration Division.
29. On 5 July 2021, the Respondent wrote to the CAS Court Office indicating that he considered it necessary for a hearing to be held.
30. On 2 and 8 September 2021 respectively, the Appellant and the Respondent signed and returned the Order of Procedure in this appeal.
31. On 25 October 2021, a hearing was held by videoconference. In addition to the Parties and their representatives and interpreters, Messrs David Ian Macveigh and Marcel Keizer appeared as witnesses for the Appellant, and Mr Chakib Laraki appeared as a witness for the Respondent.
32. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

33. The Appellant makes the following requests for relief:

“To adopt an award to set aside the [Appealed Decision].

a. To uphold this appeal on the arguments mentioned herein and rule that:

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- i. The Appellant does not owe the Respondent any pending sums whatsoever out of their contractual relationship having expired on the 30th of June 2020 or, as a most unlikely alternative,*
- ii. That the honourable Sole Arbitrator considers the amount the latter will determine as the fair payment to be made by the Club the Player which in all scenarios shall be substantially inferior to the one ruled by the Decision.*
- b. *To condemn the Respondent to the payment of the whole CAS administration costs and Sole Arbitrator's fees.*
- c. *To oblige the Club to reimburse the Appellant his legal fees in the amount at the discretion of the honourable Sole Arbitrator.” [sic, footnote omitted]*
34. The Appellant's submissions, in essence, may be summarized as follows:
- The Appealed Decision is flawed as it deviates from (i) the actual circumstances and hence the facts of the case, and (ii) the application of the underlying FIFA regulations.
 - The actions taken by the Club respect not only UAE legislation and UAEFA regulations, but also those of FIFA and the Contract.
 - Specifically, the UAE FA Circular 1516-2020 (the “**UAE FA Circular**”) allowed its affiliated members to establish a temporary salary reduction from 15 March 2020 until 1 July 2020 provided it did not exceed 40% of the Player's salary. The Circular fills a legal vacuum created by the FIFA Guidelines which refer to the need for proportionality without specifically defining the applicable percentage for which a reduction can be considered proportionate. The UAE FA was entitled to issue the UAE FA Circular following Ministerial Resolution no 279 of 2020 enacted by the Ministry of Human Resources and Emiratization (the “**Resolution**”).
 - According to the applicable provisions of the FIFA Guidelines, a unilateral reduction of salaries will have been appropriate in the event an agreement is eventually not reached between the Club and the Player if prior negotiations took place and as long as the reduction was reasonable and proportional.
 - This was the case because the percentage of salary reduction did not exceed the range permissible by the UAE FA Circular (namely 40%), and the Club only decided to impose the reduction between 1 April and 30 June 2020, whereas it would have been within its rights to do so as of 15 March and until 11 July 2020.
 - The Player accepted the basis for a temporary salary reduction in his letter to the Club of 8 June 2020, in which he admitted to being fully aware of the impact of the pandemic in the UAE. According to the *volenti non fit injuria* principle, the Player cannot claim that he is harmed by the measures undertaken by the Club as he has recognized that the latter has suffered losses.
 - Whereas the Club's proposals were made in good faith, the Player was unwilling to make necessary concessions. He was only willing to concede the equivalent of

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0.75% of his annual remuneration. This amounts neither to good faith nor to a proportional proposal, considering that the Club was facing a loss of 71% of its revenue from its principal sources and a generally dire economic outlook.

- The Player was earning substantially more than others on the squad, who would have been relatively more affected by the salary cut, given that, in keeping with the request players, the measure was universally applied to ensure equal treatment of all players, whether local or international. The Player was earning approximately 13 times the minimum income set by the UAE FA Circular.
- Applicable jurisprudence contradicts the Appealed Decision, which also does not adequately address additional expenses owed to the Club by the Player at the time of Contract expiration on 30 June 2020.

35. The Respondent make the following requests for relief:

“... the Player respectfully requests the Court of Arbitration for Sport:

- *To reject the Appeal lodged by the Appellant,*
- *To rule that the Appellant did not comply with its financial obligations towards the Player,*
- *To uphold the Decision issued by the FIFA Dispute Resolution Chamber of 11 March 2021, the grounds of which were notified on 15 April 2021,*

Consequently,

- *Order the Appellant to pay to the Player EUR 145,941.61 as outstanding remuneration, plus 5% interest p.a. until the date of effective payment as follows:*
 - o 5% p.a. as of 1 May 2020 on the amount of EUR 43,681.36;
 - o 5% p.a. as of 1 June 2020 on the amount of EUR 43,682;
 - o 5% p.a. as of 1 July 2020 on the amount of EUR 58,578.25;
- *Order the Appellant to bear the entire costs of proceedings before the Court of Arbitration for Sport;*
- *Award a contribution to be established at its discretion to cover the legal fees and expenses of the Player before the FIFA DRC and before the Court of Arbitration for Sport.”*

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

- The Club was already in arrears of payments owed to the Player in March 2020. He did not receive his March salary until May, received a portion of his April salary in June, and received two more partial payments in July and September 2020 which did not clearly specify their purpose.

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- Neither the Player's attempts at resolving the case amicably nor formal notices resolved the situation, and the Club's delays and salary reductions are not justified.
- The legitimacy of the measures adopted by the Club must be assessed according to the three-level analysis of the FIFA Guidelines, namely:
 - o Whether the Parties were able to reach an agreement; if not
 - o Whether national law or a possible collective bargaining agreement is applicable and addresses the situation; if not
 - o Whether the unilateral variation was made in good faith and was reasonable and proportionate.
- The UAE FA Circular distinguishes between UAE national players and foreign players; it does not authorize clubs to impose a salary cut of 40% to foreign players, for which FIFA regulations must be respected.
- Ministerial Resolution no 279 of 2020 is a forgery, and in any event not applicable to the matter at stake.
- The pay cut was imposed by the Club as of 1 April 2020 but notified on 4 June 2020. Such retroactive application is contrary to the FIFA Guidelines and evidence of the Club's bad faith, which is also illustrated by the delays in payment of the Player's salaries.
- The Club has not met its burden of proving that a new agreement was reached with the Player, or that negotiations were conducted in good faith. On the other hand, the Player expressed his willingness on several occasions to lower his salary, provided it remained proportionate. The unilateral variation of the Player's salaries was not made in good faith, nor was it proportionate or reasonable.
- The Club's assertions concerning its alleged economic difficulties are not substantiated, as no accounting documents have been proffered by the Club.
- The additional deductions made by the Club from the Player's salary are unjustified. The deductions associated with the alleged registration fee lack a legal basis, and the Club fails to establish that it paid accommodation expenses that it claims are owed to it.

V. JURISDICTION

37. Article R47 of the Code provides that:

"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."

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38. Article 58 para. 1 of the FIFA Statutes states:

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

39. Article 22 (b) of the FIFA RSTP provides:

“Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear: [...] b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs”

40. The Appellant relies of Article 58 of the FIFA Statutes and Article 22 (b) of the RSTP as conferring jurisdiction on the CAS.

41. The jurisdiction of the CAS was not contested by the Respondent, who also recalled that Article 16.2 of the Contract states that:

“Any dispute arising from or related to this Contract will be submitted to FIFA with an appeal possibility before the Court of Arbitration for Sport (CAS-TAS) in Lausanne, Switzerland.”

42. The Order of Procedure was signed by both Parties.

43. In keeping with Article 178 of Chapter 12 of the Swiss Private International Law Act (the *lex arbitri*), the Sole Arbitrator therefore finds that the CAS has jurisdiction.

VI. ADMISSIBILITY

44. Article 58.1 of the FIFA Statutes states:

“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.”

45. The Parties received the grounds of the Appealed Decision from FIFA on 15 April 2021.

46. The Appellant submitted its Statement of Appeal on 6 May 2021, accordingly within the applicable deadline.

47. The appeal is therefore admissible.

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VII. APPLICABLE LAW

48. Article 187(1) of the Swiss Private International Law Act (“PILA”) provides as follows:

“The arbitral tribunal shall decide on the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the case has the closest connection.”

49. Article R58 of the Code provides more specifically 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

50. Article 57 para. 2 of the FIFA Statutes provides as follows:

“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss Law.”

51. Article 2.2 of the Contract states:

“The following elements are an integral part of the Contract:

- a. Statutes, Polices and Regulations of Al Jazira;*
- b. Statutes and Regulations of the Emirates Football Association ‘UAE FA’.*
- c. Statutes and Regulations of the Asian Football Confederation (‘AFC’) and Federation International for Football Association (‘FIFA’) (including, without limitation, the Laws of the game).”*

52. Article 2.4 of the Contract provides that:

“The Player acknowledges the disciplinary authority of Al Jazira and submits to the decisions of the organs for the administration of justice of the aforementioned football bodies (including, without limitation, UAE FA, AFC, FIFA, UAE Laws) provided they have jurisdiction.”

53. Finally, Article 16 of the Contract states:

“DISPUTE RESOLUTION

16.1 Subject to the FIFA Regulations (including, without limitation, the FIFA Regulations on the Status and Transfer of Players), this Contract shall be governed by and interpreted in accordance with the laws of FIFA.

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16.2 *Any dispute arising from or related to this Contract will be submitted to FIFA with an appeal possibility before the Court of Arbitration for Sport (CAS-TAS) in Lausanne, Switzerland.”*

54. The Appellant contends that according to R58 of the Code, the FIFA Regulations and Swiss law shall be applied to the merits “in conjunction” with the UAE legislation and UAE FA regulations as ruled by FIFA itself along with the FIFA RSTP and its COVID-19-related FIFA Guidelines.
55. The Respondent holds that the language of Article 2.4 of the Contract does not establish jurisdiction and applicable law, merely reflecting the Player’s undertaking that, provided the relevant football body has jurisdiction, he will submit to it.
56. The Sole Arbitrator finds it unambiguous that Article 16 of the Contract is determinative when it comes to the Parties’ choice of law. As Article 16.2 clearly confers jurisdiction upon the CAS, there can be no doubt that the choice of law made in 16.1, which makes no reference to laws other than the “laws of FIFA”, subject to its regulations, applies.
57. Accordingly, the applicable FIFA regulations and statutes will be applied primarily, and Swiss law shall apply subsidiarily.

VIII. MERITS

58. Given that the Club has invoked the COVID-19 pandemic as the basis for the salary reduction, and considering that the FIFA regulations are applicable, the FIFA COVID-19 Guidelines and associated FAQ document are the appropriate basis for analysis of whether the Club complied with said regulations when imposing its 40% salary reduction.
59. The remaining deductions made to the Player’s salary are to be analysed individually under the specifically applicable principles and rules.
60. The issues for determination are therefore (i) whether the Club’s 40% salary reduction as of April 2020 was lawful, and (ii) whether the Club was justified in making the additional deductions applied to the Player’s final payment, namely the registration fee, hotel expenses and traffic fine?
 - A. **Was the Club entitled to reduce the Player’s salary by 40% as of April 2020?**
61. The FIFA Guidelines FAQ provides as follows with respect to “Agreements that cannot be performed as originally anticipated”:

“The guiding principles are listed in the preferred order in which FIFA believes clubs and employees should address variations to an employment agreement during any period when a competition is suspended. FIFA strongly recommends that clubs and employees make their best efforts to find collective agreements before following any other guiding principle.

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The guiding principles should be read in conjunction with the principles of non-discrimination and equal treatment. Employees (players or coaches) should be treated as equally as possible when considering variations to employment agreements.

(i) Clubs and employees (players and coaches) should first undertake good-faith efforts to negotiate collective agreements on a league basis (i.e. between an MA or league and the local social partners) or a club basis (i.e. between an individual club and its employees (players and coaches)) where the suspension of a competition requires the amendment of existing employment agreements.

(ii) The FIFA judicial bodies will only recognise a unilateral variation to an employment agreement where such variation complies with the national law referred to in the agreement, a CBA, or another collective agreement mechanism.

(iii) Where:

a. clubs and employees cannot reach an agreement; and

b. national law does not address the situation or collective agreements with a players' union are not an option or not applicable,

unilateral decisions to vary terms and conditions of contracts will only be recognised by the FIFA judicial bodies where they were made in good faith, and are reasonable and proportionate.

(iv) Alternatively, all agreements between clubs and employees should be “suspended” during any suspension of competitions (i.e. suspension of football activities), provided proper insurance coverage is maintained, and adequate alternative income support arrangements can be found for employees during the period in question.”

62. The Parties readily recognize that they did not reach an agreement as to the value of the percentage to apply to a potential salary reduction.

63. The question is therefore whether UAE national law addressed the situation, and, if so, whether the provisions are applicable to the Player considering the Contract and his foreign status.

64. The Appellant invokes the Resolution aimed at helping entities under its jurisdiction cope with the effects of the COVID-19 pandemic.

65. Article 2 of the Resolution provides as follows:

“The companies affected by the precautionary measures referred to and who wish to reorganize the work structure there, must include their procedures, in agreement with the non-citizen employee, according to the following:

1. Implementing the telecommuting system.

2. Granting him a paid leave.

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3. *Granting him leave without pay.*
4. *Reducing his wages temporarily during the period referred to.*
5. *Reducing his wages permanently.”*

66. The Appellant also relies on the UAE FA Circular, which it quotes as follows in its written submissions:

“The clubs may sign consensual contracts addendums between the club and the player/coach include the delay/reduce their salaries for a specific period agreed upon between parties. All parties shall sign new agreements and deliver the same to the UAEFA for approval.”

The Clubs of the UAE Pro League may deduct a percentage of maximum 40% from the UAE national players and coaches' salaries, provided that the minimum salary of the player or coach shall not be less than AED 15,000 monthly. The deduction shall not be applicable to the players and coaches whose salaries are less than AED 15,000 monthly.

The same percentage of deduction shall be applicable fairly and equally to all the players of the club, and without any discrimination between them, taking into consideration the minimum monthly salary of the player or coach.

The decision shall be applicable as of the date of suspending the sports activity on 15/03/2020; pursuant to letter No. 1271/2020 issued by the UAEFA, and shall be enforced until the end of the pandemic or return of the sports activity of any type, whichever is sooner.”

67. In the Appellant's view, the effect of the Resolution and the UAE FA Circular was that by operation of national law, it was empowered to make the 40% deduction to the Player's salary, given that his remaining salary was no less than AED 15,000 per month and the same percentage deduction was being applied to all players.
68. The Respondent contends that the Club has failed to adequately prove the legitimacy of the Resolution and that it is a forgery. The Sole Arbitrator determines that a finding as to the authenticity of the Resolution is not necessary as the issue not dispositive. Firstly, as a matter of applicable law, the FIFA regulations are to be applied. Whether the UAE FA Circular is deemed to be an application of the FIFA regulations and/or FIFA Guidelines, or the Resolution (indeed, it appears to a certain extent to be both) is of no consequence, as explained *infra*.
69. The Appellant's reference to the UAE FA Circular does not entirely correspond to the English version provided as an exhibit to its own submissions. The latter, which appears to reflect the Arabic version more accurately and completely, is worthy of inclusion below as it makes an even more distinct differentiation between the way it is to be applied to UAE national players and foreign players, with specific provisions for each category:

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“First: Professional UAE National Players and Coaches:

- 1- *Clubs may sign consensual contracts addendums between the club and the player/coach regarding the delay/reduce of the players/coaches salaries for a specific period agreed upon between the parties. All parties who shall sign new consensual agreement shall deliver the same to the UAE Football Association for its approval.*
- 2- *The clubs developing in the UAE Pro League may deduct a percentage of maximum 40% from the UAE national players and coaches' salaries, provided that the minimum salary of the player or coach shall not be less than AED 15,000 monthly. The deduction shall not be applicable to the players and coaches whose salaries are less than AED 15,000 monthly.*
- 3- *Clubs developing in the First Division may deduct a percentage of maximum 40% from the UAE national players and coaches' salaries, provided that the minimum salary of the player or coach shall not be less than AED 10,000 monthly. The deduction shall not be applicable to the players and coaches whose salaries are less than AED 10,000 monthly.*
- 4- *The same percentage of salary deduction shall be applicable fairly and equally to all the players of the club, and without any discrimination between them, taking into consideration the minimum monthly salary of the player/coach.*
- 5- *The decision shall be applicable as of the date of suspending the sports activity on 15/03/2020, pursuant to letter No. 1271/2020 issued by the UAE FA, and until the end of the pandemic or return of the sports activity of any type, whichever is sooner.*

Second: Contracts of the Foreign Players / Coaches:

The clubs shall have the right, as they deem fit to their benefits, to negotiate with the players / coaches, taking into consideration the adopted scheme of the FIFA and apply the relevant regulations of the FIFA, and any other regulatory or indicative rules issued by the same concerning the contracts and salaries of the foreign players / coaches.” (Emphasis in paragraphs 2 & 3 added).

70. The inclusion of the subtitles from the original document (underlined and bolded therein) makes it abundantly clear that even in the UAE FA’s own regulatory measures, different rules apply to foreign and national players. The provision (numbered “4” above) which provides for equal application of measures to all players is contained in the section of the document specific to UAE nationals. It ensures that all UAE national players receive the same deduction (provided their salaries meet the requisite monthly minimum), but it is not meant to apply to foreign players (or coaches), who are covered by the following section. The latter does not grant a right to make any salary adjustments that are not fully negotiated and agreed.

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71. As a result, given that the 40% reduction of the Player's salary was a unilateral measure, it is necessary to determine whether such a measure was justified under the FIFA Guidelines, which further provide:
- “When assessing whether a decision is reasonable, the DRC or the PSC may consider, without limitation:*
- a. whether the club had attempted to reach a mutual agreement with its employee(s);*
 - b. the economic situation of the club;*
 - c. the proportionality of any contract amendment;*
 - d. the net income of the employee after contract amendment;*
 - e. whether the decision applied to the entire squad or only specific employees.*
72. While the Parties both accept an agreement was not reached, they differ as to the reasons why.
73. The Club holds that (i) it made attempts to reach a mutual agreement with its employees, (ii) it was in a dire economic situation that required the salary reductions (which represented the Club's largest expense) to be taken, and that considering this (iii) the reduction was proportional, (iv) the Player's net income after the reduction was still substantially higher than other players, and (v) the decision applied to the entire squad. In its view, the Player did not negotiate in good faith and was unreasonable in his demands.
74. The Sole Arbitrator recognizes that the pandemic had severe economic repercussions for the Club, and that it undoubtedly considered appropriately that it had to minimize its costs and sought to do so in what it considered was an equitable fashion. On the other hand, the correspondence provided between the Parties as well as the testimony provided at the hearing demonstrates that even though the Club was in arrears with respect to payments owed to the Player, he nevertheless proposed that he would agree to a 10% reduction in salary. Rather than engage in negotiations directly with the Player with respect to his situation as a foreign Player, the Club's approach was to apply its 40% salary deduction to the entire squad indiscriminately of this fact.
75. The Club's approach to the implementation of the UAE FA Circular appears to have been primarily concerned with a “one size fits all” approach that could meet the criterion of non-discrimination in the reasonability determination. Unfortunately, it also appears that this approach came at the expense of criterion (a). The Club, given its determination to apply the same percentage reduction in salary to the entire squad, did not make a sincere, meaningful attempt at reaching a mutual agreement with the Player accounting for his circumstances as a foreigner. While the Club's attempt to treat everyone “equally” was understandable and laudable conceptually, it was not in keeping with the Player's right to have his situation treated uniquely under the rules that applied to him specifically.
76. The economic situation of the Club, while undoubtedly more difficult than pre-pandemic, and despite the witness evidence submitted, was not objectively demonstrated through relevant accounting documents, making it difficult to assess. The proportionality of the imposed 40% reduction (linked to the net income of the Player post-reduction) is

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something that could and should have been assessed and determined in the context of sincere, individual negotiations with the Player.

77. As a result, the Sole Arbitrator finds that the decision to reduce the Player's salary by 40% was not reasonable primarily in that it did not consider his specific circumstances, which would have been the correct approach under the UAE FA Circular and FIFA Guidelines. Moreover, as the Club did not respond to the Player agreeing to his proposed 10% salary cut, choosing instead to apply a unilateral 40% cut which has found to be unlawful, the Sole Arbitrator does not have a basis to reduce the amounts owed to the Player under the Contract.

B. Was the Club entitled to make the additional deductions?

78. The deductions at issue concern (a) the 1% UAE FA registration fee, (b) the accommodation expenses, and (c) the traffic fine.

a. The 1% UAE FA registration fee

79. The Contract provides at Article 17.8:

“the Player shall pay the 1% registration fee at the UAFFA. Upon express consent of the player. Al Jazira will deduct this amount from the first payment owed to the player in every season during the duration of the employment contract.” (Emphasis added).

80. In light of the contractual language, the Player was entitled to consider that the 1% fee, to the extent that it had not been deducted from the first payment owed to the Player in the season, had been waived by the Club. The Player having relied on this, the Club is estopped from making deductions from any outstanding amount for this purpose.

b. The accommodation expenses

81. The correspondence between the Club and the Alcazar hotel, where the Player was staying, indicates that the Club had instructed the hotel to charge the Player directly for his additional stay. The Club, while submitting invoices, does not submit proof of payment which would have established a right for it to be reimbursed. In light of its failure to meet its burden of proof in this regard, the Sole Arbitrator cannot allow a deduction for hotel expenses to be applied to amounts owed to the Player.

c. The traffic fine

82. Likewise, the Sole Arbitrator finds that an amount for a traffic fine that has not been substantiated (indeed the Club provides no proof of the existence or amount of said fine) cannot be deducted.

C. Conclusion

83. Given the determinations above, the Sole Arbitrator has no basis to set aside or reform the Appealed Decision in any way, and hereby confirms it.

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IX. COSTS

84. Art. R64.4 of the Code provides:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- *the CAS Court Office fee,*
- *the administrative costs of the CAS calculated in accordance with the CAS scale,*
- *the costs and fees of the arbitrators,*
- *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- *a contribution towards the expenses of the CAS, and*
- *the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.”

85. Art. R64.5 of the Code provides:

In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.

86. In light of the findings in this case, the Appellant shall bear the costs of the arbitration.

87. Furthermore, pursuant to Article R64.5 of the CAS Code, and in consideration of the complexity and outcome of the proceedings, the financial resources and the conduct of the Parties, the Sole Arbitrator rules that a contribution in the amount of CHF 3000 (three thousand Swiss Francs) shall be awarded to the Respondent for legal costs and other expenses incurred in connection with these proceedings.

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ON THESE GROUNDS


The Court of Arbitration for Sport rules that:

1. The appeal filed by Al Jazira Sporting Club on 6 May 2021 against Mr Mourad Batna concerning the Decision issued on 11 March 2021 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.
2. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne entirely by Al Jazira Sporting Club.
3. Al Jazira Sporting Club shall pay to Mr Mourad Batna the amount of CHF 3000 (three thousand Swiss Francs) for the legal costs and other expenses incurred in connection with these proceedings.
4. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 27 September 2022

THE COURT OF ARBITRATION FOR SPORT


Alexander McLin
Sole Arbitrator