Arbitration CAS 2022/A/8963 Al-Faisaly Club v. Alexander Merkel & Gazişehir GFK, award of 14 June 2023

Panel: Mr Michele Bernasconi (Switzerland), President; Mr Khaled Banaser (Saudi Arabia); Mr Efraim Barak (Israel)

Football
Contractual dispute – termination of the employment contract
Poor sporting performance
Abusive conduct under article 14(2) of the FIFA RSTP
Compensation for breach of the contract under article 17(1) of the FIFA RSTP
Duty to mitigate - abuses

1. **Poor sporting performance cannot in principle constitute a just cause to terminate an employment contract. Even if such poor performance was substantiated sufficiently, a club alleging of such circumstance should warn its player and sanction him internally before proceeding with a termination as termination of an employment contract should be *ultima ratio*.**

2. **A player's conduct can qualify as abusive within the meaning article 14(2) of the FIFA Regulations on the Status and Transfer of Players (RSTP). That would for example be the case if a player wishes to be transferred against the will of his current club and therefore refuses to train or participate in matches to force the hand of his said club. Under such circumstances the club might have just cause to terminate the contract; as the player would appear to be in breach of his main contractual obligations. The burden of proof in respect of alleged abusive conduct by a player lies with the club. The attitude of a player who would refuse to be transferred on loan to another club does not constitute an abusive conduct as per article 14(2) of the FIFA RSTP.**

3. **The purpose of Article 17(1) FIFA RSTP is to reinforce contractual stability, *i.e.* to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player. When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. The amount of compensation awarded is led by the principle of the so-called positive interest with the purpose of determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. CAS panels have a considerable discretion in determining the amount of compensation to be paid.**

4. In accordance with article 337c(2) of the Swiss Code of Obligations, the duty of mitigation is related to the rule that the employee must permit a set-off against the amount of compensation for what he saved because of the termination of the employment relationship, or what he earned from other work, or what he has intentionally failed to earn. By requesting to his new club to receive most of his remuneration under the new employment contract during the period not covered by the original employment contract, a player will have created a disbalance between the overall value of the new employment contract and the salaries subject to mitigation under the new contract. Given the discretion afforded under article 17(1) of the RSTP, CAS panels are allowed to adjust the amount of mitigation to be considered.

I. PARTIES

1. Al-Faisaly Club (the "Appellant" or "Al-Faisaly") is a professional football club with its registered office in Harma al Majma'a, Saudi Arabia. Al-Faisaly is registered with the Saudi Arabian Football Federation (the "SAFF"), which in turn is affiliated to the *Fédération Internationale de Football Association* ("FIFA").

2. Mr Alexander Merkel (the "First Respondent" or the "Player"), is a professional football player of German and Kazakh nationalities.

3. Gazişehir Futbol Kulübü (GFK) A.Ş. (the "Second Respondent" or "Gazişehir") is a professional football club with its registered office in Gaziantep, Turkey. Gazişehir is registered with the Turkish Football Federation (the "TFF"), which in turn is also affiliated to FIFA.

4. The Player and Gazişehir are hereinafter jointly referred to as the "Respondents", and together with Al-Faisaly as the "Parties".

II. INTRODUCTION

5. The present appeal arbitration procedure concerns an employment-related dispute between Al-Faisaly and the Player.

6. Following claims lodged by both Al-Faisaly as well as the Player, the Dispute Resolution Chamber of FIFA (the "FIFA DRC") decided that Al-Faisaly had no just cause to terminate the employment contract with the Player (the "Employment Contract") and that Al-Faisaly was liable to pay outstanding remuneration in an amount of EUR 95,455.50 net and compensation for breach of contract in an amount of EUR 1,100,008 net to the Player, plus interest (the "Appealed Decision").

7. Al-Faisaly is challenging the Appealed Decision before the Court of Arbitration for Sport ("CAS"), claiming i) that it had just cause to terminate the Employment Contract; ii) that the

Player shall not be awarded compensation, but that instead Al-Faisaly shall be awarded compensation for breach of contract from the Player in the amount of EUR 1,200,000 plus interest; and iii) that this case be sent back to the FIFA DRC for the imposition of sporting sanctions on the Player. Subsidiarily, Al-Faisaly requests for the amount of outstanding compensation to be reduced. The Player requests the Appealed Decision to be confirmed.

III. FACTUAL BACKGROUND

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

A. Background Facts

9. On 24 August 2020, Al-Faisaly and the Player concluded the Employment Contract, valid as from 15 September 2020 until 14 July 2022. Pursuant to the Employment Contract, the Player was, *inter alia*, entitled to i) sign-on fees of USD 400,000 net in both the first and the second season, due on 30 September 2020 and 31 August 2021 respectively; ii) EUR 63,637 net as 11 monthly salaries from 15 September 2020 until 14 August 2021; and iii) EUR 72,728 net as 11 monthly salaries from 15 August 2021 until 14 July 2022.

10. During the 2020/21 season, Al-Faisaly duly paid the Player's salary and sign-on fee, and the Player participated in 31 games for Al-Faisaly.

11. According to the Player, during the 2021/22 pre-season training camp, Al-Faisaly verbally notified him that it was not interested in his services anymore.

12. According to the Player, on 25 July 2021, Al-Faisaly signed the Brazilian football player Mr Ismael Silva, who plays in the same position as the Player (central midfielder) and who became Al-Faisaly's eight foreign player in summer 2021 while its quota was limited to only seven foreign players.

13. According to the Player, on 6 August 2021, he was excluded from the first team of Al-Faisaly for reasons not related to his professional qualities.

14. On 8 August 2021, counsel for the Player sent a letter to Al-Faisaly. This letter, *inter alia*, provides as follows:

"Suddenly, when preseason training session started, [Al-Faisaly] notified the Player that it is not interested in the Player's services anymore and offered the Player to look for a new team. [Al-Faisaly] already signed a number of foreign players, and [the Player], also being the foreigner in the Kingdom of Saudi Arabia (KSA), has a significant risk do [sic] not be registered with the Club for Saudi Arabia League because of [Al-Faisaly's] transfer policy. Please note, it is a mandatory obligation of [Al-Faisaly] to register the Player

for the season 2021/2022, and the opposite will be considered as a significant breach of [the Employment Contract].

Another signal [the Player] received from [Al-Faisaly], when he was excluded from the first team, and forced to participate in two-times trainings with a group of players out of the team. As from 6 August 2021 the Player has two-times trainings every day out of the team. Please note, such conduct of [Al-Faisaly] constitutes a significant breach of the [Employment Contract], that according to the well-established jurisprudence of FIFA and CAS provides the Player a right to terminate his [Employment Contract] with just cause.

Considering the above, I kindly ask you to reinstate the Player immediately in the first team and to provide the Player's registration with [Al-Faisaly] in Saudi Arabia League for the season 2020/2021".

15. On 11 August 2021, Al-Faisaly offered the Player to terminate the Employment Contract and sent a draft termination agreement to the Player.

16. On the same date, 11 August 2021, the Player responded and sent back an amended draft termination agreement.

17. On 15 August 2021, a meeting took place between Al-Faisaly and the Player at Al-Faisaly's office and negotiations with respect to the draft termination agreement took place, but no agreement was reached.

18. On 16 August 2021, Al-Faisaly terminated the Employment Contract by providing the Player with a contract termination notice (the "Termination Notice"), which provides as follows:

"The head coach was surprised with the drop of your technical level and showing la moubalat to improve your performance and to fuse with the head coach's philosophy and you lack of adaptation.

Whereas the technical reports of the head coach were not positive about your performance during the preparation camp of this sportive season;

Whereas [Al-Faisaly] tried to pay your attention about this issue and offered you an opportunity to change the atmosphere sportively and join a team in the UAE on free basis to have more chances of play and to improve your technical performance;

We were surprised by your total rejection and not giving us the chance to negotiate the offer neither sportively or financially;

We have received an offer from an intermediary to join a Turkish club for 600,000 (six hundred thousand USD) and [Al-Faisaly] agreed to pay you the difference to reach your contract value for the second season in full payment but you showed incomprehensible stubborn;

Whereas the administration proposed a termination of the [Employment Contract] by taking charge of the full contract. However, all what you wanted is to receive the full contract value at once and to leave the team;

Despite all attempts of [Al-Faisaly's] administration to reach a mutual and sportive agreement that guarantees both parties rights, you were pushing the [Al-Faisaly], by your behaviour, to terminate the [Employment Contract] and take the full contract value with bad faith;

On 15/08/2021, the administration tried again to find a way for convergence by paying the contract value of the second year throughout monthly installments until the end of the [Employment Contract] but you insisted in receiving the full amount and immediately;

Whereas your hard stance about receiving the full amount immediately in one payment is a proof of your bad faith far from sporting purpose;

We would like to remind you that in accordance with article (14) paragraph (2) of FIFA Regulations on the Status and Transfer of Players (hereinafter referred to as RSTP), your behaviour is considered an abusive behaviour to force [Al-Faisaly] to terminate the [Employment Contract];

Whereas this behavior is considered a just cause to terminate the [Employment Contract];

For these aforementioned reasons and with deep regret, [Al-Faisaly's] administration would like to inform you that the [Employment Contract] is terminated due to abusive behavior in accordance with article (14) paragraph (2) of FIFA (RSTP)".

19. On 16 August 2021, the Player's counsel responded to the Termination Notice, indicated, *inter alia*, as follows:

"In termination notice [Al-Faisaly] relies on abusive conduct from the Player's side that according to the player gross is unfairness [sic]. The Player just wanted to stay in [Al-Faisaly] where he felt himself comfortably, and a desire to keep the contract and not leave for another club is normal and cannot be considered as an abusive conduct and as a breach in principle.

[…] During pre-season training camp the head coach himself was satisfied with the Player's performance and in tete-a-tete discussions the head coach always demonstrated a full respect to the Player. If the head coach has any discontent against the Player, he would say it to the Player face-to-face, but he never did this. Therefore, the Player is of the opinion, that the real reason of the termination of his [Employment Contract] is not connected to the Player's performance.

When before the season 2021/2022 the Club signed a new player Ismael Silva, it was appeared [Al-Faisaly] has more foreign player's that is it allowed according to the existing quota in Saudi Professional League. All of a sudden, [Al-Faisaly] notified the Player that it is not interested in the Player's services anymore and offered the Player to look for a new team. Than the Player was excluded from the first team, and forced to participate in two-times trainings with a group of players out of the team as from 6 August 2021 to the termination date.

Actually, it was [Al-Faisaly] who was abusing the Player and wanted to force him to terminate the [Employment Contract]. It is obvious for the Player, that [Al-Faisaly] wanted him leave the team because [Al-Faisaly] could not register Ismael Silva and therefore needed to free one slot in the list of foreign players.

Because [Al-Faisaly] has jeopardised the Player's career and caused him serious moral and material damage, he is not going to put up with the unfair behavior of [Al-Faisaly] and will go to the end.

Please note, that the Player will submit very soon a claim to FIFA, requesting a compensation and sporting sanctions against [Al-Faisaly]".

20. On 19 August 2021, the Player signed an employment contract with Gazişehir, valid from the date of signing until 31 May 2023, plus an option to extend it until 31 May 2024 (the "Gazişehir Contract"). In accordance with the Gazişehir Contract, the Player was, *inter alia*, entitled to a guaranteed remuneration of EUR 115,000 net (EUR 100,000 salary and EUR 15,000 lump sum payment) for the season 2021/22 and EUR 565,000 net (EUR 550,000 salary and EUR 15,000 lump sum payment) for the season 2022/23.

B. Proceedings before the FIFA Dispute Resolution Chamber

21. On 30 September 2021, the Player filed a claim against Al-Faisaly before the FIFA DRC, maintaining that Al-Faisaly had no just cause to terminate the Employment Contract on 16 August 2021, claiming EUR 63,637 net as outstanding salary over the month of July 2021, EUR 31,818.50 net as outstanding salary over August 2021 *pro rata* and compensation for breach of contract in an amount of EUR 1,200,008 net, plus interest. The Player also requested the FIFA DRC to impose sporting sanctions on Al-Faisaly.

22. Al-Faisaly filed a counterclaim, disputing the substance of the Player's claim, maintaining that it had just cause to terminate the Employment Contract and claiming compensation for breach of contract in an amount of USD 1,200,000. Al-Faisaly also requested the FIFA DRC to impose sporting sanctions on the Player.

23. On 21 April 2022, the FIFA DRC rendered its decision (the "Appealed Decision"), with the following operative part:

"1. The claim of the [Player] is partially accepted.

2. [Al-Faisaly] has to pay to the [Player] the following amount(s):

- *EUR 63,637 net as outstanding remuneration plus 5% interest p.a. as from 15 August 2021 until the date of effective payment;*
- *EUR 31,818.50 net as outstanding remuneration plus 5% interest p.a. as from 17 August 2021 until the date of effective payment;*
- *EUR 1,100,008 net as compensation for breach of contract plus 5% interest p.a. as from 30 September 2021 until the date of effective payment.*

3. Any further claims of the [Player] are rejected.

4. The counterclaim of the [Al-Faisaly] is rejected.

5. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.

6. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:

1. [Al-Faisaly] shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.

2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.

7. The consequences shall only be enforced at the request of the [Player] in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.

8. This decision is rendered without costs" (emphasis omitted by the Panel).

24. On 30 May 2022, the grounds of the Appealed Decision were communicated to the Parties, determining, *inter alia*, as follows:

- As to the termination of the Employment Contract by the Player, the FIFA DRC *"started to analyse the circumstances of [Al-Faisaly's] termination on 16 August, which occurred without previous, warning and shortly after negations about a mutual termination took place, based on alleged "abusive behaviour" of the Player.*

- *Before entering the analysis of the specific case, the [FIFA DRC] deemed it appropriate to remind the parties that only a breach or misconduct which is of a certain severity justifies the termination of a contract. In other words, only when there are objective criteria which do not reasonably permit to expect the continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order to ensure the fulfilment of the contractual duties by the counterparty, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only ever be an ultima ratio measure.*

- *In line with the above, the [FIFA DRC] also referred to the specific wording of art. 14 par 2 of the [FIFA RSTP], according to which "any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause".*

- *The [FIFA DRC] pointed out that [Al-Faisaly] failed to submit any corroborating evidence of the player's alleged abusive behaviour. The [FIFA DRC] wished to strongly emphasize that insisting on the [Employment Contract] and certain payments arising thereof cannot be considered as "abusive behaviour".*

- *Furthermore, the [FIFA DRC] pointed out that the termination occurred without previous warning and therefore could not be considered as ultima ratio.*

- *On account of the above, and taking into account the information on file, the [FIFA DRC] concluded that [Al-Faisaly] had no just cause to terminate the [Employment Contract] on 16 August 2021.*

- *Consequently, the Chamber rejected [Al-Faisaly]'s arguments and its counterclaim".*

- *As to the outstanding remuneration, "the [FIFA DRC] observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, are equivalent to one and a half salaries under the [Employment Contract], amounting to EUR 63,637 net and EUR 31,18.50 net (July 2021 and August 2021 pro rata).*

- *As a consequence, and in accordance with the general legal principle of pacta sunt servanda, the [FIFA DRC] decided that [Al-Faisaly] is liable to pay to the [Player] the amounts which were outstanding under the [Employment Contract] at the moment of termination, i.e. EUR 63,637 net and EUR 31,18.50 net.*

- *In addition, taking into consideration the [Player's] request as well as the constant practice of the [FIFA DRC] in this regard, the latter decided to award the [Player] interest at the rate of 5% p.a. on the outstanding amounts as from the respective due dates until the date of effective payment".*

- *As to the compensation for breach of contract, "the [FIFA DRC] held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the [FIFA DRC] established that no such compensation clause was included in the [Employment Contract] at the basis of the matter at stake.*

- *As a consequence, the members of the [FIFA DRC] determined that the amount of compensation payable by [Al-Faisaly] to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the [FIFA RSTP]. The [FIFA DRC] recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.*

- *Bearing in mind the foregoing as well as the claim of the player, the [FIFA DRC] proceeded with the calculation of the monies payable to the player under the terms of the [Employment Contract] from the date of its unilateral termination until its end date. Consequently, the [FIFA DRC] concluded that the amount of EUR 1,200,008 (i.e. 16 August 2021 until 14 July 2022; 11x EUR 72,728, plus EUR 400,000) serves as the basis for the determination of the amount of compensation for breach of contract.*

- *In continuation, the [FIFA DRC] verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the [FIFA DRC] as well as art. 17 par. 1 lit ii) of the [FIFA RSTP], such remuneration under a new employment contract*

shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.

- *Indeed, the player found employment with [Gazişehir]. In accordance with the [Gazişehir Contract], the player was entitled a total salary of EUR 100,000 for the season 2021/2022. Therefore, the [FIFA DRC] concluded that the player mitigated his damages in the total amount of EUR 100,000.*

- *Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the [FIFA DRC] decided that [Al-Faisaly] must pay the amount of EUR 1,100,008 to the player (i.e. EUR 1,200,008 minus EUR 100,000), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.*

- *Lastly, taking into consideration the player's request as well as the constant practice of the [FIFA DRC], the latter decided to award the player interest on said compensation at the rate of 5% p.a. as of the date of claim, 30 September 2021, until the date of effective payment.*

- *[…]".*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 16 June 2022, Al-Faisaly filed a Statement of Appeal dated 15 June 2022 with CAS, challenging the Appealed Decision, in accordance with Articles R47 and R48 of the 2021 edition of the Code of Sports-related Arbitration (the "CAS Code"). In this submission, Al-Faisaly named the Player and Gazişehir as respondents, requested that the case be submitted to a panel of three arbitrators and nominated an arbitrator.

26. On 7 July 2022, the Player nominated Mr Efraim Barak, Attorney-at-Law in Tel Aviv, Israel, as arbitrator.

27. On 8 July 2022, FIFA renounced its right to request its possible intervention in the proceedings pursuant to Article R52.2 and R41.3 CAS Code.

28. On 12 July 2022, the CAS Court Office informed the Parties that, in the absence of any objection having been filed by Gazişehir within the time limit granted, it was considered that Mr Barak was jointly nominated as arbitrator by the Respondents.

29. On 22 July 2022, the CAS Court Office informed the Parties that the arbitrator nominated by Al-Faisaly had not accepted his nomination as arbitrator and requested Al-Faisaly to nominate another arbitrator.

30. On 1 August 2022, Al-Faisaly nominated Dr Khaled Banaser, Professor of Law in Riyadh, Saudi Arabia, as arbitrator.

31. On 10 August 2022 and within the relevant time-limit, Al-Faisaly filed its Appeal Brief in accordance with Article R51 CAS Code. In this submission, Al Faisaly requested the Panel,

pursuant to Articles R44.3 and R57.3 CAS Code, to order the Respondents to disclose the Gazişehir Contract and any other contracts, as well as any possible annexes or renewals signed with Gazişehir. Furthermore, Al-Faisaly indicated that it intended to hear Mr Salman Bin Dhawi as a witness. Al-Faisaly also requested for a hearing to be held.

32. On 1 September 2022 and within the relevant time-limit, Gazişehir filed its Answer in accordance with Article R55 CAS Code. Together with its Answer, Gazişehir provided a copy of the Gazişehir Contract.

33. On 5 October 2022, the CAS Court Office informed the Parties that, pursuant to Article R54 CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Panel appointed to decide the procedure was constituted as follows:

President:	Mr Michele A.R. Bernasconi, Attorney-at-Law, Zurich, Switzerland
Arbitrators:	Dr Khaled Banaser, Professor of Law in Riyadh, Saudi Arabia
	Mr Efraim Barak, Attorney-at-Law in Tel Aviv, Israel
Ad hoc Clerk:	Mr Dennis Koolaard, Attorney-at-Law in Arnhem, The Netherlands

34. On 11 October 2022 and within the relevant time, the Player filed his Answer in accordance with Article R55 CAS Code. Together with his Answer, the Player provided as well a copy of the Gazişehir Contract. Furthermore, the Player requested the Panel to reject Al-Faisaly's request to hear Mr Salman Bin Dhawi as a witness, because Al-Faisaly had not provided a brief summary of the expected testimony.

35. On 18 October 2022, following an invitation from the CAS Court Office to express their preference in this respect, the Player indicated that he did not deem it necessary for a hearing to be held and preferred the Panel to issue its Award solely based on the Parties' written submissions. Gazişehir did not respond.

36. On 21 October 2022, the CAS Court Office, *inter alia*, informed the Parties that Al-Faisaly's document production request in its Appealed Brief appeared to have been voluntarily complied with. Al-Faisaly did not raise any objection to such conclusion.

37. On 31 October 2022, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing and requested the Parties to indicate their preference for an in person or online hearing. Furthermore, with respect to the testimony of Mr Salman Bin Dhawi, Al-Faisaly was requested to provide a witness statement or a summary of the expected testimony of such witness and to provide information about the witness' position, job, nationality and any relation to Al-Faisaly.

38. On 2 and 3 November 2022 respectively, Al-Faisaly indicated its preference for an in person hearing, while Gazişehir and the Player indicated their preference for an online hearing. Al-Faisaly further renounced to the testimony of Mr Salman Bin Dhawi.

39. On 7 November 2022, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing by video-conference.

40. On 29 and 30 November and 2 December 2022 respectively, Al-Faisaly, the Player and Gazişehir returned duly signed copies of the Order of Procedure to the CAS Court Office, provided to them on 28 November 2022.

41. On 8 December 2022, a hearing was held by video-conference. In addition to the Panel, Ms Pauline Pellaux, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

    a) For the Appellant:

        1) Mr Badr Al Medlaj, Member of Al-Faisaly;

        2) Mr Anis Ben Mime, Counsel;

        3) Mrs Olfa Arjoun, Counsel.

    b) For the First Respondent:

        1) Mr Sergey Lysenko, Counsel;

        2) Mr Vladislav Chepelyov, Counsel.

    c) For the Second Respondent:

        1) Dr Gürkan Özocak, Counsel.

42. Following a suggestion of the Panel during the hearing, the Parties engaged in settlement discussions and subsequently informed the Panel that they would continue to do so after the hearing. The Panel indicated that the hearing would take place as scheduled, but that the Panel would suspend its activities afterwards for a certain limited period of time, pending the settlement discussions.

43. No witnesses or experts were heard.

44. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the members of the Panel.

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

46. The Parties did not provide the CAS Court Office with any update about their settlement discussions within the deadline granted, as a consequence of which the Panel resumed its activities and issues the present arbitral award.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

47. The Panel confirms that it carefully heard and considered in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

A. The Appellant

48. Al-Faisaly's submissions, in essence, may be summarised as follows:

The bad faith of the Player

- During the employment relationship, Al-Faisaly fulfilled in full – as employer – its contractual obligations, including the timely paying of the Player's salaries.

- In the 2020/21 season, the Player started well with Al-Faisaly. However, at the beginning of the second season 2021/22, the Player showed a strange behaviour, showing an obvious nonchalance to the instructions of the new technical staff, which led to a drop in his sporting level.

- Al-Faisaly understood that the Player might have been going through a bad period and it tried to provide him with sporting alternatives. For instance, it offered him a chance to play for another club and return to Al-Faisaly at the end of the season. However, Al-Faisaly was confronted with a lack of interest of the Player which proves his manifest bad faith.

- The Player confirmed in his submission that he was ready to terminate his Employment Contract with Al-Faisaly amicably and that a draft agreement had been established in this sense after multiple meetings with Al-Faisaly's officials.

- The bad faith of the Player was manifested by the fact that he wanted *"to take his entire contract at once, because he was in full negotiation with [Gazişehir] at same time when he negotiated the termination of [the Employment Contract] with [Al-Faisaly]"*.

- Moreover, the Employment Contract was terminated on 16 August 2021, at which time the Player was in Saudi Arabia. On 19 August 2021, the Player confirmed the signature of the Gazişehir Contract on Twitter. On the same day, Gazişehir announced the engagement of the Player for a period of three seasons. This proves and confirms the Player's abusive behaviour by pushing Al-Faisaly to terminate the Employment Contract in order to join Gazişehir.

The termination of the Employment Contract for abusive behaviour of the Player

- Article 14(2) FIFA RSTP has been introduced to prevent a number of behaviours carried out by players in order to cause a club to terminate an employment contract

and leaves it to the judge to determine from the facts presented by the Parties the existence of abusive conduct.

- The Player engaged in this behaviour because he wanted to leave Al-Faisaly as soon as possible given that he was in advanced negotiations with Gazişehir. This is supported by the fact that the Player signed the Gazişehir Contract the day after receiving the Termination Notice.

- A termination based on abusive behaviour does not require a formal notice because the abusive behaviour constitutes just cause for terminating the Employment Contract.

- The real reason for his behaviour is that the Player was offered double compared to what he received from Al-Faisaly. That is why he wanted to leave Al-Faisaly at all costs while guaranteeing his full contract Gazişehir.

Articles 43 et seq. and 337b of the Swiss Code of Obligations

- On a subsidiary basis, considering the evidence provided by Al-Faisaly, even in case the Panel is of the opinion that the Player had just cause to terminate and Al-Faisaly has to pay compensation, the Panel may allocate a percentage of fault to the Player with respect to the early termination of the Employment Contract. In this regard, reference is made to CAS jurisprudence.

- Articles 43 and 44 of the Swiss Code of Obligations (the "SCO") are applicable, since contributory negligence is invoked by Al-Faisaly against the Player. As a result, it is *"impossible"* to assess the extent of the compensation to the degree of fault of the Player and Al-Faisaly with a sensible reduction of the compensation of at least 50%.

- Finally, as to the specific applicability of Article 337b SCO, Al-Faisaly deems that the *"Appellant"*, being the party in breach without just cause, must compensate Al-Faisaly for the damages caused and based on the Employment Contract.

49. On this basis, Al-Faisaly submits the following prayers for relief in its Appeal Brief:

"For all the above facts and for the reasons which shall be further added during these proceedings and reserving the right to modify the following requests in the Brief of Appeal in accordance with article R51 of the CAS Code, the Appellant respectfully requests to the Court of Arbitration for Sport to admit this Statement of Appeal, filed by Al Faisay [sic] *Club, against the Player Mr. Alexander Merkel, and confirm its jurisdiction to decide the present dispute.*

In addition, the Appellant respectfully requests the Panel of CAS:

a. to annul in full and set aside the challenged Decision passed by FIFA DRC on 21 April 2022 (Ref. Nr. FPSD-3857);

b. to establish that the Respondent has terminated without just cause the Employment Contract;

c. to condemn Mr. Alexander Merkel to pay in favour of Al Faisay [sic] *Club a compensation, for the early termination of the Employment Contract without just cause, calculated in the amount of Eur 1.200.000 ;*

d. to condemn Mr. Alexander Merkel to pay an interest of 5% on the above amount due to the Appellant, calculated from the date of the unlawfully termination of the Employment Contract, i.e. from 16 August 2021 until the date of effective payment;

e. to send back to the FIFA Football Tribunal for the possible application on the Respondent, Mr. Alexander Merkel, of the sporting sanctions in accordance with article 17 para. 3 of the FIFA RSTP;

on a subsidiary basis.

f. to reduce the amounts of outstanding and compensation awarded in first instance in favour of the Player for the reasons which will be described with the brief of appeal and to establish that these sums must be considered as gross;

g. to grant any other relief or orders it deems reasonable and fit to the case at stake.

in any case,

h. to order to the Respondent, to bear in full the costs of this arbitration proceedings;

i. to order to the Respondent, to bear the legal costs and expenses borne by the Appellant, Al-Faisaly Club, in relation to this Appeal and the first instance degree, in an amount to be determined at the discretion of the Panel".

B. The First Respondent

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

Burden and standard of proof

- Al-Faisaly makes numerous allegations not supported by any tangible evidence. However, a party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In accordance with CAS jurisprudence, the Panel should be "comfortably satisfied" when adjudicating on the case at hand.

- Submitting evidence related to the increase of the transfer value of the Player after joining Gazişehir has nothing to do with the salary of the Player. Therefore, the statement that Gazişehir's offer was significantly better in financial terms should be rejected.

- Also, Al-Faisaly failed to prove the "bad faith" of the Player, the indifference of the Player to the instructions of the technical staff and that the Player had contact with Gazişehir prior to the termination of the Employment Contract.

The Employment Contract was terminated by the Al-Faisaly without just cause

- Al-Faisaly unilaterally terminated the Employment Contract by means of the Termination Notice. In the Termination Notice, it cited the drop of the Player's technical level and indifference to improve his performance, and the abusive behaviour of the Player, which was reflected by the Player's refusal to agree to the termination agreement offered to him.

- It follows from well-established FIFA DRC and CAS jurisprudence that in order for a party to terminate an employment contract with just cause, i) the other party's breach shall be so extremely serious that the essential conditions under which the contract was concluded are no longer present and the injured party cannot in good faith be expected to continue the employment relationship; and ii) the injured party must warn the other party and give it a chance to comply with its obligations and remedy the alleged breach. Neither of these conditions are met in the present case.

General comments

- The Player never wished to leave Al-Faisaly, but it was Al-Faisaly itself that started negotiations to terminate the Employment Contract. Al-Faisaly has not established any facts which could indicate that the Player forced Al-Faisaly to terminate the Employment Contract on 16 April 2021. Article 14(2) FIFA RSTP cannot justify Al-Faisaly's actions. Al-Faisaly did not adduce sufficient evidence to prove most of its statements, and in any event failed to establish "abusive conduct" of the Player. This argument is already enough for the Panel to dismiss Al-Faisaly's appeal.

Comments regarding alleged "nonchalance" and "drop in sporting level"

- Contrary to Al-Faisaly's allegation, the Player has never showed *"strange behaviour, showing an obvious nonchalance"*. It is notable that Al-Faisaly did not provide any evidence to support its statement about the Player's *"nonchalance"*. Al-Faisaly never notified the Player either in writing or orally that he needed to change his behaviour and/or attitude to games and trainings.

- The alleged poor sporting performance of the Player cannot even theoretically be a just cause to terminate the Employment Contract. Reference is made to CAS jurisprudence in this respect.

- Furthermore, Al-Faisaly never claimed that its head coach was not satisfied with the Player's performance before the Termination Notice was issued. On the contrary, in *tete-a-tete* discussions, the head coach always showed full support and respect to the

Player. Also, the head coach rated the individual skills of the Player higher than those of central midfielder Mr Hicham Faik, who turned out to be one of the key players of Al-Faisaly in the 2021/22 season. In the 2020/21 season, the Player participated in 31 games out of 34.

- The Employment Contract does not contain any provisions which would allow Al-Faisaly to terminate it unilaterally based on the Player's poor performance.

- Moreover, the evaluation of the technical level of the Player was made by employees of Al-Faisaly and, thus, cannot be objective or in any way proven by Al-Faisaly.

Comments on the Player's behaviour during the negotiations of a termination agreement

- The fact that the Player did not want to play for another club in the 2021/22 season cannot be considered abusive conduct or a breach of the Employment Contract. Also the fact that the Player tried to protect his interests and insisted on the performance of the Employment Contract and certain payments arising therefrom cannot be considered *"abusive behaviour"*.

- In contrast, Al-Faisaly initiated discussions about the termination of the Employment Contract, it provided the Player with an offer to terminate the Employment Contract early, it signed an 8th foreign player and deregistered the Player for the 2021/22 season, and it ordered the Player not to participate in collective training sessions. In fact, these actions of Al-Faisaly constitute a just cause to terminate the Employment Contract within the meaning of Article 14(2) FIFA RSTP.

Comments on the Player's negotiations with Gazişehir

- The Player does not dispute having signed the Gazişehir Contract on 19 August 2021. However, Al-Faisaly does not prove that he entered into negotiations with Gazişehir prior to 16 August 2021. There is nothing suspicious about this. By signing the Gazişehir Contract, the Player fulfilled his duty to mitigate his damages caused by the termination of the Employment Contract by Al-Faisaly. Actually, it is in Al-Faisaly's interest that the Player managed to sign the Gazişehir Contract, because the compensation for breach of contract due to the Player by Al-Faisaly becomes less.

The lack of warnings issued by Al-Faisaly prior to the Termination Notice

- It follows from CAS jurisprudence that, before terminating a contract, the injured party shall in any case warn the party in breach and give it an opportunity to remedy the alleged breach. Moreover, the party shall take more lenient measures before prematurely terminating the contract.

- Al-Faisaly should have warned the Player and have given him the opportunity to remedy his breach before terminating the Employment Contract. Furthermore, Al-Faisaly should have taken more lenient measures before prematurely terminating the Employment Contract. However, Al-Faisaly terminated the Employment Contract without any warning or taking any other measures first.

Al-Faisaly's conduct constituted just cause for the termination of the Employment Contract by the Player

- Besides the fact that Al-Faisaly did not have just cause to terminate the Employment Contract, the Player actually could have terminated the Employment Contract.

- First, the Player was not registered to participate in the 2021/22 season due to the limit on foreign players. In several cases the FIFA DRC determined that the mere fact of non-registration constitutes a just cause for a player to terminate an employment contract.

- Second, the Player was forced to train outside of the first team to *"push the termination"* of the Employment Contract on the terms of Al-Faisaly. Despite the Player's request to be reinstated in the first team, Al-Faisaly only offered him to terminate the Employment Contract. Forcing the Player to train out of the team on a permanent basis constituted just cause for the Player to prematurely terminate the Employment Contract.

The financial consequences of Al-Faisaly's breach of the Employment Contract

- The Player agrees with the calculation of the amount due to the Player in the Appealed Decision. In its Appeal Brief, Al-Faisaly in principle agreed with the calculation in the Appealed Decision, except for the fact that i) the amounts should be considered gross and that ii) the amount should be reduced due to a *"degree of fault of both parties"*.

- Article 4 of the Employment Contract explicitly establishes that all amounts set forth in the Employment Contract are net. Therefore, all amounts awarded to the Player shall be net.

- Furthermore, as Al-Faisaly failed to prove any "bad faith" or "abusive conduct" on the side of the Player. Accordingly, it shall be decided that the termination of the Employment Contract was solely caused by Al-Faisaly.

51. On this basis, the Player submits the following prayers for relief in his Answer:

"1. The Appeal filed by Al-Faisaly Football Club is dismissed.

2. The decision issued on 21 April 2022 by the FIFA Dispute Resolution Chamber in the case REF No. FPSD-3857 is confirmed.

3. Al-Faisaly Football Club shall bear all the costs incurred with the present procedure.

4. Al-Faisaly Football Club shall pay to Mr Alexander Merkel a contribution towards his legal and other costs, in the amount to be determined at the discretion of the Panel".

C. The Second Respondent

52. Gazişehir's submissions, in essence, may be summarised as follows:

- Gazişehir met the Player for the first time a few days before signing the Gazişehir Contract. In this meeting, officials of Gazişehir asked the Player whether the Employment Contract with Al-Faisaly was still in force and informed him that Gazişehir would not carry out any negotiation if the Employment Contract was in force. The Player stated that the Employment Contract was unilaterally terminated by Al-Faisaly and provided Gazişehir with the Termination Notice.

- Following receipt of the Termination Notice, it was understood that the Employment Contract was terminated unilaterally by Al-Faisaly and that the Player was released and negotiations with the Player were initiated.

- As a result of negotiations, Gazişehir and the Player came to an agreement on the salary and terms, and Gazişehir Contract was signed on 19 August 2021 for 2+1 years.

- Al-Faisaly claims that the Player started negotiations with Gazişehir while the Employment Contract was still in force. Gazişehir absolutely rejects this claim. While the Player's Employment Contract was in force, Gazişehir had no contact with the Player.

- The Player also guaranteed under Article 27 of the Gazişehir Contract that any claims deriving from the Employment Contract could not adversely affect any obligation to play for Gazişehir.

- Al-Faisaly claims that the Player and Gazişehir signed the Gazişehir Contract the day after the termination of the Employment Contract. This is not true. The Employment Contract was terminated on 16 August 2021 and the Gazişehir Contract was signed on 19 August 2021. Three days is an extremely reasonable period in a summer transfer window. There is no evidence suggesting that the negotiations started before 16 August 2021.

- According to the Employment Contract, if it had not been terminated, the Player would have received a total remuneration of EUR 1,200,008 from Al-Faisaly for the 2021/22 season. As follows from the Gazişehir Contract, the Player is entitled to a guaranteed payment of EUR 115,000 and match bonuses in the maximum amount of EUR 50,024 for 2021/22 season. As such, the maximum payment the Player could receive was EUR 165,000. Considering that the Player would have received a much higher salary from Al-Faisaly, the claim that the Player signed the Gazişehir Contract to receive

more salary is completely false. It would be impossible for Gazişehir to pay double the amount of the salary of Al-Faisaly.

- Additionally, although Gazişehir is not a party to the dispute between Al-Faisaly and the Player, the financial and/or sportive grounds indicated as reasons for the unilateral termination in the Termination Notice do not constitute a just cause for the termination of the Employment Contract pursuant to the FIFA regulations. Regardless of the decision rendered, we would like to *"reword"* that Gazişehir has no connection to such conflict.

- If the termination of the Employment Contract is determined to be without just cause and Al-Faisaly is ordered to pay compensation to the Player, a fault rate should be allocated to the Player and at least the fee he received from Gazişehir or the amount to be determined by the fault rate should be deducted from this compensation. As this is an issue between the Player and Al-Faisaly, we do not have any answer regarding this claim, but we submitted the Gazişehir Contract.

- The only reason why Gazişehir is a "party" in these proceedings is that the FIFA DRC requested information about the case between Al-Faisaly and the Player. However, it is clear that these proceedings are between Al-Faisaly and the Player. Therefore, as Gazişehir is not claimed to be faulty and no claims have been lodged regarding Gazişehir, it is clear all claims against Gazişehir should be rejected.

53. On this basis, Gazişehir submits the following prayers for relief in his Answer:

"Since the dispute to this lawsuit is between Al-Faisaly (Appellant) and the Player (First Respondent), GFK (Second Respondent) has nothing to do with the dispute, and also GFK made transfer negotiations and signed an employment contract with the Player after the former contract between the Player and Al-Faisaly was terminated, we kindly request from your honorable Panel the dismissal of the case in terms of GFK, and decision for the judicial costs and attorney fees to be paid by the Appellant".

VI. JURISDICTION

54. Article R47 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".

55. The jurisdiction of CAS, which is not disputed, derives from Article 57(1) FIFA Statutes (May 2021 Edition), as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"*, and Article R47 CAS Code. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by the Parties.

56. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VII. ADMISSIBILITY

57. The appeal was filed within the deadline of 21 days set by Article 57(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

58. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

59. Article R58 CAS Code provides as follows:

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

60. Article 56(2) FIFA Statutes provides the following:

> *"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".*

61. With reference to Article R58 CAS Code and Article 56(2) the Parties agree that the current dispute should be decided applying the FIFA RSTP as well as Swiss law. Al-Faisaly initially maintained that Egyptian law was subsidiarily applicable in its Statement of Appeal, but indicated in its Appeal Brief that Swiss law was subsidiarily applicable.

62. Al-Faisaly and Gazişehir do not refer to any particular edition of the FIFA RSTP, whereas the Player maintains that the February 2021 edition applies.

63. The Panel agrees that the applicable regulations are the Statutes and various regulations of FIFA, in particular the FIFA RSTP. However, as to the applicable edition of the FIFA RSTP, the Panel notes that, since the Player's claim was lodged with the FIFA DRC on 30 September 2021, the August 2021 edition (and not the February 2021) is applicable, as was also held by the FIFA DRC in the Appealed Decision.

64. Additionally, in accordance with Article 56(2) FIFA Statutes, Swiss law is applicable should the need arise to fill a possible gap in the various rules of FIFA.

IX. MERITS

A. The Main Issues

65. The main issues to be resolved by the Panel are the following:

i. Did Al-Faisaly have just cause to terminate the Employment Contract?

ii. What are the consequences thereof?

i. Did Al-Faisaly have just cause to terminate the Employment Contract?

66. Since Al-Faisaly terminated the Employment Contract on 16 August 2021, Al-Faisaly has the burden of proof to establish that it had just cause to do so.

67. In the Termination Notice dated 16 August 2021, and in these proceedings, Al-Faisaly invoked *"the drop of [the Player's] technical level and showing la moubalat [sic] to improve your performance",* and *"pushing the club, by your behaviour, to terminate the [Employment Contract] and take the full contract value with bad faith"* for terminating the Employment Contract.

68. On the other hand, the Player holds that he did not breach any of his contractual obligations, that a drop of sporting performance cannot qualify as a just cause for termination and that he did not act in an abusive manner aimed at forcing Al-Faisaly to terminate the Employment Contract, but that it was rather Al-Faisaly that did not comply with its contractual obligations by, *inter alia*, deregistering the Player and forcing him to train separated from the first team.

a) The Regulatory Framework Applicable to Assessing the Termination of an Employment Contract

69. Article 14 FIFA RSTP provides as follows:

> *"1. A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.*
>
> *2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause".*

70. Besides the general Article 14, the FIFA RSTP also provide for more specific reasons to terminate an employment relationship, namely Article 14bis (terminating a contract for outstanding salaries) and Article 15 (sporting just cause), but these provisions are not invoked in the matter at hand.

71. Rather, Al-Faisaly maintains that the behaviour of the Player qualifies as "abusive conduct" in the sense of Article 14(2) FIFA RSTP and that the actions of the Player generally constituted a just cause to terminate the employment relationship.

72. As to the general provision of Article 14(1) FIFA RSTP, it is longstanding and consistent CAS jurisprudence that:

"The RSTP 2001 do not define when there is "just cause" to terminate a contract. In its established legal practice, CAS has therefore referred to Swiss law in order to determine the purport of the term "just cause". Pursuant to this, an employment contract which has been concluded for a fixed term, can only be terminated prior to expiry of the term of the contract if there are "valid reasons" or if the parties reach mutual agreement on the end of the contract (see also ATF 110 I 167; WYLER R., Droit du travail, Berne 2002, p. 323 and STAEHELIN/VISCHER, Kommentar zum Schweizerischen Zivilgesetzbuch, Obligationenrecht, Teilband V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, marg. no. 17 ad Art. 334, p. 479). In this regard Art. 337 para. 2 of the Code of Obligations (CO) states – according to the translation into English by the Swiss-American Chamber of Commerce: "A valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship". According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (ATF 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa). Particular importance is thereby attached to the nature of the breach of obligation. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (ATF 101 Ia 545). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus (ATF 5 May 2003, 4C.67/2003 no. 2). According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit., p. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., op. cit., p. 364 and TERCIER P., op. cit., no. 3394, p. 495)" (CAS 2006/A/1180, para. 25 of the abstract published on the CAS website).

73. The Panel fully adheres to such jurisprudence, which was followed in recent CAS cases (cf. CAS 2019/A/6171 & 6175, para. 93; CAS 2017/A/5312, para. 82; CAS 2020/A/6727, para. 113). The Panel will therefore examine whether the Player's conduct was of such a nature that Al-Faisaly had just cause to terminate the Employment Contract, i.e. whether it could or could not be reasonably expected to continue its employment relationship with the Player.

74. In making such assessment, and given Al-Faisaly's allegation that the Player pushed it to terminate the Employment Contract, the Panel will also consider the applicability of Article 14(2) FIFA RSTP.

75. The Panel notes that Article 14(2) was newly implemented in the June 2018 version of the FIFA RSTP. In FIFA Circular no. 1625 dated 26 April 2018 it is, *inter alia*, explained to the stakeholders that Article 14 FIFA RSTP *"has been amended to include a new paragraph concerning abusive situations where the stance of a party (either a player or a club) is intended to force the counterparty to terminate or change the terms of the contract"*.

b) Assessment of the Player's Conduct

76. Again, given that Al-Faisaly terminated the Employment Contract, the burden of proof in establishing that such premature termination was justified lies with Al-Faisaly.

77. The Panel notes that the relationship between the Player and Al-Faisaly deteriorated at the start of the 2021/22 season. The Panel recalls that, in line with the Termination Notice, Al-Faisaly invoked two reasons for the termination of the Employment Contract: i) the drop in sporting performance; and ii) the Player's pushing of Al-Faisaly to terminate the Employment Contract and take the full contract value.

1) The Alleged Drop in the Player's Sporting Performance

78. As to the drop in sporting performance of the Player, the Panel holds that such drop in sporting performance in principle cannot constitute a "just cause" to terminate an employment contract with a football player. In this regard, the Panel agrees with the approach taken in CAS 2016/A/4846, which states that:

> *"[T]he Panel finds that it is intrinsic to sport in general, and football in particular, that competition is fierce and that athletes frequently overachieve or underachieve. This is literally and figuratively "part of the game". If clubs were permitted to terminate employment contracts of alleged underachieving players, the concept of pacta sunt servanda, one of the principal pillars in the FIFA RSTP, would be seriously undermined. If a player consistently does not show a preparedness to improve his performance and to comply with the club's directions, deliberately playing below his level, in other words if wilful misconduct is proven, this may well lead to a justified termination, but if a player is perceived to underachieve while showing no lack of dedication, a termination for the sole reason of poor performance cannot be considered to constitute a just cause to terminate the contract in the absence of strict contractual language, particularly so because the term of employment contracts in football are restricted to a maximum term of 5 years".*

79. Additionally, the Panel finds that, in this particular case, and taking into account the abovementioned framework, no drop in the performance of the Player has been established. As argued by the Player during the hearing, Al-Faisaly did not present any technical report demonstrating that there was a drop in the Player's technical level.

80. Even if such drop in performance had been established, this would have not been a valid basis for Al-Faisaly to terminate the Employment Contract without notice. For such reason to be considered, at the very least a strong and abusive lack of dedication on the side of the Player would be required. However, besides a lack of evidence of any drop in performance, there is also no evidence of any lack of dedication on the side of the Player.

81. What is more, before deciding to terminate the Employment Contract because of an alleged drop in the performance of the Player, the Panel finds that Al-Faisaly should at least (potentially repeatedly) have warned and sanctioned the Player internally, before proceeding with a termination. As indicated in the Appealed Decision, termination of an employment contract is an *ultima ratio*.

82. Consequently, the Panel is satisfied that the alleged drop in the Player's sporting performance has not been proven and that, in any event, it would not justify the termination of the Employment Contract by Al-Faisaly.

2) The Player's Alleged Abusive Conduct

83. As to the *"pushing to take the full contract value"*, the Panel finds that Al-Faisaly failed to submit any corroborating evidence of the Player's alleged abusive behaviour aimed at forcing Al-Faisaly to terminate the Employment Contract in the sense of Article 14(2) FIFA RSTP.

84. During the hearing, the Player referred to the FIFA Commentary on the Regulations on the Status and Transfer of Players (edition 2021) (the "FIFA Commentary") with respect to Article 14(2) FIFA RSTP. The Panel notes that the FIFA Commentary provides, *inter alia*, as follows in this respect:

> *"A player's conduct can also qualify as abusive within the meaning article 14 paragraph 2. One potential example might occur if a player wishes to leave their club prematurely to join a new club, but their current club refuses to release them. To force the club to agree to the transfer, the player might start refusing to train or to participate in matches, coming up with various excuses for their behaviour. Under such circumstances the club might have just cause to terminate the contract; after all, the player would appear to be in breach of their main contractual obligations. However, by terminating the contract, the club would be doing exactly what the player wants. While compensation might become payable to the club because of the termination, it would lose the player and their special skills.*
>
> *Just as a player alleging abusive conduct by a club is responsible for proving that the misconduct took place, the burden of proof in respect of alleged abusive conduct by a player lies with the club"* (FIFA Commentary, p. 112).

85. In support of its allegation that the Player acted abusively, Al-Faisaly merely relies on correspondence exchanged with the Player by means of which the Player insisted on receiving the entire remaining value of the Employment Contract and that he would otherwise not agree with an earlier termination of the Employment Contract.

86. The Panel finds that insisting on the performance of the Employment Contract and only conditionally agreeing to an earlier termination thereof cannot be considered as "abusive behaviour" in the context of Article 14(2) FIFA RSTP. As a matter of fact, the Panel deems that the Player was acting in accordance with the principles of contractual stability and *pacta sunt servanda* by insisting on the full performance of the Employment Contract. For an employing club, to argue that a player acted with bad faith because he was not prepared to waive any of his contractual entitlements is, quite frankly, inacceptable.

87. The Panel also finds that the Player was by no means required to accept any proposal from Al-Faisaly to be transferred on loan to another club. The Player was entitled to insist on the performance of the Employment Contract.

88. There is no indication on file that the Player would have refused to participate in training sessions or of matches of Al-Faisaly.

89. There is no evidence of any negotiations having taken place between the Player and Gazişehir before Al-Faisaly terminated the Employment Contract. The Panel does not consider it strange or unusual that the Player signed the Gazişehir Contract three days after the Employment Contract was terminated by Al-Faisaly. In any event, even if the Player had already discussed the terms of a potential future employment contract with Gazişehir, the Panel does not consider this to be inappropriate. Indeed, considering the stance taken by Al-Faisaly and that Al-Faisaly provided the Player with a draft termination agreement, it was probably clear for the Player that his employment relationship with Al-Faisaly was coming to an end. It would therefore not have been unreasonable for the Player to explore contingency options. Al-Faisaly's allegations in this respect may have been relevant had the Player terminated the Employment Contract, but such decision was a unilateral decision taken by Al-Faisaly.

90. In any event, as argued by the Player, and as assessed in more detail below, the fact that the Player found alternative employment so quickly after his Employment Contract was terminated comes to the advantage of Al-Faisaly, because any such alternative salary earned is a mitigation of the Player's damages and justifies a reduction of the amount of compensation for breach of contract otherwise due to the Player by Al-Faisaly.

91. Al-Faisaly's contention that the Player would have steered towards a termination of the Employment Contract because he would allegedly earn double the salary with Gazişehir is clearly contradicted by the content of the Gazişehir Contract. Indeed, whereas the Player earned EUR 1,1 million net and EUR 1,3 million net per season with Al-Faisaly, with Gazişehir he was entitled to guaranteed remuneration of EUR 115,000 net for the first season and EUR 565,000 net for the second season, i.e. significantly less than he earned with Al-Faisaly.

92. Finally, although the Player advances a number of arguments as to why he should have been entitled to terminate the Employment Contract with just cause, the Panel does not consider it necessary to assess such arguments, because the decisive question is whether Al-Faisaly had just cause to terminate the Employment Contract and this question is already answered in the negative.

93. Consequently, the Panel finds that Al-Faisaly did not have just cause to terminate the Employment Contract on 16 August 2021.

ii. What are the consequences thereof?

a) The claim filed by Al-Faisaly

94. In light of the conclusion that Al-Faisaly did not have just cause to terminate the Employment Contract, Al-Faisaly's claim for the amount of EUR 1,200,000 as compensation for breach of contract by the Player is dismissed. Also, Al-Faisaly's request that this case be

sent back to the FIFA DRC for the possible application of sporting sanctions on the Player is dismissed, all this leaving open the theorical issue whether it can be admitted that Al-Faisaly raised or not a claim against Gazişehir.

95. Rather, the Panel will assess below whether the Player is entitled to receive any outstanding remuneration from Al-Faisaly and whether any compensation for breach of contract is to be paid.

b) Outstanding Salaries

96. With respect to the Player's claim for outstanding salaries, the FIFA DRC decided in the Appealed Decision that Al-Faisaly, in accordance with the principle of *pacta sunt servanda*, was liable to pay the Player EUR 95,455.50 net. This amount corresponds to the Player's salaries of July 2021 (EUR 63,637 net) and the salary of August 2021 until the end of the first year of the Employment Contract, i.e. 15 August 2021 (EUR 31,818.50 net).

97. Al-Faisaly did not submit any specific arguments as to why such calculation would be incorrect or why such amount should not be due to the Player.

98. The Panel finds it reasonable and fair that Al-Faisaly pays the Player the remuneration that was outstanding at the time Al-Faisaly terminated the Employment Contract, i.e. the amount of EUR 95,455.50 net.

99. As to the interest to be awarded over such amounts, the Employment Contract provides that the monthly salary is payable *"no later than the day 15th of the next month"*.

100. Article 102(2) SCO further provides that *"[w]here a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the obligor is automatically in default on expiry of the deadline"*, while, in accordance withe Article 104 SCO default interest is of 5% per annum.

101. The July 2021 salary therefore fell due on 15 August 2021.

102. As to the August 2021 salary, despite the fact that it had not formally fallen due on the date of termination of the Employment Contract, given that the Player was employed and provided services for Al-Faisaly in the first half of the month of August 2021, the Panel finds that the Player is entitled to such outstanding remuneration.

103. Indeed, Article 339(1) SCO provides as follows:

"When the employment relationship ends, all claims arising therefrom fall due".

104. Accordingly, the Panel finds that interest over the August 2021 fell due as from the date following 16 August 2021, i.e. the date of termination of the Employment Contract.

105. Furthermore, Article 73(1) SCO provides as follows:

"Where an obligation involved the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5% per annum".

106. Consequently, the Panel decides that, in confirmation of what was pronounced in the Appealed Decision, interest at a rate of 5% *per annum* is due over the amount of EUR 63,637 as from 15 August 2021 and over the amount of EUR 31,818.50 as from 17 August 2021.

c) The Regulatory Framework applicable to Awarding Compensation for Breach of Contract

107. Having established that Al-Faisaly had no just cause to terminate the Employment Contract on 16 August 2021, the Panel will now deal with the issue of compensation for breach of contract.

108. The Panel finds that the amount of compensation for breach of contract to be paid by Al-Faisaly to the Player is to be determined on the basis of Article 17(1) FIFA RSTP. Article 17(1) FIFA RSTP provides as follows:

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

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

Bearing in mind the aforementioned principles, compensation due to a player shall be calculated as follows:

i. in case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated;

ii. in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract.

iii. Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in the points i. and ii. above. The terms of such an agreement shall prevail".

109. The Panel takes due note of previous CAS jurisprudence establishing that the purpose of Article 17(1) FIFA RSTP is to reinforce contractual stability, i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (CAS 2008/A/1519-1520, para. 80, with further references to: CAS 2005/A/876, p. 17*: "[…] it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability' […]"*; CAS 2007/A/1358, para. 90; CAS 2007/A/1359, para. 92: *"[…] the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability […]"*; confirmed in CAS 2008/A/1568, para. 6.37).

110. In respect of the calculation of compensation in accordance with Article 17(1) FIFA RSTP and the application of the principle of *"positive interest"*, the Panel follows the framework set out by a previous CAS panel as follows:

> *"When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.*
>
> *As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have if no breach had occurred.*
>
> *The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see Streiff/von Kaenel, Arbeitsvertrag, Art. 337d N 6, and Staehelin, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also Wyler, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) (…).*
>
> *The principle of the "positive interest" shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the player by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the player from a third party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including the specificity of sport, as foreseen in art. 17 FIFA Regulations"* (CAS 2008/A/1519-1520, para. 85 *et seq.* of the abstract published on the CAS website).

111. Considering the development in CAS jurisprudence, this is now the common approach adopted by CAS panels (see, *inter alia*, CAS 2018/A/6017, CAS 2017/A/5366, CAS 2016/A/4843, CAS 2015/A/4046 & 4047, CAS 2015/A/4346, CAS 2010/A/2146 & 2147 and CAS 2008/A/1519 & 1520). As such, CAS panels have a considerable discretion in determining the amount of

compensation to be paid, which has been accepted in CAS jurisprudence (see, *inter alia*, CAS 2018/A/6017 and CAS 2018/A/5607).

112. The Panel finds that the legal framework set out above and the principle of positive interest are applicable to the present case and adheres thereto. Against this background, the Panel will proceed to assess the Player's objective damages, before applying its discretion in adjusting this total amount of objective damage to an appropriate amount of damages, if deemed necessary, in particular in considering the Al-Faisaly's argument that the alleged contributory negligence of the Player should result in the consequence that the amount of compensation for breach of contract otherwise payable is to be reduced on such basis.

d) Determining the Amount of Compensation for Breach of Contract

113. In view of the above, the Panel is satisfied that the Player is entitled to compensation for breach of contract on the basis of Article 17(1) FIFA RSTP, in the light of the principle of the "positive interest" as specified above and with due consideration of the duty to mitigate damages according to Swiss law which is consistent with CAS jurisprudence.

114. At the outset, the Panel notes that it is undisputed between the Parties that the residual value of the Employment Contract amounts to EUR 1,200,008 net, as this was the amount payable to the Player by Al-Faisaly between the moment of termination until the Employment Contract would have expired on 14 July 2022. Because Al-Faisaly terminated the Employment Contract without just cause, it deprived the Player of such income, which therefore comprise damages for the Player.

115. However, it is undisputed that the termination without just cause by Al-Faisaly enabled the Player to conclude the Gazişehir Contract, initially valid as from 19 August 2021 until 31 May 2023. In accordance with the Gazişehir Contract, the Player was entitled to a guaranteed remuneration of EUR 115,000 net (EUR 100,000 salary and EUR 15,000 lump sum payment) for the season 2021/2022 and EUR 565,000 net (EUR 550,000 salary and EUR 15,000 lump sum payment) for the season 2022/2023.

116. Al-Faisaly maintains that such arrangement between the Player and Gazişehir was made in bad faith, as the difference in salary between the first and the second year is very large. Al-Faisaly requests that the amount of compensation for breach of contract to be awarded to the Player is to be reduced on such basis.

117. During the hearing, following a question of counsel for Al-Faisaly, counsel for Gazişehir indicated that the division of salary between the first and the second year of the Gazişehir Contract was made upon the request of the Player. Although counsel for Gazişehir later somewhat tried to nuance such initial statement by indicating that the difference in salary between the first and the second season was the result of a deal with the Player and that dividing it equally would have been possible as well, the Panel finds that this does not take away the veracity of his initial statement.

118. When assessing the Player's objective damages, the Appealed Decision took into account the salary the Player was entitled to receive under the Gazişehir Contract during the period of overlap between the Employment Contract and the Gazişehir Contract and applied a mitigation of EUR 100,000. The FIFA DRC thus only considered the Player's salary under the Gazişehir Contract and not the lump sum payment of EUR 15,000. The Panel finds that an argument could be made that also the lump sum payment is to be considered as mitigation as it was a guaranteed payment, but notes that Al-Faisaly did not challenge this aspect and consistently referred to a mitigation of EUR 100,000 during its pleadings.

119. The Panel therefore finds that only the amount of EUR 100,000 should in principle be deducted from the amount of compensation otherwise payable to the Player by Al-Faisaly.

120. Furthermore, insofar as the duty to mitigate damages is concerned, Article 337c(2) SCO provides the following:

"The employee must permit a set-off against this amount for what he saved because of the termination of the employment relationship, or what he earned from other work, or what he has intentionally failed to earn".

121. Accordingly, not only the effective mitigation is relevant to be taken into account, but also amounts intentionally failed to be earned by the Player. Such duty also generally stems from Article 2 of the Swiss Civil Code (the "SCC"), which provides as follows:

"1. Every person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations.

2. The manifest abuse of a right is not protected by law".

122. In CAS jurisprudence, *inter alia*, the following has been determined:

"As already noted above, according to Article 337c(2) of the SCO, the duty of mitigation is related to the rule that the employee must permit a set-off against the amount of compensation for what he saved because of the termination of the employment relationship, or what he earned from other work, or what he has intentionally failed to earn.

In the opinion of the Panel, such a rule implies that, in accordance with the general principle of fairness, the injured player must act in good faith after the breach by the club and seek for other employment, showing diligence and seriousness. The Panel considers that this principle is aimed at limiting the damages deriving from the breach and at avoiding that a possible breach committed by the club could turn into an unjust enrichment for the injured party.

Moreover, the wording of Article 337c(2) of the SCO, with reference to what the employee intentionally failed to earn, suggests that the duty to mitigate should not be considered satisfied when, for example, the player deliberately fails to search for a new club or unreasonably refuses to sign a satisfying employment contract, or when, having different options, he deliberately accepts to sign the contract with worse financial conditions, in the absence of any valid reason to do so" (CAS 2016/A/4605, paras. 7.31-7.33 of the abstract published on the CAS website).

123. The Panel concurs with this reasoning and finds that the Player was therefore generally required to not intentionally forego any salary during the remaining term of the Employment Contract to fulfil his duty to mitigate his damages in good faith.

124. In this respect, it is to be noted that there is a significant difference between the salaries the Player was entitled to receive in the first season (EUR 100,000) and the second season (EUR 550,000) under the Gazişehir Contract.

125. Had the Player's total guaranteed salary under the Gazişehir Contract (EUR 650,000 net) been divided equally over the 2021/2022 and the 2022/2023 seasons, the mitigation to be applied would have been significantly larger than the mitigation of EUR 100,000 applied by the FIFA DRC in the Appealed Decision and Al-Faisaly would have been required to pay a significantly lower amount of compensation for breach of contract. Al-Faisaly is therefore disadvantaged by such arrangement between the Player and Gazişehir.

126. Contrarily, for the Player it is beneficial to allocate as much of the total guaranteed salary under the Gazişehir Contract as possible to the second season, because such salary is not considered for the purposes of mitigation, whereas the salary for the first season is deducted from the amount of compensation to be received from Al-Faisaly.

127. As to the third party involved in this constellation, besides a general interest in postponing payment obligations as much as possible, there does not appear to be any particular interest for Gazişehir in how to allocate the total amount of salary payable between the first and the second season. In fact, as mentioned above, counsel for Gazişehir indicated that the division of salary between the first and the second year of the Gazişehir Contract was made upon the request of the Player.

128. Against such background, the Panel finds that one must be mindful of potential exploitation by football players involved in employment-related disputes as the present to create a disbalance between the overall value of a new employment contract and the salary payable during the period covered by the original employment contract of the player's previous club that was terminated early.

129. In these proceedings, Al-Faisaly requested the Player to produce the Gazişehir Contract in order to be able to determine the mitigated damages, with which request the Player and Gazişehir voluntarily complied. The Player did not present any reason for the significant difference between the salary for the first season and the second season, in which the Player earned almost 6 times more than in the first season, besides a general reference that it is common practice that salary increases throughout the term of an employment contract.

130. The Panel finds that, while a certain increase in salary over the course of an employment contract is indeed common practice and not indicative of abuse, the difference between the salary under the first and the second season of the Gazişehir Contract is inexplicably large. In addition, the difference has been requested by the Player, not by Gazişehir.

131. Given the fact that Al-Faisaly was not privy to the contract negotiations between the Player and Gazişehir concerning the Gazişehir Contract, the Panel finds that the burden for Al-Faisaly to establish that the Player intentionally failed to earn a higher salary in the first season of the Gazişehir Contract is met in the matter at hand.

132. However, the Panel finds that it would be unjust to simply divide the Player's total guaranteed salary under the Gazişehir Contract in two (EUR 650,000 / 2 = EUR 325,000) and take the amount of EUR 325,000 into account as the Player's mitigation of his damages. As indicated, it is common practice in employment contracts in football that salary increases over time. Furthermore, the Panel finds that, generally, football players finding themselves in the position of the Player, i.e. suffering from a breach of their employment contract due to no fault of their own, should not be particularly restrained in how to mitigate their damages. This consideration applies here, where the Player faced an earlier termination without just cause and immediately acted to mitigate his damage.

133. Based on all the above, and also considering the discretion afforded to it under Article 17(1) FIFA RSTP to take into account subjective elements in determining a reasonable and fair amount of compensation for breach of contract, the Panel is satisfied to accept that while the Player mitigated his damages with EUR 100,000 by concluding the Gazişehir Contract, he intentionally failed to earn at least a salary of EUR 200,000 over the first season. Accordingly, the Panel finds that the total amount of damages to be considered as having been mitigated is EUR 200,000. This amount shall be considered to include and solve the issue of whether the "salary" earned by the Player was EUR 100,000 or 115,000. In other words the amount of EUR 200,000 shall be deemed to correspond to the total of the mitigated damages.

134. Consequently, the Panel holds that, in accordance with Article 17(1) FIFA RSTP, the Player is entitled to receive a total amount of compensation for breach of contract of EUR 1,000,008 (EUR 1,200,008 – EUR 200,000) from Al-Faisaly.

e) The Player's Alleged Contributory Negligence

135. On a subsidiary basis, Al-Faisaly maintains that, even in case the Panel is of the opinion that Al-Faisaly did not have just cause to terminate the Employment Contract and that Al-Faisaly has to pay compensation for breach of contract to the Player, any such compensation is to be reduced with 50% because of the Player's alleged contributory negligence on the basis of Articles 43, 44 and Article 337b SCO.

136. Article 44(1) SCO provides as follows:

"Where the person suffering damage consented to the harmful act or circumstances attributable to him helped give rise to or compound the damage or otherwise exacerbated the position of the party liable for it, the court may reduce the compensation due or even dispense with it entirely".

137. The Panel observes that CAS jurisprudence has, *inter alia*, held the following in respect of the application of Article 44(1) SCO:

"[…] [A]ccording to Article 44 para. 1 CO, compensation may be reduced if there are circumstances attributable to the injured party that helped to give rise to or increase the damage" (CAS 2014/A/3647-3648, para. 121).

138. Article 337b SCO provides as follows:

"1. Where the good cause for terminating the employment relationship with immediate effect consists in breach of contract by one party, he is fully liable in damages with due regard to all claims arising under the employment relationship.

2. In other eventualities the court determines the financial consequences of termination with immediate effect at its discretion, taking due account of all the circumstances".

139. CAS jurisprudence has also accepted that an amount of compensation for breach of contract may be reduced on such basis:

"[…] [T]he Panel notes that CAS jurisprudence has recognised that, in line with Article 337b(2) SCO, situations in which a unilateral breach of a contract cannot be deemed to have been caused exclusively by the conduct of one party, the Panel has to decide in its due discretion the financial consequences of such breach, taking into account all circumstances (cf. CAS 2003/O/453, para. 45; CAS 2005/A/865, para. 45; CAS 2014/A/3626, para. 99; CAS 2015/A/3955 & 3956, para. 84 et seq.)".

140. The Panel agrees with Al-Faisaly that the afore-mentioned provisions could in theory be applied and could therefore lead to a reduction of the amount of compensation for breach of contract otherwise payable.

141. However, in the matter at hand, the Panel finds that there is no evidence on file whatsoever suggesting that the Player in any way contributed to the termination of the employment relationship. The alleged conduct of which Al-Faisaly accuses the Player is addressed in more detail above and has been dismissed by the Panel.

142. Consequently, the Panel finds that there is no contributory negligence on the side of the Player and that the afore-mentioned amount of compensation for breach of contract, i.e. EUR 1,000,008, is not to be reduced on this basis.

f) Interest over the Amount of Compensation Awarded

143. Finally, on the basis of the afore-mentioned Article 339(1) SCO, the Panel finds that Al-Faisaly is in principle required to pay interest at a rate of 5% *per annum* over the amount of EUR 1,000,008 as from 17 August 2021 (i.e. the day following the day on which the Employment Contract was terminated) until the date of effective payment.

144. However, the Panel notes that the FIFA DRC only awarded interest as from 30 September 2021 in the Appealed Decision (i.e. the date the Player lodged his claim with FIFA).

145. Since the Player did not file an appeal against the Appealed Decision, because Al-Faisaly cannot be prejudiced by its appeal and in line with the principle of *ne ultra petita,* the Panel finds that it is barred from awarding interest as from 17 August 2021 and therefore confirms the Appealed Decision, awarding interest at a rate of 5% *per annum* as from 30 September 2021 until the date of effective payment.

B. Conclusion

146. Based on the foregoing, the Panel holds that:

i) Al-Faisaly terminated the Employment Contract without just cause on 16 August 2021;

ii) The Player is entitled to receive from Al-Faisaly outstanding remuneration in the amount of EUR 63,637 net, plus interest at a rate of 5% *p.a.* as from 15 August 2021 until the date of effective payment;

iii) The Player is entitled to receive from Al-Faisaly outstanding remuneration in the amount EUR 31,818.50 net, plus interest at a rate of 5% *p.a.* as from 17 August 2021 until the date of effective payment;

iv) The Player is entitled to receive compensation for breach of contract from Al-Faisaly in the amount of EUR 1,000,008 net, plus interest at a rate of 5% *p.a.* as from 30 September 2021 until the date of effective payment.

147. Accordingly, Al-Faisaly's appeal is partially upheld. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 16 June 2022 by Al-Faisaly Club against the decision issued on 21 April 2022 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 21 April 2022 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is confirmed, save for paragraph 2 third bullet, which shall provide as follows:

   EUR 1,000,008 (one million and eight Euros) net as compensation for breach of contract plus 5% interest p.a. as from 30 September 2021 until the date of effective payment.

3. (…).

4. (…).

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