



TAS / CAS

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

Arbitration CAS 2023/A/10102 Esteghlal FC v. Azizbek Amanov & Nasaf FC, award of 18 June 2024

Panel: Mr Patrick Grandjean (Switzerland), Sole Arbitrator

Football

Termination of an employment contract with just cause by a player

Admissibility of correspondence sent to the CAS Court Office through postal services

Calculation of the monthly pro-rata value of a player's salary

Non-application of Art. 18 RSTP to an intermediary acting on a player's behalf to terminate the contract

Validity under Swiss law of legal actions undertaken by an individual acting as an agent for another person

Principle of the "positive interest"

Adjustment of the amount of compensation for damages

1. An official postal service can be validly used in the CAS' arbitration proceedings.
2. According to art. 14bis (2) of the FIFA Regulations on the Status and Transfer of Players (RSTP), *"[f]or any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered. Delayed payment of an amount which is equal to at least two months shall also be deemed a just cause for the player to terminate his contract, subject to him complying with the notice of termination [of art. 14bis (1) of the FIFA RSTP] "*.
3. Art. 18 (3) of the FIFA RSTP only concerns intermediaries involved in the negotiations of a transfer agreement or the conclusion of an employment contract. An individual's intervention on a player's behalf in order to terminate said player's employment relationship with his club is a situation that is not governed by Art. 18 of the FIFA RSTP.
4. Legal actions undertaken by an individual acting as an agent for another person become legally binding on the principal if the agent possesses the appropriate authority, or upon subsequent endorsement of these actions by the principal, or if the behavior of the principal suggests to the third party that authority has been granted to the agent, leading to a reasonable inference of a power of attorney.
5. According to Art. 17 of the FIFA RSTP and in case of termination of an employment contract with just cause, the party which has given rise to premature termination is liable to pay compensation for damages suffered by the injured party. The latter is entitled to a whole reparation of the damages suffered, pursuant to the principle of the *"positive interest"*, under which compensation for breach must be aimed at reinstating the injured party to the position it would have been, had the contract been fulfilled to its end. Therefore, the damages to be taken into account are not only those that may have caused the act or the omission that justify the termination, but also the *"positive interest"* which, in case of termination of an employment contract, corresponds to the

salaries and other material income or benefits that a player would have earned if the contract would have been performed until its natural expiration.

6. On the basis of Article 17 (1) lit. ii) of the FIFA RSTP, the amounts that the player has earned with (an)other employment agreement(s) during the residual period of the employment contract must be taken into account to adjust the amount of compensation for damages. A contract signed by the player with a new club after the decision of the FIFA DRC (and therefore not taken into account by the latter) can also be taken into consideration by the CAS panel.

I. PARTIES

1. Esteghlal FC is a football club with its registered office in Tehran, Iran (“Esteghlal” or the “Appellant”). It is a member of the Islamic Republic of Iran Football Federation (“FFIRI”), itself affiliated with the *Fédération Internationale de Football Association* (“FIFA”).
2. Mr Azizbek Amanov is a professional football player, born on 30 October 1997 and of Uzbekistan nationality (the “Player”).
3. Nasaf FC is a football club with its registered office in Karshi, Uzbekistan. It is a member of the Uzbekistan Football Association (“UFA”), itself affiliated with FIFA.
4. The Player and Nasaf FC are jointly referred to as the “Respondents”.
5. Esteghlal and the Respondents are jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

A. Introduction

6. These arbitration proceedings concern an employment-related dispute between Esteghlal and the Player. A notable aspect of this case is that neither Party has made any factual assertions regarding the events that took place between the signing of the employment contract on 3 February 2022 and its unilateral termination by the Player on 2 February 2023. This period of time is exclusively documented by the decision delivered on 24 August 2023 by the FIFA Dispute Resolution Chamber, which is the subject of the appeal filed by Esteghlal.
7. Bearing the foregoing in mind, below is a summary of the relevant facts and allegations based on the available written submissions and evidence adduced in these proceedings. References to additional facts, allegations and evidence found in the file at hand will be made, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted in these arbitration proceedings, he refers in his award only to the submissions and evidence he deems necessary to explain his reasoning.

B. The contractual relationship between Esteghlal and the Player

8. On 3 February 2022, Esteghlal and the Player signed an employment contract (the “Employment Contract”), the main characteristics of which can be summarised as follows:

- It is a fix-term agreement valid as from 3 February 2022 *“until the end of the sporting season 2023/ 2024 or 31st of June 2024 whichever happens later”*.
- Among other obligations, Esteghlal agreed to pay to the Player:

2021/2022 Season

- USD 50,000 *“paid within 1 week after Player ITC receipt”*;
- USD 50,000 on 24 February 2022;
- USD 50,000 on 16 March 2022;
- USD 50,000 on 20 April 2022;
- USD 50,000 on 21 May 2022;
- USD 50,000 on 21 June 2022.

2022/2023 Season

- USD 100,000 *“within one week before the first official match of the Iranian Premier league for the 2022/ 2023 season”*;
- USD 50,000 on 10 October 2022;
- USD 50,000 on 10 December 2022;
- USD 50,000 on 10 February 2023;
- USD 50,000 on 10 May 2023;
- USD 50,000 on 10 June 2023.

2023/2024 Season

- USD 100,000 *“within one week before the first official match of the Iranian Premier league for the season 2023/ 2024”*.
 - USD 60,000 on 10 October 2023;
 - USD 60,000 on 10 December 2023;
 - USD 60,000 on 10 February 2024;
 - USD 60,000 on 10 May 2024;
 - USD 60,000 on 10 June 2024.
- Pursuant to Article 5 of the Employment Contract, entitled *“Rewards, Bonuses and Fines for the seasons 2021/ 21-2022/ 23-2023/ 24”*, the Player was entitled to the following bonuses:

“Iranian Premier League Championship: \$ 20,000”;

“Match-winning bonus for Iranian Premier League” home and away games: USD 200.

- Article 10 of the Employment Contract, entitled “*Applicable Law and Jurisdiction*”, reads as follows:

“10.1. The Contract is governed by FIFA Regulations and subsidiary by Swiss law.

10.2. Any dispute arising out of or in connection with the present Contract shall be settled exclusively by the legal bodies/committees/chambers of FIFA and, in particular, Football Tribunal, and FIFA DRC. The appeal to a ruling of the FIFA Players’ Status Committee shall be addressed to the Court of Arbitration for Sports (‘CAS’) based in Lausanne, Switzerland, and resolved definitely in accordance with the Code of sports-related arbitration. Three (3) arbitrators shall form the panel; the language to be used in any arbitral proceedings shall be English”.

- According to Article 12 of the Employment Contract “[a]ny notices and other communications under the Contract shall be in writing and shall be given by facsimile or by electronic mail addressed as follows:

***The Club** (...) fcesteghlaliran20@gmail.com (...)*

***The Player** (...) Freekick.dubai@gmail.com”.*

9. The following facts have been established by the FIFA Dispute Resolution Chamber in its decision of 24 August 2023 and are not disputed or have not been altered in any way by either Party to these arbitration proceedings:

5. *“On 29 August 2022, the player put [Esteghlal] in default and requested payment of USD 121,800, corresponding to salary payments and bonuses, within 10 days.*
6. *On 8 September 2022, [Esteghlal] replied with an email from esteghlal.cls@gmail.com acknowledging its debt and maintaining to settle the debt within a week.*
7. *On 27 September 2022, the [Player] acknowledged receipt of a payment in the amount of USD 86,700 from [Esteghlal].*
8. *On 21 October 2022, the player put [Esteghlal] in default and requested payment of USD 85,696.20, corresponding to the residual debt, salary payments and bonuses, within 10 days.*
9. *On 10 December 2022, the [Player] acknowledged receipt of a payment in the amount of USD 10,640 from [Esteghlal].*
10. *On 14 December 2022, [Esteghlal] informed the player that all correspondence to the club shall be sent to the email address fcesteghlaliran20@gmail.com.*
11. *On 19 December 2022, the [Player] put [Esteghlal] in default [via an] email to fcesteghlaliran20@gmail.com and requested payment of USD 125,346.20, corresponding to the residual debt, two salary payments and bonuses, within 15 days.*

12. On 20 January 2023, the parties held a meeting and discussed a mutual termination without agreeing terms.
 13. On 2 February 2023, the [Player] terminated the contract with [Esteghlal] due to outstanding remuneration of more than two monthly salaries and based on art. 14bis RSTP.
 14. On 3 February 2023, [Esteghlal] replied and insisted that a mutual termination was agreed upon.
 15. On 3 February 2023, the [Player] reiterated his termination and denied having reached an agreement".
10. On 5 February 2023, Esteghlal sent a notice to the Player complaining about his absence, which it claimed was in breach of several clauses of the Employment Contract. It gave 24 hours to the Player to resume training and warned him that "[i]f the unjustified absence of the player continues, the club will have no choice but to file a complaint against the player in FIFA Judicial Bodies".
 11. On 7 February 2023, Esteghlal sent the following email to freekick.dubai@gmail.com:

"Dear Sir/Madam,

I am writing to you again as our previous letter remained unanswered.

In this regard, I would like to officially inform you that due to the continued unjustified absence of the player Mr. Azizbek Amonov in the team training sessions, the club Disciplinary Committee will have a meeting regarding the said matter on Monday February 13th, 2023 in the club office accordingly.

I hereby invite Mr. Azizbek Amonov to attend the said disciplinary meeting in person or send his defensive bill to the club office directly. it [sic] is clear that in the case of absence or lack of sending the defensive bill to the club disciplinary committee, it will not prevent the said committee from issuing a justified verdict".
 12. On 13 February 2023, the Disciplinary Committee of Esteghlal imposed upon the Player a fine of USD 10,500 for his unjustified and unauthorized absences since 3 February 2023.
 13. The Player did not reply to any of the messages sent by Esteghlal as from 5 February 2023.
 14. On 15 February 2023, and as determined by the FIFA Dispute Resolution Chamber in its decision of 24 August 2023, without this being contested by the Parties to these arbitration proceedings, "the [Player] signed an employment contract with the Uzbek club, Nasaf FC, valid as from 15 February 2023 until 30 December 2023, including a monthly salary of Uzbekistan Som (UZS) 77,161,000 (approx. USD 6,630)".
 15. On 3 January 2024, the Player signed an employment contract with the Emirati football club Khorfakkan FC, valid as from 3 January until 31 December 2024. The club agreed to pay to the Player a monthly salary of USD 34,375. According to its clause 1.A and 1B, this contract states the following:

"A- first advance payment of (USD NET 68,750) (...) paid to the player at 30/01/2024.

B- Second advance payment of (USD NET 68,750) (...) paid to the player at 28/02/2024”.

C. The Proceedings before the FIFA Dispute Resolution Chamber

16. On 17 February 2023, the Player filed a claim against Esteghlal before FIFA, requesting unquantified moral damages as well as the payment of USD 580,346 plus interest, broken down as follows:

- Outstanding salaries (instalments due on 10 October and 10 December 2022):	USD 100,000
- Remaining amount of the first USD 100,000 due for the 2022/2023 season:	USD 3,146
- Unpaid bonuses:	USD 22,200
- Compensation for breach of the Employment Contract:	USD 450,000
- Legal fees:	<u>USD 5,000</u>
Total	USD 580,346

17. In its reply, Esteghlal rejected the Player’s claim and lodged a counterclaim against the latter and Nasaf FC, requesting the payment of USD 750,000 as compensation for breach of the Employment Contract. In support of its claim, Esteghlal put forward that the Player had terminated the Employment Contract without just cause. It also submitted that any correspondence sent on behalf of the Player to esteghlal.cls@gmail.com had to be disregarded as the Employment Contract clearly stipulated that written communications between the Player and Esteghlal were to take place *via* the email address fcsteghlaliran20@gmail.com. Finally, Esteghlal argued that the formal notices sent on the Player’s behalf were invalid because his representative was not duly authorised to act in his name.

18. In his Reply, the Player reiterated his position and rejected Esteghlal’s counterclaim. Nasaf FC did not reply to Esteghlal’s counterclaim.

19. In a decision dated 24 August 2023, the FIFA Dispute Resolution Chamber (“DRC”) partially accepted the Player’s claim based upon the following considerations:

- The DRC held that *“notwithstanding previous notifications, as of 14 December 2022, the [Player] did correspond with the email address indicated for the [Esteghlal] in the contract. Therefore, the Chamber concluded that the club’s argument shall be rejected”*.
- Esteghlal failed to prove that the Player’s claim for outstanding salaries and unpaid bonuses (amounting to USD 125,346.20) was without merit. In particular, it did not establish that it had met its financial obligations and paid the amount of money claimed by the Player.
- The outstanding remunerations and bonuses claimed by the Player correspond to more than four monthly salaries.

- The Player had provided written evidence of having put Esteghlal in default on 19 December 2022, *i.e.* at least 15 days before unilaterally terminating the Employment Contract on 2 February 2023.
- The requirements of Article 14bis of the applicable FIFA Regulations on the Status and Transfer of Players (“RSTP”) have been met by the Player, who had therefore a just cause to unilaterally and prematurely terminate the Employment Contract.
- In accordance with the general legal principle of *pacta sunt servanda*, Esteghlal was liable to pay to the Player the amounts which were outstanding under the Employment Contract at the moment of its termination, *i.e.* USD 125,346.
- With regard to the calculation of the compensation, the DRC made the following findings:
 - The DRC held that the Employment Contract did not contain a provision by means of which Esteghlal and the Player had beforehand agreed on an amount of compensation payable in the event of premature termination of the Employment Contract for just cause.
 - In compliance with Article 17 of the RSTP, the DRC took into account the remuneration of the Player and the residual duration of the Employment Contract. In this regard, the DRC found that *“the amount of USD 450,000 serves as the basis for the determination of the amount of compensation for breach of contract”*.
 - The compensation awarded to the Player had to be reduced by the wages received from Nasaf FC for the period corresponding to the time remaining on the prematurely terminated Employment Contract. *“Indeed, the [Player] found employment with the Uzbek club, Nasaf FC between 15 February 2023 and 30 December 2023. In accordance with the pertinent employment contract, the [Player] was entitled to approximately USD 6,630 per month. Therefore, the Chamber concluded that the [Player] mitigated his damages in the total amount of USD 72,930, that is, 11 times USD 6,630”*.
 - The DRC determined that the criteria set forth in Article 17 (1) lit. ii) of the RSTP had been met and that the Player was entitled to an amount equal to three monthly salaries as additional compensation as the early termination of the Employment Contract was the result of overdue payables. It decided to award the Player additional compensation in the amount of USD 72,930. However, in compliance with the last sentence of Article 17 (1) lit. ii) of the RSTP, according to which *“the overall compensation may never exceed the rest value of the prematurely terminated contract”*, the DRC *“decided that the club must pay the amount of USD 450,000 to the player (i.e. USD 450,000 minus USD 72,930 plus USD 72,930), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter”*.

20. As a result, on 24 August 2023, the DRC issued the following decision:

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

2. [Esteghlal] *must pay to [the Player] the following amount(s):*
 - USD 3,146 as outstanding remuneration plus 5% interest p.a. as from 8 August 2022 until the date of effective payment;
 - USD 50,000 as outstanding remuneration plus 5% interest p.a. as from 11 October 2022 until the date of effective payment;
 - USD 50,000 as outstanding remuneration plus 5% interest p.a. as from 11 December 2022 until the date of effective payment;
 - USD 22,200 as outstanding remuneration plus 5% interest p.a. as from 17 February 2023 until the date of effective payment;
 - USD 450,000 as compensation for breach of contract without just cause plus 5% interest p.a. as from 4 February 2023 until the date of effective payment.
 3. *Any further claims of [the Player] are rejected.*
 4. *Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.*
 5. *The counterclaim of [Esteghlal] is rejected.*
 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. *[Esteghlal] 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”.*
21. On 5 October 2023, the Parties were notified of the grounds of the decision issued by the DRC (the “Appealed Decision”).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 24 October 2023, Esteghlal lodged its Statement of Appeal with the Court of Arbitration for Sport (“CAS”) against the Respondents with respect to the Appealed Decision in accordance with Article R47 *et seq.* of the CAS Code of Sports-related Arbitration (2023 edition) (the “Code”).
23. In several subsequent emails, Esteghlal explained to the CAS Court Office that the hard copies of its Statement of Appeal had been sent by the National Post Company of the Islamic Republic of Iran, given that *“DHL Courier company continues to refrain from providing its services to our club as an Iranian national due to the unilateral sanctions of the US against Iran”*. According to Esteghlal *“the package is expected to be delivered to [the CAS] no later than 16 December 2023”*.
24. On 4 November 2023, Esteghlal filed its Appeal Brief in accordance with Article R51 of the Code.
25. On 16 November 2023, the CAS Court Office acknowledged receipt of Esteghlal’s Statement of Appeal and of its payment of the CAS Court Office fee, which was made on 19 October 2023. It informed the Parties that it *“acknowledge[d] receipt of [Esteghlal’s] Appeal Brief filed by email on 4 November 2023. A copy of [Esteghlal’s] Appeal Brief will be provided to the Respondents upon its receipt at the CAS, whereupon the Respondents will be invited to file an Answer within a deadline of twenty (20) days of its receipt, pursuant to Article R55 of the Code”*. The CAS Court Office invited the Respondents to comment within five days on Esteghlal’s request to refer the present matter to a sole arbitrator. With this respect, the Respondents’ attention was drawn to the fact that in the absence of an answer or in case of disagreement, it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide the issue, taking into account the circumstances of the case, in accordance with Article R50 of the Code.
26. On 24 November 2023, the Player informed the CAS Court Office that a) he refused to refer the present matter to a sole arbitrator, b) confirmed that he had no intention to pay his share of the costs, c) asked that the time limit for the filing of his Answer be fixed after the payment by Esteghlal of its share of the advance of costs, d) submitted that the Appeal was inadmissible as the Statement of Appeal should have been sent by *“courier”* as opposed to *“postal delivery”*.
27. Nasaf FC did not comment on the letter of 16 November 2023 sent by the CAS Court Office.
28. On 27 November 2023, the CAS Court Office acknowledged receipt of the Appeal Brief filed on 4 November 2023 and invited Nasaf FC to submit its Answer within 20 days. With respect to the Player, it confirmed that his time limit to file his Answer would be fixed upon the payment by Esteghlal of its share of the advance of costs.
29. On 29 November 2023, Nasaf FC asked the CAS Court Office that the time limit for the filing of its Answer be fixed after the payment by Esteghlal of its share of the advance of costs. Its request was granted.

30. On 12 December 2023, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had appointed Mr Patrick Grandjean, Attorney-at-law, Belmont-sur-Lausanne, Switzerland as Sole Arbitrator.
31. On 5 January 2024, the CAS Court Office invited the Respondents to submit their Answer within 20 days.
32. On 31 January 2024, the CAS Court Office confirmed that it did not receive the Respondents' Answer or any communication from them in this regard. It invited the Parties to state whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.
33. On the same date, the Player referred to his letter of 24 November 2023, in which he had requested that the Sole Arbitrator issue a preliminary award on the admissibility of the appeal, based on the fact that Esteghlal had used regular mail services, in breach of Article R31 of the Code. He also requested for a case management hearing as well as a hearing to be held and maintained that *"in the instance that the CAS, post preliminary decision by the esteemed Sole Arbitrator, seeks to proceed with this matter, [the Player] fully endorses the FIFA decision and seeks to add nothing further to this"*.
34. On 3 February 2024, Esteghlal opposed to any hearing and requested that the Sole Arbitrator issue an award based solely on the Parties' written submissions. Nasaf FC did not make its views known on the matter of the hearing.
35. On 13 February 2024, Esteghlal maintained that it had no choice but to resort to the National Post Company of the Islamic Republic of Iran to file its appeal as per Article R31 of the Code and requested that the Player be asked to submit a copy of its employment contract with Khorfakkan FC.
36. On 15 January 2024, the CAS Court Office informed the Parties that the Sole Arbitrator deemed himself sufficiently well informed to issue his decision solely on the basis of the written submissions and sent them the Order of Procedure.
37. On 18 January 2024, Esteghlal returned a duly signed copy of the Order of Procedure.
38. On 17 February 2024, the Player filed the three first pages of the employment contract signed with Khorfakkan FC and requested the replacement of the Sole Arbitrator by a three-member panel, in accordance with Article 10.2 of the Employment Contract signed with Esteghlal. In view of these circumstances, he did not return a signed copy of the Order of Procedure.
39. On 19 February 2024, the CAS Court Office informed the Parties that the arbitration proceedings were suspended in view of the Player's objection for the Sole Arbitrator to deal with the present matter and invited Esteghlal and Nasaf FC to comment on the Player's letter of 17 February 2024 within three days.
40. On 20 February 2024, Nasaf FC confirmed that it shared the Player's viewpoint as articulated in his letter of 17 February 2024, requesting the referral of the matter to a three-member panel.

Consequently, Nasaf FC declined to sign and to return the Order of Procedure. Additionally, Nasaf FC announced that it was enclosing a copy of the employment contract signed with the Player but failed to do so.

41. On 24 February 2024, Esteghlal maintained its request for the Sole Arbitrator to decide on this matter.
42. On 6 March 2024, the CAS Court Office informed the Parties of the following:

“In consideration of the Parties’ submissions on the number of arbitrators in this matter, the CAS Court Office comes to the conclusion that the decision of the Deputy President of the CAS Appeals Arbitration Division to appoint a sole arbitrator in this matter shall not be reconsidered and, consequently, the present procedure shall be decided by the appointed Sole Arbitrator.

For the sake of good order, this procedure is no longer suspended and resumes with immediate effect.

Finally, the Respondents are requested to sign and return a copy of the Order of Procedure by 12 March 2024”.

43. On 11 and 12 March 2024 respectively, Nasaf FC and the Player returned a duly signed copy of the Order of Procedure.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

44. In its Statement of Appeal, Esteghlal submitted the following requests for relief:
 - *“Set aside the Decision of DRC of FIFA;*
 - *Reconsider the matter and render a new decision in compliance with the applicable rules and regulations with special attention to the counter-claim of Esteghlal Club;*
 - *Declare that the termination of the player is without just cause;*
 - *Order 1st and 2ed respondents jointly to pay 750,000 USD to Esteghlal as liquidated damages;*
 - *to impose sporting sanctions against the respondent(s), namely, a fine and ban from registering any new players, either nationally or internationally for two entire and consecutive registration periods, all in the light of FIFA RSTP;*
 - *Reduction of the compensation determined in the appealed decision based on duty to mitigate damages (the player deliberately fails to search for a new club or unreasonably refuses to sign a satisfying employment contract, or when, having different options, he deliberately accepts to sign a contract with worse financial conditions, in the absence of any valid reason to do so)”.*

45. In its Appeal Brief, Esteghlal also asked the CAS to “[o]rder the Respondents to pay the costs of the present arbitration proceedings together with a contribution towards [its] legal fees”.
46. The submissions of Esteghlal, in essence, may be summarized as follows:
 - The Player has failed to comply with the conditions set out in Article 14bis of the RSTP. Consequently, the Player’s premature termination of the Employment Contract is not valid. *“Basically, the termination of the contract in the world of football is a formal legal act, and all related formalities must be observed”*.
 - *“All e-mails and notices of the player were sent both from anonymous e-mails and to e-mails not included in the contract”*. As stipulated in the Employment Contract and in order to be valid, written communications to Esteghlal could only be made *via* the email *“fcesteghlaliran20@gmail.com”*. Hence, the notices sent to the club using the email address *“esteghlal.cls@gmail.com”* were not received by Esteghlal and, therefore, must not be taken into account.
 - *“According to clause 12 of the employment contract, the Player has introduced the email ‘freekick.dubai@gmail.com’; therefore, the [Player] was obliged to send all his notices to the club by email ‘freekick.dubai@gmail.com’. This is [why] Esteghlal FC did not receive any email from the claimant from this email address (freekick.dubai@gmail.com). (...) Also, according to the last part of Article 12 of the employment contract, ‘In the case of change of the above information for one party, he shall inform the other party in writing in two (2) weeks’ (...) It is noteworthy that any possible change in email address other than the ones stipulated in the employment contract must be communicated promptly to the other party. Otherwise, the other party has no responsibility regarding the notification to the former addresses. (...) Therefore, it was the Player’s duty to notify the Esteghlal FC in writing if the email address has been changed. That such a thing was never done by the player. Obviously, Esteghlal FC has no responsibility in this regard”*.
 - In breach of Article 18 of the RSTP, the Player failed to disclose in the Employment Contract that he was being represented by an intermediary. Hence, the various notices sent to Esteghlal on the behalf of the Player by Mr Shuaib Ahmed are contractually null and void, as the latter had no authority to represent the Player. *“For the sake of good order, when Mr. Shuaib Ahmed sent a notice to ‘fcesteghlaliran20@gmail.com’, Esteghlal FC requested him to present a valid power of attorney. The only thing sent by Mr. Shuaib Ahmed to Esteghlal FC as a power of attorney was a screenshot (...), which did not have the validity of a power of attorney in any way. The submitted power of attorney lacked subject matter, duration (term), powers, and also did not have any of the characteristics required for a power of attorney”*.
 - The Player breached numerous provisions of the Employment Contract by failing to participate in several training sessions, by not attending official matches and leaving Iran without the prior permission of Esteghlal, which was therefore entitled to terminate the employment relationship. However, *“[in] order to maintain the contractual relationship and show its good faith, Esteghlal FC did not terminate the employment contract and asked the player to return to club training”*. Despite Esteghlal’s benevolent attitude towards him, the Player joined Nasaf FC, thereby terminating the Employment Contract without just cause.

- In accordance with Article 17 of the RSTP and given that the Player had terminated the Employment Contract without just cause, Esteghlal is entitled to compensation of USD 750,000. This amount corresponds to the contractually agreed minimum fee payable to Esteghlal in the event of the Player's transfer to another club during the term of the Employment Contract.
- On the assumption that the termination of the Employment Contract by the Player was justified, "[he] *did not make any effort to conclude a suitable employment contract with a reasonable salary, thinking of receiving possible compensation from Esteghlal FC. The duty to mitigate damages shall be regarded in accordance with the general principle of fairness, which implies that, after a breach by the Club, the Player must act in good faith and seek for other employment, showing diligence and seriousness, with the overall aim of limiting the damages deriving from the breach and avoiding that a possible breach committed by the club could turn into an unjust enrichment for him. The duty to mitigate should not be considered satisfied when, for example, the player deliberately fails to search for a new club or unreasonably refuses to sign a satisfying employment contract, or when, having different options, he deliberately accepts to sign a contract with worse financial conditions, in the absence of any valid reason to do so. However, the circumstance that a player received a higher remuneration under his former contract than he will receive under his new contract is not in itself sufficient to mean automatically that the compensation payable from his former club has to be reduced in the event that the new contract does not pay the player just as well as the original contract did*". In the present case and according to information available on the internet, the Player's market value is of EUR 400,000. The fact that he signed an employment contract with Nasaf FC worth USD 72,930 per year shows that he made no effort to mitigate his damages. The Player's bad faith is all the more significant given that he signed with Nasaf FC only 13 days after the termination of the Employment Contract. The Player could have very well taken more time to find a better paid job.

B. The Respondents

47. Although duly invited by the CAS Court Office, the Respondents did not file an Answer to the Appeal Brief within the granted time limit.

V. JURISDICTION

48. Article R47 (1) of the Code provides as follows:

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

49. The jurisdiction of the CAS, which is not disputed, derives from Articles 57 (1) of the applicable FIFA Statutes, Article R47 of the Code and Article 10.2 of the Employment Contract. It is further confirmed by the Order of Procedure duly signed by the Parties.
50. It follows that the CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

51. Article R49, first sentence, of the Code provides the following:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

52. Article 57 (1) of the applicable FIFA Statutes reads as follows:

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

53. Pursuant to Article R31 (3), first sentence, of the Code, “[t]he request for arbitration, the statement of appeal and any other written submissions, printed or saved on digital medium, must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself, failing which the CAS shall not proceed”.

54. Article R32 of the Code states that “[t]he time limits fixed under this Code are respected if the communications by the parties are sent before midnight, time of the location of their own domicile or, if represented, of the domicile of their main legal representative, on the last day on which such time limits expire”.

55. Esteghlal submitted its Statement of Appeal on 24 October 2023 and its Appeal Brief on 4 November 2023. These documents were sent by “express mail” through the National Post Company of the Islamic Republic of Iran, as evidenced by the postal receipt, which indicates:

- for the Statement of Appeal, the “postal zone” (Tehran), the date (24 October 2023), the hour (11:54.28 am), the sender (“Esteghlal club”), the recipient (CAS), the country of destination (Switzerland) and the “postal fare”;
- for the Appeal Brief, the “postal zone” (Tehran), the date (4 November 2023), the sender (“Esteghlal Sport & Cultural Club”), the country of destination (Switzerland) and the “Overall Postal Costs”.

56. The authenticity of these postal receipts is not disputed and the Sole Arbitrator sees no reason to doubt the reliability of their contents. It is also not contested the fact that the National Post Company of the Islamic Republic of Iran is the official corporation responsible for providing postal services in Iran.

57. In his letters of 24 November 2023 and 31 January 2024, the Player claims that a Statement of Appeal filed by postal service does not meet the requirement of Article R31 of the Code, “which specifically refers to the word ‘courier’ no less than 4 (four times), and does not mention the word ‘post’, even once”. He is of the opinion that Esteghlal should have made use of DHL courier services, which was in operation in Iran and specifically in Tehran at the relevant time. He argues that Esteghlal significantly delayed the matter by using regular postal services and thus benefited from additional time. According to the Player, the appeal is therefore inadmissible.

58. The CAS Code does not define “*courier*”. The French text of the Code (which prevails in the event of discrepancy – see Article R69 of the Code), also refers to “*courrier*”, the definition of which is “*Correspondance (lettres imprimés paquets) reçue ou envoyée par la poste*” (Correspondence (letters, printed material, parcels) received or sent by post - Larousse Dictionnaire Français en ligne). According to scholars, the statement of appeal and any other written submissions must be filed by “*courier delivery*”, which includes postal as well as delivery services (The CAS Procedural Rules, in: Arbitration in Switzerland, The Practitioner’s Guide, Second edition, Volume II, 2018, ad art. R31, N. 7 p. 1458).
59. The Sole Arbitrator notes that the Code does not distinguish between ordinary postal services and other delivery services. If such a distinction had been intended, the Code would certainly have explicitly excluded the use of ordinary postal services. Furthermore, the position of the Player is untenable for several reasons. If official postal services are to be excluded, the parties to CAS proceedings would be forced to resort to using the services of other delivery providers, even if none of them operates in their part of the world. Maintaining such a position would not only be unreasonable but would also be a source of great inequality of treatment and uncertainty. Furthermore, if the use of the official postal service is not valid, a delivery service offering minimum guarantees would be required. Such minimum guarantees are not provided for in the Code. It seems quite difficult to accept that any delivery service would meet the requirements of Article R31 of the Code, regardless of its reliability, when official postal services, no matter how efficient and stable, fail to do so.
60. Based on the foregoing and on the wording of Article R31 of the Code, the Sole Arbitrator comes to the conclusion that an official postal service can be validly used in the arbitration proceedings before the CAS. Articles R31 and R32 of the Code simply place the burden of proof of having sent the communication within the set time limit on the party filing the submission.
61. In the present case, Esteghlal has established that it had submitted its appeal within the deadline provided by Article R49 of the Code as well as by Article 57 (1) of the applicable FIFA Statutes. Therefore, given that the appeal complies with all the other requirements set forth by Article R48 of the Code, it is admissible.

VII. APPLICABLE LAW

62. Article R58 of the Code provides the following:

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

63. Pursuant to Article 56 (2) of the applicable FIFA Statutes, “[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*”.
64. Article 10.1 of the Employment Contract provides that “[it] *is governed by FIFA Regulations and subsidiary by Swiss law*”.
65. As a result, and in light of the foregoing, subject to the primacy of applicable FIFA’s regulations, Swiss law shall apply complementarily, whenever warranted.
66. On 17 February 2023, the Player lodged his claim before FIFA against Esteghlal. This happened after 31 March 2022 and 16 November 2022, which are the dates when the FIFA Statutes, edition May 2022, and the RSTP, edition October 2022, came into force. These are the editions of the rules and regulations, which the Sole Arbitrator will rely on to adjudicate this case.

VIII. MERITS

67. Esteghlal contends that the Player did not validly terminate the Employment Contract with just cause as he did not comply with the requirements set in Article 14bis of the RSTP. In particular and according to Esteghlal, the Player failed to send notices to and from the email addresses specified in the Employment Contract, and because the author of the notifications was allegedly an individual lacking proper authorization. Furthermore, should the unilateral and premature termination of the Employment Contract be valid, the compensation should be reduced as the Player failed to mitigate his damage by securing a better paid job.
68. In this context, the issues to be decided by the Sole Arbitrator are:
 - A. Were the requirements of Article 14bis of the RSTP met by the Player?
 - B. If the Employment Contract was terminated by the Player with just cause, what are the financial consequences?
69. The Sole Arbitrator will address these issues in turn below.
 - A. Were the requirements of Article 14bis of the RSTP met by the Player?**
70. Fixed-term employment contracts expire without the necessity of notice at the end of the specified duration. Termination before the agreed-upon period is permissible solely through mutual consent or in the presence of a just cause (Judgments of the Swiss Federal Tribunal 4C.61/2006 of 24 May 2006 consid. 3.1).
71. Pursuant to Article 14bis of the RSTP and provided that certain formal conditions are met, a player has a just cause to terminate his employment contract if the club unlawfully fails to pay him two monthly salaries on their due dates.

72. Article 14bis (1) and (2) of the RSTP, entitled “*Terminating a contract with just cause for outstanding salaries*”, reads as follows:

“In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.

For any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered. Delayed payment of an amount which is equal to at least two months shall also be deemed a just cause for the player to terminate his contract, subject to him complying with the notice of termination as per paragraph 1 above”.

73. The Sole Arbitrator observes that, for the 2022/2023 season, the Player’s salary was not paid monthly. Based on Article 14bis (2) of the RSTP, the *pro-rata* value corresponding to two monthly salaries is USD 58,333.32 (= USD 350,000 : 12 x 2).
74. Esteghlal does not dispute that on 19 December 2022, the Player put it in default by sending an email to fcesteghlaliran20@gmail.com, requesting payment of USD 125,346.20 within the next fifteen days. Esteghlal also does not contest that this amount was outstanding and represented more than the equivalent of two monthly salaries. However, Esteghlal considers that the notice was not validly served on behalf of the Player as it was not sent from Freekick.dubai@gmail.com, which was the email address that the Player contractually agreed to use to communicate with Esteghlal. Furthermore, the notice was sent by a person who was not duly authorised to act on behalf of the Player.
75. According to Article 12 of the Employment Contract, “*Any notices and other communications under the Contract shall be in writing and shall be given by facsimile or by electronic mail addressed as follows:*

The Club (...) fcesteghlaliran20@gmail.com (...)

The Player (...) Freekick.dubai@gmail.com”.

76. The Sole Arbitrator observes that this clause does not explicitly address the consequences of failing to meet its requirements or of utilizing an email address other than the one specified. Particularly, it does not mention that any communication transmitted from or through an alternate email address must be disregarded. Such a clause is quite common in contractual relationship and aims to establish a clear protocol for communication, ensuring that important notices, requests, or other formal correspondence reach the intended recipient in a timely manner. Should one of the parties opt for another email address, it must bear the consequences of any communication failure. A provision such as Article 12 of the Employment Contract does not preclude a party from conveying information to the other party by other means; however, it is incumbent upon that party to demonstrate that the communication has reached its intended recipient.

77. In this particular case, the notice sent to Esteghlal on 19 December 2022 was transmitted *via fcesteghlaliran20@gmail.com*; *i.e. via* the email address designated for communicating with the club as outlined in Article 12 of the Employment Contract. Esteghlal does not object that it has received this notice. On the contrary, in its Appeal Brief it claims that “*when Mr. Shuaib Ahmed sent a notice to ‘fcesteghlaliran20@gmail.com’, Esteghlal FC requested him to present a valid power of attorney*” admitting thereby that it had been served with the notice and was aware of its content.
78. The same applies to the notice sent on 2 February 2023, in which the Player informed Esteghlal that he was terminating the Employment Contract with immediate effect. Again, Esteghlal does not claim that it did not receive the notification, which would have been in conflict with the fact that it replied the following day insisting that a mutual termination had been agreed upon.
79. The Sole Arbitrator notes that Esteghlal did not prove, nor did it attempt to prove, the existence of a mutual agreement to terminate the Employment Contract. Moreover, it did not rely on the existence of such an agreement in these arbitration proceedings. Therefore, there is no reason to address this issue any further.
80. Based on the foregoing considerations, it appears that a) on 19 December 2022, b) Esteghlal “*unlawfully fail[ed] to pay [the Player] at least two monthly salaries on their due dates*”, c) the Player “*put the debtor club in default*”, d) “*in writing*” and e) “*has granted a deadline of at least 15 days for [Esteghlal] to fully comply with its financial obligation(s)*”. As a consequence, the requirements of Article 14bis of the RSTP were met and the Player had a just cause to terminate the Employment Contract on 2 February 2023, *i.e.* more than 15 days after the expiry of the deadline set in the notice of 19 December 2022.
81. Esteghlal argues that Mr Shuaib Ahmed, the person who sent the notices of 19 December 2022 and 2 February 2023 on behalf of the Player, did not have proper authority to do so. In these circumstances, Esteghlal submits that his intervention should be treated as if it had never taken place. In addition, Esteghlal contends that Mr Shuaib Ahmed’s capacity to act on behalf of the Player could only be recognized if his authority to do so was expressly stated in the Employment Contract, as stipulated by Article 18 of the RSTP. Esteghlal claims that this condition was not met in the present case.
82. According to Article 18 (1) of the RSTP “[i]f an intermediary is involved in the negotiation of a contract, he shall be named in that contract”. According to the FIFA Commentary on the RSTP (Edition 2021, page 192) “[t]his complements the Regulations on Working with Intermediaries which requires that clubs or players must ensure that any transfer agreement or employment contract concluded with the services of an intermediary bears the name and signature of such intermediary”. The FIFA Commentary on the RSTP, Edition 2023, has a similar content (see its page 228). It is clear that this provision only concerns intermediaries involved in the negotiations of a transfer agreement or the conclusion of an employment contract. In the matter at hand, there is nothing to suggest that Mr Shuaib Ahmed acted as an intermediary within the meaning of Article 18 of the RSTP; *i.e.* for the signing of the Employment Contract. Esteghlal has not established nor claimed the contrary.
83. Mr Shuaib Ahmed intervened in the termination of the employment relationship with Esteghlal, which is a situation that is not governed by Article 18 of the RSTP. It is not unusual for a player to retain the services of a representative, specifically for labour disputes. In such circumstances

and for obvious reasons, nothing requires for the latter's name to be indicated in the employment contract. As a matter of fact, it is difficult to see how this could be done when the agent is specifically mandated to terminate the employment contract and was not necessarily at the services of the Player at the moment of the signature of the employment contract.

84. Hence the only remaining question to resolve is whether Mr Shuaib Ahmed validly acted on behalf of the Player when he sent the notices of 19 December 2022 and 2 February 2023 to Esteghlal.
85. The FIFA regulations do not specify the form that a mandate linked to the termination of an employment contract must take. According to Swiss law, which applies subsidiarily, the termination of an employment contract is a unilateral declaration of intent, subject to receipt, by which the party terminating the contract notifies the other party of his/her intention to terminate the employment relationship (Judgments of the Swiss Federal Tribunal 4A_257/2019 of 6 November 2019 consid. 2.2). Notice of termination must be given by the party himself/herself or by his/her representative (Judgments of the Swiss Federal Tribunal 4C.151/2003 of 26 August 2003 consid. 4.1 and 4.2). In the latter case, Article 32 of the Swiss Code of Obligations ("CO") applies (ORDOLLI/WITZIG, in: Commentaire Romand, Code des obligations, Art. 253-529 CO, 3rd edition, 2021, ad art. 335 N. 2 p. 2546 and references; WYLER/HEINZER, Droit du travail, 4th edition, 2019, p. 624).
86. According to Article 32 (1) of the CO, *"The rights and obligations arising from a contract made by an agent in the name of another person accrue to the person represented, and not to the agent"*. This provision does not only apply to "contracts" as its wording may suggest but extends to unilateral or multilateral legal acts in general (CHAPPUIS C., in: Commentaire Romand, Code des obligations, Art. 1-252 CO, 3rd edition, 2021, ad art. 32 N. 6 p. 315 and references).
87. Legal actions undertaken by an individual acting as an agent for another person become legally binding on the principal if the agent possesses the appropriate authority (Article 32 CO), or upon subsequent endorsement of these actions by the principal (Article 38 CO), or if the behavior of the principal suggests to the third party that authority has been granted to the agent, leading to a reasonable inference of a power of attorney (Judgments of the Swiss Federal Tribunal 4A_478/2015 of 20 May 2016, consid. 3.1).
88. In the present case, the Parties do not dispute that between December 2022 and January 2023 a formal notice was served regarding the payment of outstanding wages and negotiations took place between the Player and Esteghlal regarding the mutual termination of the Employment Contract. In this context, given that the amounts owed remained unpaid and that the Player did not return to training in January 2023, Mr Shuaib Ahmed's notification of the unilateral termination of the Employment Contract can be seen as the logical and consistent consequence of the whole situation and in particular of the fruitless discussions between the Player and Esteghlal. Mr Shuaib Ahmed's involvement implies that he had the authority to act on behalf of the Player, as evidenced by the fact that the Player initiated proceedings before FIFA two weeks after the notification of the termination letter, thereby affirming (or ratifying) Mr Shuaib Ahmed's valid power of attorney.

89. Based on the foregoing, the Sole Arbitrator concludes that the requirements of Article 14bis of the RSTP were met and that the Player had a just cause to bring the Employment Contract to an end, which was validly terminated on his behalf on 2 February 2023.

B. If the Employment Contract was terminated by the Player with just cause, what are the financial consequences?

90. The Sole Arbitrator has to assess the financial consequences deriving from the fact that the Player terminated the Employment Contract with just cause.
91. Neither Esteghlal nor the Respondents called into question the detailed calculation of outstanding salaries, bonuses and compensation made by the DRC in its Appealed Decision. Save for the legal fees, the DRC fully adhered to the requests made by the Player when he referred the matter to it on 17 February 2023:

- Remaining amount of the first USD 100,000 due for the 2022/2023 season:	USD	3,146
- Outstanding instalment due on 10 October 2022:	USD	50,000
- Outstanding instalment due on 10 December 2022:	USD	50,000
- Unpaid bonuses	USD	22,200
- Compensation for breach of the Employment Contract:	<u>USD</u>	<u>450,000</u>
Total	USD	575,346

92. The outstanding salaries must be dissociated from the compensation for damages suffered by the Player following the termination of the Employment Contract with just cause.

1. The outstanding salaries

93. It must be inferred from the Player's claim before FIFA as well as from the Appealed Decision of the DRC, that on 2 February 2023, date of the termination of the Employment Contract by the Player for just cause, the outstanding salaries and bonuses due to the Player amounted to USD 125,346. This sum corresponds to the amount mentioned in the notice sent on behalf of the Player to Esteghlal on 19 December 2022 as well as in the claim filed by the Player before FIFA on 17 February 2023. Furthermore, Esteghlal does not dispute that this amount was not paid to the Player. In any event, it has not proven the contrary.

94. Based on the foregoing, the Sole Arbitrator holds that the outstanding salaries of USD 125,345 are due and that there is no reason to depart from this amount. On the basis of the principle of *pacta sunt servanda*, Esteghlal is liable to pay this sum to the Player.

2. The compensation for damages suffered by the Player

95. The situation is governed by Article 17 of the RSTP, entitled "*Consequences of terminating a contract without just cause*", which states the following:

"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”.*

- 96. The party responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract. As the Employment Contract does not contain a specific compensation clause in the event of its premature termination for just cause, the Player’s claim for compensation must be calculated on the basis of Article 17 of the RSTP.
- 97. According to this provision and in case of termination of an employment contract with just cause, the other party which has given rise to premature termination, is liable to pay compensation for damages suffered by the injured party. The latter is entitled to a whole reparation of the damages suffered, pursuant to the principle of the “*positive interest*”, under which compensation for breach must be aimed at reinstating the injured party to the position it would have been, had the contract been fulfilled to its end. Therefore, the damages to be taken into account are not only those that may have caused the act or the omission that justify the termination, but also the “*positive interest*” which, in case of termination of an employment contract, corresponds to the salaries and other material income or benefits that the Player would have earned if the contract would have been performed until its natural expiration (see the FIFA Commentary on the RSTP, Edition 2021, page 151 and numerous references; FIFA Commentary on the RSTP, Edition 2023, page 183 and numerous references).
- 98. Considering that the Employment Contract was terminated on 2 February 2023, the remaining salaries for the 2022/2023 season amounted to USD 150,000 (outstanding instalment of USD

50,000 due on 10 February 2023, outstanding instalment of USD 50,000 due on 10 May 2023 and outstanding instalment of USD 50,000 due on 10 June 2023). In addition, for the 2023/2024 season, the agreed salary was USD 400,000, bringing the residual value of the Employment Contract that was prematurely terminated to USD 550,000 (USD 150,000 of the 2022/2023 season + USD 400,000 of the 2023/2024 season).

99. Under these circumstances, it is not clear how the Player (in his claim filed on 17 February 2023 before FIFA) and FIFA established that the compensation for breach of contract amounted to USD 450,000. Even recently, on 31 January 2024, the Player confirmed that he *“fully endorses the FIFA decision and seeks to add nothing further to this”*. In light of the foregoing, the Sole Arbitrator does not see any reason to depart from the amount of compensation (*i.e.* USD 450,000) a) claimed by the Player before FIFA, b) awarded in the Appealed Decision, c) confirmed by the Player on 31 January 2024, and d) ultimately not contested by Esteghlal, which only complains about the Player’s lack of effort to mitigate it any further.

3. *Is there a reason to adjust the amount of compensation for damages suffered by the Player*

100. The question then arises whether there is any reason to adjust the compensation to be awarded to the Player. On the basis of Article 17 (1) lit. ii) of the RSTP, must be taken into account the amounts that the Player has earned with another employment agreement during the residual period of the Employment Contract.
101. Esteghlal contends that the Player has not seriously attempted to mitigate his losses as he deliberately accepted to sign a contract with poor financial conditions, in the absence of any valid reason to do so. According to Esteghlal and bearing in mind that his market value was of EUR 400,000, the Player acted in bad faith when he accepted to sign an employment contract with Nasaf FC, worth USD 72,930 per year. The Player’s bad faith is all the more significant given that he signed with Nasaf FC only 13 days after the termination of the Employment Contract. According to Esteghlal, the Player could have very well taken more time to find a better paid job.
102. With respect to the burden of proof, Article 8 of the Swiss Civil Code (“CC”) states that *“Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact”*. As a result, the Sole Arbitrator reaffirms the principle established by CAS jurisprudence that *“in CAS arbitration, any 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 other words, the party which asserts facts to support its rights has the burden of establishing them. The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence”* (CAS 2021/A/7673 & 7699 and references).
103. Esteghlal has not substantiated its submission that the Player deliberately chose to sign with Nasaf FC rather than with another employer that could have offered him a higher salary. Moreover, such an assertion is not compatible with the fact that the hypothetically higher salary paid by another club, added to the mitigated compensation, would likely result in the same sum as that to which the Player is entitled as a result of the premature termination of the

Employment Contract for just cause. In these circumstances, the Sole Arbitrator fails to see what interest the Player would have in foregoing a better paid job if not exclusively to harm the interests of Esteghlal, which has not been demonstrated at all. On the contrary, once he had terminated the Employment Contract with just cause, the Player was diligent in finding a new employer, which enabled him to reduce the amount of compensation owed by Esteghlal. Furthermore, while he was contractually bound with Nasaf FC, the Player secured a better professional opportunity with Khorfakkan FC, which enabled him to significantly mitigate the amount of compensation for damages he suffered because of Esteghlal's breach of the Employment Contract.

104. On 17 February 2024 and with respect to the contract signed with Khorfakkan FC, the Player confirmed that "[the] salary in the New Contract is \$412,500.00 (four hundred and twelve thousand, five hundred United States dollars only) for the term, in addition payments in advance of the salary equating to \$137,500.00 (one hundred and thirty-seven thousand, five hundred United States dollars only)". Hence, it is admitted that the Player is entitled to USD 550,000 for the services he will be providing to Khorfakkan FC for the year 2024.
105. In calculating the compensation due to the Player, the following elements must be taken into account:
 - The Employment Contract was terminated on 2 February 2023.
 - At the time of its signature, the agreed expiry date of the Employment Contract is at the earliest on 31 June 2024.
 - From February until December 2023, the Player received USD 72,930 from Nasaf FC.
 - The employment contract signed by the Player and Khorfakkan FC is effective from 3 January until 31 December 2024.
 - From 3 January 2024 to 31 June 2024, the Player is entitled to USD 275,000 (= USD 550,000 : 2 x 3).
 - Pursuant to Article 17 (1) lit. ii) of the RSTP, a player is entitled to an amount corresponding to three monthly salaries as "additional compensation" should the termination of the employment contract at stake be due to overdue payables. Where egregious circumstances exist in cases where the early termination of the contract was due to overdue payables, the "additional compensation" can be increased up to a maximum of the equivalent of six monthly salary payments. In the present case, the Employment Contract was prematurely terminated because of overdue payables but, in its Appealed Decision, the DRC did not find that there were "egregious circumstances" as it decided to award to the Player only three monthly salaries as "additional compensation". This was not questioned by any of the Parties. Hence the Player is entitled to USD 87,500 as additional compensation, corresponding to three monthly salaries, calculated on the pro rata basis of the entire salary due for the whole duration of the Employment Contract (USD 1,050,000 : 12 x 3).

106. In view of the above findings, the compensation due by Esteghlal is the following:

- Compensation awarded by the DRC:	USD 450,000
- Additional compensation	USD 87,500
- Salaries paid by Nasaf FC:	./ USD 72,930
- Salaries paid by Khorfakkan FC	./ USD 275,000
Total:	USD 189,570

107. Hence, the compensation due by Esteghlal for the damages caused to the Player as a result of the termination of the Employment Contract with just cause, is of USD 189,570. This amount is within the limits set by Article 17 (1) lit. ii) of the RSTP according to which “[the] *overall compensation may never exceed the rest value of the prematurely terminated contract*”; i.e. USD 450,000.

4. *What are the default interests?*

108. With respect to the payment of default interest, the question is not governed by FIFA Regulations and must therefore be assessed according to Swiss law. The pertinent provisions are:

“Article 73 CO

1. *Where an obligation involves 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.*
2. *Public law provisions governing abusive interest charges are not affected”.*

“Article 104 CO

1. *A debtor in default on payment of a pecuniary debt must pay default interest of 5% per annum even where a lower rate of interest was stipulated by contract.*
2. *Where the contract envisages a rate of interest higher than 5%, whether directly or by agreement of a periodic bank commission, such higher rate of interest may also be applied while the debtor remains in default”.*

109. Regarding the *dies a quo*, where an obligation is due, the obligor is in default as soon as he receives a formal notice from the creditor. Where a deadline for performance of the obligation has been set by agreement, a notice is not necessary (see Article 102 CO; THÉVENOZ L., in: Commentaire romand, Code des obligations I, Art. 1-252 CO, 3rd edition, 2021, ad art. 102 CO, N. 26, p. 918).

110. Based on the foregoing, it appears that the DRC correctly applied the above provisions in its Appealed Decision.

C. Conclusion

111. For all the reasons set above, the Sole Arbitrator comes to the conclusion that the Player is entitled to the following amounts:
- USD 3,146 as outstanding remuneration plus 5% interest *p.a.* as from 8 August 2022 until the date of effective payment;
 - USD 50,000 as outstanding remuneration plus 5% interest *p.a.* as from 11 October 2022 until the date of effective payment;
 - USD 50,000 as outstanding remuneration plus 5% interest *p.a.* as from 11 December 2022 until the date of effective payment;
 - USD 22,200 as outstanding remuneration plus 5% interest *p.a.* as from 17 February 2023 until the date of effective payment;
 - USD 189,570 as compensation for breach of contract without just cause plus 5% interest *p.a.* as from 4 February 2023 until the date of effective payment.
112. The above conclusion, finally, makes it unnecessary for the Sole Arbitrator to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Esteghlal FC against the decision issued on 24 August 2023 by the FIFA Players' Status Chamber is partially upheld.
2. The decision issued on 24 August 2023 by the FIFA Players' Status Chamber is confirmed, save for Item 2 of its operative part which is amended as follows:

"[Esteghlal FC] must pay to [Azizbek Amanov] the following amount(s):

- *USD 3,146 as outstanding remuneration plus 5% interest p.a. as from 8 August 2022 until the date of effective payment;*
- *USD 50,000 as outstanding remuneration plus 5% interest p.a. as from 11 October 2022 until the date of effective payment;*

- *USD 50,000 as outstanding remuneration plus 5% interest p.a. as from 11 December 2022 until the date of effective payment;*
 - *USD 22,200 as outstanding remuneration plus 5% interest p.a. as from 17 February 2023 until the date of effective payment;*
 - *USD 189,570 as compensation for breach of contract without just cause plus 5% interest p.a. as from 4 February 2023 until the date of effective payment”.*
3. (...).
 4. (...).
 5. All other or further motions or prayers for relief are dismissed.