

# Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 20 May 2020,

in the following composition:

**Geoff Thompson (England), Chairman**  
**Jerome Perlemuter (France), member**  
**Angela Collins (Australia), member**

on the claim presented by the club,

**Shabab Al Ahli Dubai, United Arab Emirates,**  
represented by Mr Rafael Botelho

*as Claimant / Counter-Respondent*

against the player,

**Mauro Alberto Diaz, Argentina,**  
represented by Mr Ariel Reck

*as First Respondent / Counter-Claimant*

with the club,

**Estudiantes de la Plata, Argentina**

*as Second Respondent*

regarding an employment-related dispute  
between the parties

## I. Facts of the case

1. On 11 June 2018, the North-American club, FC Dallas, and the Emirati club, Shabab Al Ahli Dubai (hereinafter: *Shabab*) executed a transfer agreement by means of which the services of the Argentinian player, Mauro Alberto Diaz (hereinafter: *the player*), were permanently transferred from the former to the latter club.
2. According to the aforementioned transfer agreement, Shabab paid FC Dallas a transfer fee of USD 1,500,000.
3. On 29 June 2018, the player and Shabab executed an employment agreement valid from 1 July 2018 until 30 June 2021 (hereinafter: *the contract*). Pursuant to the contract, Shabab undertook to pay to the player the following remuneration:
  - USD 375,000 payable 5 days after *"the signature of the player [...] and he passes the medical exam"*.
  - USD 150,000 on 1 January 2019;
  - USD 225,000 on 1 July 2019;
  - USD 125,000 per month from 1 July 2018 until 30 June 2021 payable *"on or before the 10th natural day of the subsequent month"*.
4. In accordance with clause 6.4 of the contract, Shabab undertook to provide the player with 2 business tickets per season, route Buenos Aires-Dubai-Buenos Aires, *"to be freely used for him or his family"*.
5. In accordance with clause 9.15 of the contract, the parties agreed as follows (quoted verbatim): *"In the event of an unlawful breach by the Player of this Agreement the Player and the Club acknowledge and agree that the market value of the Player at the time of such unlawful breach, as determined by the Dispute Resolution Chamber of FIFA, shall be used (in addition to the existing criteria as set out at Article 17 of the FIFA Regulations for the Status and Transfer of Players) (as amended) when calculating the compensation due and payable by the Player to the Club for the Player's unlawful breach of Agreement. The Player agrees and acknowledges that such market value represents the actual loss sustained by the Club and the true and fair cost to the Club of replacing the Player as at the time of his unlawful breach of this Agreement. For the avoidance of doubt the market value shall be assessed at the time of the unlawful breach not at the date this Agreement was entered into. Nothing in this Agreement shall infer or imply an acceptance by the Club of the Players ability to terminate this Agreement."*
6. On 29 October 2019, Shabab, at the request of the player, authorized him to travel to Barcelona in order to attend private medical consultation in relation to an injury.

7. On 23 December 2019, the player sent a written notice to Shabab. In said letter, the player requested Shabab to proceed with his *“registration for the upcoming year”*, and informed Shabab that he had *“tolerated and accepted”* such situation, *i.e.* his de-registration, *“until January 2020”*. Accordingly, the player gave a 10-day deadline for Shabab to register him *“again at the FA to play officially with the first team for the year 2020 and to include me in the official web page as member of the first team”*, under penalty of termination of the contract with just cause by the player.
8. According to the information available in the Transfer Matching System (TMS), the relevant registration period in the UAE started on 7 January 2020 and ended on 3 February 2020.
9. On 11 January 2020, the player terminated the contract with Shabab in writing.
10. On 13 January 2020, the player left Dubai, arriving in Buenos Aires on the same day (20h40min local time).
11. On 14 January 2020, an alleged medical report was published by Shabab’s medical team regarding the medical situation of the player. Said report stated, *inter alia*, that the player suffered from *“true arthrosis of the lateral compartment of the right knee”*, which was a *“progressive condition”*.
12. On 15 January 2020, the player and the Argentinian club, Estudiantes de la Plata (hereinafter: *Estudiantes*) signed an employment contract (hereinafter: *the new employment agreement*), valid as from its date of signature until 30 June 2021. According to the new employment agreement, the player was entitled to, *inter alia*, the total fixed remuneration of Argentinian Peso (ARS) 23,750,000, broken down as follows:
  - ARS 600,000 per month for the period January 2020 until and including June 2020;
  - ARS 1,850,000 on 25 March 2020;
  - ARS 1,850,000 on 25 June 2020;
  - ARS 900,000 per month for the period July 2020 until and including June 2021;
  - ARS 2,825,000 on 25 March 2021;
  - ARS 2,825,000 on 25 June 2021.
13. On 17 January 2020, Estudiantes asked Shabab for the player’s *“Third-Party Ownership declaration”* regarding his registration with Estudiantes via TMS.
14. On 18 January 2020, Shabab responded to the player’s termination letter, *inter alia*, holding the following (quoted *verbatim*):

*“As a result of the detailed discussions where the content of your letters were taken into consideration from all aspects, we would like to inform you that the Technical*

*Director as well as the entire administrative staff of the Club want to be able to take advantage of your technical skills and enroll you in the upcoming window.*

*As you are aware the Club has more than one front and championship it is participating at, be it in the UAE, or the wider Gulf competitions as well as the AFC Championship. As a matter of fact, the Club lost the final of the cup, as it had several of its foreign players injured and the coach recalled back all players under contract to join the squad again as soon as possible and before the close of the transfer window on the 3rd of February*

*Further, the Club received a letter from Testudinate De La Plata requesting the TPO declaration, in this respect we would like to remind you that you are still engaged with the Club by the Professional Football Player's Contract that is still valid and binding, hence the Club will not be in a position to issue such declaration.*

*The Club complied with all its contractual obligations towards you, therefore the Club reserves its right towards you should you not perform your contractual obligations and report back to the Club as soon as possible and prior to the 3rd of February i.e. the close of the winter window transfer window, otherwise the Club will be obliged to take all legal steps to protect its interests."*

15. On 19 January 2020, the player replied to Shabab's letter, stating *inter alia* the following (quoted verbatim): *"In consideration of all the above-mentioned facts your request for my return has no legal basis. The employment contract we had was terminated by my with just cause and I will pursue compensation and sporting sanctions before FIFA for your breach and also sporting damages if you try to block my registration with Estudiantes from the beginning of the season."*
16. On 20 January 2020, according to the information contained in the TMS, the *Asociación del Fútbol Argentino* (AFA), in order to register the player for its affiliated club, Estudiantes, requested the player's International Transfer Certificate (ITC) through TMS from the United Arab Emirates Football Association (UAEFA).
17. On 3 February 2020, the AFA addressed FIFA requesting assistance with regard to the provisional registration of the player for Estudiantes. In this respect, the AFA forwarded a letter signed by Estudiantes and the player on 27 January 2020 indicating, *inter alia*, that the player and Shabab signed a contract from 21 June 2018 until 30 June 2021, and that, following a 6 months deregistration agreed between the parties during the season 2018/2019, the player was not reinstated among its team and registered again with Shabab by the end of 2019. Furthermore, Estudiantes and the player argued that, despite the player's attempt to get in contact with Shabab and despite giving a written notice to said club in order to be registered again with it - as the championship in UAE had allegedly started - the latter did not respond, resulting in the player having no other choice than to terminate his contract *"with just cause"* on 11 January 2020.

18. On 12 February 2020, the Single Judge of the Players' Status Committee authorised the AFA to provisionally register the player with Estudiantes with immediate effect. The Single Judge of the Players' Status Committee outlined his decision as follows:

*"Finally, the Single Judge emphasised that the present decision related to the authorisation to provisionally register the player for [Estudiantes] is a provisional measure and, as such, without prejudice to any decision as to a potential contractual dispute between [Shabab] and the player (as well as the new club). In particular, it would be up to the competent deciding body to express itself on the questions if the contract has been terminated by one of the contractual parties, whether with or without just cause, and who is to be deemed responsible for such possible breach. Equally, the competent body would have to determine the possible consequences thereof, i.e. financial compensation and/or sporting sanctions".*

19. On 2 March 2020, Shabab filed a claim before FIFA against the player and Estudiantes for breach of contract.
20. On the same date, the player lodged a parallel claim against Shabab for breach of contract.
21. For the sake of good order, the player's claim was considered, for the purposes of this decision, as a counterclaim, albeit having been filed independently. The position of the parties is summarized in continuation.
22. As per Shabab, *"prior to the start of the 2019/2020 season, Shabab and Player consensually agreed that he should be deregistered from the team during the season, which would allow the Player to seek appropriate treatment and completely heal from his nagging injury and the Club to fill the foreign quota with a player able to perform"*.
23. In this context, Shabab underlined that the de-registration of the player was consensual, as it is allegedly demonstrated (a) by the player's letter dated 23 December 2019, and (b) by the provisional registration request jointly made by the player and Estudiantes.
24. With regard to the player's de-registration, Shabab argued that this was not permanent. As per Shabab, it *"was not in position to register the Player at the moment he demanded so – registration was closed and Club had fulfilled its foreign quota -, the Player was part of the Club's strategy for the remainder of the 2019/2020 season and for the 2020/2021 season, during which he would still be under contract"*.
25. With regard to the player's letter dated of 23 December 2019 and the subsequent unilateral contract termination on 11 January 2020, Shabab highlighted that it did not authorize any of this.

26. In this context, Shabab maintained that all of the player's *"salaries and wages were duly and fully paid by the Club, including the period the Player was away from the activities due to medical reasons"*.
27. In sum, according to Shabab, the player terminated the contract on 11 January 2020 without just cause.
28. Moreover, Shabab claimed that the player was induced by Estudiantes, given that the player, after accepting the temporary de-registration *"suddenly changed his mind"* and was registered with Estudiantes instead.
29. In this regard, Shabab pointed out that the player terminated the contract on 11 January 2020, only to sign a new employment contract with Estudiantes four days later, on 15 January 2020.
30. As to the compensation for breach of contract, Shabab referred to clause 9.15 of the contract and argued that the player's market value needs to be taken into account. In this light, Shabab highlighted that the transfer fee in order to sign the player amounted to USD 1,500,000.
31. As per Shabab, *"since the Player terminated the Contract following 1½ (one and a half) seasons, the Club have amortized only half the Transfer Fee, i.e. US\$750,000 [...]. Hence, the Respondents are responsible for paying to the Club an amount of US\$750,000."*
32. In continuation, Shabab argued that the residual value of the contract amounted to USD 2,250,000, and that this amount should be added to the compensation due to Shabab.
33. In conclusion, Shabab submitted the player and Estudiantes are jointly liable to compensate Shabab for breach of contract in the total amount of USD 3,000,000 *"plus the reasonable market value of the player and expected costs of replacement for the 2020/2021 season"*. Shabab further requested that interest of 5% *p.a.* applies on the cited amount as from the date of claim.
34. Lastly, Shabab requested that the player and Estudiantes bear the costs of the proceeding, and that sporting sanctions are imposed on both the player and Estudiantes.
35. The player, for his part, claimed that he was informed in August 2019 that he would be de-registered in favour of another foreign player. In this regard, the player held that he and Shabab agreed on a temporary de-registration, under the conditions that he would be registered again in December 2019.

36. The player wished to underline that during this period he did not miss a single training session, except for the period he travelled to Barcelona in early November 2019, in order to receive medical treatment.
37. However, as per the player, by late December 2019, Shabab had still not re-registered him, hence why he sent Shabab a default notice. According to the player, given that Shabab had still not re-registered him by 11 January 2020, he had no choice but to terminate the contract.
38. The player is of the position that given that Shabab had promised to re-register him, but did not do so, and that Shabab did not reply to his default letter, he concluded that he had a just cause to terminate the contract on 11 January 2020.
39. In this regard, the player further highlighted that Shabab only contacted him on 18 January 2020, *i.e.* after both his default letter and letter of contract termination.
40. As to the consequences for his unilateral termination with just cause, the player held that Shabab should pay him the following amounts:
  - USD 125,000 as outstanding remuneration corresponding to the monthly salary of January 2020;
  - USD 2,125,000 corresponding to the residual value of the contract, *i.e.* 17 monthly salaries for the period of February 2020 until and including June 2021;
  - USD 28,000 corresponding to two business class flight tickets he is entitled to under clause 6.4 of the contract.
41. In addition, the player submitted that the amount due to him needs to be mitigated by USD 265,000, corresponding to the value of the employment contract he signed with Estudiantes.
42. As a result, the player concluded that he is entitled to compensation for breach of contract in the amount of USD 2,013,000. The player further requested that interest of 5% *p.a.* is applied as from 11 January 2020, and that sporting sanctions be imposed on Shabab.
43. In his reply to Shabab's claim, the player, in short, reiterated his position and requests for relief as detailed in his own statement of claim. As an alternative request for relief, should it be concluded that the player terminated the contract without just cause, the player outlined that Shabab saved money with the termination of the contract, therefore not entitling it to any compensation. Lastly, the player requested that no sporting sanctions be imposed on him.
44. In its reply to the player's claim, Shabab, in short, reiterated its position and requests for relief as detailed in its own statement of claim, and sought, as an alternative prayer for relief and should it be concluded that the player terminated the contract with just cause, that compensation be capped at the amount of USD 750,000.

45. Estudiantes, for its part, rejected Shabab's claim.
46. In this respect, Estudiantes deems that the termination of the contract between the player and Shabab was the latter's exclusive fault, as it de-registered the player for sporting reasons, and failed to re-register him upon request. Estudiantes is of the position that Shabab reacted late to the player's letters, only replying after it had received "*the TPO request*".
47. Estudiantes further submitted that it did not induce the player to breach the contract, and that it had all reasons to believe that the termination by the player was done with just cause. It went on to state that the player had negotiated, upon his return to Argentina, with various clubs.
48. Estudiantes concluded its submissions by requesting Shabab's claim to be dismissed.

## II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 2 March 2020. Taking into account the wording of art. 21 of the 2019 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and par. 2 in conjunction with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition March 2020), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension concerning an Emirati club against an Argentinian player and an Argentinian club.
3. Furthermore, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (edition March 2020), and considering that both claims were lodged on 2 March 2020, the March 2020 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
4. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the



arguments and documentation on file. However, the DRC emphasised that in the following considerations, it will refer only to the facts, arguments, and documentary evidence which it considered pertinent for the assessment of the matter at hand. In this respect, the Chamber recalled that in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, FIFA may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in TMS.

5. By doing so, the Chamber firstly took note of Shabab's position, according to which the player terminated the contract without just cause. What is more, the members of the Chamber observed that Shabab claimed that the de-registration of the player was consensual, as it is allegedly demonstrated (a) by the player's letter dated 23 December 2019, and (b) by the provisional registration request jointly made by the player and Estudiantes. The Chamber also noted Shabab's submission that the player's de-registration was not permanent, and that it still wished to make use of the player's services for the remainder of the contract.
6. In continuation, the DRC took note that Shabab requested that the player and Estudiantes are found jointly liable for the payment of compensation for breach of contract in the total amount of USD 3,000,000 *"plus the reasonable market value of the player and expected costs of replacement for the 2020/2021 season"*, plus application of interest of 5% *p.a.* on the cited amount as from the date of claim.
7. Lastly, the DRC observed that Shabab requested that the player and Estudiantes bear the costs of the proceeding, and that sporting sanctions are imposed on both the player and Estudiantes.
8. Turning then to the position of the player, the members of the DRC observed that he deemed to have terminated the contract with just cause on 11 January 2020. In this regard, the Chamber took into account the player's position that he was informed in August 2019 that he would be de-registered in favour of another foreign player.
9. The Chamber further noted that the player submitted to have reached an agreement with Shabab for his temporary de-registration, under the conditions that he would be registered again in December 2019, but that by late December 2019, Shabab had still not re-registered him, hence why he sent Shabab a default notice.
10. The members of the DRC, in continuation, acknowledged that according to the player, given that Shabab had still not re-registered him by 11 January 2020, he had no choice but to terminate the employment contract, hence entitling him to receive the following amounts:
  - USD 125,000 as outstanding remuneration corresponding to the monthly salary of January 2020;
  - USD 2,125,000 corresponding to the residual value of the contract, *i.e.* 17 monthly salaries for the period of February 2020 until and including June 2021;

- USD 28,000 corresponding to two business class flight tickets as per clause 6.4 of the contract.
11. In addition, the DRC observed that the player submitted that the amount due to him needs to be mitigated by USD 265,000, corresponding to the value of the employment contract he signed with Estudiantes, therefore resulting in the amount of USD 2,013,000.
  12. Lastly, the members of the Chamber noted that the player further requested that interest of 5% *p.a.* is applied as from 11 January 2020, and that sporting sanctions be imposed on Shabab.
  13. In continuation, the Chamber turned its attention to the position of Estudiantes, according to which the termination of the contract between the player and Shabab was the latter's exclusive fault, as it de-registered the player and failed to re-register him upon request. The Chamber duly noted Estudiantes argument that Shabab reacted late to the player's letters, only replying after it had received the "TPO request".
  14. In addition, the DRC observed that Estudiantes further submitted not to have induced the player to breach the contract, and that it had all elements to believe that the termination by the player was done with just cause.
  15. Bearing in mind the foregoing, the Chamber started by recalling the fact that the dispute at hand deals with two parallel claims lodged on the same date, the first one from Shabab against the player and Estudiantes for breach of contract and inducement, and the second one lodged by the player against Shabab for breach of contract.
  16. Accordingly, the Chamber concluded that the issue at the centre of the dispute is whether the player had just cause to terminate the contract on 11 January 2020, and the consequences thereof.
  17. Notwithstanding, the members of the Chamber, before entering in detail into the substance of the matter, wished to recall the contents of art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right in regards to a fact shall bear the respective burden of proof. Likewise, the DRC recalled that it can consider evidence not presented by the parties, in line with article 12 par. 4 of the Procedural Rules.
  18. In continuation, the members of the Chamber found important to outline two key pieces of evidence, namely (a) the player's letter of 23 December 2019 and (b) the request for provisional registration made by Estudiantes and the player, according to which the player agreed to remain de-registered.

19. As such, and in line with the parties' submissions, the members of the Chamber were comfortably satisfied to conclude that the player and Shabab agreed on the player's de-registration, in spite of the dispute as to why and until when this was agreed.
20. Therefore, the members of the Chamber decided that the first point of the controversy to be clarified is until when such agreement for the player's de-registration lasted. Having said this, the DRC recalled that, as per the player's submissions, his de-registration had been agreed until December 2019.
21. Subsequently, the DRC observed that no written agreement was executed by the parties confirming the player's de-registration's term. However, based on the evidence on file, the Chamber outlined that the player confirmed, in his letter dated 23 December 2019, that he had "*made clear that* [his agreement to the de-registration] *was only temporary until January 2020*".
22. Consequently, the members of the Chamber concluded that the parties agreed that the player would remain de-registered (or would be re-registered) in the month of January 2020, as this was expressly admitted by the player in the aforementioned correspondence.
23. In addition, the DRC observed that in accordance with the information available in TMS, the registration period in the UAE started on 7 January 2020 and would remain open until 3 February 2020.
24. Consequently, the DRC concluded that at the time the player requested to be re-registered in December, (a) the mutually agreed deadline for re-registration of the player had not yet elapsed, and (b) the relevant transfer window was not yet open.
25. Hence, the DRC was of the opinion that by the time the player terminated the contract, it cannot be said that Shabab was in breach of its obligations, as the re-registration of the player was to take place at any time during the month of January 2020. Accordingly, the DRC concluded that the player's correspondence of 23 December 2019 is to be considered a reminder rather than a default notice.
26. Furthermore, the player, in his correspondence of 23 December 2019, gave the club "*10 natural days to remedy the default*", i.e. until 2 January 2020. However, as per the information contained in TMS, the registration period in the UAE started only on 7 January 2020. On 11 January 2020, i.e. 4 days after the opening of the registration period, the player terminated the contract.
27. The Chamber was eager to emphasise 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 a continuation of the employment relationship between the parties, may a contract be terminated prematurely. Hence, if there are more lenient measures which can be taken in order to ensure the fulfilment of the parties' contractual duties, 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.

28. In addition, the members of the Chamber also highlighted that while the de-registration of a player, as per the Jurisprudence of the DRC, might in principle constitute a valid reason justifying termination, it found that in the specific circumstances of the case at hand it does not.
29. In light of the foregoing considerations, the DRC concluded that the termination of the contract by the player in the present case cannot be considered as an *ultima ratio* measure.
30. In short, the members of the Chamber deemed that the player's termination of the contract was premature; the deadline for the player's re-registration had not yet elapsed and the club's stance on the player's re-registration had, in any case, not reached a level for the player to conclude that he could not reasonably be expected to continue the employment relationship.
31. Accordingly, the Chamber decided that the player terminated the employment contract on 11 January 2020 without just cause.
32. That said, the DRC further established that the player is to be held liable for the early termination of the contract without just cause, thereby focussing its attention on the consequences of such breach of contract.
33. In doing so, the DRC first of all established that the player was employed by Shabab for 11 days in the month of January 2020, *i.e.* up until the contract was terminated. Therefore, the Chamber decided that the player is entitled to his pro-rata salary of January 2020.
34. Since the player's monthly remuneration was USD 125,000, the Chamber came to the conclusion that the player is entitled to USD 45,833 as his pro-rata salary of January 2020. As such, the Chamber decided to partially accept the player's counterclaim and that Shabab must pay, in accordance with the general legal principle of *pacta sunt servanda*, the amount of USD 45,833 as outstanding remuneration in the case at hand.
35. In addition, taking into account the player's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the Chamber decided that Shabab must pay to the player interest of 5% *p.a.* on the said amount as of the date of claim, *i.e.* 2 March 2020, until the date of effective payment.
36. In continuation, the Chamber turned its attention to art. 17 par. 1 of the Regulations, according to which the player is liable to pay compensation to Shabab. Furthermore, pursuant to the unambiguous contents of art. 17 par. 2 of the Regulations, the Chamber established that the player's new club, *i.e.* Estudiantes, shall be jointly and severally liable for the payment of compensation. In this respect, the Chamber was

eager to point out that the joint liability of the player's new club is independent from the question as to whether the new club has committed an inducement to contractual breach or any other kind of involvement by the new club. This conclusion is in line with the jurisprudence of the DRC, which has been repeatedly confirmed by the Court of Arbitration for Sport (CAS). Notwithstanding, the Chamber recalled that in accordance with art. 17 par. 2 of the Regulations, it should be assumed that, unless otherwise proven, any club that signs a contract with a professional player who has terminated his/her contract without just cause has induced the player to terminate such contract.

37. The members of the Chamber recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including 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 as well as 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.
38. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contains a provision by which the parties had beforehand agreed upon an amount of compensation payable by either contractual party in the event of breach of contract. Upon careful examination of said contract, the members of the Chamber assured themselves that this was not the case in the matter at stake.
39. For the sake of completeness, the Chamber observed the contents of article 9.15 of the contract, according to which (quoted *verbatim*): *"In the event of an unlawful breach by the Player of this Agreement the Player and the Club acknowledge and agree that the market value of the Player at the time of such unlawful breach, as determined by the Dispute Resolution Chamber of FIFA, shall be used (in addition to the existing criteria as set out at Article 17 of the FIFA Regulations for the Status and Transfer of Players) (as amended) when calculating the compensation due and payable by the Player to the Club for the Player's unlawful breach of Agreement. The Player agrees and acknowledges that such market value represents the actual loss sustained by the Club and the true and fair cost to the Club of replacing the Player as at the time of his unlawful breach of this Agreement. For the avoidance of doubt the market value shall be assessed at the time of the unlawful breach not at the date this Agreement was entered into. Nothing in this Agreement shall infer or imply an acceptance by the Club of the Players ability to terminate this Agreement"*.
40. In this regard, the Chamber emphasized that such clause, while partially mimicking the contents of art. 17 of the Regulations, tentatively provides for additional criteria to be taken into account. However, the Chamber concluded that in light of the particular wording of the clause at stake, such additional criteria is already embodied

in the contents of art. 17 of the Regulations, namely the fees and expenses paid or incurred by the former club (amortised over the term of the contract). Accordingly, the Chamber concluded that the basis of the calculation would be only art. 17 of the Regulations, and that the contents of clause 9.15 of the contract were not to be taken into consideration.

41. The Chamber further recalled that the Claimant had claimed compensation in the amount of USD 3,000,000 *“plus the reasonable market value of the player and expected costs of replacement for the 2020/2021 season”*.
42. In the calculation of the amount of compensation due by the player, the Chamber firstly turned its attention to the remuneration and other benefits due to the player under the existing contract and/or any new contract(s), a criterion which was considered by the Chamber to be essential. The members of the Chamber deemed it important to emphasise that the wording of art. 17 par. 1 of the Regulations allows the Chamber to take into account both the existing contract and any new contract(s) in the calculation of the amount of compensation.
43. According to the documentation provided by the parties, it appears that in accordance with the contract, which was to run until 30 June 2021, the player was to receive a total remuneration of USD 2,204,167. This amount includes the remainder of the player’s salaries of January 2020 (i.e. from 12 January 2020 onwards) and 17 months of remuneration from February 2020 until June 2021.
44. On the other hand, the value of the new employment agreement, concluded between the player and Estudiantes, appears to amount to ARS 23,750,000, which corresponds to approximately USD 396,000 as converted on 15 January 2020, *i.e.* the date the player and Estudiantes signed their contract.
45. In view of all of the above, the Chamber concluded that bearing in mind art. 17 par. 1 of the Regulations, after having duly taken into account the specificities of the present case, the compensation considering the player’s both existing contract and any new contract(s) amounts to USD 1,300,083, which is the average between the amounts the player is entitled to both under the contract and new employment agreement, a sum the Chamber found to be fair and proportionate.
46. The members of the Chamber then turned to the essential criterion relating to the fees and expenses paid by Shabab for the acquisition of the player’s services insofar as these have not yet been amortised over the term of the relevant contract. The Chamber recalled that a transfer compensation of USD 1,500,000 had been paid by Shabab to the North-American club FC Dallas for the player’s transfer, documentation of which has been presented by Shabab. According to article 17 par.1 of the Regulations, this amount shall be amortised over the term of the relevant employment contract. As stated above, the player was still bound to Shabab by one and a half years of contract when he terminated the contract, which was originally valid for a total period of three years, *i.e.* until 30 June 2021. As a result of the player’s

breach of contract in January 2020, Shabab has thus been prevented from amortising the amount of USD 750,000, *i.e.* 1/2 of USD 1,500,000, relating to the transfer compensation that it paid in order to acquire the player's services, which, at that time, Shabab counted to be able to make use of during three entire years.

47. In sum, the Chamber concluded that the amount of compensation for breach of contract without just cause to be paid by the player to Shabab consists of the amount of USD 750,000 related to non-amortised expenses incurred by Shabab when engaging the services of the player and USD 1,300,083 being the reflection of the remuneration and other benefits due to the player under the previous and the new contract.
48. On account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the player must pay the amount of USD 2,050,083 (*i.e.* USD 750,000 plus USD 1,300,083) to Shabab as compensation for breach of contract. Furthermore, Estudiantes is jointly and severally liable for the payment of the relevant compensation.
49. In addition, taking into account Shabab's request as well as the constant practice of the Dispute Resolution Chamber in this regard, the Chamber decided that the player and Estudiantes must pay to Shabab interest of 5% *p.a.* on the amount of compensation as of the date of claim, *i.e.* 2 March 2020, until the date of effective payment.
50. As to the matter of sporting sanctions, as established under art. 17 par. 3 and 17 par. 4 of the Regulations, the Chamber found that, albeit Shabab was not in breach of its obligations at the time of termination, it was indeed late in replying to the player's communications of 23 December 2019 and 11 January 2020. As such, the DRC was of the opinion that Shabab might have given the impression to the player that it tacitly acquiesced to his position, leading to the termination of the contract.
51. In view of such particular situation, and yet underlining, once again, that the player's letter of 23 December 2019 is rather a reminder instead of a default notice since Shabab was not in breach of its obligations, the members of the Chamber concluded that the player's actions did not merit the imposition of sporting sanctions. In short, the DRC concluded that the belated response by Shabab was to be considered an attenuating factor.
52. Finally, taking into account the consideration under number II./3. above, the Chamber referred to par. 1 and 2 of art. 24bis of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
53. In this regard, the DRC pointed out that, against players, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from playing in

official matches, up until the due amounts are paid and for the maximum duration of six months.

54. Additionally, the DRC highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods.
55. Therefore, bearing in mind the above, the DRC decided that, in the event that the player does not pay the amounts due to Shabab within 45 days as from the moment in which Shabab, following the notification of the present decision, communicates the relevant bank details to the player, a ban from playing in official matches, for the maximum duration of six months shall become effective on the player in accordance with art. 24bis par. 2 and 4 of the Regulations.
56. Likewise, the DRC decided that, in the event that Estudiantes does not pay the amounts due to Shabab within 45 days as from the moment in which Shabab, following the notification of the present decision, communicates the relevant bank details to Estudiantes, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on Estudiantes in accordance with art. 24bis par. 2 and 4 of the Regulations.
57. Equally, the DRC decided that, in the event that Shabab does not pay the amounts due to the player within 45 days as from the moment in which the player, following the notification of the present decision, communicates the relevant bank details to Shabab, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on Shabab in accordance with art. 24bis par. 2 and 4 of the Regulations.
58. The DRC recalled that the above-mentioned bans will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24bis par. 3 of the Regulations.
59. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

### **III. Decision of the Dispute Resolution Chamber**

1. The claim of the Claimant / Counter-Respondent, Shabab Al Ahli Dubai, is partially accepted.



2. The First Respondent / Counter-Claimant, Mauro Alberto Diaz, has to pay to the Claimant / Counter-Respondent compensation for breach of contract in the amount of USD 2,050,083, plus interest at the rate of 5% *p.a.* on said amount as from 2 March 2020 until the date of effective payment.
3. The Second Respondent, Estudiantes de la Plata, is jointly and severally liable for the payment of the amount mentioned under point III./2. above.
4. Any further claim lodged by the Claimant / Counter-Respondent is rejected.
5. The Claimant / Counter-Respondent is directed to inform the First Respondent / Counter-Claimant and the Second Respondent, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision, of the relevant bank account to which remittance is to be made in accordance with point III./2. above.
6. The First Respondent / Counter-Claimant and the Second Respondent shall provide evidence of payment of the due amount in accordance with point III./5. above to FIFA to the e-mail address [psdfifa@fifa.org](mailto:psdfifa@fifa.org), duly translated into one of the official FIFA languages (English, French, German, Spanish).
7. In the event that the amount plus interest due in accordance with point III./2. above is not paid by the First Respondent / Counter-Claimant **within 45 days** as from the notification by the Claimant / Counter-Respondent of the relevant bank details to the First Respondent / Counter-Claimant, the First Respondent / Counter-Claimant shall be restricted on playing in official matches up until the due amount is paid and for the maximum duration of six months (cf. art. 24bis of the Regulations on the Status and Transfer of Players).
8. The ban mentioned in point III./7. above will be lifted immediately and prior to its complete serving, once the due amount is paid.
9. In the event that the aforementioned sum is still not paid by the end of the restriction on playing in official matches for six months, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.
10. In the event that the amount due plus interest in accordance with point III./2. above is not paid by the Second Respondent **within 45 days** as from the notification by the Claimant / Counter-Respondent of the relevant bank details to the Second Respondent, the Second Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount(s) is/are paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

11. The ban mentioned in point III./10. above will be lifted immediately and prior to its complete serving, once the due amount is paid.
12. In the event that the aforementioned sum plus interest is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.
13. The counterclaim of the First Respondent / Counter-Claimant, Mauro Alberto Diaz, is partially accepted.
14. The Claimant / Counter-Respondent, Shabab Al Ahli Dubai, has to pay to the First Respondent / Counter-Claimant outstanding remuneration in the amount of USD 45,833, plus interest at the rate of 5% *p.a.* on said amount as from 2 March 2020 until the date of effective payment.
15. Any further claim lodged by the First Respondent / Counter-Claimant is rejected.
16. The First Respondent / Counter-Claimant is directed to inform the Claimant / Counter-Respondent, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision, of the relevant bank account to which the Claimant / Counter-Respondent must pay the amount mentioned under point III./14. above.
17. The Claimant / Counter-Respondent shall provide evidence of payment of the due amount in accordance with point III./14. above to FIFA to the e-mail address [psdfifa@fifa.org](mailto:psdfifa@fifa.org), duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).
18. In the event that the amount due plus interest in accordance with point III./14. above is not paid by the Claimant / Counter-Respondent **within 45 days** as from the notification by the First Respondent / Counter-Claimant of the relevant bank details to the Claimant / Counter-Respondent, the Claimant / Counter-Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).
19. The ban mentioned in point III./18. above will be lifted immediately and prior to its complete serving, once the due amount is paid.
20. In the event that the aforementioned sum plus interest is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

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**Note related to the publication:**

The FIFA administration may publish decisions issued by the players' Status Committee or the DRC. Where such decisions contain confidential information, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 20 of the Rules Governing the Procedures of the players' Status Committee and the Dispute Resolution Chamber).

**Note relating to the motivated decision (legal remedy):**

According to art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with the Code of sports-related arbitration. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

The full address and contact numbers of the CAS are the following:

Court of Arbitration for Sport (CAS)  
Avenue de Beaumont 2, CH-1012 Lausanne  
Switzerland  
Tel: +41 21 613 50 00  
e-mail: [info@tas-cas.org](mailto:info@tas-cas.org)  
[www.tas-cas.org](http://www.tas-cas.org)

For the Dispute Resolution Chamber:



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Emilio García Silvero  
Chief Legal & Compliance Officer