



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2019/A/6306 Jean Philippe Mendy v. Baniyas Football Sports Club LLC
CAS 2019/A/6316 Baniyas Football Sports Club LLC v. Jean Philippe Mendy, Club NK
Slaven Belupo & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. José Juan Pintó Sala, Attorney-at-law, Barcelona, Spain
Arbitrators: Mr. Luigi Fumagalli, Professor and Attorney-at-Law, Milan, Italy
Mr. Michele A.R. Bernasconi, Attorney-at-Law, Zurich, Switzerland
Ad hoc Clerk: Mr. Alberto González Martínez, Attorney-at-law, Barcelona, Spain

in the proceedings between

Jean Philippe Mendy, France.

Represented by Mr. Felix Majani, Attorney-at-law, Lisbon, Portugal.

- the Player –

Baniyas Football Sports Club LLC, United Arab Emirates.

Represented by Daniel Muñoz Sirera, Attorney-at-law, Valencia, Spain.

- the Club–

and

Club NK Slaven Belupo, Croatia.

Represented by Mr. Davor Radić, Attorney-at-law, Split, Croatia.

- Belupo –

Fédération Internationale de Football Association, Switzerland.

Represented by Mr. Miguel Liétard Fernández-Palacios and Ms. Audrey Cech, Attorneys-at-law, FIFA Legal Department, Zurich, Switzerland.

- FIFA–

I. PARTIES

1. Mr. Jean Philippe Mendy (hereinafter “**Mr. Mendy**” or “**the Player**”) is a French professional football player born on 4 March 1987.
2. Baniyas Football Sports Club LLC (hereinafter “**Baniyas**” or “**the Club**”) is an Emirati professional football club, with its registered office in Baniyas – Abu Dhabi. It is a member of the United Arab Emirates Football Association (hereinafter the “**UAEFA**”), affiliated to the Fédération Internationale de Football Association.
3. Club NK Slaven Belupo (hereinafter “**Belupo**”) is a Croatian professional football club with its registered office in Koprivnica, Croatia. It is member of the Croatian Football Federation (hereinafter “**CFF**”) which in turn is affiliated to the Fédération Internationale de Football Association.
4. The Fédération Internationale de Football Association (hereinafter “**FIFA**”) is an association incorporated under Swiss Law with its registered office in Zurich, Switzerland. FIFA is the governing body of international football and exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players worldwide.

II. FACTUAL BACKGROUND

5. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties’ written submissions, the evidence filed with these submissions, and the statements made by the parties and the evidence taken at the hearing held in the present case. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Panel refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning. The Panel, however, has considered all the factual allegations, legal arguments, and evidence submitted by the parties in the present proceedings.
6. On 18 January 2017, Mr. Mendy and Baniyas concluded an employment contract (hereinafter the “**Employment Contract**”), valid from 18 January 2017 until 31 May 2018. In its most relevant parts the Employment Contract reads as follows:

“Whereas [...]

- (i) the club desires to employ the Player as foreign player of its first team, subject to the terms and conditions of this contract.*

3.-Contract Period

This contract is valid from -18th January 2017 to 31st May 2018.

[...]

4.2. – Financial Entitlements:

The club shall pay the player as the follows:

The club shall pay the player total amount of one million six hundred fifty thousand USD (\$1.650.0000[sic]) within the validity of the contract to be paid as the follows:

An advance payment: at total amount of four hundred thousand USD (\$400.000) to be paid as the follows:

1. \$250.000: on January 2017.
2. \$75.000: on 02 April 2017.
3. \$75.000: on 16 April 2017.

4.2.1 The First season from 18th January 2017 to 31st May 2017:

The player is entitled to three hundred ninety thousand six hundred twenty five USD (\$390.625) within the first season to be paid by (5) equal monthly installments at amount of (\$78.125) seventy eight thousand one hundred twenty five USD per month.

4.2.2. The Second season from 01 June 2017 to 31st May 2018:

The player is entitled to receive (\$860.000) eight hundred sixty thousand USD to be paid by (11) equal monthly installments at amount of (\$78.182) seventy eight thousand one hundred eight two USD per month.

- All the payment shall be made in UAE currency at exchange rate 1 USD = 3.66 AED
[...]

4.6- Annual Leave

The Player shall be entitled to 20 days paid leave in each year of his employment. Any leave must be taken at times agreed at least one month in advance by the Club. In case the Player fails to return in time from an agreed leave without a lawful excuse accepted by the club, the Club shall deduct an amount equal to 7 (seven) days of salary. If the absence is of more than seven days then the Club shall be entitled to terminate the contract with just cause being the Player liable to pay compensation to the Club in accordance with clause 6.3 below.

4.7- Health insurance

4.7.1 The Club will provide health insurance to the Player and his family and the club is committed to provide medication clinics to the player with high standard clinics on the Club's cost.

[...]

4.8. Airline ticket:

The club shall provide the player with (2) tickets airline on business class rate in the first season and (2) tickets airline on business class rate in the second season from Portugal to Abu Dhabi (round tripe [sic])

[...]

5.- Player's Obligations

5.1 The Player shall participate in all matches, in all training sessions and in any other related activity as required by the Club either in UAE or abroad, unless otherwise required by the Club or unless his health condition prevents him to do so subject to the medical reports issued by the Club. In the event the Player infringes this provision, sanctions shall be imposed as follows [...]

5.5- The Player shall exert his utmost efforts in order to safeguard his health, not expose it to danger and not violate any of the insurance contract provisions.

[...]

6.- *Termination of Contract*

[...]

6.3. *The Parties hereby expressly and irrevocably agree that in the event the Player terminates the Contract without just cause in accordance with Art. 17 of FIFA Regulations on the Status and Transfer of Players, the Player shall promptly pay to the Club, as compensation for the breach, the amount of five million USD (USD 5.000.000) ("Breach Compensation").*

6.4 *in [sic.] the event the club terminate [sic.] the contract without justice [sic.] cause before its expiry date, the player will be compensated pursuant to article no. 17 of (player statue [sic.] & transfer regulation of FIFA).*

[...]

8.- *Applicable Law and Jurisdiction*

The present contract is governed by FIFA Regulations.

Any dispute arising out of or in connection with the present Contract shall be settled by the legal bodies of FIFA (cf. Art. 22 et seq. of the FIFA RSTP). In the event FIFA does not accept jurisdiction or any appeal to a ruling of the FIFA Dispute Resolution Chamber shall be addressed to the Court of Arbitration for Sports [sic.] ("CAS") based in Lausanne, Switzerland, and resolved definitively in accordance [sic.] with the Code of sports-related arbitration. The panel shall be formed by three arbitrators [sic.] language to be used in any arbitral proceeding shall be in English."

7. On 23 February 2017, in the course of an official match of the UAE Pro-League (hereinafter, "**Pro-League**"), Mr. Mendy got injured. Baniyas' doctor diagnosed a "*linear nondisplaced fracture in the left tibia*" and prescribed the Player total rest for a month.
8. On 15 March 2017, Mr. Mendy started attending Baniyas' official matches until the end of the season.
9. The Club failed to pay the third instalment of the advance payment foreseen in the Employment Contract, which deadline was fixed on 16 April 2017.
10. At the end of the 2016-2017 season, Baniyas was relegated to the UAE Division One. Then, Mr. Mendy went on annual leave for 2 months, from 21 May 2017 until 18 July 2018.
11. At the pertinent medical examination conducted before starting the season 2017-2018, Mr. Mendy stated that he felt pain on his left leg, the same that he got injured on 23 February 2017.
12. On 20 July 2017, a computerized tomography of Mr. Mendy's left leg was made, which displayed signs of "*small linear lucent line in the shaft of tibia in anteromedial cortex with thickening of the cortex suggestive of old hearing fracture but a small fracture line is still visible [...]*".
13. Mr. Mendy was then examined by Dr. Ramón Cugat (firstly in United Arab Emirates

and thereafter in Barcelona, Spain). These visits apparently revealed that, from February 2017, Mr. Mendy was afflicted from a stress fracture in the left tibia. Dr. Cugat recommended to perform physiotherapy and functional recovery along 2-3 weeks, and the Player's reincorporation to the first team activity in the fourth week of the recovery process.

14. In September 2017, Mr. Mendy re-joined the training sessions of the Club's first team squad.
15. In accordance with UAEFA regulations, in 2017-2018 season, it was only possible to register two foreign player per team. Furthermore, it shall be noted that the first registration period began on 11 July 2017 until 2 October 2017 and the second period from 11 December 2017 until 8 January 2018.
16. On 2 October 2017 (last day of the first registration period), Baniyas concluded an employment contract with the player Mr. Osarimen Ebagua, a Nigerian-Italian professional football player who plays as center forward (hereinafter "**Mr. Ebagua**"). This player became registered as foreign player, together with another football player, Mr. Harry Christopher Novillo (hereinafter "**Mr. Novillo**"). Conversely, Mr. Mendy was not registered with the UAEFA for the Club.
17. On 10 October 2017, Baniyas informed Mr. Mendy that he could not train with the team and had to train at the gym.
18. Also on 10 October 2017, Mr. Mendy's counsel sent a letter to Baniyas which in the pertinent part reads as follows:

"[...]"

1. *That my Client's "**Advance Payment**" of USD 75.000 as provided for in clause 4.2 of the Contract remains in arrears despite the same having fallen due on 16th April 2017.*
 2. *That on or about 2nd October 2017, you signed the player Mr. Osarimen Ebagua as a purported replacement my Client and thereafter (on 9th October 2017) proceed against my Client's wish by **unilaterally and indefinitely excluding him from attending the club's training sessions** with instructions that he instead (and forthwith) be going to the gym while the rest of the players go about their day to day training sessions.*
 3. *That you have de-registered and/or failed to register my Client at the UAE Football Association as one of the players eligible to play for the club in the current (2017-2018) UAE Football season and instead allocated his slot to Mr. Ebagua. [...]"*
19. On 14 October 2017, Baniyas informed the Player that from 15 to 19 October 2017 he was expected to attend to the gym for individual training sessions twice a day.
 20. On 19 October 2017, Mr. Mendy's counsel asked Baniyas again in writing to immediate allow the Player to take part in the first team training sessions and to remedy the breaches of the Employment Contract already denounced in the letter dated 10 October

2017.

21. On 1 November 2017, Mr. Mendy terminated the Employment Contract with immediately effect by means a letter sent to Baniyas (hereinafter the “**Termination Letter**”). In its most relevant parts the Termination Letter reads as follows:

“[...] TAKE NOTICE therefore that in the interests of furthering and securing his career, my Client hereby terminates the employment contract dated 18th January 2017 with immediate effect pursuant to Article 14 of the FIFA Regulations on the Status and Transfer of Players.

TAKE FURTHER NOTICE that following this termination, my Client hereby demands the payment of the following net amounts within 10 (TEN) days:

- 1. USD 5.000.000 in damages for your breach as fixed under clause 6.3 of the employment contract;*
- 2. USD 75.000 being the outstanding Advanced Payment due on 17th April 2017; and*
- 3. EUR 6.000, being the cost of two business class round trip flight tickets (Portugal-Abu Dhabi) as provided for under clause 4.8 of the employment contract [...].”*

III. PROCEEDINGS BEFORE THE FIFA’S DISPUTE RESOLUTION CHAMBER

22. On 6 November 2017, Mr. Mendy filed a claim against Baniyas before FIFA’s Dispute Resolution Chamber (hereinafter “**FIFA DRC**”), requesting the following:

- The total amount of USD 5,075,000 plus interests broken down as follows:
 - USD 75,000 as outstanding remuneration corresponding to the last instalment of the advanced payment due on 16 April 2017;
 - USD 5,000,000 as compensation for breach corresponding to the application of clause 6.3 of the Employment Contract;
- Alternatively, USD 1,494,574 corresponding to:
 - USD 547,247 corresponding to the 7 monthly salaries until the end of the Employment Contract;
 - USD 9,116 for the cost of the two (2) round trip tickets stipulated in the Employment Contract;
 - USD 938,184 for the specificity of sport;
- Sporting sanctions to be imposed on the Club; and
- Reimbursement of legal fees.

23. On 7 November 2017, Baniyas replied to the Termination Letter, stating *inter alia* the following:

“[...]

6. *All the above indicate that there is no breach of Contract from the part of the Club but in fact the breach came from your client's side. We emphasize here that the intension [sic.] of the Club was to register his name in the next session of UAEFA football season. [...]*

Since your client has breached the Art. 6.3 of the Contract he is liable to compensate the Club for all damages caused:

- A. *Pay to the Club USD 5.000.000 as Breach Compensation in accordance with the above Article for Terminating the Contract unilaterally by you client without just cause.*
- B. *Pay back the advance payment made to your client.*
- C. *To pay all medical expenses incurred by the club for the treatment of your client for the injury sustained by him during vacation abroad including treatment in Barcelona and other travel Expenses related to the same [...]*”

24. On 11 December 2017, Baniyas lodged a claim against Mr. Mendy before the FIFA DRC for breach of the Employment Contract, requesting that the Player be ordered to pay the following sums to the Club:

- USD 325,000 as reimbursement of advance payment;
- USD 5,000.000 as compensation for breach the Employment Contract in accordance with its clause 6.3;
- Reimbursement of all the expenses incurred by Baniyas for the treatment of Mr. Mendy for the injury sustained during his annual leave, including the treatment in Barcelona and other travel expenses.

25. On 22 February 2018, Mr. Mendy entered into an employment contract with Club NK Slaven Belupo (hereinafter “**Belupo**”), valid from 22 February 2018 until 15 June 2019, with a monthly salary of HRK 37,500 (EUR 5,000) net + VAT.

26. On 27 February 2018, the CFF requested FIFA TMS Department (hereinafter, the “**FIFA TMS**”) a special exemption to register Mr. Mendy in favour of Belupo to play in the Croatian League.

27. On 1 March 2018, FIFA TMS dismissed the aforementioned request of the CFF stating the following:

“[...]In view of all the above, and in particular considering that on 15 February 2018, the last day of your federation's registration period, your affiliated club, NK Slaven Belupo, had not yet signed an employment contract with the player in question, and consequently had not initiated and approved the relevant instruction in the TMS, we regret having to inform you that we do not appear to be in a position to grant your request for the special exemption from the “validation exception” in the TMS [...]”

28. Some months after, Belupo tried again to register Mr. Mendy, as regards of which FIFA TMS queried the UAEFA and Baniyas about the issuance of the International Transfer Certificate (hereinafter, the “ITC”).
29. On 23 June 2018 Baniyas, and subsequently on 10 July 2018 the UAEFA, refused to authorize Mr. Mendy’s ITC since Baniyas had a dispute pending against him.
30. On 15 November 2018, FIFA DRC resolved in a single decision the claims filed by Mr. Mendy and Baniyas, partially accepting the Player’s claim and rejecting the Club’s claim. The relevant part of this decision reads as follows (hereinafter, the “**Appealed Decision**”):
1. *The claim of the Claimant / Counter-Respondent, Jean Philippe Mendy, is partially accepted.*
 2. *The counterclaim of the Respondent / Counter-Claimant, Baniyas FC, is rejected.*
 3. *The Respondent / Counter-Claimant has to pay to the Claimant / Counter-Respondent, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of USD 75.000 plus 5% interest p.a. as from 11 December 2017 until the date of effective payment.*
 4. *The Respondent / Counter-Claimant has to pay to the Claimant / Counter-Respondent, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amounts of USD 529.274 and CHF 2.368 plus 5% interest p.a. on said amounts as from 11 December 2017 until the date of effective payment.*
 5. *In the event that the amounts plus interest due to the Claimant / Counter-Respondent in accordance with the above-mentioned numbers 3. and 4. are not paid by the Respondent / Counter-Claimant within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for considerations and a formal decision.*
 6. *Any further claim lodged by the Claimant/Counter-Claimant is rejected.*
 7. *The Claimant/Counter-Respondent is directed to inform the Respondent / Counter-Claimant immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every Payment received.*
31. On 16 May 2019, FIFA DRC notified the grounds of the Appealed Decision to Mr. Mendy and Baniyas, which may be summarized as follows:
- Mr. Mendy terminated the Employment Contract with just cause. Baniyas owed him the payment of USD 75,000 due on 16 April 2017, did not allow him to train with the rest of his teammates and did not register him to play.
 - Baniyas did not provide evidence to conclude that the non-registration of Mr. Mendy was agreed with him.

- Baniyas did not timely reply the letters sent by Mr. Mendy asking the Club to rectify the contractual breaches.
- Considering the circumstances of the case, Mr. Mendy had reasons to legitimately believe that Baniyas was no longer interested on him.
- Concerning Mr. Mendy's claimed compensation for breach, Clause 6.3 of the Employment Contract cannot be applied to determine this compensation, because such provision only applies in the case of termination of the contract without just cause, which is not the case herein. Thus, the compensation must be calculated in accordance with Article 17.1 of the FIFA Regulations on the Status and Transfer of Players (hereinafter, the "**FIFA RSTP**").
- In view of the above, Mr. Mendy must be compensated with the following amounts:
 - USD 75,000 as the outstanding remuneration of the third instalment of the "Advance Payment"
 - USD 529,274 as compensation for breach of Contract (USD 547,247 corresponding to the outstanding salaries of the Employment Contract minus Mr. Mendy's salaries received from Belupo)
 - CHF 2,368 for one (1) air ticket to return home.
- In respect of Mr. Mendy's request for compensation based on the specificity of sport, there is no contractual basis to award it.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

32. On 3 June 2019, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (hereinafter, the "**CAS Code**"), Mr. Mendy filed his Statement of Appeal before the Court of Arbitration for Sport (hereinafter, the "**CAS**") against the Appealed Decision, naming Baniyas as respondent, with the following request for relief:

- i. *"Review, vary, amend and/or set aside page 12 paragraph 4 of the operative part of the FIFA Dispute Resolution Chamber decision dated 15th November 2018 to the effect that Baniyas Football Sports Club LLC be ordered to pay Jean Phillippe Mendy:*
 - a) *USD 529.274 plus 5% interest p.a. from 11 December 2017 until the date of effective payment as already ordered therein, plus:*
 - *USD 469.092 plus interest at 5% p.a. from 11 December 2017 until the date of effective payment, being further compensation legally due to the Appellant for specificity of sport; and*
 - *USD 9.116 plus 5% interest p.a. from 11 December 2017 until the date of effective payment, being the cost of two round trip business class tickets (Lisbon- Abu Dhabi).*
- ii. *Award Mr. Jean Philippe Mendy the costs of this suit;*

iii. *Order Baniyas Football Sports Club LLC to bear the cost of these arbitration proceedings.*

iv. *Grant any further or other relief that this Honorable Court may deem fit."*

In his Statement of Appeal, Mr. Mendy also requested that the dispute was resolved by a Sole arbitrator and that the proceedings were conducted in English. This Statement of Appeal gave rise to the file CAS 2019/A/6306 *Jean Philippe Mendy v. Baniyas Football Sports Club LLC*.

33. On 5 June 2019, pursuant to Articles R47 and R48 of the CAS Code, Baniyas filed its Statement of Appeal before CAS against the Appealed Decision, naming the Player, Belupo and FIFA as respondents, with the following request for relief:

- a) *"Accept this appeal against the decision of the Dispute Resolution Chamber of FIFA passed on 15 November 2018, notified with grounds on 16 May 2019 (Ref. Nr. 17-01952/iml)*
- b) *Set aside the Appealed Decision and decide:*
 - i. *That Mr. Jean Philippe Mendy terminated his employment contract with Baniyas Football Sports Club LLC without just cause.*
 - ii. *To order Mr. Jean Philippe Mendy to pay the amount of \$5.000.000,00 USD (Five million US dollars) to Baniyas Football Sports Club LLC as compensation;*
 - iii. *To order Mr. Jean Philippe Mendy to pay default interests as a rate of 5% p.a on said amount as from 1 November 2017 and until the date of effective payment of the full amount owed as compensation;*
 - iv. *Ban Mr Jean Philippe Mendy from playing official matches for a period of six months in accordance with Article 17.3 of the FIFA RSTP;*
 - v. *Ban Club NK Slaven Belupo from registering any new players, either nationally or internationally, for two entire and consecutive transfer windows in accordance with Article 17.4 of the FIFA RSTP.*
- c) *To condemn the Respondents to pay the whole CAS administration and the Arbitrator fees."*

Furthermore, Baniyas requested in its Statement of Appeal that the case be submitted to a panel of three arbitrators and be conducted in English. This Statement of Appeal gave rise to the file CAS 2019/A/6316 *Baniyas Football Sports Club LLC v. Jean Philippe Mendy, Club NK Slaven Belupo & FIFA*.

34. On 7 June 2019, the CAS Court Office invited FIFA to state whether it intended to participate in the proceedings CAS 2019/A/6306, in which it had not been named as a respondent.

35. On 11 June 2019, pursuant to Article R51 of the CAS Code, Mr. Mendy submitted his Appeal Brief in which he reiterated the petitions previously filed with his Statement of Appeal.

36. On 12 June 2019, CAS Court Office informed Baniyas, Belupo and FIFA that Mr. Mendy had filed an appeal against the Appealed Decision (the one that gave rise to the proceedings CAS 2019/A/6306), and in accordance with Article R52 of the CAS Code, invited the parties to inform whether they agreed to consolidate such proceedings with the proceedings CAS 2019/A/6316 or not.
37. On the same day, the CAS Court Office informed Mr. Mendy that Baniyas had filed an appeal against the Appealed Decision (the one that gave rise to the CAS proceedings 2019/A/6316), and pursuant to Article R52 of the CAS Code invited the parties to inform whether they agreed to consolidate such proceedings with the proceedings CAS 2019/A/6306 or not.
38. On 13 June 2019, Baniyas informed the CAS Court Office about its objection to submit the matter to a Sole Arbitrator.
39. On 17 June 2019, the CAS Court Office informed the parties that pursuant Article R50 of the CAS Code, the President of the Division had decided to submit this procedure to a three-member Panel.
40. Also on 17 June 2019, FIFA informed the CAS Court Office that it renounced to intervene in the arbitration proceedings CAS 2019/A/6306.
41. On 25 June 2019, the CAS Court Office informed the parties that the procedures CAS 2019/A/6306 and CAS 2019/A/6316 were consolidated, in accordance with Article R52 of the CAS Code.
42. On 5 July 2019, Baniyas submitted its Appeal Brief with the following request for relief:
 - i. *“To set aside the Appealed Decision.*
 - ii. *To declare that Mr. Jean Philippe Mendy Terminated his employment contract with Baniyas Football Sports Club LLC without just cause on 1 November 2017.*
 - iii. *To order Mr. Jean Philippe Mendy to pay the amount of \$5.000.000 USD (Five million US Dollars) plus interests at a rate of 5% per annum as from 1 November 2017 (date of effective termination) and until the amount of compensation of completely covered, to the Baniyas Football Sports Club LLC as compensation for the termination of the Employment Contract without just cause.*
 - iv. *To declare that the club NK Slaven Belupo is to be held joint and severally liable for the payment of the compensation owed to the Club due to the termination without just cause by the Player.*
 - v. *To declare that the termination of the Employment Contract without just cause by the Player came within the Protected Period.*
 - vi. *To impose sporting sanctions on the Player consisting in a restriction of playing any official matches for a period that under no circumstances should be of less than four months.*
 - vii. *To impose sporting sanction on the club NK Slaven Belupo consisting in a ban from registering any new players, either nationally or internationally, for*

two entire and consecutive registration periods.

viii. *To condemn the Respondents to pay the whole CAS administration and Arbitrators Fees [...]"*

43. On 5 August 2019, Baniyas filed its Answer to the Appeal, in accordance with Article R55 of the CAS Code, submitting the following prayers for relief:

"[...]"

- a. *To dismiss in full the Appeal of **MR. JEAN PHILIPPE MENDY** against the decision passed by the Dispute Resolution Chamber of FIFA dated 15th November 2018 in the procedure with reference number 17-01952/iml;*
- b. *Order **MR. JEAN PHILIPPE MENDY** to bear the arbitration cost of this procedure.*
- c. *Fix a minimum sum of 20.000CHF to be paid by **MR. JEAN PHILIPPE MENDY** as a contribution to **BANIYAS SPORTS CLUB**'s legal fees and costs [...]"*

44. On 6 August 2019, pursuant to Article R54 of the CAS Code, the CAS Court Office informed the parties that the Panel appointed to settle the present dispute would be composed as follows:

President: Mr. José Juan Pintó Sala, Attorney-at-law in Barcelona, Spain.

Arbitrators: Mr. Luigi Fumagalli, Professor and Attorney-at-law in Milan, Italy.
Mr. Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland.

45. On 9 August 2019, Mr. Mendy filed its Answer to the Appeal, in accordance with Article R55 of the CAS Code, submitting the following prayers for relief:

"[...]"

- i. *Dismiss the appeal filed by Baniyas Football Sports Club LLC against the FIFA Dispute Resolution Chamber decision dated 15th November 2018;*
- ii. *Award Mr. Jean Philippe Mendy the costs of this suit;*
- iii. *Order Baniyas Football Sports Club LLC to bear the cost of these arbitration proceedings;*
- iv. *Grant any further or other relief that this Honorable Court may deem fit."*

46. On 23 August 2019, Belupo filed its Answer to the Appeal, in accordance with Article R55 of the CAS Code, submitting the following prayers for relief:

"[...]"

Accordingly, it is clear that the appeal of the Appellant Baniyas Football Sports Club LLC is wholly legally unfounded and because of that CAS must rejected this appeal and that the Appellant Baniyas Football Sports Club LLC pay to the Club NK Slaven Belupo costs (legal fees) of this dispute."

47. On 5 September 2019, FIFA filed its Answer to the Appeal, in accordance with Article

R55 of the CAS Code, submitting the following prayers for relief:

1. *“To reject the Appellant’s appeal in its entirety.*
2. *To confirm the decision rendered by the Dispute Resolution Chamber on 15 November 2018.*
3. *To order the Appellant to bear all cost incurred with the present procedure and to cover all the legal expenses of FIFA related to the present procedure [...]”*

48. On 6 September 2019, the CAS Court Office advised the parties that, pursuant to Article R56 of the CAS Code, they were no longer authorized to supplement or amend their requests or their arguments, produce new exhibits, or specify further evidence on which they intended to rely.
49. On 13 September 2019, the CAS Court Office informed the parties that the Panel, after consulting the parties and pursuant to Article R57 of the CAS Code, had decided to hold a hearing on the present matter.
50. On 17 September 2019, the CAS Court Office informed the parties that Mr. Alberto González Martínez, Attorney-at-law in Barcelona, Spain, would assist the Panel as *ad hoc* clerk.
51. On 19 September 2019, the CAS Court Office informed the parties that a hearing for the present matter would be held on 21 November 2019 at the CAS Headquarters in Lausanne, Switzerland.
52. On 20 September 2019, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (hereinafter referred to as the “Order of Procedure”), which was accepted and countersigned by the parties.
53. On 21 November 2019, the hearing for the present matter was held in Lausanne, Switzerland. The Panel was assisted at the hearing by Mr. Antonio de Quesada, CAS Head of Arbitration, and Mr. Alberto González Martínez, as *ad hoc* clerk. The following persons attended the hearing:
- | | |
|------------------|---|
| - For Mr. Mendy: | Mr. Mendy, his counsel Mr. Felix Majani who was assisted by Ms. Giulia Marras, Mr Mendy’s personal assistant, Ms Lisette Mendy and the witness Mr. Novillo. |
| - For Baniyas: | Its counsels, Mr. Daniel Muñoz Sirera, Mr. Alejandro Campos and Mr. Saleh Alobeidhi. |
| - For Belupo: | Its counsel, Mr. Davor Radić. |
| - For FIFA: | Mr. Andreas Roffler, FIFA representative, Mr. Miguel Liétard Fernández-Palacios, FIFA Director of Litigation, and Ms. Audrey Cech, FIFA counsel. |
54. At the outset of the hearing, the parties confirmed that they had no objections with respect to the composition of the Panel or to the jurisdiction of the CAS (except for Belupo’s statements on the CAS jurisdiction as explained below).

55. In the course of the hearing, the parties had the opportunity to present their case, to submit their arguments and to comment on the issues and questions raised by the Panel. In particular, discussions were held at the hearing on the quantification of the compensation made by the Appealed Decision, on which the parties had the opportunity to allege.
56. Then, the Panel heard the testimony given by the Player and Mr. Novillo. Mr. Rafael Aranda Malavés and Mr. Marzouk Husain Khamis Shadal Almansoori were also examined via videoconference. Those of them who had signed a written statement confirmed it.
57. During the final statements, Baniyas submitted an alternative request that was accepted and not challenged by any of the other parties. Baniyas' alternative request reads as follows:
- "We kindly request if CAS, if the Panel does not deem that the contract was terminated without just cause by the player and award Baniyas FC the compensation clearly agreed in the contract, to look at this alternative request where both parties, their behavior, the facts proven in the file, the available documents, the witnesses, confirm that both had somehow contributed to the termination so no party is entitled for any compensation."*
58. At the end of the hearing, the parties expressly declared that they did not have any objection with respect to the procedure and that their right to be heard had been fully respected.

V. SUMMARY OF THE PARTIES' SUBMISSIONS

59. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

A. THE PLAYER

Submissions on the Appealed Decision (file 6306)

60. The Appealed Decision is not correct, as it did not award the solicited compensation for "specificity of sport", and additionally it only granted the amount of one single air ticket instead of Mr. Mendy's right to receive the value of two round trip air tickets in business class (Portugal-Abu Dhabi).
61. FIFA DRC erred when established that it could not award the compensation for "specificity of sport" due to the absence of contractual basis. Such concept is not provided by the contract, but by the FIFA RSTP itself, footnote 75 of the FIFA Commentary of the RSTP, as well as by Article 337(c)(3) of the Swiss Code of Obligations (hereinafter, the "Swiss CO"). This compensation should be granted based on the following reasons:
- a) The breach of the Employment Contract occurred within the protected period.

The panel in the *Matuzalem* case (TAS 2008/A/1519-1520) established that this was a “*serious form of unlawful behavior*” and should provide for a higher compensation for “specificity of sport”. In the awards *CAS 2012/A/2874 Grzegorz Rasiak v. AEL Limassol* and *CAS 2012/A/3033 A. v. FC OFI Crete*, further damages were also awarded for having terminated the contracts within the protected period. Even Article 17.3 FIFA RSTP establishes sporting sanctions for the termination of the contractual relationship within such period, which for unknown reasons, FIFA DRC did not apply in the case at hand, which further justifies awarding a higher monetary compensation in favor of Mr. Mendy.

- b) Mr. Mendy, at the Employment Contract’s termination, was in the later stage of his professional career, being 30 years old. Realistically speaking, Mr. Mendy would not reach a new contract in the same conditions as he had with Baniyas.
- c) Baniyas selfishly and intentionally retained Mr. Mendy’s ITC and TPO clearance forms, generating different insecurities in him and provoking, as a consequence, a drop in his fitness level. Such attitude was absolutely unjustified and against the workers’ right of freedom of movement enshrined in the *Bosman* case.
- d) Likewise, by retaining the ITC and TPO clearance forms, Baniyas frustrated two new job offers to Mr. Mendy with a Thai club, club Bangkok United (hereinafter, “Bangkok”) and with the Iranian club Esteghlal Football Club (hereinafter, “Esteghlal”). Mr. Mendy came from a contract with Baniyas with a “liquidated damages” clause of USD 5,000,000 to a new contract bearing a total salary of barely EUR 85,000. Such value depreciation was the consequence of the negative attitude of Baniyas against Mr. Mendy.
- e) Baniyas knowingly de-registered Mr. Mendy from its list of foreign players for the 2017-2018 UAEFA season, a situation which was unknown and never allowed by Mr. Mendy. To compound the situation, Mr. Mendy was excluded from training with the rest of his teammates of the first team throughout 30 days, the Club subjected him to two personal training sessions in a day with the purpose of frustrating and forcing him to terminate the Employment Contract.
- f) Mr. Mendy was highly valued for Baniyas, as well as for all his teammates and had a huge sport contribution during the season (scoring 6 goals and giving 2 assists in the last 8 matches of the season). This fact must be taken into consideration as an element in favour of Mr. Mendy’s claim, as set out in the case *CAS 2005/A/902 Philippe Mexés & AS Roma c. AJ Auxerre & CAS 2005/A/903 AJ Auxerre c. Philippe Mexés & AS Roma*.
- g) Mr. Mendy suffered periods of mental pain and anguish because of Baniyas’ behaviour: the Club’s coach telling him, in front of all his teammates, that he was a surplus to requirements for the team and therefore had to clean his locker, Baniyas’ imposition of individual training sessions or Baniyas’ frustration of his possibility to find new clubs to join.

62. Taking into consideration all these circumstances, Mr. Mendy has the right to a compensation for “specificity of sport”, quantified in 6 monthly salaries in accordance with Article 337 c par. 3 of the Swiss CO and footnote 75 of the FIFA Commentary, that is to say USD 78,182 x 6 months = USD 469,092, plus 5% annual interest.

63. The Appealed Decision also erred when awarding exclusively the amount of one way air ticket. Pursuant the Employment Contract (Clause 4.8), Mr. Mendy was entitled to two round trip tickets Abu Dhabi-Portugal. Taking into account the FIFA DRC's valuation of a one-way ticket Portugal-Abu Dhabi at CHF 2,368, Mr. Mendy was entitled to receive the amount of CHF 9,472 (2,386 x 4), but only USD 9,116 are claimed, as this was the amount claimed in this regard before the FIFA DRC.

Submissions on Baniyas' Appeal (file 6316)

64. Baniyas' appeal is groundless as Mr. Mendy had just cause to terminate the Employment Contract. Baniyas' submissions on the contrary shall be refuted as follows:

- At the moment of the termination of the Employment Contract, Mr. Mendy was fit and had recovered from his injury, which is confirmed by (i) different photos published by Baniyas on 17 September 2017 showing that Mr. Mendy was already training with the team in a positive manner, (ii) Mr. Novillo's statements confirming it, (iii) Dr. Ramón Cugat medical report and (iv) Baniyas' statement acknowledging that Mr. Mendy was currently training with the first team.
- Baniyas did not design a 6-8 week special training program for Mr. Mendy's recovery. Such a special program never existed since on 17 September 2017 Mr. Mendy was already normally training with the Club's first team. On 3 October 2017, the Club's coach told him that he was unwelcome in the team and had to clean his locker. The same was verified on 10 October 2017 when Baniyas' President notified Mr. Mendy to forthwith stop attending the team training sessions and that he had to attend to double individual training sessions per day at the gym.
- The parties never agreed on Mr. Mendy's de-registration. There is no evidence or sign to conclude that Mr. Mendy accepted such condition, even when that only could bring negative consequences to him. The de-registration was a unilateral measure of Baniyas in breach of the Employment Contract.
- Baniyas did not intend to register Mr. Mendy in the new registration window on December 2017: there is no evidence of that and it could not be considered as true, even when Mr. Novillo and Mr. Ebagua (both having a one year employment contract) already occupied the foreign places in the UAEFA.
- Baniyas failed to comply with its contractual obligations. It failed to pay Mr. Mendy the third installment of the "advance payment" foreseen in the Employment Contract, did not allow him to train with the team and de-registered him.
- Mr. Mendy did not fail to safeguard his health and did not deliberately injured himself in the summertime. On the contrary, Mr. Mendy was in perfect condition when Baniyas unjustifiably decided not to register him for the next UAEFA season.
- It is false that Mr. Mendy spent from 4 to 5 months on "holidays" without engaging in any physical activity. As Baniyas has accepted, Mr. Mendy was already training with the team from September 2017 on and he was also in good condition in October 2017.
- It is untrue that Baniyas suffered an impact as a result of the Player's absence.

There is no evidence of this and in any event, if Baniyas suffered any damage, it was for its own decision to isolate Mr. Mendy.

- It is not true that Baniyas signed Mr. Ebagua to enhance the team. Mr. Ebagua did not play any match with Baniyas, so he could not contribute anything to Baniyas.
- It is incorrect that Mr. Mendy failed to notify Baniyas of its failure to pay the third instalment of the “Advance payment”: Mr. Mendy did so in writing on 10 and 19 October 2017 without obtaining any response from Baniyas.

65. In summary, Mr. Mendy terminated the Employment Contract with just cause for (i) not having received the payment of USD 75,000 which was due, (ii) having been excluded from training with the team, and (iii) not having been registered in the UAEFA. These three reasons, either jointly or individually, justified Mr. Mendy’s termination of the employment relationship, and consequently Baniyas’ appeal must be dismissed.

B. BANIYAS

Submissions on the Appealed Decision (file 6316)

66. FIFA DRC did not assess correctly Baniyas submissions in accordance with the evidence available in the proceeding, and did not take into account the relevant jurisprudence applicable to the case.
67. Mr. Mendy’s performance was extremely important for Baniyas during the first season of his Employment Contract, but he got injured in his left tibia firstly on 23 February 2017. On 18 July 2017, when Mr. Mendy returned to the Club’s sport discipline to start the second season of his contract, he brought up that he felt pain in the same left tibia previously injured. The medical studies determined that Mr. Mendy was suffering from the preceding fracture and thus the Club detached him for training with his teammates, and a specific recovery program was organized for him.
68. Mr. Mendy failed to safeguard his own health, breaching clause 5.5 of the Employment Contract with it. This generated a significant economic and sporting impact for Baniyas, which was consequently forced to hire and register the player Mr. Ebagua.
69. While Baniyas was still considering Mr. Mendy for the season, Mr. Mendy terminated the Employment Contract in a surprising and unjustified way. In accordance with CAS 2008/A/1447 *E. v. Diyarbakirspor*, the Swiss Federal Tribunal (hereinafter, “SFT”) jurisprudence and Article 337.2 of the Swiss CO, Mr. Mendy had the burden of proof to demonstrate that the alleged contractual violations committed by Baniyas were of such severity that the Player could not be expected, in good faith, to keep the employment relationship with Baniyas. However, Mr. Mendy has never demonstrated this and had not just cause to terminate the Employment Contract as:
- Concerning the non-registration of Mr. Mendy: Mr. Mendy non-registration was agreed with him considering the time required to fully recover from his injury and to return to his full competitive level. Furthermore, it was a temporary measure given Baniyas’ intention to register Mr. Mendy in the second registration window of the season (in other words, on 11 December 2017). This measure did not jeopardize the Player’s employment relationship, considering

that he received his salary and numerous benefits provided in the Employment Contract and did not affect Mr. Mendy's right to exercise his profession as footballer.

- Concerning the conduction of individual training sessions: The fact that Mr. Mendy trained apart from the rest of his teammates was due to his physical condition and the injury that he suffered, with the main objective to gradually recover his competitive level. This cannot be a reason to terminate the Employment Contract, as the CAS confirmed in the award *CAS 2014/A/3642 Erik Salkic v. Football Union of Russia & Professional Football Club Arsenal* where one of the reasons to dictate that a player trains alone and separately from his teammates can be the recovery from an injury.
- Concerning the payment of USD 75,000: Baniyas has always complied with its contractual payment obligations. Baniyas' lack of payment of the third instalment of the "*Advanced Payment*" did not justify the termination of the Employment Contract particularly when this debt was not persistent or material and Mr. Mendy never previously warned Baniyas of the payment failure, proving his bad faith by not giving the opportunity to Baniyas to rectify the breach.

70. Considering that the Employment Contract was terminated without just cause and in accordance with Article 17 FIFA RSTP and the principles *pacta sunt servanda* and *contractual stability*, Baniyas is entitled to receive a compensation from Mr. Mendy in the amount of USD 5,000,000 pursuant to clause 6.3 of the Employment Contract plus interest at a rate of 5% per annum as from 1 November 2017 until the effective payment of the compensation.
71. Additionally, in accordance with the Article 17.2 FIFA RSTP Belupo must be held joint and severally liable for the payment of the compensation owed by the Player to Baniyas.
72. Finally, bearing in mind that the termination of the Employment Contract without just cause occurred within the protected period, sporting sanctions shall be imposed on the Player pursuant to Article 17.3 FIFA RSTP (restriction on playing any official matches for a period of not less than four months) and on Belupo in accordance with Article 17.4 FIFA RSTP (transfer ban for 2 entire consecutive periods).

Submissions on the Player's Appeal (file 6306)

73. Mr. Mendy's appeal is baseless as:
 - The breach of the Employment Contract was committed by Mr. Mendy, by not taking care of his physical condition and causing his injury to appear again, becoming unable to provide services to Baniyas for more than 5 months.
 - As regard of it, Baniyas had the contractual right of sanctioning Mr. Mendy or terminating the Employment Contract; nevertheless, it decided to support and help him with his recovery. Baniyas continued to pay Mr. Mendy's salary, keep up all his contractual amenities and provide the best services available for his recovery as soon as possible.
 - At the time of establishing the special training sessions, Mr. Mendy had not been

competing for more than 4 months, because of (i) the summer holidays, (ii) the injury, (iii) the time to assess the severity of the injury and (iv) the beginning of his treatment and recovery. Consequently, the double training sessions were fully justified and having let him train with his teammates in the same conditions would have been a risk to his health that Baniyas could not assume.

- Mr. Mendy's non-registration was an agreed, completely justified necessary measure and was carried out as last resort. In addition, it was a temporary measure, as indicated in the response to the Termination Letter, and Baniyas had the intention to register him in the new registration window of the UAEFA (11 December 2017), that is to say, just few weeks after the time established for the completion of the special training and his recovery.
- Baniyas is not the entity that issues the ITC and TPO clearance forms. It is the UAEFA the one in charge of it, and does so only after having ensured that there is no binding contract between the parties or that there is no contractual pending dispute. Baniyas always acted within the applicable regulatory framework, defending its interest and always under the principles of good faith.
- The whatsapp messages presented by Mr. Mendy as alleged official offers of other clubs (Bangkok and Esteghalal) to hire him are acutely inaccurate, lacking the identification and telephone number of the interlocutor. In addition, this kind of messages are not official means of communication in football.
- Contrary to what Mr. Mendy believes, the "specificity of sport" has been considered as a principle in conflict with the freedom of movement of workers within the UE and not as a principle that naturally protects this right.
- It is true that Mr. Mendy had significant value for Baniyas, but Mr. Novillo's declaration on this is exaggerated and cannot be considered as a general opinion of the squad.
- The fact that Mr. Mendy had troubles in finding a new team after his illegitimate termination of the Employment Contract, and the fact that he experienced situations of pain, anguish and suffering, cannot be the responsibility of Baniyas, since it has always acted in good faith and Baniyas has only defended its interests and rights.

74. Bearing in mind all these circumstances, Mr. Mendy neither suffered any contractual violation nor the conditions that could grant him greater compensation for "specificity of sport" are met. Resolving otherwise would constitute a dangerous precedent for football and produce unfair enrichment for Mr. Mendy to the detriment of Baniyas.

C. BELUPO (file 6316)

75. Baniyas did not lodge a claim against Belupo before the FIFA DRC claiming for the payment of the compensation as joint and several responsible party in accordance with Article 17.2 FIFA RSTP or the imposition of sporting sanctions. Belupo was thus not a party to the proceedings of first instance. Therefore, CAS has no jurisdiction to settle this issue.
76. In any event, when Mr. Mendy terminated the Employment Contract (on 1 November 2017), Belupo did not know him, since the first contact with Mr. Mendy was well after

this. Baniyas did not adduce any evidence or sign where Belupo induced Mr. Mendy to terminate the Employment Contract.

D. FIFA (file 6316)

FIFA's lack of standing to be sued

77. The totality of the requests filed by Baniyas are exclusively addressed against Mr. Mendy and Belupo as a consequence of the contractual relationships between them (i.e. we are before a “horizontal” dispute). Therefore, FIFA should have not been sued, because Baniyas is not claiming for anything against it.
78. Baniyas is requesting CAS to order FIFA the application of the Article 17 par. 3, par. 4 and par. 5 FIFA RSTP and to sanction Mr. Mendy and Belupo. This is subject to Panel’s consideration that Mr. Mendy terminated the Employment Contract without just cause, which is not the case herein. In any case, Baniyas lacks a legitimate and direct interest in this. As established by the long-standing jurisprudence of the CAS and SFT, Baniyas would not achieve anything if Mr. Mendy and Belupo were sanctioned.

The Appealed Decision is correct

79. The FIFA DRC, in the process of rendering the Appealed Decision, assessed all the elements brought by the parties to the proceedings and reached the correct conclusion that Mr. Mendy terminated the Employment Contract with just cause due to Baniyas’ breaches, as:
- It is undisputed that Baniyas deregistered Mr. Mendy from the list of foreign players allowed to play under the UAEFA’s regulations at the beginning of the season 2017/2018. This deprived the Player of his fundamental right to exercise his profession.
 - Baniyas failed to provide any explanation or convincing evidence to show that Mr. Mendy did not take all the necessary measures to recover quickly from his injury.
 - Baniyas failed to prove that the non-registration of Mr. Mendy was agreed by the Club with him.
 - Baniyas cannot validly state that the non-registration was a temporary measure and that Mr. Mendy could have been registered on 11 December 2017, when the supposed temporariness of the measure was only communicated to Mr. Mendy on 7 November 2017, after he terminated the Employment Contract. In addition, there is no evidence to suggest that Mr. Mendy could have been registered again in December 2017, especially when Mr. Novillo and Mr. Ebagua were taking the only two places available to foreigners.
 - Mr. Mendy informed Baniyas, in two different occasions, about the failure of payment of USD 75,000 through the letters of 10 and 19 October 2017. These two letters were neither discussed nor answered by Baniyas. This constitutes another element that legitimately led Mr. Mendy to believe that Baniyas was not interested in his services.
 - Contrary to what Baniyas holds, the FIFA DRC did not consider that the

outstanding USD 75,000 would be enough to justify the termination of the Employment Contract by Mr. Mendy. There were more breaches involved herein.

80. In conclusion, Baniyas has not provided new arguments different from those provided before FIFA DRC, and the new evidence provided is not sufficient to modify the Appealed Decision.

VI. JURISDICTION

81. The CAS jurisdiction derives from Article R47 of the CAS Code, that 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.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.”

82. Articles R57 and R58 of the FIFA Statutes read in the pertinent part as follows:

Article 57: *“1. FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents...”*

Article 58: *1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question.*

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

83. All the parties, except Belupo, accept that the CAS has jurisdiction to resolve this dispute. Belupo disputes the competence of the CAS based on the fact that these proceedings aim at resolving an appeal against a decision taken in a procedure in which Belupo was not a party, given that it was not sued before the FIFA DRC by Baniyas.
84. The Panel firstly notes that the Appealed Decision has been issued by a FIFA legal body, that the FIFA Statutes provide for the recourse to the CAS and that all the prior legal remedies available to the Appellants have been exhausted, so the general conditions for the CAS to have jurisdiction in accordance with Article R47 of the CAS Code are met.
85. Concerning the allegations on “jurisdiction” made by Belupo the Panel, after analysing them, considers that more than challenging the jurisdiction of the CAS itself, Belupo is actually somehow contesting its standing to be sued in these proceedings by arguing

that it was not a party to the proceeding of instance, an issue that will be addressed later on in this award but that *strictu sensu*, in the Panel's view, does not automatically correspond with the question, whether CAS has jurisdiction to decide about this case, which additionally involves other parties that have accepted such jurisdiction. Belupo is not arguing that the prerequisites of Article R47 of the CAS Code are not met, but raising that it cannot be condemned in these appeals procedure as it was not a party in the first instance proceedings. This, in the Panel's view, does not exert an influence on CAS jurisdiction in this case. If the conditions set forth in article R47 of the CAS Code concur, which is the case herein, the CAS is to be deemed competent.

86. Last but not least, the Panel wishes to emphasize that all the parties signed the Order of Procedure, in which Belupo made no objection to the CAS jurisdiction.
87. Therefore, given that in the Panel's opinion, the requisites of Article R47 of the CAS Code are met in this case, CAS is competent to rule on it.

VII. ADMISSIBILITY

88. Pursuant to Article 58, para. 1 of the FIFA Statutes, in connection with the Article R49 of the CAS Code, the Appellants had 21 days from the notification of the Appealed Decision to file their Statements of Appeal before the CAS.
89. The grounds of the Appealed Decision were communicated to the Appellants by facsimile on 16 May 2019, and their Statements of Appeal were filed on 3 June 2019 (the Player) and on 5 June 2019 (Baniyas), i.e. within the time limit established by the FIFA Statutes and Article R49 of the CAS Code.
90. Consequently, both appeals are admissible.

VIII. APPLICABLE LAW

91. Article R58 of the CAS Code reads as follows:

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

92. In addition, Article. 57, par.2 of the FIFA Statutes establishes the following:

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

93. Taking the aforementioned provisions into account, in the present case the parties have submitted, and the Panel agrees on this, that the "applicable regulations" in the sense of article R58 of the CAS Code are the FIFA RSTP. Pursuant Article 26 par. 1 and 2 of the FIFA RSTP (edition 2016 and 2018) and taking into account that the present issue

was submitted before FIFA on 6 November 2017, the FIFA RSTP 2016 Edition is applicable to the present matter.

94. In light of it and of the aforementioned CAS and FIFA provisions, the Panel considers that it shall apply the FIFA RSTP and subsidiarily Swiss law to decide the present dispute.

IX. MERITS

A. PRELIMINARY ISSUES

95. Before addressing the merits of the case, the Panel shall decide on two preliminary issues respectively raised by Belupo and FIFA and which ultimately have to do with their standing to be sued in these proceedings.

a. BELUPO'S ABSENCE IN THE PROCEEDINGS BEFORE FIFA DRC. CONSEQUENCES IN THE PRESENT APPEALS PROCEDURE

96. The Panel shall firstly note that it is undisputed that Belupo was not a party in the proceedings conducted before the FIFA DRC, and that Baniyas is now asking in the present proceedings before the CAS (where the Appealed Decision is being revised) that Belupo is held joint and severally liable for the payment of the compensation owed to Baniyas by the Player and that sporting sanctions are imposed on Belupo.
97. The Panel also notes that at the time Baniyas filed its claim against the Player (11 December 2017), the fact that could have given rise to include Belupo in the claim as per article 17 FIFA RSTP (the Player's signature of a new employment contract with Belupo) had still not taken place, as the Player only signed his employment contract with Belupo on 22 February 2018.
98. However, the Panel shall stress that at a later stage and before the conclusion of the proceedings conducted before the FIFA DRC, Baniyas became aware of the signature of this employment agreement between Belupo and the Player. In fact, the Player informed, in the framework of the FIFA DRC proceedings, that he had signed the employment agreement with Belupo, and it is also accredited in these proceedings that Baniyas opposed to the issuance of Mr. Mendy's ITC, which was logically due to the fact that the Player intended to be registered in another association in favour of another club (Belupo). It is thus crystal clear that Baniyas knew about the existence of the new club while the FIFA proceedings were being conducted and decided not to sue this new club when it could have done so.
99. In light of this, the Panel thus considers that it is not acceptable that Baniyas intends to join Belupo in the second instance proceedings when it decided not to bring a claim against it in the first instance proceedings, when it had the opportunity, at least, to try to do it. The fact that FIFA invited Belupo to provide its comments in the FIFA DRC procedure and that Belupo replied to this invitation stating that the dispute between the Player and Baniyas was "*their private thing*" neither distorts the aforementioned conclusion, nor turns Belupo into a party to the proceedings before the FIFA DRC, as if Baniyas wanted that Belupo was declared liable for anything concerning the hiring of the Player, it should have expressly asked for it. Concluding the contrary in this case

and admitting Belupo as a legitimate party before the CAS would unjustifiably imply depriving Belupo of one instance in the present dispute.

100. Therefore, Baniyas' voluntary conduct before the FIFA DRC prevents in the Panel's view a revision of the Appealed Decision affecting Belupo. The Panel concludes, as a consequence, that in this case, and taking into account the specific circumstances that have taken place, Belupo does not have standing to be sued.

b. FIFA'S STANDING TO BE SUED

101. FIFA is arguing that it has not standing to be sued in these proceedings essentially because Baniyas' requests for relief are in its view exclusively directed against Mr. Mendy and Belupo and not to FIFA.
102. CAS well-established jurisprudence provides that *"(u)nder Swiss law, applicable pursuant to Articles 60.2 of the FIFA Statutes and R58 of the CAS Codes, the defending party has standing to be sued (légitimation passive) if it is personally obliged by the "disputed right" at stake (see CAS 2006/A/1206). In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (CAS 2007/A/1329&1330 and also CAS 2008/A/1517).*
103. In the specific case of FIFA's standing to be sued, the Panel notes that, for instance in the award CAS 2015/A/3999&4000 *Diego de Souza Andrade v. Al Ittihad Club & FIFA*, it is mentioned that *"CAS jurisprudence is unanimous in stating that in cases where FIFA imposes disciplinary sanctions (for example on a player or a club) or in all other cases whether the matter concerns a membership related decision, FIFA would have capacity to be sued, according to article 75 of the Swiss Civil Code, as the association which passed the opposed decision and that "According to the well-established CAS jurisprudence (...), FIFA has no standing to be sued where it is only involved in the dispute between two parties (such as a player and a club as in the present case) merely as the adjudicating body having issued the appealed decision and the parties cannot bring an actual claim against FIFA"*, and that in the award CAS 2016/A/4838 *Alex Pallarés Piquer vs FC Rubin Kazan*, it is stated that *"Prof. Haas notes above that certain decisions such as sporting sanctions or purely disciplinary issues, along with eligibility or registration matters (such as in CAS 2008/A/1639, as cited by Rubin Kazan), fall clearly within the "vertical" criteria"*.
104. In this regard, as established above, the current appeal procedure originates from a dispute between Mr. Mendy and Baniyas as a consequence of the Termination of the Employment Contract, which is indeed a private contractual dispute.
105. However, one of the requests for relief of Baniyas in these proceedings is precisely the imposition of sporting sanctions on (i) the Player, which FIFA decided not to impose in the proceedings of instance as it found that the contract's termination had just cause, and (ii) Belupo, on the basis of Article 17 FIFA RSTP. These discussions and contentions on the appropriateness or not of imposing sanctions that FIFA did not impose in the instance justifies, in the Panel's view, the call of FIFA to participate as Respondent in the present proceedings and thus the Panel concludes that it has standing to be sued herein.

B. ON THE MERITS

106. The respective claims of the Appellants in the present proceedings may be summarized as follows: while the Player claims that the Employment Contract was terminated with just cause by him and that he shall receive a compensation that is higher than the one that has been already recognized and awarded to him in the Appealed Decision, Baniyas claims that the Employment Contract was terminated without just cause by the Player and that the latter shall be ordered to pay a compensation and that sporting sanctions shall be imposed on the Player and Belupo.
107. The Panel notes that the existence of the debt of USD 75,000 (third instalment of the Advance Payment) plus interest recognized in point 3 of the Appealed Decision's operative part has not been contested by the Club, so there is no need to address this issue in the award for obvious reasons.
108. Therefore, the first issue to be resolved by the Panel is whether Mr. Mendy terminated the Employment Contract with just cause or not.

A. DID MR. MENDY TERMINATE THE EMPLOYMENT CONTRACT WITH OR WITHOUT JUST CAUSE?

109. Article 14 of the FIFA RSTP provides for the possibility of terminating a contract with just cause (*"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause."*).
110. In accordance with Article 337 para. 2 of the Swiss Code of Obligations and CAS well-established jurisprudence, a just cause for termination is any circumstance which, according to the rules of good faith, means that the party who has given notice of termination cannot be reasonably required to continue the employment relationship.
111. The Panel has carefully analysed:
- (i) The grounds adduced by the Player to justify that it had a just cause to terminate the Employment Contract (not having received the payment of USD 75,000 which was due, having been excluded from training with the team, and not having been registered in the UAEFA).
 - (ii) Baniyas' reasons intending to justify that the contractual termination was executed without just cause, which in essence can be summarized as follows: (i) Baniyas' failure to pay the Advanced Payment's third instalment did not justify the contractual termination, (ii) Baniyas did not separate the Player from the group but for a justified reason -designing individual trainings for the Player with the main objective to gradually recover his competitive level after his injury- and (iii) Mr. Mendy non-registration was agreed between the Club and the Player.
112. After this analysis, the Panel is convinced that the Player had just cause to terminate the Employment Contract and that none of the reasons advanced by the Club distort this conclusion. The three reasons given by the Player to terminate the Employment Contract, considered altogether, are in the Panel's view sufficient to understand that just cause for termination, in the sense explained above, existed.

113. Concerning the failure in the payment of the Advance Payment third instalment (USD 75,000), it has been admitted by the Club, so there is not much to add in this respect, being it proven in the present proceedings that the Player claimed for this amount at least twice in writing to the Club. The Panel notes that this amount, taking into account the global sums to be received by the Player, was not extraordinarily significant and that it is at least questionable to hold that Mr. Mendy was financially endangered or stressed by the situation of lack of payment. However, the breach of the payment obligations existed, the Club disregarded the Player's prior written warnings of 10 and 19 October and this breach, being put in connection with the other reasons adduced by the Player to ground the termination, perfectly justifies in the Panel's view the Player's decision to terminate the employment relationship.
114. With regard to the Player being put apart from the team's training sessions and being ordered to train on his own, the Panel considers that the Club did not have a valid reason to proceed in such a manner. From the evidence produced to the proceedings, the Panel concludes that Mr. Mendy had to be recovered from his injury in mid-September 2017 as at that time, he was training with his teammates. On 17 September 2018, Baniyas official Instagram account published photos with the title "*Photos | first team exercises 17-09-2017*" where Mr. Mendy appears training with the rest of his teammates. This would enter in clear contradiction with the alleged lack of fitness of the Player adduced by the Club and makes its argument in this respect to fail. In addition, both Mr. Mendy and Baniyas recognized at the hearing that the Player started his recovery program during Baniyas pre-season in Spain.
115. In what concerns the non-registration of the Player, it is uncontested that Baniyas did not register the Player as one of its 2 foreign players in the UAEFA for the season 2017-2018. Article 7 of the UAEFA Statutes established a quota of maximum two foreign players to be registered in clubs featuring the UAE Division One. The two foreign players included in such list by Baniyas were Mr. Ebagua and Mr. Novillo. Furthermore, contrary to what the Club alleged in this respect, there is no evidence or sign that the Panel can considerate to validly conclude that the de-registration was agreed with Mr. Mendy, or that there was an agreement to register the Player at the opening of the subsequent transfer window.
116. For all these reasons, the Panel finds that Mr. Mendy was entitled to terminate the Employment Contract for just cause on 1 November 2017. As a result of this, Baniyas prayers for relief based on the unjust termination of the Employment Contract are to be dismissed, and the portion of the Decision (point 3 of the operative part) ordering the Club to pay the Player the overdue amount of USD 75,000, is to be confirmed.

B. CONSEQUENCES OF THE TERMINATION WITH JUST CAUSE

117. Considering that Mr. Mendy terminated the Employment Contract with just cause, the Panel shall assess the claims for compensation raised by the Player in the present proceedings.
118. The Player is essentially claiming that apart from the amounts already recognized in his favour in the Appealed Decision, he is also entitled to (i) a further compensation for breach based on the specificity of sport, equivalent to 6 monthly salaries (USD 469,092) plus 5% annual interest, and (ii) USD 9,116 with regard to the flight tickets Abu Dhabi-

Portugal, as stipulated in the Employment Contract.

119. In this respect, it shall be firstly pointed out that Article 17 of the FIFA RSTP indeed establishes that the deciding body shall consider the specificity of sport as one of the criteria to determine the compensation in case of breach of contract, and that this criterion is to be used to “*verify that the solution reached is just and fair (...) and reaching therefore a decision which can be regarded as being appropriate evaluation of the interests at stake, and does so fit in the landscape of international football*” (CAS 2017/A/1358). However, considering this criterion is different from having to inexcusably apply it to each and every case.
120. The Panel has examined the request of the Player and in light of the facts occurred and the evidence brought to the proceedings, it considers that in the present case, there are no reasons that may justify the increase of the compensation for breach based on the “specificity of sport”. The Panel finds that the criteria applied by the FIFA DRC in accordance with Article 17 FIFA RSTP (outstanding salaries until the end of the Employment Contract less the amounts foreseen in the new contract with Belupo) are correct and appropriate, and that the outcome of this calculation is fair when considering the overall circumstances of the case, and in particular the fact that apart from the outstanding USD 75,000, the Club was up to date in the payment of the remaining salary instalments and that this pending amount did not represent a very considerable part of the Player’s earnings.
121. Even if the Panel is fine with the rationale followed by FIFA to calculate the compensation for breach, it does not fully agree with the determination of the final amount to be awarded to the Player. Discussions on this specific topic were held at the hearing and the parties had the opportunity to state their positions in its regard. Clauses 4.2.1 and 4.2.2 of the Employment Contract stipulates that the Player’s salary for the first season was of USD 390,625 and for the second season was of USD 860,000, for a total, therefore, of USD 1,250,625. It has been proven in these proceedings that Baniyas, prior to the Termination Letter, had already paid to the Player the total amount for salaries of AED 2,858,470, corresponding to USD 781,000 (at the contractual exchange rate of USD 1 = AED 3.66. Therefore, the outstanding amount due until the end of the Employment Contract was of USD 469,625 (1,250,625 – 781,000), and not of USD 547,274 as stated by FIFA in section 34 of the Appealed Decision.
122. The Panel however concurs with the Appealed Decision in the fact that this amount shall be reduced by the sums foreseen in the new employment agreement with Belupo until 31 May 2018, date of termination of the Employment Contract, that is to say EUR 5,000 per month, which FIFA ultimately quantified in the Appealed Decision in USD 18,000 (the difference between the sum of USD 547,274 -point 34 of the Appealed Decision- and the sum of USD 529,274 -point 37 of the Appealed Decision), being the Panel fine with the calculation of this reduction (USD 18,000).
123. As a consequence of the foregoing, the Panel concludes that the compensation for breach of contract payable by Baniyas to the Player shall be of USD 451,625 (469,625 – 18,000).
124. Concerning the Player’s request to be paid the sum of USD 9,116 in concept of flight tickets Abu Dhabi-Portugal as established in the Employment Contract (clause 4.8), the

Panel considers that it cannot be granted. The Employment Agreement was terminated on 1st November 2017 (i.e., rather at the beginning of the season) and the Player was already awarded the amount of CHF 2,368 in the Appealed Decision for 1 air ticket to return home. This in the Panel's view covers the traveling cost that the Player had as regards of the Employment Contract's termination and no further amount is to be recognized to the Player.

C. CONCLUSION

125. In light of the aforementioned, the Panel considers that the Player's appeal shall be totally dismissed, and that the appeal of Baniyas shall be partially upheld in the sense that the compensation for breach of the Employment Contract payable by the Club shall be reduced. As a result, the Appealed Decision is to be confirmed, with the sole exception of the compensation foreseen in item 4 of its operative part, which instead of amounting to the sums of USD 529,274 and CHF 2,368 shall amount to USD 451,625 and CHF 2,368. This conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties to the Panel. Accordingly, all other prayers for relief are rejected.

X. COSTS

126. The present arbitration procedure is subject to the provisions on costs set out in Article R64 of the CAS Code.

127. Article R64.4 of the CAS Code provides that:

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

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

The final account of the arbitration costs may either be included in the award or communicated separately to the parties."

128. Furthermore, Article R64.5 of the CAS Code provides that:

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

the financial resources of the parties.”

129. Taking into account the outcome of these proceedings, the Panel considers fair and reasonable that the arbitration costs, which will be communicated separately by the CAS Court Office to the parties at a later stage, shall be borne as to 50% by Mr. Mendy and as to 50% by Baniyas.
130. Finally, with regard to the legal fees and other expenses incurred by the parties in connection with this proceeding, taking into account the outcome of the proceedings, the financial resources of the parties, and the complexity and the specific circumstances of this case, the Panel considers fair and appropriate that Mendy, Baniyas and FIFA bear their own legal costs incurred in connection with these proceedings, and that Baniyas is ordered to pay to Belupo a contribution towards its legal fees and other expenses of CHF 5,000.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Jean Philippe Mendy against the Decision rendered by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* (FIFA) on 15 November 2018 is dismissed.
2. The appeal filed by Baniyas Football Sports Club LLC against the Decision rendered by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* (FIFA) on 15 November 2018 is partially upheld.
3. The Decision rendered by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* (FIFA) on 15 November 2018 is confirmed, with the sole exception of the portions reflected in item 4 of the operative part of decision, which shall be replaced by the following:
 4. *The Respondent / Counter-Claimant has to pay to the Claimant / Counter-Respondent, within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of USD 451,625 and CHF 2,368 plus 5% interest p.a. on said amounts as from 11 December 2017 until the date of effective payment.*
4. The costs of the arbitration, which will be communicated separately by the CAS Court Office to the parties at a later stage, shall be borne by Mr. Jean Philippe Mendy as to 50% and by Baniyas Football Sports Club LLC as to 50%.
5. Mr. Jean Philippe Mendy, Baniyas Football Sports Club LLC and *Fédération Internationale de Football Association* (FIFA) shall bear its own legal fees and other expenses incurred in connection with this arbitration, and Baniyas Football Sports Club LLC shall pay to Belupo the amount of CHF 5.000 as a contribution towards its legal fees and other expenses incurred in connection with this arbitration.
6. All other or further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 26 March 2020.

THE COURT OF ARBITRATION FOR SPORT

~~José~~ Juan Pintó Sala
President

~~Michele A.R.~~ Bernasconi
Arbitrator

~~Prof. Luigi Fu~~magalli
Arbitrator

~~Alberto G~~onzález Martínez
Ad hoc clerk