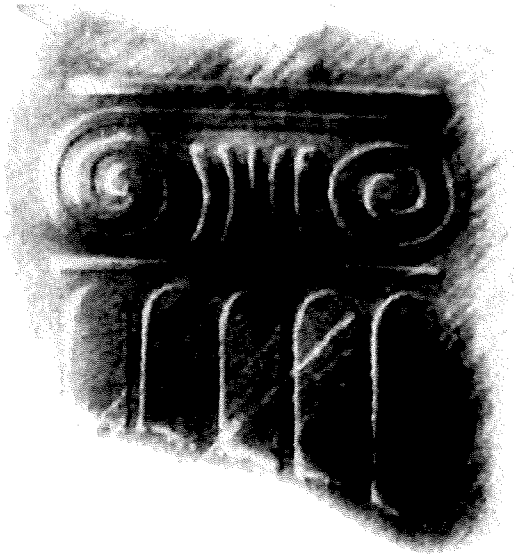
TAS / CAS

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



ARBITRAL AWARD

Al Batin, Saudi Arabia

v.

Afriye Acquah, Ghana

&

Fédération Internationale de Football Association, Switzerland

CAS 2022/A/9237 - Lausanne, May 2023

CAS 2022/A/9237 Al Batin v. Afriye Acquah & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Edward Canty, Solicitor, Manchester, United Kingdom

in the arbitration between

Al Batin, Saudi Arabia

Represented by Mr Nasr Eldin Azzam, Attorney-at-Law, Cairo, Egypt

- Appellant -

and

Afriye Acquah, Ghana

Represented by Mr Cesare Di Cintio, Attorney-at-Law, Bergamo, Italy

- First Respondent -

and

Fédération Internationale de Football Association, Switzerland

Represented by Mr Miguel Liétard Fernandez-Palacios and Mr Alexander Jacobs, FIFA Litigation Department, Zurich, Switzerland

- Second Respondent -

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

I. PARTIES

1. Al Batin (the "Appellant" or the "Club") is a football club with its registered office in Hafar al-Batin, Saudi Arabia. Al Batin is registered with the Saudi Arabian Football Federation (the "SAFF"), which in turn is affiliated with the Fédération Internationale de Football Association and is currently participating in the Saudi Professional League, the first division in the Saudi Arabian football league system.

2. Afriye Acquah (the "First Respondent" or the "Player") is a player of Ghanaian nationality, currently playing for Al-Quwa Al-Jawiya in Iraq.

3. Fédération Internationale de Football Association (the "Second Respondent" or "FIFA") is an association under Swiss law (Articles 60 et seq. of the Swiss Civil Code (the "SCC")) and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions and the evidence examined in the course of the present appeals arbitration proceedings.[1] This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

A. Background Facts

5. On 20 June 2021, the Club and the Player signed an employment contract for a period of two seasons, commencing on 1 July 2021 and expiring on 30 June 2023 or at the end of the 2022-2023 season, whichever is the later, (the "Playing Contract") in which it was agreed, *inter alia*, as follows:

> "***Item 4: Obligations of the first Party:***
>
> *1 – the parties agreed that the total value of the contract is (2,300,000 USD) Two million, three-hundred thousand US dollars.*
>
> *2 – The total amount of the contract shall be divided on the 2 contractual years as*

[1] Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for the sake of efficiency and to facilitate the reading of this Award, not all of the misspellings have been identified with a [sic] or otherwise.

follows:

a) In the first-year season 2021/2022, the First party agreed to pay to the Second Party the total value of (1,100,000 USD) One million, one hundred thousand US dollars divided as salaries on the 12 complete months of the first year/season (91,667 USD due at the end of each complete month, starting from July 2021).

b) In the second-year season 2022/2023, the Two Parties agreed that the total value is (1.200.000. USD) one million, two hundred thousand US dollars net divided as salaries on the 12 complete months of the second year/season (100,000 USD due at the end of each complete month in the second season starting from July 2022).

[…]

item 11:Force Majeure:

1 – No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this contract, for any failure or delay in fulfilling or performing any term of this contract when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's control, including, but not limited to, the following force majeure events:

a. acts of God;

b. a natural disaster (fires, explosions, earthquakes, hurricane, flooding, storms, explosions, infestations), epidemic, or pandemic;

c. war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest;

d. government order or law;

e. actions, embargoes or blockades in effect on or after the date of this Agreement;

f. action by any governmental authority;

g. national or regional emergency; and

h. strikes, labor stoppages or slowdowns or any other industrial or sporting disturbances.

2 – The parties shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized according to FIFA and SAFF decisions.

3 – The parties shall resume the performance of their obligations as soon as reasonably practicable after the removal of the cause." (emphasis in original)

6. On 21 December 2021, the Club and the Player signed a mutual termination agreement in respect of the Playing Contract (the "Termination Agreement") in which it was

agreed, *inter alia*, as follows:

"*Agreement to end a contract*

ON THIS DAY TUESDAY DATE 21/12/2021 we make agreement between :

1-(first part) Albatin football club and his location is Hafar Albatin / Saudi Arabia, Emile info@albatin.sa

2-(second part)Afriyie Acquah, nationality Ghanaian, Passaport number G2031886, date of birth 05/01/1992.

We decide to end the second part contract that start from 01/07/2021 and expire date 30/6/2023, between the club and the player by Mutual consent from both sides that the first part should pay all the total dues until the day 31/12/2021 to the player." (emphasis in original)

7. The Club made three payments to the Player on 23 August 2021, 6 October 2021 and 2 November 2021 in the sums of USD 91,478.32, USD 87,055 and USD 90,637 respectively, which totalled USD 269,170.32.

8. On 18 February 2022, the Player's lawyer, Mr Di Cintio, wrote to the Club on the Player's behalf putting it in default for the outstanding balance of the amount due under the Termination Agreement (the "Default Letter"), *inter alia*, as follows:

"*Albatin Football club, represented by Mr. Awadh Al Hozalmy, has first signed a contract with the player Acquah on 21 June 2021 in which have been provided precise terms and payment obligations. In particular, with refer to the season 2021/2022, Albatin Football Club agreed to pay Mr. Acquah the total value of 1.100,00 USD divided as salaries on the 12 complete month of the first year/season (91.667 USD due at the end of each complete month, starting from July 2021).*

On 21 December 2021 the parties has signed an agreement to end the second part of the contract start from 01/07/2021 and they mutually agreed that the first part (Albatin Football) should pay all the total due until the day 31/12 to the player.

The total due from 1 July 2021 until 31 December 2021 amounts to 550.002,00 USD.

However, the player confirms that your club has only made three payments for a total of 269.170,32 USD.

To date our information is that ***your club did not pay*** *Mr. Acquah the remaining amount of* ***USD 280,831.68.***

Mr. Acquah allows the Club ***15 (fifteen) days*** *from receipt of this communication to fulfil the payment of the amount due.*

Otherwise, we inform you right now that I will be forced to act in the appropriate place

for the protection of the Mr. Acquah's rights." (emphasis in original)

9. Notwithstanding the receipt of the Default Letter, the Club did not make any further payments to the Player.

B. Proceedings before the FIFA Dispute Resolution Chamber

10. On 14 June 2022, following the above, the Player lodged a claim against the Club before the FIFA Football Tribunal, requesting that the Club be ordered to pay to the Player the amount of USD 280,831.68 relating to the outstanding amount due under the Termination Agreement (the "Outstanding Amount"), plus 5% interest per annum from 21 December 2021 until the date of effective payment. Furthermore, the Player also requested that a disciplinary sanction be imposed on the Club as well as sporting sanctions pursuant to Article 12bis paragraphs 2, 4 (c) and 4 (d) of the FIFA Regulations on the Status and Transfer of Players (March 2022) (the "FIFA RSTP").

11. On the same date, the FIFA general secretariat sent a settlement proposal to the Club and the Player, in accordance with Article 20 of the Procedural Rules Governing the Football Tribunal (2022 edition) (the "FIFA Procedural Rules"), *inter alia*, as follows:

"*The Respondent, Al Batin, shall pay the Claimant, Afriye Acquah:*

- *USD 280,831.68 as outstanding amount plus 5% interest per annum as from 1 January 2022 until the date of effective payment.*

Payment (including any applicable interest) shall be made within ***45 days*** *as from notification of the confirmation letter.*

[...]

If the Respondent rejects the proposal, it shall provide its ***response to the claim*** *(including any exhibits duly translated if need be into English, Spanish, German or French) in PDF format* ***by 29 June 2022*** *(cf. art. 21 of the Procedural Rules).*" (emphasis in original)

12. On 17 July 2022, having been granted an extension of time, the Club filed its response to the Player's claim. The Club acknowledged the non-payment of the Outstanding Amount, justifying that the default was caused by a case of *force majeure*. Specifically, the Club explained that it was funded by public monies and that it had ceased to receive this funding, which is outside of its control. The Club referred to the fact that it had not disputed the Outstanding Amount and had tried to negotiate a payment schedule with the Player as evidence of its good faith. Therefore, the Club limited its requests for relief to the non-imposition of sporting sanctions.

13. On 1 September 2022, the FIFA Dispute Resolution Chamber (the "FIFA DRC") rendered its decision (the "Appealed Decision"), with the following conclusion and operative part:

" ***i. Main legal discussion and considerations***

17. *The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly disputed the lawfulness of the non-payment of the amount of USD 280,831.68, in accordance with the Termination Agreement.*

18. *In this context, the Chamber wished to point out that both parties expressly agreed as to the fact that the amount itself, i.e. USD 280,831.68 under the Termination Agreement, remained unpaid.*

19. *Thus, the Chamber acknowledged that it was its task to determine, based on the evidence presented by the parties, whether the Respondent had a valid justification for not having complied with its financial obligations under the Termination Agreement.*

20. *In this respect, the Chamber took note of the Respondent's argumentation that the amount owed to the Claimant remained unpaid due to a lack of funding from its financial sponsor, thereby giving rise to a case of force majeure.*

21. *In this context, the Chamber wished to point out that the Respondent failed to submit any evidence in order to substantiate its claim that there was, indeed, a case of force majeure and a resulting inability to make the payments stipulated under the Termination Agreement. Thereby, the Chamber considered that the Respondent failed to meet the burden of proving that the payments under the Contract could be challenged.*

22. *Consequently, the Chamber concluded that, as no situation of force majeure could be established in the present matter, the Respondent has to comply with the contractually agreed payments as stipulated per the Termination Agreement.*

23. *In view of the foregoing, and bearing in mind the general legal principle of pacta sunt servanda, which in essence means that agreements must be respected by the parties in good faith, the Respondent is held liable to pay the Claimant the outstanding amount deriving from the Termination Agreement, namely USD 280,831.68.*

ii. Consequences

24. *Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.*

25. *In this respect, the Chamber recalled that the amount claimed by the Claimant, i.e. USD 280,831.68, was confirmed by the Respondent as having remained unpaid.*

26. *As a consequence, and in accordance with the general legal principle pacta sunt servanda, the Chamber decided that the Respondent is liable to pay*

the Claimant the amount established as outstanding under the Termination Agreement, namely USD 280,831.68.

27. *In addition, taking into account the Claimant's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amount as from 1 January 2022 until the date of effective payment.*

iii. Art. 12bis of the Regulations

28. *In continuation, the Chamber referred to art. 12bis par.2 of the Regulations, which stipulates that any club found to have delayed a due payment for more than 30 days without a prima facie basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.*

29. *To this end, the Chamber confirmed that the Claimant put the Respondent in default of payment of the amounts sought on the date of 18 February 2022, and that said amounts had been overdue for more than 30 days. Moreover, the Chamber confirmed that the Claimant granted the Respondent a 15-day deadline to cure such breach.*

30. *Accordingly, it was established that the Respondent had delayed a due payment without a prima facie contractual basis. It followed that the criteria enshrined in art. 12bis of the Regulations were partially met in the case at hand.*

31. *The Chamber further established that, by virtue of art. 12bis par. 4 of the Regulations, it had competence to impose sanctions on the Respondent. On account of the above and bearing in mind that this was the 5th offence committed by the Respondent within the last two years (1st offence: FPSD-2174/svi, notified to parties on 7 June 2021; 2nd offence: FPSD-3108/pmu, notified to parties on 5 November 2021; 3rd offence FPSD-5225/plv, notified to parties on 25 April 2022; 4th offence FPSD-6053/chz, notified to parties on 4 August 2022), the Chamber decided to impose a reprimand and a fine of USD 40,000 in accordance with art. 12bis par. 4 lit. c) of the Regulations.*

32. *In this connection, the Chamber wished to highlight that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty in accordance with art. 12 par. 6 of the Regulations.*

[...]

IV. Decision of the Single Judge of the Players Status Chamber

1. *The claim of the Claimant, Afriye Acquah, is partially accepted.*

2. *The Respondent, Al Batin, has to pay to the Claimant USD 280,031.68 as outstanding amount plus 5% p.a. as from 1 January 2022 until the date of effective payment.*

3. *Any further claims of the Claimant are rejected.*

4. *A reprimand shall be imposed on the Respondent.*

5. *The Respondent is ordered to pay a fine of USD 40,000 to FIFA within 30 days as from the notification of this decision to the following bank account, with clear reference to the case FPSD-6317:*

UBS Zurich

Account number 230-366677.61N (FIFA Players' Status)

Clearing number 230

IBAN: CH12 0023 0230 3666 7761 N

SWIFT: UBSWCHZH80A

Please mention the applicable reference number

6. *Full payment of the amounts mentioned in point 2. (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.*

7. *Pursuant to art. 24 of the Regulations on the Status and Transfer of Players if full payment of the amounts mentioned in point 2. (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:*

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

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

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

9. *This decision is rendered without costs.*" (emphasis in original)

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 30 October 2022, the Appellant lodged an appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2021) (the "CAS Code") and requested that the case be submitted to a sole arbitrator.

15. On 7 November 2022, the CAS Court Office provided a copy of the Statement of Appeal to the Respondents.

16. On 9 November 2022, the Second Respondent confirmed its agreement to the case being submitted to a sole arbitrator.

17. On 11 November 2022, the First Respondent confirmed his agreement to the case being submitted to a sole arbitrator.

18. On 24 November 2022, after having been granted an extension, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code.

19. On 3 January 2023, the First Respondent, after having been granted an extension, filed his Answer pursuant to Article R55 of the CAS Code.

20. On 23 January 2023, the Second Respondent, after having been granted an extension, filed its Answer pursuant to Article R55 of the CAS Code.

21. On 24 January 2023, on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to this case was constituted as follows:

    Sole Arbitrator: Mr Edward Canty, Solicitor in Manchester, United Kingdom

22. On 30 January 2023, the Appellant indicated that it did wish to have a hearing, while the First Respondent indicated that he was content to have the case determined on the basis of the written submissions. On 1 February 2023, the Second Respondent expressed the same position as the First Respondent.

23. On 3 March 2023, the CAS Court Office wrote to the Parties to inform them of the Sole Arbitrator's decision that it was not necessary to hold a hearing and the case would be determined based on the Parties' written submissions. An Order of Procedure was also circulated with the Parties, which signed and returned it within the deadline granted in this respect.

IV. SUBMISSIONS OF THE PARTIES

24. The following summaries of the submissions of the Parties is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator has, however, carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or

evidence in the following summaries.

A. The Appellant

25. The Appellant's submissions, in essence, may be summarized as follows:

- The Appellant noted that the Player had raised a complaint that he had not been paid his salaries as set out in the Playing Contract, which led to the Club and the Player agreeing to terminate the Playing Contract with the Club agreeing to pay to the Player his full entitlement to his salaries for the period 1 July 2021 to 31 December 2021. Accordingly, the Club accepts that by virtue of the Termination Agreement, the Player was entitled to receive the total sum of USD 550,002, however it had only paid a total of USD 269,170.32, leaving a balance of USD 280,831.68 outstanding.

- However, the Club had agreed to sign the Player for the start of the 2021-2022 season because it had guaranteed its position in the Saudi Professional League for that season and as such was entitled to a payment of SAR 5,000,000 (which equated to approximately USD 1,300,000) (the "Reward") from the Saudi Ministry of Sport (the "Ministry"), but despite constant reminders, the Club had not received the payment.

- The Club had shown its good faith, despite not being able to properly respond to the Default Letter, by having discussions with the Player in which it acknowledged the Player's entitlement to the Outstanding Amount and expressed its intention to "*push the matter as much as possible*".

- The Club stated that the Outstanding Amount should not be ordered to be paid because the delay had been caused by a situation of *force majeure*.

- The principle of *force majeure* is recognised in Swiss law and FIFA and CAS jurisprudence and for it to be applied, the following factors have to be satisfied:

    - it should be based on objective reasons, not personal impediment;

    - it should be beyond the control of the obliged party;

    - it should be unforeseeable;

    - it cannot be resisted; and

    - it must render the performance of the obligation impossible.

- The Club maintained that the Ministry's failure to pay the Reward satisfied all of these conditions which meant that it was impossible for the Club to pay the Outstanding Amount of USD 280,831.68.

- Therefore, the principle of *force majeure* should be applied in the Club's favour and it should not be obliged to pay the Outstanding Amount until it receives the Reward.

26. Accordingly, the Appellant submitted the following requests for relief in its Statement

of Appeal:

"*1. To accept this appeal against the Decision of the FIFA decision that was passed in Zurich on the 1st of September 2022 and notified to the parties with grounds on the 11th of October 2022.*

2. ***To adopt an award annulling said decision and declaring that:***

2.1 The First Respondent is not entitled to the amount of the installment in question amounting to USD 280,031.68.

2.2 To exempt the Appellant from paying the imposed fine of USD 40,000 to the Second Respondent

2.3 To condemn the Respondents to the payment of the whole CAS administration costs and the Arbitrator's fees.

2.4 Awarding any such other relief as the Panel may deem necessary or appropriate

The Appellant expressly reserves its right to amend or supplement the requests for relief as expressed above in its further written submission to be filed before the Court of Arbitration for Sport." (emphasis in original)

27. Furthermore, the Appellant supplemented its requests for relief in its Appeal Brief:

"*1. In the light of all the above and also under consideration of the factual and legal aspects as outlined in our present position we respectfully request the FIFA* [sic], *on behalf of Al Batin Club:*

1.1 To accept and grant our requests and issue a decision stating that:

1.2 To establish that the Player (Afriye Acquah) is not entitled to any amount based on our submitted and evidenced force majeure;"

B. The First Respondent

28. The First Respondent's submissions, in essence, may be summarized as follows:

- Firstly, the Club had not disputed the Player's entitlement to the Outstanding Amount, in fact, it confirmed that this was due to the Player.

- However, the payment of the Outstanding Amount was not conditional on the Club receiving the Reward from the Ministry and nor was it a *force majeure* situation if the Reward is not paid to the Club. Each club must honour its contractual commitments, according to its financial capabilities, and any failure to receive a payment cannot affect the agreements it undertakes and the commitments it makes.

- For *force majeure* to exist there must be an objective (rather than a personal) impediment, beyond the contract of the obliged party, that is unforeseeable, that cannot

be resisted and that renders the performance of the obligation impossible. It must be narrowly interpreted because it represents an exception to the fundamental obligation of *pacta sunt servanda*, that legally binding agreements must be enforced, which is at the basis of legal systems and necessary for maintaining contractual stability.

- In accordance with this principle of *pacta sunt servanda*, which is consistently upheld by CAS jurisprudence, it is therefore established that the lack of financial means to satisfy a contractual payment obligation does not justify the non-payment.

- The Player referred to CAS jurisprudence which demonstrated that for *force majeure* to be applicable, as a general rule, it requires an unpredictable situation that is extraordinary and unexpected such as a natural disaster or earthquake. For instance, a player being called up for national service would not be a *force majeure* event because the player should be aware of his civil obligations and the requirement to be called up for military service was completely foreseeable according to the relevant country's law.

- The non-receipt of the Reward was not a *force majeure* event which makes payment of the Outstanding Amount impossible because payment could be made using other resources of the Club and/or the Club could make savings elsewhere to allow it to pay the Outstanding Amount. The conditions required for a *force majeure* event to occur had not been satisfied:

    - the Club had a claim against the Ministry which could be fulfilled;

    - the payment of the salary obligations and the Outstanding Amount was not dependent on the Club's receipt of the Award, and the Club could use other resources to fulfil it;

    - the Player should not carry the risk of non-payment of the Reward;

    - the Player should not suffer if the Club has made commitments that are beyond its financial resources.

- Furthermore, the Club has not provided any proof that the Reward has not been paid or will not be paid in the future. Indeed, the Club has failed to provide any evidence either that it was entitled to the Reward or that, if it was, that it had taken any steps to recover it. Accordingly, in light of the burden of proof adopted in CAS jurisprudence, the Club bears the evidential burden to prove the facts it alleges and has failed to discharge this burden.

- The Player also rejected the suggestion that the Club had tried to resolve the situation by proposing payments by instalments or attempting any other form of settlement as no such steps were taken by the Club.

- Finally, the Club could have raised funds in other ways, including taking out a loan, to be able to discharge the Outstanding Amount or requesting a further deferral, however instead it did nothing.

- There are no grounds for *force majeure* to exist and the Club has failed to prove its case.

29. Accordingly, the First Respondent submitted the following requests for relief:

"*We hereby request that the COURT OF ARBITRATION FOR SPORT deem this ANSWER TO THE APPEAL as filed on behalf of MR AFRIYE ACQUAH, together with the documents which are annexed thereto, in order for the future Appeal Arbitration Panel to eventually deliver an Award, in light of the statements herein and any other evidence provided in the course of arbitration proceedings, whereby:*

A.- Rejecting in full the appeal against the Decision issued by the Panel of the Dispute Resolution Chamber (FIFA Football Tribunal) with reference FPSD-6317.

B.- Accepting in full the Decision issued by the Panel of the Dispute Resolution Chamber (FIFA Football Tribunal) with reference FPSD-6317.

C.- The Club is ordered to pay all legal costs and other arbitration expenses." (emphasis in original)

C. The Second Respondent

30. The Second Respondent's submissions, in essence, may be summarized as follows:

- The case is simply about the Club's failure to comply with its financial obligations set out in the Termination Agreement with the Player, and for which it was sanctioned with a fine and a reprimand on the basis of Article 12bis of the FIFA RSTP.

- All of the requirements set out in Article 12bis of the FIFA RSTP were satisfied which meant that the FIFA DRC was entitled to impose a fine on the Club, and the amount of USD 40,000 is entirely proportionate given that the Club is a repeat offender (this is the Club's fifth breach of Article 12bis of the FIFA RSTP over the previous two years) and the substantial amount owed to the Player.

- FIFA noted that, despite referencing the fine in the Club's initial requests for relief in its Statement of Appeal, it has not challenged it in its requests for relief in its Appeal Brief, and furthermore has not submitted any arguments in respect of the fine imposed. The absence of any arguments or a specific challenge to the imposition of the reprimand and the fine means that the same should be confirmed.

- The following two conditions must be satisfied for Article 12bis of the FIFA RSTP to be applicable:

    - A club (the debtor) must have delayed a due payment for more than 30 days with a *prima facie* contractual basis; and

    - The creditor must have put the debtor in default in writing and have granted a deadline of at least ten days for the debtor to comply with its financial obligations.

- Both conditions are satisfied in this case and remain undisputed. Indeed, the Club even acknowledged that the Player was entitled to the Outstanding Amount.

- The Club has failed to provide any evidence whatsoever to substantiate the alleged existence of *force majeure* which it seeks to rely on. It has clearly failed to discharge its burden of proof in line with Article 8 of the SCC.

- The fine is both correctly applied and proportionate, and it is noted that the Club raises no argument against either aspect.

- The main aim of Article 12bis of the FIFA RSTP is to ensure that clubs comply with their financial contractual obligations, and it affords a wide discretion to the deciding bodies of FIFA when it comes to the sanctioning of clubs. CAS jurisprudence respects that discretion and panels will "*only review the decision if it is considered evidently and grossly disproportionate to the committed offence.*" It is only possible for a CAS panel to review such a decision if the relevant FIFA judicial body exceeded the margin of discretion given to it by the principle of association autonomy (i.e. it must be held to have acted arbitrarily).

- Sanctions are not only based on the overdue amount, but actually on a diverse range of factors which include the specific circumstances of a case, the stance of the parties during the investigation, the amount awarded, the importance of the infringement and whether the sanctioned party has previously been found responsible for having overdue payables.

- The sanction imposed on the Club is not the most severe sanction under Article 12bis of the FIFA RSTP, which can include a registration ban. It is possible to apply sanctions cumulatively. Furthermore, Article 12bis(6) of the FIFA RSTP confirms that if a club is a repeat offender then this is considered to be an aggravating circumstance and leads to a more severe sanction. This was the Club's fifth violation of Article 12bis of the FIFA RSTP in the previous two years, which was taken into account in the Appealed Decision, and was a fact that was not contested by the Club.

- It is clear that the fine imposed should be confirmed, considering the Outstanding Amount, as well as the absence of any good will or intention from the Club to pay the Player. The filing of this appeal has further delayed payment to the Player and should be seen as simply a delaying tactic, particularly so given the Club confirms the Player's entitlement to the Outstanding Amount.

- In consideration of the circumstances of the case, as well as the Club's qualification as a repeat offender which is an aggravating factor (in respect of which, the sanctions have gradually become more severe), a fine in the amount of USD 40,000 is appropriate, and most definitely not grossly and evidently disproportionate and should therefore be confirmed.

31. Accordingly, the Second Respondent submitted the following requests for relief:

"***B.*** ***Prayers for Relief***

50. Based on the foregoing, FIFA respectfully requests CAS to:

(a) Reject the Appellant's appeal in its entirety;

(b) Confirm the Appealed Decision;

(c) Order the Appellant to bear all costs incurred with the present procedure." (emphasis in original)

V. JURISDICTION

32. The jurisdiction of CAS, which is not disputed, derives from Article R47 of the CAS Code which states "[a]*n 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*".

33. Article 57(1) of the FIFA Statutes (2022 edition) then provides that "[a]*ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS [...]*".

34. The Parties do not dispute the jurisdiction of the CAS and further confirmed it by signing the Order of Procedure.

35. It follows that the CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

36. Article R49 of the CAS Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document."

37. According to Article 57(1) of the FIFA Statutes (2022 edition), appeals *"shall be lodged with CAS within 21 days of receipt of the decision in question"*.

38. The Appealed Decision was passed on 1 September 2022 and notified to the Parties on 11 October 2022. The time limit to file an appeal runs from receipt of the notification of the decision with grounds, i.e., 11 October 2022. Therefore, given the appeal was filed on 30 October 2022, the appeal was filed within the deadline of 21 days set by Article 57(1) of the FIFA Statutes (2022 edition). The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

39. It follows that the appeal is admissible.

VII. APPLICABLE LAW

40. Article R58 of the CAS Code provides the following:

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

41. Article 56(2) of the FIFA Statutes (2022 edition) stipulates 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."

42. The Sole Arbitrator is satisfied that primarily the various regulations of FIFA are applicable to the substance of the case, and additionally Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

43. The main issues to be determined are:

(i) Was there a *force majeure* situation which has prevented the Club from making payment of the Outstanding Amount to the Player?

(ii) What are the consequences that follow?

(iii) Were the disciplinary sanctions validly imposed on the Club by FIFA and appropriate in all the circumstances?

A. Was there a *force majeure* situation which has prevented the Club from making payment of the Outstanding Amount to the Player?

44. By way of reminder, the Club accepted that the Outstanding Amount is owed to the Player but claimed that, firstly, it has shown goodwill towards the Player by having discussions with him in which it acknowledged the amount was owed and giving assurances it would do all that it could to make the payment. Further, it had discussions with the Player to seek to reach a settlement and / or propose some form of payment schedule.

45. The Club stated that it was unable to make the payment of the Outstanding Amount when it fell due (or since) because it had not (and still had not at the time it filed its Appeal Brief) received the Reward from the Ministry. The failure to receive the Reward satisfied the requirements to determine it a *force majeure* event and therefore the Club should not be ordered to make payment of the Outstanding Amount.

46. The Player disputes this in its entirety. He disputes that there were any discussions with the Club, that he received any assurances or that there were any attempts made by the Club to reach a settlement or propose a payment schedule. The Player noted that the Club has provided no evidence to support these assertions. Furthermore, the Player disputes that the non-receipt of the Reward is a *force majeure* event which prevented the Club from making the payment of the Outstanding Amount. Indeed, the Player further noted that the Club provided no evidence of (a) its alleged entitlement to the Reward, (b) its non-receipt of the Reward and (c) any attempts to recover the Reward.

47. FIFA also commented that the Club had failed to provide any evidence whatsoever to substantiate its argument that a *force majeure* event had occurred which prevented it from paying the Outstanding Amount.

48. Beginning with a brief analysis of the applicable burden and standard of proof, Article 8 of the SCC states that a party has the burden of proving the facts underlying its claim(s) as follows:

"*Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.*"

49. This position is further supported by the provisions of Article 13 para. 5 of the FIFA Procedural Rules, which is referenced in the Appealed Decision, and states:

"*A party that asserts a fact has the burden of proving it.*"

50. It follows therefore that each Party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the Sole Arbitrator that the facts it pleads are established.

51. The standard of proof which applies to proceedings of the FIFA judicial bodies is that the members of FIFA's judicial bodies decide on the basis of their "personal conviction" and CAS jurisprudence has consistently equalled this standard to the standard of "comfortable satisfaction". It is a standard that is higher than the standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt" (see CAS 2020/A/6916; CAS 2020/A/7397).

52. Based on the foregoing, the Sole Arbitrator is content to adopt the standard of comfortable satisfaction, commonly adopted in CAS jurisprudence, as the standard of proof to apply in this case.

53. Finally, in accordance with Article R57 of the CAS Code, "[t]*he Panel has full power to review the facts and the law*", which means that the CAS appeals arbitration procedure provides for a *de novo* review of the merits of the case. Accordingly, as is well-established in CAS jurisprudence, a panel is not limited to deciding if the appealed decision is correct or not but, rather, its function is to make an independent determination as to the merits of the case.

54. It follows therefore, that the burden of proof rests upon the party seeking to rely on a situation of *force majeure* as the basis for non-payment of an obligation. Accordingly, in this case it is the Club which has the burden of proving the existence of a *force majeure* event because it asserts this and seeks to rely on it to justify the non-payment of the Outstanding Amount.

55. Turning to the substance of the matter, the Sole Arbitrator first notes that, in accordance with the well-established CAS jurisprudence, external economic issues cannot justify the failure to comply with financial obligations. CAS 2018/A/5537 states as follows:

"[t]*he alleged financial difficulties the Appellant faced because of the economic crisis in Egypt, and the consequential loss of value of the local currency, are not valid arguments in view of well-established CAS jurisprudence. Financial difficulties or the lack of financial means of a club cannot be invoked as justification for not complying with an obligation to pay (cf. CAS 2016/A/4402 par. 40; CAS 2014/A/3533 par. 59; CAS 2005/A/957 par. 24).*"

56. *Force majeure* is considered to be a situation or event, beyond the control of the parties, which prevents them from fulfilling their contractual obligations and for which the parties should not carry any liability.

57. It is a widely accepted legal concept and also an established principle under Swiss law. Given that Swiss law applies to this case, it is appropriate to turn to the jurisprudence of the Swiss Federal Tribunal to help define the concept of *force majeure.* By way of example, the decision 2C_579/2011 sets out a helpful definition of *force majeure* as follows "*il y a force majeure en présence d'événements extraordinaires et imprévisibles qui surviennent en dehors de la sphere d'activité de l'intéressé et qui s'imposent à lui de façon irresistible"* which is freely translated in CAS 2015/A/3909 as "*Force majeure takes place in the presence of extraordinary and unforeseeable events that occur beyond the sphere of activity of the person concerned and that impose themselves on him / her in an irresistible manner".*

58. In CAS 2010/A/2144, the Panel held that:

"*The Panel highlights that force majeure is an event which leads to the non performance of a part of a contract due to causes which are outside the control of the parties and which could not be avoided by exercise of due care. The unforeseen event must also have been unavoidable in the sense that the party seeking to be excused from performing could not have prevented it.*

Moreover, force majeure is not intended to excuse any possible negligence or lack of diligence from a party, and is not applicable in cases where a party does not take reasonable steps or specific precautions to prevent or limit the effects of the external interference."

59. In CAS 2006/A/1110, the Panel held that:

"*Force majeure, indeed, implies an objective, rather than a personal, impediment,*

beyond the control of the "obliged party", that is unforeseeable, that cannot be resisted, and that renders the performance of the obligation impossible (see CAS 2002/A/388, published in Digest of CAS Awards III 2001-2003, pp. 516 ff.) In addition, the conditions for the occurrence of force majeure are to be narrowly interpreted, since force majeure introduces an exception to the binding force of an obligation."

60. Therefore, the definition of *force majeure* must be narrowly interpreted because it represents an exception to the fundamental obligation of *pacta sunt servanda*, which is necessary for maintaining contractual stability and forms part of the basis of a legal system.

61. The Sole Arbitrator notes that the Club has failed to provide any corroborative evidence that it was entitled to the Reward, that it had not received the Reward or that it had taken any steps to enforce its entitlement to the Reward.

62. Furthermore, the Club has also failed to provide any evidence that, notwithstanding the above lack of corroborative evidence, its failure to receive the Reward meant that it was impossible for the Club to make payment of the Outstanding Amount, for instance, by using alternative funds to settle this debt.

63. On this basis, the Sole Arbitrator is satisfied that the question as to whether the non-payment of the Reward amounts to a *force majeure* event does not require any further consideration.

64. In any event, as referenced above, it should be added, for completeness, that the financial situation of the Club is not a valid ground for non-payment of a debt. Notwithstanding the lack of supporting evidence, the Sole Arbitrator finds that any financial problems suggested by the Club cannot be used as a reason for non-payment, and it is a well-established principle that financial difficulties to satisfy a payment obligation cannot excuse the failure to make the payment required. This is well supported by CAS jurisprudence, as follows:

"*At the same time, the Panel confirms that the difficult financial and sporting situation alleged by the Appellant is not a justification for its failure to pay its debt to the Brazilian Club. Lack of financial means, even though caused by sporting conditions, to satisfy an obligation of payment does not excuse the failure to make the required payment. The DC, therefore, rightly considered the Appellant in breach of its financial obligation to the Club, irrespective of the financial situation of the debtor*" (CAS 2006/A/1008).

65. Therefore, the Sole Arbitrator finds to his comfortable satisfaction, due to a complete lack of supporting evidence, that the Club has failed to satisfy its evidential burden to prove the existence of a *force majeure* event which rendered it impossible for the Club to make payment of the Outstanding Amount.

B. What are the consequences that follow?

66. Having established that *force majeure* was not a valid excuse for the Club's failure to

pay the Outstanding Amount, the Sole Arbitrator now turns to the next issue to be determined, which is the consequences that follow.

67. By way of reminder, the Club accepted that the Outstanding Amount is payable to the Player but claimed that it is prevented from making payment due to the *force majeure* event of failing to receive the Reward. Accordingly, it follows that if the *force majeure* event is not proven, then the Club must be ordered to make payment of the Outstanding Amount to the Player as the only alleged impediment has been dismissed.

68. It follows, therefore, that the Sole Arbitrator finds, to his comfortable satisfaction, that the Outstanding Amount is payable by the Club to the Player.

C. Were the disciplinary sanctions validly imposed on the Club by FIFA and appropriate in all the circumstances?

69. The Sole Arbitrator notes that the position of the Club with regard to the disciplinary sanction of a reprimand and a fine of USD 40,000 imposed on it by FIFA in the Appealed Decision is unclear. In its requests for relief in its Statement of Appeal, the Club requests "[t]*o exempt the Appellant from paying the imposed fine of USD 40,000 to the Second Respondent*" however this request is not maintained in its requests for relief in its Appeal Brief. Furthermore, there are no arguments put forward or indeed any reference to why it should have the fine and/or reprimand removed.

70. Therefore, it is not clear whether (a) the Club maintains that the sanctions should be removed, (b) it does and is based on the same *force majeure* situation or (c) the sanctions should be removed for any other reason, such as not validly imposed or disproportionate.

71. Accordingly, the Sole Arbitrator considers it is helpful, for the avoidance of doubt, to address this issue.

72. The provisions of Article 12bis of the FIFA RSTP sets out the basis for the imposition of disciplinary sanctions, which states, as follows:

> "*1. Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements.*
>
> *2. Any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned in accordance with paragraph 4 below.*
>
> *3. In order for a club to be considered to have overdue payables in the sense of the present article, the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s).*
>
> *4. Within the scope of its jurisdiction (cf. article 22 to 24), the Football Tribunal may impose the following sanctions:*

a) a warning;

b) a reprimand;

c) a fine;

d) a ban from registering any new players, either nationally or internationally, for one or two entire and consecutive registration periods.

5. *The sanctions provided for in paragraph 4 above may be applied cumulatively.*

6. *A repeated offence will be considered an aggravating circumstance and lead to a more severe penalty.*

7. *The terms of the present article are without prejudice to the application of further measures in accordance with article 17 in the event of unilateral termination of the contractual relationship.*"

73. CAS jurisprudence supports the ability of FIFA to impose disciplinary sanctions and the discretion afforded to it in setting the appropriate sanction taking the context into account, as shown in CAS 2014/A/3665, 3666 and 3667 which stated, *inter alia*, as follows:

"*Such fundamental principles are satisfied whenever the disciplinary rules have been properly adopted, describe the infringement and provide, directly or by reference, for the relevant sanction. The fact that the competent body applying the FIFA DC has the discretion to adjust the sanction mentioned in the rules deemed applicable to the individual behavior of a player breaching such rules is not inconsistent with those principles.*"

74. Furthermore, the Swiss Federal Supreme Court has also deemed the system of sanctions utilised by FIFA as being lawful (Swiss Federal Supreme Court decision dated 5 January 2007, 4P.240/2006).

75. The two conditions which must be satisfied for Article 12bis of the FIFA RSTP to be validly applied are that the debtor must have delayed a due payment with a contractual basis for more than 30 days and the creditor must have put the debtor in default in writing and granted a deadline of at least ten days for the debtor to comply with its financial obligations.

76. By virtue of the Termination Agreement, the Player was entitled to the amount of USD 550,002 for the period from 1 July 2021 to 31 December 2021, however the Club only paid the amount of USD 269,170.32 leaving a balance of USD 280,831.68 still owed to the Player.

77. The Player sent the Default Letter on 18 February 2022, more than 30 days after the payment default, and gave the Club 15 days to pay the Outstanding Amount.

78. Therefore, both conditions were satisfied for Article 12bis of the FIFA RSTP to be

validly applied.

79. Consequently, the Sole Arbitrator finds that there was a legal basis for FIFA to impose disciplinary sanctions on the Club.

80. In terms of the sanctions of a reprimand and a fine of USD 40,000 imposed on the Club, the Sole Arbitrator firstly notes that Article 12bis paragraph 5 provides for the cumulative application of sanctions.

81. FIFA indicated that this was Club's fifth violation of Article 12bis of the FIFA RSTP in the previous two years, and in support, provided copies of all the other decisions. The Sole Arbitrator has considered these and notes that the sanctions imposed on the Club in those decisions were as follows:

a. FPSD-2174 – 1 June 2021 – amount owed EUR 862,500 – a reprimand;

b. FPSD-3108 – 16 December 2021 – amount owed USD 504,262.02 and EUR 1,030.74 – a warning;

c. FPSD-5225 – 19 April 2022 – amount owed EUR 603,750 – a fine of USD 37,500; and

d. FPSD-6053 – 4 August 2022 – amount owed EUR 192,720 – a fine of USD 22,500.

82. The Sole Arbitrator notes that the application of Article 12bis paragraph 6 provides for more severe penalties to be imposed in the case of repeated offences because this is taken as an aggravating circumstance. It can be seen in the escalation of the sanctions above, that FIFA has imposed more serious sanctions with each repeated offence, save for the second fine imposed, which it is assumed was reduced given the reduced amount owed compared with the previous case.

83. Having established the general appropriateness of the approach to setting the level of fines, it is supported by CAS jurisprudence that the level of fines imposed is referable to the level of debts, as "*the "outstanding amounts due" constitutes the most logical nexus between the severity of the violation committed and the sanctions to be imposed*" (CAS 2018/A/5551).

84. Turning to an assessment of proportionality, the Sole Arbitrator recognises the principle of association autonomy and should only seek to amend a disciplinary decision in those cases where the FIFA judicial body making the decision has exceeded the margin of discretion afforded to it such that it must be held to have acted arbitrarily. It is not sufficient for a CAS panel to merely disagree with a particular sanction, it must be considered evidently and grossly disproportionate to the offence.

85. Indeed, consistent CAS jurisprudence determines the following:

"[t]*he measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rule can be reviewed only when the sanction is*

evidently and grossly disproportionate to the offence" (CAS 2012/A/2762; CAS 2013/A/3139; CAS 2009/A/811-844).

86. Further, the CAS has held as follows:

"Far from excluding, or limiting, the power of a CAS panel to review the facts and the law involved in the dispute heard (pursuant to Article R57 of the Code), such indication only means that a CAS panel "would not easily 'tinker' with a well-reasoned sanction [...]". Therefore, a panel "would naturally [...] pay respect to a fully reasoned and well-evidenced decision [...] in pursuit of a legitimate and explicit policy". In other words, this Panel does not consider warranted, nor proper, to interfere with the Decision, to slightly adjust it" (CAS 2011/A/2645, with reference to CAS 2011/A/2518 and CAS 2010/A/2283, citations omitted).

87. In terms of the submissions of the Parties, it is noted that the Club did not put forward any argument or evidence that the sanctions imposed in the Appealed Decision are disproportionate and excessive whereas FIFA has provided evidence of the recent decisions of its judicial bodies for other similar breaches by the Club to support its position that the sanctions in the Appealed Decision are at a level both proportionate to the debts, demonstrate compliance with Article 12bis paragraph 6 and consistent with its well-established approach to such matters.

88. In order to determine the approach to take in conducting this assessment, the Sole Arbitrator finds that the test is not whether a sanction is in accordance with the FIFA judicial bodies' longstanding practice, but rather whether it is evidently and grossly disproportionate, whilst acknowledging that the two approaches will often arrive at the same conclusion. In support, reference is made to the findings of another CAS award which stated that:

"*The test to be applied by the Panel is therefore not whether the fine imposed on the Club is in accordance with the FIFA DC's longstanding practice, but rather whether the fine imposed on the Club is evidently and grossly disproportionate to the offence. In this respect, the fine imposed on the Club shall be reduced if the Panel is convinced that it is evidently and grossly disproportionate in comparison with FIFA's practice regarding the imposition of fines*" (CAS 2016/A/4595, par. 60).

89. Having considered the evidence of the case and the evidence provided by FIFA of the decisions in other cases relating to the Club during these proceedings, and the lack of any argument or evidence supplied by the Club, the Sole Arbitrator is convinced that the sanctions imposed in the Appealed Decision were not evidently and grossly disproportionate; the cumulative sanctions of a fine imposed of USD 40,000 and a reprimand were set in accordance with the principle of proportionality as well as in accordance with the FIFA judicial bodies' longstanding practice.

90. Accordingly, based on all the above grounds and having taken into consideration the circumstances of the case, the conduct of the Club, its persistent failure to make the payment of the Amount Outstanding, and also the seriousness of the Amount Outstanding, the Sole Arbitrator finds that the disciplinary sanctions imposed by the

Appealed Decision are both appropriate and proportionate; accordingly the sanctions are not evidently and grossly disproportionate to the offences and are therefore confirmed.

91. Therefore, the Sole Arbitrator finds no reason to alter the sanctions imposed in the Appealed Decision, whether for reason that *force majeure* was found not to be applicable or in the alternative because the sanctions were proportionate and validly imposed.

92. It follows that the appeal by the Club shall therefore be dismissed.

D. Conclusion

93. Based on the above, and having taken into account all the arguments put forward and the evidence supplied, the Sole Arbitrator finds that:

(a) there was no *force majeure* event which prevented the Club from paying the Outstanding Amount;

(b) the Club has to pay to the Player the sum of USD 280,031.68 plus interest at the rate of 5% *per annum* from 1 January 2022 until the date of effective payment;

(c) there is a legal basis for the FIFA Football Tribunal to impose the disciplinary sanctions set out in the Appealed Decision on the Club; and

(d) the disciplinary sanctions imposed on the Club by the FIFA Football Tribunal are not disproportionate and there is no justifiable reason to modify them.

94. Accordingly, the Club's appeal against the Appealed Decision is dismissed and the Appealed Decision is confirmed.

IX. Costs

95. Pursuant to Article R64.4 of the CAS Code, which is applicable to this proceeding:

"*At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*
- *the CAS Court Office fee,*
- *the administrative costs of the CAS calculated in accordance with the CAS scale,*
- *the costs and fees of the arbitrators,*
- *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- *a contribution towards the expenses of the CAS, and*
- *the costs of witnesses, experts and interpreters.*

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

96. In addition, Article R64.5 of the CAS Code provides as follows:

> "*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 and without any specific request from the parties, 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.*"

97. Following the outcome of these proceedings, the Sole Arbitrator finds that, in accordance with Article R64.4 of the CAS Code, the arbitration costs of these proceedings, in an amount to be subsequently notified to the Parties by the CAS Court Office, shall be borne by the Appellant.

98. For the reasons above, the Sole Arbitrator is also of the view that, pursuant to Article R64.5 of the CAS Code, the Appellant shall pay CHF 5,000 (five thousand Swiss francs) to the First Respondent as a contribution towards the legal costs and other expenses incurred in relation to these proceedings.

99. Finally, the Sole Arbitrator determines that the Second Respondent, who was represented by its in-house counsel, is not entitled to a contribution to its legal fees and, consequently, the Appellant and the Second Respondent shall bear their own legal fees and other expenses incurred in relation to these proceedings.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 30 October 2022 by Al Batin against the decision issued on 1 September 2022 by the FIFA Dispute Resolution Chamber is dismissed.

2. The decision issued on 1 September 2022 by the FIFA Dispute Resolution Chamber is confirmed.

3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne by Al Batin.

4. Al Batin shall pay to Afriye Acquah CHF 5,000 (five thousand Swiss francs) as a contribution towards the legal fees and expenses incurred in connection with these arbitration proceedings.

5. Al Batin and Fédération Internationale de Football Association shall bear their own legal fees and other expenses incurred in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 30 May 2023

THE COURT OF ARBITRATION FOR SPORT

Edward Canty
Sole Arbitrator