

Decision of the Dispute Resolution Chamber

passed on 20 July 2023

regarding an employment-related dispute concerning
the player Mohammed Benkhemassa

COMPOSITION:

Clifford J. HENDEL (USA & France), Deputy Chairperson

Mario FLORES CHEMOR (Mexico), member

Alexandra GOMEZ BRUINEWOUD (Uruguay & The Netherlands), member

CLAIMANT/COUNTER-RESPONDENT:

Mohammed Benkhemassa, Algeria

Represented by Ludovic Deléchat

RESPONDENT/COUNTER-CLAIMANT:

Ismaily SC, Egypt

INTERVENING PARTY:

MC Alger, Algeria

I. Facts of the case

1. The parties to the dispute are:

- the Algerian player, Mohammed Benkhemassa (hereinafter: *the Player* or *Claimant/counter-Respondent*);
- the Egyptian club, Ismaily SC (hereinafter: *the Club* or *the Respondent/counter-Claimant*); and
- the Algerian club, MC Algiers (hereinafter: *the new club* or *the Intervening Party*).

2. On 29 January 2022, the Player and the Club concluded a contract called “*contract a Player transfer agreement*” (hereinafter: **the first contract**) valid as from January 2022 until the end of the season 2025/2026.

3. Clause 1 of the first contract reads as follows:

“a. The preamble is considered as an integral part of this contract and the contract agreed on this date is the only one valid and replace any written or oral agreement previously agreed.

b. This contract is considered an integral part of the contract concluded between the club and the player.

c. whereas Ismaily SC. and the player agreed on a free transfer of the player to the club, this contract shall be considered as a complementary part of the contract by which the club and the player wish to agree on the terms and conditions governing their employment contract according to the following clauses”.

4. Clause 3 of the first contract reads as follows:

“The first party will pay to the second party during 4.5 seasons (four seasons and half season) a total amount of 1,010,000 USD net (only One million and ten thousand US Dollars Net) divided as follows:

- *130,000 USD Net (only one hundred and thirty thousand US Dollars Net) to be paid for January 2022- end of the season 2021/2022.*
- *220,000 USD net (only Two hundred and twenty thousand US Dollars Net) to be paid on season 2022/2023.*
- *220,000 USD net (only Two hundred and twenty thousand US Dollars Net) to be paid on season 2023/2024.*
- *220,000 USD net (only Two hundred and twenty thousand US Dollars Net) to be paid on season 2024/2025.*
- *220,000 USD net (only Two hundred and twenty thousand US Dollars Net) to be paid on season 2025/2026”.*

5. Clause 4 of the first contract reads as follows:

“Additional rights of the second party:

a. The second party is entitled to receive one flight ticket per year during the term of this contract.

b. Match bonuses according to the club’s internal regulations”.

6. On the same date, 29 January 2022, the Player and the Club signed an employment contract titled “Contract of Professional Football Player” (hereinafter: **the second contract**) valid for the 2021/2022 season until the end of the season 2025/2026.

7. In accordance with clause 2 of the second contract, the Player is entitled to a total gross amount of USD 1,346,665 payable as follows:

- 2021/2022 season: USD 173,333

USD 60,000 payable on 29 January 2022;
USD 13,333 payable on 28 February 2022;
USD 13,333 payable on 30 March 2022;
USD 13,333 payable on 30 April 2022;
USD 13,333 payable on 30 May 2022;
USD 13,333 payable on 30 June 2022;
USD 13,333 payable on 30 July 2022;
USD 33,335 payable on 30 August 2022.

- 2022/2023 season: USD 293,333

USD 73,333 payable on 15 September 2022;
USD 14,666 payable on 1 October 2022;
USD 14,666 payable on 1 November 2022;
USD 14,666 payable on 1 December 2022;
USD 14,666 payable on 1 January 2023;
USD 14,666 payable on 1 February 2023;
USD 14,666 payable on 1 March 2023;
USD 14,666 payable on 1 April 2023;
USD 14,666 payable on 1 May 2023;
USD 14,666 payable on 1 June 2023;
USD 14,666 payable on 1 July 2023;
USD 73,340 payable on 30 August 2023.

- 2023/2024 season: USD 293,333

USD 73,333 payable on 15 September 2023;

USD 14,666 payable on 1 October 2023;
USD 14,666 payable on 1 November 2023;
USD 14,666 payable on 1 December 2023;
USD 14,666 payable on 1 January 2024;
USD 14,666 payable on 1 February 2024;
USD 14,666 payable on 1 March 2024;
USD 14,666 payable on 1 April 2024;
USD 14,666 payable on 1 May 2024;
USD 14,666 payable on 1 June 2024;
USD 14,666 payable on 1 July 2024;
USD 73,340 payable on 30 August 2024.

- 2024/2025 season: USD 293,333

USD 73,333 payable on 15 September 2024;
USD 14,666 payable on 1 October 2024;
USD 14,666 payable on 1 November 2024;
USD 14,666 payable on 1 December 2024;
USD 14,666 payable on 1 January 2025;
USD 14,666 payable on 1 February 2025;
USD 14,666 payable on 1 March 2025;
USD 14,666 payable on 1 April 2025;
USD 14,666 payable on 1 May 2025;
USD 14,666 payable on 1 June 2025;
USD 14,666 payable on 1 July 2025;
USD 73,340 payable on 30 August 2025.

- 2025/2026 season: USD 293,333

USD 73,333 payable on 15 September 2025;
USD 14,666 payable on 1 October 2025;
USD 14,666 payable on 1 November 2025;
USD 14,666 payable on 1 December 2025;
USD 14,666 payable on 1 January 2026;
USD 14,666 payable on 1 February 2026;
USD 14,666 payable on 1 March 2026;
USD 14,666 payable on 1 April 2026;
USD 14,666 payable on 1 May 2026;
USD 14,666 payable on 1 June 2026;
USD 14,666 payable on 1 July 2026;
USD 73,340 payable on 30 August 2026.

8. Clause 4 of the second contract reads as follows, *inter alia*:

"(...) 4.4. it should not consider any supplement out of this contract unless agreed upon in writing by the player and the club.

(...)

4.6 The player should bear the taxes of this contract and other remuneration according to the law, the club shall deduct taxes from the player dues and transfer them to the taxes under his responsibility. (...)"

9. Clause 5 of the second contract reads as follows:

"1. The employment contract maybe terminated by mutual agreement.

2. The Player or Club cannot unilaterally terminate the contract unless the right to terminate the contract is stipulated in the FIFA Regulations on the Status and Transfer of Player ("FIFA RSTP"). Particular reference is made to art. 13, art 14, and art q4 bis and 17 of the FIFA RSTP, which state that a party may terminate a contract where there is just cause If there is just cause, the contract may be terminated at any time, even during the course of a season.

3. If the Player of Club unilaterally terminates the contract for a just cause reason the other party will be liable to pay compensation, in accordance with the FIFA RSTP and the jurisprudence of the FIFA DRC. Likewise if the Player or Club unilaterally terminates the contract without just cause the party in breach will be liable to pay compensation, in accordance with the FIFA RSTP and the jurisprudence of the FIFA DRC. In the event of a dispute".

10. Clause 6 of the second contract reads as follow (this part of the second contract was handwritten):

"1. The player shall receive amount (5,000 L.E) only (five thousand Egyptian pound) per month for accommodation.

2. The player has the right one air ticket per year.

(...)

6. The player acknowledges that he has read all the terms of the financial and administrative regulations for the first football team and has received a copy of it ; he also acknowledges that comply with all the obligations and penalties stated in this regulation.

7. The second party (the player) has agreed upon his good will that the first party (the club) has unilateral the right to terminate this contract at the end of each season.

8. The club will pay to the player an amount of (10,000 \$) only (ten thousand US Dollar) as final contractual compensation for such termination provided that the club notify the player through his e-mail stated in this contract with fifteen days after the last match of the sporting

season. The player will have no right to ask for any other payments whatsoever from the club because of such termination”.

11. The Club’s “Financial Regulations for the first football team of Ismaily Sporting Club - Season 2021/2022” (hereinafter: *the internal regulations*) stated, *inter alia*, the following:

Clause 1 let. C

“25% of the value of the player’s contract is set aside and paid after the end of the season, in case he participates in 80% of the matches. (...)”

Clause 6.5

“The Players’ housing allowance shall be paid on the condition that they bring their families (wife and children) with them, and submit documents proving this.”

12. In accordance with the information retrieved from the Transfer Matching System (**TMS**), the Egyptian football seasons were as follows:

- Season 2021/2022: started on 25 September 2021 and ended on 30 August 2022;
- Season 2022/2023: started on 15 October 2022 and ended on 30 June 2023.

13. By correspondence dated 3 December 2022, the Player put the Club in default of payment of USD 132,000 net, claiming that he had not been paid since June 2022, setting a 15 days’ time limit to the Club in order to remedy its default.

14. On 19 December 2022, the Player sent a termination notice to the Club, as the amount of USD 132,000 net remained allegedly unpaid.

15. On 11 May 2023, upon a request of the Club, the Egyptian Football Association (EFA) stated the following:

“the model contract of professional players in Egypt approved by the EFA (Egyptians and foreigners) is the only effective contract in Egypt to register players with the EFA, and no other contract is considered. In addition, players bear the applicable taxes arising from this contract and any other fees according to the laws, clubs shall deduct them from their players’ financial dues and remit them to the authorities under the player’s responsibility. All players’ contracts shall be approved and registered with the EFA to be enforceable and the player could be registered in the club’s squad. The EFA’s approved model contract of the Player Mohamed Benkhemassa got registered with the EFA on 31 January 2023 and it is the sole registered and valid contract for the Player in Egypt”.

16. On 19 January 2023, the Player concluded an employment contract with the new club valid as from the date of signature until 20 July 2025, including a monthly gross salary of DZD 2,292,756.67.

II. Proceedings before FIFA

17. On 3 February 2023, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the Player

18. The Player filed a claim for overdue payables and compensation for breach of contract.
19. According to the Player, the Club and the Player concluded 2 different contracts on the same day for tax-related reasons and registration purposes at the EFA.
20. The player stated that: *"at the time of termination of the employment contract, i.e. on 19 December 2022, the Club had to pay the total amount of USD 398,998.67 net based on both Contract 1 and Contract 2. Indeed, the Club had only paid the instalments of USD 60,000 (January 2022), USD 13,333 (February to May 2022) based on Contract 2 and nothing based on Contract 1".* Therefore, the Player terminated the employment relationship with just cause in line with art. 14bis of the Regulations on the Status and Transfer of Players (**RSTP**).
21. The Player requested the following relief:

"1. The claim of [the Player] shall be accepted in its entirety.

2. [The Club] shall be obliged to pay to [the Player] the amount of USD 398,998.67 net as outstanding salaries, plus interest at a rate of 5% per year over said amount, as from the relevant due dates until the effective date of payment.

3. [The Club] shall be obliged to pay to [the Player] the amount of USD 1,957,666.33 net as compensation for breach of the employment contract, plus 5% interest per annum over said amount as of the date of termination of the employment contract, i.e. on 19 December 2022.

4. [The Club] shall be obliged to pay to [the Player] the amount of Egyptian Pound 270,000 as compensation for the accommodation, plus 5% interest per annum over said amount as of the date of termination of the employment contract, i.e. on 19 December 2022.

5. [The Club] shall be obliged to pay to [the Player] the amount of USD 261,851.67 net in accordance with article 17 par. 1 lit. ii) FIFA Regulations on the Status and Transfer (hereinafter: RSTP).

6. Art. 24bis of the FIFA RSTP shall be applied in the present matter. Consequently, a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods shall be applied against [the Club]" (emphasis added on the original).

b. Position of the Club and counterclaim

22. In its reply, the Club contested the claim of the Player and filed a counterclaim.
23. As to the contractual basis, the Club alleged that the first contract was signed with amounts excluding the income tax and that therefore, on the same day the parties cancelled the first contract and signed the final and only valid contract, i.e., the second contract.
24. The Club argued that the parties' intention was to cancel the first contract automatically by signing the second contract on the EFA unified and mandatory template for all players in Egypt. The Club further added that the second contract is the last and most recent contract.
25. In continuation, the Club argued that as of the date of termination, the Club allegedly paid the Player USD 112,390 net as follows:

Cheque Number	Amount spent in dollars	exchange date
000115052272	\$ 35000	1-2-2022
000115052275	\$ 5000	1-2-2022
000115052273	\$ 5000	10-2-2022
Bank Transfer (included in Exhibit 2)	\$ 30000	-6-2022
Bank Transfer (included in Exhibit 2)	\$ 15000	1-7-2022
000115052301	\$ 22390	26-8-2022

26. As to the housing allowance, the Club referred to the internal regulations (clause 6.5) and stated that the accommodation payment was conditional in that the player should bring his family to Egypt and prove this.
27. In continuation, the Club referred that clause 2 and 6 of the second contract stipulated gross amounts and according to the Club, the Player's salary was subject to the following deductions:
- Income tax of 25 % in line with Law 26/2020 dated 5 July 2022. The Club provided with a copy of the law 26/2020 regulation, two letters from EFA confirming said imposition and a copy of the income taxes proof of payment. On the latter, the Club clarified that *"in accordance with the long-standing practice of the Egyptian Tax Authority, invoices are issued upon Tax inspections and Tax statement filed by the employer mentioning the global number of its employees and their salaries"*.
 - State's resources development tax of 10%: The Development Tax Law sorted variable percentages ranging between 3% up to 10% on players', coaches', *in casu*, according to the Club, the Player was taxed at the highest rate 10%. According to the Club, it paid the amount of USD 46,666 on 17 September 2022, as the total salary for

2021/2022 and 2022/2023 season was USD 466,666. The Club provided a copy of Law no. 83 of 2020 and a proof of payment of the development tax.

- Syndicate of Sports professions' Tax of 10%: the Player's salary is to be subject to 10% tax, according to the Club it paid on 1 February 2022, an amount of USD 17,333 for 2021/2022 season and on 17 September 2022, an amount of USD 29,333 for 2022/2023 season. The Club provided a copy of the provisions of Law No. 3/1987 and the proof of payment.
28. The Club further stated that taxes contribution can never be included in the assessment of the presence or absence of just cause. The Club concluded that it *"duly paid all the taxes on behalf of the Player and hence it would not be appropriate to be ordered to pay them again to the Player"*.
29. Thereafter, the Club argued that according to its internal regulations (clause 1 lit. c), the Player's salary was subject to a participation rate, in this context the Club mentioned that *"the Player's participation rate is much lower than 80% of the Club's matches, he shall not be entitled to the participation rate of the Season 2021/2022 in full (which is the last installment of the season) that shall be paid after the end of the Season 2021/2022 (in full if the Player's participation is greater than 80% or pro rata if less than 80%)"*.
30. The Club provided with the following calculation:
- *"Before calculating the Player's entitled portion of the participation rate, we hereby calculate the accurate amount of the participation rate installment itself as follows:*
 - a) *Its gross amount: USD 33,335*
 - b) *After deducting the 25% income tax, 10% Development Tax and 10% Sports Profession Tax: USD 18,334*
 - *Since the player participated in 09 out of 27 matches with the Club, he shall be entitled to a percentage of 33.3333% of the net amount of the participation fee (i.e. USD 18,334) [18,334\$ x 33.3333% = USD 6,111].*
 - *Accordingly, the Player is not entitled to the remaining part of the participation rate which is USD 18,334 – USD 6,111 = USD 12,223"*.
31. In continuation, the Club stated that upon the Player's request of salaries and the default notice *"the Club informed the Player with his lawyer's notice of default and asked him if the Club's explanations are sufficient, which was positively confirmed and acknowledged by the Player who also confirmed that he will close the matter with his lawyer"*.
32. In view of the foregoing, the Club considered that the Player terminated the contract without just cause, justifying in with the following breakdown:

"THE PLAYER'S GROSS DUES AS PER THE CONTRACT (UNTIL 19 DECEMBER 2022): USD 290,664

THE PLAYER'S INCOME TAX (25%) ON 290,664\$ = USD 72,666
 THE PLAYER'S COLLECTED AMOUNTS (EXHIBIT 2): USD 112,390
 THE PLAYER'S DEVELOPMENT TAX (EXHIBIT 11): **USD 46,666**
 THE PLAYER'S SYNDICATE OF SPORTS PROFESSION TAX (EXHIBIT 13): **USD 46,666**
 THE PLAYER'S NON-ENTITLED PARTICIPATION RATE: **USD 12,223**
THE PLAYER'S DUES: 290,664 - (72,666 + 17,333 + 29,333 + 46,666 + 112,390 + 12,223) = USD 53." (Emphasis added on the original).

33. In view of the above, the Club requested compensation for the unlawfully termination of the employment relationship by the Player.
34. The club requested the following relief:

"In view of all the above, we request this honorable chamber:

- 1) *To accept this Counterclaim against the Respondent(s); and*
- 2) *To hold an oral hearing for the Parties based on exceptional circumstances; and*
- 3) *To rule that the Player prematurely terminated the Contract without just cause; and*
- 4) *To rule that the New Club induced the Player to terminate the Contract without just cause; and*
- 5) *To condemn the Player and the New Club, jointly and severally, to pay the following compensation (in total: **USD 829,200 + 5% p.a.**):*
 - o Residual value of the Contract: **USD 580,800.55 NET** + 5% p.a. as from 19 Dec 2022*
 - o Loss of Transfer Fee: **USD 200,000** + 5% p.a. as from 19 Dec 2022*
 - o Specificity of Sport: **USD 48,397.8 NET** + 5% p.a. as from 19 Dec 2022; and*
- 6) *To ban the Player for a duration of six month from participating in any football activity based on Article 17 Para 3 of the FIFA RSTP; and*
- 7) *To ban the Second from registering any new players, either nationally or internationally, for two registration periods under article 17, Paragraphs 4 and 5 of the FIFA RSTP; and*
- 8) *To fix a sum of **EUR 20,000 (twenty thousand Euros)**, to be paid by the Respondents to the Claimant, to help the payment of its legal fees and costs.*
- 9) *As a consequence of the above, to condemn the Respondents to pay all expenses and costs of the present proceedings, if any."* (Emphasis added on the original).

c. Response of the Player to the counterclaim

35. In his reply to the counterclaim, the Player stated that some statements made by the Club are misleading and untrue. Additionally, the Player indicated that the Club's factual allegations do not meet the burden of proof in line with the Procedural Rules.
36. With regards to the validity of the two contracts, the Player stated that the parties signed both contracts on the same day and stressed that said contracts contain all fundamental principles of a contract. Moreover, there is no clause in the contracts stating that one would replace the other.

37. As to the Club's allegation that the Club clarified the situation with the Player prior the termination, the Player indicated that there is no proof on file that the Club would have spoken with the Player after the default notice letter.
38. In continuation, as to the housing allowance, the Player indicated that in accordance with the second contract he is entitled to EGP 270,000.
39. Thereafter, as to the proof of payments provided by the Club, the Player indicated that *"the Club did not provide any evidence supporting its allegation of having paid the Player with cheques in accordance article 12 para. 5 of the Procedural Rules"*. The only cheque in the Player's possession was never cashed as it was impossible to do so.
40. As to the tax deductions, the Player only mentioned that at the time of the termination the Club had to pay USD 398,998.67 based on the 2 contracts.
41. Alternatively, in case it is decided that both contracts do not form one sole relationship, at the date of termination, the amount due would be USD 177,332 that represented more than 7 monthly salaries as outstanding, and the Player had just cause to terminate the contract.
42. Finally, the Player indicated that *"the alleged payment of taxes for a club does not justify to stop the payment of a Player's salary. In other terms, the Club cannot justify the non-payment of the Player's salary since months because of tax related reasons"*.
43. The request for relief remained unchanged.

d. Final comments of the Club

44. According to the Club, the second contract superseded the first contract and stated that it was never necessary to include a clause clarifying this as according to the concept *"Accord and Satisfaction"*. Moreover, the Club referred to CAS jurisprudence stating that in order to have two agreements bidding two different services shall be rendered.
45. In view of the foregoing, the Club stated that the second contract is the only and bidding contract, as according to the Club, the Player acknowledged that the second contract replaced the first contract and that the second contract was registered in TMS and at the EFA.
46. As to the applicable taxes, the Club further argued that it discharged its burden of proof and referred to the evidence provided in the counterclaim. Moreover, the Player did not dispute any of the Club's submissions in this regard. Additionally, the Club mentioned that the taxation system in any country is a public policy matter and that it cannot, in any way, be breached or contradicted or replaced by any parties' agreement.

47. As to the payments, the Club stated that it paid the Player USD 112,390, and that the Player *"acknowledged the receipt of all the cheques by signing on each single one, and he did not deny his signatures or contest them in any way"*.
48. In continuation, as to the housing allowance the Player is not entitled to it and referred to the internal regulations.
49. Thereafter, as to the participation rate, the Club argued that the Player did not contest it in its reply and referred to the internal regulations which are binding to the Club's players without any exception. The Club stated that the Player's participation was low i.e., 23%. Additionally, the Club argued that it had 2 coaches, and it was their decision not to put the Player, the Club concluded that it had no influence on that.
50. Furthermore, the Club referred to the Player's bad faith considering that if the Player had 2 agreements bidding, then at the time of the default notice, he would not ask USD 132,000 for June 2022 to December 2022, he would request a higher amount. Moreover, the Club stated that *"as part of the Club's payments to the Player, there is a cheque dated 26 August 2022 (Exhibit 2 of our Counterclaim) in the amount of USD 22,390. The Player never complained of any problems arising from this cheque and remained silent for almost **four (4) months** (from 26 August until 19 December 2022) until he allegedly had a failure attempt to cash the cheque, the Player allege in the forged document that it is stamped by bank on 19 December 2022 after the termination, and despite there is no dispute on the amount he received which proves his bad faith as he never submit or mention this document"*.
51. The Club concluded that that it only owed the Player USD 53, and thus, this did not constitute a just cause.
52. The Club requested the following relief:
 - 1) To accept this Response against the Player; and*
 - 2) To rule that the Player prematurely terminated the Contract without just cause with all consequences detailed in the Club's Counterclaim*
 - 3) Alternatively, if the Player is deemed to have terminated the Contract with just cause, he should not be entitled to any compensation of any kind;*
 - 4) If the Player shall be entitled to any compensation, it shall be mitigated with 75%".*

e. Position of the Intervening Party

53. The Intervening Party failed to submit with its position within the timeframe granted by the FIFA general secretariat.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

54. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 3 February 2023 and submitted for decision on 20 July 2023. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
55. Subsequently, the members of the Chamber referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 par.1 lit. b) of the RSTP (May 2023 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from Algeria and a club from Egypt, with the involvement of an Algerian club.
56. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the RSTP (May 2023 edition), and considering that the present claim was lodged on 3 February 2023 and the counterclaim on 12 March 2023, the October 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

57. The Chamber recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Chamber stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

c. Merits of the dispute

58. Its competence and the applicable regulations having been established, the Chamber entered into the merits of the dispute. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Chamber emphasised that in the following

considerations it will refer only to the facts, arguments, and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

59. The foregoing having been established, the DRC moved to the substance of the matter, and took note of the fact that the parties strongly dispute (i) the validity of the two contracts and (ii) the justice of the early termination of the employment relationship by the Player, based on the alleged non-payment of certain financial obligations by the Club.
60. In this context, the Chamber acknowledged that its task was to determine the following points:
- Are the two contracts valid and binding?
 - Had the Player just cause to terminate the contract?
61. The DRC proceeded thus to examine these issues in turn.

Are the two contracts valid and binding?

62. The Chamber recalled the position of the parties on this point and observed that the Player considered that the two contracts were signed on the same date, and both contracts should be binding as they contain all *essentialia negotii* elements. The Club, conversely, considered that the second contract superseded the first contract and that it should be the only contract valid and binding in this employment relationship.
63. Having reviewed the submissions and evidence at its disposal, the Chamber concluded that the two contracts were valid and binding to the present relationship on the following grounds:
- Two contracts were signed on the same date, the first contract titled "contract a Player transfer agreement" and the second contract titled "Contract of Professional Football Player".
 - In accordance with clause 1 of the first contract, it mentioned that the first contract is a complementary contract to the employment contract:
 - "a. The preamble is considered as an integral part of this contract and the contract agreed on this date is the only one valid and replace any written or oral agreement previously agreed.*
 - b. This contract is considered an integral part of the contract concluded between the club and the player.*

*c. whereas Ismaily SC. and the player agreed on a free transfer of the player to the club, **this contract shall be considered as a complementary part of the contract by which the club and the player wish to agree on the terms and conditions governing their employment contract according to the following clauses**” (emphasis added).*

- The non-registration of the first contract in TMS does not imply that other private contracts were signed between the parties. Moreover, the Chamber recalled that it is the Club that is responsible to upload this information in TMS and not the Player.
- Finally, the Chamber considered that if according to the Club the first contract was signed with amounts excluding the deductible taxes and that on the same day the parties cancelled the first contract and signed the final and only valid contract, i.e., the second contract, which contained the amounts in gross. Then, the amounts disclosed in the two contracts (USD 1,010,000 in the first contract and USD 1,346,665 in the second contract) do not correspond to the tax that the club claimed as deductible, i.e., 45%.

Had the Player just cause to terminate the contract?

64. In continuation, the DRC proceeded to determine, based on the evidence presented by the parties, whether the claimed amounts had in fact remained unpaid by the Club.
65. The DRC noted that the Player claims not having received his remuneration corresponding to part of the second contract as well as the amounts mentioned in the first contract, and all housing allowances. Furthermore, the Player has provided written evidence of having put the Club in default on 3 December 2022, i.e., at least 15 days before unilaterally terminating the contract on 19 December 2022.
66. The DRC also noted that in the case at hand the Club bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties. Therefore, the Chamber went on to analyse the arguments and evidence provided by the Club.
67. The Chamber addressed the argument of the Club in respect of the variable remuneration of the Player. In doing so, the Chamber deemed that it was necessary to first analyse whether said reduction of the Player’s salary made by the Club was indeed lawful. In this context, the Chamber highlighted that, in general, potestative clauses – i.e., clauses dependent on an event which can only be triggered by one of the contractual parties and upon the latter’s wish – cannot be applied, as they limit the rights of the contractual counterparty in an excessive manner and lead to an unjustified disadvantage of the latter.
68. The Chamber understood that the clause in question inserted in the internal regulations of the Club (clause 1 let. c) is clearly potestative as it unilaterally provides all the power to

the Club to decide upon a considerable reduction of the Player's salary, since it is the Club, at its sole discretion, who decides if the Player is fielded or not. On this basis, the Chamber decided that such clause has a clearly abusive nature and shall not have any legal effect in the relevant employment relationship.

69. In continuation, the DRC turned to the payments allegedly performed by the Club as per the below, totalling: USD 112,390:
- Cheque n° 115052275 dated 01.02.2022 for an amount of USD 5,000;
 - Cheque n° 115052273 dated 10.02.2022 for an amount of USD 5,000;
 - Cheque n° 115052272 dated 10.02.2022 for an amount of USD 35,000;
 - Cheque n° 115052301 dated 26.08.2022 for an amount of USD 22,390;
 - Bank transfer dated June 2022 for an amount of USD 30,000;
 - Bank transfer dated July 2022 for an amount of USD 15,000.
70. In this respect, the Chamber recalled the position of the Player who indicated that he only received USD 60,000 for the first instalment and USD 13,333 for February to May 2022. Additionally, the Player contested that he has been paid with cheques, considering that the only cheque in the Player's possession was n° 115052301 and it was never cashed out as it was impossible to do so. To support this position, the Player provided with a document allegedly issued by the Bank CIB which stated that the reason of return of the cheque n° 115052301: *"insufficient Funds, Partial Payment refused without any responsibility related to CIB"*. The Chamber further noted that said document was challenged by the Respondent as according to it, the document was forged.
71. Without entering the discussion whether the document presented by the Player was forged or whether the Club effectively provided the Player those cheques; the Chamber considered that the issuance of a cheque does not sufficiently prove that the amounts were effectively paid to the Player. The Chamber mentioned that a document that could confirm the payment of such amounts would be a confirmation of the bank or the Club's bank statements, however, none of those documents were provided. Therefore, the Chamber concluded that the amount paid to the Player is only the amount that he acknowledged, *i.e.*, USD 73,333 (USD 60,000 plus 13,333), on the grounds that the Club has failed to demonstrate otherwise.
72. Additionally, as the Player acknowledged that a cheque was in his possession without the possibility to cash it out, the Chamber requested the Player to return the cheque n°115052301 to the Respondent/Counter-Claimant within 30 days following the notification of this decision, in order to ensure that no unjust enrichment can take place.
73. In continuation, with regards to the housing allowance claimed by the Player based on the second contract, the same is contested by the Club referring to the internal regulations. The Chamber considered however that said amount was contractually stipulated (clause 6.1 of the second contract) and that the Player is entitled to that amount.

74. Lastly, as to the tax deductions claimed by the Club of 45% (corresponding to Income Tax at 25%, State's Resources' Development Tax at 10% and Syndicate of Sports Professions' Tax at 10%) and applicable to the amounts agreed under the second contract; the Chamber decided to accept the allegations of the Club to deduct said amounts on the following basis: firstly, the second contract referred to gross amounts, and secondly but principally because the evidence provided by the Club regarding the legal basis and the payment of said taxes were not contested by the Player in his reply to the counterclaim, thus leading to the conclusion that he accepted these allegations/evidence.
75. The Chamber wished to highlight that the State's Resources' Development Tax (10%) and Syndicate of Sports Professions' Tax (10%) deductions appears to be contributions/or fees that were paid, rather than taxes (income and wealth taxes), which should be established in the relevant contracts. However, and considering that the Player did not contest the evidence and payment of such taxes, the Chamber decided considering the very specific and limited circumstances of the dispute at hand to accept the deduction of said taxes. The deduction, so remarked the Chamber, was due only on the salaries agreed under the second contract until the termination of the employment relationship.
76. As such, the DRC performed the amounts deducted were as follows:

Period	Amount in USD	25%	10%	10%	TOTAL in USD
2021/2022 season	173,333	43,333,25	17,333,3	17,333,3	95,333,15
September 2022	73,333	18,333,25	7,333,3	7,333,3	40,333,15
October 2022	14,666	3,666,50	1,466,6	1,466,6	8,066,30
November 2022	14,666	3,666,50	1,466,6	1,466,6	8,066,30
December 2022	14,666	3,666,50	1,466,6	1,466,6	8,066,30
Total - second contract	290,664	72,666	29,066	29,066	159,865,20

77. In light of the above, the Chamber considered that until the termination of the employment relationship the due amounts by the Club were EGY 55,000 as housing allowance and USD 216,532.20 (USD 130,000 (as per the first instalment of the first contract) plus USD 159,865,20 (as per second contract) less USD 73,333).
78. Having so found, the DRC highlighted in consideration of the foregoing that the Club had repeatedly and for a significant period been in breach of its contractual obligations towards the Player. Consequently, the Chamber concluded that the Player had just cause to unilaterally terminate the employment relationship based on art. 14 of the Regulations. It followed that the counterclaim of the Club was dismissed.

ii. Consequences

79. 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.
80. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the Player, are equivalent to USD 216,532.20 and EGP 55,000.
81. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the Club is liable to pay to the Player the amounts which were outstanding under the contract at the moment of the termination, i.e., USD 216,532.20 and EGP 55,000.
82. In addition, taking into consideration the Player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Player interest at the rate of 5% p.a. on the outstanding amounts as follows:
- On the amount of USD 130,000 as from 30 August 2022 until the date of effective payment.
 - On the amount of USD 42,534.20 as from 16 September 2022 until the date of effective payment.
 - On the amount of USD 14,666 as from 2 October 2022 until the date of effective payment.
 - On the amount of USD 14,666 as from 2 November 2022 until the date of effective payment.
 - On the amount of USD 14,666 as from 2 December 2022 until the date of effective payment.
 - On the amount of EGP 55,000 as from 19 December 2022 until the date of effective payment; as requested by the Player in accordance with principle *ne ultra petita*.
83. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

84. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
85. As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the Player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
86. Bearing in mind the foregoing as well as the claim of the Player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the contract from the date of its unilateral termination until its end date. Consequently, the Chamber concluded that the amounts of USD 1,936,001 and EGP 215,000 serve as the basis for the determination of the amount of compensation for breach of contract.
87. In continuation, the Chamber verified as to whether the Player had signed an employment contract with another club during the relevant period, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the Player's general obligation to mitigate his damages.
88. Indeed, the Player found employment with the Intervening Party. In accordance with the pertinent employment contract, the Player was entitled to approximately DZD 2,292,756.67 per month. Therefore, the Chamber concluded that the Player mitigated his damages in the total amount of DZD 68,782,700.10, that is, DZD 2,292,756.67 times 30 months, which is approximately USD 504,148.
89. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the contract termination took place due to said reason i.e., overdue payables by the Club, and therefore decided that the Player shall receive additional compensation.
90. In this respect, the DRC decided to award the amount of additional compensation of USD 73,333.26, i.e., three times the average monthly remuneration of the Player.

91. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the Club must pay the amount of USD 1,505,186.26 (i.e., USD 1,936,001 minus USD 504,148 plus USD 73,333.26) and EGP 215,000 to the Player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
92. Lastly, taking into consideration the Player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Player interest on said compensation at the rate of 5% p.a. as of 19 December 2022 until the date of effective payment.

iii. Compliance with monetary decisions

93. Finally, taking into account the applicable Regulations, the Chamber referred to art. 24 par. 1 and 2 of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
94. In this regard, the DRC highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
95. Therefore, bearing in mind the above, the DRC decided that the Club must pay the full amount due (including all applicable interest) to the Player within 45 days of notification of the decision, failing which, at the request of the Player, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Respondent in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
96. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Player in the Bank Account Registration Form, which is attached to the present decision.
97. The DRC recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24 par. 8 of the Regulations.

d. Costs

98. The Chamber referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent,*

or match agent". Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.

99. Likewise, and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.

100. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant/Counter-Respondent, Mohammed Benkhemassa, is partially accepted.
2. The counterclaim of the Respondent/Counter-Claimant, Ismaily SC, is rejected.
3. The Respondent/Counter-Claimant must pay to the Claimant/Counter-Respondent the following amounts:
 - **USD 130,000 as outstanding remuneration** plus 5% interest *p.a.* as from 30 August 2022 until the date of effective payment;
 - **USD 42,534.20 as outstanding remuneration** plus 5% interest *p.a.* as from 16 September 2022 until the date of effective payment;
 - **USD 14,666 as outstanding remuneration** plus 5% interest *p.a.* as from 2 October 2022 until the date of effective payment;
 - **USD 14,666 as outstanding remuneration** plus 5% interest *p.a.* as from 2 November 2022 until the date of effective payment;
 - **USD 14,666 as outstanding remuneration** plus 5% interest *p.a.* as from 2 December 2022 until the date of effective payment;
 - **EGP 55,000 as outstanding remuneration** plus 5% interest *p.a.* as from 19 December 2022 until the date of effective payment;
 - **USD 1,505,186.26 and EGP 215,000 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 19 December 2022 until the date of effective payment.
4. Any further claims of the Claimant/Counter-Respondent are rejected.
5. The Claimant/Counter-Respondent shall return the cheque n° 115052301 to the Respondent/Counter-Claimant within 30 days following the notification of this decision, failing which and upon request of the Respondent/Counter-Claimant, the matter shall be submitted to the FIFA Disciplinary Committee.
6. Full payment (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 (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:
 1. The Respondent/Counter-Claimant shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.
 2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.
8. The consequences **shall only be enforced at the request of the Claimant/Counter-Respondent** in accordance with art. 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.

For the Football Tribunal:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 17 of the Procedural Rules Governing the Football Tribunal).

CONTACT INFORMATION

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777