



Arbitration CAS 2006/A/1194 Ittihad Club of Saudi Arabia v. Vitória S/A & CAS 2006/A/1195 Vitória S/A v. Ittihad Club of Saudi Arabia, award of 7 August 2007

Panel: Mr Jan Paulsson (France), President; Prof. Luigi Fumagalli (Italy); Mr José Juan Pintó (Spain)

Football

Transfer

Validity of the transfer

Breach of contract for non payment of the transfer fee

- 1. The exchange of correspondence by fax between the Parties relating to a transfer agreement can establish overwhelmingly the Parties' intention to conclude an agreement in the precise terms of the Contract despite the lack of one signature.**
- 2. A transfer agreement cannot be cancelled by the alleged disappearance of the "object" of the Contract – the right to have the Player perform for Club A – for failure of receipt of the signed Contract within a certain deadline where the correspondence exchanged between the parties clearly show the intention to conclude the contract. The fact for a football club A to ask a football Club B for confirmation of certain aspects of the transfer transactions "within two days from date of this letter" or else the first Club would consider the Contract to be "cancelled" is inconsistent with the notion of disappearance of the object of the contract for the mentioned failure.**
- 3. The non-payment of the Transfer Price amounts to a breach of the Contract and to the non fulfilment of its obligations by the Club. The concept of apportionment of responsibility does not arise in such a case and the transfer price has to be paid.**

These cases are cross-appeals against a decision rendered on 17 October 2006 by the FIFA Players' Status Committee (PSC). Each party expresses separate disagreement with that decision.

The original dispute arises out of a contract between the Parties dated 21 January 2005 ("the Contract") for the transfer to Ittihad of a Brazilian player, Manuel de Brito Filho, also known as Obina ("the Player"). The Transfer Price of US\$2.6 million was to be paid in two equal instalments of US\$1.3 million. The second, due 120 days from the date of the Contract, was to be secured by a letter of credit.

Although he signed an employment agreement and participated in a few training sessions in late January 2005 with Ittihad, the Player never participated in matches for that club. Ittihad asserts that it did not receive the signed Contract in time, and therefore could not register him by the Saudi

Federation's relevant deadline of 31 January 2005. It further explains that it sought to transfer the Player back to Vitória on loan, but he refused to sign the necessary contract. Instead, having been released by Vitória, he signed on as a free agent with the Brazilian club Flamengo and was lost to both of the disputing clubs.

Vitória's position was and remains that the issue of registration did not affect Ittihad's payment obligations. Vitória therefore first sought redress from the PSC.

The PSC found that while Ittihad had failed to pay the agreed fee of US\$2.6 million, it was also true that *"on the occasion of the conclusion of the transfer agreement, it was apparently established that the agreement had to be signed by Vitória's President"*, who by a letter dated 3 February 2005 *"admitted that he could only send the copy of the contract signed by him back to Saudi Arabia on that day, due to an oversight"*. Accordingly Ittihad was not in a position to register the Player in a timely fashion. The PSC therefore concluded that both clubs shared responsibility *"for the facts at the basis of this dispute"*. The PSC went on *"to emphasise that the delayed return of the signed transfer agreement essentially contributed to the collapse of the transaction"*, and that Vitória had *"not even justified the late return"* beyond stating that it was an oversight. *"In view of these circumstances"*, as the PSC put it, Ittihad's payment obligation was reduced, without further explanation, to 25% of the agreed fee, i.e. US\$650,000.

Ittihad's appeal requests the following relief:

- annulment of the decision of the PSC;
- a declaration that no debt is owed by Ittihad to Vitória;
- an order that Vitória compensate Ittihad for the costs incurred by Ittihad in connection with the aborted transfer, e.g. US\$203,300; and
- an order of costs for the present proceedings in the amount of €15,000.

Vitória's cross-appeal requests the following relief:

- annulment of the decision of the PSC;
- a declaration that Vitória "fully complied" with the Contract;
- an order that Ittihad pay Vitória the full amount of the transfer fee of US\$2.6 million plus 10% per annum starting with the contractual dates of payment;
- an order that Ittihad pay "all arbitration and legal costs" incurred by Vitória.

The Panel finds that the evidence sufficiently establishes that the essential factual context is as follows.

After initial contacts and communications through an agent, Mr Josias Cardoso, Vitória's former Vice-President Mr Barroso and the Player went with Mr Cardoso to Beirut where the President of Ittihad, Mr Mansour H. Al Balawi, has a residence, to finalise the negotiations of an employment agreement between the Player and Ittihad as well as the Contract between Vitória and Ittihad.

The employment agreement was signed by Ittihad and the Player. The Contract was signed for Ittihad by Mr Al Balawi on 21 January 2005 in Beirut. The Player countersigned it, and Messrs. Barroso and Cardoso signed it as “witnesses”. The signature line for Vitória, however, remained blank because it was to be signed by Vitória’s President, who was not in Beirut but back in Brazil.

Article 6 of the Contract provides as follows:

“The present Contract can be signed by the Parties by fax. In this case the fax copy of the present Contract will equate with the originals. ITTIHAD shall deliver to VITORIA, by overnight express courier, the six signed original counterparts of the present contract within one day counted as of the date of its execution. On its turns, VITORIA shall sign and deliver back to ITTIHAD, by overnight express courier, three original counterparts so received within one day counted as of its receipt”.

Mr Barroso asserted in his testimony before the Panel that the Contract was indeed faxed to Brazil, and returned by fax the same day to Ittihad with Mr Carneiro’s signature. No written evidence of this assertion has been presented to the Panel of this contention, which is sharply disputed by Ittihad.

As for the six original “counterparts”, it is not disputed that they were sent by courier from Beirut to Bahia on 21 January. The waybill shows the “sender” as a Mr Mohamed Al Jawad, a well-known figure in Saudi football who apparently speaks Portuguese and was present in Beirut but had no official position with either Party.

The Player and Mr Barroso went from Beirut to Cairo, where the Ittihad team was training. The Player participated in a number of training sessions. On 27 January they went to Jeddah. Mr Barroso did not return to Brazil until 31 January.

On 31 January 2005, Ittihad faxed a letter to Vitória in the following terms:

“We would like to bring your attention that we are really surprised from the new condition and demands we have been asked from your agent or the vice president of Vitoria club, which we are listing for you:

- *Your agent asked for \$480,000 being his commission.*
- *The vice president asked to add in the player contract a bounce for scoring goals \$2000 for each goal.*
- *The vice president asked for 5 tickets annually for the player plus another 2 one for the vice president and one for his wife.*

Therefore, regarding the “Transfer price”. We would like to advise you that we are going to issue a bank Letter of Credit for the full amount (\$2,600,000) to make sure that we are going to receive the ITC (International Transfer Certificate) on time without any delay under the following condition as per the contract terms:

- 50% of the full value (\$1,300,000) will be paid on sight after receiving the ITC (International Transfer Certificate).
- The remaining 50% will be paid after 120 days.

Please we would like to have your confirmation for the above within two days from date of this letter other wise we consider the contract signed on 21st Jan 2005 cancelled, without any obligation on us”.

Vitória responded the same day to Ittihad as follows:

“We acknowledge receipt of copy your letter of today, January 31, 2005, sent to our representative Mr. Josias Cardoso dos Santos, and we would like to make the following considerations:

1. *The conditions of the Employment Contract of the athlete with ITTIHAD are the ones stated on the contract already signed by the both parties.*

Any other conditions like the ones that you have listed on the letter abovementioned or those ones which don't make part of the content of the Employment Contract should be not taken into consideration.

2. *Regarding the changes of the Item 2.1.2 of the Football Player Transfer Rights Contract dully signed on January 21, 2005, we may agree with them if our Bank Institution (Banco Itaú S/A) agree with the terms of the Letter of Credit you will send to us for the full amount of U\$2,600,00.00.*

So, we hope we can receive the original of the Letter of Credit, the soonest possible, so that we can send it to our Bank Institution.

Also, we would like to inform you that the International Transfer Certificate is already with our National Federation just waiting the fulfilment of the contract obligations”.

On 3 February, Mr Carneiro faxed a letter to Ittihad entitled “Subject: Misplacement of Obina’s Contract” reading as follows:

“This is to inform that we are sending you today, February 3, 2005 by DHL – Shipment Air Waybill nr. 6721801063 01 original copy of the Football Player Transfer Rights Contract of Obina, duly signed, because of the displacement of the other 02 original copies, wrongly sent to Mr. Mohamed Al Jawad (the sender) in Beirut (see DHL Shipment Air Waybill 302 1609 474 attached), in January 28, 2005, but he has been not found, according to the notification we had today from DHL Express.

The 02 misplaced original copies are been sending to you from Beirut right away.

We would like to apologize for that mistake and for the trouble it may be caused to you, and ask you to, as soon as you get the Contract, please acknowledge receipt, by our fax nr. 55 71 281.1870.

We look forward to receiving your reply soon”.

The Player’s transfer was never registered in Saudi Arabia, and he never played for Ittihad there. Nor was he paid. He left Saudi Arabia on 16 March 2005, and subsequently made a claim against Ittihad, which ultimately resulted in an award dated 23 October 2006 (CAS 2005/A/1061), by which Ittihad was ordered to pay US\$203,200 to the Player as a consequence of Ittihad’s breach of the employment contract.

In these circumstances, Ittihad and Vitória sought to establish an alternative arrangement whereby the Player would rejoin the Vitória team “on loan” from Ittihad, and would return to Ittihad at the next so-called “transfer window” – i.e. the immediately subsequent time period when transfers could be registered in Saudi Arabia. This arrangement, however, required the Player’s agreement, because he was no longer contractually obliged to either Club; Vitória had released him as of 17 January 2005 in view of his transfer to Ittihad, and Ittihad had breached its contract with him. Accordingly, he was a free agent. Unfortunately for the two Parties, he rejected the new Vitória/Ittihad arrangement and instead signed to play for Flamengo in Brazil with no compensation to either Vitória or Ittihad.

The stakes are therefore very clear. If Vitória is right, Ittihad has incurred a debt of US\$2.6 million and received nothing in return. But if Ittihad is right, Vitória has lost what it calls “a valuable asset” with no compensation whatever.

LAW

CAS Jurisdiction

1. Article R47 of the Code of Sport-Related Arbitration (the “Code”) provides:

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

An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure or first instance”.

2. The jurisdiction of the CAS in the present case derives from Articles 60 and 61 of the FIFA Statutes, which provide, *inter alia*, as follows:

“Article 60 Court of Arbitration for Sport (CAS)

1. *FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players’ agents.*
2. *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.*

Article 61 Jurisdiction of CAS

1. *Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.*
2. *Recourse may only be made to CAS after all other internal channels have been exhausted.*
... ”.
3. The jurisdiction of the CAS is not disputed by either party in these proceedings. Indeed, both parties expressly agreed to the jurisdiction of the CAS by signing the Order of Procedure dated 4 June 2007.
4. It follows that the CAS has jurisdiction to decide the present dispute.

Admissibility

5. The parties' respective statements of appeal were filed within the deadline set down in the FIFA Statutes and the PSC decision being appealed against. Both parties had exhausted the legal remedies available to them prior to filing the CAS appeal, as all other internal channels within the framework provided by FIFA had been exhausted.
6. It follows that the appeals brought by both parties were admissible.

Applicable law

7. Article R58 of the Code provides:
“The Panel shall decide the dispute according to the applicable regulations and 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.
8. Further, Article 60.2 of the FIFA Statutes provides:
“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”.
9. In the present matter, the Contract concluded between the parties contained express references to the applicability of FIFA Regulations to such Contract.

10. It follows that the statutes, rules and regulations of FIFA shall apply primarily and Swiss law shall apply complementarily.

Scope of the Panel's Review

11. As these arbitration proceedings involve appeals against a decision issued by a federation (FIFA) whose statutes provide for an appeal to the CAS, they are to be considered as non-disciplinary appeals arbitration proceedings for the purpose and meaning of the Code. These proceedings are therefore subject to the "Special Provisions Applicable to the Appeal Arbitration Procedure" contained in the Code.
12. Pursuant to Article R57 of the Code, "[t]he Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. [...]".

The Tribunal's Analysis and Conclusions

13. This dispute raises three essential questions. Was a binding Contract concluded notwithstanding the fact that it was not signed on behalf of Vitória on 21 January 2005? If so, did Vitória breach the Contract? If not, does Ittihad have a valid excuse for not paying the Transfer Price?
 - A. *The Contract became binding at least as of 31 January 2005*
14. As Ittihad admits in its Appeal Brief, the Contract was "negotiated" in Beirut. That is to say, the complete text of the Contract was discussed in Beirut; it was signed by the President on behalf of Ittihad and in the presence of the Vice-President of Vitória; the only missing element was the signature on behalf of Vitória by its President. It is not necessary to consider the legal consequences of a hypothetical withdrawal of Ittihad's consent before Mr Carneiro's signature, because there was no such withdrawal. Nor is it necessary to consider the consequences of a hypothetical signature by Mr Carneiro subject to the condition that terms of the Contract be altered in some way, because he signed it exactly in the way it came to him from Beirut.
15. It seems that Mr Carneiro signed the Contract on or before 28 January, when it was unfortunately sent to Beirut. This might raise an issue as to the import of a signature which remained unknown to Ittihad due to the misdirection of the courier. This detail need not detain the Panel, however, because the two faxed communications of 31 January 2005 remove all doubt. First, Ittihad wrote to request confirmation of certain elements of the transaction failing which it would consider "*the Contract signed on 21st January 2005 cancelled*". Whether or not

Ittihad had any right to impose such conditions is immaterial; its position was clearly that the Contract was extant. Secondly, Vitória's answer, signed by its President, clearly refers to its acceptance of certain changes to the "*Contract duly signed on January 21, 2005*", thereby confirming the same understanding (The changes related to the mechanics of the request of the Transfer Price; Vitória's indication that its bank should agree with the terms of Ittihad's letter of credit is immaterial because it cannot be viewed putting in doubt Vitória's substantial acceptance of Ittihad's proposal). This exchange of correspondence, coming at the end of a week during which the Player had been training with Ittihad, and Vitória's Vice-President had accompanied him as Ittihad's guest in Egypt and Saudi Arabia, establish overwhelmingly the Parties' intention to conclude an agreement in the precise terms of the Contract.

16. In his oral testimony, Mr Barroso stated that in the course of the day on 21 January 2005, the Contract as signed by Mr Al Balawi in Beirut was faxed to Brazil, and that Mr Barroso saw it come back by fax with Mr Carneiro's signature, and received by Ittihad at Mr Al Balawi's residence. Mr Barroso himself did not, he said, keep a copy of the faxed version of 21 January as signed by Mr Carneiro. He could not explain why Vitória has never made reference to this exchange of the faxed countersigned Contract during the course of its dispute with Ittihad, either before the PSC or the CAS, or in any correspondence with Ittihad. Indeed, counsel to Vitória stated in the hearing that the first time he had heard this account was when he discussed the matter with Mr Barroso some weeks before the hearing. This would presumably have left him time to ask Vitória to search its files for confirmation of this version of events. No such evidence has been furnished to the Panel. Mr Barroso, who left Vitória's employ in September 2005 and is now a businessman involved in resort development and fish farming, suggested that the fact that Mr Carneiro also left Vitória at the end of the 2005 season might explain some disarray in Vitória's recordkeeping. For its part, Ittihad emphatically denies the reality of this alleged exchange of a faxed countersigned Contract on 21 January. Under these circumstances, the Panel cannot accept as proven that such an exchange occurred. Mr Barroso's allegation in this respect is entitled to no weight.

B. *Vitória did not breach the Contract*

17. The Contract does not mention the date of 31 January 2005 for any purpose, let alone as an essential deadline by which the fully executed original must be in Ittihad's hands in order that the Contract not lose its "object", to use the term employed by Ittihad's counsel. Moreover, there is no proof that Vitória was by any other means put on notice that it was essential to return a signed original to Ittihad before 31 January 2005, or indeed any other date. Given the fact that Vitória was releasing a valuable player, and that if for some reason the Contract was ineffective it would suffer the complete loss of his value since he would become a free agent, it is likely that Vitória would have *hand delivered* the signed Contract to Ittihad – even at the cost of sending someone to Saudi Arabia – if it was on notice that this was a requirement prior to 31 January.

18. If it had been essential for Ittihad to receive the countersigned contract by a particular date, such as 31 January 2005, it could have asked for a copy to be faxed. Conversely, and more significantly, if Vitória had been apprised of such a deadline it could simply and instantly have complied, at any time after the documents had been brought back from Beirut to Brazil, by transmitting the Contract by fax. The Panel is not persuaded by Ittihad's argument that an experienced Brazilian club should be aware of the fact that the player registration deadline in Saudi Arabia, like that of many major European countries, was 31 January. That was a matter for Ittihad.
19. It will be recalled that Article 6 of the Contract specified two ways in which it was to be exchanged between the Parties (see above). The first involved an exchange by fax. Mr Barroso's allegation that this occurred does not, as seen, have sufficient weight or documentary support to be accepted.
20. The Panel accordingly concludes that the second approach was followed. It called for Ittihad to forward counterparts, signed on its behalf, by overnight courier to Brazil. Ittihad has not sought to provide proof of how it did so, but the Panel is satisfied that it did because Vitória confirmed by its letter of 3 February that it had received the documents at the latest by 28 January. With one day of receipt, Vitória was to return the Contract, countersigned by its President, in the same way. Allowing for the fact that "overnight" couriers to places like Bahia do not necessarily achieve their mission *over one night*, the Panel has no reason to doubt that Vitória did what it said in due time. After all, Vitória had every incentive to expedite the transaction and receive the substantial Transfer Price as soon as possible. Since it was Ittihad's responsibility to send the documents to Vitória, Vitória could reasonably assure that "the sender" in Beirut was an appropriate addressee for the return package. There is no evidence that Ittihad provided different or more explicit instructions. It should be recalled that Mr Barroso himself was still with the Ittihad team, and did not return to Brazil until 31 January. The fact that Mr Carneiro wrote that the documents had been addressed "wrongly" means no more than his acknowledgment that they did not get to Ittihad; it was no admission of fault. At any rate, the PSC was wrong to call this an "oversight" (see above); Vitória obviously did not *forget* the need to send back the countersigned Contract. And while Ittihad expresses surprise that Vitória did not realize that documents to one of the major clubs in Saudi Arabia should be sent to Ittihad's easily ascertainable home office in Jeddah, the Panel does not find it surprising that Vitória returned the documents to Beirut for two simple reasons: the President of Ittihad was not in Jeddah, and there was no point to sending documents by courier to a place where he would only arrive some time later. Ittihad has only itself to blame if it did not give sufficiently precise instructions to Vitória.
21. Ittihad has not satisfied the Panel that non-receipt by Ittihad of a fully signed original Contract had the dire effects it claims. As Vitória argued in the hearing, the FIFA Regulations require that applications for registration of a transferred player by a new federation shall be presented, within whatever deadline is applicable in the relevant country, along with the employment agreement between the new club *and the player*; the inter-club transfer contract is

not required. Moreover, Ittihad's argument is fatally undermined by the fact that on 31 January 2005 Ittihad itself wrote to Vitória to ask for confirmation of certain aspects of the transactions "*within two days from date of this letter*" or else Ittihad would consider the Contract to be "cancelled". This posture (assuming as the Panel does that Ittihad was not in bad faith) is inconsistent with the notion that the "object" of the Contract – the right to have the Player perform for Ittihad – disappeared for failure of receipt of the signed Contract as of 31 January. Counsel for Ittihad conjectured that the explanation for this letter is that Ittihad might have "begged" the Saudi federation to give them 48 hours. This is speculation. There is no evidence that such an entreaty was made, or that it was granted with a severe time restriction. There is moreover no evidence that Ittihad asked for a longer extension of the deadline, or tried to convince the federation to content itself with the partially signed Contract and confirmation in writing that Vitória considered the Contract to be in force – perhaps subject to confirmation or regularisation – or indeed to content itself with Ittihad's employment agreement with the Player.

C. *Ittihad has no excuse for its non-payment of the Transfer Price*

22. The Panel does not accept that Ittihad's failure to receive the ITC neutralised its contractual obligations. As a professional organisation, Ittihad knew or should have known that 31 January was the end of its "transfer window" yet did not give notice to Vitória of that fact. The Panel of course presumes good faith, and on that basis concludes that the exchange of correspondence on 31 January implies that each Party *believed* the ITC could still be obtained in a timely fashion, and that Vitória considered that it had done its part in that regard by confirming that the ITC "*is already with our National Federation*".
23. The PSC appears to have suggested a compromise which it believed would be equitable. Evidently the Parties did not perceive it as such, since each is appealing. At any rate, the PSC decision is not based on legal reasoning that is identifiable by the Panel. Causation is a notoriously slippery concept, as illustrated by the ancient saying of the lack of a nail leading to the lack of a shoe, then the lack of a horse, then the loss of a battle, and finally the loss of a kingdom. It may indeed be true that if Vitória had successfully returned a fully signed Contract well in advance of 31 January 2005 there would have been no problem between the Parties. But that is *not a legal issue of liability*. If Ittihad's duty to pay the Transfer Price was conditioned on Vitória's return of the Contract before 31 January, the legal debate would be quickly concluded in Ittihad's favour. But there was no such condition. The PSC therefore confused two distinct concepts: Ittihad's contractual duty to pay the Transfer Price, on the one hand, and, on the other hand, the mere factual circumstance that Vitória did not get the countersigned Contract into Ittihad's hand until some days after 31 January.
24. In the absence of a contractual stipulation of a due date, or even a unilateral notice at some date between 21 and 31 January to the effect that the Contract would lapse if not returned before the latter date, Vitória was in a position to accept the Contract even after 31 January, a

date which had no particular contractual significance. The fact that Vitória had apparently been unsuccessful in returning the fully signed Contract to Ittihad some time before is irrelevant, no matter how ineffectual its attempt. Vitória may have put countersigned contracts in a bottle and thrown them into the sea on 25 January; sent others by pigeon on 26 January; yet others to Ittihad care of an address in Reykjavik on 27 January. None of these absurd instances of fecklessness would have mattered once Vitória did effect the signature and return the Contract by effective means to the proper address, with no reason to think that it mattered that the Contract was thus concluded some days after, rather than some days before, 31 January. Nor has either party suggested that there was an imperative necessity for each side to be in possession of three originals, as literally envisaged in Section 6 of the Contract; this detail of the Contract does not relate to any element of the claimed breach, and has not been connected to any supposed prejudice.

25. Deciding this dispute as a matter of legal principle does not call for speculations about what would have happened if either side had acted differently. The criteria are rather those of contractual requirements. The Contract was concluded by negotiators who agreed to a complete document. It was signed by Ittihad with no reservations as to the timing of the signature of behalf of Vitória, which was entitled to sign it and to rely on it.
26. Ittihad also fails in its attempt to rely on the notion of causation when it argues that there is no “causal link” between Ittihad’s behaviour and Vitória’s damage because Vitória had terminated its contract with the Player some days before the Contract was negotiated, and Vitória therefore “*has not discharged its burden of proof pursuant to the applicable Swiss law*”. The very first words of the chapter on “causation” in Professor Engel’s *Traité des obligations en droit suisse* (2^d ed. 1997) at p. 482 are the following: “*Damages must be the consequence of the wrongful act ...*” (“*Le dommage doit être la conséquence de l’acte illicite ...*”). The application of this principle is simple in this case. Ittihad’s non-payment of the Transfer Price was wrongful (a breach of the Contract); Vitória’s prejudice was non-receipt of the Transfer Price; there is no serious issue of causation. Vitória had no duty to act on the assumption that Ittihad would not respect the Contract. To the contrary, Vitória has a right to rely on Ittihad’s undertaking.
27. The issue raised by Ittihad as to the date of Vitória’s release of the Player is therefore wholly irrelevant. Even if Ittihad were correct that the release was consummated on 17 January 2005, that would be of no assistance to Ittihad. The fact that Vitória had exposed itself to vulnerability in the event that Ittihad did not agree to the terms set out in the 21 January document does not excuse Ittihad from the duty to respect the undertakings it accepted. Ittihad may have conducted itself in a negligent manner; but it has no legal basis to seek to shift the consequences to Vitória.

28. In sum, Ittihad has not demonstrated:

- (i) the irresistible nature of the putative 31 January 2005 deadline;
- (ii) that its accomplishment was a term of the Contract;
- (iii) that Vitória was otherwise put on notice of it;
- (iv) that it immediately communicated with Vitória to ask for confirmation of dispatch of the signed Contract, or for dispatch by fax as the Contract explicitly states is acceptable, if indeed it was expecting it to arrive within a few days after 21 January 2005;
- (v) that Ittihad tried to overcome the deadline by making its application in time and explaining to the sports authorities the reasons for a short delay in supplying the missing documentation; or
- (vi) that the deadline could not in fact have been met by using the partially signed Contract, perhaps pending receipt of the formal signature of Vitória's President.

As a matter of contractual security, Ittihad must be held to its undertaking. It is obvious that Ittihad failed to respect its obligations; it cannot be shown that Vitória failed to execute its own. The concept of apportionment of responsibility does not arise.

29. It is true that Ittihad will not have received any benefit in return for the Transfer Price, or indeed for US\$203,200 awarded to the Player under the employment agreement. But this is entirely due to Ittihad's management of this transaction, notably in breaching its separate agreement with the Player and thereby freeing him to act as a free agent. Otherwise, whether or not he could play for Ittihad in light of Ittihad's failure to respect the Saudi transfer window, Ittihad may have been in a position to negotiate another transfer to recover its expenditures. But if this was a wasteful transaction for Ittihad, it is the sole author of its misfortune.
30. If one were to pursue the theory of causation, it would in fact work *against* Ittihad and not the other way around. In answer to Ittihad's contention that the Player could have been registered in time if Vitória had returned the countersigned Contract by 31 January, the evident retort would be that Ittihad itself failed to ensure registration by having neglected to pay the first instalment of the Transfer Price by that date, and therefore was in any event not entitled to receive the ITC under clause 2.1.2 of the Contract.
31. It follows that Vitória's principal claims must succeed, and that Ittihad's fails. As for interest, in the absence of a defined *dies à quo* the Panel calculates from the most favourable date to the debtor conceivable, i.e. 1 February 2005 (the day after the clear manifestation by Vitória's President of agreement to the Contract), and adds 120 days, to 31 May 2005. The claimed rate of 10% on a US\$ denominated debt does not correspond to commercial reality. Since Ittihad itself claimed 5% for the amount it sought, it can hardly object to that rate. Interest therefore amounts to US\$ 282,490 (two hundred and eighty-two thousand, four hundred and ninety US dollars), from 31 May 2005 to the date of this award.

The Court of Arbitration for Sport rules:

1. The decision of the FIFA Players' Status Committee dated 17 October 2006, concerning a dispute between Vitória S/A and Ittihad Club, is overruled and replaced by the present award.
2. Ittihad Club is ordered to immediately pay the amount of US\$ 2,882,490 (two million, eight hundred and eighty-two thousand, four hundred and ninety US dollars) to Vitória S/A. Interest shall run on any unpaid portion of this amount at a rate of 5% per annum, beginning on 1 September 2007.

(...)