CAS 2023/A/10243 Club APOEL Nicosia v. Lucas Vieira de Souza

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Lars Halgreen, Ph.D. Legal Director, Gentofte, Denmark

in the arbitration between

Club APOEL Nicosia, Nicosia, Cyprus

Represented by Mr. Charalambos Vrakas, Legal Counsel, Nicosia, Cyprus

Appellant

and

Mr Lucas Vieira de Souza, Brazil

Represented by Mr. J. Rebelo da Silva and Mr. Luís Filipe Pedras, attorneys-at-law, Porto, Portugal

Respondent

I. PARTIES

1. Club APOEL Nicosia, (the "Appellant", "Apoel" or the "Club") is a football club with its registered offices in Nicosia, Cyprus. The Appellant is registered with the Cyprus Football Association, which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

2. Lucas Vieira de Souza, (the "Respondent" or the "Player") is a Brazilian professional football player, born on 4 July 1990, and is currently playing for Al-Faisaly in Saudi Arabia.

3. The Appellant and the Respondent are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 6 July 2017 the Respondent for the first time signed an employment contract with the Appellant.

6. On 5 March 2020, the Respondent was transferred to the Chinese League One club, Changchun Yatai, ("Yatai"), and on 10 April 2021, he joined a Chinese Super league club, Beijing Guoan on a loan agreement.

7. During the first months of 2021, the Respondent had taken steps to and unilaterally terminated his employment contact with Yatai, claiming that the Chinese club had breached its contractual obligations by unilaterally de-registering him at the Chinese Football Federation. Yatai had not acknowledged any breach of contract.

8. The Parties entered negotiations in August 2021 to finalize a new employment contract, but before an agreement was signed, the Club wished to obtain contractual guarantees from the Player to mitigate any potential liability risks from an adverse decision in the unsettled dispute between the Player and Yatai.

9. On 13 August 2021, the Parties negotiated and signed a so-called "Guarantee Agreement" (the "Guarantee Agreement"), which, *inter alia*, had the following wording:

"(…)

BECAUSE *the Parties are negotiating to sign an employment agreement* ***AND***

BECAUSE *the Player has confirmed to the Club that he is not bound with any employment agreement with any other club* ***AND***

BECAUSE *the Player has confirmed to the Club that he has recently unilaterally terminated his employment contract with the club* ***Changchun Yatai FC*** *from China (the Chinese club) with just cause and in full compliance with the applicable regulations and jurisprudence.*

THE PARTIES AGREE AS FOLLOWS:

1. *The preamble of the present agreement constitutes an integrated part of it.*

2. *The Player is well aware that the Club would never accept entering into any negotiations or signing any employment contract with him if there was any risk that the unilateral termination of the Player's employment with the Chinese club was made without just cause.*

3. *For this reason, the Player submits the following guarantees to the Club:*

    i. *Following the legal advice he has received by his legal representatives, his deregistration from the list of eligible to compete players of the Chinese club is now final and cannot be reverted, at least before the winter registration period of the Chinese Football Association.*

    ii. *The Player confirms that he has never directly or indirectly consented to this deregistration of him.*

    iii. *The Player confirms that his deregistration was a unilateral decision of the Chinese club.*

    iv. *The Player confirms that the only reason or at least on of the reasons why he terminated his employment contract with the Chinese club was because he was deregistered from the list of eligible to compete players and was no longer eligible to compete in any official matches of the Chinese club.*

4. *The Player accepts that should the above guarantees not be correct, he will pay the Club a compensation equal to any amounts which the Club might be ordered by the FIFA DRC, CAS or any other competent body to pay the Chinese club, should the latter initiate any legal proceedings against the Club, in case the Parties sign an employment agreement.*

5. *In addition to the above-mentioned compensation, the Player will also have to pay the Club a penalty of EUR 50.000.*

6. *Any dispute arising from or related to the present agreement shall be submitted to the FIFA DRC or the Court of Arbitration for Sport in Lausanne. In case, it was filed before the CAS, the dispute shall be submitted before a Sole*

Arbitrator, it shall be heard in the English language and the applicable law shall be the Swiss law."

10. On the same day, the Player filed a claim against Yatai before FIFA's Dispute Resolution Chamber ("FIFA DRC") immediately after his termination. Yatai had filed its defence as well as a counterclaim against the Respondent, claiming that the termination was without just cause. The Chinese club's counterclaim was only directed against the Respondent. The Chinese club did not join or submit any claims against the Appellant as the Respondent's new club, but the FIFA DRC summoned the Appellant in the said proceedings as an intervening party.

11. On 19 August 2021, the Parties concluded an employment contract (the "Employment Contract") valid as from 19 August 2021 until 31 May 2023.

12. According to the Employment Contract, the Club undertook to pay the player a monthly salary of EUR 15,000 net in the following two seasons from 31 August 2021 until 31 May 2023.

13. On 21 April 2022, the FIFA DRC rejected the Player's claim and partially accepted Yatai's counterclaim, ruling that the Player's unilateral termination of his employment contract with his former Chinese club was made without just cause (the "First Decision"). The FIFA DRC ordered the Player to pay Yatai a compensation of EUR 200,000, plus legal interest from that date. In addition to the monetary compensation, the FIFA DRC stipulated in point 7 of the First Decision that the Player was to be restricted from playing in official matches, until the due amount, including interests, was paid. The maximum duration of this restriction was up to 6 months.

14. The FIFA DRC noted, *inter alia,* in para. 71 of the First Decision that "*indeed, the Player found new employment with the Cypriot club Apoel Nicosia*", outlining the remuneration agreed by the Parties in the Employment Contract, which in turn was instrumental in fixing the compensation at EUR 200,000 "*[a]ccording to the constant practice of the Chamber as well as art. 17 par. 1 of the [FIFA] Regulations […]*" (cf. para. 70 of the decision). The Club was additionally served with a ban from registering new players, either nationally or internationally, up until the full amount including interests was paid. The maximum duration of the ban was to be up to three entire and consecutive registration periods.

15. There were no indications whatsoever found in the First Decision that the Club should have induced the Player to breach his contract with his former Chinese club. No such claims were either made by the Chinese club. Nevertheless, the FIFA DRC, without any further deliberations, held in point 5. of the First Decision: "*The Intervening Party, Apoel Nicosia, is jointly and severally liable for the payment of the amount mentioned in point 3 above.*", i.e. the compensation fixed at EUR 200,000 plus interests.

16. On 28 June 2022 the First Decision was notified to the Parties, and both Parties appealed the decision to the Court of Arbitration for Sport ("CAS").

17. On 19 July 2022, the Parties received a written notification from a Saudi Arabian club, (Al-Khaleej), which expressed its interest in signing the Respondent as soon as possible. The Saudi Arabian club explicitly stated that it had no intention to pay any commission or transfer fees. Since the Appellant was facing financial difficulties at the time, but also because the remuneration proposed to the Player by the Saudi Arabian club was considerably higher than the amount he was receiving by the Appellant, the Player was eager to sign with the Saudi Arabian club and declared to the Appellant that he did not want to miss that opportunity. For this reason, the Appellant gave him the right to negotiate with the Saudi Arabian club but made it clear that it was not going to release him without any monetary compensation.

18. On 22 July 2022, the CAS Court Office, in a letter to all parties, including the Appellant and the lawyer Mr. Duarte Costa representing the Respondent at the time, acknowledged receipt of the Statement of Appeal filed by the Appellant on 18 July 2022 against the First Decision.

19. On 25 July 2022, the CAS Court Office wrote to Mr. Duarte Costa, requesting proof of the timely filing of the hard copies of the Statement of Appeal filed on behalf of the Player.

20. At the end of July 2022, various WhatsApp messages were exchanged over several days between the Parties about the Player's negotiations with Al-Khaleej. Even though it became clear during these negotiations that the Saudi Arabian club was not willing to pay any transfer fee, the Parties went ahead and terminated their contractual relationship on 29 July 2022 in a mutual termination agreement (the "Termination Agreement"), which – in the version included in the FIFA file – contained the following terms and conditions precedent:

*"**WHEREAS***

a. the Player is currently being employed by the Club by virtue of the employment agreement dated 19/08/2021 and/or additional employment agreements until 31/05/2023 with an option for an extension until 31/05/2024.

b. the Club is in debt with the Player, as outstanding salaries, in the total amount of € 200,000.

c. with the Club's consent the Player has been negotiating with club Al Khaleej from Saudi Arabia.

d. the Player and the club from Saudi Arabia have reached an agreement as to the Player's remuneration should he sign with the club from Saudi Arabia.

e. the club from Saudi Arabia is not willing to pay a transfer fee to the Club.

f. the Player wants to be prematurely released from his contractual obligations towards the Club so as to be free to sign with the club from Saudi Arabia,

*g. the Club and the Player were jointly and severally ordered by the FIFA DRC in the case with ref. no. FPSD – 333 (**the FIFA case**) to pay the Chinese club Changchun Yatai FC a compensation of €200,000 plus 5% interest from 21/04/2022 until full payment,*

h. before signing with the Club, the Player signed a guarantee agreement agreeing to personally cover and pay all amounts in case the unilateral termination he made with the Chinese club was deemed by the FIFA DRC as having being made without just cause,

i. the Player filed a CAS appeal challenging the decision of the FIFA DRC in the FIFA case,

j. it was confirmed today by CAS that the Chinese club did not file any appeal requesting a higher compensation and therefore the compensation awarded in its favour by the FIFA DRC can no longer be increased,

THE PARTIES AGREE TO THE FOLLOWING:

1. The preamble of the present agreement constitutes an integrated part of it.

2. The Club recognizes the debt to the Player for €200,000, as well the player accepts this amount as the total amount owed to him, payable after CAS final and binding decision.

3. The Parties agree that in order for the Player to be prematurely released from the Club and sign with the club from Saudi, he shall pay the Club the amount of EUR 200,000. This amount shall be set off against the Club's debt towards the Player and the Club will no longer be indebted to the Player.

4. If CAS confirms the FIFA decision, or even if it reduces it and as result the Parties will remain liable to pay compensation to the Chinese club, both Parties agree that this compensation will be paid by them by ½.

5. The Parties hereby declare that they have no future claim whatsoever against each other for the termination of the employment relationship between them and further declares that the present agreement fully settles all differences between the parties.

6. The Parties agree that the Guarantee Agreement dated 13/08/2021 signed between them is hereby mutually terminated and of no longer legal validity or enforcement and no longer imposes any contractual obligations on the Player.

7. The Club declares that with signing the present agreement, the Player is free to sign any contracts with any Club he wants, apart from a Cyprus club and the Club has no claim from the Player.

IN WITNESS WHEREOF the parts here to set their respective hands the date as above written. [The Parties signatures.]" (emphasis in original)

21. On 29 July 2022, on the same day that the Termination Agreement had been signed by the Parties, the Player signed an employment contract with the Saudi club, Al Khaleej valid from 29 July 2022 until 28 July 2024, for a monthly salary of USD 56,250 and a sign-on fee payable in two instalments of USD 75,000 on 31 August 2022 and again on 31 August 2023, hence a total sign-on fee of USD 150,000.

22. On 2 August 2022, the CAS Court Office in a letter to Mr. Duarte Costa, representing the Respondent in the CAS proceedings against FIFA and Yatai, referred to its previous letter of 25 July 2022 and acknowledged receipt of the requested hard copies of the Statement of Appeal. However, the CAS Court Office noted that these hard copies were filed late. Consequently, pursuant to Articles R48 para. 3 and R49 of the Code of Sports-related Arbitration (the "Code"), on behalf of the President of the CAS Appeals Arbitration Division (the "Division President"), the Respondent was advised that CAS would not initiate an arbitral procedure in this matter.

23. Once the Player had not filed a valid and timely appeal with the CAS against the decision of the FIFA DRC decision, the playing ban initiated against him in the Appealed Decision came into immediate effect, and he would thus not be able to play for his new club in Saudi Arabia. Against this background, the Player decided to pay the full damages plus interest, i.e. an amount of EUR 203,014 on his own to Yatai on 9 August 2022.

24. On 22 August 2022, the Club withdrew its own appeal against the First Decision. In the letter to the CAS Court Office, the Club motivated the withdrawal as follows: "*This is because, as informed by FIFA last week, the Second Respondent has fully complied with and settled the challenged FIFA DRC decision. As a result, there exits no decision enforceable against our club today and the present appeal is of no object anymore. Consequently, our club has no other option than to withdraw the appeal.*"

25. On 29 September 2022, the Division President issued a Termination Order.

26. On 24 December 2022, the Player presented a default notice to the Club requesting payment of a total amount of EUR 300,000, comprising of outstanding salaries of EUR 200,000 and half of the damages paid by the Player to the Chinese club, i.e. EUR 100,000 as per the Parties' spilt hereof agreed in the Termination Agreement. The Club refused payment.

B. Proceedings before the FIFA DRC

27. On 11 January 2023, the Player filed a claim of EUR 300,000 against the Club before the FIFA DRC, relying on the same legal submissions as stated in his default notice.

28. In its reply before the FIFA DRC, the Club confirmed that a termination agreement had been signed by the Parties but claimed that the version presented by the Player had been forged, because several important clauses had been either altered and/or removed from the original version.

29. In conclusion, the Club requested that the Player's requests for relief be rejected, because the Club had no obligation to pay any due salaries to the Player, as these due salaries were set off with the compensation that the Player agreed to pay to acquire his release and sign with the Saudi Arabian club for a considerably higher remuneration. Moreover, the Club claimed under the circumstances to have no obligation to pay EUR 100,000 plus legal interests to the Player.

30. Additionally, the Club filed a counterclaim against the Player indicating that the Player had misled the Club about his valid and timely appeal to the CAS, and that this deception also constituted fraud, which meant that the Guarantee Agreement had never been validly cancelled, and the Club has thus never lawfully waived any of its rights under it. Consequently, the Club requested the imposition of the agreed penalty of EUR 50,000 on the Player, plus legal interest from 21 April 2022, when the First Decision was issued.

31. The counterclaim as well as the Club's allegations about the validity of the presented terms of the termination of the contractual relationship between the Parties were rejected by the Player.

32. In its decision, the FIFA held as follows (the "Appealed Decision"):

"(…), the Chamber moved to the substance of the matter and took note that the parties strongly dispute the total amount that was due to the Claimant as detailed in his claim.

In this context, the Chamber acknowledged that its task was to determine whether the amounts claimed by the Claimant were to be paid by the Respondent.

The Chamber noted that in its submission, the club claimed that the player submitted a forged termination agreement, and further noted that the player on his account denies this allegation and in return claims that the document which the club submitted is forged, however failed to substantiate its argument with any corroborating evidence.

The Chamber observed that the club provided the original termination agreement concluded between the parties on 29 July 2022, confirming the contents it alleged the parties agreed.

In consideration of the dissent between the parties, the Chamber deemed it important to take into consideration the following:

- a request from the player in specific the WhatsApp correspondence seeking permission from the club to negotiate with the Saudi club

- copy of the declaration from the Saudi club relating to said negotiations dated, 19 July 2022

- the permission granted by the club to the player to negotiate with the club, dated 21 July 2022

- the subsequent contract the player concluded with the Saudi club, Al Khaleej at a higher value, dated 29 July 2022,

- termination agreement of the club referencing the aforesaid, dated 29 July 2022.

On analysis of the documentation on file, the Chamber established that (i) it is evident that the parties agreed to mutually terminate the contract, (ii) that the player negotiated with a third club for potential future employment and (iii) that the player was released prior to the expiry of his contract from the club. i.e., due to expire on 31 May 2023.

In consideration of the above circumstances and the documentation on file, this according to the Chamber seems to lead to the conclusion and furthermore verify that the termination agreement provided by the club, reflected the true intention of the parties regarding the terms for mutual termination. In support of this opinion, the Chamber highlighted that the original document as provided by the club was signed by both parties, furthermore the player failed to provide corroborating evidence as to his argument that the said agreement was forged by the club.

On account of the above, the Chamber took into account the termination agreement as provided by the club in assessment of this matter.

Subsequently, the Chamber made reference to article 3 of the termination agreement which mentions that "the parties agree that in order for the player to be prematurely released from the Club and sign with the club from Saudi, he shall pay the Club the amount of EUR 200,000. This amount shall be set off against the Club's debt towards the Player and the Club will no longer be indebted to the Player."

In this regard, the Chamber took note that the club argued that it had no obligation to pay any outstanding salaries to the player as it was set off against compensation the player agreed to pay to the club to acquire his release and to sign with the Saudi Arabian club for a considerably higher remuneration.

In the context, the Chamber remarked that it would take into consideration whether there were reciprocal concessions of equivalent value between the parties. In this regard, the Chamber noted that the club agreed to release the player early from his contract without paying compensation to the club in consideration that the club would no longer be indebted to the player for his outstanding salaries.

Following the aforesaid, majority of the Chamber deemed that this indeed established in a manner a reciprocal concession, consequently majority of the Chamber considered that the club made a concession as to a similar value as the rights per se waived by the player i.e., entitlement to his outstanding salaries.

In conclusion hereof, majority of the Chamber decided that the set-off had been validly agreed to between the parties and that reciprocal concessions have been established, therefore it decided to reject the part of the claim of the player amounting to EUR 200,000.

In continuation reference was made to the liability of the club established in FPSD-3313 and majority of the Chamber concluded that the termination agreement clearly establishes that the club would remain liable for payment of half of this amount.

Consequently, majority of the Chamber decided to reject the counterclaim of the club."

33. Based on these considerations, the FIFA DRC reached the Appealed Decision on 21 September 2023, and it was notified to the Parties on 22 November 2023:

"1. The claim of the [Player] is partially accepted.

2. The [Club] must pay to the [Player] the following amount(s): - EUR 100,000 as outstanding amount plus 5% interest p.a. as from 21 April 2022 until the date of payment.

3. Any further claims of the [Player] are rejected.

4. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.

5. 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 [Club] 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.

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

7. This decision is rendered without costs."

III. PROCEEDINGS BEFORE THE CAS

34. On 13 December 2023 the Appellant filed its Statement of Appeal with the CAS challenging the Appealed Decision in accordance with Articles R47 and R48 of the Code.

35. In its Statement of Appeal, the Appellant requested that the matter be submitted to a Sole Arbitrator chosen from the CAS football list.

36. On 21 December 2023, the CAS Court Office acknowledged receipt of the Statement of Appeal and *inter alia* invited the Appellant to file an Appeal Brief within 10 days from the expiry of the time limit for the appeal, failing which the appeal would be deemed to have been withdrawn.

37. On the same day, the CAS Court Office notified FIFA of the appeal stating that FIFA was not a party to the CAS proceedings. However, if FIFA pursuant to Article R41(3) of the Code wished to become a party in these proceedings, the deadline for filing an application to this effect, was 10 days from the receipt of this letter. The CAS Court Office also asked FIFA to forward a clean unmarked version of the Appealed Decision to CAS.

38. On the same day, the Appellant requested a 20-day extension to file the Appeal Brief due to the Christmas holidays.

39. On 22 December 2023, pursuant to Article R32(2) of the Code, and on behalf of the CAS Director General, an extension of ten days was automatically granted by the CAS Court Office. The Respondent was invited to state whether he would consent to another 10-day extension. In the meantime, the Appellant's deadline to file his Appeal Brief was suspended until further notice from the CAS Court Office.

40. On 26 December 2023, the Respondent objected to the additional 10-day extension. The Respondent also informed the CAS Court Office that he would not pay any advance of costs in the matter.

41. On 28 December 2023, the CAS Court Office notified the Parties that, after consideration of the circumstances, and on behalf of the Division President, the Appellant's request for an additional 10-day extension of the time limit to file its Appeal Brief was granted. At the same time, the suspension of the deadline to submit the Appeal Brief was lifted with immediate effect.

42. On 28 December 2023, the Respondent requested that the case be submitted to a panel of three arbitrators according to Article R50 of the Code.

43. On 29 December 2023, the CAS Court Office acknowledged receipt of the Respondent's request and invited it to indicate whether he would pay his share of the advance of costs.

44. On 2 and 3 January 2024, the Respondent wrote two similar letters to the CAS Court Office requesting to know what the advance of costs would be in case the matter was adjudicated by a full panel of three arbitrators or only by a Sole Arbitrator. Before having knowledge of these expenses, the Respondent would not be in position to answer the CAS Court Office's question of 29 December 2023, but he indicated that he intended to pay his share of the advance of costs.

45. On 4 January 2024, the CAS Court Office informed the Respondent that the question of the advance of costs would be determined by the CAS Finance Director, and it was noted that the Respondent had stated that he intended to pay his share of the advance of costs.

46. On 9 January 2024, FIFA renounced its right to possibly intervene in the present CAS proceedings and provided a clean copy of the Appealed Decision with its letter.

47. On 11 January 2024, the Appellant filed its Appeal Brief. A copy of the Appeal Brief and its exhibits was made available for the Respondent's attention on the CAS e-Filing platform. The CAS Court Office further instructed the Respondent that he should submit his Answer within 20 days of receipt of the said letter by courier.

48. On 22 January 2024, the Respondent requested that the time limit for the filing of the Answer be fixed at 20 days after the payment by the Appellant of his share of the advance of costs in accordance with Article R64.2 of the Code.

49. On 26 January 2024, the Respondent requested an additional 10-day extension to file the Answer due to illness, and he stated that the Appeal Brief document was filed "*very late*".

50. On 30 January 2024, the CAS Court Office confirmed that the deadline set out in the CAS Court Office's letter of 11 January 2024 was set aside, and a new deadline would be fixed upon the Appellant's payment of its share of the advance of costs.

51. On 6 February 2024, the Appellant rejected the allegation that the Appeal Brief was filed too late and presented various arguments in support of its position.

52. On 7 February 2024, the Respondent informed the CAS Court Office that he would not pay the advance of costs if a Sole Arbitrator would decide the matter, but that he would pay if a panel of three arbitrators was appointed.

53. On the same day, the CAS Court Office acknowledged receipt of the Respondent's letter and invited the Appellant to indicate whether it agreed to the appointment of a panel of three arbitrators.

54. On 15 February 2024, in view of the Appellant's silence, the CAS Court Office informed the Parties that the Division President had decided to submit the present procedure to a panel of three arbitrators. Accordingly, the Parties were invited to each nominate an arbitrator in turn from the list of CAS arbitrators published on the CAS website.

55. On 26 February 2024, the Appellant nominated Dr Jan Räker from Germany.

56. On 11 March 2024, the Respondent nominated Mr. Jose Luis Andrade from Portugal.

57. On 12 March 2024, the CAS Court Office *inter alia* advised the Respondent that his share of the advance of costs was not received by the CAS, and he was invited to provide a SWIFT proof of timely payment within three days upon receipt of this letter.

58. On 19 March 2024, the CAS Finance Director invited the Appellant to pay the entire advance of costs, considering that the Respondent had not paid his share.

59. On 27 March 2024, the Appellant wrote to the CAS Court Office objecting to have been called to pay the full amount of the advance of costs, since the Respondent had failed to pay his share. In light hereof, the Appellant objected to the appointment of three arbitrators and reiterated his initial request for a Sole Arbitrator. Finally, the Appellant

asked for the suspension of the deadline to pay its advance of costs, until its request had been decided upon.

60. On 4 April 2024, the Respondent submitted a letter to the CAS Court Office, in which he made a number of objections, which may be summarized to the effect that the Appellant's non-payment of its share of the advance of costs should, in the opinion of the Respondent, have triggered that the case should have been withdrawn from the CAS docket, because of the Appellant's failure to pay according to Article 64.2 of the Code.

61. Following further correspondence between the Respondent and the CAS Court Office, on 1 May 2024, the Division President decided to submit the present proceedings to a Sole Arbitrator pursuant to Article R53 of the Code.

62. On 7 May 2024, the Respondent reiterated his objections and maintained that the decision of 1 May 2024 had been taken in violation of the specific wording of Article R50 of the Code, and the Respondent therefore requested that the decision of the Division President dated 1 May 2024 be declared null and void.

63. On the same day, the CAS Court Office acknowledged receipt of such letter and informed the Parties that the Respondent's request was denied. The Respondent's request that the appeal be withdrawn was also denied because the management of the advance of costs was an administrative issue dealt with by the CAS Court Office.

64. On the same day, the Respondent objected to the Appellant's request for extension and asked CAS to reject this request.

65. On 18 June 2024, the CAS Court Office acknowledged receipt of the Appellant's payment of the total of the advance of costs for this procedure. In accordance with Article R55 of the Code, the Respondent should submit his Answer within 20 days. Pursuant to Article R54 of the Code, and on behalf of the Division President, the Parties were informed that the Panel to decide this matter had been constituted as follows:

    Sole Arbitrator: Mr. Lars Halgreen, Legal director in Gentofte, Denmark.

66. On 2 July 2024, on behalf of the Sole Arbitrator, the CAS Court Office requested a copy of the FIFA file in this matter.

67. On 2 July 2024, the Respondent filed its Answer. The Parties were invited to inform the CAS Court Office whether they preferred for a hearing and/or a case management conference pursuant to Articles R56 and R57 to be held.

68. On 9 July 2024, the Respondent asked that the Sole Arbitrator first decided on the issue whether the Appeal Brief had been filed on time but stated that a hearing and case management conference were in his opinion not necessary.

69. On 10 July 2024, the Appellant informed the CAS Court Office that it deemed a hearing, but not a case management conference, to be necessary in this matter.

70. On the same day, FIFA provided a link to download the complete FIFA file related to this appeal.

71. On 25 July 2024, the Parties were advised by the CAS Court Office that, pursuant to Article R57 of the Code, the Sole Arbitrator had decided to hold a hearing in this matter, which would be held by videoconference. The Sole Arbitrator offered various possible hearing dates to the Parties. Separately, the Sole Arbitrator informed the Parties that he was aware of Advocate General Szpunar's opinion delivered on 30 April 2024 in the so-called "Diarra-case" (C-650/22) before the European Court of Justice, and the opinion was enclosed. The letter made the following invitation to the Parties:

"Although neither parties have made any reference to this case, nor to the compliance of Art. 17(2) FIFA RSTP with respect to TFEU Art. 101 and 45, the Sole Arbitrator hereby invites the Parties to present a written submission within ten (10) days, stating which consequences they believe this opinion may have on the matter at hand, should the European Court of Justice follow this analysis and confirm the proposal of Advocate General Szpunar, before an award has been rendered in this case."

72. On 31 July 2024, the Respondent reiterated his request that the Sole Arbitrator should decide on the issue whether the Appeal Brief had been filed on time before a hearing was scheduled. He further submitted his comments on Advocate General Szpunar's opinion, which are summarised below (see paras. 97 ff).

73. The Appellant did not submit any comments to the CAS Court Office on Advocate General Szpunar's opinion, nor on its potential relevance to this case at hand, within the prescribed deadline.

74. On 7 August 2024, in view of the Parties' availabilities, the CAS Court Office informed the Parties that a video-conference hearing would be held on 9 October 2024, at 9:30 Swiss time.

75. On 13 August 2024, the CAS Court Office informed that Parties that the Sole Arbitrator after having carefully examined the Parties' arguments regarding the timeliness of the Appeal Brief, had reached the decision that the time limit for filing the Appeal Brief had been correctly observed, and that the reasons for his opinion would be found in the final award.

76. On 22 August 2024, the Respondent wrote a letter to the CAS Court Office stating that he could not accept the decision of the Sole Arbitrator and that he would contest or appeal the decision once the reasons hereof are known.

77. On 12 September 2024, the CAS Court Office enclosed for the Parties' attention an Order of Procedure for the above-referenced matter. The Parties were requested to sign and return a copy of the Order of Procedure to the CAS Court Office by 19 September 2024, and a signed copy was returned by the Appellant on 13 September 2024.

78. On 17 September 2024, the Respondent wrote a letter to the CAS Court Office protesting against the witnesses, which the Appellant had called, as he claimed that they

essentially were parties, and that their names had not been brought forward in a timely fashion. He also stated that he did not agree with the terms of, nor did he understand the need for the Order of Procedure and refrained from signing it, as he did not recognize CAS' legitimacy to render a new decision.

79. On 7 October 2024, the Respondent forwarded a new power of attorney giving powers to Mr. J. Rebelo da Silva and Mr. Luís Filipe Pedras, lawyers in these CAS proceedings.

80. On the same date, the CAS Court Office acknowledged receipt of the Respondent's above letter, a copy of which was enclosed for the Appellant's attention, as well as his Power of attorney. Separately, on behalf of the Sole Arbitrator, the letter stated the following:

"The Parties' attention is drawn to the press release issued by the Court of Justice of the European Union (CJEU) on 4 October 2024 in the so-called "Diarra case" (C-650/22), which is available here: https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-10/cp240172en.pdf. The full judgment is available on the CJEU's website (in French only):

https://curia.europa.eu/juris/document/document.jsf;jsessionid=8BAA77AE97A3F9042CCAD02AD4DBB7E8?text=&docid=290690&pageIndex=0&doclang=FR&mode=req&dir=&occ=first&part=1&cid=160070.

The Parties will have the opportunity to comment on the above at the hearing."

81. On 9 October 2024, the hearing took place in the present case, by videoconference. In addition to the Sole Arbitrator, and Ms Delphine Deschenaux-Rochat, Counsel to the CAS, the following persons attended the hearing remotely:

For the Appellant:

- Mr. Charalambos Vrakas, legal counsel,
- Mr. Efthymios Agathokleous, general director of the Club

For and with the Respondent:

- Mr. J. Rebelo da Silva, legal counsel
- Mr. Luís Filipe Pedras, legal counsel
- Ms. Carina Carixto de Souza, witness
- Mr. Paulo Ricardo de Mello, witness
- Mr. da Silva Morais, interpreter

82. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel, i.e. the appointment of Mr. Lars Halgreen as Sole Arbitrator to adjudicate in this matter. The Sole Arbitrator asked for the Appellant to forward a power of attorney to the CAS Court Office for Mr. Charalambos Vrakas, who was acting as legal counsel at the hearing. The Respondent's legal counsel specified that the non-signing of the Order of Procedure should not be regarded as an implicit objection to the constitution of the Panel, nor to the jurisdiction of CAS to adjudicate this matter.

83. The Parties made their submissions in support of their respective prayers and requests for relief, having amble time for closing and rebuttals, whilst Mr Efthymios Agathokleous on behalf of the Appellant and the Respondent gave their statements in the matter, and Mr. Paulo Ricardo de Mello and Ms. Carina Carixto de Souza, having been cautioned by the Sole Arbitrator to tell the truth subject to sanctions of perjury under Swiss law, were heard as witnesses after the opening statements. All Parties as well as the Sole Arbitrator had the opportunity to ask questions to the representatives of the Parties and to the witnesses.

84. **Mr Efthymios Agathokleous** stated that the Club had been pleased with the Player's performance before he was sold to the Chinese club for EUR 300,000. There remained a good chemistry and dialogue between the Player and the Club's President. The Club, however, did not want to take the risk that his Chinese club would bring a claim against the Club, so that was the reason why the Guarantee Agreement had been drawn up and signed by both parties. He explained that the Club felt that the Player had defrauded it, because it would never have signed the Termination Agreement, if the Player had told that his appeal to the CAS had been dismissed. When the Player had paid the damages of EUR 200,000, the Club had no cause to uphold its own appeal to the CAS. The Club was in financial difficulties and could not pay the Player's salary but would not release him to the Saudi Club for free. That was why the Club's debt to the Player was set-off to function as a "transfer payment" in kind, when the Saudi club did not want to pay any amount.

85. **The Respondent** stated that after the Chinese club had de-registered him, he terminated his contract at the advice of his lawyer, Mr. Duarte. He did not have a problem with signing the Guarantee Agreement with the penalty of EUR 50,000, because he was confident that he would win at the FIFA DRC. He did not know at the time that the Termination Agreement was signed that his appeal had been dismissed by the CAS. It was his lawyer, Mr. Duarte, who had filed the appeal in a wrong way, and he only found out afterwards. He refused that he had defrauded the Club. He had made a complaint to the Portuguese Bar Association against his former lawyer, but not made any financial claims. When the appeal was dismissed, he could not get his International Player's Certificate to play, and he felt that the only way that he could stay with his new club in Saudi Arabia, was to come up with and pay the money himself. His International Player's Certificate came approx. 10-15 days after he had paid the EUR 200,000 plus interests to the Chinese club, and he could then honor his new contract. He did not inform the Club about his payment at the time, but he knows that his lawyer would contact FIFA. He maintained that the version of the Termination Agreement that he signed did not have a clause whereby he would give up EUR 200,000 in unpaid salaries. He stated that it would never make sense to give up such a large amount of money owed to him by the Club. Today, he is still playing football in Saudi Arabia, but in another club in a lower division. His contract expires in July 2025. He earns a net salary of USD 750,000 per year.

86. **Mr. Paulo Ricardo de Mello** stated that he acted as the Respondent's agent and that he had been negotiating with the Saudi club regarding a transfer. He confirmed that the Club in his view had financial issues and that the Respondent had not received his salary for some time. In his opinion, the version that the Player signed had not contained a

clause, whereby the Club's debt had been set-off. The Player had not waived his rights to his money, as he had to take care of himself and his family. He confirmed that Mr. Duarte had the responsibility of filing the appeal to the CAS, but the case had been dismissed. He confirmed that the Player, at the time when FIFA's playing ban was not suspended, had to pay the damages owed, so he could obtain the International Player's Certificate, and hence be able to make a much higher salary in Saudi Arabia. Without the Player's Certificate, the Respondent would not have had a contract with his Saudi club.

87. **Ms. Carina Carixto de Souza** stated that she was the wife of the Player and had normally been briefed by her husband about the negotiations of his various transfer agreements, but not participated in them. She confirmed that the Club had not paid her husband's salaries and they wanted to move on to be able to support themselves. She had neither been directly involved in the negotiations of the Termination Agreement, but she had been present, when her husband had telephone conversations with his lawyer, Mr. Duarte and his agent about the transfer to Saudi Arabia. Her husband did not in her view know that the CAS appeal had been dismissed, until after the Termination Agreement had been signed.

88. At the end of the hearing, the Parties expressly stated that their right to be heard and to be treated equally in these proceedings had been fully respected. Because the Diarra-decision had been passed by the European Court of justice only five days before the hearing, the Sole Arbitrator informed the Parties that they would be given an additional opportunity to submit their views to the CAS Court Office as to the effect of this decision on the matter at hand.

89. On 10 October 2024, the Appellant filed the requested power of attorney and the Parties were invited to file a written submission on the judgment issued by the Court of Justice of the European Union (CJEU) on 4 October 2024 in the so-called "Diarra case" (C-650/22).

90. On 24 October 2024, the Respondent submitted a new brief concerning the CJEU-decision in the so-called "Diarra-case", repeating many of the arguments presented earlier as per Advocate General Szpunar's opinion, and its potential relevance to the case at hand. Reference is made to the summery hereof in paras 97ff.

91. The Appellant did not file any submissions within the prescribed time limit.

92. On 29 October 2024, the Parties were advised that, according to Article R59 of the Code, the evidentiary proceedings were now closed.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Position of the Appellant

93. In the Appellant's Appeal Brief, the following requests for relief in these proceedings have been made:

"I. Set aside the decision of the FIFA DRC with which the Appellant was ordered to pay the Respondent EUR 100,000 plus legal interest and decide that the Appellant is not liable to pay any amounts to the Respondent.

II. Order the Respondent to pay the Appellant a contractual penalty of EUR 50,000 plus legal interest from 21/04/2022 until full settlement.

III. Order the Respondent to pay the procedural and all other costs arising out of the present proceedings and to reimburse the Appellant with the CAS Court Office Fee.

IV. Order the Respondent to pay a contribution towards the Appellant's legal fees incurred in connection with the present proceedings."

94. The Appellant's submissions, in essence, and as made at the hearing may be summarized as follows:

- From the moment that the Appellant entered into the Termination Agreement based on the Respondent's representations that he had filed a CAS appeal and that this appeal was in place when the Termination Agreement was being signed, the fact whether an appeal was in place was a fundamental fact. Had that fact not existed, the Appellant would never have signed the Termination Agreement. According to Articles 23, 24 and 31 of the Swiss Code of Obligations (SCO), in such cases the innocent party, i.e. the Appellant, is not bound by the contract.

- From the moment that, when the Termination Agreement was being signed, the Respondent knew or at least should had known that the CAS appeal had not been properly filed, then the signing of the Termination Agreement was the result of a fraud. According to Articles 28 and 31 SCO, in such cases the innocent party, i.e. the Appellant, is also not bound by the contract.

- Should CAS accept that the Appellant was not bound by the Termination Agreement, either due to an error on a fundamental fact or due to fraud, it must then order the Respondent to pay the Appellant the penalty stipulated in the Guarantee Agreement.

- Even if CAS is of the opinion that the Termination Agreement was valid and imposed contractual obligations on the Appellant, the majority of the FIFA DRC was wrong to decide that clause 4 of that agreement was triggered.

B. The Position of the Respondent

95. In the Respondent's Answer, the following requests for relief in these proceedings have been made:

"- deliver Apoel's request and proof of payment of advance costs to the Respondent.

- *decide that the Appeal Brief was clearly presented after the deadline, and therefore must be rejected outright, with the appropriate legal consequences: the appeal shall be deemed withdrawn.*

- *consider the REQUEST FOR RELIEF of the Statement of Appeal dated on 12.12.2023 has to prevail over the REQUEST FOR RELIEF of the Statement of Appeal dated on 12.12.2023.*

- *decide the player did not induce the club into any error, much less a fundamental one, or commit fraud to get the club to sign the revocation agreement of 29.07.2022.*

- *decide that Clauses 4 and 6 of the revocation agreement must be maintained.*

- *decide that, in case CAS retires clauses 4 and 6 of the revocation agreement, the entire agreement falls apart, and in this case, as a result, CAS must recognize the entire contract as voidable, namely that the player has the right to receive the amounts that the club owed him as wages (200,000.00 €);*

- *maintain fully the decision of DRC FIFA, rejecting the Apoel's appeal."*

96. The Respondent's submissions, in essence, and as made at the hearing may be summarized as follows:

As per the Respondent' first request for relief:

"Given the information that the club paid the costs in advance, the player did not receive proof of this payment or the date of the payment. (…) CAS did not send Apoel's request or the proof of advance costs payment to the respondent. The player requires CAS to deliver these elements to him."

As per the Respondent' second request for relief:

"Apoel filed a statement of appeal on 12/12/2023 (…) According to the CAS procedural rules, Apoel had 10 days from that date to present the appeal brief. On 21/21/23, Apoel submitted a request for a 20-day extension of time (…). On 22.12.23, on the last day Apoel had to present the appeal CAS informed that it was automatically granted a 10-day extension of time and, on that date, the deadline for presenting the appeal brief was suspended until TAS decided on Apoel's request for an extension of time (…). On 26.12.2023 respondent opposed to the extension of time. On 28.12.2023 CAS informed that it had decided to grant a 10-day extension of time for the club to present its "appeal brief" (…). In this communication, CAS also informed that the suspension of the deadline for presenting the appeal brief was immediately lifted on that date. Thus, the club on that date had 10 (ten) days to present its "appeal brief", that is, it must do so until 8.01.2024, Monday. But the club only presented the "appeal brief" on 11.01.24, that is, it exceeded the deadline for presenting it.

The appeal brief was placed in e-filling after the deadline, which should determine that CAS considers it untimely and determines the immediate rejection of the appeal. Apoel presented its appeal brief after the deadline, when CAS only suspended the deadline for

submission for 7 days and granted an additional deadline for presenting the "appeal brief" of 10 days. The Appeal Brief was clearly presented after the deadline, and therefore must be rejected outright, with the appropriate legal consequences. (…) The appeal shall be deemed withdrawn."

As per the Respondent's third request for relief:

"In the Appellant's REQUEST FOR RELIEF of the Statement of Appeal dated on 12.12.2023 it was never said that the appeal intended for the TAS to change the DRC FIFA sentence in the aspect of "Order the Respondent to pay the Appellant a contractual penalty of EUR 50,000 plus legal interest from 21/04/2022 until full settlement. This request was not initially made in the Statement for Relief, the CAS cannot consider it. The Appellant's REQUEST FOR RELIEF of the Statement of Appeal dated on 12.12.2023 limits the intervention of the CAS, which cannot assess the request subsequently introduced by the appellant in the Appeal Relief dated on 11.01.2024 of "Order the Respondent to pay the Appellant a contractual penalty of EUR 50,000 plus legal interest from 21/04/2022 until full settlement". If there is a divergence between the two, the Appellant's REQUEST FOR RELIEF of the Statement of Appeal dated on 12.12.2023 must prevail."

As per the Respondent's fourth requests for relief:

"The player did not deceive the club. When he signed for the club on 19th August 2021, the player was very convinced that he had just cause to terminate his contract with the Chinese club. If the player was not convinced, obviously he would not have unilaterally terminated the contract, considering the serious consequences that could result, as unfortunately they ended up resulting. (…) The player was never even notified by CAS that the appeal could be rejected, nor did his lawyer at the time convey this information to him, so the player and his representative, Mr. Paulo Ricardo, always negotiated with Apoel in total good faith and without intending to defraud you. The player does not even know if his lawyer was notified of the problem with the appeal. […]" Even though Apoel, at the time of negotiation and conclusion of the revocation agreement, was unaware that the player's appeal to the CAS presented a formal defect, which would later lead to its rejection, this circumstance did not harm Apoel in any way, who was safe due to the appeal it itself had filed with the CAS. The lack of knowledge about that vice did not harm Apoel's expectations in any way. Apoel later withdrew the appeal it had filed with CAS when it became aware that the player had paid all the debt to the Chinese club […]".

As per the Respondent's fifth, sixth request for relief:

"The player and club negotiated a termination agreement under which Apoel assumed the player's debt of 200,000 Euros, as well as 50% of the debt owed to the Chinese club. The agreement was signed in the locker room before the European competition match on 28th July 2022 […]. On that occasion, the negotiated agreement and duplicates were given to the player to sign, which the player did, trusting the club's representative. However, it turned out that one of the duplicates that was presented to the player to sign had a different version: it had the wording of the agreement that Apoel delivered to the

Cyprus federation and, which is the copy that it was attached to the DRC FIFA case, but which in fact had not been negotiated by the parties and did not represent the player's wishes. This duplicate had another number under which the player's salary credit to the club was offset by the amount that the club allegedly intended for the transfer to the Saudi club […]. The player was unable to prove to DRC FIFA that the agreement he added to the case was the real one, and Apoel's was not […]. Apoel also understands that clauses 4 and 6 of the revocation agreement should be removed. If, absurdly, the CAS considered that clauses 4 and 6 of the agreement should be withdrawn, the agreement would lose all its negotiating balance and would no longer make any sense. The existence of the aforementioned clauses in the agreement was essential in forming the player's willingness to sign it. In fact, Apoel's recognition of the assumption of responsibility for half of the debt owed to the Chinese club was an essential condition for the agreement reached. Without it, the entire agreement falls apart, and in this case, as a result, CAS must recognize the entire contract as voidable, namely that the player has the right to receive the amounts that the club owed him as wages (200,000.00 €), as confessed in clause 2 of the revocation agreement dated July 29, 2022."

As per the Respondent's seventh request for relief:

"According to the Article 21, no. 2 of the FIFA Procedural-Rules Governing-the-Football-Tribunal, any counterclaim must assume exactly the same formal requirements as that of the claim. According that Article 21, no. 2, the counterclaim must have the same form as the claim. In other words, it must follow Article 18, no. 1 of the FIFA Procedural-Rules Governing-the-Football-Tribunal. But Apoel's counterclaim did not comply with those demands in the slightest and should therefore had to be rejected outright. For example, it did not, in particular, present a statement of claim, setting out full written arguments in fact and law, the full body of evidence, and requests for relief. In addition to the other mandatory requirements that Article 18, no. 2 of Procedural-Rules-Governing-the-Football-Court requires. Apoel's counterclaim did not meet the required factual and legal requirements, meaning FIFA could not have decided differently than it did. FIFA's decision on this matter must obviously be maintained."

97. Finally, as for the relevance of Advocate General Szpunar's opinion, it should not according to the Respondent have any consequences on the present matter. This case from which the joint and several liability of the Parties arose, came from a FIFA decision that had already become final and unappealable and involved a Chinese club, and which could no longer be changed and whose effects had already been produced.

98. Moreover, the Respondent submitted, *inter alia*, that the European Court of Justice could not regulate "something that took place in China", and that the FIFA rules questioned by the Advocate General did not discriminate against the Appellant compared to other world clubs. They apply to all of them. Finally, the Respondent maintained that the questions invoked by the Advocate General were not raised by the parties in the Appealed Decision nor in this appeal, so the CAS cannot consider them now. The CAS must only verify the conformity of FIFA's decision with the evidence in

the file and with what has been alleged, and not make a new judgment. The opinion of the Advocate General is not legally binding.

99. Once the CJEU-decision had been issued, the Respondent reiterated that the Diarra decision did not have any influence on the outcome of these CAS proceeding, concluding, *inter alia*, "*that the Diarra decision is not legally binding. Only the Belgium Court decision will have legal value when it is final and binding. When it will happen, it will be valid for the case in which the questions were disposed of (case of the player BZ / FIFA), and, at most, it will be valid for future cases, not for those that have already become final. If the CAS were to apply Diarra decision effects to the present case, CAS would be violating the juridical stability as well as the legitimate expectations of the Respondent when he made the revocation agreement with Apoel and harming his legitimate rights to be reimbursed for 50% of the compensation he paid to the Chinese club Changchun Yatai FC. It is reaffirmed that Apoel's obligation arises from an agreement that it freely entered into with the player on 29th July 2022. Terms in which the Diarra decision cannot be enforced by CAS in this case.*".

V. JURISDICTION

100. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the 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. […]"

101. The Appellant relies on Article 57 of the Statutes of FIFA as conferring jurisdiction on the CAS. The jurisdiction of the CAS is not contested by the Respondent in its Answer. Although the Respondent did not sign the Order of Procedure, it was confirmed by counsel at the hearing that the Respondent does not contest the jurisdiction of CAS. Thus, the Sole Arbitrator rules that CAS has jurisdiction in the matter at hand.

VI. APPLICABLE LAW

102. Article R58 of the Code provides as follows:

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

103. The Sole Arbitrator notes that the applicable rules of law in adjudicating this matter shall be decided pursuant to Article R58 of the Code. The Termination Agreement is silent on the question of choice of law. The Appellant has submitted that the Sole

Arbitrator must decide the present dispute in accordance with primarily, the FIFA Statutes and Regulations, in particular the FIFA Regulations on the Status and Transfer of Players (FIFA RSTP), March 2023 edition, and, additionally, Swiss law. The Respondent has not disputed Appellant on the issue of the applicable law in his Answer.

104. Hence, the Sole Arbitrator agrees and shall decide the dispute accordingly.

VII. ADMISSIBILITY OF THE APPEAL AND THE APPEAL BRIEF

105. Article R49 of the 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. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties."*

106. According to Article 57 par. 1 of the FIFA Statutes, a decision made by the FIFA DRC may be appealed against before the CAS within 21 days of receipt of the notification of the decision. Thus, this deadline for filing an appeal supersedes the rule in Article R49 of the Code, since Article 57 par 1 of the FIFA Statutes takes precedence in this football-related matter, although the deadline would have been the same according to the CAS rules.

107. The Appealed Decision with grounds was notified by FIFA to the Parties on 22 November 2023.

108. The Statement of Appeal was filed via email and e-filing with the CAS Court Office on 12 December 2023. Hence, the Sole Arbitrator rules that the appeal filed by the Appellant was timely within the 21-days deadline pursuant to Article 57 par 1 of the FIFA Statutes.

109. In his second request for relief the Respondent has claimed that the Appellant's Appeal Brief was filed too late and that the case should therefore be dismissed.

110. Article R51 of the Code provides as follows:

"Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely. Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief. The appeal shall be deemed to have been withdrawn if the Appellant fails to meet such time limit. In its written submissions, the Appellant shall specify the

name(s) of any witnesses, including a brief summary of their expected testimony, and the name(s) of any experts, stating their area of expertise, it intends to call and state any other evidentiary measure which it requests. The witness statements, if any, shall be filed together with the appeal brief, unless the President of the Panel decides otherwise."

111. As stated in para. 107 above, the grounds of the Appealed Decision were notified on 22 November 2023. Accordingly, the 21-day deadline to file the Appellant's Statement of Appeal expired on 13 December 2023. The deadline to file the Appeal Brief pursuant to R51 of the Code was therefore due to expire 10 days later, i.e. on 23 December 2023.

112. The deadline was suspended on 22 December 2023, i.e. with 2 days left of the said 10-days deadline (22 and 23 December). The suspension was lifted by the CAS Court Office on 28 December 2023.

113. Hence, in the opinion of the Sole Arbitrator, at the time the suspension was lifted there were 2 days left of the original deadline, which should be added to the 10-day extension which was automatically granted by the CAS Director General, and which should then be added to the additional 10-day extension which was granted by the Division President, i.e. an extension of 22 days in total.

114. According to the calculation of the Sole Arbitration, these extensions due to the suspension granted would then have given the Appellant until 19 January 2024 to file its Appeal Brief on time pursuant to Article R51 of the Code.

115. The Appeal Brief was filed by the Appellant on 11 January 2024, and therefore well within the deadline.

116. The Respondent's second request for relief concerning the admissibility of the Appeal Brief is hereby dismissed.

VIII. ADMISSIBILITY OF THE APPELLANT'S SECOND REQUEST OF RELIEF

117. Article R56 par. 1 of the Code provides as follows:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer."

118. The Respondent has in his third request for relief made an objection against the Appellant's second request for relief, which states: "O*rder the Respondent to pay the Appellant a contractual penalty of EUR 50,000 plus legal interest from 21/04/2022 until full settlement.*"

119. This request was not made in the Statement of Appeal, but first brought forward by the Appellant in the Appeal Brief. For that reason, the Respondent submits that CAS, or the

Sole Arbitrator, cannot consider this prayer, as it should have made in the Statement of Appeal.

120. As stated in the above wording of Article R56 of the Code, the Appellant is not allowed to "*supplement or amend [its] requests …. after the submission of the appeal brief…*" (emphasis added). However, this stipulation thus *allows the Appellant to amend his requests in the appeal brief without permission* from the President of the Panel, or according to the Parties' agreement hereto. Hence, the Appellant's second request for relief made in the Appeal Brief is admissible in these CAS proceedings pursuant to Article R56 of the Code, and the Respondent's third request of relief is hereby dismissed.

IX. MERITS

121. Keeping in mind the submissions of the Parties, the Sole Arbitrator considers that in deciding the merits of this matter, the following issues need to be addressed:

A. Which version of the Termination Agreement is valid and binding on the Parties, and is there any evidence on file in these CAS proceedings to suggest that fraud has been committed by the Appellant in connection with the signing and execution of this agreement?

B. In case the version of the Termination Agreement put forward by the Appellant is deemed valid and binding on the Parties, has the alleged fraudulent behaviour of the Respondent by way of not informing the Appellant of the rejection of his appeal to the CAS any significance on the Parties' legal obligations towards each other?

C. Has the Appellant maintained the right to demand a contractual penalty of the Respondent of EUR 50,000 as stipulated in the Guarantee Agreement?

D. Has the outcome in the European Court of Justice's judgment of 4 October 2024 in the so-called Diarra-case (C-650) any influence on the Appellant's requests of relief in this matter?

A. Which version of the Termination Agreement is valid and binding on the Parties, and is there any evidence on file in these CAS proceedings to suggest that fraud has been committed by the Appellant in connection with the signing and execution of this agreement?

122. The scope of the Sole Arbitrator's review in this matter is based on Article R57 of the Code, giving the Sole Arbitrator "full power to review the facts and the law". This so-called "de novo" review has been characterized by several previous CAS panels as "basically unrestricted" (see *CAS 2025/A/3896 Trindade v. Club Atlético de Madrid*). The Sole Arbitrator is of the opinion that he may therefore re-hear the matter afresh, and take into consideration new evidence, which has not been previously heard or taken into consideration when the Appealed Decision was made by the FIFA DRC. Accordingly,

the Sole Arbitrator deems himself able to hear new evidence and witnesses on this matter, which has been brought forward now during these CAS proceedings.

123. Against this background, the Sole Arbitrator has taken the new witness statements of the agent Mr. Paulo Ricardo de Mello and the Respondent's wife Ms. Carina Carixto de Souza into consideration in this "de novo" hearing of the case. However, the Sole Arbitrator has at the same time noted that the Respondent has failed to produce any written evidence to rebut the assumption that the version of the Termination Agreement that was part of the FIFA file was the *only original version*, which has been signed by both Parties on 29 July 2023. The witness statements of the agent Mr. Paulo Ricardo de Mello and the Respondent's wife Ms. Carina Carixto de Souza are not sufficient by themselves to lift the Respondent's burden of proof that this version has either been fraudulently redacted or that a different version (without the provision about setting-off the debt) had in fact been presented to the Player for signature.

124. The Sole Arbitrator is thus persuaded by the legal analysis made by the FIFA DRC in the Appealed Decision and concurs fully herewith. It may be that the Player could have terminated his contract with the Appellant with just cause, as the Club had not paid his salaries on time. But such a dispute would – most likely – have resulted in the collapse of the Player's plans to transfer to the Saudi Arabian club, and the Sole Arbitrator finds it most plausible that, due to his financial situation, the Player and his advisers were not willing to risk the opportunity of signing a much more lucrative contract here and now to slip away, compared with the prospects of a future salary dispute with the Club that had severe financial difficulties.

125. In this regard, the Sole Arbitrator also concurs with the majority of the FIFA DRC in the Appealed Decision that "*reciprocal concessions of equal value*" had been established in that the Player gave up his claim of EUR 200,000 in unpaid salaries against the Club's releasing him to sign on the same day with the Saudi Arabian club by way of setting-off the two equal amounts against each other as it had been done in para. 3 in the Termination Agreement. Moreover, the Sole Arbitrator notes that the Respondent has not made any separate claims/counterclaims as for the payment of the unpaid salary amount during these CAS proceedings.

126. Thus, the Sole Arbitrator considers the version of the Termination Agreement including this so-called "*reciprocal concessions of equal value*" proposition in para. 3 to be the original version, which has been signed by both Parties without reservations on 29 July 2023, and hence forms the original, valid, and binding contract.

B. In case the version of the Termination Agreement put forward by the Appellant is deemed valid and binding on the Parties, has the alleged fraudulent behaviour of the Respondent by way of not informing the Appellant of the rejection of his appeal to the CAS any significance on the Parties' legal obligations towards each other?

127. Having established that the version of the Termination Agreement that the Appellant has put forward during the proceedings at FIFA and the CAS is deemed both valid and binding on the Parties, the Sole Arbitrator points to fact that this version contained the following provision in para. 4:

"4. If CAS confirms the FIFA decision, or even if it reduces it and as result the Parties will remain liable to pay compensation to the Chinese club, both Parties agree that this compensation will be paid by them by ½."

128. Based on the evidence on file and the statements submitted by the Parties and the witnesses at the hearing, the Sole Arbitrator finds that this provision formed a compromise between the Parties, as they decided among themselves to split any compensation payable to the Chinese club 50/50. To understand the rationale behind this compromise, it is, in the opinion of the Sole Arbitrator, very important to consider the confirmation, which the Parties received on the same day the agreement was signed, and which became part of the recital under the letter j.:

"It was confirmed today by CAS that the Chinese club did not file any appeal requesting a higher compensation and therefore the compensation awarded in its favour by the FIFA DRC can no longer be increased."

129. This confirmation meant for both Parties that the "worst case scenario" resulting from any CAS award would be damages equal to what had already been awarded the Chinese club at the FIFA level, i.e. a total EUR 200,000, which again meant an amount of EUR 100,000 for each party to pay. From the perspective of both Parties, and although the Chinese club, due to the joint and several liability foreseen in art. 17 para. 2 FIFA RTSP would be able to claim a maximum amount of EUR 200,000 from either party, there would – at least – be an agreed recourse of half this amount, i.e. a maximum amount of EUR 100,000, towards the other party.

130. Having the certainty that the damage amount could not exceed EUR 200,000, and that each Party *inter partes* in accordance with para. 4 would only bear half of any actual damages awarded, the Sole Arbitrator puts great emphasis on the fact that the Parties also agreed to settle all claims and/or disputes that might arise between them due to prior agreements. This accord was stipulated in paras. 5 and 6 in the Termination Agreement:

"5. The Parties hereby declare that they have no future claim whatsoever against each other for the termination of the employment relationship between them and further declares that the present agreement fully settles all differences between the parties.

6. The Parties agree that the Guarantee Agreement dated 13/08/2021 signed between them is hereby mutually terminated and of no longer legal validity or enforcement and no longer imposes any contractual obligations on the Player."

131. In this context, the Sole Arbitrator finds that para. 4 should therefore not be regarded in isolation but viewed as part of a settlement of the totality of all claims and potential disputes between the Parties. This recognition is important, since it reflects the Parties' over-all desire to "close the book" on their relationship and move forward on settled terms after 29 July 2023.

132. One of the main arguments that the Appellant has put forward during these proceedings for not being liable as per para. 4 to pay half of the damages awarded to the Chinese

club, has been the allegation that the Respondent deliberately did not inform the Appellant of the CAS rejection of his appeal before the Termination Agreement was signed. The Appellant submits in this regard that "*the fact whether or not an appeal was in place, was a fundamental fact. Had that fact not existed, the Appellant would never [have] sign[ed] the Termination Agreement […]".*

133. For several reasons, the Sole Arbitrator fails to understand the legal relevance of this so-called "fundamental fact" argument in relation to the Appellant's obligation to pay half of the damages awarded to the Chinese club. First, the Sole Arbitrator finds that the language of the Termination Agreement, or paragraph 4 itself, is not sufficiently strong or clear enough to conclude that the appeal filed by the Player himself constituted some form of *legal precondition* for the Club's assumed liability, i.e. that this was a fundamental fact for the entire agreement's existence. The Appellant's above-stated submission is not supported by any of the correspondence between the Parties around that time, and such a conclusion can neither, directly nor indirectly, be drawn from any part of the Termination Agreement, including the recitals.

134. Secondly, the Sole Arbitrator notes that the Termination Agreement has no mentioning whatsoever of the fact that the Club had already on 18 July 2022 filed its *own* appeal with the CAS. This appeal must indeed be regarded as an important piece of information, as the Appellant at the time of the signing of the Termination Agreement thus could control, if appeal proceedings should take place at the CAS, regardless of the actions or omissions of the Respondent.

135. However, on 22 August 2022, the Club voluntarily withdrew its appeal motivating the decision as follows: "*This is because, as informed by FIFA last week, the Second Respondent has fully complied with and settled the challenged FIFA DRC decision. As a result, there exists no decision enforceable against our club today and the present appeal is of no object anymore. Consequently, our club has no other option than to withdraw the appeal.*"

136. The Sole Arbitrator disagrees with the explanation rendered in the Appellant's withdrawal letter to the CAS, as it must appear evident from a legal standpoint that the Appellant's obligation in para. 4 of the Termination Agreement would not simply disappear, because the Respondent choose to fulfil the total payment obligation towards the Chinese club. In case the Appellant felt that it was no longer bound by its financial obligations in the Termination Agreement, the Club could for example have made a prayer during the ongoing CAS proceedings, now aimed against the Respondent, that he would have no recourse against the Appellant and that the principle of dividing the damages in half, could no longer apply once the Appellant had decided to pay the full amount on his own. But the Appellant choose not to do so, and instead withdraw its appeal voluntarily.

137. The Sole Arbitrator is neither convinced that the Respondent knew himself that his appeal filed on 18 July 2022 with the CAS against the First Decision contained serious formal flaws that later would lead to the dismissal of the appeal, as the letter from the CAS Court Office to this effect was not sent to his lawyer, Mr. Duarte before 2 August 2023 – after the signing of the Termination Agreement on 29 July 2022.

138. However, the legal significance of the CAS' dismissal of the Respondent's appeal (when the Appellant had filed its own appeal in the same case) and the Respondent's potential knowledge hereof has not been sufficiently clarified by the Appellant as how this fact would constitute "fraud" in any legal sense of the word under Swiss law. There are simply no evidentiary grounds to conclude that the Respondent should have committed "fraud" or behaved negligently towards the Appellant by not disclosing that the appeal had not been entertained. Based on the evidence at hand, it seems more likely that the former lawyer of the Respondent, Mr. Duarte committed a serious fault by not providing CAS with the correct documents on time, and that the Respondent was only informed hereof after the signing of the Termination Agreement.

139. But it remains a solid and undeniable fact in this case that the Appellant assumed the legal responsibility to pay half of the damages to the Chinese club in para. 4 of the Termination Agreement as part of an over-all evaluation of the strengths and weaknesses in the legal relationship of the Parties and the onus of establishing that the claimed circumstances in which a timely appeal to the CAS was not made or disclosed by the Respondent would release the Appellant of his obligations, rests with the Appellant. It is the firm opinion of the Sole Arbitrator that the Appellant has not been able to provide any such proof, and for that reason its first request for relief must be dismissed.

C. Has the Appellant maintained the right to demand a contractual penalty of the Respondent of EUR 50.000 as stipulated in the Guarantee Agreement?

140. Based on the conclusion above regarding the second issue of the merits, it follows that the Appellant by signing the Termination Agreement has also relinquished any rights to demand a contractual penalty of EUR 50,000 from the Respondent.

141. Accordingly, the Parties clearly and irrevocably in para. 6 in the Termination Agreement agreed that the Guarantee Agreement of 13 August 2021 was "*hereby mutually terminated and of no longer legal validity or enforcement and no longer imposes any contractual obligations on the Player*".

142. The argument that the Appellant has submitted in support of its second request of relief does not pass muster, for the very same reasons as stated above re issue no. 2). The Appellant has not been successful in producing any evidence to suggest that the Respondent has committed fraud or acted in a negligent manner towards the Appellant so that the Termination Agreement, including para. 6, should not be valid and binding on the Appellant. No other acts or omissions of the Respondent would lead to this result either. Thus, the Appellant's second relief for relief is therefore dismissed.

D. Has the outcome in the European Court of Justice's judgment of 4 October 2024 in the so-called Diarra-case (C-650) any influence on the Appellant's requests of relief in this matter?

143. On several occasions during these CAS proceedings the Sole Arbitrator has invited the Parties to submit their views on whether the pending co-called "Diarra-case", and later the European Court of Justice's judgment of 4 October 2024 in that case (C-650) would

have any influence on this case at hand, and in particular on the evaluation of the Appellant's requests for relief.

144. The facts of this case will show that the Appellant in the First Decision was ordered to pay the awarded damages of EUR 200,000 jointly and severally with the Player. It is also clear from the First Decision that the Appellant's liability only stemmed from the wording of Article 17 (2) of the FIFA RSTP, and not because the Appellant in any way had induced the Player to breach his contract with Chinese club without just cause.

145. Together with the joint and several liability to pay the awarded damages, the Appellant was also banned from registering any new players, either nationally or internationally, up until the full amount of damages, incl. interests, was paid. The maximum duration of the Appellant's ban in the Appealed Decision was set at up to three entire and consecutive registration periods.

146. Although the full implications of the Diarra judgement are not known yet, and may not be known until the final judgment before the Belgian courts has been passed in the matter, it is, however, a noteworthy fact that FIFA on 25 November 2024 in light of the Diarra judgment as well as the currently ongoing Global Dialogue initiated by FIFA to conduct a worldwide consultation regarding possible changes of the FIFA RSTP, has decided with immediate effect to temporarily *suspend* any disciplinary measures against players, coaches and clubs for violation of Article 17 of the FIFA RSTP.

147. Only one CAS case has so far dealt briefly with the implication of the Diarra-case on matters that occurred before the judgment was passed on 4 October 2024. In *CAS 2023/A/9670 LOSC Lille v. Sporting Club de Portugal & Fédération Internationale de Football Association (FIFA) & CAS 2023/A/9671 Sporting Club de Portugal v. LOSC Lille*, the Panel on 13 November 2024 wrote the following passage concerning the judgment in para. 139 in the Award:

"Finally, the Panel notes that following the hearing, by letter dated 9 October 2024, LOSC requested from the Panel to account for the decision issued by the CJEU (Court of Justice of the European Union) C-650/22, since in its view it impacted on the resolution of the present dispute. By letters dated 4 November 2024, both Sporting as well as FIFA effectively posited that the Panel should disregard the request submitted by LOSC. It is the Panel's view that, as this dispute is far from being completed, it can have no bearing on the outcome of the present dispute. The Panel so ordered."

148. Opposite the circumstances in the above cited CAS case, the Sole Arbitrator has in this matter both before, during and after the hearing on 9 October 2024 invited the Parties to make their views known as to the possible influence of the Diarra judgment on the outcome of this case. On several occasions, latest in his brief of 24 October 2024, the Respondent has refuted that the Diarra judgment should have any influence on this case. However, the Appellant, who was directly affected by the joint and several liability embedded in Article 17 (2) of the FIFA RSTP, has both before the FIFA DRC and during these CAS proceedings remained silent on this issue.

149. When the Appellant has not once raised this argument in support of its requests for relief, despite several opportunities to do so, the Sole Arbitrator finds that he according to the long-standing CAS procedural principle of "non ultra petita" will be unable to take the outcome of the Diarra judgment in consideration when adjudicating this matter. As the Sole Arbitrator has established in paras 127ff, the Parties reached a valid and binding agreement including paragraph 4, which split the financial risks 50/50 inter partes vis-à-vis the claims from Yatai. It is based on the existence of this agreement that the Sole Arbitrator has dismissed the appeal and confirmed the Appealed Decision. In a proceeding before the CAS, it would thus be for the Appellant, and not the Sole Arbitrator, to articulate and submit precise legal arguments to the effect that the Diarra judgment would somehow override or invalidate this otherwise legally binding paragraph 4 in the Termination Agreement. Accordingly, the decisions rendered in this case will not be affected whatsoever of the outcome of the Diarra case, as such arguments have never been submitted by the Appellant.

X. CONCLUSION

150. In conclusion and based on the above considerations, the Sole Arbitrator decides to reject the Appellant's appeal in its entirety and to confirm the Appealed Decision.

151. Accordingly, any and all further requests or prayers for relief shall be dismissed.

XI. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club APOEL Nicosia on 13 December 2023 against the decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 21 September 2023 is dismissed.

2. The decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 21 September 2023 is confirmed.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 26 February 2025

THE COURT OF ARBITRATION FOR SPORT

Lars Halgreen
Sole Arbitrator