TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2024/A/10507 Persib Bandung v. Luis Milla

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr Rui Botica Santos, Attorney-at-law, Lisbon, Portugal
Arbitrators:	Mr Wouter Lambrecht, Attorney-at-law, Geneva, Switzerland
	Mr Romano F. Subiotto KC, Avocat in, Brussels, Belgium, and Solicitor-Avocat in London, United Kingdom

in the arbitration between

PT. Persib Bandung Bermartabat, Bandung, Indonesia

Represented by Dr Vitus Derungs, Attorney-at-law in Zurich, Switzerland

Appellant

and

Mr Luis Milla Aspas, Barcelona, Spain

Represented by Mr Toni Garcia, Attorney-at-law at Landaberea & Abogados, in Barcelona, Spain

Respondent

I. PARTIES

1. PT. Persib Bandung Bermartabat (the "Appellant", "Persib" or the "Club") is an Indonesian professional football club with its registered head office in Bandung, currently competing in the Indonesian BRI Liga 1. It is affiliated to the Football Association of Indonesia (the "PSSI"), which is a member association of the Fédération Internationale de Football Association (the "FIFA"). FIFA is the international governing body of football, and it exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials, and players belonging to its affiliates. FIFA is an association under Articles 60 et seq. of the Swiss Civil Code (the "SCC") with headquarters in Zurich, Switzerland.

2. Mr Luis Milla Aspas (the "Respondent" or the "Coach") is a Spanish professional football coach born on 12 March 1966. The Coach trained the first team of the Club from 15 August 2022 to 14 July 2023.

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

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. This factual background information is given for the sole purpose of providing a synopsis of the matter in dispute. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award (the "Award") only to the submissions and evidence it considers necessary to explain its reasoning.

A. Introduction

5. This appeal (the "Appeal") before the Court of Arbitration for Sport (the "CAS") challenges the decision adopted by the FIFA Football Tribunal Players Status Chamber (the "FIFA PSC") on 20 February 2024, with grounds communicated to the Parties on 26 March 2024, which rejected Persib's claim and, in light of the counter-claim presented by the Coach, ordered Persib to pay to the Coach the total amount of EUR 18,064.51 as outstanding remuneration, plus 5% interest *p.a* as from 1 August 2023 until the date of effective payment (the "Appealed Decision" or the "FIFA PSC Decision").

B. The employment relationship between the Club and the Coach

6. On 20 August 2022, the Club and the Coach signed an employment contract, valid from 15 August 2022 until 31 March 2024 (the "Employment Contract").

7. The relevant parts of the Employment Contract read as follows:

"(...)

Article 1
Period and Extension

1. *This Contract is valid from 15 August 2022 to 31 March 2024 ("Term"). (...)*

Article 2
Contract Value and Remuneration Methods

1. *In accordance with the terms and conditions of this Contract, the [Coach] is entitled to receive payment of the total contract value in accordance with the Article 2 paragraph 2 below (hereinafter referred to as the "Contract Value").*

2. *(...) The Contract Value for the Term (...) shall be a monthly salary of EUROS 40.000.- (...) per month (...). The club will pay the salary without any expense, directly into the Spanish account (...).*

3. *Payment of monthly salary as provided in paragraph 2 above will be paid by the [Club] to the [Coach] by the 30th day of each month to the [Coach's] account (...).*

(...)

6. *All of the [Coach's] income received from the [Club] including monthly salary, match fees, bonus, etc (...) will be calculated with tax payment under the applicable taxation regulation as the [Club's] obligation to the state of Indonesia.*

(...)

Article 12
Violation

1. *Where the [Coach] carries out any acts in violation of his responsibilities as the [Coach] and/or violates any provisions stipulated under this Contract or specific rules issued by the [Club] beyond the Contract, the [Club] will impose sanction pursuant to such violations. The manner and level of the sanctions imposed are based on the [Club's] discretion as long as they are sanctions with just Cause, which are incontestable and the [Coach] shall adhere and comply with the sanctions.*

2. *Where the [Coach] commits violation as provided in paragraph 1 above, the [Club] shall issue warning letter and giving reasonable period to the [Coach] to remedy such violation. In the event the [Coach] commits the same violation or has not remedied such violation within the period given by the [Club], the [Club] shall issue second warning letter as the final warning.*

3. *In the event that a second warning letter has been filed and the [Coach] commits the same violation or has not remedied such violation within the period given under the second warning letter, the [Club] is entitled to terminate this Contract.*

Article 13
Sanction

The forms of sanctions which may be imposed by the [Club] to the [Coach] due to his violations of the regulations as mentioned in Article 13 are as follows:

1. *Where the [Coach] is absent from the training program without having prior written approval from the [Club], the [Coach] will be imposed with penalty in form of monthly salary-deduction in the amount of 5% (...) per day multiplied by the total day(s) in which the [Coach] is absent from participating in the scheduled training sessions.*

(...)

3. *Where the [Coach] does not take part in any match/competition without prior written approval from the [Club], the [Coach] will be imposed with penalty in form of monthly salary-deduction in the amount of 50% (...) multiplied by the total matches in which the [Coach] should participate.*

(...)

6. *Where the [Coach] does not return to the [Club] whether during the match preparation or post-match, the [Coach] will be imposed with penalty in the form of monthly salary-deduction in the amount of 10% (...) multiplied by the total days of absence."*

(...)

Article 16
Unilateral Contract Termination

1. *Where the [Coach] unilaterally terminates this Contract without any reasons or due to any reasons unacceptable to the [Club], the [Club] is entitled for indemnification of a total 100% (one hundred percent) of the Contract's Value by the [Coach].*

(...)

3. *If this Contract is prematurely terminated by the [Club] without just cause or by the [Coach] for just cause, the parties agree that the compensation shall be equal to the residual value of the contract regardless of whether the [Coach] signs any new contract following the termination. The [Club] accepts and undertakes in advance that it will not demand a reduction from this compensation amount.*

4. *Where the [Club] terminates the Contract in accordance with provisions under Article 13 paragraphs (...) and 3, the [Club] is entitled to stop all payments of the Contract Value and provision of facilities under this Contract and the [Coach] shall pay to the [Club], including but not limited to all losses suffered by the [Club] and costs incurred by the [Club] under this Contract.*

(…)

Article 21
Governing Law, Dispute and Dispute Settlement

1. *This Contract is made pursuant to and subject to the prevailing laws and regulations of the Republic of Indonesia. However, it is the [Club] and [Coach] will to expressly submit any disputes related to the present Contract to the competent judicial bodies of FIFA in first instance and in appeal to the Court of Arbitration for Sport (CAS). Both proceedings will follow FIFA regulations for the merits of the case, as well as its own rules about the procedure enforce at the time of any possible dispute. The language of all disputes and communications between the [Club] and [Coach] shall be English.*

(…)

Article 24
Final Provisions

All matters which have not been stipulated in this Contract, whether amendments or additions to this Contract, if deemed necessary by parties, will be provided in an Addendum Letter or Amendment to this Contract which shall constitute as an integral part of and must be read together with this Contract.

(…)"

8. On 23 August 2022, the Club signed an employment contract with Messrs Carlos Grande Rodriguez and Manuel Perez Cascallana de Roman, the assistant coaches (the "Assistant Coaches"). The Assistant Coaches' employment agreements were also valid until 31 March 2024 and stipulated a monthly salary of EUR 6,500 each.

C. The termination of the Employment Contract

9. On 12 July 2023, the Parties had a video conference meeting, in which the Coach expressed his desire and need to leave the Club after the match on 14 July 2023, due to his mother's illness (severe depression), in addition to her age-related health issues. The Coach alleges that the Director of the Club, Mr Teddy Tjahjono, the Commercial Director of the Club, and Ms Gabriella Witdarmono, also attended this meeting, something which was not contradicted by the Club. The Coach also alleges that, at this meeting, the Club authorized him to leave the Club and that the Club never mentioned that his departure would generate an obligation to pay any compensation. The Club disputes this allegation.

10. On 14 July 2023, the Coach had a WhatsApp conversation with Ms Witdarmono, who assured the Coach that she would handle his flight arrangement back to Spain. It was Ms Witdarmono who later sent the Coach the flight tickets and the itinerary.

11. On 14 July 2023, the Club played against Dewa United in BRI Liga 1. At this moment, the Coach alleged that everyone at the Club knew it would be his last game as coach and that he had said goodbye to the whole team, staff and the fans.

12. On 15 July 2023, the Club made three social media posts thanking the Coach for his work for the Club.

The first post read "Hatur Nuhun" which means "Thank you" in English.

The second post featured an official statement of the Coach which read "*The match against Dewa United last night was Luis Milla Aspas' last moment together with #PERSIB Together with #PERSIB Luis Milla has managed to record 17 wins, 7 draws and 6 losses. Furthermore, PERSIB appointed Yaya Sunarya to be the temporary coach assisted by Bayu Eka Sari and Luizinho Passos. Thank you, Luis Milla. Adios, nos vemos pronto*" (Free English Translations provided by the Respondent and not contested by the Appellant).

The third post contained a photo of the Coach and read as follows: "*This is a difficult day for me because today I have to leave the PERSIB club for personal reasons. For me, the time and journey that has been passed with PERSIB has been passed well, full of love and love from all aspects of the club. Thank you to all my friends and people around me who have been patient and given love and affection and support until today. Whatever has been passed with the players has also been passed well, only this is a personal matter, a difficult topic that must be solved by me. Luis Milla.*" (Free English Translations provided by the Respondent and not contested by the Appellant).

13. On 15 July 2023, before the farewell press conference, the Coach recorded an interview with Ms Witdarmono at the Club's premises. The interview was part of a video tribute to the Coach later published by the Club.

14. On 15 July 2023 (at 2pm), the Coach's farewell press conference took place. In addition to the Coach, the Club's Director, Mr Tjahjono, the Club's Manager, Mr Umuh Muchtar, and the Club's Commercial Director, Ms Witdarmono, were also present. During the press conference, the Club's Director, Mr Tjahjono, acknowledged that the Club had already started the process for a replacement for the Coach.

15. On 16 July 2023, the Coach departed for Spain using the flight tickets provided by the Club.

16. On 19 July 2023, following the alleged unauthorized absence of the Coach, the Club sent a letter to the Coach requesting him to return and resume his duties by 22 July 2023 (the "First Notice"). The First Notice reads as follows:

"(...)

On 20 August 2022, we have concluded an employment contract with you as the head coach of our first team valid from 15 August 2022 to 31 March 2024.

On 15 July 2023, after three rounds of the Liga 1 Indonesia season 2023/24 have been played, you suddenly left your contractual position and duties and apparently travelled to Spain. Since then, you are absent from your position without authorization and not rendering your contractually agreed services anymore.

In this respect, we highlight that the Liga 1 Indonesia season 2023/24 is in full motion. The next match of our first team is scheduled to be played already on 22 July 2023.

In view thereof, we request you to immediately return to our club and to resume your duties by 22 July 2023 at the latest. Should you not return to our club until the said date, we will have no other choice but to take into consideration further legal measures including a unilateral termination of your employment contract with just cause and a legal claim against you for damage compensation.

(…)"

17. The Coach did not reply to the First Notice.

18. On 21 July 2023, the Club published a video tribute to the Coach on YouTube, which included images of the Coach saying goodbye to the Club's players and staff during the match played on 14 July 2023, as well as interviews, including the one recorded with Ms Witdamoro and the Coach on 15 July 2023 (see above para. 13).

19. On 24 July 2023, the Club sent another communication to the Coach requesting him to return and resume duties by 26 July 2023, failing which they would terminate the Employment Contract (the "Second Notice"). The Second Notice reads as follows:

"(…)

We refer to the above-mentioned matter as well as to our previous letter dated 19 July 2023, by means of which we referred to the fact that you were absent from your position as head coach of our first team without authorization since 15 July 2023, and requested you to immediately return to our club and to resume your duties by 22 July 2023 at the latest. Unfortunately, we have not received any answer from you, and you, and you have not resumed your duties until today.

In view thereof, this is our final request to you to immediately return to our club to resume your duties by 26 July 2023 at the latest. Should you not return to our club until the said date, we will have no other choice but to unilaterally terminate your employment contract with just cause.

(…)."

20. On 26 July 2023, the Club announced on its Facebook page the hiring of Mr Bojan Horak as the new head coach.

21. On the same day, the Coach (through his intermediary) replied by e-mail to the Club as follows:

"Dear Teddy,

In relation to the attached email, sent to Mr. Milla, comment that said communication has greatly surprised us given that there is a verbal agreement between the club and the coach to amicably terminate the employment relationship, without generating any compensation for either party.

Please, we remain at your entire disposal to clarify any doubt in this issue.

(...)."

22. On 27 July 2023, the Club sent to the Coach a notice terminating the Employment Agreement (the "Termination Notice"), which *inter alia* states the following:

"(...)

We refer to the fact that you are absent without authorization from your position as head coach of the first team (...) since 15 July 2023. Moreover, we refer to our letters dated 19 and 24 July 2023, by means of which we requested you to immediately return to [the Club] *and resume your duties by 22 July 2023 respectively 26 July 2023 at the latest, and warned you that in case you should not return to* [the Club] *within such deadline, we will have no other choice but to unilaterally terminate your employment contract with just cause. Finally, we note that you neither returned to* [the Club] *in time despite our afore-mentioned letters requesting you to do so, nor even responded to those letters.*

In view of the above, and considering in particular that the Liga 1 Indonesia season 2023/24 is in full motion and the first team of [the Club] *therefore absolutely needs the leadership and guidance of a head coach, you described behaviour is a blatant violation of* [the Club]*'s confidence, which is to be considered as a breach of contract. In view thereof, the continuation of the employment relationship with you is in good faith unconscionable for* [the Club]. *We therefore inform you that* [the Club] *herewith terminates the employment relationship with you with immediate effect and with just case.*

Finally, please note that in view of the above [the Club] *herewith reserves its right to claim for compensation for breach of contract from you before the competent authorities.*

(...)."

23. On 14 August 2023, the Club claimed from the Coach compensation equivalent to the remaining value of the Employment Contract (eight monthly salaries x EUR 40,000 = EUR 320,000) on the grounds that he had left the Club without authorization and failed to return despite the several requests of the Club.

24. On 24 August 2023, the Coach sent the following response:

"(...)

(…) [W]*e would like to express our categorical disagreement with the account of the facts described in the above correspondence, as they do not conform at all to reality.*

As the Club is well aware, the early termination of Mr. Luis Milla's employment relationship with the Club was agreed upon by both parties, and numerous video evidence, press articles, social media statements, and even witnesses corroborate the preceding. Not only are the facts that give rise to the Club's claim not true, but the Club owes the coach, Mr Luís Milla, the equivalent salary for the days worked in July 2023, which our client reserves his right to claim (…).

Considering all the above, the coach, Mr Luis Milla, will not pay any amount to the Club.

(…)."

25. On 30 August 2023, after they lodged a complaint with FIFA, the Club entered into an agreement with the Assistant Coaches to terminate their respective employment agreements.

D. Proceedings before the FIFA Football Tribunal Players Status Chamber

26. On 13 September 2023, the Club filed a claim against the Coach, before the FIFA PSC, requesting the payment of the following amounts:

(a) EUR 780,000 plus interest of 5% *p.a* as of 27 July 2023;

In the alternative,

(b) EUR 430,000 plus interest of 5% *p.a.* as of 27 July 2023; and

(c) All legal and procedural costs shall be borne by the Coach.

27. On 19 October 2023, the Coach opposed the allegations of the Club and lodged a counterclaim. The Coach argued that he was entitled to receive his pro-rata salary for July 2023 and requested the following:

(a) The Club be ordered to pay to the Coach the amount of EUR 18,666.67 as outstanding salaries, plus 5% interest *p.a* as from its respective due date until date of effective payment;

(b) Impose on the Club the sanction that FIFA deems appropriate in accordance with Article 7 of Annexe 2 RSTP as the Club failed to pay paid the salary for July 2023; and

(c) All legal and procedural costs shall be borne by the Coach.

28. On 20 February 2024, the FIFA PSC issued the Appealed Decision:

"(…)

1. The claim of the [Club] *is rejected.*

2. The claim of the [Coach] *is partially accepted.*
3. The [Club] *must pay to the* [Coach] *the following amount(s):*
- *EUR 18,064.51 as outstanding remuneration plus 5% interest p.a. as from 1 August 2023 until the date of effective payment.*

4. Any further claims (…) are rejected.

(…).”

29. On 26 March 2024, the grounds of the Appealed Decision were notified to the Parties. In essence, the Appealed Decision’s grounds can be summarized as follows:

- Considering the chronology of the events, the Coach failed to provide any documentary evidence proving (1) that he had authorization to be absent from the Club or (2) that a mutual termination agreement was concluded between the Parties.

- The Club failed to respect the *ultima ratio* principle that disciplinary measures should be considered and applied before the termination of an employment agreement. While the Club sent several communications to the Coach, it failed to request the Coach’s return within a reasonable deadline. The FIFA PSC concluded that the deadlines provided by the Club were rather short and that the Club failed to arrange or provide the flight tickets to the Coach to return to Indonesia.

- As a consequence, the FIFA PSC decided that the Club did not have just cause to terminate the Employment Agreement on 27 July 2023 and rejected entirely its claim. FIFA PSC also decided that the Club was liable to pay the Coach’s outstanding *pro-rata* salary of July 2023 (EUR 18,064.51), plus 5% interest p.a. as from 1 August 2023.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 16 April 2024, in accordance with Article R47 of the Code of Sports-related Arbitration edition 2023 (the “CAS Code”), the Appellant filed its Statement of Appeal (the “Statement of Appeal”) with the CAS challenging the Appealed Decision. In its Statement of Appeal, the Appellant nominated Mr Wouter Lambrecht as arbitrator.

31. On 26 April 2024, in accordance with Article R51 of the CAS Code, the Appellant filed the appeal brief (the “Appeal Brief”) with the CAS.

32. On 30 April 2024, the Respondent nominated Mr Romano F. Subiotto KC as arbitrator.

33. On 3 May 2024, in accordance with Articles R52(2) and R41(3) of the CAS Code, FIFA renounced its right to request its possible intervention in the present arbitration proceedings

34. On 4 June 2024, the CAS Court Office informed the Parties that the Panel to decide the Appeal was constituted as follows:

President: Mr Rui Botica Santos, Attorney-at-law, Lisbon, Portugal

Arbitrators: Mr Wouter Lambrect, Attorney-at-law, Barcelona, Spain
Mr Romano Subiotto KC, Attorney-at-law, Brussels, Belgium.

35. On 17 June 2024, within the extended time limit, the Coach submitted his answer (the "Answer").

36. On 18 June 2024, the CAS Court Office acknowledged the Respondent's position that he did not consider a hearing necessary and invited the Appellant to inform whether it prefers a hearing to be held in this matter or, as stated by the Respondent, the Panel can proceed and issue an award based solely on the Parties' written submissions.

37. On 16 July 2024, after consultation with the Parties, the Panel decided to hold a hearing via videoconference. The hearing was scheduled for Monday 9 September 2024 at 9.30 am CET (Swiss time).

38. On 20 August 2024, the CAS Court Office issued the Order of Procedure, which was duly signed by the Parties.

39. On 9 September 2024, a hearing was held by videoconference. The following persons attended the hearing in addition to the Panel and Ms Delphine Deschenaux-Rochat, as Counsel to the CAS:

For the Appellant

- Dr Vitus Derungs – Legal Counsel
- Mr Adhitia Herawan – Sporting Director

For the Respondent

- Mr Toni Garcia – Legal Counsel
- Mr Luís Milla – Respondent
- Ms Cristina Esteban Díaz – Interpreter

40. As a preliminary remark, the Parties were requested to confirm not having any objection to the constitution and composition of the Panel, and they so confirmed.

41. The Parties were given the opportunity to present their case and make their submissions and arguments. Moreover, the Parties were able to interrogate the Respondent, Mr Luís Milla, which attended the hearing and answered with the help of the Interpreter. After the Parties' closing submissions, the hearing was closed, and the Panel reserved its decision to this Award.

42. Before the hearing concluded, the Parties expressly stated that they had no objection to the way that these proceedings have been conducted and that the equal treatment of the Parties and their right to be heard had been respected.

IV. THE PARTIES' SUBMISSIONS

43. The following summary of the Parties' positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant's Submissions

44. In its Appeal Brief the Appellant submits the following prayers and requests the CAS:

"(...)

1) the Appeal be declared admissible;

2) the Appealed Decision be set aside;

3) the Respondent be ordered to pay to the [Club] the amount of EUR 780'000 plus interest of 5% per year as of 27 July 2023 until the date of effective payment;

4) Alternatively, the Respondent be ordered to pay to the [Club] the amount of EUR 430'000 plus interest of 5% per year as of 27 July 2023 until de date of effective payment;

5) the Costs of the Arbitration and the Legal Costs of the Appellant at an amount to be determined by the Appellant at the closing of the proceedings be borne by the Respondent.

(...)."

45. The Appellant advanced the following grounds in support of the Appeal:

i. The departure of the Coach from the Club without authorization

   a. On 12 July 2023, the Coach informed the Club of his decision to leave the Club after the match on 14 July 2023.
   b. The Club did not agree with the Coach's decision but could not physically stop him from leaving the Club.
   c. The Coach took a unilateral decision to leave the Club without any amicable termination agreement and, as such, breached the Employment Contract without just cause.

ii. The termination of the Employment Contract with just cause

   a. The Coach breached the Employment Contract without just cause and, therefore, the Club rightfully terminated the Employment Contract with just cause on 27 July 2023.
   b. The Club disputes that it was obliged at all to summon the Coach to resume his duties. Article 108(1) of the Swiss Code of Obligations (the "SCO")

provides that if an obligor (the Coach in this case) is in default under a bilateral contract, the obligee (the Club in this case) does not need to set an appropriate deadline for subsequent performance: *"… where it is evident from the conduct of the obligor that a time limit would serve no purpose…"*.

c. Given the Coach's behavior, in particular his "direct communication" that he personally decided to leave the Club, the Club could reasonably assume that this decision was final and that he did not intend to return to the Club. Therefore, the Club was legitimated to proceed with the termination of the Employment Contract immediately after his departure and in fact should not even have sent him the notices asking him to resume his duties. Waiting more time would have caused damages to the Club, since the Indonesian First Division was ongoing.
d. In the unlikely event that the Panel finds that the Club was obliged to warn and set a deadline for the Coach to resume his duties, the Club has validly complied with this obligation through the First Notice and Second Notice (jointly referred as to the "Notices"). In the First Notice the Club imposed a time limit of 3-days and in the Second Notice a time limit of 2-days. Between the date of the Coach's departure (15 July 2023) and the Termination Notice, the Club waited 12-days, which was more than enough for the Coach to fly back to Indonesia. Considering that, in the meantime, the Club's first team had to play matches in the Liga 1 Indonesia, the Club could not accept that its first team would stay longer without a head coach.
e. In addition, the FIFA PSC erred when it blamed the Club for failing to provide the Coach with flight tickets to return, as the Employment Contract does not stipulate that the Club must provide flight tickets to the Coach. The Coach was obliged to ensure his return to the Club and bear the corresponding financial costs.

iii. Consequences of the breach of the Employment Contract

a. Article 6, Annex 2 of the Regulations on the Status and Transfer of Players (the "RSTP") provides for the primacy of contractual clauses regarding the calculation of compensation for breach of contract. The subsequent parameters set out in this provision apply only subsidiarily. Any agreement of the contractual parties regarding the calculation for compensation for breach of contract is to be considered first (e.g. CAS 2012/A/2910, para. 79; CAS 2009/A/1880&1881, para. 73; CAS 2008/A/1519&1520, para. 66).
b. In light of the above, Article 16(1) of the Employment Agreement (see para. 7 above) applies to the situation in the present case and mandates that the compensation payable by the Coach should be equal to the total value of the Employment Contract, i.e. EUR 780,000 (19.5 months (corresponding to the duration of the Employment Agreement) x EUR 40,000 – agreed monthly salary).
c. In the unlikely event that the Panel considers Article 16 of the Employment Contract to not be applicable, the compensation for breach of the Employment Contract shall alternatively be determined in accordance with Annexe 2 Article 6 para. 2 lit. d) RSTP, according to which compensation should be

calculated by giving: *"due consideration, in particular, to the remaining remuneration and other benefits due to the coach under the prematurely terminated contract and/or due to the coach under any new contract, the fees and expenses incurred by the former club (amortised over the term of the contract), and the principle of the specificity of sport".*

d. The Coach left the Club on 15 July 2023 and his Employment Contract would expire on 31 March 2023. The Employment Contract had a remaining duration of 8 and half months. Considering the Coach's monthly salary of EUR 40,000, the remaining value was EUR 340,000.
e. Since the dismissal of the Assistant Coaches was a direct consequence of the Coach's breach (since the new coach brought his assistants and forced the Club to dismiss the Assistant Coaches), the EUR 45,000 paid to each (total EUR 90,000) (see above para. 25) should be added to the damage compensation. In this alternative scenario, the Club has the right to receive EUR 430,000 (EUR 340,000 + EUR 90,000) from the Coach.
f. Regardless of the scenarios, default interest of 5% p.a., from 27 July 2023 until the date of effective payment shall apply to the compensation due to the Club.

B. The Respondent's Submissions

46. In his Answer, the Respondent seeks the following reliefs from the CAS:

"(...)

1. The appeal lodged by [the Club] *(...) is rejected and the* [FIFA PSC Decision] *confirmed.*

2. The entire costs of the proceedings and a contribution toward the legal fees and other expenses of the [Coach] *are paid by the Appellant.*

(...)".

47. The Respondent advanced the following grounds:

i. The Coach's departure from the Club with authorization

a. The Club has deliberately omitted relevant information to resolving the present dispute. Several of the Club's statements in its claim before the FIFA PSC were false.
b. The Club was consistently informed about the Coach's mother health issues, which required his return to Spain. In fact, the health issue of the Coach's mother was an evolving situation which worsened in July 2023.
c. The Parties verbally and mutually agreed on the early termination of the Employment Contract.
d. The Club publicly (i) acknowledged the Coach's departure through social media posts, (ii) organized a farewell press conference to express gratitude for his work, (iii) created a video tribute, (iv) provided flight tickets to the Coach

for his return to Spain, and (v) publicly announced the new head coach's hiring. FIFA ignored in its decision this information, which occurred before the alleged deadline for the Coach to return to Indonesia and expire.

e. Had the above facts been duly considered, the decision to dismiss the Club's claim would not have been based on the Club's lack of just cause for terminating the Employment Contract, but it would have been possible to establish that the Employment Contract was terminated by mutual agreement.

ii. The termination of the Employment Contract by mutual agreement

a. On 12 July 2023, the Coach and Club's representatives held a meeting in which mutual discussions took place regarding the earlier termination of the Employment Contract (see para. 9 above).
b. On 14 July 2024, the Club purchased and provided the Coach with a plane ticket which indicates the Club's intention to facilitate to the Coach's departure, which indeed occurred.
c. The circumstances, actions and sequence of events clearly indicates and demonstrates the termination of the Employment Contract was consensual. Consequently, the Club had no grounds to terminate the Employment Contract.
d. Without conceding that the Club's departure was consented to, the Coach states that he agrees with FIFA's decision and, specifically, with the following grounds:
   - The Club has not provided a reasonable period for his return. The Club only provided a period of 3-7 days (from 19 to 29 July 2023) which is an insufficient period considering the circumstances;
   - The Club failed to purchase and provide the return flight tickets; and
   - The *ultima ratio* principle dictates that the termination of employment contracts should only be considered after all other reasonable measures have been exhausted.

   This principle emphasizes that termination is a last resort and should follow substantial efforts to resolve any underlying issues through less severe means. This short period is indeed insufficient for meaningful conflict resolution and does not adhere to the principle of *ultima ratio*, which requires exhaustive attempts at resolving disputes before termination.

iii. Other relevant considerations in relation to the Club's claim for compensation

a. The Club's behavior clearly demonstrates bad faith and an attempt to unjustly seek compensation.
b. The Club's position violates the principle of good faith and the prohibition of *venire contra factum proprium* (Article 2 of the SCC).
c. The compensation claimed by the Club is grossly disproportionate and contrary to the principles of contractual fairness, stability and positive interest.

d. The initial claim of EUR 320,000 made by the Club on 14 August 2023 should be regarded as their definitive claim on this matter. Based on the principle of *venire contra factum proprium non valet*, the Club is estopped from claiming compensation exceeding EUR 320,000 and subsequently increase its claim to EUR 780,000.
e. Additionally, Article 16(1) of the Employment Contract should be declared null and void as it contravenes the principles of contractual fairness and stability as upheld by CAS jurisprudence (e.g. CAS 2012/A/2698, para. 93). The Coach is the weaker party in the contractual relationship, and it is unacceptable that under Article 16(1) the Coach must pay the Club 100% of the contract's value if he terminates the contract without just cause and, conversely, if the Club terminates the contract without just cause the Coach is only entitled to the remaining contract value. This disparity between the two clauses highlights the inequity of the Employment Contract.
f. The Coach also claims that if there is no valid contractual clause regarding compensation, the compensation should be assessed in application of the parameters set out in Article 6 (1) (d) of Annex 2 RSTP and, in these circumstances, the amount should be adjusted to reflect actual damages in accordance with the referred parameters that (i) the Club quickly replaced the head coach and the Club did not suffer any prolonged disruption in its operations or competitive performance; (ii) the funds saved from early termination of the Coach were reallocated to secure the new head coach; (iii) the Cub continued to perform and achieve results in its competitions; (iv) the Club has not provided concrete evidence of any tangible losses directly attributable to the Coach departure; and (v) the Club's argument that the Coach should be responsible for the compensation paid to the assistant coaches is flaws.
g. The termination of the Assistant Coaches was a direct result of the Club's decision to hire a new head coach who apparently insisted on bringing his own staff. Without documented financial or operational damages, the claim for EUR 780,000, EUR 340,000, EUR 320,000 or any other amount lacks substantiation. In the improper scenario that the Panel decides to grant compensation it should be minimal and strictly based on documented damages (if any).

V. JURISDICTION

48. In accordance with Article 186 of the Swiss Private International Law Act (the "PILA"), the CAS has the power to decide upon its own jurisdiction.

49. Article R47 of the CAS Code states the following:

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

(...)"

50. In addition, Articles 56(1) and 57 (1) of the FIFA Statutes Ed. May 2022 read as follows:

"Article 56.1 - FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, members associations, confederations, leagues, clubs, players, officials, football agents and match agents."

"Article 57.1 - Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question."

51. The jurisdiction of the CAS, which is not disputed by the Parties, derives from Article R47 of the CAS Code and Articles 56 (1) and 57 (1) of the FIFA Statutes. Furthermore, the jurisdiction of the CAS is confirmed by the Order of Procedure duly signed by the Parties.

52. It follows that CAS has jurisdiction to hear this matter.

53. According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case and can decide the dispute *de novo*. The Panel may issue a new decision that replaces the decision challenged, may annul the decision, or refer the case back to the previous instance.

VI. ADMISSIBILITY

54. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late."

55. Article 57 (1) of the FIFA Statutes reads as follows:

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

56. The grounds of the Appealed Decision were notified to the Appellant 26 March 2024 and the Statement of Appeal was filed on 16 April 2024, *i.e.* within the 21-day deadline fixed under Article 57 (1) of the FIFA Statutes. The Statement of Appeal complied with the requirements of Article R48 of the CAS Code. The Panel also notes that the admissibility of the Appeal is not contested by the Parties.

57. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

58. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in absence of such 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".*

59. In addition, Article 56 (2) of the FIFA Statutes sets forth as follows:

> *"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".*

60. As a result, the Panel will primarily apply the various regulations of FIFA, in particular the FIFA Regulations on the Status and Transfer of Players (May 2023 edition) and, subsidiarily, Swiss law shall be applied should the need arise to fill a possible gap or *lacuna* in the various regulations of FIFA.

VIII. MERITS

A. Introduction

61. Before assessing the legal issues at stake, the Panel deems it useful to clarify the scope of the Appeal.

62. The issue at the center of the Appeal is whether the FIFA PSC, through the Appealed Decision, correctly concluded that the Club did not have just cause to terminate the Employment Contract and consequently ordered the Club to pay to the Coach the total amount of EUR 18,064.51 plus 5% interest p.a. as from 1 August 2023 until date of effective payment, which referred to the Coach's *pro-rata* outstanding salary of July 2023.

63. In order to correctly decide the present case, the Panel will consider the following questions:

a) Did the Coach breach the Employment Contract when he left the Club or, in the alternative, was there a mutual agreement between the Parties?
b) Depending on the answer to the previous question, what are the consequences for the Parties?

64. Before proceeding with the analysis of the main issue, the Panel will briefly consider the rules applicable to the burden of proof and the applicable standard of proof. The

Panel will then also analyze and decide the preliminary question regarding FIFA's standing to be sued.

B. The Burden and the Standard of Proof

65. Before commencing the analysis of the merits of the case, the Panel notes that it is for the party that derives a claim from a certain fact to prove the existence of such fact. This general rule is applied in several jurisdictions and is explicitly contained in Article 8 of the SCC, that reads as follows: "*Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.*"

66. As to the standard of proof, it is a well-established practice that lacking a specific legal or regulatory requirement, in a civil dispute, a CAS Panel has to apply the usual standard of proof for civil matters, i.e. the one of comfortable satisfaction. In the present case, the Panel sees no reason to impose a higher standard of proof than comfortable satisfaction (see CAS 2020/A/7503, para. 95; CAS 2018/A/6075, para. 46), seeing as this case concerns essentially matters of contractual nature.

67. The "comfortable satisfaction" standard of proof may be defined "*(…) as being greater than a mere balance of probability but less than proof beyond a reasonable doubt (CAS 2014/A/3625, with further reference to CAS 2009/A/1920, CAS 2013/A/3258, CAS 2010/A/2267, CAS 2010/A/2172). In particular, CAS jurisprudence clearly established that to reach this comfortable satisfaction, the Panel should have in mind "the seriousness of the allegation which is made" (CAS 2014/A/3625, with further reference to CAS 2005/A/908, CAS 2009/A/1902)*" (CAS 2016/A/4558, para. 70).

C. Did the Coach breach the Employment Contract?

68. As per the arguments of the Parties summarized above, it is clear that the Club and the Coach have a very different perspective regarding what happened on July 2023. While the Coach believes he communicated properly his motives for leaving the Club and that there was a mutual agreement regarding his departure, the Club is of the opposite opinion, claiming that the Coach inexplicably left the Club, could not stop him from leaving and which led to the unilateral termination of the Employment Agreement being the only reasonable measure that the Club could take.

69. Having reviewed the facts put forward by the Parties, as well as the evidence presented, the Panel wishes to highlight a few key moments in this process.

a) It is undisputed that the Parties met by video-conference on 12 July 2023. While the specific contents of this meeting have been disputed, the testimonies and statements produced in the hearing have led the Panel to be comfortably satisfied that such a meeting was arranged for the Parties to mutually discuss the termination of the Employment Agreement and the departure of the Coach.
b) The Coach's one way ticket to fly from Indonesia to Spain was bought by the Club through Ms Witdarmono, on 14 July 2023, after the meeting mentioned in the previous paragraph.

c) On 14 July 2023, the Coach said goodbye to the players of the team, staff and fans, as the videos published by the Club clearly demonstrate.
d) On 15 July 2023, the Club published three social media posts where it thanked the Coach for his services during the time he spent coaching the team.
e) A press conference was held where the Coach explained that he was leaving for personal reasons and the Club's representatives attended. The Club's representatives even went as far as stating they had already initiated the search for a new manager.
f) A video tribute to the Coach was published by the Club on YouTube, honoring his passage and time at the Club, as well as his work.
g) Despite the above, on 19 July and 24 July 2023, the Club sent notices to the Coach asking him to resume his duties in Indonesia.
h) On 26 July, the Club announced the hiring of a new manager.
i) On 27 July, the Club communicated to the Coach that it had unilaterally terminated the Employment Agreement with just cause.

70. Considering the above, the Panel considers that the Club's current behavior and that exhibited through the notices sent after the departure of the Coach is contradicted by its own previous actions.

71. If the Club had indeed felt that the Coach had abandoned and breached his Employment Agreement as it does in its Appeal, then it would make no sense to dedicate him numerous tributes and even facilitate his departure from Indonesia to Spain, by buying him a flight ticket, the latter not even constituting a contractual obligation for the Club under in the Employment Contract. The Club's reference – during the hearing – to local customs as an explanation for having provided such flight ticket was not convincing nor credible in light of the other factual elements on file.

72. Moreover, it is not possible to follow the Club's allegation that it was open to allow the Coach to leave for a short period of time to visit his mother because of the Club's comprehensive approach to the situation. If this was the case, it would have purchased and sent him a return ticket to Indonesia rather than a single ticket for Spain, nor would it have sent him a notice demanding his return less than a week after the Coach departed to Spain basically writing that the Coach "*suddenly left* [his] *contractual position and duties and apparently travelled to Spain*". It would also be senseless to release social media posts which clearly demonstrate that, on 15 July 2023, the Club was already not expecting the Coach to return.

73. The press conference held by the Coach with the presence of the Club's representatives also strongly suggests that the Parties had some type of understanding as to the Coach's definitive departure and that he would not be going back to Spain without authorization. Otherwise, the Club's officials would not have announced that they had already initiated the search for a new manager.

74. From the available evidence, the Panel also notes that the Club exhibited a contradictory behavior by sending notices requesting the Coach's return while, at the same time, it was negotiating with a new manager, which it ended up hiring one day before communicating to the Coach that it intended to unilaterally terminate the Employment Agreement.

75. If the Club really felt that the Coach had left his job without permission, they wouldn't have facilitated his departure, nor would they have created video and social media tributes to the Coach. The very fact that the Club held a press conference to announce the Coach's departure, without once making any mention of the fact that such a departure had only been authorized for a few days, indicates that there was, likely, an agreement between the Parties regarding the Coach's departure.

76. In fact, whilst it is not uncommon for a Club to announce the departure of a Coach and thank him for his services, both in cases where a Coach would be fired or decides to leave a club to pursue to a different career option with a third party, the different communications issued by the Club *in casu* taken together with the relevant factual elements cannot be understood as a simple farewell & thank you message from which no inferences can be drawn.

77. The Panel considers this to be a very clear case of *venire contra factum proprium*, as the Club's initial behavior strongly suggests it had agreed to let the Coach return to Spain and mutually terminate the Employment Agreement. This conduct is prohibited under Article 2 SCC, which prohibits the manifest abuse of a right and establishes that every person must act in accordance with the principles of good faith when exercising any of its rights or performing any obligations.

78. The Panel notes the Appellant's claim that no termination could have been agreed on verbally since the Employment Agreement foresees the need for a written agreement to modify any of its clauses according to Article 24 of the Employment Agreement (see above para. 7).

79. While the lack of a written agreement between the Parties in which both acknowledge the termination of the Employment Agreement is unfortunate, since such a document would put an end to any uncertainty regarding that procedure, the facts and circumstances of the present case leave no doubt as to the existence of an understanding between the Parties, otherwise the Club wouldn't have reasonably behaved like it did.

80. Furthermore, it is important to note that Article 24 of the Employment Agreement only mandates that "amendments" or "additions" to said contract be provided by means of an "addendum letter" or "amendment to the contract". At no point does the Employment Agreement reference the need for a "mutual termination" to be made in writing for it to be valid and binding – therefore, the Club's argument in this matter is of no relevance.

81. Even if that was the case, the Panel would always be forced to conclude that the Club could not argue that the lack of any written agreement detracted from the validity of the mutual termination, since the Club acted in *venire contra factum proprium*. If the Panel were to decide differently, it would be permitting the Club to commit an abuse of rights, which is forbidden under Article 2 (2) SCC.

82. The Panel is, as such, comfortably satisfied that the Club was aware of the Coach's intention to leave the Club, authorized him to do so and, as such, agreed to mutually terminate the Employment Agreement on 14 July 2023.

83. Even when considering a hypothetical scenario in which the Coach had not been authorized to permanently leave the Club, and this was not the case, the Panel would in any case point out that the Club also failed to comply with Article 12 of the Employment Agreement since it gave the Coach only three days to return to Indonesia in both of the notices sent to him.

84. The Panel is of the opinion that, given the circumstances, such a deadline was not possible to be fulfilled by the Coach, who was, in any case, under the well-founded impression that the Employment Agreement had been mutually terminated or, at the very least, that his voyage to Spain had been authorized since the Club facilitated the purchase of the tickets and the itinerary. Not only would it be excessively onerous for the Coach to organize his return in the span of a few days, but this short deadline also effectively prevented the Coach from presenting any structured defense to the Club's accusations.

85. All in all, the Panel concludes that the Parties had agreed on 14 July 2024 to mutually terminate the Employment Agreement.

D. The consequences of the mutual termination of the Employment Agreement

86. Having established above that the Employment Agreement was terminated by mutual agreement, the Panel shall now turn to the consequences of such finding.

87. The Appealed Decision considered that the Club was also liable to pay to the Coach the amount of EUR 18,064.51 as outstanding remuneration corresponding to his *pro-rata* salary of July 2023, since he worked at the Club until the 14th of July 2023. This decision was based on the Coach's counterclaim presented before the FIFA PSC which was also assessed in the Appealed Decision.

88. While the Coach argues that the Club did not contest this part of the FIFA PSC, the Panel has the opposite view, since the Appellant requested that the whole Appealed Decision be set aside.

89. In any case, given that the Club did not contest that the Coach worked until the 14th of July 2023, and considering that the termination of the Employment Agreement occurred by mutual agreement, the Panel has to confirm the FIFA PSC's decision in this part and award the Coach, in respect to outstanding remuneration, the amount of EUR 18,064.51 plus 5% interest p.a. as from 1 August 2023 until date of effective payment.

90. In addition, the Parties have not demonstrated that the mutual termination of the Employment Agreement was conditional on any compensation to be paid by the Coach to the Club, or vice-versa, and, as such, the Panel is comfortably satisfied that no other amounts shall be awarded to the Parties.

E. Conclusions

91. The Coach did not breach the Employment Agreement. The Club's behavior reveals that it had authorized the Coach to leave and did not expect him to return. The Club's agreement to such termination shows from its subsequent behavior and acts.

92. By sending the notices to the Coach and seeking compensation from him, after having authorized and facilitated his departure, even publicly acknowledging that he would not continue to manage the Club, and publicly announcing his departure in social media posting and press conferences, the Club has acted in *venire contra factum proprium.* This inconsistent behavior from the Club confirms that there had been an understanding between the Parties regarding the mutual termination of the Employment Agreement.

93. The fact that the Employment Agreement was terminated without resorting to a written document signed by the Parties is of no relevance to the case, since (1) Article 24 of the Employment Agreement does not mandate the written form for any termination agreement and (2) even if it did, the Club would be abusing its rights by demanding such a written agreement in this proceedings, considering the clear situation of *venire contra factum proprium* asserted by the Panel.

94. The Club also failed to pay the Coach's salary for the month of July 2023, on a *pro-rata* basis, since he only left on 15 July 2023. As such, the outstanding remuneration owed to the Coach until 14 July 2023 has to be awarded to him, as decided by the FIFA PSC. The Coach is therefore entitled to receive the following amount:

- **EUR 18,064.51 as outstanding remuneration** plus 5% interest *p.a.* as from 1 August 2023 until the date of effective payment.

95. The Parties' mutual termination of the Employment Agreement did not foresee any other compensations payable by one to the other and, as such, the Panel cannot award any further amounts to the Club or the Coach.

96. The above conclusions, finally, make it unnecessary for the Panel to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

IX. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by PT. Persib Bandung Bermartabat on 16 April 2024 against the decision issued by the FIFA Football Tribunal Players Status Chamber passed on 20 February 2024 is dismissed.

2. The decision rendered by the FIFA Football Tribunal Players Status Chamber passed on 20 February 2024 is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 20 December 2024

THE COURT OF ARBITRATION FOR SPORT

Rui Botica Santos
President of the Panel

Wouter Lambrecht
Arbitrator

Romano F. Subiotto KC
Arbitrator