CAS 2023/A/9855 Eliandro dos Santos Gonzaga v. Suphanburi Football Club & Fédération Internationale de Football Association (FIFA)

ARBITRAL AWARD

delivered by

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Sofoklis P. Pilavios, Attorney-at-Law, Athens, Greece

in the arbitration between

Eliandro dos Santos Gonzaga, Brazil

Represented by Mr. André Scalli, Attorney-at-Law in São Paulo, Brazil

Appellant

and

Suphanburi Football Club, Suphanburi, Thailand

Represented by Messrs. Menno Teunissen and Thomas Spee, Attorneys-at-Law, Liege, Belgium

First Respondent

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Second Respondent

I. PARTIES

1. Mr. Eliandro dos Santos Gonzaga (the "Player" or the "Appellant") is a professional football player of Brazilian nationality.

2. Suphanburi Football Club (the "Club" or the "First Respondent") is a professional football club with its registered office in Suphanburi, Thailand. It is affiliated with the Football Association of Thailand (the "FAT"), which in turn is affiliated with the *Fédération Internationale de Football Association* ("FIFA" or the "Second Respondent).

3. FIFA is a private association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

4. The Player and Club shall be collectively referred to as the "Parties".[1]

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion. 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 the Award only to the submissions and evidence he considers necessary to explain his reasoning.

A. Background facts

6. On 17 December 2019, the Parties concluded an employment agreement valid as of January 2020 until 31 December 2020 (the "First Employment Agreement").

7. On 20 April 2020, the Club provided the Player with an "*Attachment to* [the First Employment Agreement]" by means of which the monthly salary of the Player would be reduced by 50% as of April 2020 and henceforth due to the financial hardships caused by the pandemic of Covid-19 and the subsequent suspension of the Thai professional football league. The Player did not sign said document.

8. On 14 October 2020, the Parties allegedly concluded another employment agreement valid as from 30 October 2020 to 30 April 2021 (the "Second Employment Agreement").

[1] FIFA repeatedly expressed its decision to not actively participate in the present proceedings. In order to avoid constant repetitions in this respect, the Sole Arbitrator will henceforth use the term "Parties" for the Player and the Club only. In case of need FIFA will be referred to as such.

9. Allegedly, on 25 December 2020 the Club forced the Player to leave his apartment.

10. On 26 December 2020, the Player and the Thai professional football club "Chonburi FC" concluded an employment agreement, valid as of 1 January 2021 until 31 March 2021 (the "Chonburi Contract").

11. On 31 December 2020, the Parties concluded a document headed "Final Contract Completion Agreement" (the "Final Agreement"). By means of the Final Agreement and in light of the imminent expiry of the First Employment Agreement, the Parties confirmed the end of their employment relationship and the Player acknowledged that he was entitled to receive no further monies from the Club, save only for the salary of December 2020. Said document also contains a declaration signed by the Player whereby the latter confirmed the absence of any financial claim against the Club and, to the extent that any such claim may arise in the future, he provided an explicit waiver in this respect.

12. Between 11 and 18 January 2021, the Player was hospitalized which incurred Chonburi FC costs of BAHT 44,860.50 (forty four thousand eight hundred and sixty Thai Bahts and fifty Satangs). According to the notes of the treating practitioner in the pertinent certification: "*After jobless, he has had anxious and depressed mood, nausea, vomiting, heart beating, dizziness, insomnia, no appetite for 1 week. He has admitted for work up cause but no organic cause was found. Now he is better and his mood is normal. His provisional diagnosis is adjustment disorder*".

13. On 19 May 2021, the Player signed an employment agreement with another Thai club, Samut Prakan City Football Club.

B. Proceedings before the FIFA Dispute Resolution Chamber

14. On 29 December 2022, the Player lodged a claim before the Dispute Resolution Chamber of the FIFA Football Tribunal (the "FIFA DRC" or the "Chamber") against the Club for breach of the Second Employment Agreement without just cause and requested the imposition of sporting sanctions on the Club, as well as the payment of the following amounts with interest at a rate of 5% *p.a.* until the date of effective payment:

- USD 104,000 corresponding to: i) the residual part of the Player's salaries under the first Employment Agreement for the term between April until November 2020, which were unilaterally reduced by the Club, and ii) the outstanding salaries under the Second Employment Agreement;

- BAHT 200,000 corresponding to a lump sum payable to the Player under article 3.4 of the First Employment Agreement against his daily expenses;

- An additional compensation of "*a maximum of 6 (six) monthly salaries of USD 13,000, also taking into account less amounts received by the Player as his 3 monthly at Chonburi from January 2021 to March 2021*";

15. In support of his claim, the Player asserted that the Club unilaterally decided to reduce his monthly salaries for the term April – November 2020 under the pretext of the Covid-19 pandemic, a decision upon which the Player never agreed. Further the Player claimed that, despite having validly concluded the Second Employment Agreement, the Club deliberately omitted to provided him with a signed copy of said agreement. In turn, the Club forced the Player to be transferred to Chonburi FC and to sign the Final Agreement, thereby terminating their employment relationship without just cause.

16. The Club failed to timely provide any arguments in rebuttal of the Player's claim.

17. On 21 June 2023, the FIFA DRC issued its decision (the "Appealed Decision") with, *inter alia*, the following operative part:

> "*1. The claim of the Claimant, Eliandro dos Santos Gonzaga, is rejected insofar it is admissible.*
>
> *2. This decision is rendered without costs*".

18. On 10 August 2022, the grounds of the Appealed Decision were communicated to the Parties, determining, *inter alia,* the following:

> "*23. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of that this is a claim of a player against a club arising concerning* (sic) *an alleged termination of a contract allegedly concluded on 14 October 2020.*
>
> *24. In this respect, the Single Judge firstly recalled that the* [Second Employment Agreement] *was not signed by either party, nor that the* [Player] *provided sufficient evidence proving that the said agreement entered into force.*
>
> *25. At this point, the Single Judge noted that the* [First Employment Agreement] *was valid until December 2020 as well as the fact that the* [Final Agreement] *is specifically referring to the initial contract.*
>
> *26. Based on the above, and referring to art. 13 par.5 of the Procedural Rules, the Single Judge concluded that it cannot be established that an employment relationship between the* [Parties] *has been prolonged until April 2021.*
>
> *27. In this context, the Single Judge established that any claim based on the* [First Employment *Agreement*] *shall be rejected. It goes in hand that, in this respect, the Single Judge does not deem to enter into the question of the of the validity of the* [Final Agreement].
>
> *28. For the sake of completeness, the Single Judge added that any possible entitlement to outstanding salaries in the present matter would correspond to December 2020, yet the* [Player] *himself confirmed that he received the December 2020 salary*".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 29 July 2023, the Player filed a Statement of Appeal with CAS against the Appealed Decision in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"). By means of said submission, the Player requested, *inter alia*, that the matter at hand be submitted to a Sole Arbitrator and that he be granted legal aid in accordance with the Guidelines on Legal Aid before the Court of Arbitration for Sport (ed. February 2023 – the "Legal Aid Guidelines").

20. On 18 August 2023, the Appellant filed his Appeal Brief pursuant to Article R51 of the CAS Code. In this submission, the Appellant indicated only Mr. Diogo Figueira, a former employee of the Club, as a witness.

21. On 8 May 2024, the CAS Court Office informed the Parties that the Appellant had been granted legal aid from the Football Legal Aid Fund (FLAF). By means of the same correspondence, the Respondents were invited to file their respective Answers within 20 days upon its receipt.

22. On 18 June 2024 and after having been granted a 14-day extension of the pertinent deadline, the First Respondent filed its Answer further to Article R55 of the CAS Code.

23. On 25 June 2024 and after its request to be excluded from the present proceedings had not been unconditionally accepted by the Appellant, FIFA expressed its decision to not actively participate in this arbitral procedure.

24. On 26 June 2024 and further to Article R54 of the CAS Code, the CAS Court Office informed the Parties that the arbitral tribunal appointed to decide on the matter at hand was constituted as follows:

    - Sole Arbitrator: Mr. Sofoklis P. Pilavios, Attorney-at-Law, Athens, Greece

25. On 1 July 2024, the CAS Court Office noted that whereas the Appellant expressed his preference for a hearing to be held in the matter at hand, the First Respondent opted for an award to be rendered solely on the basis of the Parties' written submissions. Accordingly, the CAS Court Office informed the Parties that further instructions would follow in this regard by the Sole Arbitrator in due course.

26. On 22 July 2024, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in the present matter.

27. On 5, 6 and 8 August 2024 respectively, FIFA, the First Respondent and the Appellant filed their duly signed Orders of Procedure.

28. On 9 August 2024, the Appellant filed the list of attendees in the hearing of the present matter, which included several additional witnesses not mentioned in his previous submissions, namely Mrs. Karoline Gonzaga and Messrs. Adebaior Dabadego, Felipe Amorim and

Rodrigo Ciantar (the "Additional Witnesses"). Further, the Appellant requested CAS to invite several executives of the Club to attend the hearing.

29. On 19 August 2024, the First Respondent objected to the participation of the Additional Witnesses in the hearing of the present matter, further to Article R51 of the CAS Code. By means of the same correspondence, the First Respondent also indicated that the Appellant had failed to provide a summary of the expected testimony of Mr. Figueira and requested for his testimony to be excluded from the case at stake pursuant to the above-mentioned provision. Further, the First Respondent informed the CAS Court Office that, apart from its legal counsels, no other individual would attend the hearing on behalf of the Club.

30. On 28 August 2024 the CAS Court Office informed the Parties that, further to Article R51 of the CAS Code and to the extent that they were not announced by means of the Appeal Brief, the Sole Arbitrator considered the testimonies of the Additional Witnesses as inadmissible. In regard with Mr. Figueira, the Appellant was invited to provide either a witness statement or a summary of his expected testimony by 2 September 2024. Finally, pursuant to Articles R44.3 and R57 of the CAS Code, the Appellant was informed that his request for the executives of the First Respondent to attend the hearing was denied, "*on the grounds that they were not announced in the Appeal Bried and that the Appellant did not explain why their presence is requested*".

31. On 2 September 2024, the Appellant informed the CAS Court Office that he faced difficulties in contacting Mr. Figueira and requested a two-day extension of the deadline to file his expected testimony. This request was granted.

32. On 9 September 2024 and in light of his repeated failures to contact Mr. Figueira, the Appellant requested that the hearing be postponed.

33. Also on 9 September 2024 and upon being invited to express its view in this respect, the First Respondent objected to the potential postponement of the hearing due to the unavailability of Mr. Figueira.

34. On 10 September 2024, the CAS Court Office informed the Parties that the hearing scheduled on 11 September 2024 was maintained.

35. On 11 September 2024, a hearing was held via video-conference. At the outset of the hearing, all parties confirmed not to have any objection or comments as to the constitution and the composition of the arbitral tribunal nor in respect of the conduction of the proceedings up to that moment.

36. In addition to the Sole Arbitrator and Mrs. Delphine Deschenaux-Rochat, Counsel for CAS, the following persons attended the hearing:

- For the Player:

  1) Mr. Eliandro dos Santos Gonzaga, Appellant;
  2) Mr. Alexandre Miranda, Counsel;
  3) Mr. André Scalli, Counsel;
  4) Mr. Leonardo Pinto Andrade de Abreu, Interpreter;

- For the Club:

  1) Mr. Menno Teunissen, Counsel;
  2) Mr. Thomas Spree, Counsel;

37. All the parties had a complete opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.

38. Before the hearing was concluded, all the Parties expressly stated that they did not have any objection with the procedure followed by the Sole Arbitrator and that they are satisfied and confirm that their right to be heard had been respected.

39. The Sole Arbitrator confirms that he carefully heard and took into consideration all the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarized or referred to in the present arbitral award.

IV. PARTIES' SUBMISSIONS AND PRAYERS FOR RELIEF

A. The Player

40. The submissions of the Player in essence, may be summarized as follows:

a. The employment relationship between the Parties

- On 20 April 2020 and in light of the Covid-19 pandemic, the Player received a formal notification by the Director of the Club, Mr. Nut Chayutimand, by means of which the Player was informed about the reduction of his monthly salaries at a rate of fifty percent (50%) due to the abrupt suspension of the professional football leagues in Thailand and the financial consequences thereof. Despite the Player never signed – or otherwise agreed to – said document, the Club proceeded in paying only half of the Player's monthly salaries for the term between April until November 2020.

- On 14 October 2020 and by means of the Second Employment Agreement, the Parties agreed to extend their employment relationship until 30 April 2021. Nevertheless, the Club deliberately omitted to provide the Player with a signed copy of the said agreement. In turn, the actions of the Club enabled the premature termination of the employment relationship between the Club and the Player without just cause and forced the Player to be transferred to another football club in Thailand.

- The Player was forced by the Club to sign the Final Agreement and as a matter of fact, it was his wife that signed it on his behalf.

- However, the premature termination of the employment relationship between the Club and the Player without just cause occurred after the Second Employment Agreement had entered into force. Thus, the legal principle of unicity provides that "*the legal relationship between the parties shall be assessed as a whole*".

- The illegal behavior of the Club had a severe psychological and physical impact on the Player which resulted in his hospitalization for a week. According to the evaluation of the physician that treated the Player, the provisional diagnosis for the Player's symptoms was that the latter suffered from an "*adjustment disorder*".

b. The admissibility of the Player's claim before the FIFA DRC

- The FIFA DRC erred in rejecting the Player's claim as time-barred, given that the Final Agreement was signed after 30 December 2020 and the pertinent claim was filed on 29 December 2022.

- According to the jurisprudence of CAS, the "*the two-year period starts from the date of the renegotiation between the club and the athlete, and should therefore begin on December 31, 2020*".

41. On this basis, the Player submits the following prayers for relief:

"*(i) To enforce CAS jurisdiction as competent to rule on the matter;*

(ii) As an evidentiary request, to order the [First Respondent] to provide this Chamber (sic) with both Employment Agreements duly signed on December 2019 and the second one entered on October 2020, as well as the Player requests the Witness to be heard in an oral hearing, if any, in case this Chamber (sic) decides to confirm all such facts by hearing Mr. Diogo Figueira, which was an assistant who was working for [the First Respondent's] coach by that time;

(iii) To rule that [the First Respondent] shall pay to the Player a compensation of USD104,000.00 (one hundred and four thousand American Dollars), since the Player did not receive any compensation nor penalty amount for such unlawful early termination;

(iv) To rule that [the First Respondent] shall pay to the Player BHT 200.000 (two hundred thousand Thai Baths), as provided on clause 3.4 of the [First Employment Agreement], observing the actual currency exchange rate on the date of effective payment;

(v) As per article 17 of FIFA RSTP, since the undisputed egregious circumstances, to rule that [the First Respondent] shall pay an additional compensation increased to a maximum of 6 (six) monthly salaries of USD 13,000, also taking into account less

amounts received by the Player as his 3 monthly at Chonburi from January 2021 to March 2021;

(vi) It should be noted that all amounts due shall be converted taking into account the exchange currency rate of the date of actual payment and accrued by interest of 5% (five percent) per annum from the date of default pursuant to FIFA's well-established jurisprudence and Swiss Law;

(vii) To impose a sporting sanction on the Club pursuant to the fact that the termination of the Employment Contract without just cause occurred during the protected period; and

(ix) In any event, to order the Club to cover all costs of the proceedings and to bear all the legal fees, if any".

B. The Club

42. The submissions of the Club, in essence, may be summarized as follows:

a. The employment relationship between the Parties

- In light of the expiry of their employment relationship, which coincides with the expiry of the First Employment Agreement, the Parties decided to settle any issues that remained at that time outstanding and agreed on the conclusion of the Final Agreement, the content and execution of which has insofar never been contested.

- "*In its Appeal Brief, the Appellant incorrectly refers to this document as a 'termination letter'. The Sole Arbitrator will note that the document is actually a mutual agreement in which both parties list their final legal rights and obligations upon the termination of the employment relationship. It is important to understand that 2020 was a turbulent year due to the COVID-19 pandemic. Therefore, the purpose of this document was precisely to prevent any future disputes regarding overdue COVID-19 payments, car/air ticket expenses, and other related matters*".

- Further, by invoking the conclusion of the Final Agreement to demonstrate that his claim before the FIFA DRC was not time-barred, the Player indirectly acknowledged its validity.

- The Club contests the existence of any overdue payables under the First Employment Agreement; any deductions that may have been made from the Player's salaries were executed with his consent and the Player has failed to provide any evidence to the contrary.

- The evidence submitted in the context of the present proceedings indicate that the Player was fully aware of the fact that his employment relationship with the Club was to expire by the end of December 2020. Hence, on 26 December 2020 the Player concluded the Chonburi Contract which entered into force on 1 January 2021. What is more, the Player

continued his career by being transferred to several clubs without ever complaining about the termination of his employment relationship with the First Respondent.

- "[T]*he Player was aware of the* [Final Agreement] *but due to being in training with his new club Chonburi FC requested his wife to send the document to the Club in his name. The opposing party attempts to exploit the fact that the wife used "I" instead of "we" or "he" to imply a different meaning, despite the message clearly indicating that the wife of the Player was tasked with informing the Club of the signed Final Contract Completion Agreement. Nothing in Annex 8 of the Appellant's submission suggests that the Player or his wife were forced to sign the document, as the Player claims in his Appeal Brief*."

b. The admissibility of the Player's claim before the FIFA DRC

- Despite the arguments of the Appellant regarding the invalidity of the Final Agreement, it should be noted that the Player relies on the conclusion date of said agreement to prove that his claim before the FIFA DRC within the prescribed deadline.

- Article 23 par.3 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") is clear in establishing a two-year deadline "*from the occurrence of the event that giving rise to the dispute*" for lodging a claim before the various deciding bodies of FIFA.

- The two-year deadline applies to each individual payment rather than the entire contractual relationship. Therefore, if a player seeks to be rewarded several outstanding monthly salaries, the due date of each payment should be taken into consideration in order to determine whether the pertinent claim is time-barred.

43. On this basis, the Club submits the following prayers for relief:

"*1. Reject the Appeal filed by the Appellant in full;*

2. Uphold the [Appealed Decision];

3. Order the Appellant to bear in full the costs of the arbitration proceedings before the Court of Arbitration for Sport;

4. Order the Appellant to pay the First Respondent a fee of CHF 10,000 as contribution to its legal fees and costs."

V. JURISDICTION

44. Article R47 of the CAS Code provides as follows:

"*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."

45. The Player submits that the jurisdiction of CAS derives from Article 57(1) FIFA Statutes (ed. May 2022) which states that "[a]*ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question*".

46. While the First Respondent remained silent on said matter, both Parties confirmed the jurisdiction of CAS by means of their signature on the Order of Procedure.

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

VI. ADMISSIBILITY

48. Article R49 of the CAS Code provides *inter alia* that:

"*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.*"

49. Article 57(1) of the FIFA Statutes also provides for a 21-day deadline to file an appeal with CAS.

50. The Sole Arbitrator notes that the present Appeal was filed within the deadline of 21 days set by Article 57(1) FIFA Statutes. Further the Appeal in question complies with all other requirements set in Article R48 of the CAS Code.

51. It follows that the present Appeal is admissible.

VII. APPLICABLE LAW

52. According to Article R58 of the CAS Code, "[t]*he 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*".

53. In this regard, the Sole Arbitrator notes that further to Article 56(2) of the FIFA Statutes "*CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law*".

54. It follows that the various regulations of FIFA are to be applied primarily, in particular the FIFA RSTP (ed. October 2022), and, additionally, Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

A. Main issues

53. The main issues to be resolved by the Sole Arbitrator are:

(i) Is the claim of the Appellant time-barred and if so, to what extent?

(ii) Have the Parties validly concluded the Second Employment Agreement?

(iii) If the answer under question (ii) is of the affirmative, was the Second Employment Agreement terminated without *just cause*?

(iv) If the answer under question (iii) is of the affirmative, which are the consequences thereof?

a. Is the claim of the Appellant time-barred and if so, to what extent?

56. The Sole Arbitrator notes that the Appellant seeks to be awarded both outstanding salaries and other benefits under the First Employment Agreement, as well as compensation for the alleged breach of the Second Employment Agreement by the First Respondent without just cause. In this regard, the Appellant avers that the unilateral termination of the employment relationship between the Parties occurred by means of the Final Agreement which also constitutes the "*renegotiation*" of the, at that time, outstanding financial obligations arising out of the First Employment Agreement. On the contrary, whilst the First Respondent also agrees with the view that the Final Agreement was concluded for the purposes of settling any dispute between the Parties in regard with the First Employment Agreement, it maintains that said settlement was executed in light of the imminent expiry of the employment relationship between the Parties which was never extended after its original expiry date i.e., after 31 December 2020. Given that the Appellant does not contest the fulfilment of the financial obligations assumed by the First Respondent by means of the Final Agreement, the Club submits that any claim of the Player regarding salaries in arrears that fell due prior to 29 December 2020 is time-barred.

57. In this regard, the Sole Arbitrator recalls that the Final Agreement – which is signed by both Parties – contains, *inter alia*, the following provisions:

"*1. As agreed and save for the salary of December 2020 salary* (sic) *you shall be entitled to no further sums from the Club, including but without limitation any sums due pursuant to the* [First Employment Agreement] *or any applicable bonus schedule or additional agreement.*

> *Furthermore, you shall have no claims against the Club of any nature whatsoever in respect of your employment with the Club and/or its termination and contract completion including but without limitation whether under the* [First Employment Agreement]*, the regulations of the national Football Association, FIFA or otherwise.*
>
> *To the extent you do have any such claims before whether known or unknown at the date hereof, you hereby waive them unconditionally.*
>
> […]
>
> *3. The* [Player] *is free to join other club effectively from 1st January 2021 with an immediate effect*".

58. In assessing the content of the Final Agreement, the Sole Arbitrator finds that said agreement merely refers to the payment of the salary due to the Player for December 2020, the payment of which remains uncontested between the Parties. However, said agreement does not provide a new payment schedule regarding the fulfilment of any other financial obligations of the Club towards the Player nor for the novation of the pertinent debts, as provided in Article 116 of the Swiss Code of Obligations (the "SCO"). Therefore, the circumstances and the due dates of any further claims of the Player against the Club pertaining to financial obligations that fell due prior to December 2020 remained as originally agreed by means of the First Employment Agreement.

59. Against that background, the Sole Arbitrator notes that Article 23(3) of the FIFA RSTP provides that "[t]*he Football Tribunal shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case*".

60. Given that the pertinent claim of the Appellant was lodged with the FIFA DRC on 29 December 2022, the Sole Arbitrator finds that, to the extent that said claim pertains to financial entitlements that fell due prior to 29 Decembre 2020, and particularly to the unpaid portions of the monthly salaries for the term between April until November 2020 as well as the lump sum provided in Article 3.4 of the First Employment Agreement, the claim of the Appellant is time-barred further to Article 23(3) of the FIFA RSTP. The Sole Arbitrator does not concur with the argumentation brought forward by the Appellant in this regard as he does not deem that by means of the Final Agreement the Parties "*renegotiated*" any other alleged debt of the Club towards the Player, save only for the salary of December 2020 which was admittedly paid by the Club.

61. It follows that, to the extent that it pertains to financial entitlements under the First Employment Agreement, the claim of the Player is time-barred.

b. Have the Parties validly concluded the Second Employment Agreement?

62. Having established the above, the Sole Arbitrator will proceed to analyse whether the Second Employment Agreement was validly concluded by the Parties. Such analysis is warranted by

the assertions of the Player according to which his employment relationship with the Club had been extended until 30 April 2021 and it was subsequently terminated by the latter without just cause. On the contrary, the First Respondent maintains that the employment relationship between the Parties expired on 31 December 2020, a fact of which the Appellant was fully aware and it is further proved by the conclusion of both the Final Agreement and the Chonburi Contract (effective as of 1 January 2021), as well as of the Transfer Form dated 1 January 2021 by means of which the Player was registered with Chonburi FC.

63. Against that background, the Sole Arbitrator notes that in support of his allegations, the Player submitted a copy of the Second Employment Agreement which contains no signatures by either the Player or a representative of the Club. In this respect, the Sole Arbitrator recalls that, pursuant to the consistent jurisprudence of CAS and further to Articles 1(1) and 2(1) of the SCO, an agreement is concluded only if the parties have, reciprocally and by mutual assent, expressed their common intent on all essential points. If an employment contract includes, *inter alia*, (i) a date, (ii) the names of the parties, (iii) the duration of the agreement, (iv) the position of the employee, (v) the remuneration components to be paid, and (vi) the signatures of the parties, it contains all *essentialia negotii* to be considered a valid and binding agreement between the parties (cf. CAS 2021/A/8292 para. 110, CAS 2017/A/5164 paras. 128-130).

64. In the matter at hand, it remains uncontested that the Second Employment Agreement contains all the essential points to be considered a valid employment agreement between the Parties, save only for their signatures. Therefore, the Sole Arbitrator reaches the preliminary conclusion that the Second Employment Agreement does not in fact constitute a valid and binding employment contract between the Parties.

65. Be that as it may, the Sole Arbitrator observes that the Appellant alleges that the Second Employment Agreement was indeed signed by the Appellant and delivered to the First Respondent, but the latter deliberately omitted to provide him with a copy signed on its behalf. This is not an unprecedent situation in the industry of professional football and there are several examples of clubs in the past that have attempted to force players to either remain at the said club or rescind their entitlements by withholding their respective employment agreements. Therefore, the Sole Arbitrator will proceed in assessing the sequence of events that occurred following the alleged conclusion of the Second Employment Agreement in an attempt to ascertain the exact circumstances of the case at stake.

66. In this regard, the Sole Arbitrator remarks that following the alleged conclusion of the Second Employment Agreement on 14 October 2020, it remains uncontested between the Parties that the specifics of the employment relationship between them remained in agreement with the terms of the First Employment Agreement. Particularly, there was no change (either upwards or downwards) to the monthly salary of the Player, nor the Player received any bonuses or other provisions that were not provided in the First Employment Agreement. Further, on 26 December 2020 the Player concluded the Chonburi Contract which was valid as of 1 January 2021 i.e., the day that followed the expiry date of the First Employment Agreement. Subsequently, on 31 December 2020 the Player signed the Final Agreement – by means of

which only issues arising out of the First Employment Agreement were addressed – and on 1 January 2021 the Player signed the "Player Transfer Form" provided by the FAT, pursuant to which he was registered with Chonburi FC. In fact, the Appellant has failed to submit any evidence indicating his opposition to the development of his employment relationship with the First Respondent until the submission of his claim before the FIFA DRC which occurred almost 2 years after the expiry of the First Employment Agreement. Under such circumstances, the Sole Arbitrator is not comfortably satisfied that the Parties indeed agreed on the extension of their employment relationship beyond 31 December 2020 by means of the Second Employment Agreement.

67. What is more, the Sole Arbitrator notes that the argumentation of the Appellant regarding the unilateral termination of the Second Employment Agreement – which presupposes its valid conclusion – by the First Respondent and the consequences thereof is premised on the assumption that the Final Agreement does not in fact constitute a valid and binding agreement as allegedly not only the Club "*forced him to sign the* [Final Agreement] *and made clear that the only would be released to be transferred if he agreed to sing it within the transfer window in Thailand*" but also "*the Player refused to sign it and his wife – Karoline Gonzaga – only rubricate such Termination Letter, as ratified on the message that she sent to the Suphanburi representative ('Gance')*".

68. Regardless of the fact that the Appellant has failed to provide any evidence in support of his allegations mentioned above, the Sole Arbitrator highlights that whereas the Appellant contests the validity of the Final Agreement with regard to the expiry of his employment relationship with the First Respondent, he relies on said agreement and the date of its conclusion in order to establish the admissibility of his claim in respect with his alleged financial entitlements under the First Employment Agreement. To the eyes of the Sole Arbitrator, the contradictory argumentation brought forward by the Appellant in this regard constitutes a violation of the legal principle of *venire contra factum proprium* which is unanimously recognized under Swiss Law and the application of which has been maintained by several previous Panels of CAS (cf. *inter alia* CAS 2017/A/5046, CAS 2015/A/4195). Indeed, this kind of inconsistency falls short of the procedural behavior that is expected by the parties in the course of proceedings before CAS and therefore, it cannot be accepted by the Sole Arbitrator. For the sake of completeness, the Sole Arbitrator wishes to also emphasize that even if the Final Agreement was indeed signed by the wife of the Appellant, it is evident from the WhatsApp messages exchanged between her and the representative of the First Respondent that she had done so on behalf of the Appellant and after having been explicitly authorized and instructed by the latter to provide the Club with a signed copy of the Final Agreement.

69. In view of the foregoing, the Sole Arbitrator finds that the Parties have not validly concluded the Second Employment Agreement.

70. Considering and following the findings of the Sole Arbitrator on the two previous issues, all the other prayers for relief should be dismissed.

B. Conclusions

71. Based on the foregoing, the Sole Arbitrator finds that:

- To the extent that it pertains to financial entitlements under the First Employment Agreement, the claim of the Player is time – barred.

- The Parties have not validly concluded the Second Employment Agreement.

72. All other and further motions and prayers for relief are dismissed.

IX. COSTS

(…)

* * * * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 29 July 2023 by Mr. Eliandro dos Santos Gonzaga against the decision issued on 21 June 2023 by the Dispute Resolution Chamber of the Football Tribunal fo the *Fédération Internationale de Football Association* is dismissed.

2. The decision issued on 21 June 2023 by the Dispute Resolution Chamber of the Football Tribunal of the *Fédération Internationale de Football Association* is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 13 January 2025

THE COURT OF ARBITRATION FOR SPORT

Sofoklis Pilavios
Sole Arbitrator