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

CAS 2024/A/10642 Persepolis Football Club v. Leandro Marcos Pereira

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. José Juan Pintó Sala, Attorney-at-law, Barcelona, Spain.

Ad hoc Clerk: Mr. Alejandro Naranjo Acosta, Attorney-at-law, Barcelona, Spain.

in the arbitration between

Persepolis Football Club, Tehran, Iran.
Represented by Mr. Reza Darvish, Persepolis Football Club President

Appellant

and

Leandro Marcos Pereira, Brazil.
Represented by Mr. Breno Costa Ramos Tannuri and Mr. Pedro Vasconcelos Botelho, Attorneys-at-law at Tannuri Ribeiro Advogados São Paulo, Brazil

Respondent

I. PARTIES

1. Persepolis Football Club (the "Appellant" or the "Club") is a professional football club, with its registered office in Tehran, Iran. It is affiliated to the Football Federation of Islamic Republic of Iran ("FFIRI"), which, in turn, is affiliated to the Fédération Internationale de Football Association ("FIFA").

2. Mr. Leandro Marcos Pereira (the "Respondent" or the "Player") is a Brazilian professional football player.

3. The Club and the Player are jointly named as the "Parties".

II. FACTUAL BACKGROUND

4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the Parties' written and oral submissions and the evidence filed with these submissions and adduced at the hearing. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 5 February 2023, the Club and the Player concluded an employment agreement (the "Employment Agreement") valid for one and a half sport seasons, *i.e.* the second half of the sport season 2022/2023 and the entire season 2023/2024. The total value of the Employment Agreement was the net amount of USD 1,100,000 plus bonuses for the Club winning the Irani Pro League (USD 10,000), the Hazfi Cup (USD 8,000) and the Asian Champions League (USD 30,000).

6. On 18 May 2023, Persepolis played the last match of the sport season 2022/2023 and became champion of the Iranian Pro League 2022/2023.

7. On 31 May 2023, the Club played and won the final of the Hazfi Cup 2022/2023.

8. On 12 July 2023, the Parties agreed on a termination agreement (the "First Termination Agreement") which acknowledge a debt of the Club to the Player of USD 125,000 of overdue salaries of the season 2022/2023, USD 10,000 due for the bonus upon winning the Irani Pro League 2022/2023 and USD 8,000 due for the bonus upon winning the Hazfi Cup.

9. The First Termination Agreement obliged the Club to pay the Player the amount of USD 143,000 not later than 11 August 2023. Moreover, if such payment was not fulfilled by 11 August 2023, the Player was entitled to receive USD 100,000 as compensation for the belated payment.

10. The Club failed to comply with the payment established in the First Termination Agreement.

11. On 25 August 2023, the Parties concluded a second termination agreement (the "Second Termination Agreement"). The most relevant clauses of the Second Agreement are the following:

*"**Note 1:** the above parties agree that the total debt of the club Persepolis to the player is the NET amount of USD **163,000 (Only One Hundred Sixty Three Thousand Dollars**, Net of all Taxes), broken down as follows:*
USD 125,000 (One Hundred Twenty-Five Thousand Dollars), Due Payable amount from the season 2022-2023.
USD 10,000 (Ten Thousand Dollars), Bonus of Championship in Iran Pro-League 2023.
USD 8,000 (Eight Thousand Dollars) Bonus of Championship in Iran Hazfi Cup 2023.

USD 20,000 (Twenty thousand dollars) as interest.
***Note 2:** the parties of the agreement (Persepolis and Player Mr. Pereira) agree that not later than a month after the signing date of the current agreement (not later than **22 Sep 2023**), the amount mentioned in Note 1, (USD 163,000) will be transferred by Persepolis to the bank account which is provided by the player as below:*

(…)

***Note 3:** club will request FIFA to transfer the amount of USD 163,000 to the bank account, provided by the player and deduct the same amount from the club's money, currently kept by FIFA (Club's Benefit of World Cup 2022) and the player admits he will sign the necessary documents of FIFA. In case, the amount of Note 1, is not transferred by 24 Sep 2023, the player is entitled to receive the amount of this agreement (USD 163,000 Net) plus USD 150,000 (One Hundred Fifty Thousand Dollars) as compensation for the delay in payment. (Total USD 313,000 – three hundred thirteen thousand dollars)."*

(Emphasis added in the original wording)

12. The Club had several players that participated in the FIFA's World Cup Qatar 2022, which entitled the Club to an economic benefit payable by FIFA by virtue of the FIFA World Cup Club Benefits Programme.

13. On 26 August 2023, the Club sent a letter to the FFIRI and asked it to re-send it to FIFA. In this letter, the Club informed FIFA about the Second Termination Agreement and its due date. Additionally, the Club requested FIFA to transfer the net amount of USD 163,000 on behalf of Persepolis to the Player and deduct such amount from Persepolis' benefit due to the participation of its players in the FIFA World Cup Qatar 2022.

14. On 27 August 2023, the FFIRI sent the Club's letter to FIFA and requested FIFA's assistance to the Club's request before the deadline of 22 September 2023.

15. On 30 August 2023, FIFA sent a letter to the FFIRI enouncing: *"[t]hank you for the letter from Persepolis FC. As the Club Benefit Funds are booked on IRIFF's account at FIFA we need an official request letter from IRIFF. Could you please send us that. Thank you."*

16. On 2 September 2023, the Club sent FIFA a reminder letter with respect to the above-mentioned request of paying the Player, on the Club's behalf, USD 163,000 and deduce it from the Club's benefit from the FIFA World Cup Club Benefits Programme. In addition, the Club expressed its concern that if the payment was not made at the latest on 22 September 2023, the Club would be obliged to pay USD 150,000 as penalty for the belated payment.

17. On 5 September 2023, the FFIRI sent to FIFA the requested letter mentioned in paragraph 15.

18. On 15 September 2023, the Club sent to FIFA a letter reminding its request and expressing its concern regarding the potential penalty fee.

19. On 25 September 2023, the Club sent a new letter to FIFA reminding its request and noting that, although the deadline for the payment was overdue, the Club would seek the Player's patience to prevent the financial harm of the penalty of USD 150,000 for late payment.

20. On 27 September 2023, the FFIRI informed the Club that it received a letter from FIFA stating that regarding the Club's request *"We* [FIFA] *have not yet received the ok from our Compliance, therefore we cannot yet proceed. Once they approve it, we will check with the bank and send 3 letters to sign (one for IRIFF, one for the club and one for the beneficiary). Only afterwards a payment order will be given to the bank"*.

21. On 10 October 2023, the Club sent another letter to FIFA reminding its request and its concern because of the penalty to be imposed on the Club.

22. On the same day, the FFIRI sent a letter to FIFA requesting any update of the Club's request.

III. PROCEEDINGS BEFORE THE FIFA FOOTBALL TRIBUNAL

23. On 16 October 2023, the Player lodged a claim before the FIFA Football Tribunal arising from outstanding fees of the Second Termination Agreement and requested the payment of the following amounts:

- *"USD 163,000 plus 5% interest p.a. as from 23 September 2023;*
- *USD 150,000 net as penalty."*

24. On 17 October 2023, the Club sent a letter to FIFA requesting to expedite the process to pay in its behalf the mentioned USD 163,000 to the Player.

25. On 18 October 2023, FIFA sent a letter to the FFIRI stating:

"…Regarding the request from Persepolis FC in relation to the payment of Leandro Marcos Pereira, we received the necessary approvals for this payment.
Please find attached two letters to be completed, printed on company paper and signed by Persepolis FC and IRIFF respectively. Also please find attached a letter for Leandro Marcos Pereira to be completed, printed and signed by him. Once we receive the letters completed and duly signed we can transfer the amount to the indicated bank account…"

26. On 19 October 2023, the FFIRI sent to the Club the abovementioned FIFA's letter and forms to be filled.

27. On the same date, the Club sent to the Player the respective form to be filled in to authorize the payment of FIFA to the Player on behalf of the Club.

28. The Player never filled in the form. Accordingly, FIFA did not realize the payment to the Player on behalf of the Club.

29. In its answer to the Player's claim, the Club argued, in summary, the following:
- The Club did not comply with the First Termination Agreement because of international sanctions against Iranian banking.
- FIFA took more than 50 days to approve the payment to the Player.
- The Player agreed to receive the payment through FIFA and sign the necessary documents, however when FIFA sent the payment form, he refrained from signing it and preferred to continue with his claim before the Football Tribunal.
- The Club highlighted the principle of equity. The amount of USD 150,000 as penalty for the delay is disproportionate.

30. In his *replica*, the Player stated, in summary, the following:
- He rejected the Club's argument that the delay in the payment was due to international sanctions on Iranian banking as it lacks legal substantiation and considers that it does not absolve the Club to make a timely payment.

- The penalty of USD 150,000 in the Second Termination Agreement was not imposed arbitrarily, it was agreed during the negotiation process.

31. The Club failed to submit its *duplica*.

32. On 18 April 2024, the Dispute Resolution Chamber of the FIFA Football Tribunal (the "DRC") issued the Decision FPSD-12243 (the "Appealed Decision") that ruled:

1. *"The claim of the Claimant, Leandro Marco Pereira, is partially accepted.*
2. *The Respondent, Persepolis Football Club, must pay to the Claimant the following amounts:*
   - ***USD 163,000 net as outstanding remuneration** plus 5% interest p.a. as from 23 September 2023 until the date of effective payment;*
   - ***USD 75,000 net as contractual penalty.***
3. *Any further claims of the Claimant are rejected.*
4. *Full payment (including all applicable interest) shall be made to the bank account indicated in the Bank Account Registration Form.*
5. *Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:*
   1. *The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.*
   2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*
6. *The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*
7. *This decision is rendered without costs."*

(Emphasis added in the original wording)

33. On 13 May 2024, the DRC notified the Parties the grounds of the Appealed Decision, which can be summarized as follows:

- In relation to the Player's claim of USD 163,000, the Chamber noted that the Club did not contest that such amount is due. Moreover, the Club requested the intermediation of FIFA to proceed with the payment and such intermediation was not achieved.
- *"However, the Chamber understood that this possible intermediation, in any case, does not alter the contractual obligations concluded between the parties.*

Indeed, any potential role FIFA could have played should be viewed within the framework of contractual facilitation rather than as a determinant of the parties' legal obligations. In other words, said possible facilitation does not absolve either party from fulfilling their contractual duties."

- *"Therefore, in line with the principle of pacta sunt servanda, the Respondent shall pay to the Claimant, the agreed amount of USD 163,000 net."*
- *"In addition, in line with the longstanding jurisprudence of the Football Tribunal, the Chamber decided to award 5% interest p.a. as from the due date over the principal amount."*
- In respect of the penalty compensation for delayed payment of USD 150.000, *"the Chamber observed that this penalty fee represents 92% of the principal amount. Hence, a majority of the Chamber considered this rate to be disproportionately high."*
- Consequently, *"the majority of the Chamber deemed it appropriate to reduce the penalty fee by 50%, leading to a revised penalty amount of USD 75,000."*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

34. On 2 June 2024, the Club submitted its Statement of Appeal to the Court of Arbitration for Sport (the "CAS") against the Appealed Decision and designated the Player as respondent.

35. On 3 June 2024, the CAS Court Office acknowledge the Club's Statement of Appeal, however it reminded the Club of the minimum requirements for a Statement of Appeal pursuant Article R48 of the Code of Sports-related Arbitration 2023 edition (the "CAS Code"). Accordingly, the CAS Court Office invited the Club to complete its Statement of Appeal.

36. On 5 June 2024, the Club submitted to the CAS its completed Statement of Appeal. Such Statement of Appeal serves as the Appeal Brief. In addition, the Club requested the appointment of a sole arbitrator to resolve the present dispute.

37. On 7 June 2024, the CAS Court Office, pursuant Article 41.3 of the CAS Code, sent a letter to FIFA to inform it about the proceedings and to stress that if FIFA intended to participate as a party, it shall send an application within ten days.

38. On the same date, the CAS Court Office invited the Player to inform whether he agrees with the appointment of a sole arbitrator.

39. On 10 June 2024, the Player informed that he agrees with the submission of this case to a sole arbitrator.

40. On 13 June 2024, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present proceedings.

41. On 15 August 2024, within an extended deadline, the Player submitted its Answer to the Appeal Brief.

42. On 16 August 2024, the CAS Court Office invited the Parties to inform whether they prefer a hearing to be held or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions, similarly, if the Parties requested a case management conference to be held in order to discuss procedural issues. Lastly, the CAS Court Office informed the Parties that the Panel appointed to decide the case was composed by:

    Sole Arbitrator: Mr. José Juan Pintó Sala, Attorney-at-law in Barcelona, Spain.

43. On 20 August 2024, the Club stated its preference for a hearing to be held in the present procedure. Contrarily and on the same date, the Player informed that he does not wish a hearing to be held and preferred the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

44. On 28 August 2024, the CAS Court Office advised the Parties that the Sole Arbitrator had decided, pursuant Article R57 (2) of the CAS Code, to hold a hearing by videoconference. Moreover, the Parties were invited to indicate their availability from several possible dates.

45. On 31 August 2024, the Club indicated its availability for the hearing. Furthermore, the Club requested that the hearing be held in person as it was unable to use the platform Cisco Webex because it is *"filtered in Iran and using VPN is A. Illegal and B. breaks the quality drastically"*. Additionally, the Club recalled difficulties with the platform in a previous hearing. Lastly, the Club announced that, if the hearing was not held in person, it would not be able to attend the hearing by videoconference or phone.

46. On 4 September 2024, the Player informed his availability for the hearing.

47. On 5 September 2024, the CAS Court Office, given the Club's request to hold the hearing in person, invited the Player to indicate whether he maintained his request to hold the hearing by videoconference.

48. On 9 September 2024, the Player confirmed his preference for the hearing to be held by videoconference and, should the hearing be held in person, the Player requested to attend on a remote basis.

49. On 13 September 2024, the CAS Court Office, on behalf of the Sole Arbitrator and in view of the Parties' availability, called the Parties to appear at the hearing that would take place by videoconference (via Cisco Webex) on 20 September 2024. Moreover, the Parties were invited to inform the name of the persons (counsels,

witnesses and/or interpreters) that would attend the hearing. Lastly, the CAS Court Office informed that:

- The platform Cisco Webex does not require any special hardware or software and allows participation from any location.
- Several hearings via Cisco Webex were held with parties based in Iran without encountering any technical issue.
- None of the Iranian parties attending a Cisco Webex hearing raised the legality of this platform in Iran.

50. On 16 September 2024, the Player provided his list of attendees at the hearing. The Club did not provide its list of participants within the granted time limit.

51. On 17 September 2024, the CAS Court Office sent to the Parties the Order of Procedure. In the Order of Procedure, the Parties were advised that Mr. Alejandro Naranjo Acosta would assist the Sole Arbitrator as *ad-hoc* Clerk.

52. On 18 September 2024, the Player duly signed and returned the Order of Procedure. The Club did not send the Order of Procedure signed.

53. On the same date, the Club announced that it would not attend the hearing since it was going to be held by videoconference.

54. On the same date, the CAS Court Office reminded the Club that, pursuant to Article R57 (4) of the CAS Code, if a party fails to attend a hearing, although duly summoned to appear, the Sole Arbitrator may nevertheless proceed with the hearing and deliver an award. Moreover, the CAS Court Office indicated to the Club that:

- *"Several hearings were held via CISCO Webex with Iranian parties, which never caused any issue. Furthermore, nothing would prevent the Appellant from travelling to a third country next to Iran and where CISCO Webex is not (supposedly) prohibited."*
- *"[T]he Sole Arbitrator has taken into account the Parties' positions and, notably, that the Respondent (a Brazilian national) does not have the financial means to travel to Lausanne to attend a hearing, considering that he would also have to cover his counsel's expenses. Besides, an equal treatment of the Parties and a due process would require that all the Parties be present in Lausanne, and not only one of them. For these reasons, the Sole Arbitrator has decided to hold the hearing on a remote basis."*

Lastly, the CAS Court Office invited the Parties to inform whether they wish to maintain the hearing in this matter.

55. Accordingly, and still on the same date, the Player indicated that he still considered a hearing unnecessary, however if the hearing was maintained he confirmed his presence by videoconference. The Club did not file any comment within the prescribed time limit.

56. On 19 September 2024, the CAS Court Office informed the Parties that the Sole Arbitrator maintained the online hearing scheduled for 20 September 2024.

57. On 20 September 2024, the Sole Arbitrator, Fabien Cagneux, Managing Counsel, the *ad-hoc* Clerk and the Player's representatives attended the hearing scheduled by videoconference. However, as the Club was not present after a waiting period of 25 minutes, the Sole Arbitrator closed the hearing.

V. SUMMARY OF THE PARTIE'S SUBMISSIONS

58. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by them. The Sole Arbitrator, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the Parties, even if there is no specific reference to those submissions in the following section.

A. The Club

59. In its Statement of Appeal serving as the Appeal Brief, the Club presented the following prayers for relief:
- *"to dismiss the decision, rendered by the FIFA.*
- *to render a decision which dismisses the claim of the respondent (claimant at FIFA).*
- *It goes without saying that Persepolis FC does not agree with the Decision and therefore wants to appeal at CAS to get a different outcome because even if the claim the player made before FIFA was admissible, yet he joined a new club and therefore he did not encounter any direct or indirect damage."*

60. The Club written submissions and the arguments therein can be summarized as follows:

61. The reason for the Parties to terminate their contract prematurely at the end of the season 2022/2023 was *"that the player had an offer from a team in Japan and Persepolis showed its goodwill and decided to release the player and replace him with another player, however, it was not an easy job to do."*

62. The Club was not able to comply with the First Termination Agreement *"due to international sanctions against Iran banking".* Accordingly, *"Persepolis had no*

way to transfer the amount but to try to use its amount at FIFA which was allocated to the club, for its players' participation in FIFA World Cup 2022, Qatar."

63. The negotiation for the conclusion of the Second Termination Agreement was because the Club needed to prevent the great loss of USD 100,000 that was established in the First Termination Agreement as penalty for delayed payment.

64. In the Second Termination Agreement, new values appeared: a) instead of USD 143,000 to be paid, the Second Agreement established USD 163,000 as the amount to be paid and; b) instead of USD 100,000 USD of penalty for delayed payment, the Second Agreement established the sum of USD 150,000 for said penalty.

65. The Club argues that these new values are illogical and excessively higher than the ones established pursuant FIFA's regulations.

66. Even with such high amounts, the Club agreed to sign the Second Termination Agreement because it was *"sure that FIFA would transfer the amounts, on behalf of the club. It is a very usual practice and FIFA always does transfer the amounts on behalf of the clubs but this time it took more than fifty days for FIFA to receive the necessary approval of the payment."*

67. The Club truly intended to pay its debts toward the Player, and it contacted FIFA insistently for this purpose.

68. The Club brings the attention to Note 3 of the Second Transfer Agreement, in such, the term and way of payment is clearly mentioned, namely, the Player accepted that the respective payment was to be done by FIFA from the money the Club was entitled to and FIFA held at that moment.

69. With the above in mind, the Parties could have written that if FIFA does not pay the due amounts within the stipulated deadline, then the Club shall seek an alternative way to fulfill the payment. However, this was not the case, and the Player accepted that FIFA would transfer him the payment, and not the Club itself.

70. When the Club was requested by FIFA to sign the respective forms to proceed with the payment to the Player, the Club immediately remitted it to the Player, but he refrained from signing the form. Apparently, the Player wished to continue with the claim as he was not satisfied with what the Parties agreed on in the Second Termination Agreement.

71. The Club considers that by no means it would be fair if the Player receives an additional compensation of USD 150,000 for delayed payment.

72. Lastly, the Club *"respectfully remind the player and the CAS of the Principle of Equity and request the CAS to drop the claim against Persepolis FC and order a fair amount to be paid to the player."*

B. The Player

73. In its Answer to the Appeal Brief, the Player submitted the following request for reliefs:

- *"FIRST – To dismiss the appeal lodged by the Club and confirm in full the terms of the Challenged Decision;*
- *SECOND – To render the operative part of the CAS Arbitral Award within 4 (four) months as from the closure of the evidentiary proceedings (cf. Art. R59 CAS Code);*
- *THIRD – To order the Club to bear all costs associated with the present arbitration; and*
- *FOURTH – To order the Club to pay a contribution towards the legal fees, costs and expenses incurred by the Player in the amount of CHF 10,000 (ten thousand Swiss francs)."*

74. The Player's submissions to support the mentioned prayers for relief may be, in essence, summarized as follows:

a. <u>The performance of the Second Termination Agreement</u>

75. Only a careless interpretation of the Second Termination Agreement embraces the argument that the Player would not be entitled to demand compliance with the due payment, on the grounds that he had given his consent for FIFA to perform the payment stipulated therein on the Club's behalf.

76. Per Note 2 of the Second Transfer Agreement, the Parties agreed that the amount payable to the Player (USD 163,000) should be transferred by the Club. Note 3 only provided for the possibility that FIFA would be authorized to deduct the above-mentioned amount from the entitlement the Club had under the FIFA World Cup Club Benefits Programme and remit it directly to the Player.

77. Hence, there is nothing in the wording of the Second Termination Agreement that can lead to the conclusion that the Parties had agreed that the payment should have been made by FIFA *in lieu* of the Club. Rather such payment could have been made by FIFA on behalf of the Club without exempting the Club's liability.

78. In fact, the second part of Note 3 underscores that the responsibility for paying the amount set forth therein rested solely on the Club by fixing a penalty of USD 150.000 at the Club's expense and obviously not at the expense of FIFA. Under no circumstances the Parties could have somehow agreed to any sort of debt assumption towards FIFA.

79. There is no legal ground to deviate from the clear and unequivocal wording of the Second Termination Agreement, which demonstrate, to a standard of comfortable satisfaction, the true will of the Parties: the obligation to pay the amount due to Player lies upon the Club.

80. In this regard, CAS 2013/A/3137 indicated:

"The Panel finds that in the case at hand no such dwelling on inexact expressions occurs. Reading article 7 of the Loan Agreement does not leave room for interpretation as the wording is clear and unambiguous. In this respect, the Panel refers to the principle of in claris non fit interpretatio, which provides that the language of a provision governs its interpretation where the language is clear and explicit and does not involve an ambiguity or absurdity. In other words, the Panel does not need to look for the true intention of the parties at the moment of signing, as these are reflected in the clear wording of the Loan Agreement (CAS 2006/A/1152; CAS 2011/A/2681)."

81. Even if there would be any doubt as to whom rested the obligation to comply with the payment stipulated in the Second Termination Agreement, the true and common intention of the Parties - as mentioned in Article 18 (1) of the Swiss Code of Obligations (the "SCO") - is further underscored by the WhatsApp message sent by the Director of the Club to the representative of the Player on 14 August 2023:

"We will write that FIFA will pay on behalf of Persepolis and we will write: in any case Persepolis is responsible for the payment and in any case if the money is not in the Player bank in time, then he can claim for more USD 100,000 as fine."

82. Pursuant to the principle *in dubio contra proferentem* any ambiguity or inexact expressions contained in an agreement should be interpreted against the party who drafted it, *in casu* the Club.

83. It is essential to highlight that the legal framework developed by FIFA in the last decade relies mainly upon the fundamental legal principle of respect of contracts *pacta sunt servanda*. Therefore, the Club's persistent default in complying with the obligations undertook towards the Player not only amounts to a breach of the

Second Termination Agreement itself, but also undermine the aforementioned principle and, consequently, the own FIFA legal framework.

84. Furthermore, Article 12bis of the FIFA Regulation on the Status and Transfer of Players (the "RSTP") provides: *"[c]lubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements."*

b. As to the penalty clause

85. In its Appeal Brief, the Club appears to claim that the penalty for delayed payment awarded by FIFA, though already reduced by half (from USD 150,000 USD to USD 75,000), would still not account for a fair amount.

86. Pursuant Article 163 (1) of the SCO, the Parties could establish the amount of a contractual penalty. Nonetheless the DRC considered it highly disproportionate pursuant Article 163 (3) of the SCO.

87. In assessing whether a penalty clause is excessive, one shall take into account not only the damages to which the creditor is exposed as a result of the breach, but also the nature and duration of the contract, the seriousness of the fault, the economic situation of the parties –especially that of the debtor –, and the business experience inherent to their field of expertise. In case of doubts, though, the principle of respect for contracts shall always prevail.

88. The Club refers to the case CAS 2021/A/8340 in which was stated:

"According to Article 163 para. 3 CO, the court must reduce penalties that it considers excessive. However, the law does not contain a clear definition of an excessive contractual penalty, so it is up to the judge, to take into account the facts of the case and all relevant circumstances, to decide whether the penalty is excessive and, if so, to what extent it must be reduced. The judge's discretionary power relates both to the excessive nature of the penalty and to the question of the extent of the reduction. If the court recognises that the penalty is excessive, it must in principle reduce it only to the extent necessary to ensure that it is no longer excessive. A reduction of the penalty is justified in particular where there is a gross disproportion between the amount agreed and the creditor's interest in maintaining his claim in full, measured in concrete terms at the time when the contractual breach occurred. The damage to which the creditor is exposed in the specific case is indicative of the creditor's interest in performance and as such is one of the circumstances to be taken into account. Other assessment criteria may be taken into account, such as the nature and duration of the contract, the seriousness of the fault

and of the breach of contract, the economic situation of the parties, especially the debtor. It is also important not to lose sight of any dependency resulting from the contract and the business experience of the parties. However, the judge must not reduce a penalty too lightly and respect the principle of freedom of contract, which is of central importance in Swiss law and which must always prevail in cases of doubt."

89. The Club further submits that the reduction of the compensation penalty occurred even though it was the Club who proposed the amount of the penalty to persuade the Player to accept a further deferral in the payment of the outstanding amounts, which stems from a breach of not only the First Termination Agreement, but also the Employment Contract itself.

90. Hence, the Club cannot now claim, in *venire contra factum proprium*, that a penalty equivalent to only 50% of the amount it had itself suggested is somehow excessive or disproportionate, even more in light of the seriousness of its persistent failure to comply with its obligations.

91. The Player does not overlook the Club's business experience as far as football-related contracts are concerned, being one of the most powerful, traditional and well-regarded clubs in Iran and in Asia. Therefore, the Club well knows the functioning of a penalty clause.

92. In light of the above, it is undisputed that a penalty amounting to USD 75,000 is neither excessive nor disproportionate in the case at hand.

VI. JURISDICTION

93. The CAS jurisdiction derives from Article R47 of the CAS Code, that 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."*

94. In connection with the abovementioned Article R47 of the CAS Code, the jurisdiction of the CAS, arises out of Article 56 of the FIFA Statutes 2023 edition (the "FIFA Statutes") which in the pertinent part reads as follows:

"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member

associations, confederations, leagues, clubs, players, officials, football agents and match agents."

95. Moreover, none of the Parties disputed the jurisdiction of CAS. Therefore, the Sole Arbitrator holds that the CAS has jurisdiction to adjudicate and decide the present Appeal.

VII. ADMISSIBILITY

96. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against."

97. Article 57 (1) of the FIFA Statutes states:

"Appeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question."

98. Additionally, the Appealed Decision confirmed that *"this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision".*

99. The Sole Arbitrator notes that the admissibility of the Appeal is not contested by the Parties.

100. The grounds of the Appealed Decision were notified to the Parties on 13 May 2024 and the Statement of Appeal was filed on 2 June 2024, *i.e.* within the time limit required both by the FIFA Statutes and the CAS Code.

101. Consequently, the Sole Arbitrator finds that Appeal filed by the Club is admissible.

VIII. APPLICABLE LAW

102. Article R58 of the CAS Code reads as follows:

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

103. In addition, Article 56 (2) of the FIFA Statutes establishes the following:

> *"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."*

104. The Sole Arbitrator notes that although the Club did not explicitly recognize the applicability of FIFA Regulations, it referred to such Regulations in its submissions. Conversely, the Player did mention that *"the various regulations of FIFA and, additionally Swiss law shall both apply to the merits of the ongoing proceedings"*

105. In accordance with the abovementioned, the Sole Arbitrator considers that the present dispute shall be resolved based on the applicable FIFA Regulations and, subsidiarily, Swiss Law.

IX. MERITS

106. As a preliminary remark and for the sake of completeness, the Sole Arbitrator addresses the matter of the non-attendance of the Club to the hearing of the present procedure.

107. As said, although the Club is the Appellant in this procedure, i.e. the party that initiated the CAS proceedings, the Club did not attend the hearing.

108. Article R57 (4) of the Code had already foreseen this kind of situation and established that *"[i]f any of the parties, or any of its witnesses, having been duly summoned, fails to appear, the Panel may nevertheless proceed with the hearing and render an award."*

109. Moreover, in *The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials* (Mavromati/Reeb) was also stressed that *"The main condition for continuing the proceedings is the (timely) notice of the parties. The Panel should make sure that all parties were duly summoned. Once the Panel made sure that the defaulting party was duly informed, it suffices to briefly refer to Article R57 paragraph 3 and to continue with the award."*[1]

110. Lastly, the Sole Arbitrator observes that this kind of situation has already happened in CAS proceedings in which the respective panels issued the respective awards with no further issues, *e.g.* CAS 2020/A/6694, CAS 2013/A/3172 and CAS 2008/A/1534.

111. Moreover, in the case CAS 2019/A/6463 & CAS 2019/A/6464, the panel determined:

[1] P. 528.

"[D]eciding to hold a video-conference hearing would not violate any right of the Appellants, including the right to be heard. The CAS Code does not grant the parties a right to a hearing. In fact, pursuant to Article R57 of the CAS Code, the Panel has the discretion, after consulting with the parties and if it considers to be sufficiently well informed, not to hold a hearing at all. Therefore, a fortiori, the Parties have no right to an in-person hearing over one by video-conference."

112. Furthermore, Article R44.2 of the Code rules that *"[t]he President of the Panel may decide to conduct a hearing by video-conference or to hear some parties, witnesses and experts via tele-conference or video-conference."*

113. Lastly, the Sole Arbitrator observes that the Club failed to demonstrate its alleged difficulties presenting itself to the hearing and neither continued communications with the CAS Court Office to find any solution to the potential difficulties.

114. Consequently, the Sole Arbitrator finds that the Parties were duly informed and summoned to appear at the hearing. Accordingly, he will proceed with issuing the Award, as permitted by Article R57 (4) of the Code.

115. Turning to the merits of the dispute and given the Parties written submissions, the Sole Arbitrator firstly identifies that the following facts of the dispute remained undisputed, namely:

- On 5 February 2023, the Parties signed an Employment Agreement valid for two and a half sport seasons and for a total value of USD 1,100,000 plus bonuses.
- On 12 July 2023, the Parties concluded the First Termination Agreement to terminate the employment agreement. Such agreement consisted in the payment of overdue payables of the sum of USD 143,000 by the Club to the Player and, if such payment was delayed, a penalty amounting to USD100,000 would be due to the Player.
- The Club failed to fulfill the payment of the First Termination Agreement.
- After a negotiation phase, the Parties signed a Second Termination Agreement in which the overdue payable ascended to USD 163,000 and the potential penalty for delayed payment to USD 150,000.
- Given the participation of several Club's players in the FIFA World Cup Qatar 2022 and the FIFA World Cup Club Benefits Programme, the Club requested FIFA to proceed with the payment of USD 163,000 USD directly to the Player.
- The payment of USD 163,000 USD stipulated in the Second Termination Agreement in the determined deadline was not complied.
- In the Appealed Decision, the DRC decided to award the Player the sum of USD 163,000 USD as overdue payables and reduced the penalty for delayed payment to USD 75,000.

116. Given the Parties written submissions and their prayers for relief, the Sole Arbitrator considers that the two issues to resolve are:

a. Is the Player entitled to the payment of a penalty compensation?
b. Is the amount of 75.000 USD for penalty compensation disproportionate?

117. As an initial remark, the Sole Arbitrator identifies that at no point, the Club has denied overdue payment for the amount of USD 163,000. Accordingly, the payment for such sum is confirmed by the Sole Arbitrator pursuant the principle of *pacta sunt servanda* and Article 12bis of the RSTP that provides that: *"[c]lubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements."*

118. Conversely, the Club's argumentation is based on its understanding that the Second Termination Agreement stipulated that the Parties agreed that the payment of the overdue payable to the Player was to be complied with by FIFA on behalf of the Club.

a. Is the player entitled to the payment of a penalty compensation?

119. The Sole arbitrator refers to the wording of Notes 2 and 3 of the Second Termination Agreement:

Note 2: the parties of the agreement (Persepolis and Player Mr. Pereira) agree that not later than a month after the signing date of the current agreement (not later than 22 Sep 2023), ***the amount mentioned in Note 1, (USD 163,000) will be transferred by Persepolis to the bank account which is provided by the player*** *as below:*

(…)

Note 3: ***club will request FIFA to transfer the amount of USD 163,000*** *to the bank account, provided by the player and deduct the same amount from the club's money, currently kept by FIFA (Club's Benefit of World Cup 2022) and the player admits he will sign the necessary documents of FIFA. In case, the amount of Note 1, is not transferred by 24 Sep 2023, the player is entitled to receive the amount of this agreement (USD 163,000 Net) plus USD 150,000 (One Hundred Fifty Thousand Dollars) as compensation for the delay in payment. (Total USD 313,000 – three hundred thirteen thousand dollars)."*

(Emphasis added by the Sole Arbitrator)

120. From the abovementioned wording the Sole Arbitrator remarks two main findings:

121. First, from Note 2, it is not disputed that the Parties agreed that the obligated party to make the payment of USD 163,000 is the Club.

122. Second, in continuance of Note 2, the Parties determined that a request would be made to FIFA to proceed to the mentioned payment on behalf of the Club (Note 3).

123. From such findings, the Sole Arbitrator concludes that the Club was obliged to comply with the payment to the Player, not FIFA. The provision of establishing a request to FIFA to proceed with the payment on behalf of the Club is a valid agreement between the Parties. However, such a request, subject to FIFA's approval, converts FIFA into a mere facilitator for the transaction, in no way is the Club relieved or substituted of his obligation to guarantee that the payment was duly complied within the stipulated deadline.

124. Moreover, the request to FIFA to act as a facilitator or intermediary could not have any other nature given that the Parties had no faculty to conclude binding obligations on behalf of FIFA.

125. Considering the abovementioned, although the Club indeed requested FIFA to proceed with the payment on its behalf, by not being replaced as debtor, the Club is liable for the non-fulfillment in due time of the obligations set in the Second Termination Agreement, triggering as well the compensation penalty for delayed payment.

b. Is the sum of USD 75,000 disproportionate?

126. Having established that the Club has always been the debtor and responsible for the compliance of the overdue payable of USD 163,000, the Sole Arbitrator observes that the Club does not consider fair that the Player is awarded a compensation for the delayed payment of the amount agreed on the Second Termination Agreement.

127. In this respect, the Sole Arbitrator remarks the following:

- The overdue payable is the result of unpaid salaries and bonuses amounting to USD 143,000 of the first half season of the Employment Agreement.
- Then such sums were recognized and deemed to be paid with the signing of the First Termination Agreement.
- After the non-compliance of the First Termination Agreement and in order to conclude a Second Termination Agreement, the Club made offerings to the Player to increase the amount payable and to include a compensation penalty for delayed payment.
- The Club did not comply with the Second Termination Agreement.

128. Moreover, the Sole Arbitrator observes that the Club did not provide any reason for the non-compliance with the Employment Agreement in first instance. Regarding the First Termination Agreement, the Club has also not filed any evidence of the impossibility to make payments to the Club due do international sanctions on Iran banking.

129. With all, the Player has consistently expected his credit to be paid with no success. Furthermore, the Second Termination Agreement provided for a penalty compensation if such debt was not paid within a specific deadline and such penalty compensation was freely agreed upon by the Parties.

130. Accordingly, the Sole Arbitrator concludes that the Player is entitled to receive a penalty compensation for the delay in the payment of outstandings salaries due to him.

131. Concerning the amount of such compensation, the Sole Arbitrator recalls the award of the case CAS 2017/A/5046 in which the sole arbitrator stated:

"Under Swiss law, the interpretation of Article 163 para. 3 SCO is that the judge (or the arbitrator) will use his discretion to reduce a contractual penalty if the relationship between the amount of the penalty agreed upon, on the one hand, and the interest of the creditor worthy of protection, on the other hand, is grossly disproportionate (ATF 114 II 264 et seq.).

In other words, an excessive penalty under Swiss law is a penalty that, at the time of the judgment, is unreasonable and clearly exceeds the admissible amount in consideration of justice and equity, or, more simply put, is "abusive" (ATF 82 II 142).

Moreover, according to the Swiss jurisprudence, the specific circumstances of the case, such as the nature and the duration of the contract, the seriousness of the contractual breach, the degree of fault, the behaviour of the creditor, the financial conditions of the parties, a special interest of the creditor that the debtor behaves in conformity with the contract, the experience in business matters of the parties and the damage incurred by the creditor shall be considered (ATF 114 II 264, 265; TF 4A_141/2008 at 14.1)."

132. Moreover, the panel in the case CAS 2015/A/4057 indicated:

"The Swiss Supreme Court held that Article 163 CO is part of public order and that, as a consequence, the Judge must apply it even if the debtor has not expressly requested a reduction. Nevertheless, the Judge must observe a degree of deference as the parties are free to determine the amount of the contractual penalty (see Article 163 para. 1 CO) and as the principle of freedom of contract commands that the judge abides by the parties' agreement. The judge must intervene only when the

stipulated amount is so high that it unreasonably and flagrantly exceeds the amount admissible with regard to the sense of justice and equity (ATF 133 III 201, consid. 5.2; see also CAS 2010/A/2202 para. 28; Decision of the Swiss Federal Tribunal 4C.5/2003, dated 11 March 2003, consid. 2.3.1; ATF 114 II 264 consid 1a).

The Judge must assess all the elements which are objectively relevant and look for an adequate solution regarding the concrete circumstances of the matter before him or her (ATF 101 Ia 545 cons. 1b). He or she will primarily seek to enforce the parties' intention and make sure not to substitute his or her own views for that of the parties' (ATF 133 III 201 consid. 5.2 and 5.4). In other words, should the Judge hold that the penalty clause is excessive, he or she must refrain from doing anything else but reduce it so that it is not excessive anymore. In particular, the Judge cannot reduce the penalty to an amount that he or she deems fair (ATF 133 III 201, consid. 5.2 and 5.5 and references)."

133. Accordingly, the Sole Arbitrator concurs with the reasoning of the Appealed Decision: although the Parties have stipulated a sum for such compensation, this amount is deemed disproportionate in comparison with the main debt. In this respect, the Sole Arbitrator notes that the DRC has already reduced the penalty compensation to USD 75,000, i.e. 50% of the agreed upon compensation, and considers that such new amount is proportionate considering the circumstances of the case at stake.

134. Lastly, the Sole Arbitrator notes in the Club's request for relief, the allegation that the Player "*joined a new club and therefore he did not encounter any direct or indirect damage".*

135. Nonetheless, the Sole Arbitrator finds no evidence in the file of the proceedings regarding the Player's new club. In any case, such circumstances would not modify the abovementioned analysis given that the amounts awarded correspond to overdue payables and a penalty for delay payment, *i.e.* compensations for already produced damages for the Player within its relationship with the Club.

136. Consequently, the Sole Arbitrator confirmed the Appeal Decision entirely.

X. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Persepolis Football Club against the Decision FPSD-12243 rendered on 18 April 2024 by the Dispute Resolution Chamber of the FIFA Football Tribunal is dismissed.

2. The Decision FPSD-12243 rendered on 18 April 2024 by the Player Status Chamber of the FIFA Football Tribunal is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland

Date: 17 January 2025

THE COURT OF ARBITRATION FOR SPORT

José Juan Pintó Sala
Sole Arbitrator

Alejandro Naranjo Acosta
Ad hoc Clerk