CAS 2023/A/10069 Club Jorge Wilstermann v. Gustavo Alexandre Barbosa do Nascimento & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Mariano Clariá, Attorney-at-law in Buenos Aires, Argentina

in the arbitration between

Club Jorge Wilstermann, Bolivia

Represented by Mr. Enric Ripol, Attorney-at-law, in Miami, United States of America

Appellant

and

Gustavo Alexandre Barbosa do Nascimento, Brazil

Represented by Mr. Arthur Saltz, Attorney-at-law in Porto Alegre, Brazil

First Respondent

And

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr. Roberto Nájera Reyes, Attorney-at-law, FIFA Litigation Department, Zurich, Switzerland

Second Respondent

I. PARTIES

1. Club Jorge Wilstermann (hereinafter, the "Appellant", "CJW" or the "Club") is a Bolivian professional football club affiliated to the Bolivian Football Federation ("FBF"), which in turn is a member association of the *Fédération Internationale de Football Association* (hereinafter, "FIFA").

2. Mr. Gustavo Alexandre Barbosa do Nascimento (hereinafter, the "Player" or the "First Respondent") is a Brazilian professional player born on 31 August 1993.

3. FIFA is the international governing body of football. FIFA is an association under Articles 60 *et seq*. of the Swiss Civil Code ("SCC") with its headquarters in Zürich, Switzerland (hereinafter, FIFA or the "Second Respondent").

   FIFA and the Player shall hereinafter be jointly referred to as the "Respondents", where applicable.

   The Club and the Player shall be jointly referred to as the "Parties".

II. BACKGROUND

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

5. On 1 August 2022, the Player signed an employment contract with the Thai club Ayutthaya United, valid from 16 July 2022 until 31 May 2023.

6. On 4 January 2023, the Club announced on Facebook the appointment of Mr Adeval Borba as its new sports manager (Gerente Deportivo), who was going to work under the direction of Mr. Gary Soria, President of the Club.

7. On 6 January 2023, the Player engaged in a conversation with Mr. Borba via WhatsApp to discuss potential terms and conditions for the Player's prospective inclusion in the first team of the Club.

8. On the same date of 6 January 2023, Mr. Borba sent a document to the Player identified in its file name as "*Precontrato Gustavo Barbosa.doc*", to be signed by the Player and by the President (i.e., Mr. Gary Edson Soria Lazarte) and Omar Jhonny Sarmiento Via, first vice-president of CJW (hereinafter, the "Precontract"). In addition, Mr. Borva requested the Player to terminate its contract with Ayutthaya United in order to send him the flight tickets for him and his family.

9. On the same day, the President of the Club also sent the Precontract to the Player.

10. On January 7, 2023, the Player requested Mr. Borba to make some adjustments to the Precontract, specifically regarding a bonus for goals, housing, and flight tickets. After several discussions and negotiations, Mr. Borba sent a new version of the Precontract, which included the adjustment for the Player to rent an apartment. However, the flight tickets and the bonus per goal were not included.

11. After sending this revised version, Mr. Borba insisted that the Player return the signed document as soon as possible. Additionally, he put pressure on the Player to terminate his contract with Ayutthaya United.

12. On the same date, the Player sent Mr. Borba the signed Precontract.

13. On 10 January 2023, the Player and the Thai club Ayutthaya mutually terminated their employment relationship.

14. On January 19, 24, and 26, 2023, the Player sent three default notices to the Club due to its failure to provide him with flight tickets to Bolivia. The Club did not formally respond to any of these notices. On 24 February 2023, the Player sent a fourth notice of default, which, again, was not answered by the Club.

15. On 12 June 2023, the Player lodged a claim before FIFA alleging the Club's breach of the Precontract and requesting the amount of USD 52,878 as compensation.

16. FIFA DRC decided as follows (the Appealed Decision):

"1. FIFA has jurisdiction to hear the claim of the Appellant, Gustavo Alexandre do Nascimento.

2. The claim of the Appellant is partially accepted.

3. The Respondent, Club Wilstermann, shall pay to the Appellant, the amount of USD 40.190 as compensation for breach of contract without just cause.

4. Any further claims of the Appellant are rejected.

5. The Respondent shall pay the full payment into the bank account indicated in the bank account registration form available on the FIFA legal portal.

6. The Respondent is banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods

7. If full payment (including all applicable interest) is not made within 45 days following the notification of this decision, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.

8. The enforcement of the consequences is only done at the request of the Appellant in accordance with art. 24 par. 7 and 8 and Art. 25 of the Regulations on the Status and Transfer of Players.

9. This decision is rendered without costs."

17. The grounds of the Appealed Decision were notified to the Parties on 29 September 2023.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 20 October 2023, the Appellant filed with the Court of Arbitration for Sport (the "CAS") an appeal against the Respondents with respect to the Appealed Decision, pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code").

19. Together with his Statement of Appeal, the Appellant applied for a stay of the execution of the ban to register new players from other clubs during two entire and consecutive registration periods. The summer transfer window in Bolivia was set to open on 1 January 2024.

20. Whereas the Appellant filed its Statement of Appeal in Spanish, enclosing the decision appealed against, which was rendered in English. The Appellant requested this procedure be conducted in English. Whereas the Second Respondent agreed to such request, the First Respondent did not agree to Spanish as the language of this procedure and requested this procedure be conducted in Englis.

21. In light of the disagreement on the language of this procedure, on 2 November 2023, the Deputy President of the Appeals Arbitration Division of the Court of Arbitration for Sport, ruling in camera, decided:

"1. Pursuant to Article R29 of the Code of Sports-related Arbitration, the language of the arbitral procedure TAS 2023/A/10069 Club Jorge Wilstermann c. Gustavo Alexandre Barbosa do Nascimento & FIFA shall be English.

2. The Statement of Appeal and the correspondence filed up to date in the present proceedings in English do not need to be translated into English;

3. The costs of the present order shall be determined in the final Award or in any final disposition of this arbitration."

22. The Appellant requested that the present matter be submitted to a Sole Arbitrator. On 5 November 2023, the Second Respondent agreed to submit the case to a Sole Arbitrator. On 8 November 2023, the First Respondent also agreed to submit the case to a Sole Arbitrator.

23. In accordance with Article R51 of the Code, the Appellant filed its Appeal Brief on 14 November 2023.

24. On 5 December 2023, the CAS Court Office informed the Parties that pursuant to Article R54 of the CAS Code, the President of the CAS Appeal Arbitration Division had decided to submit the present dispute to a Sole Arbitrator.

25. On 5 December 2023, the CAS Court Office notified the Parties that, on behalf of the President of the CAS Appeal Arbitration Division and pursuant to Article R54 of the CAS Code, the Panel appointed to decide the matter would be constituted by Mr. Mariano Clariá as Sole Arbitrator.

26. On 19 December 2023, the Sole Arbitrator issued an order granting the application for a stay filed by the Appellant; therefore, the ban imposed in the Appealed Decision on the Appellant Club Jorge Wilsterman from registering any new players, either nationally or internationally, for two entire and consecutive registration periods was stayed.

27. In accordance with Article R55 of the Code, the First Respondent filed his Answer on 26 January 2024.

28. In accordance with Article R55 of the Code, the Second Respondent filed its Answer on 29 January 2024.

29. On 28 February 2024, the CAS Court Office issued the Order of Procedure, which the Appellant and the Respondents signed and returned on 28 February 2024, 29 February 2024 and 1 March 2024, respectively.

30. On 9 April 2024, a hearing was held by videoconference. In attendance at the hearing were:

- the Sole Arbitrator, assisted by Mr. Antonio De Quesada (Head of Arbitration to the CAS);
- For the Appellant: Mr. Enric Ripol (Counsel) and Víctor Delgado (Counsel); and
- For the First Respondent: Mr. Arthur Saltz (Counsel) and Mr. Gustavo Alexandre Barbosa do Nascimento.
- For the Second Respondent: Mr, Roberto Nájera Reyes.

31. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution and composition of the Panel.

32. At the conclusion of the hearing, the Parties confirmed that they were satisfied with the manner that the Sole Arbitrator conducted the proceeding and that they had had no procedural objections.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

33. The Appellant set forth the following motions for relief:

"Based on the facts and legal grounds presented, the Appellant requests the Court of Arbitration for Sport to fully uphold the Appeal:

***1.** Accept and admit the present written appeal against the aforementioned decision.*

***2.** Enact an immediate provisional suspension of the imposed sanctions as they severely compromise the Club's very existence.*

***3.** Issue a ruling to set aside the Decision that condemns the Club.*

***4.** Determine that there is no evidence that the Player negotiated neither with Mr. Soria nor with Mr. Borba establishing that Club Jorge Wilstermann owes no compensation to the Player.*

***5.** Determine that the Club did not act in Bad Faith at any moment neither in the relationship with the Player nor during the proceedings of this case and, therefore, lift the sporting sanction imposed by FIFA.*

***6.** Order the Defendants to pay all the administrative costs of the CAS and the fees of the Panel;*

***7.** Set an amount that the Defendants will pay to the appellant to cover its legal fees and defense expenses for a total of 20,000 Swiss Francs.*

34. In support of its appeal, the Appellant submits, in essence, the following:

Regarding the Essentialia Negottii.

a) That there is not an iota of evidence that the conversations held by the Player were actually held with the former President and the former sporting director of the Appellant.

b) That it has not been proven that the document regarded as the "Contract" was actually sent to the Player by the former President and the former sporting director of the Appellant.

c) That the alleged documents sent to the Player at no point included an unconditional compromise to sign an employment contract. In fact, it was conditional to the submission of some requested documents by the Player and the passing of a medical test to be held in Bolivia.

d) That CAS has also established that in order to determine if the e*ssentialia negottii* requirements are met, the contract should include more information for example regarding the distribution of image rights, or also it has to be taken into account if the document sent was or not the final employment contract that would be registered before the federation, which, in this case, were not.

e) Even under the assumption that the correspondent was truly Mr. Adebal Borba and that he possessed the delegated authority to negotiate pre-contracts, the Club maintains that any pre-contract issued in this manner was inherently conditional and non-binding. The documentation was preparatory and intended to outline potential terms for a formal agreement, contingent upon the fulfillment of specific, subsequent conditions.

f) The pre-contract's stipulations required the presentation of valid personal identification documents, such as a passport and national IDcard, from the player. This step is fundamental to ensure that the Club is engaging with the correct individual, thereby safeguarding the Club against potential misrepresentations. The verification of identity is a standard and necessary measure within the professional sports domain, particularly given the international nature of the transactions and the varying degrees of familiarity with the contracting parties.

g) Furthermore, the Club's position is that even if Mr. Borba had the authority to initiate discussions, any agreement reached during these preliminary stages required ratification through formal channels, including an official contract (Contrato Unico FBF) recognized and endorsed by the FBF.

Regarding the bad Faith

h) The new management never received any of the notifications which were sent to the email address the former management was using and to which never granted access to the new (current) management. Therefore, the first time the new owners knew about it was when the claim from FIFA was received.

i) The Club never had bad faith; quite the opposite, the Club has been a victim of the former president.

j) The sporting sanctions imposed by FIFA shall, in any case, be eliminated since there was no bad faith from the Club.

B. The First Respondent

35. The First Respondent set forth the following motion for relief.

"In light of the foregoing, the Respondent requests the CAS panel:

a) To dismiss the appeal.

b) To issue an award confirming the FIFA DRC Decision.

c) To dismiss all the "Requests of Relief" made by the Appellant;

d) to fix a sum of 15,000 CHF to be paid by the Club to the Player, in order to contribute to the payment of his legal fees and expenses; and

e) to order the Club to assume the entirety of the administration and procedural fees."

36. In support of its defense, the First Respondent submits, in essence, the following:

a) That the Player showed all the evidence to a Notary, who issued a Notarial Act (Exhibit 26), recognizing all the conversations between the player and Mr. Adeval Borba, including the voice messages send by Mr. Borba, so as the conversations between the Player and Mr. Gary Soria.

b) That it is undisputed the veracity of the Player's WhatsApp chats with Mr. Gary Soria and Mr. Adeval Borba (so as voice messages sent by Mr. Borba).

c) On its answer to the Claim before FIFA, the Club recognized the WhatsApp chats as veridical and accurate and accepted their existence. In that opportunity, the unconformity manifested by the Club was not related to the veracity of the chats or their content in general, but to the alleged lack of power of Mr. Adeval Borba to negotiate on behalf of the Club. It is also significant to note that the Club changed its Requests for relief from the Statement appeal to the Appeal brief regarding the merits of the case.

d) Basically, the Club started arguing that both Mr. Borba and Mr. Soria were abandoning the Club when the negotiations happened. Later the Club argues that there is no evidence that the negotiations happened.

e) Even though the Club tries to argue that the negotiations were not carried out with the Club's President and Sports Director, Mr. Gary Soria himself recognizes that the negotiations occurred in an interview to the TV show "Deportivo".

f) Mr. Gary Soria confirms the content of the WhatsApp chats. He confirms that the Player received a pre-contract, and that the Player could not travel to Bolivia because the flight tickets were not sent to him.

g) The current Club's President, Mr. Omar Mustafa, expressly and undoubtedly said inf various interviews that Mr. Gary Soria signed the Player

h) Mr. Adeval Borba, in an interview to the *"Dosis de Futbol"* show on 25 January 2023, said that he had previously negotiated with the Player:

i) It is clear that the player had negotiations and concluded an agreement with the Club through Mr. Adeval Borba and Mr. Gary Soria.

j) The Club argues that Mr. Adeval Borba was not entitled to negotiate with new players and conclude negotiations on behalf of the Club. But it was proven that he was hired to be the Sports Director of the Club and, as it should be presumed, in good faith, that the Sporting Director of the Club is entitled to negotiate on behalf of the Club and entitled to hire players. Moreover, it was also proven that nothing happened without the knowledge and consent of the president of the Club Mr. Gary Soria. In fact, Mr. Gary Soria also sent the pre-contract to the Player, as well as committed himself to send the flight tickets.

k) Regarding the arguments about "Background of the Institutional Crisis":

i. First of all, the Club recognizes that Mr. Soria was still in charge as the Club's President when the negotiations happened.

ii. The facts brought by the Club related to an internal political conflict that happened **after the negotiations** between the Player and the Club.

iii. The Club expressly recognized that the email account sec_wilster@hotmail.com belongs to the Club.

iv. The allegation that "the current management of Club Wilstermann had no knowledge or involvement in the negotiations conducted by former president Soria neither with the players he announced during December and January, nor with the alleged negotiations held with Mr. Gustavo Alexandre Barbosa do Nascimento" is irrelevant. The Player concluded an agreement with the Club Jorge Wilstermann, and not with Mr. Soria and Mr. Borba in their personal lives. Both represented the Club, as the President and Sports Director.

l) It is clear that a negotiation took place, leading to an agreement between the Player and the Club. Consequently, the Player terminated his employment contract with Ayutthaya UTD, encouraged by the Club.

m) It is clear that the parties reached an agreement that complies with the essentialia negotii, resulting in a binding employment contract, which was breached and terminated without just cause by the Club.

n) It is clear that the agreement settled between the parties complies with the *essentialia negotii* and bound the parties, so that the signature representing the Club would represent only an unnecessary formality

o) The Club asserts that the pre-contract *"at no point included an unconditional compromise to sign an employment contract. It was conditional to the submission of the requested documents and the passing of medical test".* As the WhatsApp chats show, the Player's documents were sent, as the Club requested.

p) Regarding the medical examinations, it is emphasized that the Player was formally signed when he was still in Thailand. The agreement was already valid, so that, according to Article 18 of the RSTP, the employment relationship was not subject to passing the medical examinations.

q) The Club argues that the pre-contract did not include the flight tickets, even after the Player requested them. However, the agreement between the Player and the Club comprised not only the pre-contract, but also the promises made by Mr. Borba and Mr. Soria to the Player during their conversations

r) A negotiation occurred in which the Player initially requested a monthly wage of USD 5000,00, and Mr. Borba countered with an offer of USD 4.500,00, which the Player accepted. The Player then asked Mr. Borba to include certain conditions in the pre-contract. After the inclusion of a few of them, the Player signed the contract and sent it to the Club, confirming that a negotiation indeed took place.

s) It should be noted that Adeval Borba induced the Player to terminate his contract with Ayutthaya, as evidenced by voice messages. If the negotiations were not concluded, such actions would not have taken place.

t) It is evident that Club Jorge Wilstermann acted in bad faith towards the Player during the negotiations. The distinction between the former and current administrations is irrelevant, as the Player negotiated and reached an agreement with Club Jorge Wilstermann. Furthermore, the political crisis that occurred after the negotiations does not impact the assessment of the Club's bad faith.

u) Even if the Club's claim of not having access to the email account sec_wilster@hotmail.com and thus not seeing the four notifications sent by the Player is accepted (which is not), the Club still received the claim filed before FIFA on June 12, 2023, and made no attempt to contact the Player or his lawyers to address and resolve the issue.

v) Regarding the calculation of compensation due to the breach of agreement, the Club did not dispute it. Therefore, it can be considered undisputed, and the calculation complies with the guidelines set by the RSTP.

w) Finally, concerning the sporting sanctions, FIFA's decision on this matter is deemed impeccable. FIFA determined that the Club acted in bad faith during the negotiations, first by inducing the Player to terminate his employment contract in Thailand and subsequently abandoning the Player and breaching the agreement during the protected period. Under Article 17, paragraph 4, the imposition of sporting sanctions is not only correct and reasonable but also imperative, serving a pedagogical purpose to deter similar conduct by other clubs.

C. The Second Respondent

37. The Second Respondent set forth the following motion for relief:

"99. Based on the foregoing, FIFA respectfully requests CAS to issue an award on the merits:

(a) rejecting the reliefs sought by the Appellant and dismissing the appeal in full;

(b) confirming the Appealed Decision;

(c) ordering the Appellant to bear the full costs of these arbitration proceedings;"

38. In support of its defense, the Second Respondent submits, in essence, the following:

Regarding the authenticity of the documents presented by the Player.

a) That the Appellant is putting in question the authenticity of the Precontract for the first time during this appeal, since during the first-instance proceedings the Appellant's arguments were limited to the validity of the Precontract as it did not have the signature of Mr. Soria.

b) That it is the Appellant who, if it suggests or believes that the documents presented by the Player are not authentic, bears the burden to prove that fact to overturn the "good faith presumption" of Article 12 Procedural Rules. On the contrary, the Club has not explained – let alone demonstrated - why the Player's documents are not authentic.

c) That the current president of the Club, Mr. Omar Mustafa, has publicly accepted that the Precontract was concluded by the Former President, Mr. Soria, and that the latter indeed engaged negotiations with the Player

Regarding the validity and the breach of the Contract.

d) During the first instance proceedings, the Appellant claimed that the Precontract did not contain all the *essentialia negottii* elements to be valid. Now, in its Appeal Brief, the Club expressly accepts that the Precontract "*actually complies with the requirements established in the jurisprudence as "i) a date, ii) the name of the parties, iii) the duration of the contract, and iv) amount of remuneration"* ***but that document, as far as the evidence shows could have sent by anyone***".

e) That it was proven that the Player and the Club entered into a Precontract, which included key terms such as duration, salary, and other specifics necessary for a valid employment agreement. It must then be concluded that the Precontract is indeed a valid employment agreement that was not respected by the Appellant.

f) That the Appellant further purports that the conditions of the Precontract to become valid were not met since Clause 5 of the Contract established that (i)

the Player still had to pass the medical test and (ii) present a valid personal identification document (such as a passport or national ID card). Therefore, in its view, the Parties never entered an employment relationship since these conditions were never fulfilled.

g) In this regard, irrespective of the fact that the validity of a contract cannot be made subject to a successful medical examination, the Second Respondent emphasizes that (i) the Player complied with his obligations under the Precontract, including providing his passport and making himself available for medical tests, and (ii) the Club failed to fulfill its obligations under the Precontract, particularly in facilitating the Player's medical test and registration with the Bolivian Football Federation (FBF). Therefore, the fulfilment of these conditions did not occur solely because the Club failed to facilitate and/or request them. The breach was solely due to CJW's fault and inaction, not due to any misconduct or failure by the Player.

h) Therefore, the Precontract was genuine and valid, and its terms were clear, contained all essentialia negotii and was binding on both parties.

Regarding other (irrelevant) arguments of the Club

i) CJW argued that the Precontract was hidden by Mr. Soria to harm the Club "*in an attempt to harm the Club as retaliation for being forced to leave*", but this claim was not proven. Even if true, neither FIFA nor the Player can be held liable for Mr. Soria's alleged actions.

j) CJW also claimed that the Club's new management did not receive any of the Player's communications, but it was undisputed that these communications were sent to the correct email address (sec_wilster@hotmail.com). Legal doctrine and CAS jurisprudence establish that notification is effective when it enters the recipient's sphere of control, regardless of whether the recipient actually reads it.

Regarding the consequences of the Club's breach of the Precontract

k) Under Article 17 of the FIFA Regulations on the Status and Transfer of Players (RSTP), the DRC rightly concluded that CJW shall pay the Player USD 40,190 as compensation.

l) The DRC also imposed a two-registration period ban on CJW for breaching the contract during the protected period. CJW did not specifically contest the financial or sporting consequences imposed by the DRC in its appeal.

m) Article 17(4) RSTP mandates sporting sanctions (registration ban) for breaches occurring during the protected period, which was the case here. The circumstances of CJW's breach, including bad faith actions such as ignoring the

Player's communications and failing to honor the Precontract, justify the imposition of these sanctions.

n) That CJW's appeal lacks credible arguments to overturn the Appealed Decision.

o) That the DRC correctly applied Article 17 RSTP, and the sanctions are appropriate given the goal of protecting contractual stability.

V. JURISDICTION

39. Article R47 of the CAS Code states 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 reg-ulations of that body."

40. In its Statement of Appeal, the Appellant referred to Article 57 of the FIFA Statutes providing for CAS being competent to decide appeals against decisions of FIFA's legal bodies.

41. FIFA did not dispute that the CAS has jurisdiction in relation to the appeal filed by the Appellant pursuant to Article 57(1) FIFA Statutes, in accordance with the provisions of Article R47 CAS Code.

42. All the Parties further confirmed the CAS jurisdiction when signing the Order of Procedure. Therefore, The Sole Arbitrator decides that the CAS has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

43. Pursuant to the FIFA Statutes, in connection with Article R49 of the CAS Code, the Appellant had 21 days from the notification of the Appealed Decision to file their Statements of Appeal before the CAS.

44. The grounds of the Appealed Decision were communicated to the Appellant on 29 September 2023, and its Statement of Appeal was filed on 20 October 2023, i.e. within the time limit established by the FIFA Statutes and Article R49 of the CAS Code. Consequently, the present appeal is admissible.

VII. APPLICABLE LAW

45. Article R58 of the CAS Code provides:

"*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 a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision*"

46. According to FIFA Statutes, the provisions of the CAS Code shall apply to the proceedings. Pursuant to the same article, the CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.

"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."

47. Given that the challenged decision at hand was rendered by the DRC, FIFA Statutes and regulations – namely the Regulations on the Status and Transfer of Players (the "RSTP") and the Procedural Rules of the Football Tribunal (the "Procedural Rules") – , constitute the applicable law to the matter at hand and Swiss law shall be applied subsidiarily should the need arise to fill a possible gap in the FIFA regulations.

VIII. MERITS

48. Based on the Parties' dispute, the Sole Arbitrator must decide:

a) Which party bears the burden of proof and what is the applicable standard of proof?

b) Was there a legally valid and binding employment contract between the Player and the Club?

c) Should the Club be held responsible for the termination of the contract?

d) What are the financial consequences resulting from the termination?

e) Whether any sanctions should be imposed on the Club resulting from the termination of the contract.

49. The Sole Arbitrator shall address each of these matters in the subsequent sub-sections.

A. Which party bears the burden of proof and what is the applicable standard of proof?

50. The initial issue to be determined by the Sole Arbitrator is which party bears the burden of proof in this matter, and what constitutes the applicable standard of proof.

51. The Sole Arbitrator deems it essential to establish both matters at the outset of the merits phase, not only due to their relevance in any dispute, but particularly because both

issues are critical to the resolution of this case. Indeed, the central question in this appeal is whether the Parties entered into a valid and binding employment contract.

Burden of Proof

52. In considering the above, the Sole Arbitrator thus needs to ascertain the burden of proof, specifically, which party bears the burden of proof.

53. The concept of burden of proof has been considered in many CAS decisions and is well established CAS jurisprudence. It was set out in CAS 2007/A/1380 as follows:

"According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code "Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right" (free translation from the French original version – "Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu'elle allègue pour en déduire son droit"). It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites included in the concept of "burden of proof" are (i) the "burden of persuasion" and (ii) the "burden of production of the proof". In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party" (see also CAS 2005/A/968 and CAS 2004/A/730)."

54. In this case, the Sole Arbitrator has examined the applicable regulations, namely, the FIFA Regulations on the Status and Transfer of Players (RSTP), the Procedural Rules Governing the FIFA Football Tribunal and Swiss Law, to verify if these bodies of law establish any evidentiary rules or criteria applicable to these proceedings.

55. In accordance with Swiss Law and, in particular, Article 8 of the Swiss Civil Code (SCC), "*Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from the fact*"

56. This position is further supported by Art. 13 of the Procedural Rules Governing the FIFA Football Tribunal, which provides that "*A party that asserts a fact has the burden of proving it."*

57. This position is supported by CAS jurisprudence which provides that "*In CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them. The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*" (CAS 2014/A/3546, para. 7.3 and references)

58. In this case, a substantial dispute exists between the parties regarding which party bears the burden of proof, a matter that is crucial for the resolution of the case.

a) The Player argues that the Club must demonstrate that the individuals communicating and negotiating with the Player were neither Mr. Borba nor Mr. Soria.

b) In contrast, the Club contends that the Player is responsible for proving that he engaged in negotiations and discussions with individuals who had the authority to act on behalf of the Club.

c) In the Appealed Decision, FIFA asserts that, according to Article 12 of the Procedural Rules Governing the FIFA Football Tribunal, which stipulates that a party must always act in good faith and tell the truth. Therefore, it should be presumed that the documents and evidence submitted by the Player to the Football Tribunal are as the Player claims. Therefore, if the Club disputes the validity or accuracy of the Player's submissions, the burden of proof lies with the Club to prove otherwise.

59. The Sole Arbitrator acknowledges that all parties present valid arguments concerning the allocation of the burden of proof. For instance, as established in CAS 2020/A/6914, "*it is the Player that has the burden of proof"*. But, at the same time, since the Club has brought a new defense to this appeal – that it was not proven that conversations and negotiations invoked by the Player were actually held with Mr. Soria and/or Mr. Borba – the Sole Arbitrator deems it necessary to emphasize that, in his opinion, without undermining the aforementioned conclusion, the Club cannot merely rely on the established allocation of the burden of proof. The Club should, in good faith, provide all relevant evidence at their disposal to ensure the truth is fully revealed in this process.

60. In good faith and in accordance with procedural fairness, the Club shall produce all evidence within its possession or control that may elucidate the truth and contribute to a just resolution of this dispute. The Sole Arbitrator underscores that this duty extends beyond the strict confines of procedural rules and reflects a broader obligation to ensure the integrity and fairness of the arbitral process. The Club, therefore, has a duty to cooperate in the clarification of the facts of the present case.

61. This principle of cooperation was confirmed by the panel in CAS 2020/A/6914: "*145. … However, the SFT states that in assessing and determining whether or not a specific fact can be established, a court must take into account whether or not the contesting party has fulfilled its obligations of cooperation (ATF 119 II 305, 306 E. 1b; see also …)"*

62. Therefore, while the Player retains the burden of proof, the Club must actively participate and cooperate by providing pertinent evidence to substantiate its claims and defenses. It follows, therefore, that each Party must fulfil its burden of proof to the required standard by providing and producing evidence to convince the Sole Arbitrator that the facts it pleads are established.

63. In light of the principle of dynamic burden of proof, the Sole Arbitrator will evaluate the evidence in its entirety, considering all arguments presented by the parties. Special attention will be given to which party was in a better position to provide evidence on a particular issue or for each of the asserted facts.

Standard of Proof

64. Having determined how the burden of proof will be allocated, it is necessary to consider the standard of proof, i.e., the standard according to which the relevant party must demonstrate the particular facts in question.

65. It should be noted that the Code of the Court of Arbitration for Sport (CAS) does not provide specific guidelines regarding the standard of proof to be applied in evaluating evidence.

66. The assessment of the standard of proof in CAS jurisprudence can differ depending on the specific circumstances of the case, in particular whether relating to disciplinary issues or contractual matters.

67. However, CAS jurisprudence has established that the parties, exercising their autonomy, may predefine the standard of proof and the evidentiary rules applicable to the proceedings. This can be achieved through the determination of such rules within the regulations of a sports organization. The RSTP and the FIFA Procedural Rules do not clearly establish the applicable standard of proof.

68. FIFA Procedural Rules Governing the Football Tribunal Article 13 provides the FIFA bodies, such as the FIFA DRC, with a wide margin of discretion regarding the evaluation of the evidence. In fact, it sets that *"A chamber has ultimate discretion as to the weight it gives to evidence*"

69. In the absence of an explicitly defined standard of proof within the relevant regulations, CAS jurisprudence vests the Panel with the discretion to ascertain the suitable standard. However, as elucidated in CAS 2010/A/2172, the Panel should, in the exercise of such discretion, take into account consistent CAS jurisprudence in analogous areas.

70. Consequently, the Sole Arbitrator turns to the different standards of proof commonly used in cases before the CAS. The traditional standards of proof in CAS proceedings include: (a) "balance of probabilities", typically applied in civil law matters; (b) "beyond reasonable doubt", used in criminal law matters; and (c) "comfortable satisfaction", which is lower than the criminal standard of "beyond reasonable doubt" but higher than the civil standard of "balance of probabilities".

71. The Sole Arbitrator notes that CAS jurisprudence has consistently held that the applicable standard of proof in the context of contractual employment disputes between players and clubs is that of "*comfortable satisfaction*".

72. For example:

CAS 2015/A//4158:

"Reference shall also be made to the standard of proof required from the Coach, which, in the Sole Arbitrator's view, is to the comfortable satisfaction of the latter."

CAS 2020/A/6914:

*"For example, from CAS 2015/A/4161, it follows that "the Sole Arbitrator gave careful consideration to the standard of proof, which, in his mind, requires to be **comfortably satisfied** but not necessarily convinced beyond reasonable doubt of the existence of an employment contract". By the same token, it was decided in CAS 2015/A/4177 that **"comfortable satisfaction" is the correct standard in terms of establishing whether or not a valid contract had been concluded between a player and a club**. The standard of proof beyond reasonable doubt is typically a criminal law standard (CAS 2009/A/1912 & 1913). It is clear to the Sole Arbitrator that it follows from the CAS jurisprudence that the "comfortable satisfaction" is the most appropriate standard of proof (see, inter alia, CAS 2015/A//4158, CAS 2015/A/3891, CAS 2013/A/3309 and CAS 2012/A/2967). In view of the above, the Sole Arbitrator finds that the standard of proof to be applied is the "comfortable satisfaction" standard rather than "beyond reasonable doubt"".*

CAS 2021/A/7673 & CAS 2021/A/7699:

"*In general, the burden of proof is satisfied whenever the judge is convinced of the truthfulness of a factual allegation based on objective grounds. Absolute certainty is not required. It is sufficient if the judge has no serious doubt about the existence of the alleged facts or if any remaining doubt appears to be tenuous (ATF 130 III 321, consid. 3.3)."*

CAS 2022/A/9219:

"The Panel notes that previous CAS panels have generally applied the "comfortable satisfaction" standard when considering cases involving the FIFA RSTP. See, for example, CAS 2012/A/2908, CAS 2019/A/6187 and CAS 2020/A/7605. As explained by the panel in CAS 2011/A/2426, that standard is considered to be "higher than the civil

standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt"". e) The following FIFA regulations adopt the standard of comfortable satisfaction: (i) Article 35 of the FIFA Disciplinary Code (for the standard of proof to be applied in FIFA disciplinary proceedings); (ii) Article 48 of the FIFA Code of Ethics (for the standard of proof to be applied by FIFA's Ethics Committee); and (iii) Article 68(1) of the FIFA Anti-Doping Regulations (for the standard of proof to establish an anti-doping rule violation). 81. In light of the above observations, the Panel considers it most appropriate to apply the standard of "comfortable satisfaction"

CAS 2022/A/9047:

"*The assessment of the standard of proof in CAS jurisprudence can differ depending on the specific circumstances of the case, in particular whether relating to disciplinary issues or contractual matters. Given the case in hand relates to the latter, then the Sole Arbitrator is content to adopt the approach and reasoning in CAS 2021/A/8277 which states as follows: "The standard of proof describes the degree to which a judge / arbitral tribunal needs to be persuaded in order to accept or not to accept an alleged fact. The question of the standard of proof is a procedural question governed in an international arbitration by Article 182 of the Swiss Private International Law Act. Absent any provision agreed upon by the Parties, the Sole Arbitrator is inspired by Swiss law when determining the applicable standard of proof.* ***According thereto absolute certainty is not required. Instead, it suffices if the judge / arbitral tribunal has no serious doubt about the existence of the alleged facts or if any remaining doubt appears to be tenuous*** *(SFT 130 III 321, consid. 3.3)."*

CAS 2022/A/9237:

"*The standard of proof which applies to proceedings before FIFA judicial bodies is that of FIFA's judicial bodies decide on the basis of their "personal conviction" and CAS jurisprudence has consistently equaled this standard to the standard of "comfortable satisfaction". It is a standard that is higher than the standard of "balance of probability" but lower than the criminal standard"*

CAS 2022/A/9328&9329:

"For what concerns the standard of proof, the Panel observes that none of the FIFA regulations set the standard of proof for disputes related to the breach and termination of employment contracts. According to well-established CAS jurisprudence, when the regulations of the sports organization from which the Appealed Decision emanates, remain silent on the applicable standard, it is up to the CAS to determine it. In the present case and keeping in mind that in many other Article 17 RSTP related cases, CAS panels have applied the standard of "comfortable satisfaction", which, on the standard of proof spectrum, sits in between the standard of "beyond a reasonable doubt" and the standard of "balance of probabilities" (see CAS 2020/A/7180 para. 84 with further references), the Panel considers that the applicable standard of proof in this case, also keeping in mind the allegations of the Club, is that of "comfortable satisfaction."

CAS 2022/A/8960

"As to the standard of proof, it is a well-established practice that in the lack of any 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 the case at hand concerns essentially matters of contractual nature."

73. Based on the foregoing considerations, the Sole Arbitrator concludes that the "*comfortable satisfaction*" standard constitutes a reasonable balance. This standard necessitates clear evidence that, while not attaining the level of "beyond reasonable doubt" surpasses the "balance of probabilities" threshold.

74. Consequently, the Sole Arbitrator determines that the "*comfortable satisfaction*" standard shall be applied in this case, taking into account the dynamic burden of proof as previously mentioned.

B. Was there a legally valid and binding employment contract between the Player and the Club?

75. A fundamental principle in contract law is the meeting of the minds, or consensus ad idem, which asserts that a contract is formed when an offer is made and accepted.

76. In the present case, the Player asserts that the Club, through its legal representatives, extended him an offer in the form of a contract. The Player claims that by signing and returning the contract to the Club, after a negotiation of the terms occurred and everything was settled, the offer was accepted, thereby formalizing a valid and definitive employment contract.

77. Conversely, the Club contends that no breach of an employment contract could have occurred since no valid employment agreement was entered into between the Club and the Player.

78. The Club´s arguments challenging the validity of the contract are as follows:

a) The Player failed to establish that he had negotiated with Mr. Borba and Mr. Soria.

b) Even if it were proven that the Player had negotiated with Mr. Borba, he lacked the authority to act on behalf of and bind the Club.

c) The contract was subject to certain necessary prerequisites or implied condition precedents, none of which were fulfilled.

d) In any case, it was not a definitive contract but rather a pre-contract.

79. Therefore, before dealing with the issue of whether the contract signed by the Player can be considered a valid and binding employment contract or a pre-contract, the Sole Arbitrator will first have to consider: (i) whether the Player had negotiated with Mr. Borba and Mr. Soria, and (ii) whether Mr. Borba was entitled to legally bind and act on behalf of the Club.

80. Once these issues have been resolved, the Sole Arbitrator will focus on (iii) whether there was a legally valid and binding employment contract between the Player and the Club.

(i) Whether the Player had negotiated with Mr. Borba and Mr. Soria

81. First, the Sole Arbitrator shall analyze whether it should be considered proven that the Player had negotiated with Mr. Borba and Mr. Soria.

82. The Club argues that there is no evidence to substantiate that the conversations submitted by the Player to both the FIFA file and this appeal were conducted with the former President, Mr. Gary Soria, and the former Sporting Director, Mr. Adeval Borba. Furthermore, the Club asserts that it has not been proven that the document referred to as the Precontract was actually sent to the Player by either the former President or the former Sporting Director.

83. In contrast, the Player asserts that all the submitted evidence was reviewed by a Notary, who issued a Notarial Act verifying the authenticity of the conversations between the Player and Mr. Adeval Borba, including the voice messages sent by Mr. Borba, as well as the conversations between the Player and Mr. Gary Soria. Consequently, the Player contends that the veracity of the WhatsApp chats and voice messages with Mr. Gary Soria and Mr. Adeval Borba is indisputable.

84. The Appellant contends that the Notarial Act merely verifies that the conversations submitted by the Player match those on his phone, but it does not prove that these conversations were actually held with the individuals the Player claims to have negotiated with. Specifically, it argues that there is no evidence that the alleged conversations were held with Mr. Borba or Mr. Soria.

85. While the Appellant's assertion regarding the Notarial Act is accurate, it is also true that the Notarial Act confirms the conversations were held with someone using the phone number +59177422201, which is purportedly associated with Mr. Borba. Despite denying that these conversations were held with Mr. Borba, the Club did not attempt to prove which number Mr. Adeval Borba used. The Club limited its defense to a blanket denial, relying on the expectation that the Player must prove all elements of the case.

86. Additionally, it is noteworthy that the Club altered its defense from its position during the FIFA proceedings to the arguments presented in this appeal. While such a change is permissible under the CAS Code, the Sole Arbitrator will take this into account when evaluating the evidence.

87. Notably, in its response to the FIFA claim, the Club acknowledged the authenticity and accuracy of the WhatsApp chats with Mr. Borba, thereby accepting their existence. In fact, the following can be read in its response:

"4. *Todos los chats establecen que el Sr. Adeval Borba era quien hacía los ofrecimientos al jugador demandante, atribuyéndose facultades que no le competían y que no se establecen en el Anexo 5; facultades que, además, no se contemplan en el Estatuto del Club Wilsterman, el cual enviamos como Anexo"*

Translation: "*4. All the chats indicate that Mr. Adeval Borba was the one making offers to the claimant player, attributing to himself powers that were not his and are not established in Annex 5; powers that are also not contemplated in the Statute of Club Wilstermann, which we are submitting as an Annex."*

88. As can be inferred from the above, the Club did not deny that Mr. Borba was the individual who communicated and negotiated with the Player. In fact, during the FIFA proceedings, the Club acknowledged that Mr. Borba engaged in these discussions but claimed that he did not possess the authority to bind the Club.

89. However, in the CAS proceedings, the Club introduced a new defense, asserting that the Player must prove the conversations actually occurred with Mr. Borba and Mr. Soria. Despite this new defense and the Club's denial of the authenticity of the documents presented by the Player, the Club has failed to provide any evidence demonstrating that the conversations and negotiations cited by the Player involved individuals other than Mr. Borba and Mr. Soria. The Club did not attempt to prove that the phone numbers associated with Mr. Borba and Mr. Soria were different from those referenced by the Player.

90. Furthermore, the Sole Arbitrator should consider the conduct of the parties, especially that of the new President of the Club. The new President has publicly commented on the case and, when questioned, has not explicitly denied that Mr. Borba and Mr. Soria negotiated with the Player.

91. The Player asserts that the new President of the Club expressly acknowledged to the press that negotiations were indeed conducted by Mr. Borba. Although it is not entirely clear to the Sole Arbitrator whether the new President explicitly confirmed these negotiations with Mr. Borba, these public statements are another piece of evidence to be considered and weighed.

92. Additionally, Mr. Soria himself has made public statements expressly acknowledging that both he and Mr. Borba negotiated with the Player. Despite the Club's contention that the negotiations were not conducted by the Club's President and Sporting Director, Mr. Gary Soria admitted in an interview on the TV show "Deportivo" that these negotiations did occur. He even acknowledged that the Player received a pre-contract from the Club. Moreover, Mr. Gary Soria confirms the content of the WhatsApp chats. He affirms that the Player received a pre-contract and that the Player was unable to travel to Bolivia because the flight tickets were not sent to him.

93. Finally, Mr. Adeval Borba, in an interview to the *"Dosis de Futbol"* show on 25 January 2023, said that he had negotiated with the Player:

94. Therefore, the Sole Arbitrator concludes that, to his comfortable satisfaction, the Player had negotiated with Mr. Adeval Borba and Mr. Gary Soria and had sent them the contract duly signed.

(ii) whether Mr. Borba was entitled to legally bind and act on behalf of the Club.

95. Having determined that the Player did, in fact, negotiate with both Mr. Borba and Mr. Soria, the Sole Arbitrator will now examine the role of these individuals who purportedly negotiated on behalf of the Club, specifically Mr. Adeval Borba and Gary Soria, and whether they have authority to act on behalf of and bind the Club.

96. It is an uncontested fact that at the time the Player sent the signed contract, Mr. Gary Soria was serving as the President of the Club. Although the Club argues that Mr. Soria was in the process of departing from his position, it remains undisputed that he was still serving as President during the time the negotiations with the Player were held and also at the time the Player sent the signed contract. Consequently, Mr. Soria possessed the requisite authority to bind the Club.

97. Similarly, it was also proven that Mr. Adeval Borba was acting as the Sporting Director of the Club. However, the Club claims that, as such, he was not authorized to negotiate on behalf of the Club. However, the Sole Arbitrator finds the evidence presented by the Player regarding Mr. Borba's role within the Club to be credible and convincing.

98. In addition, it is noteworthy that the FIFA DRC in the Appealed Decision took note of the fact that the Club did not deny during those proceedings that Mr. Borba was the Club's Sporting Manager. In fact, the Club recognized its relationship with Mr. Borba by enclosing in its answer to the claim before FIFA the employment contract ("CONTRATO PRIVADO DE PRESTACION DE SERVICIOS DEPORTIVOS") signed with him. The Sole Arbitrator finds the FIFA DRC reasoning regarding this issue as correct.

99. Regarding Mr. Borba's authority to negotiate on behalf of the Club, the Sole Arbitrator emphasizes that, as the Sporting Director of a football club, he should be presumed to have the authority to negotiate and conclude deals to sign players, as that is one of his primary roles. Furthermore, it should be noted that the Player has demonstrated, to the comfortable satisfaction of the Sole Arbitrator, that the negotiations with Mr. Borba were indeed endorsed by Mr. Soria, the President of the Club.

100. Therefore, even if it could be argued that Mr. Borba lacked the legal or formal authority to bind the Club, the pertinent legal question is whether the actions of the Club could still be binding on it, thereby producing the same legal effects. In this context and given that the FIFA RSTP does not provide specific rules regarding the power and capacity to represent legal entities, the Sole Arbitrator will refer to Swiss law.

101. The Sole Arbitrator will follow the reasoning of CAS 2020/A/6914:

"At a starting point, the Sole Arbitrator observes that under Swiss law, the communication of the power to represent a party can be made in an express manner or be deduced from an express act- According to Swiss scholars, …"The communication is conclusive when the will to make public the powers can de deducted from the behaviour of the represented part, in accordance with the principle of protection of trust" (THÉVENENOZ, L. y WERRO, F. Commnentaire Romand, Code des Obligations I, Helbing & Lichtenhahn, p. 294). In this respect, powers of representation do not need to be in written form and can also result from the circumstances surrounding the conclusion of a contract. Based on the principle of protection of trust (Vertrauensschutz), under Swiss law, conduct can be constituted as a "procuration tolérée" (a tolerated representation) or a "procuration apparente" (an apparent representation) (see, inter alia, CAS 2019/A/6468-6478)."

102. The Sole Arbitrator notes that the WhatsApp messages from the Club President to the Player – in particular, the President sent the Player the same document sent by Mr. Borva identified as "Pre-Contrato Gustavo Barbosa" – should be considered sufficient proof that Mr. Adeval Borva was legally entitled to conduct negotiations with the Player. These messages also serve as compelling evidence that the Player had sufficient and reasonable grounds to believe he was negotiating and concluding an agreement with an individual genuinely empowered and authorized to act on behalf of the Club.

103. Therefore, the Sole Arbitrator concludes that the Club, through its President, had effectively announced the authority it conferred upon Mr. Adeval Borva. This can be inferred from the specific circumstances and facts of this case.

104. Consequently, the Sole Arbitrator is comfortably satisfied that the employment offer came from the Club via Mr. Adeval Borva, endorsed by Mr. Soria, and that the Club did not revoke this apparent authority.

105. As stated in CAS 2020/A/6914, "*Nevertheless, as a general rule, and as set out above, if a club lets certain persons act in the public as their representative, without any protest, then other parties may well rely on upon this fact and believe that such personas are authorized to act of the club concerned (see, inter alia, CAS 2004/A/568). This amounts to de facto announcement to conferred authority further to Article 34(3) f the SCO."*

106. As previously mentioned, and based on the evidence presented in this case, it is unequivocal that Mr. Borva was publicly announced as having been hired as the Sports Director or Sports Manager of the Club, with the authority to handle transfer-related matters. It is evident to the Sole Arbitrator that the President of the Club was fully aware of the discussions Mr. Borva was having with the Player and of the document sent to the Player, requesting it to be returned duly signed. The President himself also communicated with the Player regarding the flight tickets that Mr. Borva had promised to send to facilitate the Player's move to Bolivia.

107. Under these circumstances, the Sole Arbitrator finds that the Player had reasonable grounds to believe that Mr. Borba was duly authorized by the Club to negotiate all terms and conditions related to player contracts and to enter into binding employment

agreements on behalf of the Club. This belief was reinforced by the actions and communications from the Club's President, which implicitly confirmed Mr. Borba's authority. Given the evidence presented, it is clear that the Player relied on this apparent authority in good faith. Therefore, the Sole Arbitrator concludes that the Player's actions were based on a legitimate and reasonable assumption of Mr. Borba's authorization, and thus, the Player acted in good faith throughout the negotiations.

108. As a conclusion, the Sole Arbitrator is satisfied that Mr. Borva had the authority to legally bind and act on behalf of the Club.

(iii) whether there was a legally valid and binding employment contract between the Player and the Club

109. Finally, the Sole Arbitrator will focus on determining whether a legally valid and binding employment contract existed between the Player and the Club. To resolve this issue, it is necessary to analyze whether the document sent by the Club and returned signed by the Player contained all the essential elements required to be considered a binding and final employment contract or if it should be regarded as a pre-contract. Special consideration must be given to the fact that the document is labeled as 'Pre Contrato' (Pre-Contract).

110. Since the FIFA Regulations do not provide a set of rules governing the conclusion of an employment agreement, Swiss law is applicable.

111. It is necessary, then, to distinguish between a contract and a pre-contract in order to define if the parties have reached one or the other. In this respect:

CAS 2008/A/1589 "*The clear distinction between a "precontract" and a "contract" is that the parties to the "precontract" have not agreed on the essential elements of the contract or at least the "precontract" does not reflect the final agreement. On the contrary, if the interpretation of the "precontract" leads to the conclusion that the parties agreed on all the essential elements of the final contract, on the basis of the general principles applicable to the conclusion of a contract as defined under Article 1 et seq. of the Swiss Code of Obligations (SCO), the "precontract" would be nothing else but the final contract (see notably Art. 1 and 2 par. 1 SCO)"*

CAS 2016/A/4489: *"According to general principles of law (for Switzerland see for example SFT 113 II 31 p. 35; SFT 118 II 32 p. 33), a preliminary contract is a contract that obligates the contracting parties to conclude another contract under the law of obligations, which is then called the main contract. It is a legal act creating a relationship of obligation, which is fulfilled by concluding the main contract. It therefore obligates someone to obligate himself/herself again at a later point in time."*

112. The Sole Arbitrator also turned to the FIFA Commentary on the RSTP:

"(...) The notion of a "pre- contract" is well-known in legal practice as effectively a "promise to contract", and defined it as a reciprocal commitment between at least two parties to enter a contract at a later date. Unlike in a final contract, the parties to a "pre-

contract" have not agreed on the essential elements of the contract, or if they have, the "pre-contract" does not represent a final agreement (...)"

113. Therefore, the Sole Arbitrator will analyze whether the document sent by the Club and signed by the Player contains all the essential elements of the final contract, according to Swiss Law.

114. In assessing whether we are dealing with a pre-contract rather than a definitive contract, it is crucial to analyze the indications or elements that distinguish between the two. Therefore, a comprehensive examination of all factors is essential to determine whether the document in question constitutes a binding definitive contract or a preliminary pre-contractual agreement.

115. First and foremost, it is necessary to highlight the title of the contract: "PRE CONTRATO" (TRANSLATED: "PRE CONTRACT"). Is this sufficient to consider it a precontract and not a definitive contract? Or is it necessary to analyze its content to determine the nature of the agreement?

116. In this regard, the Sole Arbitrator understands that the designation used by the club to entitle the document does not define its legal nature. Instead, it is necessary to analyze whether the document contains all the essential elements of a contract or if, on the contrary, it does not represent a final and definitive agreement.

117. The Club contended that the Precontract would only become effective upon the Player successfully passing a medical examination conducted by the Club's medical staff in Bolivia. According to the Club, this condition serves as sufficient evidence that the agreement was not a definitive employment contract but rather a pre-contract contingent upon the fulfillment of specific conditions.

118. In fact, Article 2 of the Pre-Contract stipulates that the agreement shall enter into force upon approval by the Club's medical staff of the Player following his medical examination:

*"El presente PRE CONTRATO DE PRESTACIONES DEPORTIVAS surtirá efecto una vez el cuerpo médico del Club dé el visto bueno al FUTBOLISTA después de su revisión médica, y tendrá por objeto fijar y regular la participación del FUTBOLISTA en su condición de profesional en la práctica del FUTBOL en forma exclusiva en favor y beneficio del CLUB, sujeto a una remuneración económica pactada de forma libre, consentida y voluntaria, sin que medie vicio alguno de consentimiento, estableciéndose que la prestación de sus servicios profesionales aplicará a partir del mes de ENERO 2023, hasta el mes de DICIEMBRE del año 2023, o en su caso, hasta la finalización del campeonato de la División Profesional de la FBF que corresponda a la gestión 2023**, *para ese fin, EL CLUB se compromete otorgar las condiciones necesarias para que EL FUTBOLISTA desarrolle su talento y potencialidad futbolística en las practicas, partidos oficiales y amistosos tanto en torneos nacionales, internacionales y donde sea requerida su participación por parte de EL CLUB sin reserva ni exclusión alguna, sean*

estos torneos o actividades organizados por la F.B.F., en su División Profesional y Aficionados, la CONMEBOL y FIFA durante la vigencia del presente acuerdo."

Non-official translation:

"The present PRE-CONTRACT OF SPORTING SERVICES will take effect once the Club's medical staff gives approval to the FOOTBALLER after his medical examination, and its purpose is to establish and regulate the participation of the FOOTBALLER in his capacity as a professional in the practice of FOOTBALL exclusively in favor and for the benefit of the CLUB, subject to a freely, consensually, and voluntarily agreed economic remuneration, without any defect in consent, establishing that the provision of his professional services will apply from January 2023 until December 2023, or, if applicable, until the end of the FBF Professional Division championship corresponding to the 2023 season. To this end, THE CLUB commits to providing the necessary conditions for the FOOTBALLER to develop his talent and football potential in practices, official and friendly matches, both in national and international tournaments, and wherever his participation is required by THE CLUB without any reservation or exclusion, whether these tournaments or activities are organized by FBF, in its Professional and Amateur Division, CONMEBOL, and FIFA during the term of this agreement."

119. Regarding the issue of the medical examination as a condition precedent, if the Sole Arbitrator reaches the conclusion that the Precontract was indeed a definitive and binding employment agreement, reference to Article 18.3 of the FIFA RSTP shall be made, which states that an employment contract cannot be made subject to a medical examination.

120. The Sole Arbitrator considers this provision applicable to the present case, thus deeming the condition stipulated by the Club regarding the medical examination to be null and void. This conclusion is further reinforced by the explicit actions of the Club, represented by Mr. Borba, who pressured the Player to terminate his contract with his former club.

121. According to the Sole Arbitrator, Mr. Borba's insistence on the Player terminating his contract before moving to Bolivia is a clear indication that the Precontract was not merely a preliminary agreement but rather a definitive and binding employment contract. Therefore, its validity cannot be subject to a medical examination to be conducted after the Player has terminated his contract, as expressly requested by the Club.

122. Additionally, even if we were to consider the contract as being subject to the medical examination, this condition could not be fulfilled due to the exclusive responsibility of the Club, which failed to provide flight tickets for the Player and his family, despite numerous requests from the Player and promises made by both Mr. Borba and Mr. Soria.

123. Therefore, the Club cannot invoke the medical examination as a condition precedent to argue that the employment agreement did not take effect. As a result, the Precontract is conclusively deemed a definitive and binding employment agreement.

124. Conversely, the Player asserts that the entirety of the circumstances should be evaluated comprehensively and that the negotiations and discussions between Mr. Borba and the Player led him to believe that this was a final and definitive contract. In this regard, the Sole Arbitrator is convinced that the Player, acting in good faith, terminated his contract with Ayutthaya United based on the commitments and assurances provided by Mr. Borba and Mr. Soria, with the reasonable belief that he had entered into a legally binding agreement with the Club. In the Sole Arbitrator's opinion, the Player's actions were justified by the representations made by the Club's authorized representatives.

125. Finally, the Appellant contends that the Contract cannot be considered a binding employment agreement since it was not signed by the Club. In fact, although the document was signed by the Player, it was neither signed nor returned by the Club. Therefore, the Sole Arbitrator must analyze whether, despite the absence of a signature from one of the parties, a valid and binding employment agreement can still be considered to exist between the parties.

126. The Appealed Decision focused on this issue in these terms:

> *"58. In this order, the Chamber considered it important to point out that the conclusion of a contract can sometimes, in very specific and limited circumstances, be proved without a formal signature, provided that such proof meets certain standards of confidence. In particular, such evidence would have to show that the parties reached a mutual agreement on all essential elements of the contract, such as the subject matter of the contract, its period of validity, a remuneration and the terms of payment (essentialia negotii). Moreover, the Chamber also deemed relevant to underline that, as a general principle, parties involved in negotiations leading up to a contract must act honestly, fairly, and in good faith, and that they owe certain duties to each other even before a formal contract is formed. 59. In the present case, the Chamber considered it possible that the WhatsApp conversations and the pre-contract draft are sufficient to establish the existence of a contract. … 61. In light of the above, the Chamber held that the offer in question became binding from the moment the player sent it countersigned. Indeed, the Chamber understood that the legal principle that an offer becomes binding when it is accepted by the addressee applies. In this case, the player countersigned and returned the offer, which constitutes an acceptance. Therefore, the offer is binding on both the player and the club, thereby implying that the parties have validly and bindingly concluded an employment contract. The Chamber further wished to underline that, despite its naming as "pre-contract", said document was a proper and binding employment contract."*

127. The Sole Arbitrator observes that, under Swiss law, a signature is not an absolute requirement for an agreement to be considered valid and binding. What is of paramount importance is that all the essential elements of a contract, the so-called essentialia negotii, are present. These elements include the mutual consent of the parties, a clearly defined object, and agreed-upon terms and conditions. If these criteria are satisfied, the absence of a signature by one party does not, in itself, invalidate the agreement. The actions and conduct of the parties, along with their communications and the overall context, must also be taken into account to determine whether a binding contract has been formed.

128. As Swiss Law applies, Articles 1 and 2 of the SCO states:

"Art. 1 A. The conclusion of a contract requires a mutual expression of intent by the parties. The expression of intent may be express or implied."

"Art. 2 A. Where the parties have agreed on all the essential terms, it is presumed that the contract will be binding notwithstanding any reservation on secondary terms."

129. These articles shall be combined with Art. 319 Swiss Code of Obligations that reads as follows:

"[1] By means of an individual employment contract, the employee undertakes to work in the service of the employer for a limited or unlimited period and the employer undertakes to pay him a salary based on the amount of time he works (time wage) or the tasks he performs (piece work)."

130. Pursuant to this provision, an employment agreement shall contain the four essentialia negotii (CAS 2006/A/1024 & CAS 2017/A/5402):

a) The duration of the agreement

b) The subordination of the employee to the employer

c) The personal performance

d) The wages

131. The essential terms, in turn, are not subject to a particular form, per Article 11.1 SCO and Art. 320:

"Art. 11.1 *The validity of a contract is not subject to compliance with any particular form unless a particular form is prescribed by law."*

*"*Art. 320 A. *[1] Except where the law provides otherwise, the individual employment contract is not subject to any specific formal requirement. [2] It is deemed to have been concluded where the employer accepts the performance of work over a certain period in his service which in the circumstances could reasonably be expected only in exchange for salary."*

132. CAS jurisprudence has confirmed that, under Swiss Law, a signature is not a mandatory element. See, for instance, CAS 2020/A/6914: "*As noted above, the Sole Arbitrator concludes that, under Swiss Law, a signature is not a mandatory element, contrary to the arguments put forward by the Club. Put differently, parties can enter into a valid employment agreement without the existence of a signature, which also follows from CAS jurisprudence (see, inter alia, CAS 2017/A/5121 and CAS 2016/A/4843). In this regard, the Sole Arbitrator refers to Article 320(1) of the SCO, from which it follows that "[e]xcept where the law provides otherwise, the individual employment contract is not subject to any specific formal requirement"".*

133. Upon analyzing the contract, the following elements can be identified: (1) the details of the contracting parties, including the Club, with the precise information of its legal representatives, and the Player; (2) the object of the contract, specifically, the participation of the Player as a professional footballer exclusively in favor and for the benefit of the Club, wherever his participation is required by the Club without any reservation or exclusion; (3) the Player's remuneration; (4) the Player's obligations; (5) the Club's obligations; (6) clauses related to breach and termination of the contract; (7) an agreement on jurisdiction.

134. It is evident from the so-called Pre-Contract that it includes all four essential terms described previously, leaving no further issues for the parties to define thereafter. Therefore, the Sole Arbitrator concludes decisively and to his comfortable satisfaction that the so-called Pre-Contract constitutes a final and definitive employment agreement, since both parties had expressed their common intent on the essential elements: the Club by sending the Pre-Contract with all the essesitalia negotti and the Player by returning said document duly signed.

135. This is also reinforced by the Appellant's position as set in its Appeal Brief, paragraph 64*: "The document actually complies with the requirements established in the jurisprudence, such as 'i) a date, ii) name of the parties, iii) the duration of the contract, and iv) the amount of remuneration', but that document, as far as the evidence shows, could have sent by anyone*". As we can see, The Appellant's central argument refers not to the content of the Pre-Contract but to the alleged lack of proof – as previously addressed by the Sole Arbitrator – of who would have negotiated and concluded the contract with the Player.

136. Therefore, despite the Club not returning a duly signed copy of the contract, the Player's acceptance of the offer and subsequent actions based on this acceptance created a binding employment relationship. This is further supported by the FIFA RSTP, which does not stipulate that a signature from the parties is a requirement or condition for the validity of an employment agreement.

137. Additionally, the Sole Arbitrator finds it significant that the Club did not object to the Precontract when it was received, duly signed by the Player. The Club´s lack of objection, coupled with the Player's reliance on the agreement and actions performed in accordance with the belief that an employment relationship had been established, unequivocally indicates the existence of a valid and binding contract.

138. Thus, the Sole Arbitrator concludes that a binding employment agreement was indeed established between the parties, notwithstanding the absence of the Club's signature on the contract.

C. Whether the Club should be held responsible for the early termination of the contract.

139. The Appealed Decision refers to this issue in a simple paragraph: "*62. Therefore, to the extent that the club refused to comply with a fully valid employment agreement, the*

Chamber held that the player is entitled to compensation for breach of contract without just cause."

140. The Appellant contends that the Precontract did not constitute an unconditional commitment to enter into an employment contract. Instead, it was subject to certain conditions, including the submission of specific requested documents and the Player's successful completion of a medical examination.

141. The issue of the medical examination has already been thoroughly addressed by the Sole Arbitrator, who found the Appellant's arguments to be without merit.

142. Regarding the issue that the contract was contingent upon the Player providing valid personal identification documents, the evidence unequivocally demonstrates that the Player submitted all the requisite documents as requested by the Club. Therefore, this contention by the Appellant is also unfounded and must be dismissed.

143. It should be highlighted again that, after the Player sent the Precontract duly signed, as requested by the Club through Mr. Borva, the Club did not object at all nor it claimed that there was something still pending for the contract to enter into force. Instead, Mr. Borva repeatedly insisted the Player to terminate his contract with Ayutthaya United.

144. Article 13 of the FIFA RSTP, which brings the principle of "*pacta sunt servanda*" to FIFA's framework, in order to keep contract stability, states as follows: "*A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement"*

145. Likewise, the Article 14 establishes that a contract may be terminated without any kind of consequences for the terminating party only in case of having a just cause for the termination. "*1. A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause. 2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause."*

146. Therefore, the Sole Arbitrator shall analyze if there was a mutual agreement to terminate the contract or if there was just cause for any of the parties to terminate it.

147. It is clear for the Sole Arbitrator that there was no agreement between the parties to terminate the contract.

148. In the opinion of the Sole Arbitrator, the Club refused to fulfill the employment agreement. Despite multiple promises made, both by Mr. Borva and Mr. Soria, and numerous claims by the Player, the Club failed to provide the flight tickets for the Player and his family to travel to Bolivia.

149. Finally, after the Club ceased communications despite numerous messages sent by the Player and his lawyer, the Player sent a formal notice on January 19, 2023, granting a 2-

day deadline to provide the flight tickets and a copy of the pre-contract signed by the Club. In this notice, the Player made it clear that if the Club failed to fulfill their commitments, he would understand that the Club had abandoned the signing of the employment contract and would consider the pre-contract as terminated by the Club without just cause.

150. Since the Club did not respond to this initial notice, the Player sent a second notice on January 24, 2023, granting a new 48-hour deadline.

151. Considering the Club's silence in response to both notifications, as well as its failure to comply with the requests, the Player sent a final notification on January 26, 2023, stating that he considered the Club to have abandoned the signing of the Player and that their agreement had been breached by the Club without just cause.

152. The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case.

153. Considering the context and circumstances of the present case and the arguments submitted by the parties, the Sole Arbitrator concludes that the Club terminated the contract without just cause. Therefore, the Club is to be held responsible for the termination of the contract.

154. Having already determined that the Pre-Contract constitutes a valid and binding employment agreement, the only remaining argument presented by the Club is that it did not receive the communications from the Player. The Club claims it had no access to the email account to which the messages were sent, as these were withheld by the previous administration, which was in the process of exiting the Club at the time of the events in question.

155. The Sole Arbitrator finds the Club's argument unpersuasive. The Club has not denied ownership of the email account to which the communications were sent. Moreover, the Club has failed to provide any evidence demonstrating that it did not have access to these communications. Internal administrative issues and conflicts between the previous and current administrations do not justify or excuse the Club's failure to fulfill its contractual obligations. Such internal matters cannot be used to undermine the Player's rights.

156. Therefore, the Sole Arbitrator is convinced that the Player provided the Club with adequate notice, allowing the Club a fair opportunity to comply with its obligations. Despite this, the Club chose to remain indifferent and did not take any action, even though the Player and his family were facing significant difficulties in Thailand. This indifference further underscores the Club's breach of the contract.

D. What are the financial consequences resulting from the early termination?

157. The Appellant did not submit any argument in its Appeal Brief regarding the calculation of the compensation for early termination made by the FIFA DRC. In fact, in paragraph 82 they claimed the following:

"*82. In the improbable and hypothetical case that the Sole arbitrator, considers that the relationship between Player and Club was indeed created and it had to be considered binding, we hereby request the Sole Arbitrator to determine that the Club was a victim of an unethical behavior of the former president and set partially aside the appealed decision by eliminating the sporting sanctions imposed by FIFA, on the grounds that no bad faith existed by the Club."*

158. As can be seen, in the event that the Sole Arbitrator determines there was a valid and binding employment agreement between the Club and the Player, the Appellant requests only the elimination of the sporting sanctions imposed by FIFA on the grounds that no bad faith existed on the part of the Club. However, the Appellant has not challenged, in its Appeal Brief, the calculation of compensation determined in the Appealed Decision. This lack of challenge regarding the compensation calculation indicates that the Appellant has accepted the DRC's assessment of the financial consequences.

159. During the hearing, however, the Appellant introduced an argument concerning the calculation of compensation made by the FIFA DRC. Specifically, the Appellant claimed that the Player would have earned more money from his new club during the term of the employment agreement with the Club than he would have earned from the Club itself. Consequently, the Appellant argued that the damage caused to the Player was fully mitigated and, therefore, no compensation should be awarded. To support this claim, the Appellant referred to certain information obtained from the Internet, which was not submitted as evidence during this proceeding.

160. Given that the Appellant did not challenge the DRC's financial assessment in its Appeal Brief and only introduced this new argument during the hearing without providing substantiating evidence, the Sole Arbitrator finds the Appellant's claim unconvincing. The introduction of unverified information at a late stage does not meet the evidentiary standards required in these proceedings. The Appellant´s argument does not provide sufficient grounds to alter the DRC's original decision regarding financial compensation due to the Player.

161. Therefore, the Sole Arbitrator concludes that the compensation awarded by the FIFA DRC is justified and shall be confirmed.

E. Whether any sanctions should be imposed on CJW resulting from the termination of the Contract.

162. Based on the findings of the Sole Arbitrator that the Club have terminated the Contract without just cause and therefore shall be held liable for the payment of a financial compensation, the Sole Arbitrator turns his attention to the issue of whether any disciplinary sanction should be imposed on the Club pursuant to Article 17 of the FIFA Regulations on the Status and Transfer of Players (RSTP).

163. The Appellant's argument regarding the sanctions imposed by FIFA is that the Club never acted in bad faith; rather, the Club was a victim of the former president's actions.

Therefore, the Club considered that no sanction shall be imposed on the Club. The Appellant also referred to the institutional crisis of the Club. The Club claimed that it was effectively held hostage by an unethical official who not only mismanaged the Club during his tenure but also ensured that the new management faced numerous problems. Mr. Soria never relinquished control of the official email account, where all notifications were received, leaving the new management unaware of crucial communications. This obstructive behavior significantly hampered the Club's ability to manage its affairs effectively and respond to important matters.

164. Given these circumstances, the Appellant argues that the Club should not be held liable for the actions of a rogue president whose conduct was neither sanctioned nor supported by the Club as an institution. The lack of access to essential communications and the deliberate sabotage by the former president should be considered mitigating factors. Therefore, the Appellant requests that the sporting sanctions imposed by FIFA be eliminated, as the Club itself did not act in bad faith and was instead a victim of internal mismanagement and sabotage.

165. On the other hand, the main arguments invoked by FIFA in the present arbitration before CAS as to why the imposition of sporting sanctions on the Club is warranted, are the following:

a) The Club entered into negotiations with the Player;

b) The Club offered the Precontract (supposedly) to comply with it;

c) The Player accepted the offer and signed the Precontract in good faith;

d) As a consequence, the Player terminated its contract with the Thai club Ayutthaya United under the understanding that he would immediately join CJW;

e) The Player had the legitimate expectation that the Club would send him the flight tickets for his arrival to Bolivia and that it would honour the Precontract;

f) However, the Club decided not to engage in any further communications with the Player, and the latter was simply ignored and abandoned by the Club;

g) The Club's failure to comply with the terms of the Precontract caused the Player important harm as the latter not only lost the opportunity to continue playing with his former club but also the opportunity to negotiate with other clubs;

h) The Club's breach not only occurred during the protected period but from the very outset of the employment relationship.

i) By means of three default notices, the Player granted to the Club the possibility to remedy its breach and honour the Precontract;

j) The Club, instead, remained passive upon these communications and left the Player to his fate;

k) The Club did not even attempt to reach a settlement agreement with the Player or show any trace of remorse for its behaviour;

l) As established in the Appealed Decision, this bad-faith behaviour must be punished.

166. The Sole Arbitrator initially notes that Art. 17 (4) states as follows:

*"**In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract** or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. **The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.** The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exceptions stipulated in article 6 paragraph 3 of these regulations in order to register players at an earlier stage."*

167. The term 'protected period' is defined as follows in no. 7 of the definitions of the FIFA RSTP: "*Protected period: a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional*".

168. Article 2(3) of the FIFA Commentary on Article 17 FIFA RSTP determines the following: "*A club that breaches a contract with a player during the protected period risks being prohibited from registering new players, either domestically or internationally, for two registration periods following the contractual breach*".

169. Despite the explicit language of the Regulations ("*shall be imposed"*), the FIFA DRC has consistently exercised a degree of discretion in deciding whether to apply sporting sanctions. The DRC interprets the Regulations as conferring the authority to impose sporting sanctions, rather than mandating their imposition. This discretionary approach is evident in the DRC's regular decisions to refrain from imposing such sanctions on both players and clubs, even in cases where breaches of contract have occurred during the protected period, as noted in the Commentary to the FIFA Regulations on the Status and Transfer of Players (RSTP). This is also in accordance with FIFA's submissions in the present arbitration.

170. The discretionary application of sporting sanctions serves to reinforce contractual stability between professional players and their clubs. It acts as an additional deterrent

against unilateral termination of contracts or deliberate non-compliance with contractual obligations. This principle is supported by jurisprudence, such as in CAS 2019/A/6463 & 6464 Saman Ghoddos v. SD Huesca & Östersunds FC & Amiens Sporting Club & FIFA, Östersunds FK Elitfotboll AB v. SD Huesca & FIFA & Saman Ghoddos & Amiens Sporting Club.

171. The Court of Arbitration for Sport (CAS) has consistently upheld this approach, affirming that the imposition of sporting sanctions should be justified by the specific circumstances surrounding the conduct of the breaching party. Therefore, a flexible, case-by-case analysis is both appropriate and necessary in determining whether such sanctions are warranted.

172. However, FIFA's policy of not automatically imposing sporting sanctions for breaches of contract during the protected period, as decisions are made on a case-by-case basis, does not preclude FIFA from imposing such sanctions in these situations.

CAS 2017/A/5056: "*128. The Panel finds that FIFA's policy to not necessarily impose sporting sanctions in case of a breach of contract during the protected period, since the decisions are rendered ex officio on a case by case basis, does not mean that FIFA cannot impose sporting sanctions in such situation. To the contrary, the legal basis to impose sporting sanctions in this kind of disputes as in the matter at hand, is clearly provided for in Article 17(4) of the FIFA RSTP. As such, the sanction resulting from the offence is predictable and the provision meets the requirement of a clear connection between the incriminated behaviour and the sanction. This should not lead to any controversy, as such policy does not prejudice the Club. FIFA's policy to not necessarily impose sporting sanctions in case of a breach of contract by a club during the protected period is in fact favourable to the Club."*

173. Despite the Club´s arguments, the Sole Arbitrator concludes that it had failed to demonstrate that the FIFA DRC should not have imposed the sporting sanctions.

F. Conclusion:

174. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that:

a) There was a valid and binding employment agreement between the Club and the Player.

b) The Club is responsible for the early termination of the contract without just cause.

c) The Club must compensate the Player for the residual value of the contract, adjusted for any mitigation.

d) the FIFA DRC legitimately imposed sporting sanctions on the Club.

G. Further or different motions

175. All further or different motions or requests of the Parties are rejected.

IX. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club Jorge Wilsterman against the Decision rendered by the FIFA DRC on 29 September 2023 is dismissed.

2. The Decision rendered by the FIFA DRC on 29 September 2023 is confirmed.

3. The stay of the ban imposed on Club Jorge Wilsterman from registering any new players, either nationally or internationally, for two entire and consecutive registration periods is lifted with immediate effect.

4. (…).

5. (…).

6. (…).

7. All other or further request or motions submitted by the Parties are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 10 February 2025

THE COURT OF ARBITRATION FOR SPORT

Mariano Clariá
Sole Arbitrator