CAS 2023/A/9749 Roberto Luiz Bianchi Pelliser v. Vipers Sports Club Limited

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Jacopo Tognon, Professor and Attorney-at-law in Padova, Italy

in the arbitration between

Roberto Luiz Bianchi Pelliser, Itatiba, Brazil

Represented by Ms Rosalía Ortega Pradillo and Mr Nicolás Felipe Senderowicz Slucki, Toledo, Spain

Appellant

and

Vipers Sports Club Limited, Kampala, Uganda

Represented by Mr Njuba Simon Peter, Chief Executive Office, Kampala, Uganda

Respondent

I. PARTIES

1. Roberto Luiz Bianchi Pelliser (the "Appellant" or the "Coach") is a professional football coach of both Brazilian and Spanish nationalities.

2. Vipers Sports Club Limited (the "Respondent" or the "Club") is a professional football club based in Kampala, Uganda. It is a member of the Federation of Uganda Football Association ("FUFA") which in turn is affiliated with the *Féderation Internationale de Football Association* ("FIFA").

3. The Appellant and the Respondent shall hereinafter be jointly referred to as the "Parties", where applicable.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the hearing on 8 July 2024. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

A. Background Facts

5. On 3 January 2023, the Parties concluded an employment contract (the "Contract") valid as from the date of signature and *"for one and a half years"* (i.e. until 30 June 2024).

6. According to Article 6 of the Contract, the Coach was entitled to USD 6,000 net per month to be paid within the first 5 days of each month.

7. Furthermore, following Article 5 of the Contract, the Coach was *"entitled to a return air Ticket to his home country (Spain) once a year."*

8. While Article 3 of the Contract stipulated the following:

   "Article 3: Contract expiration and /or termination

   - *Within three months to the end of this contract both parties will come together to table a possibility of renewing this contract on the same terms or with new terms if agreed upon.*

   - *Either party may terminate this contract with just cause by the provision of two month's prior written notice to the other party or payment in lieu of such notice."*

9. On 21 February 2023, the Club allegedly sent a warning notice to the Coach for *"unbecoming conduct"*, indicating the following:

"In a Technical Committee meeting held on 20th February 2023 called to address the recurring loses, you arrived late while fuming in Spanish (...). I believe this was insubordination.
Your responses on Viper players sounded offensive (...) You called them none professionals and yet they are the same players who eliminated the Africa giants TP Mazembe and Real de Bangui (...).
The accusation caused a huge rift among the players particularly the foreigners. Amazingly with all your expertise, you have failed to manage players on the dress code, time management and you were excessively rude.
Intolerable arrogance, gesture and threats while on the bench were noticed (...)"

10. On 27 February 2023, the Club allegedly sent a second warning notice, indicating that the *"growing indiscipline of players, poor time management and divisions have led to poor results"*, and complained on the *"abominable body language"* of the Coach.

11. On 8 March 2023, the Club allegedly sent a third notice for *"intolerable behaviour"*, whereby, *"on 7th March 2023 while in Tanzania, the leader of the Delegation realized that the morale of the team was extremely low - there was division and disorder among players and the Head Coach"*, while noting that *"even if he is fired and the Club hired Morihno or Gordiola, the team cannot produce any sensible results."*

12. Also, on 8 March 2023, the Club sent a termination letter to the coach (the "Termination Letter") stating the following:

"You are hereby notified that by decision of the Executive and Vipers Management that you are forthwith relieved of your duties as Head Coach Vipers SC in accordance with Article 3 (Bullet 2) of your contract for non-satisfactory performance and not living to the Employer's expectations.

That Management has decided that you shall be paid two month's salary in lieu of notice as per your contract plus computed salary for the 8 days worked for the month of March 2023. In that respect, the termination takes immediate effect and you will be required to hand over all Club property within your possession to the CLUB CEO by the close of business 10th March 2023 and all payments due to you as per the contract above shall be paid within the same time frame. We assure you of our utmost considerations and wish you the best in your future endeavours. We remain "One Team. One Dream"

13. On 9 March 2023, the Club paid to the Coach, a payment of two months' salary in the amount of USD 12,000 in accordance with Article 3 of the Contract.

14. Following the termination of the Contract, the Appellant remained unemployed till date.

B. Proceedings before the FIFA Football Tribunal

15. On 24 March 2023, the Appellant submitted a claim before the FIFA Football Tribunal (or the "Players' Status Chamber") for breach of Contract without just cause and requested the payment of the following amounts:

- *USD 90,000 as compensation and corresponding to the residual value of the Contract;*

- *EUR 1,250, for an air ticket to return to Spain;*

- *USD 18,000, as compensation for bad faith, moral damages and specificity of sports.*

16. In its reply, the Club argued that the termination of the Contract was lawful, as it was in accordance with Article 3 and 4 of the Contract and the Ugandan Labour Laws.

17. On 23 May 2023, the Single Judge of the Players' Status Chamber (the "Single Judge") rendered the challenged decision, considering the following determinations:

    - Regarding the default notices, the Single Judge notes that, after verifying the information on file, that there is no transmission report and therefore there is no direct evidence on whether said default notice were sent. However, the Single Judge also noted that said notices, as available on file, have a similar format to the termination letter, which the Coach acknowledged having received. Therefore, the Single Judge could only assume that the Coach indeed received the default notices.

    - Regarding the termination, the Single Judge recalled that, in accordance with the longstanding jurisprudence of the Football Tribunal, sporting team results / sporting team performance cannot be retained as a valid reason to justify an early termination of an employment contract. Further, that the termination must be in accordance with the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"). As a result, the Single Judge concluded that the termination of the Contract was without just cause and the Coach is entitled to compensation.

    - Regarding the air ticket, the Single Judge rejected this part of the claim, stating that, the Club already complied with its basic obligation on 3 January 2023, and as a result, the disputed ticket for 11 March 2023 shall be considered as an additional ticket that goes beyond what was contractually agreed between the Parties.

    - Regarding the compensation, the Single Judge noted that the Contract included a compensation clause stipulated in Article 3 of the Contract. Whereby, the clause corresponds to a liquidated damages clause. The Single Judge also observed that the said clause appears to be fully reciprocal, as it grants the same rights to either party and therefore must be considered as valid and binding.

    - On this basis, the Single Judge confirmed that the Parties agreed upon the payment of two months' salaries as compensation. As a result, the Single Judge established that no compensation is currently due insofar it was already settled by the Respondent.

- Moreover, in accordance with the longstanding jurisprudence of the Football Tribunal, the Single Judge rejected the Appellant's request for "moral damages" due to a lack of legal basis and evidence.

18. The Decision of the Players' Status Chamber (the "Appealed Decision") is as follows:

"1. The claim of the Claimant, Roberto Luiz Bianchi Pelliser, is rejected.

2. This decision is rendered without costs."

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 21 June 2023, the Appellant lodged the Statement of Appeal in Spanish before the Court of Arbitration for Sport (the "CAS") in accordance with Article R48 of the Code of Sports-related Arbitration (the "CAS Code") against the Respondent with respect to the decision rendered by the Players' Status Chamber on 23 May 2023.

20. On 22 June 2023, the Appellant lodged the Statement of Appeal in English before the CAS. The Appellant requested the proceedings to be conducted in Spanish and for the appointment of a Sole Arbitrator.

21. On 4 July 2023, the CAS Court Office acknowledge receipt of the Respondent's letter according to which it accepted the appointment of a Sole Arbitrator and requested for the proceedings to be conducted in English. Thus, the former informed the Parties that the language of the proceedings is English.

22. On 18 July 2023, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code and within the previously extended period of time.

23. On 7 August 2023, the Respondent filed its Answer to the Appeal Brief.

24. On 15 August 2023, the Appellant requested for a hearing via video-conference. Furthermore, the Appellant requested authorization to submit new allegations and evidence in order to challenge Annexures 1, 4, 5 and 6 of the Respondent's Answer.

25. On 24 April 2024, the CAS Court Office notified the Parties that Mr Jacopo Tognon had been appointed as the Sole Arbitrator by the Deputy President of the CAS Appeals Arbitration Division.

26. On 1 May 2024, the CAS Court Office informed the Parties that the Sole Arbitrator accepted the Appellant's request. As a consequence, the Appellant is invited to submit new allegations and evidence connected exclusively to his objections against Annexures 1, 4, 5 and 6 of the Respondent's Answer. Subsequently, the Respondent was granted a deadline to respond.

27. On 3 May 2024, the CAS Court Office received the complete FIFA case file of Ref. Nr. FPSD-9738 from FIFA, as requested by the Sole Arbitrator.

28. On 13 May 2024, the Appellant submitted new allegations and evidence connected to Annexes 1, 4, 5 and 6 of the Respondent's Answer.

29. On 22 May 2024, the Respondent countered to the Appellant's new allegations and evidence and submitted a new Annex 1 ("New Annex 1") to support its comments.

30. On 6 June 2024, the Appellant informed the CAS Court Office that the new Annex 1 submitted by the Respondent is allegedly falsified and requested for a pre-hearing in line with Article R56 of the CAS Code. Lastly, the Appellant requested the Sole Arbitrator to order the Respondent to submit the original document of the Annex 1.

31. On 11 June 2024, the CAS Court Office informed the Parties that a hearing will be held by video-conference on 8 July 2024. Further, regarding the Appellant's requests, the Sole Arbitrator rejected the request for a pre-hearing, however, granted the other request regarding the original document and informed the Respondent to present the Annex 1 document in an .eml file by 18 June 2024.

32. On 13 June 2024, the CAS Court Office issued the Order of Procedure, which both the Parties signed without any reservation.

33. On 17 June 2024, the Respondent submitted the original .eml file of the Annex 1.

34. On 21 June 2024, the Appellant submitted an Expert Report on the said .eml file.

35. On 25 June 2024, the Respondent submitted certain comments regarding the Expert Report submitted by the Appellant.

36. On 8 July 2024, the hearing took place by videoconference. In addition to the Sole Arbitrator and Ms Lia Yokomizo, Counsel to the CAS, the following persons attended the hearing:

On behalf of the Appellant:

– Mr Roberto Luiz Bianchi Pelliser (Appellant)
– Ms Rosalía Ortega Pradillo (Counsel)
– Mr Brandon Tub Caplan (Counsel and Interpreter)
– Mr Virgilio Garzia Lopez (Expert)

On behalf of the Respondent:

– Dr Lawrence Mulindwa (Club President)
– Mr Njuba Simon Peter (Chief Executive Office)
– Mr Luganda Alex (Legal Director of the Club)

37. At the outset of the hearing, the Parties confirmed that they had no procedural objections as to the conduct of the proceedings and the appointment of the Sole Arbitrator. During the hearing, the Parties made submissions in support of their respective arguments.

38. Further, the Sole Arbitrator heard the Expert called by the Appellant. The testimony of the Expert, Mr Virgilio Garzia Lopez, may be summarised as follows:

- Mr Lopez is a computer engineer and he was called by the Appellant to verify the authenticity of the .eml file submitted by the Respondent in connection with Annex 1 on 17 June 2024.

- The Expert affirms that after verification, he detected that the signature on the .eml file was incorrect, along with the date on the file which was modified after the actual date of when the email was sent.

- Mr Lopez further adds that the .eml file was created and falsified on the same night that it was submitted i.e. on 17 June 2023 at 4.49.34 GMT, whereas the actual email was supposedly sent on 9 March 2023 to the Appellant.

- However, he states that he was only able to determine whether the file was in fact manipulated or not but he is unsure as to which specific part or text of the email was falsified and how.

- In conclusion, the Expert confirms the falsification of the said .eml file on the basis that it was created *ad hoc*.

39. During the hearing, the Appellant gave an oral statement, which may be summarised as follows:

- The Appellant states that the Club contacted him for the first time in 2023 when they were preparing for the Champions League organised by the Confederation of African Football (CAF) and they were looking for a coach with previous experience in training African football teams.

- Mr Bianchi further adds that before he signed the Contract with the Respondent, he was coaching the national team of Angola and hence the Club was interested in his services for a long-term project.

- He affirms that he only speaks Spanish and his assistant coach Mr Bianchi helped him with the communication and translation with the players and staff.

- He confirms that he has never had any prior disciplinary action taken against him. Moreover, in his 20-year coaching career, this was the first time he was dismissed early by a Club.

- Mr Bianchi adds that he never expected this decision of dismissal from the Club. Including the players and the coaching staff were equally surprised.

- He states that, prior to the termination, Mr Njuba Simon used to show up at his house a couple of times in order to influence Mr Bianchi's coaching decisions by suggesting him which players to select for the squad.

- Mr Bianchi affirms that the Club always paid him in cash since he did not possess a Ugandan bank account. During the time of his termination, he affirms that he had USD 12,000 in cash as wages for January and February 2023.

- After he received the termination letter, Mr Bianchi contacted Mr Njuba Simon whereby Mr Simon requested for Mr Bianchi's Spanish bank account details to transfer the money. Mr Bianchi found this to be strange since Mr Simon was insisting him to send the bank account details.

- Thus, after confirming with his lawyer, Mr Bianchi sent an email with the bank account to Mr Simon and added that it was for the purpose of January and February wages, only.

- He denies having received his wages for March 2023 since he was dismissed in March. He further confirms that he received another USD 12,000 from the Club which was transferred to his Spanish bank account however, he strongly affirms that this was for the payment of wages for January and February and not for the purpose of any compensation.

- Mr Bianchi confirms that he never returned this payment of USD 12,000 to the Club.

- In connection with the flight tickets, Mr Bianchi explains that the Club sent him the 1st return flight ticket to Spain in January 2023, before he came to Uganda since he did not possess a work permit at that time and hence, he had to show a return ticket to Spain for visa purposes.

- He adds that this flight ticket was cancelled on 9 March 2023. And, on the same day, Mr Bianchi requested the Club to book him another flight ticket but they never responded so he went ahead and booked his own flight ticket back to Spain.

- Accordingly, on 10 March 2023, he communicated to the Club that he booked his own flight ticket for 11 March 2023 and yet received no response from the Club.

- On 11 March 2023, the day he was supposed to leave Uganda, the Club sent Mr Bianchi a flight ticket to Spain for the same day. However, the Club sent the flight ticket two hours after the flight's departure thus rendering it useless.

- Lastly, Mr Bianchi shares how the termination affected his life and career. He states that the early termination did not make a good impression on his coaching career and till date he was unable to find a job.

- He adds that, apart from being responsible for his own 2 children, he also helps fund the expenses of 2 other children in Angola – which he has been unable to do so ever since he was dismissed.

- Thus, the early termination by the Club not only affected him professionally and financially, but also mentally as it was an unfair decision taken by the Club.

40. At the closing of the hearing, the Parties confirmed that they had no objections on their right to be heard and that they had been given the opportunity to fully present their cases.

IV. SUBMISSIONS OF THE PARTIES

41. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every argument advanced by the Parties. The Sole Arbitrator has nonetheless carefully considered all claims made by the Parties, whether or not there is a specific reference to them in the following summary.

A. The Appellant's submissions

42. The Appellant's submissions, in essence, may be summarised as follows:

- The Appellant's primary contention is that the Players' Status Chamber wrongfully settled the compensation component owed to the Coach, all while establishing that the Club terminated the Contract without just cause. The Single Judge unjustly concluded that the payment received by the Coach regarding the fixed right of notice for termination with just cause (two monthly salaries) is the only amount that the Coach was entitled to.

- This means substituting one right for another, specifically, substituting the right to compensation for damages fixed in Article 6 para. 2 (a) of Annex II of the FIFA RSTP for termination without just cause, by the right to notice in case of termination with just cause as fixed in the Contract. Further, both FIFA and CAS jurisprudence recognise and guarantee the right to compensate the Coach with the residual value of the Contract in the event of a dismissal without just cause.

- As per Article 4 of the Contract, the Appellant argues that the Club is in violation of FIFA and FUFA regulations by terminating the Contract during the season without reaching the specified contract duration or mutual agreement.

- The Appellant challenges the reason for the termination due to *"non-satisfactory performance"*, arguing that it does not constitute just and sufficient cause under any circumstances to proceed with the most severe punishment i.e. termination.

- The Appellant invokes Article 66 para.1 of the Employment Act, 2006 of Uganda which requires the employer to explain to the employee the reasons for the termination of the contract if it is due to poor performance, whereby, the employer

must give the worker a reasonable amount of time to prepare their defence. Thus, arguing that neither was done in this case.

– The Appellant claims that the Coach was never previously sanctioned, penalized or reprimanded. Further, he did not receive any complaints, whether written or orally, as also confirmed by FIFA in the Appealed Decision. The Appellant accuses the Respondent of malpractice by providing certain evidences produced *ad hoc*.

– In connection to the Club's allegation regarding the Coach's behaviour and professionalism – the Appellant submits evidence to show that the players and the staff were surprised by the termination since the Coach's work was excellent. The Appellant further argues that the Club itself, through its official social media channels, expressed satisfaction with the team's good work.

– The Appellant argues that since the termination, he has not been employed by another club and is thus entitled to a compensation *"equal to the residual value of the contract that was prematurely terminated"* as per the FIFA RSTP.

– Further, Article 3 of the Contract, was agreed only for the right to a prior notice with just cause and not in the case as compensation for termination of the Contract without just cause. And, only in the event that a party does not respect this notice period, must it pay the other party an amount corresponding to 2 monthly salaries.

– The Appellant states that Article 26 paras. 3 and 4 of FUFA's RSTP, on one hand prohibits terminating a contract without just cause, and on the other hand, in the presence of just cause, which is not the case here, requires a 14-day notice period.

– In view of the above, the Appellant argues that the Single Judge has wrongly concluded that *"... the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach contract"* in Article 3 of the Contract. According to the Appellant, the two months' salary were agreed only for the right to a prior notice and not as compensation for termination of the contract without just cause.

– In addition, the Appellant requests for a reimbursement of EUR 1,250 euros for a flight ticket that the Coach had to pay in order to return home at the time of his dismissal. The Appellant argues that the Club had made a flight reservation for the Coach as it was its contractual obligation (Article 5). However, after confirming him they will provide it to him, the Club stopped responding to him and just disappeared. Thus, forcing the Coach to buy the ticket from his own pocket, even though it was the Club's responsibility to cover that amount.

– In conclusion, the Appellant submits various CAS jurisprudence to argue that he suffered a termination without just cause by the Club, thus as a consequence, he is entitled to the residual value of the Contract, and also an additional compensation due to the specificity of the sport.

43. The Appellant's request for relief is the following:

"The appellant respectfully requests from the Panel the following request for relief:

1. To accept this Appeal Brief, and its annexes.

2. To adopt an award partially annulling the Appealed Decision.

3. To order the Respondent to pay:

- *90.000 USD as residual value of the contract*
- *1.250 EUR as return ticket flight from Uganda to Spain*
- *18.000 USD as compensation due to bad faith, moral damage and specificity of the sport*

4. To order the Respondent to pay all arbitration costs and be ordered to reimburse the Appellant the CAS Court Office Fee and any other advance cost paid by the Appellant to CAS.

5. To order the Respondent to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at the discretion of the Arbitrator."

B. The Respondent's submissions

44. The Respondent's submissions, in essence, may be summarised as follows:

– Firstly, the Respondent contends that the action taken by the Club towards the Coach was lawful and in line with Article 3 and 4 of the Contract and in compliance with the Employment Act, 2006 Laws of Uganda.

– Secondly, the Club contends that the Appealed Decision was correct with respect to the zero-compensation awarded to the Coach and it was the proper interpretation of the Contract. Likewise, the same should be upheld by CAS.

– The Respondent primarily argues that the termination was however with just cause and that the Coach was not dismissed but rather, the Club opted for an anticipated discharge of the Contract by way of termination with notice or payment in lieu.

– The Respondent strongly contends that the FIFA Regulations and the CAS Code are not to be applied in absolute exclusivity and the substantive law applicable in determination of the disputes is the applicable law in the designated country of contract execution i.e. Ugandan labour law.

– Likewise, Section 58 of the Employment Act, 2006 allows an employer to terminate an employment contract with an employee by issuing an advance notice of

termination or making payment in lieu of the notice. This was indeed enshrined in the Contract (via Article 3) signed between the Parties. Thus, the Club contends that the Contract was terminated with the Coach in compliance with the law, in good faith and without malice as alleged by the Appellant.

- Contrary to the Appellant's allegation, the Respondent argues that it is false for the Appellant to assume that an employment contract can only come to an end through disciplinary processes and/or hearing. The Respondent submits that as per the labour laws in Uganda and other parts of the world, there are several ways through which an employment contract can be terminated.

- The Respondent further submits that if a contract is silent on the notice period before termination, the Employment Act, 2006 provides applicable notice periods guided by the duration of the contract however, this was not the case here since the notice or payment in lieu of notice was already stipulated in the Contract.

- The Respondent contends that Article 6 para.2 (a) of Annex II of the FIFA RSTP should not be interpreted as a substitute or intended to do away with the well-known principles of Contract Law since the intention of the parties must be well respected.

- In the above context, the Respondent argues that the Contract clearly stipulated for notice period or compensation of two months in lieu to either party in the event of early termination. Thus, the Single Judge fairly concluded that the compensation due to the Coach was two monthly salaries as per his Contract, which has been duly paid by the Club.

- Moreover, the Appellant's reference to Section 66 of the Employment Act, 2006 is not applicable here since the termination letter issued to the Coach was in accordance with Article 3(2) of the Contract – which provided for Notice.

- The Respondent therefore, argues that it did not carry out a dismissal of the employee (the Coach) although it has reasons to do so which would require a hearing. The Club decided that instead of subjecting the Coach to a hearing while he was still coaching the team, it would be in the best sporting interest to terminate the Contract with notice.

- The Respondent further cites Section 71(1) of the Employment Act, 2006 that for an employee to have locus to complain on cases of unfair termination, he/she must have been in continuous employment for thirteen weeks or more (3 months plus) at the time of termination.

- On that note, the Respondent submits that the Coach was employed on 3 January 2023 and terminated on 8 March 2023 which is equal to 9 weeks thus, less than 3 months to claim for unfair termination.

- The Respondent contends that the Coach was never terminated on the basis of poor performance of the Club (as alleged by the Appellant) but rather the early discharge

of the Coach was solely due to *"non satisfactory performance and not living up to the employer's expectations"* (as duly stated in the termination letter).

– Whereby, the *"non-satisfactory performance and not living up to the employer's expectations"* were a result of toxic working environment, insubordination of supervisor, lack of team spirit with other technical staff and the players.

– Thus, the Appellant's submissions and jurisprudence referred in relation to the above allegation is misleading, conjecture and the Appellant's own creation as possible reason for dismissal.

– Regarding the return flight ticket, the Respondent claims that it has submitted evidence to prove that the Coach indeed had a return flight ticket paid for in January 2023 however, he had not utilised the same as he had not travelled back to Spain since January. Subsequently, at the time of his return to Spain, the Coach had become uncooperative and refused to take the ticket for reasons best known to him.

– The Respondent submits that in the event of grant of the remedies sought by the Appellant, the various amounts claimed are too excessive resulting in a negative impact on the sporting merit of the Respondent club.

– Lastly, the Respondent claims that the Contract did not provide for such damages as requested in the Appeal Brief since the Club and the Coach did not specifically or strictly define what amounts to just cause.

45. The Respondent submits its request for relief by stating that there is no basis for the award of the damages, compensation and order sought against the Club as there is both no sporting or legal merit for the remedies sought.

46. Lastly, in the spirit of sporting promotion, the Respondent invites the Sole Arbitrator to distinguish the cases cited by the Claimant since the involved clubs are part of the top tier leagues of the world with more advanced economic performances and as such sanctioning an upcoming club in the third world league like the Respondent club over decisions taken by the Club, which do not violate its national labour laws or FIFA Regulations is injurious to the development of football.

C. Other Written Submissions

47. After the submission of the Respondent's Answer, the Appellant requested the Sole Arbitrator to submit new claims alleging manipulation of evidence on the part of the Respondent. Since the allegations involved exceptional circumstances, the Sole Arbitrator permitted the Appellant to submit new allegations and evidence in connection to Annexes 1, 4, 5 and 6 (submitted along with the Answer to the Appeal Brief).

48. On 13 May 2024, the Appellant submitted the following:

- Regarding Annex 1: consisting of the Coach's dismissal letter dated 8 March 2023, the Appellant challenges its probative value and its veracity by stating that it has been altered by the Club. On 9 March 2023, the letter was personally delivered by the Club secretary Mr Njuba Simon to the Coach. And, on 11 March 2023, the Coach sent back the dismissal letter expressly writing *"non-conforming"* to the dismissal, above his signature, both via email and in the letter itself.

- The Appellant submits that the Club by means of Annex 1, manipulated the signed letter by the Coach, removing the *"non-conforming"* part but leaving his signature alone. The Appellant further claims that the motive behind the Club's doing so was in order to appear as if the Coach supposedly agreed with the dismissal.

- Regarding Annexes 4, 5 and 6: consisting of warning letters dated 21 February 2023, 27 February 2023 and 8 March 2023, respectively, the Appellant argues that they are all newly created documents, which have been produced after the dismissal and during the FIFA proceedings. Further, there neither exists a proof of delivery of the above-mentioned warning letters nor proof of having been received by the Coach, all of which was recognised by the Single Judge in the Appealed Decision.

- The Appellant submits that the said warning letters were manipulated and/or falsified by the Respondent in order to falsely demonstrate the Coach's alleged inappropriate behaviour with the Club and its players. Whereas, in reality, the Appellant's character is completely contrary to the allegations made against him

- Thus, the Appellant requests the Sole Arbitrator to disregard these annexes in its entirety and allow for the submission of new evidence in the form of WhatsApp conversations and allegations of a personal dispute between the Coach and Mr Steven Mulindwa (General Manager/Club President's son) – which the Appellant believes to be the real reason for his dismissal.

49. On 22 May 2024, the Respondent submitted its comments on the above submissions:

- The Respondent reiterated that the Coach was terminated in compliance with the law, in good faith and without malice as alleged by the Appellant.

- Regarding the Appellant's allegation of a personal dispute between the Coach and Mr Steven Mulindwa, the Respondent claims that this is a wild and false allegation which further contradicts the Coach's own earlier evidence that there was no animosity between the technical officials and the players.

- With regard to the Appellant's additional evidence on pages 6, 7 and 8 of the new submission (WhatsApp chats and social media posts), the Respondent claims that they not only breach the data protection laws of Uganda but also lack veracity and authenticity to pass the admissibility test of evidence. Moreover, the alleged WhatsApp chats do not indicate the full addresses and contact details of the persons allegedly chatted with, thus, the source is not clearly verifiable.

- In connection to Annex 1 of the Appeal Brief, the Respondent submits that the evidence provided by the Appellant is baseless and of no probative value since the Coach does not dispute receiving the receipt of the dismissal letter and the same is not the issue of the matter. The allegations altering the same are not admitted to by the Club and thus the Respondent reiterates the authenticity of their previous submission of the electronic evidence.

- Further, the Respondent claims that the Coach was requested to provide his bank account details via email for the payment of the compensation due to him as per the Contract. The Respondent contends that the Coach indeed complied to this request by providing his bank details via email dated 9 March 2023 (New Annex 1).

- Thus, the Respondent submits that the Appellant desired to be paid the remaining amount of the contract period at the time of termination. In this regard, the Single Judge of the FIFA Players' Status Chamber rightfully held that the payment or compensation due to the Coach was two months' payment as per his Contract and the same has been duly paid by the Club.

50. On 6 June 2024, the Appellant replied to the Respondent's submission:

- The Appellant states that the New Annex 1 submitted by the Club was completely false and it appears that certain content was eliminated. Thus, the Appellant submits its own copy of the said email claiming that the Coach sent the email with his bank details however, specifically adding that it was not connected to the compensation for his dismissal.

- The Appellant argues that the new Annexure 1 is an obvious manipulation which was not produced before the FIFA proceedings thus it was a new creation that has never been provided until now. Lastly, the Appellant requested the Sole Arbitrator to order the Respondent to produce the New Annex 1 in an original .eml file.

51. On 17 June 2024, the Respondent submitted the original .eml file of the disputed New Annex 1 (".eml file"), as requested by the Sole Arbitrator.

52. On 21 June 2024, the Appellant submitted an Expert Report to verify the authenticity of the .eml file submitted by the Respondent.

- The Expert has observed that the email body contains paragraph structures without content, which could indicate that certain text has been deleted from the body of the message.

- He states that the said email file contains a DKIM digital signature. After verification of the digital signature, the Expert concluded that there is clear evidence that the message content has been tampered with and that the .eml file is a fake email.

– Further, the .eml file contains an attached image with a date later than the message's sending date. This constitutes that the content of the file has been manipulated and was specifically created on the same night that it was submitted as of 17 June 2023 at 4.49.34 GMT, whereas in theory the email was supposedly sent on 9 March 2023.

V. JURISDICTION

53. Article R47 para. 1 of the CAS Code provides as follows:

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

54. Article 57 para. 1 of the FIFA Statutes (2023 edition) provides as follows:

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

55. Similarly, the Appealed Decision provides for an appeal to CAS.

56. The jurisdiction of the CAS derives from Article R47 para. 1 of the CAS Code, Article 57 para. 1 of the FIFA Statutes, and is confirmed in the Appealed Decision itself. Furthermore, the jurisdiction of the CAS is not contested by the Parties and is confirmed by the Order of Procedure duly signed by the Parties.

57. Therefore, the Sole Arbitrator finds that the CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

58. Article R49 of the CAS Code provides in its relevant part as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document."

59. Article 57 para. 1 of the FIFA Statutes quoted above provides for a time limit to lodge an appeal against a decision of the FIFA Players' Status Chamber of 21 days as of receipt of the decision in question.

60. The grounds of the Appealed Decision were notified to the Parties on 1 June 2023. The Appellant filed his Statement of Appeal on 21 June 2023.

61. The Sole Arbitrator notes that the admissibility of the appeal is not, in principle, contested by the Parties

62. The Sole Arbitrator concludes that the present appeal is well within the 21-day time limit and thus admissible.

VII. APPLICABLE LAW

63. The Sole Arbitrator examines whether the Contract includes a provision to the *rules of law* chosen by the Parties. Accordingly, the only reference to the applicable law is found in Article 4 of the Contract, which provides as follows:

    "Anticipated discharge of this contract shall be in strict observation of the FUFA internal rules and regulations as well as FIFA regulations and the Ugandan Labour laws on the relevant subject matter"

64. Nevertheless, the Parties in their respective submissions, propose different hierarchical order of the law applicable to the present dispute.

65. The Appellant argues that the applicable law is the FIFA Regulations on the Status and Transfer of Player (the "FIFA RSTP"), FUFA Regulations on the Status and Transfer of Players, Ugandan Labour Law and Swiss law.

66. Whilst the Respondent contests that the FIFA Regulations and the CAS Code are not to be applied in absolute, exclusivity and isolation of other applicable laws as basis for substantive rules to determine the employment disputes between a club and a coach. Thus, the Club submits that the substantive law applicable in determination of the present dispute is the applicable law in the designated country where the Contract was executed i.e. Ugandan labour law and in particular the Employment Act, 2006.

67. As a starting point, Article R58 of the CAS Code states as follows:

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

68. By submitting their dispute to CAS, by signing the Order of Procedure and not filing any objections in this regard, the Parties have implicitly and indirectly chosen for the application of the conflict-of-law rule in Article R58 CAS Code, leading to the primary application of the regulations of FIFA (CAS 2020/A/7499).

69. Moreover, in accordance with the Haas-doctrine, Article R58 of the CAS Code *"serves to restrict the autonomy of the parties, since even where a choice of law has been made, the 'applicable regulations' are primarily applied, irrespective of the will of the parties. […] Hence any choice of law made by the parties does not prevail over Art. R58 of the CAS Code, but is to be considered only within the framework of Art. R58 of the CAS Code and consequently affects only the subsidiarily applicable law"*. (HAAS U., Applicable law in football-related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law, Bulletin TAS / CAS Bulletin 2015/2, p. 11-12).

70. Furthermore, FIFA's rules and regulations shall apply in football-related disputes but also, and in particular, because the Appeal in the present case is directed against a decision issued by FIFA, which was passed in accordance with FIFA's rules and regulations (CAS 2014/A/3626).

71. Article 56 para. 2 of the FIFA Statutes provides as follows:

"*The provisions of the CAS Code of Sports related Arbitration shall apply to the proceedings. CAS shall apply the various regulations of FIFA and, additionally, Swiss law*".

72. In order to determine the applicable law, further relevance is given to Article 187 para. 1 PILA, which reads as follows:

"The arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected".

73. In case of appeals against decisions issued by FIFA, there is a tacit and indirect choice of law, in accordance with Article R58 of the CAS Code and Article 56 para. 2 of the FIFA Statutes, the dispute has to be decided according to the laws and regulations of the FIFA and, complementarily, Swiss law as the law of the country where FIFA is domiciled.

74. In the matter at hand, the parties have, besides the above-mentioned implicit and indirect choice of law, also choose for the application of the Ugandan Labour law. Thus, coming back to the scope of Article 4, the applicable law agreed by the Parties does not however, refer to the Contract as a whole, but rather only to the context involving an *"Anticipated discharge of the Contract"*.

75. Simultaneously, the clause in question is ambiguous and does not clearly state which of the mentioned regulations should take precedence (due to the expression "and"). The clause also fails to establish any hierarchy of applicable "laws" and only refers to a wide range of applicable laws/regulations.

76. The mere reference to certain provisions of the Ugandan labour law would not suffice to establish that the Coach and the Club entered into a valid choice-of-law regarding

Ugandan law; in fact, all employment agreements between parties have to comply with national laws worldwide and, as such, a reference to certain provisions of national legislation does not entail an implicit or explicit choice of law. (CAS 2020/A/7605)

77. Furthermore, only circumstances not covered by the FIFA Regulations leave room for the parties to decide the possible choice of law made in the relevant contracts (CAS 2017/A/5111). Thus, it follows that *in casu*, the Ugandan Labour law would only apply, *quod non*, to issues not covered by the FIFA Regulations.

78. In light of the above, the Sole Arbitrator shall decide the present matter according to the relevant FIFA regulations, and more specifically the FIFA RSTP, March 2023 edition, along with Swiss law being applied subsidiarily, in order to fill any existing *lacunae* in the said regulations.

79. The Sole Arbitrator, shall additionally apply the Ugandan Labour law on a subsidiary basis, but only insofar as it would concern issues that are not regulated in the FIFA RSTP and under Swiss law.

VIII. MERITS

A. The scope of the appeal

80. Prior to assessing the legal issues at stake, the Sole Arbitrator deems it useful to clarify the scope of the appeal.

81. This appeal is based on the challenge brought by the Appellant against the FIFA Decision which considered that the Contract between the Parties was terminated by the Respondent without just cause. However, the Single Judge of the Players' Status Chamber did not award a compensation to the Appellant on the basis that the Coach was already compensated by the Club in accordance with the Contract.

82. The Sole Arbitrator notes that according to Article R57 para. 1 of the CAS Code "*The Panel has full power to review the facts and the law*".

83. Indeed, Article R57 para. 1 of the CAS Code generally grants a CAS panel the power to review the appealed decision *de novo*. These powers, however, are limited to the matter in dispute before it and cannot go further than what was at dispute before the previous instance (cf. CAS 2006/A/1206 para. 25; CAS 2010/A/2090 para. 7.22; CAS 2019/A/6483).

84. The Sole Arbitrator observes that the Appellant principally contests to the fact that the Single Judge did not fairly consider the consequences of the termination without just cause and subsequently failed to award the correct compensation owed to the Coach as enshrined in the FIFA RSTP.

B. Admissibility of the new submissions made by the Parties

85. Before dwelling into the legal matters, the Sole Arbitrator shall address the issues related to the admissibility of certain evidences and likewise assess the new submissions made by the Parties.

a) Annexes 1, 4, 5 and 6 submitted by the Respondent in its Answer

86. Firstly, the Sole Arbitrator notes that the Appellant disputed the admissibility of 4 items of evidence namely Annex 1: the Coach's dismissal letter dated 8 March 2023; Annexes 4, 5 and 6: Warning letters dated 21 February 2023, 27 February 2023 and 8 March 2023.

87. As to Annex 1, the Sole Arbitrator finds that there are indeed two copies of the said dismissal letter on file, one submitted by the Appellant as evidence in its Appeal Brief i.e. the copy of the disputed letter sent by the Coach to the Club on 11 March 2023, via email, expressly stating *"non-confirming"* along with his signature. And, the other submitted by the Respondent as evidence in its Answer, with only the signature of the Coach and no trace of the expression *"non-conforming"*.

88. Generally, if an employee specifies *"non-conforming"* on a dismissal letter, it would typically be in the context of the employee's acknowledgment to the letter and a further indication of disagreement to the stated reasons for dismissal. However, it is not standard practice for an employee to write anything on a dismissal letter directly unless they are specifically asked to sign an acknowledgment of receipt. And, if there is a formal dispute, it is more common for the employee to address their concerns in a separate communication or through formal grievance procedures.

89. In the present case, it remains undisputed that the Club did not conduct any internal disciplinary procedure against the Coach. In fact, the only objection from the Coach was in form of an email sent to the Club on 11 March 2023 (attached with the signed dismissal letter) stating that:

"I am sending you the signed dismissal letter, but as I have indicated, I don't agree with the dismissal because it is my desire to continue with the signed contract".

90. Further, the Respondent did not submit any evidence to dismiss the Appellant's allegations of manipulating the said dismissal letter. Alternatively, the Appellant has provided sufficient evidence to support his theory. Thus, based on the available evidence on file and in the absence of direct evidence collaborating any said manipulation, the Sole Arbitrator considers that a higher probative value shall be given to the document submitted by the Appellant in this matter as opposed to the one submitted by the Respondent.

91. In light of the above, the Sole Arbitrator shall render Annex 1 submitted by the Respondent as inadmissible. Accordingly, the signed dismissal letter submitted by the

Appellant shall be the only evidence in this matter that shall be taken into consideration by the Sole Arbitrator.

92. As to Annexes 4, 5 and 6, the Sole Arbitrator firstly notes that the above-mentioned annexes have been duly submitted by the Respondent before the FIFA proceedings as well. Secondly, even if the Appellant's argument that there neither exists proof of delivery of the said warning letters nor proof of having received them by the Coach, are in fact true, the Sole Arbitrator finds that the Appellant failed to discharge its burden of proof since it did not submit evidence to establish that the said warning letters were in fact manipulated or newly created for the purpose of FIFA or CAS proceedings.

93. In this regard, the Sole Arbitrator finds that the objections on the admissibility of the Annexes 4, 5 and 6 are dismissed and furthermore, the Sole Arbitrator shall address the consequences and value of these warning letters under the legal issues of this Award.

b) New evidences submitted by the Appellant

94. During the proceedings, the Appellant submitted new evidence, namely eight screenshots of social media posts from the Club and the Coach's official Instagram pages. Along with a WhatsApp chat between the Coach and the Club's general manager.

95. The Respondent claims that the new evidence breach the data protection laws of Uganda and moreover, the alleged WhatsApp chat does not indicate the full address and contact details of the person allegedly chatted with, thus, the source is not clearly verifiable.

96. In this regard, social media posts from public accounts are generally accessible and can be used as evidence without breaching data protection laws. On the other hand, posts restricted to a private account without the user's consent may raise privacy concerns. Further, on the Proportionality and Necessity test - the use of social media posts as evidence must be proportionate to the need for resolving the dispute. Thus, it is the discretion of the Courts to consider whether the evidence is necessary

97. In this case, the Club's official Instagram page is in fact public and the other posts are taken from the Appellant's own private account. Therefore, the Sole Arbitrator considers that the social media posts submitted as new evidence are admissible.

98. Next, the Sole Arbitrator recalls that under Swiss law, in particular, Article 168 of the Swiss Civil Procedure Code (the "Swiss CPC"), deals with classes of evidence admissible in court, among which, physical records by virtue of the definition under Article 177 of the same Swiss CPC, considers the admissibility of electronic files suitable to prove legally significant facts.

99. Electronic files such as WhatsApp chats can potentially be admissible as evidence in court, but their admissibility depends on various factors, including relevance, authenticity, and how the evidence was obtained.

100. Further under Article 178 of the Swiss CPC, the party invoking a physical record must prove its authenticity if this is disputed by the opposing party; the opposing party must give adequate grounds for disputing authenticity.

101. On this note, the Sole Arbitrator is of the opinion that when it comes to authenticity, the party presenting the chats in the form of screenshots, may need them to be corroborated with technical evidence or expert testimony which accurately prove that they are authentic and have not been tampered with. Lastly, the use of the evidence must be proportional to the need for resolving the dispute.

102. Based on the tests of admissibility and proportionality, the Sole Arbitrator finds that the said WhatsApp conversation is not admissible under these proceedings and additionally, none of the arguments made in relation to the said evidence were determinative for the outcome of this dispute. In other words, the Sole Arbitrator would have reached the same findings with or without it.

c) The Expert Report submitted by the Appellant

103. The Respondent in its comments dated 25 June 2024, requested the Sole Arbitrator to disregard the Expert Report submitted by the Appellant on the basis that it is not material to the present appeal for reasons such as (i) it is a self-solicited expert report adduced by the Appellant; (ii) the Expert is not a neutral party but rather engaged by the Appellant to produce a report in order to satisfy the Appellant's interests; and (iii) the Expert neither examined the electronic gadget from which the email was sent nor did he explain how the original email was sent.

104. For the sake of clarification, the Appellant did not seek any prior permission from the Sole Arbitrator in order to submit an Expert Report, hence it was not authorised by the Sole Arbitrator in the first place, however, the said report emerges from the presentation of the .eml file, as before that, it would not be reasonable to expect it.

105. Simultaneously, the Sole Arbitrator notes that the Respondent was granted a deadline to provide its comments on the said report and likewise it did not request the opportunity to be granted more time to file a counter report of its own. Furthermore, the Respondent had the chance to cross examine the Expert at the hearing which it duly executed.

106. In light of the above, the Sole Arbitrator finds that the topic of the Expert Report cannot be considered as an admissibility issue since there was no explicit objection from the Respondent on its admissibility and further the Respondent exercised its right to thoroughly cross examine the Expert. Thus, the report in question shall be assessed by the Sole Arbitrator in consideration of the legal issues in this Appeal.

C. The legal issues to be decided

107. Bearing in mind the above, the main issues to be addressed by the Sole Arbitrator in deciding this dispute are the following:

(a) Does the Contract contain a provision for payment of compensation in case of termination without just cause?

(b) In case the above provision does not apply, what would be the compensation for breach of Contract?

108. The Sole Arbitrator will tackle these issues in detail below.

(a) Does the Contract contain a provision for payment of compensation in case of termination without just cause?

i. Considerations of no just cause

109. For the sake of clarity, the Sole Arbitrator shall first examine the considerations made by the Single Judge in conclusion to no just cause for breach of Contract by the Respondent and while doing so, also examine the new evidence and submissions made by the Parties before this tribunal.

110. The Parties concluded an employment contract valid as from the date of signature (i.e. 3 January 2023) and *"for one and a half years"* (i.e. until 30 June 2024). Shortly after two months, on 8 March 2023, the Club served the Coach a termination letter, after allegedly sending three warning notices as on 21 February 2023; 27 February 2023; and the last one on 8 March 2023.

111. In this respect, the Single Judge noted that, *"after verifying the information on file, that there is no transmission report and therefore there is no direct evidence on whether said default notice were sent. However, the said notices, as available on file, have a similar format to the termination letter, which the coach acknowledged having received. Therefore, the Single Judge could only assume that the coach indeed received the default notice"*

112. The Sole Arbitrator notes that the issue related to the warning notices were strongly contested by both Parties. The Appellant contests to the above findings of the Single Judge and maintains his position that he never in fact received any warning notices and from his testimony, he only came to know about the dismissal on the day he received the dismissal letter. The Respondent, on the other hand, argues that the Club had delivered the default notices to the Appellant on the dates mentioned above as they are part of their routine internal memo documents and communication.

113. The Sole Arbitrator notes that the Respondent has not presented nor evidenced any proof of delivery of the said default notices thus, it is possible that the Appellant never received the said notices as alleged by the Respondent.

114. Further, the Single Judge agreed on the fact that there was no transmission report and hence no direct evidence on whether the said default notices were sent. The Sole Arbitrator, however, disagrees to the second part of the Single Judge's observation that the said notices have a similar format to the termination letter (which the Coach

acknowledged to having received) thus, it is assumed by the Single Judge that the Coach indeed received the notices.

115. The Sole Arbitrator does not consider that a *"similar format"* alone is sufficient to prove that the Coach received the notices. A similar format can only mean that the Club follows a common template for disciplinary issues and the Club further confirmed that it is part of their internal memo documents. Thus, it is unfair to assume that the Coach received the default notices solely on the basis that the notices and the termination letter had a similar layout or format.

116. In any case, the Sole Arbitrator is of the opinion that the alleged default notices provided by the Respondent do not prove that the Coach received them or was in fact aware of the termination beforehand. Accordingly, the Sole Arbitrator rejects the Respondent's arguments and evidence in connection to the default notices.

117. As to the reasons for the termination, the Sole Arbitrator observed that, in the termination letter, the Respondent stated that the dismissal was due to the *"non-satisfactory performance and not living to the Employer's expectation."*

118. The Single Judge in the Appealed Decision, recalled that, "*in in accordance with the longstanding jurisprudence of the Football Tribunal, sporting team results / sporting team performance cannot be retained as a valid reason to justify an early termination of an employment contract. As a result, the Single Judge concluded that the termination of the contract was without just cause and the coach is entitled to compensation*."

119. It is to be noted that both Parties submit extensive arguments and evidence in order to justify the just cause or the lack thereof.

120. Firstly, the Parties undisputably entered into an agreement for a fixed-term contract whereby the main characteristic of a fixed-term contract is that it cannot be terminated by the parties before the fixed term expires, unless the party who terminates the contract can justify cause for dismissal with immediate effect or if the parties reach mutual agreement on the termination of the contract (Decision of the Federal Court 4A_89/2007 of 29 June 2007, para. 3.2; WYLER/HEINZER, *Droit du travail, 3ème* édition, Berne 2014, p. 497-498; CARRON V., Art. 334 CO, in: DUNAND/MAHON (ed.), *Commentaire du contrat de travail*, Berne 2013, p. 558, N 5 ad. Art. 334 CO; BERENSTEIN/MAHON/DUNAND, *Labour Law in Switzerland*, 3rd edition, Berne 2018, p. 150).

121. Here, the question as to whether such early termination has occurred with or without just cause was already dealt with by the Single Judge, whereby, it was concluded that the Club terminated the Contract without just cause and therefore the Coach is entitled to a compensation. The Sole Arbitrator agrees with the reasons given by the Single Judge to establish that the Respondent terminated the contract without just cause.

122. Keeping in mind the *de novo* principle, in accordance with the power bestowed on it by Article R57 of the CAS Code grants discretion to the CAS Panel to award more than what the Single Judge granted.

ii. Right of compensation

123. The Sole Arbitrator shall now examine the highly disputed provision i.e. Article 3 para. 2 of the Contract, which reads as follows:

"Either party may terminate this contract with just cause by the provision of two month's prior written notice to the other party or payment in lieu of such notice."

124. The Single Judge while calculating the compensation owed to the Appellant, noted that the Contract included a compensation clause in accordance with the above-mentioned Article which corresponded to a liquidated damage clause. On this basis, the Single Judge confirmed that the Parties agreed upon the payment of two months of salaries as compensation – which was duly settled by the Club.

125. In the Appeal Brief, the Appellant primarily contests that the Single Judge mistook the clause of *"right of notice for termination"* as a compensation clause, more specifically, substituting the right of compensation for damages fixed in Article 6 para. 2 (a) of Annex II of the FIFA RSTP, with the right to notice in case of termination with just cause fixed in the Contract.

126. In its Answer, the Respondent argues that the Contract clearly stipulated for a notice period or compensation of two months in lieu to either party in the event of early termination. Thus, the Single Judge fairly concluded that the compensation due to the Coach was two monthly salaries as per the Contract, which has been duly paid by the Club in the amount of USD 12,000 (i.e. USD 6,000 x 2 months).

127. The Appellant does not dispute to having received the USD 12,000. However, he strongly asserts that it was not for the purpose of compensation but rather for the wages of January and February. While the Respondent, contests that, after the termination and upon the Club's request, the Coach willingly sent his Spanish bank account details and accordingly the Club transferred USD 12,000 as compensation and the same was never returned by the Appellant.

128. The main issue at stake which is to be addressed by the Sole Arbitrator is whether Article 3 para. 2 of the Contract constitutes as a right to notice clause or a compensation clause and consequently the intention behind the term *"payment in lieu of notice"*.

129. The concept of *"payment in lieu of notice"* is found under Swiss law, particularly under Article 337c of the Swiss Code of Obligations (the "CO") which stipulates that if an employee is dismissed without notice in the absence of just cause, the termination is valid and takes effect at the time of notice, but the employee is entitled to compensation.

130. The same article stipulates that the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration. Thus, confirming that the compensation is generally equivalent to the salary that the employee would have earned during the notice period or at the expiry of the contract's duration. This is broadly considered as payment in lieu of notice under Swiss law.

131. The amount of this compensation is equal to the salary and other statutory or contractual advantages that the employee would have received had notice been given in compliance with the statutory or contractual notice period (as applicable), minus all cost savings and income earned (or intentionally renounced) by the employee due to the end of the employment relationship. Moreover, the employee is entitled to an additional indemnity, the amount of which the court can freely decide on according to all circumstances of the case. This indemnity can however not exceed an amount corresponding to six monthly salaries. (see *Comparative Legal Guide, Switzerland: Employment & Labour Law*, 3rd edition)

132. Insofar as possible, the court must determine, in a concrete and precise manner, what the employee would have actually earned if the contract had been terminated at the contractually agreed end date (ATF 125 III 14, p. 16, para. 2b).

133. In the present case, the Sole Arbitrator observes that the Contract is silent on matters related to termination without just cause since Article 3 para. 2 explicitly concerns termination with just cause.

134. In light of the above, the Sole Arbitrator finds that the concept of payment in lieu of notice should have been ideally triggered only in the case of a termination with just cause. Whereas, in the event of early termination without just cause, the disputed contractual provision regarding the payment in lieu of notice does not constitute a clause for compensation entitled to the Appellant.

135. Further, the Club argues that it paid the Coach USD 12,000 as payment in lieu of notice as per the Contract. Meaning that the payment in lieu of notice was triggered in case a party fails to provide the two months' written notice, while simultaneously arguing and submitting evidence of sending default notices to the Appellant. In this respect, the Club cannot rely on two contradicting facts and arguments to prove it performed its obligation under the Contract.

136. The Club neither gave an opportunity to the Coach to resolve the alleged dispute before dismissing him. And, as already discussed above, the Coach was not aware of the dismissal until the day he received the termination letter. Thus, in the absence of notice period, warning letters and a disciplinary hearing, the Sole Arbitrator is convinced that the early termination was rather harsh and conducted in an improper manner.

137. In conclusion, the Sole Arbitrator finds that Article 3 para. 2 of the Contract doesn't apply and cannot be exercised by the Club in the event of termination of the Contract without just cause. Thus, the said contractual provision is disregarded and the Sole

Arbitrator shall assess the calculation of the compensation entitled to the Appellant in detail below.

(b) In case the above provision does not apply, what would be the compensation for breach of Contract?

138. Given that the Contract does not contain a provision for an agreed amount of compensation payable to the affected party in case of termination without just cause, the Sole Arbitrator shall thus refer to the FIFA regulations in connection to this matter.

139. In this regard, the issue regarding consequences of terminating a contract without just cause between a club and a coach are indeed covered by the FIFA RSTP, in particular, Article 6 para. 2(a) of the Annex II, which states as follows:

"[….] (2) Unless otherwise provided for in the contract, compensation for the breach shall be calculated as follows:

Compensation due to a coach

a) In case the coach did not sign any new contract following the termination of their previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.

b) In case the coach signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). […]".

140. It is well recognised by the CAS jurisprudence that the compensation received by the affected party should be based on what it would have received if the contract had not been wrongfully terminated.

141. The principle of the so-called positive interest aims at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is recognized by various legal systems and aims at setting the injured party to the original state it would have if no breach had occurred. The positive damages of the employee are the salaries and other material income that he would have had if the contract would have been performed until its natural expiration (CAS 2017/A/5228).

142. In the present matter, it remains undisputed that the Coach did not sign any new contract with a third club after the termination. Nevertheless, the Club sustains that the Coach failed to comply with his duty to mitigate the damages as he did not become employed with another club after the termination of the Contract.

143. In this regard, the Sole Arbitrator observes that the Club has failed to provide any evidence in support of such allegations. Based on the general principle of burden of proof, which lies on a party raising the argument (Article 8 of the Swiss Civil Code), it

was for the Club to substantiate its claim in this respect. The Club has not demonstrated that the Coach deliberately refused to enter into an employment relationship or negotiations with other clubs after the termination of the Contract. (CAS 2020/A/6994).

144. In the absence of any evidence that the Coach deliberately failed to find new employment after the termination of the Contract, the Sole Arbitrator holds that there is no proof that the Coach has acted in bad faith or intentionally failed to mitigate the damages.

145. Therefore, the Sole Arbitrator is of the opinion that no remuneration appears to exist which the Coach earned after the termination of the Employment Contract and by which he could mitigate the compensation owed to him by the Club.

146. Having established that the FIFA regulations are primarily applicable to this case (and only in case of any *lacunae*, Swiss law shall be used on a subsidiary basis) the Sole Arbitrator notes that those regulations do in fact contain a provision regarding the manner in which compensation is to be awarded in employment disputes between clubs and coaches.

147. Thus, based on the above-mentioned Article 6 para. 2(a) of the Annex II of the FIFA RSTP, the Sole Arbitrator finds that the Appellant is entitled to a compensation equal to the residual value of the Contract that was prematurely terminated.

148. The Sole Arbitrator now analyses all the monies paid to the Appellant until the termination. The Coach admits to having received USD 12,000 in cash for the salaries of January and February. In addition to this, it is undisputed by the Parties that the Club paid the Coach USD 12,000 (2 monthly salaries) as payment in lieu of notice via bank transfer to the Coach's Spanish bank account.

149. In this regard, the total monies paid to the Coach was USD 24,000 equal to four monthly salaries. Thus, the Sole Arbitrator finds that in principle, the Appellant should be entitled to the residual value of the contract, which amounts to USD 96,000 i.e. USD 6,000 x 16 months (residual value of the contract). However, as the Coach already received from the Club USD 12,000, corresponding to 2 monthly salaries as compensation for breach of the Contract, the final compensation owed to the Appellant is fixed at USD 84,000 i.e. USD 6000 x 14 months (the remaining time in the Contract).

150. The Sole Arbitrator notes that the Appellant, in his prayer for relief, requested for the reimbursement of EUR 1,250 for the return flight ticket from Uganda to Spain.

151. The Appellant argues that the Club had made a flight reservation for the Coach, both onward and return to Spain in January 2023 as part of its contractual obligation (Article 5). However, the return flight ticket was cancelled on 9 March 2023 and in spite of requesting the Club for a new flight ticket to Spain, the Club never responded to him. Thus, forcing the Coach to buy the ticket from his own pocket on 10 March 2023. The Club, on 11 March 2023 sent the Coach a new flight ticket, but only it was 2 hours after the flight's departure.

152. The Respondent, on the other hand, contends that the Club already issued a return flight ticket in January to the Coach and he had not utilized it since he did not travel to Spain since his arrival. In any case, the Club issued another flight ticket on 11 March 2023, which the Coach never used for reasons unknown to the Club.

153. On this issue, the Single Judge concluded that the Club complied with its basic obligation on 3 January 2023, and as a result, the disputed ticket for 11 March 2023 shall be considered as an additional ticket that goes beyond what was contractually agreed between the parties. As a result, it was held that no reimbursement was due.

154. The question that needs to be analysed here is not merely whether the Respondent complied with its contractual obligation of providing a return flight ticket to the Coach, which insofar is undisputed by the Parties, but rather, whether the said ticket was valid on the date of departure.

155. On that note, the first return flight ticket scheduled for 3 April 2023 was issued on 3 January 2023 to the Coach. Nevertheless, the said ticket was not utilised since the termination occurred before April and subsequently on 10 March 2023, the Coach requested the Club to issue another flight ticket to leave Uganda.

156. Since the Club was unresponsive to his request, the Coach went ahead and bought his own flight ticket. Soon after, on 11 March 2024, the Club sent a new flight ticket scheduled for 04:15 on the same day, however, the WhatsApp chat evidence submitted by the Appellant shows that the said ticket was sent by the Club at 06:18 i.e. 2 hours after the flight's departure.

157. Given that the initial return ticket scheduled for 3 April 2023 was invalid at the time of termination, the Club should have ideally changed the dates of the said ticket or provide the Coach a new return ticket, as per its contractual obligation. Moreover, the second flight ticket issued by the Club on 11 March 2023 shall also be considered invalid on the basis that it was sent 2 hours after the time of departure.

158. Thus, the Sole Arbitrator finds that, on the principle of good faith and contractual obligation, the Club failed to provide the Appellant with a legitimate flight ticket at the time of departure. Accordingly, the Club shall reimburse the Coach an amount of EUR 1,250 for the return flight ticket from Uganda to Spain.

159. Additionally, the Appellant also requested USD 18,000 as compensation due to bad faith, moral damage and specificity of the sport.

160. The Respondent, on the other hand, raises specific arguments in the event that the remedies sought by the Appellant are granted, whereas, the Club states that the amounts requested are too exorbitant and excessive leading to a negative impact on the Club's ability to pay its players and effectively compete on sporting merit.

161. Nevertheless, the Sole Arbitrator is of the opinion that the Rules shall be applied consistently to all clubs, irrespective of their economic conditions. In light of uniformity

and fairness, the Sole Arbitrator has no discretion to make any distinction on the application of the Rules.

162. The *"specificity of sport"* is not an additional head of compensation, nor a criterion allowing to decide *ex aequo et bono*, but a correcting factor which allows the Sole Arbitrator to take into consideration other objective elements (chiefly of sporting nature) which are not envisaged under the other criteria of Article 17 FIFA RSTP (CAS 2021/A/7815).

163. However, the Sole Arbitrator sees no reason to use the "specificity of sport" as a correcting factor in the matter at hand. The Sole Arbitrator considers that the compensation granted to the Coach is fair and it does not need to be corrected. CAS jurisprudence often seek to balance strict legal norms with what is considered fair and reasonable in a sporting context. This can mean that certain legal principles are adapted or interpreted in light of what is appropriate for sporting fairness.

164. The Sole Arbitrator further adheres to the reasoning of a previous CAS panel in CAS 2007/A/1358, where it considered the following about the *"specificity of sport"*:

"[...] The criterion of specificity of sport shall be used by a Panel to verify that the solution reached is just and fair not only under a strict civil (or common) law point of view, but also taking into due consideration the specific nature and needs of the football world (and of parties being stakeholders in such world) and reaching therefore a decision which can be recognised as being an appropriate evaluation of the interests at stake, and does so fit in the landscape of international football".

165. In this regard, the Sole Arbitrator finds that the conduct of the Club was not so severe as to justify an additional amount of compensation. The Club paid the Coach USD 12,000 as salary until the end of the employment relationship and further paid USD 12,000 equivalent to a 2-months' salary as payment of lieu of a notice period.

166. For the sake of completeness, the Sole Arbitrator considers that the facts in the present case, do not imply any extraordinary circumstance which could lead to the increase of the compensation based on the specificity of sport. To the contrary, such facts are precisely the grounds to sustain that the amount of the compensation established (i.e. USD 84,000 + EUR 1,250) is appropriate due to the circumstances at stake, despite the short effective duration of the contractual relationship (i.e. two months). For this reason, the Sole Arbitrator dismissed the Appellant's request to additional compensation.

167. Lastly, the Appellant during the hearing, requested the Sole Arbitrator for an additional relief, namely, to apply disciplinary measures on the Club by means sporting sanction/fine for up to six matches and no less than 6 months. This was requested by the Appellant in light of the falsification of evidence by the Club.

168. On the issue pertaining to sporting sanctions, the Sole Arbitrator notes that FIFA is not a party to the present proceedings and thus in principle, the Appellant is precluded from requesting an imposition of disciplinary sanctions on the Respondent. For this reason

alone, the Sole Arbitrator finds that there is no legal basis to impose sporting sanctions on the Respondent in this case.

(c) Conclusion

169. Based on the above, and after having taken into due consideration the applicable rules, the evidence produced and the arguments submitted, the Sole Arbitrator concludes that:

i. The Contract was prematurely terminated by the Respondent without just cause;

ii. Article 3 para. 2 of the Contract cannot be exercised by the Respondent in case of termination without just cause;

iii. The Appellant has not found a new employment following the termination of the Contract and, thus, has not earned any remuneration which could mitigate the amount of compensation.

iv. The Appellant is entitled to a compensation for breach of Contract, in the amount of USD 84,000; and

v. The Appellant is entitled to a reimbursement of the flight ticket from Uganda to Spain in the amount of EUR 1,250.

170. Finally, all other and further motions or prayers for relief are dismissed.

IX. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 18 July 2023 by Roberto Luiz Bianchi Pelliser against the decision rendered on 23 May 2023 by the FIFA Players' Status Chamber in the case ref. no. FPSD-9738 is partially upheld.

2. The Appealed Decision issued by the FIFA Players' Status Chamber on 23 May 2023 is set aside.

3. Vipers Sports Club Limited has to pay Roberto Luiz Bianchi Pelliser compensation for breach of Contract in the amount of USD 84,000.

4. Vipers Sports Club Limited has to reimburse Roberto Luiz Bianchi Pelliser for the flight ticket in the amount of EUR 1,250.

5. (…).

6. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 25 February 2025

THE COURT OF ARBITRATION FOR SPORT

Jacopo Tognon
Sole Arbitrator