CAS 2023/A/9979 Renato Kayzer de Souza v. Daejeon Hana Citizen Football Club

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal

in the arbitration between

Renato Kayzer de Souza, Fortaleza, Ceará, Brazil
Represented by Mr. Breno Tannuri and Mr. André Ribeiro, Attorneys-at-Law with Tannuri Ribeiro Advogados, São Paulo, Brazil

Appellant

v.

Daejeon Hana Citizen Football Club, Daejeon, Republic of Korea
Represented by Mr. Cristiano Caús and Mr. Raphael Paçó Barbieri, Attorneys-at-law with CCLA Advogados, São Paulo, Brazil

Respondent

I. PARTIES

1. Mr Renato Kayzer de Souza (the "Appellant" or the "Player") is a Brazilian professional football player, born on 17 February 1996, and currently playing for the Brazilian club Fortaleza EC, which competes in the Brazilian First Division (Série A) of professional football.

2. Daejeon Hana Citizen Football Club (the "Respondent", the "Club" or "Daejeon") is a South Korean professional football club with headquarters in Daejeon, Republic of Korea, currently playing in the Korean First Division and is affiliated with the Korea Football Association, which in turn is affiliated with the *Fédération Internationale de Football Association* ("FIFA").

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

II. FACTUAL BACKGROUND

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

II.1 Background facts

(A) <u>The contractual relationship between the Player and Fortaleza Esporte Club</u>

5. On 8 February 2022, the Brazilian football club Fortaleza Esporte Clube ("Fortaleza") and the Player entered into an employment agreement in which the latter undertook to provide his services as a professional football player to Fortaleza between 9 February 2022 and 31 December 2025 (the "Fortaleza Employment Agreement").

6. According to Clause 4 of the Fortaleza Employment Agreement, the Player was entitled to receive the following amounts as fixed remuneration:

"*4.1. For the services rendered, the CONTRACTOR will pay the* [Player] *for the period from 09/02/2022 to 31/12/2022 the gross monthly remuneration of R$ 138,000.00 (one hundred and thirty-eight thousand reais);*

4.2. For the period from 01/01/2023 to 31/12/2023, the CONTRACTOR will pay the [Player] *the gross monthly remuneration of R$ 150,000.00 (one hundred and fifty thousand reais);*

4.3. For the period from 01/01/2024 to 31/12/2024, the CONTRACTOR will pay the [Player] *the gross monthly remuneration of R$ 156,000.00 (one hundred and fifty-six thousand reais);*

4.4. For the period from 01/01/2025 to 31/12/2025, the CONTRACTOR will pay the [Player] *the gross monthly remuneration of R$ 162,000.00 (one hundred and sixty-two thousand reais)*."

(Free translation provided by the Appellant and not disputed by the Respondent)

(B) The loan of the Player from Fortaleza to Daejeon

7. On 30 June 2022, Fortaleza, the Player and the Club entered into a loan agreement for the temporary transfer of the Player to the Club (the "Loan Agreement"). The most relevant clauses of the Loan Agreement read as follows:

"*1.2. FORTALEZA, as the legitimate holder of the federative rights (sports bond) of the PLAYER, with his consent, in this act and in the best form of law, assigns said rights to DAEJEON for the period from 07/01/2022 to 12/31/2022*." ("Clause 1 of the Loan Agreement")

"*2.1. As consideration for the temporary transfer of the PLAYER's federative rights, DAEJEON undertakes to pay FORTALEZA a fixed net transfer fee in the amount of USD 200,000 (two hundred thousand dollars), by crediting FORTALEZA's account on the date of presentation of the PLAYER at the headquarters of DAEJEON, to be paid in a single instalment until the date of the PLAYER's presentation.*" ("Clause 2 of the Loan Agreement")

"*3.1. During the term of this temporary transfer, DAEJEON undertakes to sign an employment contract with the PLAYER, in accordance with the legislation applicable to the football player, also respecting FIFA regulations.*" ("Clause 3.1 of the Loan Agreement")

3.2 DAEJEON undertakes to pay the entirety of the PLAYER's monthly salaries in the period indicated in Clause 1.2 above, based on a contract between DAEJEON and the PLAYER, as well as any charges arising from the relationship of work, leaving FORTALEZA expressly released from any responsibility in relation to such obligations during the term of the temporary transfer. In addition, the Parties agree that the PLAYER may not return to FORTALEZA during the period of the temporary transfer." ("Clause 3.2 of the Loan Agreement")

"*4.1. DAEJEON shall take out an occupational accident insurance for the PLAYER, with the PLAYER himself as beneficiary, with an indemnity in the amount of USD 400,000.00 (four hundred thousand American Dollars), as well as an insurance to cover death, disability permanent and personal accidents of the PLAYER, with FORTALEZA as the beneficiary, with an indemnity in the amount of USD 2,000,000.00.*

4.1.1. If there is no insurance contract that would have the PLAYER as the beneficiary the responsibility for any accident will fall exclusively on DAEJEON, with which the PLAYER expressly agrees at this time." ("Clause 4.1 of the Loan Agreement")

"*DAEJEON is responsible for all expenses related to the PLAYER's clinical recovery, notably, but not exclusively, expenses arising from medical treatments and clinical examinations. The parties agree that the PLAYER may not return to FORTALEZA unless in perfect physical condition, proven by the competent medical certificate, in which case, if the PLAYER is not able, this temporary assignment shall be extended for the period corresponding to full recovery of the PLAYER, under the same terms of this instrument.*" ("Clause 4.3 of the Loan Agreement")

8. On 1 July 2022, the Player and the Club concluded an employment agreement (the "Daejeon Employment Agreement") which was valid for the period between 1 July 2022 until 31 December 2022 as per Clause 4.1 of the Daejeon Employment Agreement. The most relevant clauses of the Daejeon Employment Agreement read as follows:

"*5. The annual salary shall mean all remuneration paid in connection with the performance of this Contract ('Annual Compensation'). The Annual Compensation to be paid by the Club to the Player during* [1 July 2022] *to* [31 December 2022] *shall be as follows:*
(1) Basic Annual Compensation USD 300,000 (USD 50,000 /Month).
The club will pay to player salary from July to Dec 2022."
("Clause 5 of the Daejeon Employment Agreement)

"*10.2. Upon execution of this Contract, the Club shall purchase an insurance policy against the risk of the Player's injury or death in connection with the performance of this Contract*." (Clause 10.2 of the Daejeon Employment Agreement)

"*11.1. The Player shall immediately notify the Club of any injury or illness related to the Player Activities. The Player and Club shall discuss in good faith whether treatment is necessary, at which medical institution to receive treatment, and what kind of treatment (surgical, non-surgical, drug, etc.) will be provided. Expenses related to treatment shall be paid in accordance with each of the following Subsections:*

(1) If the Player receives treatment at a hospital designated by the Club, the Club shall pay the full cost of treatment.

(2) If the Player receives treatment at a hospital other than the one designated by the Club, the difference from the treatment expenses in Subsection 1 shall be borne by the Player. In such case, the amount of treatment expenses under Subsection 1 shall be proved by the Club, and the Player may request disclosure of the details of the calculation of treatment expenses." (Clause 11.1 of the Daejeon Employment Agreement)

(C) <u>The Player's injury</u>

9. On 25 October 2022, the Player ruptured his Achilles' tendon, an injury which required him to undergo medical surgery and, subsequently, a lengthy period of recovery. On this same day, the Club paid the Player's salary of October 2022 (*i.e.*, USD 50,000).

10. On the 26 October 2022, the Player underwent examination with a doctor appointed by the Club who confirmed the seriousness of his injury.

11. On 27 October 2022, the Player sent the Club, through his counsel, the following communication:

"(…).

Unfortunately, on 25 October 2022, the Player ruptured his Achilles' tendon while performing his duties for the Club. Such injury unfortunately will demand a medical surgery and, subsequently, a lengthy period of recovery lasting between 5 and 7 months.

Accordingly, we hereby inform you that the Player wishes to travel to Brazil as soon as possible to undergo the required medical procedure and subsequent rehabilitation.

In this sense, we hereby kindly request you to provide the Player with the necessary flight tickets to travel from Korea to Brazil.

Considering that the Club has the obligation of bearing the medical expenses regarding the treatment of the Player, we refer to Art. 11, par. 1, item (2) of the Employment Contract and kindly request it to disclose the details of the calculation of treatment expenses.

That notwithstanding, we herein kindly reiterate that in accordance with the terms of the Employment Contract, the Loan Agreement and the rules and regulations of FIFA, the Club should comply with the payment of the entire remuneration of the Player until the expiration of the Employment Contract.

Last but not least, we remind the Club of its obligation to comply with the payment of the insurance benefit to the Player under the insurance policy purchased with the Player as beneficiary in the amount of USD 400,000 as expressly provided for in the Loan Agreement and the Employment Contract.

In this sense, we kindly request you to inform us of the procedure to follow for the Player to receive the amount provided for in the Loan Agreement as insurance benefit, namely the USD 400,000.

(…)."

(Emphasis added by the Sole Arbitrator)

(D) The Dispute between the Parties

12. On 28 October 2022, a meeting between the Club, the Player and his Korean agent, Mr. Ho Yun Cho, took place, and the Club produced the following "memorandum of meeting":

"*(…)*

Subject: Player Renato Kayzer de Souza x Daejeon Verbal Agreement

Considering the current injury situation of the Player and his request to return to Brazil for treatment, the Club met with the Player (…) with his agent in Korea, ***to friendly discuss about the costs of treatment and the payment of his salaries.***

The Club informed the Player that in case the treatment takes place in Brazil, the Player would not be able to receive the insurance policy reward which the Player was entitled to, as of the terms of the Certificate of Insurance.

Based on the Medical Certificate issued by the Club's medical department doctor, which recommended a total of period of six months of rehabilitation after the operation, the following terms were proposed by the Player, through his agent, to the Club:

1. *The payment of an amount of USD 100,000.00 equivalent to two months of the Player's remainder salary (November and December 2022);*
2. *The payment of an amount of USD 150,000.00 equivalent to the net amount of four months of the Player's salary;*
3. *The payment of all medical expenses and costs related to the Player's treatment (including flight tickets to Brazil for the Player) by the Club.*

After all payments are made by the Club, the Player shall not be entitled to any other amount from the Club.

The Club accepted the terms 1 and 3 above, however, in regard to item number 2, the Club informed the Player that they would need to discuss it internally and afterwards would inform the Player about the acceptance of the proposal by December.

(...)".

(Emphasis added by the Sole Arbitrator)

13. The "memorandum of meeting" was only signed by Mr. Soo Bok Kim (the Manager of the Club's Football Department) and Mr. Juwon Park (the Head of the Club's Football Department).

14. On 29 October 2022, the Club agreed to let the Player undergo surgery in Brazil at a hospital of his choice.

15. On 31 October 2022, the Player travelled to Brazil to be submitted to the necessary surgery and rehabilitation.

16. On 8 November 2022, the Player underwent surgery at a hospital in São Paulo, Brazil. The surgery was successful and a further period of 8 to 10 months of rehabilitation period was prescribed to the Player. The Player chose the facilities of the Brazilian club Athletico Paranaense to undergo physiotherapy and rehabilitation treatments.

17. On 17 November 2022, the Player sent to the Club, through his counsel, the following communication:

"*As you are already aware,* [the Player] *has hired us to take care of his interests regarding the 'Professional Football Player Contract' concluded with your club.*

Please find below a short summary of the events for your ease of reference.

(…)

On 1 July 2022, the Player and Club entered into the Professional Football Player Contract – For Foreign Players – with term until 31 December 2022 ('Employment Contract').

Unfortunately, on 25 October 2022, the Player ruptured his Achilles' tendon while performing his duties for the Club. Such injury unfortunately demanded a medical surgery and, subsequently, a lengthy period of recovery lasting between 8 and 10 months.

As explained in our correspondence of 27 October 2022, the Club has the obligation of bearing the medical expenses regarding the treatment of the Player, we refer to Art. 11, par. 1, item (2) of the Employment Contract.

On 29 October 2022, the Club acknowledged the seriousness of the injury sustained by the Player and permitted him to undergo the surgery at any hospital of his choice.

On 31 October 2022, the Player travelled to Brazil with the purpose to get the necessary medical treatment.

Subsequently, the player travelled to Curitiba, Brazil and a Magnetic Resonance Imaging (MRI) scan was performed on 1 November 2022, confirming the initial finding of the rupture of his Achilles tendon.

On 8 November 2022, the Player underwent surgery in São Paulo and will soon begin the necessary physiotherapy treatment at the facilities of Club Athletico Paranaense as from 22 November 2022 and such procedure shall be continue for about 8 to 10 months (see Exhibit – 1).

Therefore, we kindly request the Club to transfer the amount of R$ 69,166.59 (sixty-nine thousand and one hundred sixty-six Brazilian reais) corresponding to the medical expenses of the Player in his bank account as well as his travel expenses to get the appropriate medical care (see Exhibit – 2).

Lastly, we kindly remind you that the payment of the amount above is without any prejudice whatsoever to the payment of the remuneration due to the Player and set out in the Employment Contract, as well as the insurance amount of USD 400,000 indicated in the Loan Agreement.

(…)".

(Emphasis added by the Sole Arbitrator)

18. On 25 November 2022, the Club paid the Player's monthly salary of November 2022 (*i.e.*, USD 50,000).

19. On 5 December 2022, in response to the Player's request for payment of his medical expenses, the Club communicated to the Player in writing that it needed time to check the relevant information and that it would revert to the Player by the end of December 2022.

20. On 6 December 2022, the Player sent to the Club the following communication:

"(…)

I acknowledge receipt your email forwarded to my attention last night (…).

I kindly request your best efforts regarding the reimburse of the expenses deriving from the medical surgery and treatment of Mr. Renato Kayzer (c.c.) as soon as possible, considering that the latter has already afforded with them couple of weeks ago.

As such, considering the relevant amounts already expended by [the Player] *with the mentioned medical surgery and treatment, I kindly request your best attention in relation to said reimbursement*.

(…)".

21. On 22 December 2022, the Club addressed the following communication to the Player:

"*Dear Sir*

(…)

It took a long time to review the mail and attached documents you sent.

I'm concerned about injury of [the Player]. *(…).*

We are willing to pay for Kayzer's treatment and recovery. However, in the case of flight tickets, we think it's hard to pay for a person named Puppi Gabriel who we don't know.

Therefore, we would like to pay ***R$ 66,851*** *for Kayzer's surgery and treatment by January 2023.*

If you accept it, please send us a letter saying that you accept the final amount.

The final amount will be remitted into the player's account.

(…)".

22. On 23 December 2022, the Club paid to the Player his monthly salary of December 2022, in the amount of USD 50,000, as well as the promotion bonus provided for in the Daejeon Employment Agreement also in the amount of USD 50,000.

23. On 28 December 2022, the Player replied to the Club as follows:

"*Dear Sir,*

(…)

On behalf of the Player, I herein confirm that the Player accepted the amount you intended to pay as reimburse of the medical expenses already supported, notably, R$ 66,851. As such, I kindly request you to transfer the referenced amount to the bank account of the Player as soon as possible. Once the referenced transfer is concluded, I kindly request you to forward me copy of the [sic]

In addition, the Player informed me that the representatives of the Daejeon F.C. offered to pay him USD 200,000 in lieu of USD 400,000 as insurance policy premium as set out in the loan agreement signed with EC Fortaleza. I am afraid to inform you though that the Player decided to decline the referenced offer. In contrast, the Player is intended to accept a reduction of the referenced total amount. Accordingly, the letter is ready to grant USD 50,000 discount, whether Daejeon F.C. undertakes to pay to the Player USD 350,000 on or before 15 January 2023.

Please, note that the counteroffer herein submitted on behalf of the Player to you attention will expire on ***30 January 2022 at 23h59 (BRT)****.*

(…)".

24. On 31 January 2023, the Club made the payment of USD 13,148.24/BRL 66,851.00 corresponding to the medical expenses incurred by the Player which the Club agreed to pay on 28 October 2022 (see para. 12 above):

"*Dear Player (…).*

(…).

All medical expenses related to Kayzer injury were paid today in accordance with Article 4 (2) and (3) of the loan agreement signed between Daejeon and Fortaleza.

Daejeon has paid all of Kayzer's claims, and Kayzer confirms will no longer charge the Daejeon club for medical expenses.

However, R$ 66,851 was deposited in USD due to Kayzer's bank account problem, and it is notified that it was paid in USD by applying the exchange rate on 31 Jan 2023.

Daejeon wishes for fast treatment and recovery of Kayzer.

(…)".

25. On 2 February 2023, the Player answered to the Club in the following manner:

"*Dear Sir,*

I acknowledge receipt the email forwarded to our attention (…).

I herein confirm that the [Player] *received approx. USD 13,000 relating the reimbursement of his medical expenses, namely, surgery and the beginning of his psychotherapeutic treatment.*

In addition, as you are certainly aware the referenced medical treatment will still last few more months. As such, I would really appreciate to hear from you asap about the payment of the (still outstanding) amount of USD 400,000 that the Club undertook to pay to the Player within the contents of clause 4.1 of said Loan Agreement concluded.

(…)".

26. On 15 March 2023, the Club sent the Player a copy of an insurance policy certificate which contained coverage for death, disability and other injuries, with coverage limited to KRW 73,200,000, which is equivalent to an average of USD 54,649.33.

27. On 31 July 2023, the Club initiated the request of the International Transfer Certificate (the "ITC") to return the Player back to Fortaleza via the FIFA Transfer Matching System (the "TMS").

28. On 1 August 2023, the Player's doctor, Dr Mauricio Póvoa Barbosa, issued the medical clearance which confirmed the full recovery of the Player from the injury suffered.

II.2 Proceedings before the Dispute Resolution Chamber of FIFA

29. On 24 February 2023, the Player filed a claim against the Club before the Dispute Resolution Chamber of the FIFA Football Tribunal (the "DRC") and in support of his requests for relief stated, *inter alia,* that the Loan Agreement determined that the Club had an obligation to take out an insurance policy for the Player with the latter himself as the beneficiary to cover the risk of occupational injuries.

30. On 3 April 2023, the Club filed its answer to the claim and, in support of its requests for relief, stated, *inter alia*, that the Player lacked standing to sue as he was not a part of the Loan Agreement. However, even if this was not the case, the Daejeon Employment Agreement clearly stated that the Club only had the obligation to contract a life and accident insurance and did not establish any amount to be covered; in addition, the Player had waived any previous understandings as per Clause 22.2 and 22.3 of the Daejeon Employment Agreement. Finally, the Club argued that the Parties had reached an understanding at a meeting on 28 October 2022 in which the Player agreed to receive a total of USD 250,000 plus reimbursement of his medical expenses and no other amount would be due by the Club.

31. On 7 July 2023, the DRC passed its decision (the "Appealed Decision") which concluded:

"*1. The claim of the Claimant, Renato Kayzer De Souza, is rejected.*

2. This decision is rendered without costs."

32. The grounds of the Appealed Decision may be summarized as follows:

i) The Player's claim is related to the payment of USD 400,000 as compensation per Clause 4.1 of the Loan Agreement.

ii) Clause 4.1 of the Loan Agreement mandates the Club to procure occupational accident insurance for the Player, with a USD 400,000 indemnity, and another insurance policy covering death, disability, and personal accidents, with Fortaleza as beneficiary for USD 2,000,000.

iii) The "indemnity" provided for in Clause 4.1 of the Loan Agreement corresponds to the minimum insurance amount of USD 400,000 but it does not clearly grant the player a right to the entire USD 400,000 upon triggering the clause's provisions, *i.e.*, the occupational accident.

iv) As per Clause 4.1 of the Loan Agreement, in the absence of an insurance contract benefiting the Player, the Club would bear full responsibility for accidents affecting the Player.

v) As such, it's clear that the Club has the obligation to reimburse the Player for medical expenses or compensate him, based on Clause 4.1 of the Loan Agreement.

vi) The Player was adequately reimbursed for medical expenses, given evidence of costs incurred and the club's payment of USD 13,148.24, aligning with the medical report's estimate of treatment costs at approximately USD 11,692.70 (KRW 15,000,000).

vii) In view of the above, the Player's claim was rejected.

33. On 22 August 2023, the Parties were notified by FIFA of the grounds of the above decision of the DRC.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

34. On 12 September 2023, the Appellant filed his Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "Code"). The Appellant also requested that the present case be submitted to a sole arbitrator.

35. On 9 October 2023, within the extended time limit, the Appellant filed his Appeal Brief in accordance with Article R51 of the Code.

36. On 11 October 2023, the CAS Court Office informed the Parties that, pursuant to Article R54 of the Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the case was to be decided by a sole arbitrator, appointed as follows:

Sole Arbitrator: Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal.

37. On 11 January 2024, within the extended time limit, the Respondent filed its Answer in accordance with Article R55 of the Code (the "Answer").

38. On 16 January 2024, the Appellant informed the CAS Court Office that it would prefer that a hearing on this matter be held, if possible, in São Paulo, Brazil.

39. On 29 January 2024, the Respondent informed the CAS that they also agreed to the holding of a hearing in São Paulo, Brazil.

40. On 20 February 2024, the CAS Court Office invited the Parties to inform if they were available to attend a hearing in São Paulo, Brazil, on 11 April 2024.

41. On 6 March 2024, the CAS Court Office provided the Parties with the Order of Procedure, which was duly signed. The Parties agreed to hold a hearing on 11 April 2024 at 09h30 (local time), in São Paulo, Brazil.

42. On 11 April 2024, a hearing was held in São Paulo, Brazil. In addition to the Sole Arbitrator and Ms. Lia Yokomizo, Counsel to the CAS (via videoconference), the following persons also attended the hearing:

1. <u>For the Appellant</u>

- Mr. André Oliveira de Meira Ribeiro – Legal Counsel
- Ms. Gwenn Le Garrec – Legal Counsel
- Ms. Alice Maria Salvatore Barbin Laurindo – Legal Counsel
- Mr. Vinicius França da Rosa – Legal Intern

2. <u>For the Respondent</u>

- Mr. Cristiano Caús – Legal Counsel
- Mr. Raphael Paçó Barbieri - Legal Counsel
- Mr. Iñigo Vicente Alustiza – Legal Counsel
- Mr. Leonardo Franco Belloti – Legal Counsel (via videoconference)
- Ms. Helena Resstel Meirelles e Silva – Legal Counsel (via videoconference)
- Mr. Soo Bok Kim – Witness (via videoconference)
- Mr. Ho Yun Cho – Witness (via videoconference)
- Mr. Yerem Kang – Translator

43. As a preliminary remark, the Parties were requested to confirm not having any objection to the appointment of the Sole Arbitrator, and they so confirmed. During the hearing all witnesses were allowed to provide their testimony and the Parties' counsels had the opportunity to examine and cross-examine the witnesses.

44. After the closing submissions, the Parties confirmed that they were given full opportunity to present their cases and submit their arguments. Furthermore, the Parties expressly stated that the equal treatment of the Parties and their right to be heard had been respected. Before closing the evidentiary proceedings, the Parties proposed to ask Fortaleza to clarify (i) if during the period from January 2023 until July 2023 the Player received any salary; and (ii) the nature of the payment made by Fortaleza on 4 August 2023 in the amount of R$ 108.999.16.

45. On 2 May 2024, the Player reported the clarifications received by Fortaleza in which it was confirmed that the Player had not received any salary payment related to the period comprised between January and July 2023 and that the amount paid on 4 August 2023 was the anticipation of the Player's August 2023 salary, since Daejeon had not paid his salaries during the recovery period.

46. On 7 May 2024, the CAS Court Office informed the Parties that the evidentiary proceedings were closed.

IV. THE PARTIES' SUBMISSIONS

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

(A) The Appellant's Submissions

48. In its Appeal Brief, the Appellant submits the following prayers and requests to the CAS:

"*(…)*

FIRST – To uphold the present appeal and dismiss the Appealed Decision in its entirety;

SECOND – To order the Club to pay the Player USD 400,000 net, plus default interest at a rate of 5% annually as from 26 October 2022 until the date of effective payment;

Alternatively, and only in the event the above is rejected:

THIRD – To order the Club to pay the Player USD 350,000 plus default interest at a rate of 5% annually payable in the following manner:

- *USD 50,000 plus default interest at a rate of 5% annually as from 1 February 2023 until the date of effective payment;*
- *USD 50,000 plus default interest at a rate of 5% annually as from 1 March 2023 until the date of effective payment;*
- *USD 50,000 plus default interest at a rate of 5% annually as from 1 April 2023 until the date of effective payment;*
- *USD 50,000 plus default interest at a rate of 5% annually as from 1 May 2023 until the date of effective payment;*
- *USD 50,000 plus default interest at a rate of 5% annually as from 1 June 2023 until the date of effective payment;*
- *USD 50,000 plus default interest at a rate of 5% annually as from 1 July 2023 until the date of effective payment; and*
- *USD 50,000 plus default interest at a rate of 5% annually as from 1 August 2023 until the date of effective payment.*

Alternatively, and only in the event the above is rejected:

FOURTH – To order the Club to pay the Player BRL 1,935,000 plus default interest at a rate of 5% annually payable in the following manner:

- *BRL 255,000 plus default interest at a rate of 5% annually as from 1 February 2023 until the date of effective payment;*
- *BRL 150,000 plus default interest at a rate of 5% annually as from 20 February 2023 until the date of effective payment;*
- *BRL 255,000 plus default interest at a rate of 5% annually as from 1 March 2023 until the date of effective payment;*
- *BRL 255,000 plus default interest at a rate of 5% annually as from 1 April 2023 until the date of effective payment;*
- *BRL 255,000 plus default interest at a rate of 5% annually as from 1 May 2023 until the date of effective payment;*
- *BRL 255,000 plus default interest at a rate of 5% annually as from 1 June 2023 until the date of effective payment;*
- *BRL 255,000 plus default interest at a rate of 5% annually as from 1 July 2023 until the date of effective payment; and*
- *BRL 255,000 plus default interest at a rate of 5% annually as from 1 August 2023 until the date of effective payment.*

At any rate:

FIFTH - To order the Respondent to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs (if applicable) paid to the CAS; and

SIXTH – To order the Club to pay to the Player a contribution towards the legal and other costs incurred and regarding the ongoing proceedings in the amount of CHF 10,000."

49. The Appellant advanced the following submissions in support of his position:

(a) The groundless nature of the Appealed Decision

i) The Club failed to fulfil its contractual obligations, namely providing the agreed insurance coverage due to the injury period.

ii) The DRC only considered the treatment costs as damages and completely ignored the fact the Player stopped receiving any salaries during his recovery period from January 2023 to July 2023. The remuneration is also, as per *lex sportiva*, the most important obligation that an employer must respect. The DRC has not clarified this issue in the Appealed Decision.

iii) The Player had to face the consequences of the injury without receiving any remuneration during the period of treatment.

(b) The insurance obligation

i) As per FIFA Circular no. 1171, para. 4.9, clubs are obliged to contract an insurance policy for their players that covers illness and occupational accident situations.

ii) In loan agreements it is common practice to oblige the new club to take out insurance to cover any loss or damage that a player may suffer during the loan period. This is why Fortaleza and Daejeon agreed on Clause 4.1 of the Loan Agreement.

iii) As per Articles 1 and 18 of the Swiss Code of Obligations ("SCO"), the true and mutually agreed intention of the parties shall prevail as the correct interpretation of a contractual clause. The Swiss Federal Tribunal ("SFT") (ATF 129 III consid. 2.5 p. 122; 128 III 419, consid. 2.2 p. 422) and CAS jurisprudence (CAS 2007/A/1219 and CAS 2013/A/3133 & CAS 2013/A/3054, among others) also confirm this approach.

iv) Clause 4.1 of the Loan Agreement establishes an obligation for the Club to take out an insurance policy with the Player as beneficiary in order to cover any occupational accidental injury with coverage for an indemnity amount of USD 400,000.

v) Clause 4.1 of the Loan Agreement also clarifies that if the Club fails to conclude such an insurance policy, it shall be responsible towards the Player for any consequences deriving from any injury suffered by the latter.

vi) Fortaleza and Daejeon agreed that the Player was to return only when in "*perfect physical condition*" (Clause 4.3 of the Loan Agreement).

vii) The Fortaleza Employment Agreement, as well as any accessory contracts (*i.e.*, image rights contracts), were suspended until the end of the loan period.

viii) Clause 4.1 of the Loan Agreement extended the Loan Agreement and, consequently, the Daejeon Employment Agreement, until the Player fully recovered from his injury.

ix) Clause 4 of the Loan Agreement was intended to cover the Player's losses and damages during the recovery/treatment period of an injury.

x) The Loan Agreement is, for the Player, similar to a "contract for the benefit of a third party", and, as such, it grants the Player rights under Article 112 of the SCO, as confirmed by the legal doctrine on the subject (Thesis, *Les Transferts de Sportifs*, Romain DOMINGUES, p. 44). Moreover, CAS jurisprudence confirms that a provision in a contract can be for the benefit of someone who is potentially not a party to that contract (CAS 2018/A/5950). Once the provision for the benefit of another has been brought to the knowledge of the beneficiary, the parties to said agreement and the obligee cannot revoke the benefit that they intended for the beneficiary anymore (Commentaire Romand, CO des obligations I, Art. 112, n. 10, p.889; TF 4C.346/2001).

xi) The Player was more than just a "third-party" to the Loan Agreement because he signed this contract and intervened as a "consenting party".

xii) The Player has the right to compel the Club to comply with Clause 4.1 of the Loan Agreement, considering his position as a beneficiary of such obligation by the Club.

(c) Losses suffered by the Player

i) Considering the automatic extension of the Loan Agreement until the Player recovered to a "perfect physical condition", as well as the suspension of the Fortaleza Employment Agreement, the Club had the obligation to pay the Player's salaries until the end of the Loan Agreement.

ii) The Player suffered an injury that left him without the ability to play football for 9 months and he received no remuneration for most of his rehabilitation period which lasted for 7 months.

iii) The Player was denied his rightful remuneration during the period comprised between January 2023 and July 2023.

iv) Considering the Player's monthly remuneration of USD 50,000, he suffered a loss of USD 350,000 (gross). However, if the Player had been fit and able to return to Fortaleza, he would have earned a total remuneration of

USD 392,025.76 during that period. In light of those amounts, the insurance indemnity of USD 400,000 seems more than reasonable.

(d) Conclusion

i) The Appealed Decision is legally groundless, unfair and must be set aside.

ii) The Club shall be held liable for the payment of USD 400,000 as per Clause 4.1 of the Loan Agreement for failing to take out an insurance policy with the Player as a beneficiary based upon what had been contractually agreed.

iii) Subsidiarily, the Player is entitled to be compensated for the losses and damages incurred under the Daejeon Employment Agreement, which amount to USD 350,000 (gross) or USD 392,025.76, if the Panel considers the remuneration set out in the Fortaleza Employment Agreement.

iv) In addition to the outstanding remuneration, the Club shall be ordered to pay default interest to the Player under Article 104 para. 1 of the SCO.

(B) The Respondent's submissions

50. In its Answer, the Respondent submits the following prayers and requests to the CAS:

"*(…), the Respondent respectfully requests that:*

i. This appeal be rejected in its entirety as per the facts and legal arguments above and that the Decision rendered by the FIFA Dispute Resolution Chamber on 17 August 2023, reference number FPSD-9347, be confirmed;

ii. Determine that the Appellant shall bear the arbitration costs pertaining to these CAS proceedings; and shall pay the Respondent a contribution for its legal costs incurred in an amount of CHF 20,000 (twenty thousand Swiss francs).

iii. That the compensation be not higher than USD 100,000 (one hundred thousand dollars) as per point VI, d, i above; However, in the unlikely event that the Respondent is considered to have to pay the Appellant a compensation as per the Transfer Agreement:

iv. Alternatively, that the compensation be no higher than USD 156,990.44 (one hundred and fifty-six thousand nine hundred and ninety dollars and forty-four cents) as per point VI, d, ii above; or

v. In the last case, that the compensation be no higher than USD 244,990.44 (two hundred and forty-four thousand nine hundred and ninety dollars and forty-four cents) as per point VI, d, ii above."

51. The Respondent advanced the following submissions in support of its position:

(a) The Appellant cannot rely on Clause 4.1 of the Loan Agreement

i) The present Appeal shall be dismissed given the Appellant's lack of standing to sue.

ii) All the rights and obligations established in the Loan Agreement, including its Clause 4.1, only refer to the contracting parties, *i.e.*, the Club and Fortaleza. The Player was simply mentioned and granted his consent to the temporary transfer.

iii) Clause 4.1 of the Loan Agreement is linked with the Brazilian legislation which obliges clubs to pay the player's salaries during the recovery periods. This clause was established so that Fortaleza could be exempted from paying those salaries in the event of an injury.

iv) The wording of Clause 4.1 of the Loan Agreement reveals that the Appellant's consent was given solely as a way of exempting Fortaleza from any liability for compensation, indemnity, or payment of wages in the event of an injury.

v) The Club fulfilled its obligations.

vi) The Daejeon Employment Agreement superseded any other agreements. The Club complied with Clause 10.2 of the Daejeon Employment Agreement, which substituted Clause 4 of the Loan Agreement.

(b) The correct interpretation of Clause 4.1 of the Loan Agreement

i) As per Articles 2 of the Swiss Civil Code ("SCC") and 18 para. 1 of the SCO, and established CAS jurisprudence (CAS 2019/A/6569, CAS 2017/A/5183, and CAS 2010/A/2098, among others), the analysis and interpretation of contractual clauses must consider the real intention of the parties and their good faith in the negation process.

ii) As per Clause 4.1 of the Loan Agreement, the insurance was supposed to cover only the specific costs related to the occupational accidents that the Appellant could suffer and not his salaries during the injury period.

iii) To benefit from Clause 4.3 of the Loan Agreement (extension of the Daejeon Employment Agreement and payment of the salaries during that period), the Player had to agree on the extension of the Daejeon Employment Agreement and return to South Korea, but this never happened.

iv) The Player's salaries during the period he was injured cannot be considered as expenses in the sense of Clause 4.1 of the Loan Agreement, since that would mean the unjust enrichment of the Player. In that event, the Club would have to pay USD 400,000 plus the Appellant's salaries during the entire period of his injury.

v) It is clear that, when drafting Clause 4.1 of the Loan Agreement, the Parties could not have foreseen the duration of the Player's eventual injury and, as such, it is

clear that they did not intend it to cover the loss of salaries. In addition, the amount provided for in said clause cannot be seen as a liquidated damages clause, since the Appellant claims the payment of his salaries during the injury period as "losses and damages", which means the Player has the obligation to prove such damages occurred (Article 42 para. 1 of the SCO).

(c) Subsidiarily, as to the compensation due to the Player

i) If the Club is obliged to pay any compensation to the Player, it should be noted that Daejeon has already paid USD 150,000 to the Player upon his return to Brazil, as well as USD 13,148.24 as reimbursement for the medical and travel costs incurred by him.

ii) The Parties had reached an agreement by virtue of which the Club would pay USD 250,000 and the medical expenses incurred by the Player. That amount corresponded to the salaries of November and December 2022 plus USD 150,000 corresponding to another 4 month's salary (net) of the Appellant's recovery.

iii) Despite the payment of November and December 2022 salaries, the Appellant did not comply with the proposed agreement. The Appellant's conduct constitutes *venire contra factum proprium* since he created confidence in the club that the aforementioned sums would be sufficient to settle any damages or claims to which the Player might be entitled.

iv) Any compensation in favour of the Player must consider the Parties' verbal agreement, as well as the amounts already paid by the Club, which means that any compensation shall not be higher than USD 100,000.

(d) Alternatively, the amount indicated in Clause 4.1 of the Loan Agreement shall be reduced

i) If the amount indicated in Clause 4.1. of the Loan Agreement (*i.e.*, USD 400,000), is to be considered due in full, said amount must be reduced considering the sums paid by the Club to the Player.

ii) The Player's damages correspond only to the months in which he was injured.

iii) The Player's net salary was equal to USD 39,000. This means the Player would be entitled, during the period of the injury to a total of USD 312,000 (8 salaries x USD 39,000) and any calculation of compensation shall start from this amount.

iv) The Club paid USD 150,000 to the Player upon his return to Brazil, in addition to the USD 13,148.24 paid as reimbursement for the medical costs incurred by him, when these expenses were estimated to be USD 8,138.68.

v) The compensation to be awarded to the Player, if any, shall be equal to USD 156,990.44 and, if the compensation is considered to be the USD 400,000, the amount already paid by the Club shall be deducted and the total compensation shall be USD 244,990.44.

V. JURISDICTION

58. In accordance with Article 186 of the Swiss Private International Law Act (the "PILA"), the CAS has the power to decide upon its own jurisdiction (so-called *Kompetenz-Kompetenz)*.

59. Article R47 para. 1 of the Code provides, *inter alia*, 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.*"

60. Article 56 para. 1 of the FIFA Statutes (ed. May 2022) reads as follows:

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

61. Article 57 para. 1 of the FIFA Statutes (ed. May 2022) reads as follows:

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

62. The present appeal is directed against a final decision of the DRC and therefore, the CAS, considering the above provisions, has jurisdiction to rule on the appeal filed by the Appellant. Moreover, the Sole Arbitrator notes that the jurisdiction of the CAS, which is not disputed, is also confirmed by the Order of Procedure duly signed by the Parties.

63. It follows that the CAS is competent to decide on the present Appeal.

VI. ADMISSIBILITY

64. Article R49 of the Code provides as follows:

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

After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late."

65. The grounds of the Appealed Decision were notified to the Appellant on 22 August 2023 and the Statement of Appeal was filed on 12 September 2023. Therefore, the Appeal was filed within the deadline of 21 days set by Article 57 para. 1 of the FIFA Statutes. The Appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.

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

67. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

68. Article R58 of the Code reads as follows:

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

69. In addition, Article 56 para. 2 of the FIFA Statutes (May 2022 edition) provides the following:

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

70. Considering the above, the Sole Arbitrator is satisfied that the various regulations of FIFA – in particular, the Regulations on the Status and Transfer of Players (the "RSTP") – constitute the applicable law to the matter in dispute and that, subsidiarily, Swiss law shall be applied should the need arise to fill a possible *lacuna* in the various regulations of FIFA. The Parties also concur on this matter and did not dispute this conclusion.

71. In accordance with Article 26 (1) and (2) of the RSTP currently in force (October 2024 edition) and considering that the claim before FIFA was initiated on 24 February 2023,

the October 2022 edition of the RSTP applies to the matter at hand as to the substance of the dispute.

VIII. MERITS

A. Introduction

(A.1) The Extent of the Powers of the CAS

72. Under Article R57 (1) of the Code, the Sole Arbitrator has "*full power to review the facts and the law*". As repeatedly stated in the CAS jurisprudence (*e.g.* CAS 2007/A/1394), by reference to this provision, the CAS appeals arbitration procedure entails a *de novo* review of the merits of the case and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Sole Arbitrator to make an independent determination as to the merits of the case.

(A.2) The Applicable Burden and Standard of Proof

73. In the case at hand, the Parties are essentially in dispute as to matters related with the interpretation of the Loan Agreement and the Daejeon Employment Agreement, meaning that the main facts of the case are not disputed by the Parties. Despite this, the Sole Arbitrator deems it useful to clarify who bears the burden of proof and which standard of proof is applicable to the present case.

74. The concept of burden of proof has been considered in many CAS decisions and is well-established CAS jurisprudence (see, among others, CAS 2003/A/506, para. 42, and CAS 2007/A/1380, para. 25). It follows that each party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the Sole Arbitrator that the facts they plead are established.

75. The *standard of proof* plays an essential role as it ensures an objective evaluation of claims and defences. Above all, it ensures a minimum level of proof required by the parties, appropriate to the specifics of each case. The Sole Arbitrator notes that the doctrine and the long-standing CAS jurisprudence (see, among others, CAS 2012/A/2908, CAS 2019/A/6187 and CAS 2020/A/7605) have developed the understanding that the applicable standard of proof, considering the nature of this dispute (contractual dispute between a club and a player), is "comfortable satisfaction" or "balance of probabilities" which, in practical terms, means "free evaluation of evidence". This standard requires that there is greater evidence in favour of a particular claim, as opposed to the evidence adduced by the counterparty(ies).

76. In light of the above observations, the Sole Arbitrator considers it most appropriate to apply the standard of comfortable satisfaction.

(A.3) The Scope of the Appeal

77. Before assessing the legal issues at stake, the Sole Arbitrator deems it useful to clarify the scope of the Appeal – what is this case about?

78. In this appeal, the issue at stake is neither the payment of any labour claims due up until 31 December 2022, nor medical expenses or other expenses associated with treatments carried out by the Player as a result of his injury. The Daejeon Employment Agreement entered into force in July 2022 and its term was agreed to occur on 31 December 2022. The Player remained injured from the 25 October 2022 until 1 August 2023. The Club has provided proof of payment of all the salaries and bonuses due from October 2022 until December 2022 (see paras. 9, 18, 22, and 24 above), as well as the Player's medical expenses.

79. Therefore, the Sole Arbitrator observes that the main issues to be determined are (i) whether Daejeon is responsible for the payment of the amount of USD 400,000 – the interpretation of Clause 4.1 of the Loan Agreement – which allegedly served as a kind of compensation to be paid to the Player in case of injury, regardless of the quantification of the damages suffered (a kind of "liquidated damages" clause); or, alternatively, (ii) whether the salaries claimed by the Player for the recovery period (from January to July 2023, inclusive) are part of the damages resulting from the injury suffered and should be considered as insured losses that the Club was obliged to insure and/or to pay to the Player.

80. Considering the scope of the Appeal, the Sole Arbitrator will address the following issues:

a) Does the Player have standing to sue the Club?

b) If so, how should Clause 4.1. of the Loan Agreement be interpreted?

c) What is the Club's liability to the Player as a result of his injury? Is the Player entitled to receive the sum of USD 400,000 as compensation for the injury suffered? Or, in the alternative, is the Player entitled to receive the salaries claimed during his recovery period (*i.e.*, from January to July 2023)?

B. The Decision

(B.1.) Does the Player have standing to sue the Club?

81. The Player's claim essentially relies on Clause 4.1 of the Loan Agreement (see para. 7 above), an agreement that was signed by the Daejeon, Fortaleza and the Player.

82. According to the Player, and taking into account Article 112 of the SCO, the Loan Agreement may be considered as an agreement for the benefit of a third party (*stipulation pour autrui*) and the Player has the right to demand that the Club comply with Clause 4.1 of the Loan Agreement. The Club argues that the Player intervened in the Loan Agreement only as a consenting party and that this agreement has not generated any right for him, especially because Clause 4.1 of the Loan Agreement had been "designed" to protect Fortaleza from future claims in the event of damages or losses resulting from accidents or injuries suffered by the Player.

83. The Sole Arbitrator notes that the issues of legitimacy to bring forward a "claim" depend on the manner in which the "claim" is presented and constructed by the "claimant". It is up to the "claimant" to configure the scope of the dispute/claim, specifically by presenting the facts and the legal reasons underlying their request and by calling upon the parties they believe have the standing to be sued to be included in the claim (CAS 2023/A/9955). The Sole Arbitrator highlights that under Swiss law the issue of standing to be sued is an issue to be decided on the merits of a case, as per the consistent jurisprudence of the Swiss Federal Tribunal and CAS:

"*According to the Swiss Federal Tribunal, the prerequisite of the standing to be sued is to be treated as an issue of merits and not as a question for the admissibility of an appeal (Decision of the Swiss Federal Tribunal ATF 136 III 365 at. 2.1). This jurisprudence has been followed by numerous CAS Panels (see DE LA ROCHEFOUCAULD E., Standing to be sued, a procedural issue before the [CAS], in CAS Bulletin 1/2010, p. 51 and references).*" (CAS 2015/A/4335, para. 45)

84. In the case at hand, there is no doubt that the Appellant construed his claim before the DRC, and now before the CAS, under the argument that Clause 4.1 of the Loan Agreement has been violated by the Club and, as such, the Club should bear the consequences and adequately compensate the Player.

85. Furthermore, the Sole Arbitrator highlights that the Loan Agreement was signed by the Player as a "*consenting intervening party*". The Loan Agreement is not limited to establishing rights and obligations for the Club and Fortaleza. The Loan Agreement has also established several obligations related to the Player that should be taken into consideration, such as (i) the temporary transfer of his federative rights, (ii) the suspension of the Fortaleza Employment Agreement and (iii) the entry into force of a new temporary employment relationship with the Club – the Daejeon Employment Agreement.

86. Moreover, the aforementioned contract being a loan, the Player's consent would always be required for it to produce the full extent of the desired effects.

87. Finally, it is important to bear in mind that the Player and the Club had an employment relationship, and that the Player's claim is based on damages resulting from an injury caused during this employment relationship with the Club.

88. In view of the above, the Sole Arbitrator is convinced that the Player has a direct, personal and effective interest in the proceedings, since the breach of the obligation provided for in Clauses 4.1 and 4.3 of the Loan Contract concerns him directly. This solution is "*(…) consistent with the general definition of standing that parties, who are sufficiently affected by a decision, and who have a tangible interest of a financial or sporting nature at stake may bring a claim, even if they are not addressees of the measure being challenged.*" (CAS 2016/A/4924 and CAS 2017/A/4943, para. 85).

89. Consequently, the Player has the necessary standing to sue (appeal) the Club and claim from it any compensation that he feels may be due to him under the terms of the Loan Agreement which concern him – in this case, under Clause 4.1 of the Loan Agreement.

(B.2.) <u>How should Clause 4.1 of the Loan Agreement be interpreted?</u>

90. The Parties are in dispute as to the correct interpretation of Clause 4.1 of the Loan Agreement.

91. The Player states that the agreed sum of USD 400,000 is an "indemnity" that should be paid in full to him since the Club failed to take out the insurance or, as an alternative view, his salaries during the injury recovery period (January 2023 to July 2023) should be included in the concept of "occupational accident" and for this reason covered by the required insurance. The Club rejects this interpretation, arguing that Clause 4.1 of the Loan Agreement only obliged the Club to take out an "occupational accident insurance" for the Player with the minimum insured amount of USD 400,000, which could be used to cover only medical expenses in connection with the injury.

92. The Sole Arbitrator recognizes that it would have made sense to include Fortaleza in this dispute (from its very beginning at FIFA level), to the extent that, in addition to being a relevant party to the Loan Agreement, it is also one of the beneficiaries of the provisions of Clause 4.1 of the Loan Agreement. In this context, Fortaleza's participation could have helped to clarify the negotiation process and the meaning of Clause 4.1 of the Loan Agreement. In any event, Fortaleza's non-participation does not

prevent the Sole Arbitrator from interpreting the meaning of Clause 4.1 of the Loan Agreement and deciding the Player's claim.

93. In this process of interpreting Clause 4.1 of the Loan Agreement, the Sole Arbitrator draws attention to the provisions of Article 18 para. 1 of the SCO: "[w]*hen assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement*."

94. In view of the above, the Sole Arbitrator shares the DRC's interpretation in relation to Clause 4.1 of the Loan Agreement. The wording of this clause clearly indicates that the common intention of Fortaleza and Daejeon was for the latter to take out an "occupational accident" insurance for the Player, with a minimum sum insured of at least USD 400,000. This interpretation based on the common interest of the Parties dispenses the use of any objective elements of interpretation (see, among others, SFT 135 III 295, consid E.5.2). The term "indemnity" in Clause 4.1 of the Loan Agreement is, in fact, the minimum amount of damage covered under the insurance, had it been taken out. The same clause further clarifies that, in the absence of taking out the required insurance, Daejeon would be solely responsible for any accident that might occur to the Player.

95. The intention of the contractual parties was to guarantee that, in the event of an injury, the Player's recovery costs, as well as any direct damage or loss, would be insured, and, in the event that Daejeon did not take out the insurance, the responsibility for any injury would fall exclusively on the Club, exempting Fortaleza from any possible liability.

96. Therefore, the Sole Arbitrator rejects the Player's interpretation that Clause 4.1 of the Loan Agreement establishes compensation for the injury suffered in a manner similar to liquidated damages clauses. Notwithstanding this conclusion, the Sole Arbitrator must analyse and decide whether the salaries claimed by the Player during the recovery period should be included in the concept of "insured damages" under the concept of "occupational accident".

(B.3.) <u>What is the Club's liability to the Player as a result of his injury? Should the salaries claimed by the Player during the recovery period from his injury after 31 December 2022 be paid by Daejeon?</u>

97. The Sole Arbitrator begins by stating that the Club does not dispute its liability for the damages suffered by the Player in relation to the injury occurred during his employment relationship. The dispute, as previously stated, is now whether it should cover the Player's salaries for the period from January 2023 to July 2023. The answer to this question necessarily involves the following analysis:

i) Should the salaries claimed be considered damages or losses that should fall within the concept of "insured damages" for the purposes of Clause 4.1 of the Loan Agreement or, somehow, should fall under the concept of "compensable damages"?

ii) If not, is the Player entitled to receive such salaries due under Clause 4.3 of the Loan Agreement or to the alleged extension of the Daejeon Employment Agreement?

B.3.1. Should the salaries claimed be considered damages or losses that should fall within the concept of "insured damages" for the purposes of Clause 4.1 of the Loan Agreement or, somehow, should fall under the concept of "compensable damages"?

98. The Player argues that the "indemnity" provided for in the Clause 4.1 of the Loan Agreement covers the treatment costs and the loss of salaries due over the entire injury period. The Club, in turn, argues that Clause 4.1 of the Loan Agreement was only intended to cover the costs incurred by the Player in case of an injury, and that the issue of the loss of salaries had to be resolved in accordance with Clause 4.3 of the Loan Agreement that states: "*DAEJEON is responsible for all expenses related to the PLAYER's clinical recovery, notably, but not exclusively, expenses arising from medical treatments and clinical examinations. (…)*".

99. The Sole Arbitrator points out that "occupational accident insurance" is an insurance that aims to provide financial protection to employers and employees in the event of work-related injuries. Generally, "occupational accident insurance" covers medical expenses and lost wages up to the limit of the policy that has been negotiated and taken out by the policyholder. The amount of the policy is intended to limit the liability of the insurance company, in case its beneficiary claims the payment of any damages and losses related to the insured event. In any case, both the insurance limit and the events (damages covered) depend on how the policyholder took out the insurance.

100. The employer – and not only the employee – is also a direct beneficiary of the insurance which, by contracting occupational accident insurance, can be protected and avoid paying damages and losses attributable to it. Normally, policyholders tend to protect themselves against undeterminable financial damage and losses, such as medical expenses related to surgery and medical treatment, as well as the employees' salaries, but, as mentioned above, it all depends on how the insurance is arranged. The insurance limit, as well as the damages and losses covered by it, are matters that can be negotiated between the insured and the insurer and these limits do not exempt the employer from liability for any damages and losses that may be greater than the amount of insurance taken out or by damages/losses not covered by the policy.

101. It should be clarified that the case at hand does not pertain to a "mandatory occupational accident insurance" which the Club was obliged to undertake, but to a contractual clause by virtue of which Daejeon accepted to cover its liability for any injury occurred with the Player during the loan. Failure to comply with Clause 4.1 of the Loan Agreement would only result in Daejeon assuming full responsibility for the payment of damages and losses incurred by the Player as a result of an injury caused during the duration of his employment relationship.

102. In view of the above, and in the opinion of the Sole Arbitrator, the analysis of the concept of "occupational accident" is indifferent to the determination of whether Daejeon (as an employer) is liable for the damages claimed by the Player. This discussion would only make sense if the salaries were being claimed from the insurance company itself, which is not the case. The focus of the assessment is whether the unearned salaries should form part of the concept of reparable damage as a result of the injury. In the opinion of the Sole Arbitrator, in principle, the salaries owed to the Player must be paid, otherwise they would constitute a clear loss of personal income resulting from the injury.

103. Therefore, the Sole Arbitrator agrees with the Player that the salaries not earned during the recovery period may fall within the concept of reparable damage, a situation that is to some extent assumed by the Club since it paid the salaries due but only until the agreed *terminus* of the existing temporary employment relationship, *i.e.*, until the end of the Daejeon Employment Agreement.

104. The question that must be further examined is whether Daejeon is liable for the salaries allegedly owed after 31 December 2022 (the salaries claimed by the Player), taking into account that the Daejeon's Employment Contract constitutes a temporary employment relationship that ended on 31 December 2022. This issue will be analyzed below.

B.3.2. Was the Daejeon Employment Agreement extended and for this reason Daejeon is liable to pay the Player's claimed salaries?

105. Although the Player's salary may be considered as a "damage" or "loss of income" subject to compensation – as previously established – the question of Daejeon's liability for the payment of the claimed salaries will depend on the understanding of the alleged extension of Daejeon Employment Agreement and/or the content of Clause 4.3 of the Loan Agreement.

106. In the Player's opinion, the extension of the Daejeon Employment Agreement occurred by virtue of the automatic extension of the Loan Agreement; while in the Club's opinion, Clause 4.3 of the Loan Agreement did not extend the employment relationship it had

with the Player and does not provide for its liability to pay salaries to the Player until his physical recovery. The Club argues that such an extension would have to be agreed with the Player, who refused to return to South Korea.

107. In the view of the Sole Arbitrator, the answer to this question should be obtained by analyzing the Daejeon Employment Agreement (the source of the obligation allowing the Player to claim compensation for unearned salaries) and its interrelationship with the other contracts associated with the Player's loan, namely the Loan Agreement and the Fortaleza Employment Agreement.

108. Turning to the analysis and decision of the issue, the Sole Arbitrator begins by stating that the Daejeon Employment Agreement – unlike the Loan Agreement – does not contain any provision for automatic extension in the event of the Player's injury, and such alleged extension cannot be inferred or withdrawn indirectly.

109. It should also be remembered that the employment relationship between the Player and Daejeon is based on the "temporary" suspension of the Player's employment relationship with Fortaleza and that the expiry of the Daejeon Employment Agreement may have automatically activated the effectiveness of the Fortaleza Employment Agreement. The Sole Arbitrator states "may" as the absence of Fortaleza in this procedure requires caution as to the conclusions that can be reached in this decision.

110. However, and regardless of these cautions and limitations, the Sole Arbitrator is comfortable in concluding that the Daejeon Employment Agreement terminated on 31 December 2022, thereby ending the source of the Club's obligation to pay the Player's monthly salary in the amount of USD 50,000. In fact, from the testimony of the witness Mr. Ho Yun Cho – the Player's South Korean agent who accompanied his departure to Brazil –, it was clear that the Player returned to Brazil on the understanding that his employment relationship had ended at the end of 2022. The same witness also stated, with great certainty and conviction, that the Player stopped communicating with him in an attitude of someone who had completely disconnected from the professional relationship with the Club. Therefore, the Player did not meet his burden to prove that the Daejeon Employment Agreement automatically extended with the Loan Agreement.

111. With regard to the interpretation of Clause 4.3 of the Loan Agreement, it is the Sole Arbitrator's opinion that such clause does not assist the argument put forward by the Player that the Club had the obligation to pay his salaries from January to July 2023.

112. The wording of Clause 4.3 of the Loan Agreement only states that "*(...) Daejeon is responsible for all expenses related to the Player's clinical recovery, notably, but not exclusively, expenses arising from medical treatments and clinical examinations. (...)*". The Loan Agreement makes no indication as to Daejeon's liability for the payment of

the Player's salaries during the period of automatic extension of the Loan Agreement. If this clause is interpreted in the reverse direction, it would reinforce the understanding that Daejeon's liability, beyond 31 December 2022, was limited only to expenses related to the Player's clinical recovery. The absence of the reference of the Player's salaries cannot be seen as a mere detail. Firstly, because it constitutes a relevant "liability" and, secondly, it would be necessary to determine the amount of salary owed, since the amount of salary earned under the contractual relationship with Daejeon is different from that agreed in the employment relationship with Fortaleza. Which of the two salaries earned by the Player should form the basis for calculating compensable damages: the salary paid by Daejeon or by Fortaleza? The answer to this question will remain unanswered.

113. The Sole Arbitrator further refers that, following his return to Brazil, the Player never focused his claim on the payment of salaries that might fall due during the period of his recovery beyond 31 December 2022, but rather on the payment of the sum of USD 400,000 as compensation for the injury suffered. This position is well demonstrated in the communications sent to the Club on 17 November and 6 December 2022, and later on 2 February 2023 (see para. 17, 20 and 25 above). The payment of salaries from January 2023 to July 2023 was only claimed later.

114. In light of the above, the Sole Arbitrator is comfortably satisfied that the Daejeon Employment Agreement was not extended and, as such, the Club has no obligation to pay to the Player the claimed salaries from January 2023 to July of 2023.

C. Conclusion

115. Considering the above, the Sole Arbitrator is comfortably satisfied that the "indemnity" mentioned in Clause 4.1 of the Loan Agreement should be interpreted as the minimum insured amount to cover losses and damages incurred by the Player as a result of an injury and not as a liquidated damages clause to be paid to the Player in case of an injury. This is the result of the interpretation of Clause 4.1 of the Loan Agreement having in mind its wording and the intention of the Parties.

116. The purpose of the insurance was to cover losses and damages that resulted of events occurred during the Daejeon Employment Agreement, *i.e.*, until 31 December 2022. The extension of the Daejeon Employment Agreement was not proved, and the Sole Arbitrator understands that the Club's obligation to pay the Player's salaries ended with expiry of the contract term of the Daejeon Employment Agreement, *i.e.*, on 31 December 2022. Clause 4.3 of the Loan Agreement did not extend the Club's liability to the Player's salary after 31 December 2022.

117. Consequently, the Appealed Decision must be confirmed and the Appeal dismissed.

IX. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 12 September 2023 by Renato Kayzer de Sousa against the decision issued on 7 July 2023 by the FIFA Dispute Resolution Chamber is dismissed.

2. The decision rendered on 7 July 2023 by the FIFA Dispute Resolution Chamber is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 27 January 2025

THE COURT OF ARBITRATION FOR SPORT

Rui Botica Santos
Sole Arbitrator