CAS 2024/A/10453 Hapoel Tel Aviv v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Ms Annett Rombach, Attorney-at-law, Frankfurt am Main, Germany

in the arbitration between

Hapoel Tel Aviv FC, Tel Aviv, Israel
Represented by Mr Omri Applebaum of Gornitzky & Co., Advocates, Tel Aviv, Israel

Appellant

and

Fédération Internationale de Football Association, Zurich, Switzerland
Represented by Mr Miguel Liétard Fernandez-Palacios, Director of FIFA Litigation

Respondent

I. THE PARTIES

1. Hapoel Tel Aviv FC (the "**Appellant**" or "**Hapoel**") is a professional Israeli football club affiliated with the Israel Football Federation ("**IFA**"), which, in turn, is affiliated with the Fédération Internationale de Football Association.

2. The Fédération Internationale de Football Association (the "**Respondent**" or "**FIFA**") is an association incorporated under Swiss law with its registered office in Zurich, Switzerland. FIFA is recognised as the international federation for football by the International Olympic Committee. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

3. The Appellant and the Respondent are collectively referred to as the "**Parties**".

II. INTRODUCTION

4. This dispute concerns an appeal against a determination of the FIFA general secretariat dated 6 March 2024 regarding the Electronic Player Passport (the "**EPP**") 28309 for the French-Israeli player Noam Bonnet, born on 25 May 2002 (the "**Player**") (the "**EPP Determination**") and the associated Allocation Statement TC-5550 dated 26 February 2024 (the "**Allocation Statement**"). Although issued as separate decisions, the EPP Determination and the Allocation Statement will be jointly referred to as the "**Appealed Decision**".

III. FACTUAL BACKGROUND

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

6. On 30 May 2022, the French professional football club Olympique Lyonnais ("**OL**") and the Player signed an employment contract.

7. On 1 July 2023, OL, through its Head of Legal, signed a document titled "*Proof of Last Contract End Date*" ("*Confirmation Letter*"), which provided as follows:

> *"I hereby confirm that the employment contract n 500080-220047 dated 30/05/2022, signed between the Player and Olympique Lyonnais, expired on 30/6/2023 without any formal extension proposal made by Olympique Lyonnais".*

8. The Appellant alleges, and the Respondent does not contest such allegation, that it had been provided with the Confirmation Letter before making its decision to hire the Player.

9. On 21 July 2023, the Appellant and the Player signed a player contract for two years (the "**Player Contract**").

10. On 10 August 2023, the Appellant completed the Player's registration via the FIFA Transfer Matching System (the "**TMS**"). On the same day, FIFA initiated the generation of a provisional EPP in TMS in accordance with Article 8(1) of the FIFA Clearing House Regulations ("**FCHR**"), as a result of its identification of a "training rewards trigger" for the Player's transfer under Article 6 FCHR. Articles 6 and 8(1) FCHR read as follows:

> *"Article 6: Training rewards trigger: international transfer*
>
> *6.1 All details relating to the international transfer of a player within the scope of eleven-a-side football shall be entered in TMS as provided in Annexe 3 to the RSTP.*
>
> *6.2 For the avoidance of doubt, any training reward payable pursuant to the RSTP shall not be included in the amount declared as transfer compensation.*
>
> *6.3 TMS will identify international transfers that may trigger an entitlement to training rewards pursuant to the RSTP.*"
>
> *"8.1 When a training rewards trigger is identified as defined in these Regulations and in accordance with articles 20 and 21 of the RSTP, a provisional EPP for the relevant player will be generated by TMS."*

11. The provisional EEP was accordingly generated on 10 August 2023.

12. Articles 8(2) to 8(4) FCHR provide that an inspection and assessment period ("**Inspection Period**") follows in order to grant member associations and clubs the possibility to request the inclusion of information in the EPP and to evaluate the EPP for accuracy and relevance.

13. Upon completion of the Inspection Period, a review process is opened. The EPP was released for review on 21 August 2023. The review process is regulated in Article 9 FCHR. Relevantly for the purposes of this case, Articles 9(7) and 9(8) FCHR provide the following in respect of waivers of training rewards:

> *"9.7 Where a training club has waived its right to receive training rewards,* ***proof of a valid waiver shall be uploaded in TMS by the new club****.*
>
> *9.8 A training club that believes that a waiver submitted by the new club in relation to the registration of the player at the training club is not valid may challenge the validity of the waiver by submitting a written notice in TMS."*
>
> (emphasis added)

14. On 28 August 2023, the IFA intervened in the EPP process to add the Player's registration date with the Appellant. On 31 August 2023, the French Football Federation (the "**FFF**") intervened in the EPP process to upload "proof of registration" of the Player with the clubs associated to it. It is undisputed that the Appellant did not intervene in the EPP process during the review period.

15. On 2 September 2023, the EPP was "moved into validation".

16. On 18 January 2024, FIFA approved the new registration data entered by the IFA and the FFF

and informed the Club that the new registration (including the additional information entered by the IFA and the FFF) was available and, therefore, the EPP was "changed to completion" in order for the Appellant to be aware of the changes and to upload any relevant documents in relation to that. In particular, FIFA requested the Club (the "**First Message**")

> *"to provide any documentation relevant to the entitlement to training rewards of any relevant club in the EPP, including but not limited to waivers or contract offers provided by the training clubs of the player, by no later than the end date of the ongoing 'completion' phase currently displayed in TMS.*
>
> *Please note that no further deadlines will be provided. Should you fail to reply within the set deadline, we may proceed on the basis of the file as it stands".*

17. On 25 January 2024, the EPP was, once again, "moved into validation".

18. On 14 February 2024, FIFA sent a further message (the "**Second Message**") requesting the Club, once again,

> *"to provide any documentation relevant to the entitlement to training rewards of any relevant club in the EPP, including but not limited to waivers provided by the training clubs of the player, by no later than the end date of the ongoing 'completion' phase as currently displayed in TMS".*

19. On 18 February 2024, the Club sent the following message to FIFA:

> *"Hi,*
>
> *We already uploaded the relevant documentation we have - specifically the player contract which states in article 2 that any compensation owed to a 3rd club will be paid by the player himself.*
>
> *Thanks!*
>
> *Hapoel Tel Aviv"*

20. It is undisputed that the Appellant did not submit any waiver.

21. Pursuant to Article 10 FCHR:

> *"*[…] *10.3. Following the completion of its evaluation, the FIFA general secretariat will decide on the registration information to be incorporated and amended in the final EPP.* [...]
>
> *10.4. An Allocation Statement will be automatically calculated by TMS based on the final EPP, including the amount(s) to be distributed to training clubs.*
>
> *10.5. The FIFA general secretariat will notify the final EPP and the Allocation Statement to all parties in the EPP review process.* […]"

22. On 26 February 2024, the EPP was approved, and the Allocation Statement was generated.

23. On 6 March 2024, the FIFA general secretariat issued the Appealed Decision. According to the Appealed Decision, the Appellant was ordered to pay to OL, through the FIFA Clearing House, training compensation for the Player in the amount of EUR 204,356.16:

> *"8. The new club Hapoel Tel Aviv (IFA) shall pay training compensation to the training club(s) of the player in the total amount of EUR 204,356.16.*
>
> *9. The following training club(s) shall receive the following payment(s).*
>
> *9.1. The training club OLYMPIQUE LYONNAIS (FFF) shall receive training compensation payments from the new club of the player in the amount of EUR 204,356.16.*
>
> *10. The payments defined in this Allocation Statement shall be made through the FIFA Clearing House entity (FCH), in accordance with articles 12, 13 and 14 of the FCHR. The FCH will contact the new club, the relevant training clubs and the relevant member associations to process these payments.*
>
> *11. According to the relevant provisions of RSTP and FCHR, it is the new club that will be required to pay training rewards due to the training clubs concerned, and the new club may not assign responsibility to pay the amount requested to any other party.*
>
> *12. Pursuant to article 57 paragraph 1 of the FIFA Statutes and in accordance with article 10 of the FCHR, this decision and its corresponding EPP may be jointly appealed before the Court of Arbitration for Sport within 21 days of notification. The final EPP will remain available in TMS."*

24. On 19 March 2024, the Appellant contacted the FIFA Clearing House Department, requesting that the Appealed Decision be overturned and deemed void based on the assertion that OL had waived any rights to receive training compensation payments in connection with the Player.

25. On 20 March 2024, the FIFA Clearing House Department informed the Appellant that waivers for training rewards needed to be provided during the EEP review phase, and that the Appealed Decision was final.

26. During these CAS proceedings, the Appellant submitted a letter dated 21 March 2024, addressed to the FIFA Clearing House Department and to the Court of Arbitration for Sport, allegedly issued by OL (the "**Waiver**"). The Waiver provides as follows:

> *"To:*
>
> *FIFA Clearing House SAS*
>
> *FIFA Clearing House Department at FIFA*
>
> *Court of Arbitration for Sport (CAS)*
>
> ***Re: Player Noam Bonnet (EPP 28309) – Allocation Statement TC-5550***

Olympique Lyon hereby confirms that the football player Noam Bonnet (EPP 28309, DOB: May 25, 2002) was released by us on 30/06/2023 after the player's contract expired without any formal extension proposal made by Olympique Lyon towards the player.

We are aware that the Player joined and registered Hapoel Tel Aviv Football Club on 10 August 2023 and confirmed such transfer of the player without any demands or wants towards the player or his new club.

Olympique Lyon hereby confirms that upon releasing the player, we have waived rights or intentions to receive training compensation payments in connection with the player that Olympique Lyon may be entitled to from Hapoel Tel Aviv FC according to FIFA's Regulations.

By signing this document we hereby unconditionally and irreversibly waive Olympique Lyon's rights to receive training compensation from Hapoel Tel Aviv following the FIFA decision on Allocation Statement TC-5550."

(emphasis in the original)

27. FIFA asserts that the validity of the Waiver cannot be verified in the absence of OL as a party to the current proceedings.

IV. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 26 March 2024, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport ("**CAS**") against the Appealed Decisions, pursuant to Articles R47 *et seq.* of the CAS Code of Sports-related Arbitration (the "**CAS Code**") (the "**Appeal**"). The Appellant requested the appointment of a sole arbitrator.

29. On 27 March 2024, the CAS Court Office informed the Parties about the Appeal, requested the Appellant to file its Appeal Brief in accordance with Article R51 of the CAS Code and noted the Appellant's choice to proceed with its Appeal in the English language. In addition, the Respondent was invited to inform the CAS Court Office whether it agrees to the appointment of a sole arbitrator. The Respondent confirmed its agreement with the appointment of a sole arbitrator (provided that he or she is selected from the football list) on 2 April 2024.

30. On 17 April 2024, within the (extended) time limit, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

31. On 18 April 2024, upon the Respondent's respective request, the CAS Court Office informed the Parties that the time limit for the Respondent to file its Answer was set aside and that a new time limit would be fixed upon the Appellant's payment of its share of the advance of costs.

32. On 17 May 2024, the CAS Court Office informed the Parties that the Appellant had paid its share of the advance of costs and invited the Respondent to submit its Answer pursuant to Article R55 of the CAS Code.

33. On 10 June 2024, within the (extended) time limit, the Respondent filed its Answer.

34. On 12 June 2024, the CAS Court Office invited the Parties to indicate whether they prefer a hearing and/or a case management conference to be held in this matter. Furthermore, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

    Sole Arbitrator: Ms Annett Rombach, Attorney-at-law, Frankfurt am Main, Germany.

35. On 14 June 2024, the Respondent informed the CAS Court Office that it did not consider a hearing necessary. The Appellant requested a hearing.

36. On 30 July 2024, the CAS Court Office informed the Parties that the Sole Arbitrator deemed herself sufficiently well-informed to decide the case based solely on the Parties' written submissions without the need to hold a hearing.

37. On the same day, the Appellant requested leave to submit comments to the Respondent's Answer, and to amend its request for relief. The Respondent objected the Appellant's request.

38. On 20 October 2024, the CAS Court Office informed the Parties of the Sole Arbitrator's Decision to grant the Appellant the right to submit a Reply of (at maximum) five pages on the issue of standing.

39. On 13 November 2024, within the (extended) time limit, the Appellant filed its Reply.

40. On 18 November 2024, the Respondent filed a Rejoinder to the Appellant's Reply.

41. On 20 and 25 November 2024, respectively, the Parties returned duly signed copies of the Order of Procedure.

42. On 8 December 2024, the Appellant submitted the award in CAS 2023/A/10050 to the file and requested that such award be taken into consideration for the Sole Arbitrator's decision in the present case. On 27 December 2024, the Respondent submitted comments on the CAS Award.

43. In reaching the present decision, the Sole Arbitrator has carefully taken into account all the evidence and the arguments presented by the Parties, even if they have not been summarised in the present Award.

V. THE POSITIONS OF THE PARTIES

44. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator confirms, however, that she has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Appellant's Position

45. The Appellant submits the following in substance:

- The Appellant was fully allowed to lodge the Appeal only against FIFA and not against OL. This dispute concerns the interpretation of the FCHR and other FIFA regulations, and it challenges a decision rendered by FIFA. The Appeal does not have any direct impact on OL. OL has unconditionally and irreversibly waived its rights to receive training compensation, and it has sent the respective Waiver in copy directly to the CAS. Therefore, OL has no direct legal interest in the outcome of the Appeal. The CAS jurisprudence on which FIFA relies addresses different case scenarios and is not applicable to the present facts.

- Deciding this case without OL as a party does not violate OL's right to be heard. OL has not expressed any interest in participating in these proceedings. Furthermore, the inclusion of OL in these proceedings would unnecessarily complicate and delay the case without any substantive value, which would go against the principles of efficiency and expediency in arbitration. FIFA's insistence that OL needs to be a party amounts to excessive formalism and would lead to an unjust enrichment on OL's part.

- When the Player's agent offered the Player to the Club in the summer 2023, he confirmed that OL would not request any training compensation or other payment from the Player's new club. Based on the agent's representation that OL would waive training compensation, the Appellant decided to sign the Player.

- The Appellant did not participate in the EPP review process conducted by the Respondent due to an oversight / clerical mistake. However, OL signed the Waiver clearly evidencing its will to waive training compensation.

- FIFA principally acknowledges football clubs' right to agree not to apply FIFA's Training Reward Mechanism. Therefore, FIFA should respect the agreement between the Appellant and OL, which also complies with Swiss contract law and the principle of freedom of contract. Even if the Waiver could not be provided after the end of the review process phase, it does not mean that the Waiver cannot be considered and respected.

- The Respondent's request to compel the Appellant to pay OL money that OL itself is, as a result of the Waiver, prevented from demanding is unjustified. The Appellant's omission to upload the Waiver does not justify forcing the Appellant to pay the training compensation.

- The present case is the very first transfer the Appellant was involved in that triggered the new training compensation review process. The Appellant had no practical experience with such process.

- OL and the Appellant relied on the premise that no training compensation is payable because Article 6(3) of Annexe 4 of the FIFA Regulations on the Status and Transfer of Players (the "**RSTP**") provides that *"If the former club does not offer the player a contract, no training compensation is payable […]"*.The Appellant discovered only later that this article applies solely to player transfers within the European Union or the European Economic Area, but not to the Player transfer.

- The Appellant does not have the financial means to proceed with the payment due to *force majeure*.

46. In its Statement of Appeal, the Appellant requests the following relief:

> *"49.1.* ***As primary requests:***
>
> *a. To annul and set aside the Determination and the corresponding Allocation Statement.*
>
> *b. To declare that under the circumstances, the Appellant is not obligated to pay any training compensation in connection with the Player Noam Bonnet.*
>
> *49.2.* ***Alternatively:*** *If the CAS finds that the Determination and the Allocation Statement should be upheld– then the CAS is requested to declare that FIFA must respect the agreement between the Appellant and the OL in respect of the waiver of the payment of training compensation, and Therefore the Appellant is exempted from processing the payment of the training compensation through the FIFA Clearing House.*
>
> *49.3.* ***In any case:*** *The CAS is requested to order the Respondent to pay the Appellant a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Sole Arbitrator."*

47. In its Reply, the Appellant lodged the following (additional) prayers for relief:

> *a) Find that FIFA has proper standing to be sued in this matter;*
>
> *b) Consider the validity of OL's waiver of training compensation;*
>
> *c) Determine that Hapeol is not obligated to pay training compensation for the player.*
>
> *d) order FIFA to pay a contribution towards Hapoel's legal costs and expenses in this matter.*

B. The Respondent's Position

48. The Respondent submits the following in substance:

- The Appeal must be dismissed because the Appellant has failed to address the Appeal to OL, and OL is a mandatory respondent in this case. Under the doctrine of "passive mandatory joinder" (or passive mandatory *litisconsortium*), the Appellant was obligated to name OL as a respondent, because any decision on training compensation directly affects OL's legal position (as the designated beneficiary of the training compensation).

- Even assuming that the appeal could proceed in the absence of OL as a respondent in these proceedings (*quod non*), the Appeal would be without merit. Under FIFA's applicable rules, the transfer of the Player from OL to the Appellant triggered training compensation on behalf of OL (Article 3(1) of Annexe 4 of the RSTP). While the parties are entitled to waive training compensation, a relevant waiver must be uploaded

timely into the TMS, pursuant to Article 9(7) FCHR. Undisputedly, the Appellant failed to upload any such waiver.

- The FCHR must be applied strictly. Any exceptions to be made on behalf of the Appellant would put the credibility and certainty of the whole system at risk.
- Contrary to its assertion, the Appellant did participate in the EPP review process, as it sent a message (but not a relevant waiver) via TMS on 18 February 2024.
- The Appellant only filed the Waiver (whose validity cannot be verified in the absence of OL as a party to the present proceedings) after the Appealed Decision had been rendered. At the current stage, the Appellant is precluded from submitting new evidence (or any document that could and should have been presented during the administrative EPP review process). Therefore, the Appealed Decisions are final.
- The Sole Arbitrator is prevented from "re-opening" the EPP administrative process at CAS level.
- The Appellant has not submitted any proof for its *force majeure* defense.
- Nothing prevents (nor does FIFA object to) the relevant parties from agreeing on the (partial or total) reimbursement of the amounts paid after such payment has been processed in accordance with the FCHR. FIFA would not oppose any such reimbursement.

49. The Respondent requests the following relief:

> *"Based on the foregoing, FIFA respectfully requests the Sole Arbitrator to issue an award:*
>
> *(a) Rejecting the requests for relief sought by the Appellant;*
>
> *(b) Confirming the Appealed Decision;*
>
> *(c) Ordering the Appellant to bear the full costs of these arbitration proceedings."*

VI. JURISDICTION

50. 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 the 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*".

51. The FCHR, which is applicable to the procedural aspects of the present appeal, provides for the jurisdiction of the CAS on the challenge of the Appealed Decision. In relevant part, Article 10.5 of the FCHR provides as follows:

> *"10.5 The FIFA general secretariat will notify the final EPP and the Allocation Statement to all parties in the EPP review process.*
>
> *[…]*
>
> *b) This notification shall be considered a final decision by the FIFA general secretariat for the purposes of article 57 paragraph 1 of the FIFA Statutes and may be appealed to the Court of Arbitration for Sport (CAS)."*

52. The Parties further confirmed that CAS has jurisdiction by execution of the Order of Procedure.

VII. ADMISSIBILITY

53. Article R49 of the Code provides – in its pertinent parts – 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."*

54. Article 10.5 of the FCHR refers to the FIFA Statutes regarding the time limit for filing an appeal:

> *"c) Failure to appeal by the time limit in the FIFA Statutes shall result in the EPP and the Allocation Statement becoming final and binding."*

55. Article 57(1) of the FIFA Statues (ed. May 2022) 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."*

56. On 6 March 2024, the Appellant was notified of the Appealed Decisions. Hence, the 21-day time limit to file the Appeal expired on 27 March 2024. The Appellant's Statement of Appeal submitted on 26 March 2024 was, therefore, filed in time.

57. The Statement of Appeal also complied with the requirements of Article R48 of the CAS Code. In addition, the admissibility of the Appeal is not challenged by any Party.

58. The Appeal is therefore admissible.

VIII. APPLICABLE LAW

59. For appeal proceedings, Article R58 of the CAS Code provides the following:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice,*

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

60. Article 56(2) of the FIFA Statutes (ed. May 2022) reads as follows:

"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."

61. Based on the above, the Sole Arbitrator is satisfied that the various regulations of FIFA are primarily applicable, in particular the FCHR, and subsidiarily Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

IX. SCOPE OF REVIEW

62. According to Article R57 para. 1 of the CAS Code,

"*The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. ...*".

63. Against this background, the Sole Arbitrator finds that her power to review the facts and the law of the present case is not limited.

X. MERITS

64. The central issues to be addressed by the Sole Arbitrator in the present case are the following:

A. Can the Appeal be decided in the absence of OL as a respondent, i.e. was the Appellant required to name OL as a respondent under the doctrine of "passive mandatory joinder"?

B. If a decision can be rendered in the absence of OL as a respondent, can the Waiver be accepted despite that it has been submitted late?

A. Can the Appeal be decided in the absence of OL as a Respondent?

65. The Appellant has named FIFA as the sole respondent in its Appeal. FIFA submits that the Appeal must be dismissed because the Appellant failed to identify OL as a mandatory respondent. In FIFA's view, OL is a mandatory respondent in this case because the Appealed Decision directly affects a legal position of OL, evidenced by the operative part of the Appealed Decision, which states as follows:

"The training club OLYMPIQUE LYONNAIS (FFF) shall receive training compensation payments from the new club of the player in the amount of EUR 204,356.16."

66. In its Appeal, the Appellant requests "[t]*o annul and set aside"* the Appealed Decision.

67. It is undisputable that the Appeal directly concerns a legal position awarded to OL (payment of training compensation in the amount of EUR 204,356.15), because the relief requested by the Appellant seeks to deprive OL of the legal claim it had been awarded in the Appealed Decision.

68. CAS panels have repeatedly confirmed that in such circumstances, the affected party must be named as a respondent party to ensure that it can defend its position (so-called "passive mandatory joinder", or "passive mandatory litisconsortium"), and that the Appellant's failure to do so inevitably results in the dismissal of the Appeal. See, e.g., CAS 2023/A/10002, paras. 69 et seq. (see also CAS 2023/A/10009, paras. 69 et seq; CAS 2023/A/10010, paras 65 et seq.):

> *"69. Furthermore, and by not naming Excelsior as a respondent in the present appeal procedures, the said club was again prevented from submitting any comments or objections to the validity of the Waiver, if needed.*
>
> *70. For the sake of good order, it must be stressed that the Sole Arbitrator does not have any reasons for questioning the validity of the Waiver, and he is not in any way implying that it is not a genuine and valid waiver issued by Excelsior.*
>
> *71. However, the only decisive question in this regard is the fact that the Appellant, by not having joined Excelsior as a respondent, has prevented the said club from the opportunity to defend itself with regard to the validity, scope and consequences of the Waiver.*
>
> *72. And as the Sole Arbitrator thus has no knowledge of the position of Excelsior with regard to the Waiver and, thereby, also with regard to the consequences of the Appealed Decision, the Sole Arbitrator* ***finds that Excelsior has (at least potentially) a direct and legitimate interest in the present dispute and therefore should have been joined as a respondent together with FIFA.***
>
> *73. For the sake of good order, it must be noted that the "argument" submitted by the Appellant's counsel during the hearing for not having joined Excelsior, i.e. that "we know that the Waiver is valid", is not sufficient evidence for the position of Excelsor."*
>
> (emphasis added)

69. See also CAS 2022/A/9238, paras. 71-76 (for horizontal contractual disputes, English translation of the original Spanish language provided by FIFA):

> *"71. The following question arises: whether in cases of horizontal disputes, especially contractual disputes, it is possible to issue a decision which accepts a request of a particular club which affects its own interests, but which, at the same time, could affect the other club involved, without the latter having been previously summoned to the procedure.* ***And the answer to this question is categorically in the negative*** *according to the following arguments.*

> *73. [...] a necessary passive litisconsortium exists when it is required to bind all the parties to a substantial relationship in order to make the effects of a decision extensive and opposable to them. This can be inferred from Article 8a (1) of the Swiss Federal Private International Law Act ("PILA"), which provides that "lorsque l'action est intentée contre des consorts pouvant être poursuivis en Suisse en vertu de la présente loi, le tribunal suisse compétent à l'égard d'un défendeur l'est à l'égard des autres.*
>
> *75. [...] Racing Club was entitled to be summoned in these arbitration proceedings, which would have allowed it to exercise its basic procedural rights, such as defending itself, providing evidence and making allegations, surely aimed at the rejection of Cerro Porteño's appeal.*
>
> *76. This is linked to the notion of "Due Process", which constitutes a constitutional guarantee of the administration of justice. [...] The point is that every person has the right to have access to certain minimum guarantees, in order to allow him or her to have the opportunity to be heard and to assert his or her legitimate claims before the judge, so as to ensure a fair and equitable outcome in the proceedings (TAS 2015/A/4291)."*
>
> (emphasis added)

70. As illustrated concisely in CAS 2022/A/9238, the *ratio legis* of CAS's jurisprudence is that the affected party must have the opportunity "*to exercise its basic procedural rights, such as defending itself, providing evidence and making allegations"*. The Sole Arbitrator fully endorses these fundamental procedural protections underlying the concept of "passive mandatory joinder" and finds that they are entirely applicable in cases like the one before her.

71. In CAS 2023/A/10002, CAS 2023/A/10009, and CAS 2023/A/10010, the Sole Arbitrator had been asked not to apply the principle of "passive mandatory joinder" on the basis of the Appellants' respective submission of waivers of training compensation that had (allegedly) been issued by the affected third clubs (the respective beneficiaries of the claims). The Sole Arbitrator did not follow the Appellants' requests, finding that in the absence of the affected third parties' participation in the CAS proceedings, he was unable to verify the third parties' respective positions on the waivers. Even in the absence of any indications that would cast doubt on the validity of such waivers, the Sole Arbitrator found that it was of fundamental importance for the affected parties to have the opportunity to comment on the waivers (e.g. by confirming validity, or by contesting it).

72. The Sole Arbitrator fully sides with these considerations. When the third party is not involved in the CAS proceedings, it is deprived of any opportunity to challenge evidence relating to it that was submitted by another party.

73. In the present case, although the Waiver makes specific reference to the Appealed Decision (by referencing "*EPP 28309*" and "*Allocation Statement TC-5550*"), and is addressed directly to the FIFA Clearing House and to the CAS, the Sole Arbitrator is unable to confirm, based on the record before her, whether the letter has indeed been sent to the FIFA Clearing House and the CAS directly by OL (the affected third party), and whether it was received by them from OL. While the Appellant asserts that the Waiver "*is written out (also) to CAS*", there is no proof of receipt of such letter by the CAS or the FIFA Clearing House. The letter does not

bear OL's letterhead, and it neither indicates a postal or e-mail address of either the FIFA Clearing House or the CAS. Therefore, the provenance of the Waiver, introduced in these CAS proceedings by the Appellant (and not by OL), is unclear, and OL would have to be given the opportunity to comment on it in order to secure its due process rights as an affected third party. This is, however, not possible without OL being a respondent in the present case.

74. The strict application of the passive mandatory joinder doctrine in the present case does not amount to "*excessive formalism*", as contended by the Appellant. Rendering a decision without OL being named a respondent would constitute a due process violation, specifically a violation of OL's right to be heard in respect of the provenance and validity of the Waiver (see, e.g., CAS 2019/A/6635, para. 75.). Furthermore, the Appellant has failed to explain why it would have been difficult, let alone impossible, for it to identify OL as a Respondent in its Appeal.

75. In conclusion, the Sole Arbitrator finds that the Appeal cannot be decided without OL as a respondent, and that it must, therefore, be dismissed.

B. Can the Waiver be accepted despite that it has been submitted late?

76. In light of the fact that the Sole Arbitrator cannot take a decision on the Waiver in the absence of OL being a party in this arbitration, she does not have to decide whether or not evidence created after the notification of the Appealed Decision can even be considered during appeal proceedings.

XI. COSTS

(…)

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Hapoel Tel Aviv FC on 26 March 2024 against the FIFA determination of the FIFA general secretariat issued on 6 March 2024 on the Electronic Player Passport 28309 and the Allocation Statement TC-5550 corresponding to EPP 28309, generated on 26 February 2024, is dismissed.

2. The FIFA determination of the FIFA general secretariat issued on 6 March 2024 on the Electronic Player Passport 28309 and the Allocation Statement TC-5550 corresponding to EPP 28309, generated on 26 February 2024, is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 22 April 2025

THE COURT OF ARBITRATION FOR SPORT

Annett Rombach
Sole Arbitrator