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

CAS 2024/A/10515 Rizespor AS v. Ronaldo César Mendes de Medeiros & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark

Arbitrators: Mr José Andrade, Attorney-at-Law in Porto, Portugal

Mr Ulrich Haas, Law Professor in Zürich, Switzerland, and Attorney-at-Law in Hamburg, Germany

in the arbitration between

Rizespor AS, Turkey

Represented by Mr Ben Cisneros, Attorneys-at-Law, Morgan Sports Law, London, United Kingdom, and Ms Anil Gürsoy Artan, Attorney-at-Law in Ankara, Türkiye

-Appellant-

and

Ronaldo César Mendes de Medeiros, Brazil

Represented by Mr Marcos Motta and Mr Victor Eleuterio, Attorneys-at-Law, Bichara e Motta Advogados, Sao Paulo, Brazil

-First Respondent-

and

Fédération Internationale de Football Association, Zürich, Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios, FIFA Director of Litigation

- Second Respondent-

I. PARTIES

1. Rizespor AS (the "Club" or the "Appellant") is a professional football club based in Rize, Turkey. The Club is affiliated with the Turkish Football Federation (the "TFF"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA" or the "Second Respondent").

2. Mr Ronaldo César Mendes de Medeiros (the "Player" or the "First Respondent") is a professional football player of Brazilian nationality, born on 16 August 1992. The Player is currently not under contract with any professional football club.

3. FIFA is the world governing of football, whose headquarters are located in Zurich, Switzerland. FIFA is the governing body of international football and is recognised as such by the International Olympic Committee. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

4. The Appellant and the First and Second Respondents are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

A. *Background facts*

5. Below is a summary of the main relevant facts as established on the basis of the Parties' written and oral submissions and the evidence examined in the course of these proceedings. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the award only refers to the submissions and evidence the Panel considers necessary to explain its reasoning.

6. On 6 July 2021, at a time when the Club was competing in the Süper Lig, which is the top tier of Turkish football, and following discussions between the Player's agent, Mr José Rocha, and the Club, the latter sent an employment offer proposal to the Player, who was then under contract with the Al Wasl FC (UAE) until 30 June 2023.

7. The employment offer stated, *inter alia*, as follows:

"[…]

We, [the Club] are interested in permanently transferring you to our Club.

Please find below our new proposal in the basis of the following conditions:

1) For 2021/2022 season, 850.000-EUR (eight hundred fifty thousand Euros) in total.

The method of payment shall be as follows:

- 150.000-EUR (one hundred fifty thousand Euros) fix payment.

- 700.000EUR (seven hundred thousand Euros) total annual salary shall be divided into 10 equal monthly salaries starting with August 2021 ending on May 2022 and shall be paid at the end of each month

2) For 2022/2023 season, 850.000-EUR (eight hundred fifty thousand Euros) in total.

- 150.000-EUR (one hundred fifty thousand Euros) fix payment.

- 700.000EUR (seven hundred thousand Euros) total annual salary shall be divided into 10 equal monthly salaries starting with August 2022 ending on May 2023 and shall be paid at the end of each month

3) If the player scores or assists 15 goals in super league games, then he shall be entitled to receive 50.000-EUR (fifty thousand Euros) as bonus.

4) If the player appears in 25 (twenty-five) super league games, then he shall be entitled to receive 50.000-EUR (fifty thousand Euros) as bonus.

5) If the club ranks at first 7 place at the end of the season, then the player shall be entitled to receive 50.000-EUR (fifty thousand Euros) as bonus.

[…]"

8. On 7 July 2021, Mr Rocha sent a WhatsApp message to the Club's Sporting Director, Mr Fahri Tatan stating, *inter alia*, as follows:

"[…] I have got the official proposal here, can you confirm that all values for the player are net (without taxes)?"

9. Also on 7 July 2021, and since no response was received from the Club's Sporting Director, Mr Rocha sent a WhatsApp message to the Club's Administrative Manager, Mr Murat Artan, stating, *inter alia*, as, follows:

"[…] Ok my friend, I just wish [to] confirm that:

- *the values for the PLAYER in the proposal are all Net (without taxes) and*
- *or what e-mails I should send the details of our company for the commission contract. […]".*

10. On the same date, Mr Artan replied via WhatsApp "*I should ask those*".

11. By WhatsApp message dated 15 July 2021, Mr Rocha wrote, *inter alia*, as follows to Mr Artan and also forwarded the same text to Mr Tatan directly via WhatsApp:

"Hello Mr Murat Artan. Please forward to Mr. Fahri Tatan from Rizespor.

[…]

Employment contract RIZESPOR-PLAYER

(even if it is going to be signed after the medical exam, we need to be sure that the values for the PLAYER are going to be NET) […]"

12. According to Mr Rocha, on 16 July 2021, he spoke over the phone with Mr Artan and was reassured that "*net*" meant that the Club would exempt the Player from any applicable taxes in Turkey.

13. On 17 July 2021, and following further correspondence between the Club and Mr Rocha, the Club forwarded a draft version of an employment contract to Mr Rocha, and on 19 July 2021, the latter confirmed that the Player was willing to enter into this contract.

14. On 26 July 2021, the Player and the Club signed the Professional Player´s Contract (the "Contract"), valid from the day of signing until 31 May 2023. The Contract stated, *inter alia*, as follows:

"[…]

Net Monthly Salary (Not less than minimum wage): Minimum wage

3.1.

FOR 2021 - 2022 SEASON

In Total: 935.000-EUR (Nine hundred thirty-five thousand Euros) in net

Fix Payment: Club shall pay 235.000-EUR (Two hundred thirty-five thousand Euros) in net as fix payment. The payment will be made in two instalments; 117,500-EUR in net shall be paid on 31.08.2021 and 117,500-EUR in net shall be paid on 30.11.2021.

Salary: Club shall pay a total of 700.000-EUR (Seven hundred thousand Euros) in net as salary. The salary shall be 70.000-EUR (Seventy thousand Euros) in net and will be paid between the dates of 31st of August 2021 and 31st of May 2022 in monthly basis. The payments shall be made at the end of each month. Minimum wage is included in the monthly salary. No payment will be done for the months of June and July 2022.

FOR 2022 - 2023 SEASON

In Total: 935.000-EUR (Nine hundred thirty-five thousand Euros) in net

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Salary: Club shall pay a total of 700.000-EUR (Seven hundred thousand Euros) in net as salary. The salary shall be 70.000-EUR (Seventy thousand Euros) in net and will be paid between the dates of 31st of August 2022 and 31st of May 2023 in monthly basis. The payments shall be made at the end of each month. Minimum wage is included in the monthly salary. No payment will be done for the months of June and July 2022

3.2. During the term of the Contract:

- *If the Player scores or assists 15 (fifteen) goals at super league games in a season, then the Player shall be entitled to receive 50.000-EUR (fifty thousand Euros) in net as bonus for that season. The payment shall be done in thirty days following the last official game of the relevant season.*

- *If the club ranks at first 7 place at the end of the season, then the Player shall be entitled to receive 50,000-EUR (fifty thousand Euros) in net as bonus for that season.*

The payment shall be done in thirty days following the last official game of the relevant season.

• If the Player begins to play in 25 (twenty-five) super league games with the starting 11 in a season, then the Player shall be entitled to receive 50,000-EUR (fifty thousand Euros) as bonus for that season. The payment shall be done in thirty days following the last official game of the relevant season.

3.3. All the amounts stated at the hereby agreement is net.

[…]".

15. By the end of the 2021/2022 season, the Club was relegated to the Turkish second division, i.e. TFF Lig 1.

16. At this point, and due to the outstanding salaries, the Club and the Player signed a settlement agreement establishing a payment schedule for such outstanding amounts. Also, there were discussions regarding a possible mutual termination of the Contract due to the Club's financial situation as a Lig 1 club. However, no such agreement was reached, and the Player stayed with the Club.

17. On 30 January 2023, the Club provided the Player with a notification from the Turkish tax authorities indicating accrued taxes due by the Player of Turkish lira ("TRY") 1,573,593.06 in total, equivalent to TRY 786,796.53 as income tax for the year 2021, and TRY 786,796.53 as penalty for failing to pay income tax.

18. By letter of 3 February 2023, the Player put the Club in default regarding the amount of EUR 117,500 as a part of his sign-on fee, which, pursuant to the Contract, had fallen due on 30 November 2022, and further stating, *inter alia*, as follows:

"[…]
Additionally, in view of the tax notification recently forwarded by the Club to the Player, we hereby inform you that the Player is seeking legal advice to examine his fiscal situation in Turkey, in particular whether any taxes might [sic] applicable over his remuneration should have been paid by the Club or by the Player himself. Therefore, taking into account that all amounts specified in clause 3 of the Employment Contract are net, the Player reserves his right to request anticipation or reimbursement from the Club for any taxes he might be liable to pay in Turkey, including over any past payment received under the Employment Contract. […]"

19. By letter of 7 February 2023, the Club responded, *inter alia*, as follows:

"[…] As it comes to the matter of Player's tax liability, I have been informed that the Player was directly notified by tax officers about his overdue income tax. According to Turkish Income Tax Law, individuals are obligated to pay their own tax incurred from their income. Football clubs are only obligated to pay withholding tax for the Players. The Club fulfils its obligations by paying the withholding tax.

We reject all the claims and reserve all our rights regarding this issue."

20. By letter of 24 February 2023, the Turkish tax authorities informed the Club that a total of TRY 1,573,593.06 had been temporarily seized from the Club's bank account imposed as a lien on the Player's receivables.

21. By email of 27 February 2023, the Club forwarded the Player the said letter and stated, *inter alia*, as follows:

"[…] According to this letter, Rize Revenue Office has imposed lien on the receivables of the Player and asks from the Club to pay the relevant amount to them in 7 days.

As being the employer, Club has no other choice [than] paying the Player's receivable to the Revenue Office at latest on 03.03.2023."
[…]"

22. By letter of 1 March 2023, the Player put the Club in default, granting a 15-day time limit to remedy the default stating, *inter alia*, as follows:

"[…] although the Player has acknowledged receipt of his outstanding signing-on fee, we remind you that his monthly salaries of January and February 2023 remain unpaid to date.

In addition, we strongly object to your allegation that the Club has fulfilled its contractual obligations by only paying the Player's withholding tax. Apart from the Club's failure to assist or instruct the Player in understanding Turkey's tax legislation, the payments made to date by the Club cannot be considered "net" in the sense the employment contract between the Parties, since the Player will still have to pay income tax over them. Regrettably, the Player only became aware of such problem last month, when notified by the relevant tax authority.

In relation to the 2021 fiscal year, the tax authority currently requires the Player to pay the amount of TRY 786,796.53 […] as income tax.

Therefore, in accordance with articles 12bis and 14bis of the FIFA Regulations on the Status and Transfer of Players, this letter serves to put the Club on notice to proceed with the payment of the above-mentioned salaries and income tax within the next 15 (fifteen) days. Failure to do so may result in the adoption of all appliable measures, without any prior notice.

Furthermore, please be informed that the Player is currently assessing his exact income tax liability for the 2022 and 2023 fiscal years and, thus, has no choice but to, once again, reserve his right to request anticipation or reimbursement of such amounts from the Club.

With respect to Ms. Giirsoy Artan's second e-mail, we again have to strongly object to the Club's allegation that the "Rize Revenue Office has imposed lien on the receivables of the Player and asks from the Club to pay the relevant amount to them in 7 days" (sic) and that the "Club has no other choice then paying the Player's receivable to the Revenue Office at latest on 03.03.2023".

From the contents of the tax authority's notification, we point out that the tax office did not ask the Club to make any payments on behalf of the Player, but only to block his salary by

keeping it in the possession of the Club. Put simple, this is not a seizure but a precautionary seizure.

Without prejudice to that, the tax office has also acted unlawfully by requesting the Club to block the Player's entirely salary, as under Turkish law (see art. 71 of the Law Amme Alacaklarinin Tahsil Usulii Hakkinda Kanun) no more than one-third of an employee's salary can be seized.

Therefore, the Player requests the Club to refrain from making any payments to the tax office and, once again, reserves all his rights accordingly.

[…]"

23. On 2 March 2023, the Club reiterated its position, stating, *inter alia*, as follows:

"[...] First of all, I would like to draw your attention to the fact that the Club is the third party between the Revenue office and [the Player]. Therefore, until the Club received a court order, it must pay the blocked amount to the Revenue Office at latest on 03.03.2023. (A payment order has been included as annex to the first letter of the Revenue Office, please see the second document I´ve sent you on 27.02.2023)

It is clear that the Club has no obligation to pay the Player's income tax. Moreover, the Club has been ordered to block the Player's receivables by the Revenue Office. Since there are no grounds for notification of FIFA RSTP Art 12 bis and 14 bis, we object to those notifications. […]".

24. On 4 March 2023, the Reconciliation Request previously filed by the Player with the local tax authorities, seeking amnesty and/or the reduction of the tax payment and fine, was supplemented by the Player's Turkish counsel.

25. On 8 March 2023, the Player received an email from the Turkish Ministry of Labour and Social Security informing him that an apparent work permit exemption had been approved in his favour, subject to the payment, within a 30-day time limit, of the amount of TRY 3,090.20 for the work permit exemption as well as the TRY 356,00.

26. On 9 March 2023, the Player received another notification from the Rize Tax Office with information that the amount of TRY 1,405,999.00, corresponding to his full monthly salary for February 2023, had been paid by the Club to an escrow account of the tax office as a result of the existing "*lien*".

27. On the same date, the Club informed the Player that it had paid the Player's outstanding salary for January 2023 and, whilst not denying that the Player had been deregistered from the TFF Lig 1, stated that he would again be allowed to train with the first team.

28. By letter of 13 March 2023, the Player granted the Club a five-day time limit to, *inter alia*, "*undertake any and all actions necessary for the renewal of the Player's work permit, visa and/or any other authorisation required in Turkey to allow him to perform, and comply with, his Employment Contract, including the payment of any fees.*"

29. By letter of 20 March 2023, the Club informed the Player that it would pay the amount in relation to the work permit and that all applications had been filed under the supervision of the Club.

30. On 28 March 2023, and following the filing by the Player of his personal tax declaration for 2022, the Turkish tax authorities confirmed that the Player's personal income tax liability for 2022 was TRY 4,842,041.79.

31. On 30 March 2023, the Player paid the first instalment of his 2022 income tax in the amount of TRY 2,421,315.80.

32. By letter of 6 April 2023, the Player informed the Club, *inter alia*, as follows:

"[…] *In this regard, we inform that the Player timely submitted his 2022 income tax declaration, according to which his total income during such fiscal year has been of TRY17,798,310.84 (seventeen million, seven hundred ninety-eight thousand, three hundred ten Turkish Liras and eighty-four cents).*

Based on this total income, the Player will have to pay a total amount of TRY4,842,041.79 (four million, eight hundred forty-two thousand, forty one Turkish Liras and seventy-nine cents) as income tax, in two equal instalments of TRY2,421,315.80 (two million, four hundred twenty-one thousand, three hundred fifteen Turkish Liras and eighty cents), the first which was timely paid on 30 March 2023 (proof of payment enclosed) and the second of which is due to be paid until 31 July 2023.

Additionally, absent any evidence that the Club had indeed paid the Player's Work Permit Exemption, as promised in Ms. Artan's e-mail of 20 March 2023, please be informed that the Player has also done so (proof of payment enclosed), in order to avoid any problems with Turkish authorities.

Lastly, please be informed that the Player has not yet acknowledged receipt of his latest salary, which fell due on 30 March 2023.

In the light of the above, and in accordance with articles 12bis of the FIFA Regulations on the Status and Transfer of Players, this letter serves to put the Club on notice to proceed with (i) the reimbursement of the tax payment and the Work Permit Exemption payment made by the Player, (ii) the anticipation of the second tax payment to be made by the Player and (iii) the payment of the Player's outstanding salary, within the next 10 (ten) days. Failure to do so may result in the adoption of all applicable measures, without any prior notice. Once again, the Player reserves all his rights."

33. On 10 April 2023, the tax authorities accepted the "Reconciliation Request" filed by the Player, informing the latter that his fiscal debt in connection with the financial year 2021 had been reduced from TRY 1,573,593.06 to TRY 396,053.71 and that any exceeding amount subject to the lien previously imposed would constitute a tax credit in favour of the Player's future tax-related burdens.

34. Accordingly, the income tax to be remitted by the Player as a second instalment related to the fiscal year 2022 was re-computed in the total amount of TRY 1,411,075.60.

35. By email of 14 April 2023, the Club reiterated its position, stating, *inter alia*, as follows:

"[…] At our reply letter of 20.03.2023, we have guaranteed the Player that the Club would pay the relevant amounts to the Ministry of Labor and Social Security. Thus, the Club paid the relevant amounts. The Player signed with the Club in July 2021 and until today, he did not pay any amount to the government authorities relating his work/resident permits. The Player can claim the money from Ministry of Labor and Social Security because of the double payment.

I have also been informed that the Player's March salary has already been paid. He has no overdue payables.

As to the Player's income tax payments, the Club maintains its position and opinion about the Player's individual income tax liability. Therefore, Article 12bis is not applicable."

36. On 13 June 2023, the Player, once again, put the Club in default, stating, *inter alia*, as follows:

"[…]

Furthermore, the Player highlights that he has not yet received his salaries in connection with the months of April and May 2023.

Lastly, considering the Club's final ranking in the league in the 2022/23 season the Player also reminds you of the bonus stipulated in clause 3.2 of the Employment Contract, which shall be paid within 30 /thirty) days of the Club's last official match.

In light of the above, and in accordance with articles 12bis of the FIFA Regulations on the Status and Transfer of Players, this letter serves to put the Club on notice to proceed with the following payments within the next 10 (ten days): (i) the reimbursement of the Work Permit Exemption payment made by the Player; (ii) the amounts corresponding to the taxes already paid and to be paid by Player in connection with his contract, as requested in our previous notifications; (iii) the Player's overdue salaries; and, once overdue, (iv) the bonus in connection with the Club's final ranking the league in the 2022/23 season. Failure to do so shall result in the adoption of all applicable measures, without any prior notice. […]"

37. By letter of 22 June 2023, the Club replied, *inter alia*, as follows:

"[…] The Player has two monthly overdue salaries. However, at the beginning of 2022/2023 season, the Player arrived one day late to the season preparation camp. Therefore, he has been sanctioned a fine of EUR 7,000.00 by the Board.

After deducting the EUR 7,000 from the Player's total receivables, the Club has to pay a total of EUR 133,000.00 to the Player.

Since the season is over, the Club is having a cash flow problem at the moment.

With its best efforts, the Club is proposing the total amount of EUR 133,000.00 to be paid in four instalments:

1. EUR 34,000.00 to be paid 31.07.2023
2. EUR 34,000.00 to be paid 31.08.2023
3. EUR 34,000.00 to be paid 30.09.2023
4. EUR 34,000.00 to be paid 31.10.2023

We have already rejected the Player's claims regarding reimbursement of the Work Permit Exemption payment and his individual income tax with its grounds at our previous emails.

Moreover, the Player did not entitle to receive the bonus in connection with the final ranking in the TFF First League."

38. On 29 June 2023, the Player rejected the Club's proposal and granted a final deadline of five days to remedy its default.

39. On 31 July 2023, the Player paid the second instalment of his 2022 income tax in the amount of TRY 1,411,075.60.

B. *Proceedings before the FIFA Dispute Resolution Chamber*

40. On 5 October 2023, the Player lodged a claim before the FIFA DRC on the basis of the Club's failure to comply with its financial obligations, requesting the following:"

- *EUR 140,000.00 net, corresponding to the nominal value of the [Player's] salaries of April and May 2023, and acknowledged by [the Club] on its letter dated 22 June 2023;*

- *EUR 50,000.00 net, corresponding to the bonus stipulated in clause 3.2 of the Contract, which sole condition to be triggered was the [Club's] final ranking within the first 7 positions at the end of the season, regardless of the division;*

- *TRY 3,446.20 as working permit exemption fee paid by the Claimant on 28 March 2023 and never reimbursed by the Respondent, although it admitted being responsible for it.*

- *TRY 396.053,7, corresponding to the [Player's] income tax in connection with the fiscal year 2021;*

- *TRY 4,842,041.79, corresponding to the [Player's] income tax in connection with the fiscal year 2022;*

- *A 5% interest p.a. on each amount claimed as from the relevant due date until the date of effective payment by the [Club]."*

41. In support of this claim, the Player submitted, *inter alia*, that the Club failed to make the respective payments after having been put in default and that the wording of the Contract is clear and unequivocal, establishing the Club's financial liability for the entire spectrum of fees, levies and charges under the relevant Turkish law.

42. In its reply, the Club first argued that a deduction of EUR 7,000 should be made from the Player's outstanding salaries because of a fine imposed on the Player for arriving late for his first day of the pre-season 2022/2023 camp.

43. With regard to the claimed bonus, the Club submitted that this was originally stipulated in 2021 when the Club had ranked 13th in the TFF Süper Lig and wished to qualify for a UEFA Competition by the end of season 2022/2023. In this respect, the Club highlighted that there would be no benefit of reaching the 7th place in the lower division as this would neither give access to the relevant playoff nor the TFF Süper Lig.

44. With regard to the tax issue, the Club objected to the alleged liability regarding the claimed reimbursement and stated that it acted in accordance with the domestic legal provisions and the Contract by paying the Player the sums stipulated in the Contract while arguing that Turkish law mandates that employees with an income that exceeds a certain threshold p.a. must submit an annual income declaration and pay this part of the income tax on their own. Accordingly, the Club had no responsibility or possibility when it came to filing the Player's tax declarations. In this regard, the Club submitted that it had received confirmation by the local tax authority that in accordance with the Turkish legal provisions on tax, clubs have no responsibility when it comes to filing of football players' tax declarations.

45. Once the Player had reached the relevant threshold in terms of personal income, no further amounts would be due by the Club to the competent tax authority, while these would rather be payable directly by the Player.

46. In this context, the Club argued having paid the Player's monthly salary as per the agreed net value of EUR 70,000, thus acting in compliance with the Contract.

47. Finally, the Club submitted that it already paid the relevant working visa fee and that the reimbursement of the Player's double payment is a matter between the Player and the Turkish Ministry of Labour and Social Security. The Club highlighted in this regard that the Player failed to inform the Club of his payment and that the said payment was made after the Club had guaranteed in writing to attend to the matter.

48. In his rejoinder, the Player initially acknowledged the fine imposed on him for attending late for the pre-season 2022/2023, thus accepting the deduction of EUR 7,000 from his outstanding salaries.

49. With regard to the claimed bonus, the Player argued that the bonus is triggered if the Club ranks between the first seven positions at the end of the season in the division that the Club is competing in at any given time, hence not being subject to the Club playing in the Süper Lig.

50. As to the reimbursement of the relevant income taxes, the Player challenged the Club's argument by arguing that at no point during the relevant negotiations conducted prior to the signing of the Contract in 2021 had the representatives of the Club mentioned the existence of any additional or potential fiscal burden on the Player.

51. In this respect, the Player further submitted that the Contract clearly stipulated that all payments were "*net*" and that it was the parties' mutual and common intention when

negotiating the inclusion of the term "*net*" that the Player's remuneration as set out in the Contract should correspond exactly to the amount received in the Player's bank account or anyway collected by the Player, free of any taxes, so that the Club should sustain the entire financial burden related thereto, if needed, via direct payment to the tax authorities by the relevant withholding and/or reimbursement of any payment made by the Player on top of his personal income.

52. Finally, the Player submitted that the Club should reimburse him for the fee related to his working visa as the fee was only paid by him due to the Club's inactivity and in order to avoid implications with the public authorities.

53. In its final comments to the FIFA DRC, the Club submitted, *inter alia*, that the Player did not prove to have acted with the relevant due diligence and that the Player and his attorney's lack of sufficient knowledge of the potential tax implications relevant under Turkish tax law cannot transfer the corresponding burden to the Club's shoulders.

54. In this regard, the Club objected to the Player's allegations that he was assured during the contractual negotiations that no further income taxes would be due on top of the amounts withheld by the Club on the Player's gross salary.

55. To further support its position, the Club referred to the decision of the DRC in the dispute between the player Yala Bolasie and the Club (FPDS 7549, decision of 7 December 2022) and the CAS award in the subsequent appeals proceedings before the CAS (CAS 2023/A/9438) (the "Bolasie-case"). In this regard, the Club argued that the present case is identical to the "Bolasie-case" and that the Player, similar to Yala Bolasie, could not discharge his burden of proof.

56. With regard to the Player's demand for reimbursement for the relevant working visa's fee, the Club argued having not been informed by the Player that the latter had already paid the said amount whereas the Club had confirmed that it would attend to the matter in its email dated 20 March 2023, hence the Player's alleged concern would have no grounds.

57. Finally, and with regard to the bonus issue, the Club maintained its objection to the Player's entitlement based on the assumption that the parties' mutual intent was to award the bonus to the Player in case of qualification to any UEFA competition only.

58. The FIFA DRC initially analysed whether it was competent to deal with the case and found that the March 2023 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules") was applicable.

59. The FIFA DRC further observed that, in accordance with Article 23 (1), as read with Article 22 (1)(b), of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") (May 2023 edition), it was competent to deal with the matter at stake, which concerned an employment-related dispute of an international dimension.

60. Having established its competence to deal with the matter, the FIFA DRC concluded that since the claim was filed on 5 October 2023, the May 2023 edition of the FIFA RSTP is applicable to the matter at hand as to substance.

61. Moreover, and with reference to the Procedural Rules, the FIFA DRC recalled the basic principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact carries the respective burden of proof.

62. In this context, the FIFA DRC acknowledged that its task was to determine whether the Club could be held liable to reimburse the Player for costs incurred on the basis of income tax pursuant to the contractual provisions regarding the payment of the Player's remuneration.

63. The FIFA DRC then recalled the facts of the case and took into account that clause 3.3 of the Contract specified that "*all the amounts stated hereby agreement are net*".

64. Furthermore, the FIFA DRC considered the exchange of correspondence between the contractual parties prior to concluding the Contract, where the Player had clearly manifested an evident concern with respect to the issue of applicable taxes over his remuneration and where the Club's response in this respect, either at a verbal or factual level, appeared construed in the FIFA DRC's view as reassuring or averting any potential issue, thus *de facto* engendering certain expectations in the Player's mind, in particular the conviction that he would not be subject to any tax burden in addition to the regular withholding tax operated by the Club on his gross salary.

65. In light of the above, the FIFA DRC held that the expression "*net*" as adopted in the Contract should postulate the Club's full liability in relation to the whole Player's income, regardless of the amount stipulated and the recipient of the payment notices emitted by the competent tax authorities (*in claris non fit interpretatio*).

66. Therefore, the sole consequence of having the said payment notices been addressed by the Tax Office directly to the Player would be that the Club should have instead paid the relevant amounts to the Player himself so as to adhere to the actual terms of the Contract.

67. Consequently, the FIFA DRC concluded that the Player had met his burden of proof by submitting evidence of the relevant invoices and receipts of payment, which confirmed that the additional taxation was strictly related to the employment-relationship in force between the parties.

68. The FIFA DRC also took note of the Club's reference to the "Bolasie-case". As was noted in that CAS award (CAS 2023/A/9438), also in the present case the Club was aware of an obligation on the Player to pay taxes in Turkey without the Club informing the Player accordingly. In fact, during the entire negotiation process, the Club did not address this issue with the Player. Whilst it was found that there is a responsibility on a player to be aware of tax obligations, the FIFA DRC, as was also noted in the CAS award in the Bolasie case, cannot be blind to the Club's diligence to make sure that the Player fully grasped the Club's understanding of the term "*net*", all the more so taking into account the customary expectation in the football industry as to the word "*net*" and, more importantly, having in mind that the Player brought up this tax issue.

69. As a matter of fact, it was the agent of the Player on the latter's behalf that made it clear in WhatsApp correspondence between him and the Club, the existence of which was also not disputed by the Club, that "*net*" was to be understand as "*without taxes*".

70. By means of this message, and at least as from this moment, it was clear to the Club that the Player was of the understanding that no taxes had to be borne by him and that this was how he understood it. In the absence of any further reply on the part of the Club and by making the choice not to discuss the tax issue directly with the Player before signing the Contract, and despite being aware of the position of the Player, the FIFA DRC found that the Player could in good faith have expected that the term "*net*" would be that he was to be reimbursed by the Club for any private payable income tax originating from his contractual relation with the Club.

71. What was also an important difference, and reason for the CAS panel to rule in favour of the club in the "Bolasie-case" is that it attached value to the fact that the term "*net*" was also applied in relation to the buy-out provision in that specific employment contract. This was, however, also not the case in the present matter as nowhere else in the Contract any reference was made to "*net*", and it was only used to address the Player's bonuses and salaries.

72. Accordingly, the FIFA DRC concluded that pursuant to the principle of *pacta sunt servanda*, the Club should be held financially liable to the Player for the payment of the income taxes claimed by the latter in the amount of TRY 5,238,095.50.

73. The FIFA DRC then turned its attention to the Player's claim for reimbursement of the working visa fee, emphasising that the Club remained inactive regardless of being informed about the deadline granted by the relevant authority, which de facto forced the Player to personally execute the payment in order to avert any potential issue regarding his immigration permit.

74. In this respect, the FIFA DRC noted that the Club only paid the said fee after having received a letter of confirmation by the Player of the said payment. Accordingly, the FIFA DRC established that the Club should refund the Player the relevant sum paid as a fee for the working visa in the amount of TRY 3,446.20.

75. Regarding the question of the Player's outstanding remuneration, the FIFA DRC observed that it remained uncontested that the Club failed to pay the Player's salary related to (part of) the months of April 2023 and May 2023, for a total of EUR 133,000, hence the FIFA DRC acknowledged that the said amount was outstanding to date and should be paid by the Club.

76. The FIFA DRC then noted that the two parties strongly disputed the Player's entitlement to the sum of EUR 50,000 as a bonus connected with the Club's final ranking at the end of the season 2022/2023.

77. In this respect, the FIFA DRC emphasised that by adopting the term "*season*" instead of referring expressly to the name of the relevant competition, especially when read in conjunction with the constellation of additional bonuses where express reference to the TFF Süper Lig was made, it would suggest that the sole condition for the activation of the bonus was the achievement of the 7th place in any competition. Hence, and having ranked 7th at the end of the season (in Lig 1), the FIFA DRC concluded that the Club should pay the Player the relevant bonus of EUR 50,000.

78. Consequently, and in accordance with the general legal principle of *pacta sunt servanda*, the FIFA DRC decided that the Club is liable to pay to the Player the outstanding amounts of EUR 183,000 and TRY 5,241,541.70.

79. In addition, considering the Player's request as well as the constant practice of the FIFA DRC in this regard, the FIFA DRC decided that the Club must pay to the Player interest at 5% p.a. on the outstanding amounts as from the respective due dates until the date of effective payment.

80. In continuation, the FIFA DRC referred to Article 12bis (2) of the FIFA RSTP, which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with Article 12bis (4) of the FIFA RSTP, also taking note of the fact that Player had duly put the Club in default of payment of the relevant amount while setting a time limit of ten days to remedy the default.

81. Based on that, the FIFA DRC decided to impose a warning on the club.

82. Finally, and with reference to Article 24bis (1) and (2) of the FIFA RSTP, the FIFA DRC decided that in the event that the Club should fail to pay the amount due to the Player within 45 days of the notification of the decision, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods should become immediately effective on the Club in accordance with Article 24bis (2), (4) and (7) of the FIFA RSTP.

83. On 8 February 2024, the FIFA DRC rendered the Appealed Decision and decided that:

1. The claim of [Mr Ronaldo Cesar Mendes De Medeiros], is accepted.

2. [Rizespor AS] must pay to [Mr Ronaldo Cesar Mendes De Medeiros] the following amount(s):

- *EUR 183,000 net as outstanding remuneration plus interest p.a. as follows:*

  - 5% interest p.a. over the amount of EUR 63,000 as from 1 May 2023 until the date of effective payment;

  - 5% interest p.a. over the amount of EUR 70,000 as from 1 June 2023 until the date of effective payment;

  5% interest p.a. over the amount of EUR 50,000 as from 21 June 2023 until the date of effective payment.

- *TRY 5,241.541.7 net as outstanding amount plus interest p.a. as follows:*

  - 5% interest p.a. over the amount of TRY 396,053.71 as from 10 March 2023 until the date of effective payment.

  - 5% interest p.a. over the amount of TRY 1,009,650.39 as from 10 March 2023 until the date of effective payment.

- 5% interest p.a. over the amount of TRY 3,446.20 as from 29 March 2023 until the date of effective payment.

- 5% interest p.a. over the amount of TRY 2,421,315.80 as from 31 March 2023 until the date of effective payment.

- 5% interest p.a. over the amount of TRY 1,411,075.60 as from 1 August 2023 until the date of effective payment.

3. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.

4. A warning is imposed on [Rizespor AS].

5. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:

1. [Rizespor AS] shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.

2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.

6. The consequences shall only be enforced at the request of [Mr Ronaldo Cesar Mendes De Medeiros] in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.

7. The decision is rendered without costs."

84. On 28 March 2024, the grounds of the Appealed Decision were notified to the Appellant and the First Respondent.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

85. On 17 April 2024, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code") against the Appealed Decision.

86. On 8 May 2024, and within the granted extension of time, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

87. On 22 July 2024, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Arbitral Tribunal appointed to hear the appeal was constituted as follows:

President: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark

Arbitrators: Mr José Andrade, Attorney-at-Law in Porto, Portugal
Mr Ulrich Haas, Law Professor in Zürich, Switzerland and Attorney-at-Law in Hamburg, Germany.

88. On 19 July and 24 June 2024, respectively, and within the granted extension of time, the First and Second Respondents filed their Answers in accordance with Article R55 of the CAS Code.

89. By letter of 29 July 2024, the Appellant forwarded Annex 1 to its Exhibit 18 (Expert Report) of the Appeal Brief, which allegedly was inadvertently omitted from the original exhibit, setting out "*the relevant provisions of Turkish income tax law to which the expert refers, in English*".

90. By letter of 20 August 2024, the Parties were informed that the Panel had decided to hold a hearing in Lausanne, Switzerland, and by letter of 21 August 2024, FIFA informed the CAS Court Office, *inter alia*, that "*the matter at stake concerns a strictly horizontal dispute with FIFA's involvement being limited to the imposition of a warning on the basis of Article 12bis RSTP. As such, FIFA's presence at the hearing appears to be unnecessary and we therefore do not intend to attend the hearing unless the Panel indicates that it considers FIFA's presence necessary for the resolution of the dispute.*"

91. By letter of 27 August 2024, the First Respondent stated that it would "*not object to its admissibility in the event the Panel wishes to examine it and the Appellant submits the original text of the relevant provisions in Turkish) to which it refers"*, and by letter of 29 August 2024, and upon request by the Panel, the Appellant filed the requested original Turkish text of the relevant provisions of Income Tax Law No. 193.

92. The Parties all signed and returned the Order of Procedure, confirming, *inter alia*, the jurisdiction of the CAS to hear this dispute.

93. On 6 December 2024, a hearing was held at the CAS Court Office in Lausanne, Switzerland.

94. In addition to the Panel and Mr Björn Hessert, Counsel to the CAS, the following persons attended the hearing:

<u>For the Appellant:</u>

Mr William Sternheimer – Counsel;

Mr Ben Cisneros – Counsel;

Ms Anil Gürsoy Artan – Counsel;

Mr Murat Artan – Witness (remotely).

<u>For the First Respondent:</u>

Mr Victor Eleuterio – Counsel;

Mr José Maurício Rocha – Witness (remotely).

The Second Respondent did not attend the hearing in accordance with its statement of 21 August 2024.

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

96. The Panel heard the evidence of Mr Murat Artan and of Mr José Maurício Rocha, both being invited by the Panel to tell the truth subject to the sanctions of perjury under Swiss law. The Parties and the Panel had the opportunity to examine and cross-examine the witnesses.

97. The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.

98. After the Parties' final submissions, the Panel closed the hearing. The Panel took into account in its subsequent deliberations all the evidence and arguments presented by the Parties although they may not have been expressly summarised in the present Award.

99. Upon the closure of the hearing, the Parties stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

IV. SUBMISSIONS OF THE PARTIES

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

A. The Appellant

101. In its Appeal Brief, the Club requested the CAS to:

"a) set aside the [Appealed Decision] insofar as it relates to the Bonus and the Tax Liability;
(b) set aside the Warning imposed by the Second Respondent on the Appellant; and
(c) order the First Respondent to:
(i) reimburse the Appellant's legal costs and expenses related to this matter; and
(ii) bear any costs of the arbitration."

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

- With regard to the bonus, the FIFA DRC erred in determining that the Club is liable to pay the Player the bonus.

- The said bonus is not payable because, together with the other bonuses set out in clause 3.2 of the Contract, it applies only in respect of the Süper Lig, which was the common intention of the Club and the Player.

- In the 2022/23 season, the Club was playing in Lig 1 and not in the Süper Lig, and thus, as the Club finished in the top seven but of the Lig 1, the bonus is not payable.

- The fact that the wording of the second paragraph of clause 3.2. of the Contract refers merely to "*the season*", whereas the first and third paragraphs of clause 3.2 refer expressly to the "*super league*" is not decisive in this regard, and the second paragraph must be read consistently with the rest of clause 2.

- Such interpretation necessarily follows from the application of the *ejusdem generis principle* – i.e. that a general word is to be interpreted by reference to surrounding specific words. The general words (here, the second paragraph of clause 3.2) must be interpreted as being of the same kind as the specific words (here, the first and third paragraphs of clause 3.2). Thus, the second paragraph of clause 3.2 of the Contract must be construed as also applying only in respect of the Süper Lig (and not Lig 1).

- Moreover, when interpreting a contract, Article 18 (1) of the SCO requires that "*the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used [...] in error*".

- As explained by Mr Artan, at the time the Contract was entered into, the Club played in the Süper Lig and had done so for the three previous seasons also, and the Club intended that all bonuses included therein should apply only in respect of the performance in the Süper Lig, and the Player never suggested otherwise.

- The relegation of the Club, which was unexpected, caused a drop in the Club's revenues, and it therefore also makes no sense if the same bonuses should apply regardless of in which division the Club would compete.

- Moreover, and also from a sporting perspective, the achievement of finishing in the top seven of the Süper Lig is clearly a much bigger achievement than finishing in the top seven of Lig 1.

- Had the Club and the Player truly intended for the bonus to apply in respect of Lig 1 (or any other league below that), they would have expressly provided for this in the Contract, which they did not.

- Based on that, the correct interpretation of the second paragraph of clause 3.2 of the Contract is that the bonus was payable only in respect of the Club's performance in the Süper Lig and, given that the Club did not finish in the top seven of the said league in the 2022/23 season, the FIFA DRC Decision erred in holding the Club liable for the bonus.

- With regard to the tax issue, it is not disputed that pursuant to the Contract, the Club is required to pay the Player's salary on a "net" basis and that the present dispute essentially pertains to the interpretation to be given to the term "*net*", which is repeatedly mentioned in the Contract.

- The Parties seem to agree on the applicable principles of interpretation, according to which the term "*net*" must be subject to interpretation in accordance with Article 18 of the SCO, based on which the first step would be, if possible, to ascertain the common intention of the Parties.

- If the common intention of the Parties cannot be established, the consistent jurisprudence of the SFT and the CAS dictates that the Contract must then be interpreted objectively, according to the requirements of good faith (e.g. CAS 2015/A/4057, para. 68).

- However, and although the wording of an agreement may be the starting point in the objective interpretation of a contract, a purely literal interpretation is prohibited and the surrounding context and circumstances of an agreement (including other conditions within the contract and the purpose pursued by the parties) must also be considered (e.g. CAS 2021/A/7909, para. 41).

- Initially, it is noted that the Club agrees with the Player that "*net*" means "*free from all charges or deductions*" as confirmed by the CAS (e.g. CAS 2012/A/2806, para. 72). The same award states (in para. 75) that "*'net amount' refers to the final amount the creditor expects to receive in its bank account.*"

- The key question is whether the relevant liability falls upon the creditor or the debtor. If the liability falls upon the debtor (i.e. if a club is required to pay a player's taxes directly by making deductions at source), the debtor will be responsible for meeting that liability in addition to paying the net amount stipulated in the contract. However, if, as in the present case, the liability falls upon the creditor (i.e. the player is required to pay his own taxes out of his own money), the debtor is only liable to pay the net amount stipulated in the contract. This is confirmed by CAS jurisprudence in CAS 2006/A/1018 paras. 23 to 28.

- Given that the burden of paying the relevant income tax fell on the Player, it was the Player's responsibility to make provisions in the Contract to shift this liability on to the Club if he did not wish to meet this liability himself.

- However, he did not do so (notwithstanding that he was legally and commercially represented in the negotiations). Therefore, the burden of the payment of the pertinent income tax remains with the Player, and the Club's obligation to pay the "*net*" amount does not require the Club to pay the Player an additional amount in respect of the Player's personal tax liabilities.

- Indeed, this is exactly what the Panel concluded in the Bolasie case (paras. 100-101 and 105, 106 and 108), which, like the present case, was also a dispute between the Club and one of its former players regarding the payment of taxes, in circumstances where the relevant employment contract referred only to payments being "*net*".

- Given the almost identical sets of circumstances, combined with the fact that the Panel's reasoning is entirely consistent with the CAS jurisprudence, the conclusion of the Panel in the Bolasie case must be followed in this case. There is nothing in the

Contract or the surrounding circumstances that can give rise to an interpretation of the Contract which requires the Club to reimburse the Player in respect of his (additional) personal income tax liability.

- Thus, the amounts set out in the Contract were required to be paid by the Club without making any deduction.

- This is precisely what the Club has done. As such, the Club actually paid withholding tax in respect of the Player's salary by way of deduction from the grossed-up amounts under the Contract before paying the net amounts stipulated in the Contract to the Player in full. The Club's obligations under the Contract do not exceed the requirement to pay the sums stipulated therein without making any deductions therefrom, and the Player never discharged his burden of proof that this was allegedly the case.

- The Club has therefore satisfied its liability to the Player in full.

- According to Turkish tax law, (i) a club is liable to pay withholding income tax in respect of a player's (gross) salary under an employment contract, at the relevant fixed rate which is determined by the division the Club was playing in at the time. This withholding tax must be deducted from the player's gross salary by the club (i.e. at source) and must be paid by the club to the relevant tax authority directly.

- If a player's income exceeds a certain threshold (TL 650,000 for the 2021 tax year, TL 880,000 for 2022 and TL 1,900,000 for 2023), the player is also required to submit an annual income tax declaration by 31 March in the year following the end of the relevant tax year. The player is personally liable to pay tax on the income declared at the relevant progressive rates. However, the withholding tax paid by the club on the player's gross salary is deducted from the player's total tax liability, and the player is only liable to pay the difference. The player (not the club) is personally responsible for filing his annual declaration and for paying any additional tax which is owing (after the deduction of withholding tax by the club).

- If the player fails to pay any (additional) income tax on his salary (for any previous tax year), the Turkish tax authorities have various enforcement mechanisms available to them, including the right to impose a lien on the player's salary from the club (which, by law, requires the club to withhold any outstanding tax from the player's salary). However, the tax liability remains a personal liability of the player.

- In this regard, it should also be noted that it is not possible for a club to calculate precisely how much (additional) income tax a player will be required to pay on his salary from the club in any particular tax year until the end of that tax year because various matters may impact upon the amount of the player's tax liability (such as contingent payments, relegation/promotion and early termination). Therefore, and in case the Player was right in claiming that the Club was indeed responsible for paying any additional tax, the Club would not have been able to calculate (with accuracy) the grossed-up amounts due to the Player at the time such amounts were due to be

paid pursuant the Contract. In other words, if "*net*" had the meaning contended for by the Player, the Contract, as drafted, would not work.

- Furthermore, it was not possible for the Club under Turkish law to pay the Player's additional personal income tax liability directly by way of deductions from gross salary, or otherwise.

- Moreover, and even if (as suggested by the FIFA DRC) there was an obligation in the Contract for the Club to reimburse the Player in respect of his additional personal tax liability (at some unspecified point in time), which is not the case, that reimbursement would itself be treated as taxable income. This may then increase the Player's tax liability for the subsequent tax year, resulting in a potentially infinite liability for the Club. That would plainly be commercially unworkable.

- With regard to the pre-contractual negotiations between the Club and the Player, the FIFA DRC's interpretation is misconceived.

- First of all, Mr Artan does not recall ever discussing the tax issue with Mr Rocha, as alleged by the latter.

- Moreover, there were no other discussions between the two contractual parties regarding the tax position, nor about the meaning of the word "*net*".

- Thus, at no point during the pre-contractual negotiations did the Club provide any indication or assurance to the Player as to its understanding regarding the meaning of the word "*net*", nor that it would assume any liability for the Player's personal tax liabilities. Further, the Player did not seek to define the term "*net*" in the Contract.

- The Player was advised by his agent(s) and his lawyer during the pre-contractual negotiations.

- Nevertheless, at the time of entering into the Contract, the Player was not aware of his responsibility to submit a personal income tax declaration and to pay tax on his declared income, in addition to the tax withheld by the Club, if his salary exceeded a certain threshold as set out above. It was not until February 2023 that the Player sought Turkish tax advice on this issue. However, the Club was indeed aware of such responsibility of the Player at all material times during the negotiations and when signing the Contract.

- As such, there was no common intention between the contractual parties that the Club would indemnify the Player in respect of his personal liability to pay income tax in Turkey (i.e. in addition to that which the Club was required to pay by way of withholding tax).

- The only common intention of the Parties was that the Club would pay the amounts set out in the Contract without making any deductions for taxes (or otherwise), and the Player could not in good faith have expected that the term "*net*" would entitle

him to be reimbursed by the Club for any additional personal income tax payable by him.

- The Club did not make any misrepresentation to the Player, and at no stage prior to entering into the Contract did the Club ever declare that it would assume liability or would indemnify the Player in respect of his personal liability to pay income tax.

- Furthermore, it must be stressed that the Club had no duty to advise the Player on his tax obligations during the negotiations and thus, by not doing so, the Club did not act in bad faith as wrongfully submitted by the Player. This is consistent with CAS jurisprudence, e.g. CAS 2006/A/1018 and the Bolasie case, paras. 96 ff

- The Club does not dispute that it has entered into personal income tax indemnity clauses with other players in the past, in cases where such players have negotiated such clauses.

- However, the fact that the Club signed a contract with a different player with a different wording does not change the rights and obligations of the Player, for the mere reason that the Club is under no obligation to offer the same terms to each of its players. Some players manage to negotiate a shift of their additional tax burden, whereas some players, like the Player, do not.

- In any case, and as already mentioned, the Player was duly commercially and legally represented, based on which the Club could reasonably assume that the Player was aware of the effect of Turkey's income tax laws. Moreover, the Player could have sought local tax advice, which he failed to do.

- The Player never initiated such negotiations, and the circumstances of the pre-contractual negotiations do not support the Player's claim (noting that, as this is the Player's claim, the burden of proof rests on the Player, as a matter of subjective and/or objective contractual interpretation).

- Finally, and regarding the warning imposed by FIFA, such warning should never have been imposed and must therefore be set aside.

- The warning is grossly disproportionate since it is the Club's first offence in relation to the FIFA RSTP, the Club engaged proactively with the Player and the Club did not dispute before the FIFA DRC that it was liable to pay to the Player the amount of EUR 133,000 in outstanding salaries, but at the same time was not liable to pay the alleged bonus.

- Moreover, the Club paid the salary amount together with the costs for the work permit shortly after the notification of the Appealed Decision.

B. The First Respondent

103. In its Answer, the Player requested the CAS to enforce its jurisdiction over the present appeal and to grant it the following relief:

a) Dismiss all the allegations put forward by the Appellant;
b) Dismiss the present appeal and confirm the Appealed Decision in totum;
c) Order the Appellant to bear any and all administrative and/or procedural costs incurred in connection with this arbitration; and
d) Grant the Player a contribution towards his legal fees and/or other expenses incurred in connection with these proceedings, pursuant to article R64.5 of the CAS Code, in an amount to be fixed by the Panel at its own discretion but in no event lower than CHF15,000 (fifteen thousand Swiss Francs).

104. The Player's submissions, in essence, may be summarised as follows:

- The subject matter of the present dispute relates to the interpretation of certain clauses of the Contract pursuant to the FIFA RSTP and, more importantly, Swiss law.

- The Parties seem to agree on the applicable principles of interpretation in accordance with Article 18 of the SCO and that CAS jurisprudence establishes that the parties' mutual and common intention must prevail over the wording of a contract (e.g. CAS 2018/A/5950).

- Moreover, recent case law has modified the principle according to which the rules of interpretation should apply only if the terms of the agreement between the parties leave room for doubt or are unclear. In the words of the Swiss Federal Tribunal (127 III 444, para. b) *"(...) One cannot state that in the presence of a "clear text" one must exclude all other means of interpretation. It derives from Article 18 para. 1 CO that the meaning of a text, even a clear one, is not necessarily determining and that the purely literal interpretation is on the contrary prohibited. Even if a contractual clause appears clear at first view, it can result from the conditions of the contract, from the objectives sought by the parties or from other circumstances that the text of such contractual clause does not convey exactly the content of the agreement that was concluded. Consequently, even in case the terms used in a contract have a clear literal (i.e., unambiguous) meaning, the adjudicatory body must assess whether or not the parties truly wished to attribute such meaning to the terms used.*"

- "*Where a factual consensus cannot be proven, the declarations of the parties must be interpreted pursuant to the principle of good faith in the sense in which they could and should have been understood, taking into account the wording, the context as well as all circumstances*." (CAS 2019/A/6525, para. 67).

- While interpreting the Contract, even the clearest of its provisions, the Panel should therefore not stick to its literal wording or to the purely ordinary sense of the expressions (unilaterally) chosen by the Club, but seek to understand the background and the behaviour of the Parties, their goals and interests, as well as the circumstances of the negotiation. According to CAS 2018/A/5950 (preamble): "*This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them. The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation. By seeking the*

ordinary sense given to the expressions used by the parties, the real intention of the parties must be interpreted based on the principle of confidence. This principle implies that a party's declaration must be given the sense its counterparty can give to it in good faith, based on its wording, the context and the concrete circumstances in which it was expressed. Unclear declarations or wordings in a contract will be interpreted against the party that drafted the contract: it is of the responsibility of the author of the contract to choose its formulation with adequate precision (in dubio contra stipulatorem). Moreover, the interpretation must - as far as possible - stick to the legal solutions under Swiss law, under which the accrued protection of the weakest party."

- When applying the above principles of interpretation to the present matter, there is no room, however, for the application of common law principles such as the *ejusdem generis* principle invoked by the Appellant.

- Instead, the principle in *dubio contra stipulatorem* or *contra proferentem* should apply, meaning that any doubtful wording must be resolved against the party who drafted it (CAS 2009/A/1773 & 1774).

- With regard to the interpretation of the second paragraph of clause 3.2 of the Contract, it must be noted that only two out of the three bonuses in clause 3.2 refer to the Süper Lig.

- The nature of the two bonuses which are limited to the Süper Lig League is completely different from the one under dispute: while the former relates to the Player's individual performance (scoring goals, giving assists or playing a certain number of matches in the starting line-up), the latter involves the Club's first team collective performance.

- This simple finding makes a complete difference in the interpretation of such bonuses and undermines the Appellant's argument that, in accordance with the principle of *ejusdem generis*, they should be interpreted in conjunction.

- Moreover, a possible relegation was not entirely unlikely or unexpected for the Club.

- Furthermore, finishing in the top seven of the Süper Lig in the 2021/22 or 2022/23 seasons would not guarantee European qualification, which was reserved exclusively for the top 4 (four) clubs.

- In contrast, achieving a top-seven position in the 2022/23 Lig 1 held particular significance as it would give the Club an opportunity to be promoted back to the Süper League.

- The true scope of such bonus is, moreover, underpinned by the fact that payment was only supposed to occur within 30 (thirty) days from the end of the relevant season, thus not impacting the Club's finances during a possible season spent in the second division – as wrongly argued in the Appeal Brief.

- Based on the above, the Appellant's arguments concerning the said bonus must be dismissed and the Appealed Decision confirmed accordingly.

- With regard to the interpretation of the term "*net*" in the Contract, the Panel must also consider the background and the past experience of the Player in football.

- The Player came from a humble background in Brazil, and his first and only international experience before signing the Contract was in the UAE, where he played for Al Wasl FC and Al Fujairah FC. During this time, the Player always received a net remuneration, that is free of any taxes as the UAE does not levy income tax on individuals.

- Moreover, the Player was still under contract with Al Wasl FC and had simply no reason to accept a salary reduction or to forego the remuneration he was entitled to under his contract with Al Wasl FC.

- As such, the Player's intermediaries kept emphasising to the Club – multiple times and in multiple ways before they even received the first draft of the Contract – that the Player would only accept the Club's proposal if his remuneration was to be entirely net or, in the words of Mr Rocha, "*without taxes*".

- This was undoubtedly accepted by the Club over the telephone and upon the inclusions made in the wording of the Contract in comparison with the employment proposal/offer dated 6 July 2021.

- However, while making the inclusions requested by the Player in the Contract, the Club never informed him or his intermediaries about the specificities of the Turkish tax legislation on which it now intends to rely.

- Even if the Club was not obliged to give the Player lessons about the Turkish tax system or the potential practical problems regarding reimbursement, it should have promptly reacted to the numerous messages from Mr Rocha to clarify that the amounts in the Contract could not be "*without taxes*".

- On the contrary, the Club never denied Mr Rocha's request, but instead just amended the wording of the Contract to include the term "*net*".

- It is in any case irrelevant whether the Club drafted a more complete tax clause for other players since the Club itself confirmed, or at least gave indications for the Player to reasonably believe, that the inclusions made in the Contract accurately reflected his demands.

- If anything, what the existence of a more complete tax clause demonstrates is not that the Player was negligent, but that the Club was acting in bad faith towards him: firstly, the Club was evasive in responding Mr Rocha; secondly, the Club assured to Mr Rocha or at least gave reasonable indications that the inclusions made in the Contract were sufficient to meet the Player's demands; and thirdly, the Club's lawyer

stated that the Contract was in line with the Club's "policy" for foreign players and that the negotiation had pushed its "limits".

- In other words, the Club maliciously withheld key tax information from the Player during negotiations, even amidst a consistent need for reassurance expressed to this effect by his intermediaries, for which the net aspect and its subsequent confirmation were a key condition for the Player to join the Club.

- Against this background, it is clear that the mutual and common intent of the contractual parties by negotiating the inclusion of the term "*net*" in the Contract was to establish that the Player's remuneration should be free of any taxes and that the Club should incur the entire financial burden associated thereto – if needed, upon direct payment to the tax authorities (withholding income tax) and reimbursement of any payments later made by the Player (personal income tax).

- It is furthermore clear that the Player was promised a net salary higher than in his previous employment with Al Wasl FC, a condition which was essential for him to accept moving to a new country and club.

- Differently from the Bolasie case, the Player in the case at hand is not denying his obligation to pay income taxes. After seeking legal advice in February 2023, he understood that this is a legal obligation in Turkey and took steps to comply with it. However, the Player is contending that, in accordance with the Contract, which is governed by Swiss law, the Parties agreed that all his remuneration should be free of any taxes.

- Secondly, unlike the situation in the Bolasie case, the term "*net*" is not used in other provisions of the Contract, such as in a buy-out clause. Thus, whilst the buy-out clause in the Bolasie case also included the word net, in the present case the term "*net*" is only used to address salaries and bonuses. As such, the terminology, definition and effects of "*net*" is beyond any sort of reproach in the present situation.

- Thirdly, in contrast to the Bolasie case, here it is abundantly clear that the Player has discharged his burden of proof. Witness statements, emails and WhatsApp exchanges with Club officials, as well as explicit corroborations of the Club's conduct, substantiate that the Club indeed intended "*net*" to denote an amount free of taxes, aligning with the customary expectation in the football industry.

- The Club, on the other hand, failed to provide any substantial evidence in support of its current position.

- Finally, and with regard to the Turkish tax regime, the Player, albeit initially not aware of his fiscal obligations in Turkey, always acted in utmost good faith towards the Club.

- Moreover, it appears that even the Club itself did not know the full extent of its tax obligations *vis-à-vis* its professional players.

- Apparently, it was not until August 2022, more than 1 (one) year after the execution of the Contract, that the Club obtained clarification from Turkish authorities about the taxation of players' contracts. The Club therefore cannot use this understanding, garnished more than a year after the Contract was signed, to circumvent the mutual and common intention of the Parties with respect to issue of taxation.

- If the Club itself did not know the full extent of its tax liability, it cannot blame or accuse the Player of not seeking legal advice from a Turkish lawyer when negotiating the Contract.

- After receiving the Tax Notification, the Player always acted diligently and expeditiously towards (i) obtaining clarification about his fiscal obligations, (ii) rectifying mistakes or omissions and (iii) complying with his obligations to avoid future problems; and, during such endeavours, the Player always communicated transparently with the Club with the aim of resolving their existing dispute.

- Moreover, and even if the Player had not acted as such, the fiscal obligations of one or another party under Turkish law or the liability imposed by Turkish law on one or another party does not exclude the contractual duties undertaken by each of them in the Contract – a contract which moreover falls to be interpreted under Swiss law.

C. The Second Respondent

105. In its Answer, FIFA requested the CAS to

a) reject the Appellant's request for relief;
b) confirm the Appealed Decision in its entirety;
c) order the Appellant to bear the full costs of these arbitration proceedings.

106. FIFA's submissions, in essence, may be summarised as follows:

- The matter at stake principally concerns a contractual dispute between the Player and the Club regarding alleged outstanding amounts.

- Therefore, it is a strictly horizontal dispute with FIFA's involvement being limited to the imposition of a warning based on Article 12bis of the FIFA RSTP as a result of the Club's failure to comply with its payment obligations to the Player.

- Considering that the matter at stake is a strictly horizontal dispute, FIFA refrains from addressing it substantively and leaves it to the Panel to draw its own conclusions on this matter.

- FIFA is only involved for the "*vertical*" aspect of this dispute, which is subject to the confirmation by the Panel of the existence of overdue payables as set out in the Appealed Decision. This, notwithstanding the fact that the Appellant already admitted that it was liable for the payment of outstanding salaries and has even proceeded to pay these outstanding salaries upon receiving the Appealed Decision.

- Article 12bis of the FIFA RSTP confers the FIFA DRC with the authority and full discretion to impose disciplinary measures on clubs who fail to respect their financial obligations.

- In the matter at stake, the two conditions as required by the said article were fulfilled: (1) the Club delayed a due payment for more than 30 days without a *prima facie* contractual basis; and (2) the Player put the Club in default in writing and granted a deadline of at least ten days to comply with its financial obligations.

- In this regard, it must be noted that the sanctions imposed by the deciding bodies of FIFA in application of Article 12bis of the FIFA RSTP are not only based on the actual overdue amount, but rather on a series of diverse factors such as, without limitation, the specific circumstances surrounding a particular case, the stance of the parties during the investigation, the amount awarded, the importance of the infringement and whether the sanctioned party has previously been found responsible for having overdue payables.

- Moreover, Article 12bis of the FIFA RSTP is not a mechanism to claim outstanding amounts. It is a provision conferring the FIFA DRC the authority to impose disciplinary measures on clubs who fail to respect their financial obligations.

- In view of the circumstances of this case, a warning (the minimum sanction) is fully adequate (this being the Club's first breach of Article 12bis of the FIFA RSTP over the last two years) and should be confirmed in its entirety.

V. JURISDICTION AND ADMISSIBILITY

107. The present arbitration is governed by Chapter 12 of the Swiss Private International Law Act ("PILA"), which provides in Article 186 par. 1 that the Panel is entitled to rule on its jurisdiction ("*Kompetenz-Kompetenz*").

108. Article R47 of the CAS Code reads 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.*"

109. Article 57 (1) of the FIFA Statutes (2022 edition) reads:

> "*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.*"

110. In addition, neither the Appellant nor the Respondents objected to the jurisdiction of the CAS, and the Parties confirmed such jurisdiction when signing the Order of Procedure.

111. With regard to the admissibility of the appeal, Article R49 of the CAS Code provides, *inter alia*, 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.* […]*".*

112. As already set out above, it follows from Article 57 (1) of the FIFA Statutes that appeals filed against final decisions passed by FIFA's legal bodies must be lodged with the CAS within 21 days of receipt of the decision in question.

113. The grounds of the Appealed Decision were notified to the Appellant on 28 March 2024, and the Appellant's Statement of Appeal was lodged on 17 April 2024, i.e. within the statutory time limit of 21 days set forth in Article R49 of the CAS Code and in Article 57 of the FIFA Statutes, which is not disputed.

114. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

115. It follows that the appeal against the Appealed Decision is admissible, and that the CAS has jurisdiction to decide on it.

VI. APPLICABLE LAW

116. Article R58 of the CAS Code provides as follows:

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

117. Article 56 (2) of the FIFA Statutes 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.*"

118. Furthermore, it follows from clause 9 of the Contract, *inter alia*, that *"[i]n case of any disputes arisen from this contract, parties hereby agree that FIFA Bodies and Organs as the first instance and Court of Arbitration for Sports for the appeal would have the jurisdiction. The Swiss law and FIFA Regulations shall be applicable to the dispute.*"

119. Based on the above, and with reference to the filed submissions, the Panel is satisfied that the various regulations of FIFA are primarily applicable and that Swiss law is subsidiarily applicable should the need arise to interpret the various regulations of FIFA.

120. However, the Panel notes that the present dispute concerns, at least to some extent, the respective tax obligations of the Appellant and the First Respondent in respect of the Player's salary under the Contract. Considering that the Contract governs a labour relationship performed in Turkey and that tax obligations in general are matters of national law, to the extent necessary the Panel will take into consideration Turkish tax law.

VII. MERITS

121. Initially, the Panel notes that the factual circumstances of this case are in essence undisputed by the Parties, including the fact that on 26 July 2021, the Player and the Club signed the Contract valid from the day of signing until 31 May 2023, according to which the Player was entitled to receive, *inter alia*, the following remuneration from the Club:

"*FOR 2021 - 2022 SEASON*

In Total: 935.000-EUR (Nine hundred thirty-five thousand Euros) in net"

and

"FOR 2022 — 2023 SEASON

In Total: 935.000-EUR (Nine hundred thirty-five thousand Euros) in net"".

122. The Contract further included the following provisions regarding the potential bonuses and the nature of the payments pursuant to the Contract:

"3.2. During the term of the Contract:

• If the Player scores or assists 15 (fifteen) goals at super league games in a season, then the Player shall be entitled to receive 50.000-EUR (fifty thousand Euros) in net as bonus for that season. The payment shall be done in thirty days following the last official game of the relevant season.

• If the club ranks at first 7 place at the end of the season, then the Player shall be entitled to receive 50,000-EUR (fifty thousand Euros) in net as bonus for that season. The payment shall be done in thirty days following the last official game of the relevant season.

• If the Player begins to play in 25 (twenty-five) super league games with the starting 11 in a season, then the Player shall be entitled to receive 50,000-EUR (fifty thousand Euros) as bonus for that season. The payment shall be done in thirty days following the last official game of the relevant season.

3.3 All the amounts stated in this agreement are net".

123. It is further undisputed that the Club did in fact pay withholding tax in respect of the Player's salary of EUR 935,000 for each season by way of deduction from the grossed-up amounts under the Contract before paying the Player.

124. In this regard, the Parties are apparently in agreement that pursuant to Turkish income tax law, if the salary earned by a professional football player exceeds certain thresholds (TRY 650,000 for 2021, TRY 880,000 for 2022 and TRY 1,900,000 for 2023), such salary income must be declared by the football player in an annual tax declaration, and the withholding tax deducted by the player's club must be offset from the calculated tax and the accrued remaining income tax must be paid.

125. Moreover, the Parties are apparently in agreement that such accrued remaining income tax for the Player for the years 2021 and 2022 was calculated by the Turkish tax authorities at TRY 5,238,095.50 (TRY 396,053,71 for 2021 and TRY 4,842,041.79 for 2022), which amount has already been paid directly/indirectly by the Player.

126. However, the Parties disagree whether the Player is entitled under the Contract to have such additional income tax payment reimbursed by the Club for the reason that all payments according to the Contract are "*net*".

127. While the Club on the one hand submits, *inter alia*, that "*net*" used in the Contract simply means that the amounts stipulated in the Contract must be paid to the Player without any deduction by the Club in respect of taxes, expenses or otherwise, which was in fact the practice followed, the Player on the other hand submits, *inter alia*, that the term "*net*" should be interpreted to mean that the Player's remuneration should be free of any taxes and that the Club should incur the entire financial burden associated thereto – if needed, upon direct payment to the tax authorities (withholding income tax) and reimbursement of any payments later made by the Player (personal income tax).

128. Moreover, the Club and the Player are in dispute regarding whether the Player was entitled to receive the amount of EUR 50,000 as a bonus, pursuant to the second paragraph of clause 3.2 of the Contract based on the Club having finished in the top seven of Lig 1 in the 2023/2023 season.

129. Furthermore, the Club submits that the warning imposed on it by FIFA should be set aside since, according to the Club, it is grossly disproportionate.

130. Finally, and for the sake of good order, the Panel notes that the Club's payment obligation (at the time of the Appealed Decision) regarding the outstanding salary of EUR 133,000 and the fee paid by the Player for the working permit in the amount of TRY 3,446.20 pursuant to the Appealed Decision has already been fulfilled by the Club and is therefore no longer a part of this dispute.

131. Thus, the main issues to be resolved by the Panel are:

A) Is the Player entitled pursuant to the Contract to have his income tax payment to the Turkish tax authorities for 2021 and 2022 reimbursed by the Club?; and

B) Is the Player entitled to receive the amount of EUR 50,000 as a bonus for the 2022/2023 season pursuant to paragraph 2 of clause 3.2 of the Contract?; and

C) Should the warning imposed on the Club in the Appealed Decision be set aside?

A) Is the Player entitled pursuant to the Contract to have his income tax payment to the Turkish tax authorities for 2021 and 2022 reimbursed by the Club?

132. The Panel initially notes that the Contract does not contain any definition of the term "*net*" which could guide the Panel in this matter.

1. The principles applicable to the interpretation of the Contract

133. Moreover, and for the sake of completeness, it notes that as set out in CAS 2017/A/5172, para. 69, "*Swiss Law does not follow a concept of "sens clair" (cf. SFT 111 II 287 and 99 II 285). Reference is made also to SFT 127 III 444 para. b) where it was held as follows:*

"A cet égard, la jurisprudence récente a nuancé le principe selon lequel il y aurait lieu de recourir à des règles d'interprétation uniquement si les termes de l'accord passé entre parties laissent planer un doute ou sont peu clairs. On ne peut ériger en principe qu'en présence d'un "texte clair", on doit exclure d'emblée le recours à d'autres moyens d'interprétation. Il ressort de l'art. 18 al. 1 CO que le sens d'un texte, même clair, n'est pas forcément déterminant et que l'interprétation purement littérale est au contraire prohibée. Même si la teneur d'une clause contractuelle paraît claire à première vue, il peut résulter d'autres conditions du contrat, du but poursuivi par les parties ou d'autres circonstances que le texte de ladite clause ne restitue pas exactement le sens de l'accord conclu".

***Free translation**: "In this respect, recent case law has modified the principle according to which the rules of interpretation should apply only if the terms of the agreement between the parties leave room for doubt or are unclear. One cannot state that in the presence of a "clear text" one must exclude all other means of interpretation. It derives from Article 18 para. 1 CO that the meaning of a text, even a clear one, is not necessarily determining and that the purely literal interpretation is on the contrary prohibited. Even if a contractual clause appears clear at first view, it can result from the conditions of the contract, from the objectives sought by the parties or from other circumstances that the text of such contractual clause does not convey exactly the content of the agreement that was concluded.*"

134. Consequently, even if the Panel was to find that the term "*net*" would have a clear literal (i.e. unambiguous) meaning, the Panel must assess whether or not the Parties truly intended to attribute such a meaning to this specific term.

135. In the case at hand, and based on the circumstances, there may be room for doubt as to the true meaning of the term "*net*", not least since it appears that the contractual parties were not both in full knowledge of the applicable tax rules when signing the Contract. As such, and in line with the Parties' submissions regarding a possible interpretation of the term in question, the Panel finds that the Contract must be interpreted in accordance with the principles of Swiss law.

136. In this regard, the Panel notes that Article 18 of the SCO stipulates as follows (free translation):

"*When 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.*"

137. Article 18 of the SCO is based on the assumption that the Parties have concluded a contract and, in principle, do not dispute its effectiveness, which is the case in this matter. The dispute rather concerns the content of the agreement reached.

138. As such, Article 18 (1) of the SCO rules that the content of the agreement must be construed according to the true intentions of the parties. Thus, the parties' subjective will has priority over any contrary declaration in the text of the contract. In case a common subjective will of the parties cannot be ascertained, the content of the contract must be determined by application of the principle of mutual trust (CAS 2017/A/5172, para. 73). In SFT 127 III 444 para. b), the Swiss Supreme Court indicated as follows (free translation):

"To determine if there has been an agreement between the parties one must first seek their true and common intention (art. 18 para.1 SCO). The judge must therefore first establish the true will of the parties, empirically as the case may be, based on clues. If he cannot establish the true will or he finds that one of the parties did not understand the true will expressed by the other party, the judge will seek the meaning that the parties could and should have given to their respective declarations in accordance with the rules of good faith (application of the principle of trust)."

2. The burden of proof

139. Based on the facts of the case, and on the Parties' submissions, the Panel finds that it is up to the Player to discharge the burden of proof to establish that it was agreed between the Parties that the Club should reimburse the Player for any personal income tax payable by the Player and originating from the Player's contractual remuneration from the Club.

140. In doing so, the Panel adheres to the principle established by CAS jurisprudence that "*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (..). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence" (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46; and CAS 2009/A/1975, paras. 71ff).*"

141. In addition to the above-mentioned considerations, the Panel further notes that a deviation from the starting point regarding a party's obligation to pay its own taxes must be clear in order for the Panel to base a decision on it.

3. The application of the above principles to the case at hand

142. As a preliminary remark, the Panel observes that the Club is a professional football club playing in the first league of Turkish football and the Player is a rather unexperienced

professional football player without comprehensive experience in football transfer matters. However, it appears that the Player was represented by intermediaries and a lawyer, although not Turkish-qualified, during the drafting and signing of the Contract.

143. The Panel further notes, as already mentioned above, that the Contract does not contain any definition of the term "*net*", combined with the fact that the Player and the Club do not dispute that they did not discuss the intended meaning of the said term and what it would encompass during their negotiations before signing the Contract.

144. While the Panel on the one hand finds no reason to doubt that the Player, as explained during the hearing, was of the understanding that pursuant to the Contract, he would not be required to pay any Turkish taxes arising from his contractual remuneration from the Club, the Panel on the other hand notes that neither the Player nor his advisors, during the negotiations and the drafting of the Contract, apparently had sufficient knowledge of the Turkish tax system to understand that the Player was to file a personal tax declaration and, based on the circumstances, would be obligated to pay income tax directly to the Turkish tax authorities. The Panel also notes that the Player apparently decided not to engage the services of Turkish tax advisors to assist him in this process of negotiating and drafting the Contract.

145. Moreover, the Panel notes that the Club, during the negotiations and the drafting of the Contract, was aware of such an obligation on the Player and that the Club did not inform the Player accordingly.

146. In this regard, the Panel further notes that it is not disputed that in other contracts with other professional football players, the Club did include a provision regarding the meaning of the term "*net*" and that such provisions also state that the Club was to reimburse such players for any personal yearly income tax that was to be paid directly by the players to the Turkish tax authorities. However, according to the Club, and since such a provision was never requested by the Player, the matter was neither discussed between the Parties, nor inserted as a provision in the Contract.

147. The Panel therefore considers that it is possible that, when agreeing to the term "net", the Club, on its part, was indeed intending to be liable only for the withholding tax on the remuneration paid to the Player.

148. Based on the above, the Panel finds no basis for concluding that the Parties had in fact a common intention related to term "*net*" in the Contract.

149. As such, and in accordance with the principles set out above, the Panel then has to seek the meaning the Parties could and should have given to their respective declarations in accordance with the rules of good faith.

150. In this regard, the Panel notes that parties to a contract are obligated, as a starting point, to pay their own taxes originating from such a contract unless differently agreed upon.

151. In this case, the Club and the Player agree with respect to the Club's obligation to pay the withholding tax regarding the Player without any deduction in the net amounts set out in the Contract. However, they disagree over the obligation to finally pay/reimburse the

personal income tax of the Player pursuant to Turkish tax rules originating from the Player's contractual remuneration from the Club.

152. The Panel is mindful of the jurisprudence in the case CAS 2012/A/2806, para. 72. Therein the panel considered that "*the proper interpretation of 'net amount' is 'without any deduction', in the sense that the agreed net amount must exactly correspond to the amount which is received in the creditor's bank account or is anyway collected by the creditor.*"

153. Based on the lack of sufficient knowledge of the Turkish tax regime, the Panel appreciates that the Player could find himself in a situation where he, in good faith, understood the term "*net*" to be interpreted as stated by him and that the Club, to a certain degree in good faith, should have expected this to be the case, not least in a situation where the representative of the Player, Mr Rocha, as explained during the hearing and as documented in the file, several times explicitly asked for confirmation that "*net*" was to be understood as "*without any taxes*". The Panel finds that the Club must have understood that the Player's objective was to ensure that the amounts agreed in the Contract would be the amounts that he would ultimately effectively keep. However, the Club chose not to disclose to the Player and his representatives that it had a completely different understanding of the term "net". The Club decided to leave the Player "in the dark" and chose not to discuss the divergent understandings with the Player or to rebut the Player's interpretation of the terms and conditions before signing the Contract.

154. This is even more true, considering that the Club only included the term "*net*" in the Contract upon the specific request of the Mr Rocha (acting on behalf of the Player), given the fact that the term "*net*" was not referred to in the initial employment offer forwarded to the Player. The term was only included because of the Player's insistence that this was a condition for him to accept the employment offer. This circumstance further reinforces the Panel's view that the Club must have understood what the Player's concern was, but it elected not to openly discuss the matter and clarify the issue.

155. In this regard, the Panel appreciates that the Player's salary pursuant to the Contract would apparently only be higher than the Player's (then) salary with his former club, with which he was still under contract when transferred to Club, if the amount of such future salary pursuant to the Contract would also the actual final amount available to the Player after payment of all taxes etc.

156. As such, the Panel finds that the Club must have understood that the Player would only accept the Contract if the salary set out therein was to be received in full by the Player "*without any taxes*", as Mr Rocha had informed the Club.

157. The Panel appreciates that, in general, a club has no formal obligation to instruct a potential future player about all tax-related matters and that the players are responsible (either directly or through their advisors) to understand what tax obligations will impend upon them and how they can impact their remuneration. The Panel therefore finds that the Player could and perhaps should have been advised more efficiently by advisors hired by him on the issue of the personal income tax pursuant to the Turkish tax regime before the signing of the Contract.

158. In this regard, the Panel finds that a player's ignorance concerning the issue of the personal income tax pursuant to any applicable national tax regime should in general not leave such a player in a more favourable situation than would have been the case if the player, prior to the drafting and signing of an employment contract, had engaged an advisor with sufficient knowledge of the applicable tax system in order to safeguard his or her interests in the upcoming employment relationship.

159. However, in this situation, and based on the circumstances of the case, the Panel finds that an objective third party in the Player's position could in good faith expect that the term "*net*", which was inserted in the Contract upon his specific request, would have the meaning attached to such term by the Player, i.e. that he was to receive, without any deduction or additional taxes the full "net" salary as set out in the Contract. The Club knew that this was the understanding of the Player. If it wanted to deviate from the Player's understanding it should have made its different understanding transparent before signing the Contract.

160. In the Panel's view, this also means that pursuant to the Contract, the Player is entitled to be reimbursed by the Club for any private payable income tax originating from his contractual remuneration from the Club and paid directly or indirectly by him.

161. In this regard, and for the sake of good order, the Panel notes that whether the Club was in fact able to calculate the actual amount of tax to be paid on behalf of the Player at a certain time or not, as submitted by the Club, is not decisive in this regard.

162. Moreover, the Panel notes that compared to the circumstances in the Bolasie case, the term "*net*" was included in the Contract upon the specific request of the Player and was only used in a congruent manner in relation to the Player's remuneration and not in any other regard, which was the case in the Bolasie case.

163. Based on the above, the Panel finds there is sufficient basis for concluding that, based on the Contract and the circumstances of the case, the Contract should be interpreted in a way according to which the Club and the Player agreed that the Club should in fact be responsible for reimbursing the Player for the private income tax payable by the Player pursuant to the applicable Turkish tax rules.

B) Is the Player entitled to receive the amount of EUR 50,000 as a bonus for the 2022/2023 season pursuant to paragraph 2 of clause 3.2 of the Contract?

164. With reference to the principles set out in para. 140 *et seq*., the starting point is again that it is up to the Player to discharge the burden of proof to establish that he is in fact entitled to receive the bonus amount claimed, thus also that it was agreed between the Parties that the said bonus scheme should also apply in case the Club was no longer competing in the Süper Lig.

165. The Player submits that the legal basis for his claim in relation to the bonus is to be found in paragraph 2 of clause 3.2 of the Contract. Whether such provision entitled the Player to the requested amounts is a matter of interpretation. The principles applicable to contract interpretation follow from Swiss law and, more specifically, from Article 18 of the SCO as set out above. Besides the wording, also all other circumstances of the case can be taken

into consideration in the context of interpreting said clause as long as they shed light on the contents of the contract.

166. The Panel notes that the Club was participating in the Süper Lig for the third season in a row at the time when the Contract was signed and that it was confirmed during the hearing that the Club and the Player never discussed whether paragraph 2 of clause 3.2 of the Contract should also apply in case the Club was relegated during the contractual term.

167. Moreover, the Panel appreciates the arguments raised by the Club that the sporting and financial benefits deriving from finishing within the first seven teams of the tier one of Turkish professional football, including a possibility to qualify for a UEFA Competition, are not the same as the potential benefits deriving from finishing within the first seven teams of a lower tier of Turkish (professional) football.

168. In addition, the Panel finds from a sporting perspective that the achievement in finishing within the first seven teams of the Süper Lig is not directly comparable to finishing within the first seven teams of, e.g., Lig 1.

169. Furthermore, the Panel was not presented with any convincing argument in support of why the Club should be interested in, or perhaps even in a financial position to, paying the same bonus amount to the Player regardless of the division the Club was competing in. At the very least, the Panel would have expected that, if the Parties had really intended to agree on a bonus in connection with the Club's final standing at the end of the league, an adjustment would have been agreed to its respective amount depending on whether the Club was participating in the Süper Lig or in Lig 1.

170. Finally, and for the sake of good order, the Panel does not find that the omission of the term "*super league*" in paragraph 2 of clause 3.2 of the Contract compared to paragraphs 1 and 3 of the same clause is decisive as this was likely an unintended omission, rather than an intentional wish to extend its application to the Lig 1.

171. Based on the circumstances of the case, the Panel therefore finds itself comfortably satisfied that the mutual intention of the Club and the Player, even if perhaps not explicitly discussed or considered, was that paragraph 2 of clause 3.2 of the Contract should only be applicable, and so as to ensure that the Player should only be entitled to receive the bonus in question in the amount of EUR 50,000, in case the Club finished the season in question within the first seven teams of the Süper Lig, which was not the case in the 2022/2023 season.

172. As such, the Panel finds that the Player is not entitled to receive the said bonus and thus upholds the Club's appeal in this regard.

C) Should the warning imposed on the Club in the Appealed Decision be set aside?

173. Article 12bis of the FIFA RSTP reads, *inter alia*, as follows:

"*12bis Overdue payables*

1. Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements.

2. Any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned in accordance with paragraph 4 below.

3. In order for a club to be considered to have overdue payables in the sense of the present article, the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s).

4. Within the scope of its jurisdiction (cf. article 22 to 24), the Football Tribunal may impose the following sanctions:

a) a warning;

b) a reprimand;

c) a fine;

d) a ban from registering any new players, either nationally or internationally, for one or two entire and consecutive registration periods.

5. The sanctions provided for in paragraph 4 above may be applied cumulatively.

6. A repeated offence will be considered an aggravating circumstance and lead to a more severe penalty. […]"

174. The Panel notes that it is not disputed by the Club that it had delayed its payment of EUR 133,000 net of the Player's salary pursuant to the Contract without a *prima facie* contractual basis and that the Player had put it in default granting a deadline of at least 10 days for the Club to comply with such financial obligations to him.

175. As such, and without even dealing with the delayed payments in relation to the taxation issue as dealt with above, the Panel agrees with FIFA that the conditions for applying the sanctions set out in Article 12bis FIFA RSTP are fulfilled in this matter and that the FIFA DRC had full discretion to impose one of the sanctions provided for in paragraph 4 of the said provision.

176. However, the Club submits that the warning imposed on it in the Appealed Decision is grossly disproportionate and should be set aside.

177. As a preliminary issue, the Panel emphasises that, according to CAS jurisprudence, the measure of the sanction imposed by a disciplinary body in the exercise of the discretion allowed by the relevant rules should be reviewed with care (e.g. CAS 2018/A/6038, para. 126; CAS 2016/A/4910, para. 54).

178. Moreover, according to CAS jurisprudence, CAS panels should reassess first instance disciplinary sanctions only if they are evidently and grossly disproportionate to the offence or if a different conclusion than that of the first instance body is reached on the substantive merits of the case (cf. CAS 2017/A/5086 at para. 206, CAS 2009/A/1817 & 1844 at para. 174 with references to further CAS case law, CAS 2012/A/2762 at para. 122, CAS 2013/A/3256 at para. 572, CAS 2016/A/4643 at para. 100, CAS 2019/A/6344 at para. 501).

179. The above does not mean that the CAS's powers are somehow formally limited. Rather, it means that – far from excluding or limiting the power of a CAS panel to review *de novo* the facts and the law of the dispute at hand (pursuant to Article R57 of the CAS Code) – a

CAS panel should tend to pay respect to a fully-reasoned decision and should not easily "tinker" with a well-reasoned sanction, not considering it proper to just slightly adjust the measure of the sanction (cf. CAS 2015/A/3875 at para. 109, CAS 2011/A/2645 at para. 94, CAS 2011/A/2515 at paras. 66-68; CAS 2011/A/2518 at para. 10.7, CAS 2010/A/2283 at para. 14.36).

180. In other words, according to one current of CAS precedent – CAS panels should defer to the sanction imposed by first instance bodies where the same conclusion is reached on the substantive merits of case, so long as the sanction imposed is not evidently or grossly disproportionate.

181. The Panel appreciates that some CAS Panels have applied a lower threshold of review: *"[t]here is well-recognized CAS jurisprudence to the effect that whenever an association uses its discretion to impose a sanction, CAS will have regard to that association's expertise but, if having done so, the CAS panel considers nonetheless that the sanction is disproportionate, it must, given its de novo powers of review, be free to say so and apply the appropriate sanction*" (see CAS 2022/A/9053, para 274). Similarly, in yet another CAS decision, the panel stated that the jurisprudence according to which CAS should reassess sanctions only if they are evidently and grossly disproportionate to the offence "*should be interpreted (and applied) with care*" since the CAS's "*powers to review the facts and the law of the case are neither excluded nor limited*" (see CAS 2018/A/5808).

182. In any event, and as set out below, regardless of whether this Panel's standard of review to justify amending the FIFA DRC sanction is that it was "*evidently and grossly disproportionate*" or "*disproportionate*", the outcome would be the same.

183. The sanction imposed on the Appellant by means of the Appealed Decision is the least severe sanction under Article 12bis (4) of the FIFA RSTP, and based on the circumstances of the case, the Panel finds that it is neither grossly disproportionate nor even disproportionate.

184. Based on that, the Panel finds no basis for setting aside the warning imposed on the Club.

X. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Rizespor AS on 14 February 2023 against the decision of the FIFA Dispute Resolution Chamber issued on 8 February 2024 is partially upheld.

2. The decision of the FIFA Dispute Resolution Chamber issued on 8 February 2024 is partially confirmed, save for point n. 2 of its operative part, which is amended as follows:

   "*2. Rizespor AS must pay to Mr Ronaldo Cesar Mendes De Medeiros the following amount(s):*

   - *EUR 133,000 net as outstanding remuneration plus interest p.a. as follows:*

   - 5% interest p.a. over the amount of EUR 63,000 as from 1 May 2023 until the date of effective payment;

   - 5% interest p.a. over the amount of EUR 70,000 as from 1 June 2023 until the date of effective payment."

3. (…).

4. (…).

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

Seat of Arbitration: Lausanne, Switzerland
Date: 2 April 2025

THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger
President of the Panel

José Andrade
Arbitrator

Ulrich Haas
Arbitrator