



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2024/A/10441 Jairon Andrés Charcopa Cabezas v. FC Lugano & FIFA

CAS 2024/A/10442 Liga Deportiva Universitaria de Quito (L.D.U.) v. FC Lugano & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Ernesto Gamboa Morales, Attorney-at-Law in Bogotá, Colombia

Arbitrators: Prof. Miguel Cardenal Carro, Professor in Madrid, Spain

Mr. Jordi López Batet, Attorney-at-Law in Barcelona, Spain

in the arbitration proceedings between

Jairon Andrés Charcopa Cabezas

Represented by Mr. Daniel Mario Crespo, Attorney-at-Law in Buenos Aires, Argentina

-First Appellant-

Liga Deportiva Universitaria de Quito (L.D.U.), Ecuador

Represented by Mr. Daniel Mario Crespo, Attorney-at-Law in Buenos Aires, Argentina

-Second Appellant-

and

FC Lugano, Switzerland

Represented by Mr. Luca Tettamanti, Attorney-at-Law in Lugano, Switzerland

-First Respondent-

Fédération Internationale de Football Association – FIFA, Switzerland

Represented by Mr. Miguel Liétard Fernández-Palacios, FIFA Head of Litigation, Miami, Florida, USA

-Second Respondent-

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

I PARTIES

1. Jairon Andrés Charcopa Cabezas (the “Player” or the “First Appellant”) is a professional football player from Ecuador.
2. Liga Deportiva Universitaria de Quito (“LDU” or the “Second Appellant”) is a professional football club based in Quito, Ecuador, affiliated with the Ecuadorian Football Federation (“FEF”). The First Appellant and the Second Appellant are hereinafter jointly referred to as the “Appellants”.
3. FC Lugano (“Lugano” or the “First Respondent”) is a professional football club based in Lugano, Switzerland, affiliated with the Swiss Football Association.
4. Fédération Internationale de Football Association (“FIFA” or the “Second Respondent”) is the governing body of football world-wide with headquarters in Zürich, Switzerland. The First Respondent and the Second Respondent are hereinafter jointly referred to as the “Respondents”, while the Appellants and the Respondents will be hereinafter jointly referred to as the “Parties”.

II FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established based on the Parties’ written submissions and the evidence examined in the course of the present appeal proceedings and at the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion that follows.
6. On 8 February 2022, Lugano, the Ecuadorian team Club Atlético Santo Domingo (“CASD”), and the Player entered into a contract for the permanent transfer of the Player from CASD to Lugano (the “Transfer Agreement”).
7. Clause 2.1. of the Transfer Agreement provided the release and transfer of the Player on July 1, 2023, as follows:

“Santo Domingo and the Player agree on the release and the permanently transfer of the Player to FC Lugano on 1st July 2023 (“Transfer Date”) and FC Lugano agrees, subject to the terms and conditions hereof, to engage the services of the Player, in compliance with a separate Employment Contract as of 1st July 2023. For the sake of clarity, although the Parties set the release and permanent transfer of the Player on the Transfer Date this Transfer

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

Agreement is immediately valid and binding between the Parties as of the date of its mutual signature. Besides, FC Lugano shall have the right in its discretion to anticipate the Transfer Date by serving written notice to both Santo Domingo and the Player.”

8. Clause 2.2. provides conditions precedent for the permanent transfer of the Player, which Lugano may waive at its discretion. These include: (a) the release of the Player’s ITC by the Ecuadorian Football Federation by the specified deadline; (b) Lugano and the Player agreeing on and concluding an Employment Contract; (c) the Player passing medical examinations to the satisfaction of Lugano following FIFA and Swiss Football League requirements; and (d) the Player being free from any certified illness or injury that would prevent him from playing professional football for at least six months.
9. Clause 3.2(f) of the Transfer Agreement provides that if the employment contract between CASD and the Player was terminated by the club’s relegation for sporting reasons and the Player became a free agent, the parties should liaise with each other to decide how to proceed to secure the right of Lugano to obtain the Player’s registration.
10. On the same date, the Player and Lugano signed an employment contract that would be in force from July 1, 2023, to June 30, 2026 (“LFC Contract”).
11. In Clause 4 of the LFC Contract, the Player and the First Respondent agreed on remuneration in favor of the Player of CHF 5,400 per month.
12. On 17 May 2022, the Player and CASD entered into an employment agreement effective until December 31, 2023.
13. In October 2022, CASD was relegated to the third division of Ecuadorian football. Accordingly, entitled by the FEF’s rules, the Player decided to terminate his employment contract with CASD.
14. On 15 January 15 2023, the Player and LDU entered into an employment contract (the “LDU Contract”) effective until 30 June 2025.
15. According to Clause 5 of the LDU Contract, the Player would receive a fixed monthly remuneration of USD 641.65 and an additional remuneration of USD 858.35 provided that the Player actually rendered his services to the club.
16. On 3 February 2023, Lugano sent a letter to the Player, with copy to LDU, informing that it was aware of the Player’s intention to enter into an employment relationship with LDU, reminding him of the existence of the LFC Contract, and warning that any breach of such a contract would trigger its termination without just cause.
17. On 13 February 2023, Lugano sent another letter to the Appellants, reiterating its previous

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

communication and warning them about the potential consequences of breaching the LFC Contract under Article 17 of the FIFA Regulations on the Status and Transfer of Players (“RSTP”). Lugano also requested that the Appellants terminate any employment contract overlapping with the LFC Contract.

18. On 22 February 2023, the Player was effectively registered with LDU.
19. On 3 March 2023, Lugano sent a third letter to the Appellants. In this communication, Lugano also provided the Player with flight tickets to Switzerland, informed him that the club had started the process of obtaining a work permit for him and asked for some documentation to complete the process.
20. Lugano sent the Appellants two more letters reiterating its previous communications and requesting to terminate any employment contract between them before 1 July 2023. The Appellants did not answer Lugano’s letters.
21. On 3 November 2023, Lugano filed a claim against the Appellants before the FIFA Dispute Resolution Chamber (“DRC”). Lugano argued that, according to Article 17 RSTP, the Appellants shall be joint and severally liable to pay compensation for breaching the LFC Contract. Lugano requested that the Appellants were ordered to pay compensation for breach of contract, primarily USD 325,000 as liquidated damages with 5% annual interest from 1 July 2023, or alternatively USD 467,764.20 calculated under FIFA RSTP’s Article 17.1, with the same interest terms, and that sporting sanctions were imposed on the Appellants.

III THE APPEALED DECISION

22. On 14 February 2024, the DCR issued the decision (the “Appealed Decision”) partially upholding Lugano’s claim as follows:
 1. *The claim of the Claimant, FC Lugano, is partially accepted.*
 2. *The Respondent 1, Jairón Andrés Charcopa Cabezas, has to pay to the Claimant CHF 158,221.55 as compensation for breach of contract without just cause plus 5% interest p.a. as from 15 January 2023 until the date of effective payment.*
 3. *The Respondent 2, L.D.U. Quito, is jointly and severally liable for the payment of the aforementioned compensation.*
 4. *Any further claims of the Claimant are rejected.*
 5. *Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.*
 6. *If the aforementioned sum plus interest is not paid within 30 days of notification of this decision, the present matter shall be submitted, upon request, to the FIFA*

TRIBUNAL ARBITRAL DU SPORT
 COURT OF ARBITRATION FOR SPORT
 TRIBUNAL ARBITRAL DEL DEPORTE

Disciplinary Committee for its consideration and formal decision.

7. *A restriction of four months on his eligibility to play in official matches is imposed on the Respondent 1. This sanction applies with immediate effect as of the date of notification of the present decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs.*
8. *The Respondent 2 shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.*
9. *This decision is rendered without costs.”*

23. The Appealed Decision’s grounds were notified to the Appellants on 8 March 2024, to their email address.

IV PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

24. On 15 March 2024, in accordance with article R47 of the Code of Sports-related Arbitration (the “Code”), the First Appellant filed its statement of appeal before CAS challenging the Appealed Decision. In its statement, the First Appellant nominated Mr. Miguel Cardenal Carro as arbitrator and requested to stay the Appealed Decision. The First Appellant’s appeal was registered under the procedure CAS 2024/A/10441.
25. On 21 March 2024, pursuant to Article R47 of the Code, the Second Appellant filed its statement of appeal before CAS challenging the Appealed Decision. In its statement, the Second Appellant nominated Mr. Miguel Cardenal Carro as arbitrator and requested to stay the Appealed Decision. The Second Appellant’s appeal was registered under the procedure CAS 2024/A/10442.
26. In accordance with Article R52 of the Code, on March 25, 2024, the CAS Court Office invited the Parties to inform whether they agreed to consolidate procedures CAS 2024/A/10441 and CAS 2024/A/10442.
27. On 26 and 27 March 2024, the Parties agreed to consolidate both procedures.
28. On 3 April 2024, the Second Respondent submitted its answer to the Appellants’ request for a stay of the Appealed Decision.
29. On 4 April 2024, the First Respondent submitted its answer to the Appellants’ request for a stay of the Appealed Decision.
30. On 12 April 2024, the First Respondent appointed Mr. Jordi López Batet as arbitrator.
31. On 15 April 2024, the Second Respondent agreed with the appointment of Mr. López Batet as arbitrator.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

32. On 19 April 2024, after the deadline's extension granted by the CAS Court Office, the Appellants filed their Appeal Brief pursuant to Article R51 of the Code.
33. On 24 April 2024, the CAS Deputy President of the Appeals Arbitration Division stayed the 4-month restriction to play official matches imposed on the First Appellant.
34. On 14 May 2024, the CAS Court Office sent the Parties a copy of the Notice of Formation of the Panel and informed that the CAS President of the Appeals Arbitration Division had appointed Mr. Ernesto Gamboa Morales as the Panel's President. Therefore, the Panel had been constituted as follows:

President: Mr. Ernesto Gamboa Morales, attorney-at-law, Bogotá, Colombia.

Arbitrators: Mr. Miguel Cardenal Carro, attorney-at-law, Madrid, Spain.

Mr. Jordi López Batet, attorney-at-law, Barcelona, Spain.
35. On 30 May 2024, the Panel stayed the sanction imposed on the Second Appellant by the Appealed Decision.
36. On 30 May and 8 July 2024, after the deadline's extensions granted by the CAS Court Office, the Respondents filed their answers.
37. On 9 August 2024, after considering the Parties' submissions, the Panel decided to hold a hearing via videoconference.
38. On 7 October 2024, the CAS Court Office sent a copy of the Order of Procedure to the Parties, which they duly signed.
39. On 11 October 2024, the CAS Court Office informed the Parties that, after considering their requests in such respect, the Panel decided that the hearing was going to be bilingual (i.e. English-Spanish). Therefore, the Parties were authorized to plead and examine the witnesses in either language without translation. In addition, regarding the attendance of Mr. Santiago Jacome and Mr. Diego Castro to the hearing requested by Lugano, Lugano was advised that each party is responsible for the availability and costs of the witnesses it calls.
40. On 25 October 2024, a hearing was held by videoconference. The following persons attended the hearing in addition to the Panel and Mr. Antonio de Quesada, CAS Head of Arbitration:

For the Appellants

- Mr. Daniel Mario Crespo, Appellant's counsel
- Mr. Christian Ferrero, Appellant's counsel
- Mr. Isaac Álvarez, LDU's President

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

- Mr. Santiago Barragán, LDU's in-house lawyer (observer) For the

First Respondent

- Mr. Luca Tettamanti, Lugano's counsel
- Mr. Tomás Perera, Lugano's counsel
- Mr. Luca Baldo, Lugano's Director of Sport Administration (observer)
- Mr. Sebastian Pelzer, Lugano's Technical Director (observer)
- Mr. Jorge Rivera, witness

For the Second Respondent

- Mr. Roberto Nájera, legal counsel
- Mr. Rodrigo Morais, legal counsel

41. The Player, despite having announced that he would be present at the hearing and his presence at the hearing having been required by the First Respondent, did not attend the hearing. Before the hearing concluded, the Parties expressly stated that they had no objection to the way that these proceedings have been conducted and that the equal treatment of the Parties and their right to be heard had been respected.

V SUMMARY OF THE PARTIES' SUBMISSIONS

42. Below is a summary of the arguments raised by the Parties on the subject matter of this proceedings. Notwithstanding, the Panel points out that it has reviewed, considered, and taken into account all and each of the submissions and evidence filed by the Parties, whether or not express reference to any such evidence is made under this Section.

V.1 The Appellants

43. Firstly, the Appellants argue that CASD's relegation in October 2022 automatically terminated the Transfer Agreement. The First Respondent acknowledged this issue in its submission before the DRC when it confirmed that "*it is obvious and accepted by FCL that the CASD Transfer Agreement could not be performed due to the relegation of CASD*".
44. Upon termination of the Transfer Agreement, its main obligations ceased, leaving only ancillary clauses in effect.
45. If the Transfer Agreement could not be fulfilled, Lugano has no obligation to pay the price and

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

had the right to a reimbursement of the sums it already paid to CASD. Moreover, if the Transfer Agreement was terminated due to CASD's relegation, the parties were obligated to coordinate with each other and determine the appropriate course of action to ensure Lugano's right to secure the Player's permanent registration is respected. This means that, under this scenario, the parties assumed obligations to act.

46. The Appellants highlighted that the Transfer Agreement's terms and conditions are not common in professional football since the transfer would only take place one and a half year later. By the time such an agreement was signed, the Player was 18 years old.
47. The Transfer Agreement also granted the First Respondent the right to execute the transfer before 1 July 2023. This unilateral power indicates a genuine interest in securing the Player in a timely manner. This clause was intended to be applied in scenarios where the Player was left without a contract with CASD, such as in the case of CASD's possible relegation.
48. Lugano was aware of CASD's possible relegation and understood that it would have several effects on the Transfer Agreement and the LFC Contract. However, after CASD's relegation in October 2022, the Player did not receive any communication from Lugano. It was only three months after this event—when the Player had already signed the LDU Contract—that Lugano attempted to address the situation. This delay makes it evident that Lugano had abandoned its interest in the Player, as it failed to act in a timely and reasonable manner.
49. The Appellants argued that the Appealed Decision's conclusion about the autonomy of the transfer and the employment contracts is flawed. They emphasized that the Transfer Agreement and the LFC Contract are interconnected, as the former was executed in exchange for a payment by Lugano, with the Player being entitled to 15% of the transfer fee under FEF regulations. This connection implies that the Player agreed to the transfer anticipating his financial entitlement. They further questioned whether an unsatisfactory medical examination could allow Lugano to avoid paying the transfer fee while still demanding compliance with the employment contract, illustrating the interdependence of the agreements.
50. The Appellants argued that if the Transfer Agreement were terminated and the Player registered with Lugano under an "out of contract" scenario, the Player would lose income guaranteed under FEF regulations. They highlighted that the Transfer Agreement anticipated CASD's potential relegation, which occurred in October 2022, leaving the Player without a contract or income. Lugano chose not to advance the Player's employment or provide a salary before 1 July 2023, a decision entirely at its sole discretion. As a result, the Player was left in an untenable position: without income or a club for several months.
51. The Appellants argued that, from a labor law perspective, it is unreasonable for an 18-year-old footballer to sign an employment contract that only takes effect 17 months after its conclusion. Such a prolonged delay imposes an unjustified limitation on the Player's ability to explore other

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

opportunities. FIFA's RSTP allows players to sign new contracts within the last six months of their current agreements, as this timeframe balances contractual stability with a player's right to secure future employment. However, a 17-month delay far exceeds this standard and restricts the Player's career prospects.

52. The Appellants also noted that by October 2022, when CASD was relegated, it was foreseeable that the Player's employment contract with that club would be terminated. This made the deferred effectiveness of the Lugano contract until July 2023 an unacceptable restriction on the Player's freedom of work. They further emphasized that the Player could not have signed another contract covering the interim period due to Article 18.2 of the RSTP, which mandates that contracts run until the end of the season. Given that Ecuador's football season concludes in December, the Player was effectively barred from signing a temporary contract before 30 June 2023, leaving him without viable alternatives.
53. The Appellants argued that, following the termination of the Transfer Agreement in October 2022, none of the parties—Lugano, CASD, or the Player—fulfilled their obligation under clause 3.2(f) to liaise and agree on how the Player would be registered with Lugano. Despite this duty, Lugano remained passive and failed to contact the Player until months later, undermining any claim of legitimate interest in completing the transfer.
54. The Appealed Decision unfairly emphasized the Player's failure to contact Lugano while disregarding Lugano's inaction. Lugano, as the future employer, had a clear obligation to communicate with the Player to facilitate his registration, yet it failed to do so. Instead, Lugano only showed interest after the Player signed with LDU in January 2023. This delayed and opportunistic behavior highlighted Lugano's abandonment of the employment relationship, contradicting its claims of contractual commitment.
55. The Player, left without income of a club after CASD's relegation, acted reasonably in signing with LDU. The DRC once again makes statements and draws conclusions that deviate from fundamental labor law principles. In this case, the Player, who earned or should have earned a salary of USD 1,800 from CASD, faced an 8-month period of inactivity from October 2022 to July 2023. The Appealed Decision acknowledges this period as excessive from a sporting perspective but fails to account for the critical issue that, during this time, the Player had no income to support himself.
56. Given Lugano's complete lack of communication and failure to exercise its unilateral right to advance the employment contract, the Player had no reason to believe he still had a binding agreement with the First Respondent. The Appealed Decision unfairly placed the burden of communication solely on the Player, disregarding Lugano's negligence.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

57. The Appellants underscored that the Player's understanding of the situation was shaped by Lugano's inaction. The Player reasonably assumed that the LFC Contract had become void due to the lack of follow-up from the First Respondent and the termination of the Transfer Agreement. This perception was reinforced by Lugano's scout, who contacted the Player only after he had signed with LDU, making contradictory and unexpected demands.
58. In any case, the Appellants consider that Lugano does not deserve an economic compensation since it did not suffer any damage. Under the circumstances previously described by the Appellants, they consider that even if the Transfer Agreement and the LFC Contract were considered valid, they were extinguished due to the parties' concurrent fault.
59. There was no clarity as to how the relationship between Lugano and the Player would develop after the termination of the contract with CASD. The conditions under which the player would play in MLS were not clear, nor was it known whether in July 2023 he would go to Switzerland and whether Lugano would have room in his squad for him. The reality is that the First Respondent only waited for a more solvent third party to appear before invoking the existence of the LFC Contract.
60. In any event, the Appellants consider that the compensation ordered in the Appealed Decision is excessive and unjustified under the circumstances of the case. If the Player allocates all his LDU's salary, he will need more than nine years to pay Lugano. Moreover, the amount of the compensation doubles the transfer price agreed between Lugano and CASD.
61. CAS case law requires case-by-case evaluation of factors when calculating compensation under Article 17(1) RSTP, with any single factor potentially being decisive. The principle of "positive interest" should guide compensation calculations for unjustified, unilateral contract terminations under Article 17(1). The Appellants analyzed the different criteria for setting compensation in accordance with CAS jurisprudence for the specific case and the following shall be stressed:
 - a. The contract lacks a compensation clause, and Lugano's attempt to claim damages from the transfer contract should be unsuccessful, as the Player did not breach it and cannot be blamed for its termination.
 - b. There were no third-party offers or lost profits, as no club knew about the Player's contract with Lugano, and it was difficult to attract offers for a player from a third-division Ecuadorian team who had been without a club for months.
 - c. The Player's salary under the LFC Contract was CHF 7,500 per month, while under the LDU Contract, it is CHF 1,390. Lugano's claim that the salary recognized by LDU

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

was simulated lacked evidence. CASD had not paid the Player's last salaries, leaving him without work and income. After three months, he secured a new job at his previous club, LDU. The Player's primary goal was to earn enough to cover daily expenses. Lugano's arguments regarding the Player's low salary at LDU ignore the case's context. Comparing training costs, LDU paid USD 10,000 annually, while Lugano would pay Euro 60,000. LDU's salary of CHF 1,390 is comparable to CHF 8,340 in a Swiss first-division team, in line with the Ecuadorian market and the Player's situation in January 2023.

- d. The average residual value of the contracts does not apply, as the LDU Contract reflects much lower payments than the one with Lugano. Additionally, the new contract is only valid for two and a half years, during which the Player will receive a total of CHF 43,500. This amount reflects the updated value of the Player's services, considering that no transfer fees were paid to the previous club.
- e. As the Appealed Decision held, there are no fees or expenses paid or incurred by Lugano. Additionally, the First Respondent did not incur any cost to acquire another player.
- f. The Player's decision to sign with LDU was not motivated by financial gain but by the need for a club to train and compete with, as well as for basic economic survival after being without a contract or income for nearly three months. The LDU Contract was not seen by the Player as advantageous, as it offered significantly lower pay (CHF 1,390 vs CHF 7,500) than what he would have received from Lugano. Furthermore, Lugano did not suffer any damage, as the Player had played only 21 matches in the second division in 2022 and had limited involvement with LDU in 2023 and 2024. Lugano showed no interest in the Player's performance and never contacted him.
- g. The alleged breach occurred one year after the contract with Lugano was signed but six months before it came into effect, even if the contract were still enforceable.
- h. The specificity of sport can justify adjusting compensation, particularly when a Player's salary is relatively low. In this case, the compensation of CHF 158,221.55 is equivalent to more than eight years of the Player's salary under his current contract with LDU, which is significantly lower than his previous salary at Lugano. This highlights the severity of the Appealed Decision, as the Player is required to pay double the transfer price previously agreed. The Player's primary motivation for the contract with LDU was economic necessity, not a breach for personal gain. The specificity of sport doctrine considers the broader interests of the football community

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

and allows to adjust compensation based on the circumstances, including the Player's low salary, mistreatment by the club, and lack of interest shown by Lugano.

62. Furthermore, the Appellants consider the sporting sanctions unjustified. First, the Appellants noted that the DRC members did not unanimously agree to impose sporting sanctions on the Player and LDU. The Appellants argued that the contract was not terminated within the protected period, as defined by the RSTP, with the protection starting only when the contract enters into force, not at the time of its conclusion. Prior cases and the DRC's stance also supported this interpretation, emphasizing that the protected period begins with the execution of the contract, even if the contractual term has not yet begun.
63. In this case, the Appealed Decision misinterpreted the protected period, extending it incorrectly by treating the contract's termination as occurring within the protected period despite it happening six months before the contract entered into force. The clear wording of the RSTP establishes that the protected period is linked to when the contract enters into force, not its signing date, and any interpretation to the contrary is against the regulations. The Appellants insisted that the Player did not believe he had a valid contract with Lugano when he signed with LDU and was left without support or income from his previous club, which failed to communicate with LDU or even register the contract.
64. LDU acted in good faith, hiring the Player as a free agent, with no knowledge of an existing contract with Lugano. Given the Player's economic situation and the lack of proper registration or communication from Lugano, LDU could not have known about the contract. Consequently, the presumption of inducement under Article 17(4) of the RSTP does not apply. The Player's situation and LDU's actions show that they did not infringe any contractual obligations, and the imposition of sporting sanctions is unjustified.

V.1.1 Appellants' request for relief.

65. The Appellants prayed the following reliefs:

"1. Revoke and render invalid the Appealed Decision in full.

2. Order that the Respondents shall bear the costs of the present arbitration.

3. Order that the Respondents shall bear the legal fees and all other expenses incurred by the Appellant in connection with the present arbitration procedure."

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

V.2 The First Respondent

66. The First Respondent started its legal arguments by claiming that the Player willfully decided to terminate CASD's employment contract. Such a decision prevented the Transfer Agreement from being executed. However, CASD's relegation did not trigger the automatic termination of the Player's employment contract or the Transfer Agreement.

It was the Player who decided to terminate his contract with CASD based on Article 44 RJ FEF.

67. The Player's decision followed a conscious plan supported by LDU to abandon CASD, terminate the contractual link with Lugano, and join LDU. Nevertheless, the truth is that the impossibility to execute the Transfer Agreement did not release the Player from his commitments towards Lugano. The only consequence, in the case, was that the parties had to implement Clause 3.2.(f) of the Transfer Agreement. This means that Lugano, CASD and the Player had "*to find the most appropriate way to reach the solution of the definitive transfer of the Player to FCL irrespective of the termination of the CASD Contract.*" It was the Player who had to immediately inform Lugano his intentions to terminate its contract with CASD and ask how to proceed. The First Respondent pointed out that the Player acknowledged this obligation in the Appeal Brief.

68. Furthermore, the First Respondent argued that it tried to contact the Player immediately after he terminated his contract with CASD. When Lugano became aware of such situation, its scout in Ecuador, Mr. Rivera, approached the Player and then, LDU. Mr. Rivera informed the Player that Lugano was trying to allocate him in a club where he could train and play until 1 July 2023. However, the Player willfully decided not to communicate with Mr. Rivera. This shows that the Appellants' statements regarding Lugano's lack of interest in the Player are misleading. The Player's behavior was inconsistent and in bad faith.

69. Lugano only knew about the LDU Contract by the end of January 2023 through several media announcements. Even if the Player understood that the LFC Contract would not come into force, he should have contacted the club to corroborate this information.

70. The First Respondent also noted that it was open to a solution allowing the Player to remain with LDU until June 2023. Lugano deemed the Appellants' prolonged silence unusual and considered their inaction disrespectful and indicative of a coordinated effort to disadvantage Lugano.

71. The Appellants' arguments regarding Lugano's lack of interest in the Player are baseless. It had no reason to lose a talented young player, keep him inactive for months before his contract started, or forfeit its investment of over USD 95,000 in transfer fees and solidarity contributions.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

72. Additionally, the First Respondent challenges the Appellants' arguments regarding the Player's alleged lack of understanding of the agreements he signed with Lugano. It points out that, during the six months in which Lugano sent communications to the Appellants, the latter never raised any concerns about such a lack of understanding. Furthermore, the conversations between the Player and the scout clearly demonstrate that the Player was fully aware of the reasons for the contact. Moreover, LDU could have explained to the Player the consequences of breaching his contract with Lugano. Ultimately, a generic allegation of ignorance of the legal texts contradicts the principle of stability.
73. Lugano contends that the validity of the LFC Contract was independent from the Transfer Agreement. In accordance with Article 18.4 of the RSTP and CAS jurisprudence, the validity of an employment contract cannot be contingent on the fulfillment of a transfer agreement. This principle is further supported by the Transfer Agreement itself, which anticipated CASD's relegation and termination, providing mechanisms to address such scenarios.
74. The Appellants adopt a contradictory stance, claiming that the Transfer Agreement lost its effect while simultaneously asserting that specific clauses, including Clause Three, remain valid. Lugano asserts that the Employment Contract remained in effect, allowing the Player to sign as a free agent or with another club until 1 July 2023. Furthermore, even if the Employment Contract were linked to the Transfer Agreement, the Player acted in bad faith by obstructing the latter's execution.
75. The First Respondent contests the Player's claim that the LFC Contract constitutes an excessive commitment due to its deferred entry into force. It emphasizes that the Player, represented by his agent at the time, voluntarily signed the contract and fully understood and supported its structure. The arrangement aimed to allow the Player to gain experience and playing time at CASD before transitioning to European football. The Respondent further argues that it is common and legitimate in football for young players to sign contracts with a club while continuing at their current club to complete training or gain playing experience, a practice beneficial to all parties involved. Lugano also invokes the principle of *pacta sunt servanda*, emphasizing the freedom of contract and the validity of the agreed terms between the parties, and noting that none of the Appellants have presented any evidence to support the claim that Lugano exploited a dominant position or took advantage to the Player's detriment.
76. Lugano notes the Player was free to sign with another club, including LDU, between October 2022 and July 2023, as long as the new contract did not overlap with the LFC Contract.
77. The First Respondent argued that the Player breached the LFC Contract under LDU's inducement. In support, it cited Articles 13 and 14 of the RSTP, which establish that contracts between clubs

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

and players can only be terminated upon the expiration of their term or for just cause. In this case, the Player tacitly terminated the LFC Contract by signing with LDU, and without just cause.

78. Under Article 17.4 of the RSTP, it is presumed that a club signing a professional player who terminated their contract without just cause induced the breach. LDU neither presented arguments nor evidence to rebut this presumption. Instead, it was complicit with the Player by ignoring Lugano's communications. Lugano had informed LDU of its contract with the Player three weeks before the Player was registered with the team.
79. Lugano argued that under Article 17 of the RSTP, any contractual breach must be compensated to uphold the principles of *pacta sunt servanda* and contractual stability, which are fundamental to the FIFA system. Compensation is particularly significant in this case because the Player's breach of contract was deliberate, induced by LDU, and the Appellants failed to propose any solution to remedy the breach.
80. The Appealed Decision calculated the compensation based on the Player's average remuneration with his former and new clubs, a criterion commonly applied by FIFA. Furthermore, FIFA ordered a lower amount of compensation than what Lugano had requested or what would have been awarded if all Article 17 RSTP criteria had been fully applied.
81. The Appellants' arguments concerning the context in which the Player's salary at LDU is paid are unfounded. The Player voluntarily and knowingly accepted a lower salary at LDU, a leading club in Ecuador, compared to what he earned at CASD or would have earned at Lugano. Lugano suspects that the Player's actual salary at LDU may be higher than reported, potentially to reduce the compensation amount. For context, the average salary of LDU players is approximately USD 15,000.
82. The Player will not suffer harm from the compensation set forth in the Appealed Decision, as LDU is jointly liable for its payment. In contrast, Lugano has suffered damages, including the loss of the Player's services and the transfer fee paid to CASD, which were only partially remedied. Therefore, the compensation determined in the Appealed Decision should be upheld.
83. Regarding the sporting sanction imposed on the Player, it must also be confirmed because the Player breached his LFC Contract during the protected period and under LDU's inducement. The Appellants claim that the contract was not breached within the protected period because it was not yet in force; however, both FIFA and CAS have clarified that the protected period begins upon signing, irrespective of the contract's start date. Moreover, the aggravating circumstances in this case justify the imposition of sporting sanctions.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

84. Regarding LDU, the sporting sanction is equally applicable. The club failed to exercise due diligence to confirm that the Player was not under contract with another club before signing him. Additionally, it did not demonstrate the existence of any circumstances that would have prevented it from discovering this.

V.2.1 The First Respondent's request for relief

85. Lugano requests CAS to rule as follows:

"I. The Answer filed by FC Lugano is accepted;

II. The appeals filed by Jairon Andrés Charcopa Cabezas and Liga Deportiva Universitaria de Quito are dismissed;

III. The FIFA Decision issued by the FIFA DRC is confirmed in full, including both the financial orders and the disciplinary sanctions imposed on both Jairon Andrés Charcopa Cabezas and Liga Deportiva Universitaria de Quito;

IV. Jairon Andrés Charcopa Cabezas and Liga Deportiva Universitaria de Quito shall bear all the costs of this arbitration procedure;

V. Jairon Andrés Charcopa Cabezas and Liga Deportiva Universitaria de Quito shall compensate FC Lugano for the legal and other costs incurred in connection with this arbitration procedure in an amount to be determined at the discretion of the Panel, but no less than CHF 20,000, also considering that FIFA did not allocate FCL any contribution towards its legal fees for the first instance procedure in which it prevailed."

V.3 The Second Respondent

86. The Second Respondent first argues that CASD's relegation did not automatically make the Player a free agent or leave him unemployed as of October 2022. According to Article 44 of the FEF regulations, relegation allows either the club or the player to terminate the contract with just cause, but this does not occur automatically. The Player could have chosen not to terminate his contract and continued playing in the third division while maintaining his salary.
87. The Appellants cite a clause in the Transfer Agreement stating it would terminate automatically if the ITC was not obtained by 10 July 2023. However, the Second Respondent contends that this argument lacks merit. The Transfer Agreement must be read as a whole, and it required CASD and the Player to find a solution to respect Lugano's right to register the Player if the transfer could not be fulfilled. Thus, CASD's relegation did not release the Player from his obligations or allow him to

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

join LDU without consequences.

88. The Second Respondent highlights that the Player not only signed a Transfer Agreement with Lugano but also an Employment Contract. These contracts are independent, involving different parties, purposes, rights and obligations. The LFC Contract included no condition precedent. It simply stated that the Player would become Lugano's employee on 1 July 2023. This commitment had to be respected.
89. Instead of seeking solutions to fulfill his contract with Lugano, such as registering as "out of contract", the Player breached his obligations and signed with LDU. Furthermore, there is no evidence that either the Player or CASD informed Lugano about CASD's relegation or the Player's employment situation. This omission violated the Transfer Agreement's clause requiring the parties to consult and decide on measures to protect Lugano's registration rights.
90. The Second Respondent finds no merit in the Appellants' claim that Lugano had lost interest in signing the Player. On the contrary, Lugano made significant efforts to contact the Player and propose solutions to honor the LFC Contract. The Appellants remained silent and never argued that the Employment Contract was invalid. There is no evidence that Lugano adopted a controversial or unreasonable attitude towards the Player.
91. Regarding the compensation awarded, the Second Respondent emphasizes that Lugano suffered both sporting and financial damages due to the Player's breach. Even in the absence of such damages, Article 17 RSTP mandates compensation in all cases of contractual breach. The compensation calculation is legally founded, fair and appropriate given the circumstances.
92. As for the sporting sanctions imposed on the Player, these are justified under Article 17.3 RSTP. The Player knowingly terminated the LFC Contract without just cause. While sporting sanctions are not mandatory, CAS jurisprudence establishes that only specific circumstances warrant their omission. The Player has not demonstrated any such circumstances. Instead, he ignored Lugano's warnings about the consequences of his actions. The Player's attitude was reckless and disrespectful.
93. CAS jurisprudence is clear that a breach occurring after the signing of a contract but before its entry into force falls within the protected period. CAS has also confirmed that a four-month ban from playing is proportionate.
94. Regarding the sporting sanction imposed on LDU, the Second Respondent explained that it is based on LDU's inducement of the Player to breach his LFC Contract. The burden to rebut the presumption of inducement lies with LDU. However, the Second Appellant failed to present arguments or evidence demonstrating that it did not induce the Player's breach. On the contrary, it is evident that LDU influenced the Player's decision not to play for Lugano.
95. Furthermore, Lugano informed LDU of the existence of the Player's contract. Following these

TRIBUNAL ARBITRAL DU SPORT
 COURT OF ARBITRATION FOR SPORT
 TRIBUNAL ARBITRAL DEL DEPORTE

communications, LDU was obligated to act in good faith by contacting Lugano and expressing any doubts about the LFC Contract's validity. Instead, LDU adopted an evasive stance. CAS jurisprudence clarifies that even when a club relies on incorrect information from a player, it must exercise due diligence. LDU's conduct fell short of this obligation.

96. Finally, the Second Respondent maintains that the sanction imposed on LDU is not only proportionate but also aligns with Article 17(4) of the RSTP. The restriction on registering players for two consecutive transfer periods is the only applicable sanction for inducing a player to breach a contract with another club. There are no alternative sanctions, nor is the DRC required to assess the proportionality of this measure.

V.3.1 The Second Respondent's request for relief

97. Based on the arguments above, the Second Respondent requests CAS to:

“(a) reject the requests for relief sought by the Appellants;

(b) confirm the Appealed Decision in its entirety; and

(c) order the Appellants to bear the full costs of these arbitration proceedings.”

VI JURISDICTION

98. Article 47 of the Code provides as follows:

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

99. Article 56.1 of the FIFA Statutes (2022 ed.) reads as follows:

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

100. Article 57 of the FIFA Statutes (2022 ed.) provides as follows:

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

101. The Panel notes that the Parties do not dispute CAS's jurisdiction. On the contrary, they explicitly

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

confirmed it by signing the Order of Procedure without raising any objections. Consequently, it follows that CAS has jurisdiction to hear this dispute.

VII ADMISSIBILITY

102. Article R47 of the Code stipulates that an appeal against a decision issued by a sports federation may be filed before CAS within the time limit prescribed in the federation's regulations. Similarly, Article 57 of the FIFA Statutes, as previously noted, requires that appeals against decisions passed by its legal bodies be submitted to the CAS within 21 days of notification.
103. The 21-day time limit was observed. The grounds for the Appealed Decision were notified on March 8, 2024. The First Appellant filed its appeal on March 15, 2024, and the Second Appellant on March 21, 2024.
104. Furthermore, both Statements of Appeal comply with the formal requirements outlined in Article R48 of the Code.
105. None of Respondents have contested the admissibility of the appeals filed by the Appellants.
106. Accordingly, the appeals are admissible.

VIII APPLICABLE LAW

107. Article R58 of the 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.”

108. According to Article 56(2) of FIFA's Statutes (2022 ed.), “CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.
109. Moreover, the Parties agree that the dispute shall be resolved in accordance with FIFA's regulations, particularly the RSTP, and, additionally, Swiss law.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

110. Therefore, based on the aforementioned, the Panel will resolve this dispute in accordance with the FIFA Regulations and Swiss Law.

IX PRELIMINARY ISSUES

111. Before proceeding with the analysis of the merits of the dispute, the Panel must address two preliminary matters. The first concerns the grounds for the Order to Stay the Appealed Decision as requested by the Second Appellant and granted by the Panel on May 30, 2024. The second relates to outstanding evidentiary issues, specifically the First Respondent's request for document production.

IX.1 Grounds for the Order to Stay the Appealed Decision in CAS 2024/A/10442

112. In its Statement of Appeal, the Second Appellant requested the suspension of the execution of the sporting sanction ordered in the Appealed Decision. This request was granted by the Panel in the Order for Stay dated May 30, 2024. At that time, the CAS communicated only the operative part of the decision to the Parties, informing them that the grounds would be provided in due course. Accordingly, the Panel must now set out the reasons for the decision made at that time.
113. In accordance with Article 183 of the Swiss Private International Law Act (PILA), an arbitral tribunal seated in Switzerland is competent to order a provisional measure upon request of a party:

“Unless the parties have agreed otherwise, the arbitral tribunal may, at the request of a party, order interim measures or conservatory measures.”

114. Article R37 of the Code provides as follows:

“(…) The President of the relevant Division, prior to the transfer of the file to the Panel, or thereafter, the Panel may, upon application by a party, make an order for provisional or conservatory measures. In agreeing to submit any dispute subject to the ordinary arbitration procedure or to the appeal arbitration procedure to these Procedural Rules, the parties expressly waive their rights to request any such measures from state authorities or tribunals.

(…)

When deciding whether to award preliminary relief, the President of the Division or the Panel, as the case may be, shall consider whether the relief is necessary to protect the

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

applicant from irreparable harm, the likelihood of success on the merits of the claim, and whether the interests of the Applicant outweigh those of the Respondent(s). (...)

115. In accordance with CAS jurisprudence (among others, CAS 2007/A/1370-1376; CAS 2006/A/1088; CAS 2004/A/780; TAS 2004/A/708-709; CAS 2003/O/486; CAS 2002/A/378; CAS 2001/A/324), when deciding whether an application for a stay should be ordered, the Panel should in general consider the following factors:
- a) whether the stay requested is necessary to protect the applicant from irreparable harm (“irreparable harm” test): the applicant must demonstrate that the requested stay is necessary in order to protect its position from damage or risks that would be impossible, or very difficult, to remedy or cancel at a later stage;
 - b) whether the applicant has reasonable chances to succeed on the merits (“likelihood of success” test): the applicant must demonstrate that its position is not obviously groundless and that it has reasonable chances eventually to win the case;
 - c) whether the interests of the applicant outweigh those of the opposite parties and of third parties (“balance of interests” test): the applicant must demonstrate that the harm or inconvenience it would suffer from the refusal of the requested stay would be comparatively greater than the harm or inconvenience other parties would suffer from the granting of the provisional measures.
116. The Panel shall point out that it took into account all the Parties’ arguments regarding the request for provisional measures by the Second Appellant, even if not expressly mentioned below, and consider that the three prerequisites for the grant of the provisional measures set out in Article R37 of the Code are met, for the reasons explained below.
117. Regarding the existence of irreparable harm, the Panel found that, at the time of the request, the Second Appellant was indeed at risk of suffering irreparable sporting harm.
118. Prohibiting LDU from signing players for two consecutive transfer periods would place it at a competitive disadvantage. Regardless of the club’s squad depth, modern football requires teams to strengthen their rosters each season to remain competitive across various tournaments. This necessity is even more pronounced for LDU, as it competes not only in domestic leagues but also in continental tournaments. Moreover, the Panel recognized that player transactions involve both incoming and outgoing transfers, requiring clubs to engage in the transfer market to replace departing players.
119. The existence of irreparable sporting harm in such cases has been acknowledged in CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

jurisprudence. For instance, in case CAS 2008/A/1568, the panel observed:

“For a club, not being able to list new players as a consequence of the execution of a disciplinary sanction would considerably damage its reputation to be a club promoting young talents. This would result in an immediate harm which would be difficult to compensate since it would create a disadvantage amongst the other clubs for the next season of competitions.”

120. In light of the above, the Panel considered that if it were to ultimately annul or partially overturn the Appealed Decision without granting the Second Appellant’s provisional request, the latter would have already served a sanction to which it should not have been subjected. This would undoubtedly be unjust, as the nature of the sanction makes it impossible to reverse its adverse effects on LDU.
121. Regarding the appeal’s likelihood of success, the Panel emphasized that the analysis made vis-à-vis the grant of the provisional measures was preliminary and did not constitute a prejudgment on the merits. An initial assessment of the case when the provisional measure was granted suggested that the Second Appellant’s claims were likely to succeed on a *prima facie* basis. In this respect, the Panel examined only the Second Appellant’s case concerning the annulment of the sporting sanction. At the time the decision was made, considering that the sanction was based on the presumption established in Article 17(4) of the RSTP, the Panel found, *prima facie*, that LDU had grounds that could lead to the rebuttal of this presumption. Specifically, when LDU signed the Player, CASD had already been relegated, allowing the Player to terminate his contract with that club, and the LFC Contract had not been registered or made public anywhere, so LDU could not know about its existence.
122. Finally, concerning the balance of interests, the Panel determined that the Second Appellant would suffer greater harm than the Respondents if required to comply with the sanction immediately. The First Respondent is not a direct competitor of LDU, meaning LDU’s ability to strengthen its squad in the transfer market does not affect it. Additionally, the sporting sanction is independent from the compensation awarded in its favor.
123. As for the Second Respondent, who has a strong interest in enforcing sporting sanctions, the Panel considered that the deterrent effect of the sanction would not be lost merely by postponing its enforcement. The suspension of the sanction’s execution is temporary and remains in effect only until the issuance of the final award, should the Appealed Decision be upheld in what concern the sporting sanction. In other words, suspending the sanction does not imply its annulment unless the Panel decides so in its final award. Therefore, granting a suspension of sporting sanctions does not create a precedent suggesting that breaches of contractual obligations will go unpunished. In

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

sum, LDU would be more adversely affected by an immediate transfer ban than FIFA would be by delaying its enforcement until the appeal is resolved.

IX.2 Decision on the First Respondent's request for document production

124. In its Answer, the First Respondent requested the Panel to order the Appellants to produce the following documents:

“a. Copy of any and all annexes to the LDU Contract or any other contract that might have been signed between LDU and the Player with a duration as from 1 July 2023 and 30 June 2026 and that include any payment either in monetary means and/or benefit or service in kind;

b. Copy of the official Player's bank statements, payrolls, and LDU's accountancy documents that evidence the payments made by LDU – or related parties - to the Player under their employment relationship since 15 January 2023 until 30 June 2026.

c. Copy of any and all agreements between LDU and football agents in the context of the signature of the LDU Contract and copy of the payment receipts of any commission therein.”

125. The First Respondent argues that this evidence is relevant and necessary to understand the context in which the Appellants signed the LDU Contract, as well as the actual remuneration the Player receives under that agreement. Additionally, the First Respondent believes that the requested documents demonstrate the lack of merit in the Appellants' claims.

126. Article R57 of the Code, concerning the Panel's powers of review, provides that Articles R44.2 and R44.3 apply to evidentiary matters. The latter stipulates that a party may request the production of documents in the possession of the opposing party. To do so, the requesting party must demonstrate that the documents likely exist and are relevant to the dispute.

127. In the present case, the Panel considers that the documents requested by the First Respondent are not relevant. First, the evidence submitted by the Parties in their briefs is sufficient for the Panel to understand the context in which the LDU Contract was signed. Second, the First Respondent did not appeal the Appealed Decision, and therefore cannot contest (in the sense of requesting a higher amount of) the compensation awarded in its favor therein.

128. In this regard, it should be noted that, according to Lugano's argument, the requested documents would only be pertinent if the Panel were required in these proceedings to determine that the

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

compensation should have been higher. However, this point is not in dispute. Should the Panel decide to confirm the compensation in the award, it may do so without the need for the documents requested by the First Respondent.

129. In other words, in the hypothetical scenario where the Appellants may have misrepresented the Player's salary to reduce the compensation, this does not in any way affect the dispute that the Panel must resolve.
130. For these reasons, the Panel did not order the production of documents requested by the First Respondent.

X MERITS

131. To resolve the present dispute, the Panel considers it necessary to address the following issues:
- Was the LFC Contract still in force when the Player signed the LDU Contract?
 - Was the LFC Contract valid and enforceable?
 - If so, did the Player breach the LFC Contract?
 - If so, is the compensation awarded in the Appealed Decision excessive?
 - Shall sporting sanctions be imposed on the Player and LDU?
132. Before addressing these issues, the Panel notes that that the dispute exclusively concerns the potential breach of the LFC Contract by the Player. Indeed, in its claim before the DRC, the First Respondent requested confirmation that the Player terminated said contract without just cause, allegedly induced by LDU (para. 38 of the claim). In this regard, the Panel notes that this case does not involve an examination of any potential breach of the Transfer Agreement.

X.1 Was the LFC Contract still in force when the Player signed the LDU Contract?

133. In their Appeal Brief, the Appellants suggest, to some extent, that the termination of the Transfer Agreement also led to the termination of the LFC Contract, given that both agreements were interconnected. Furthermore, they argue that if the LFC Contract were deemed valid despite the termination of the Transfer Agreement, the Player would be placed at a disadvantage.
134. The Respondents argue that these were independent contracts with different parties and distinct subject matters. Accordingly, it falls upon the Panel to determine whether the LFC Contract was terminated because of the termination of the Transfer Agreement or, conversely, whether it remained in force when the Player joined LDU.
135. Although the Panel finds that the Transfer Agreement and the LFC Contract are related, it does

TRIBUNAL ARBITRAL DU SPORT
 COURT OF ARBITRATION FOR SPORT
 TRIBUNAL ARBITRAL DEL DEPORTE

not consider that the termination of the former necessarily resulted in the termination of the latter. The conditions precedent of the Transfer Agreement applied exclusively to that agreement. In contrast, the LFC Contract was not subject to any condition precedent, nor did it provide for its termination due to the termination of the Transfer Agreement. In fact, the LFC Contract had autonomous grounds for termination with just cause. According to Clause Three of the LFC Contract, the only grounds for termination of the LFC Contract are:

“- Failure to obtain membership by the SFV/ASF-SFL;

- Failure to obtain a professional footballer's licence by decision of the competent Swiss authorities;

- The player's suspension for at least three months from official matches organised under the aegis of the SFV/ASF, attributable to culpable behaviour on the part of the player and pronounced by the competent sports authorities in a final decision (at the club's discretion);

- suspension of more than 3 months or the cancellation of the league due to covid-19;

- Failure to grant or withdrawal of the SFL licence by a final decision.”

136. The termination of the Transfer Agreement means that its conditions precedent no longer have any effect. In any case, the Panel finds that the issuance of the ITC and the signing of an employment contract were conditions that could be fulfilled with or without the Transfer Agreement. It is worth recalling that the conclusion of an employment contract between a club and a player does not necessarily have to be linked to or preceded by a transfer agreement with another club. For example, when a player joins a club as a free agent, there is no prior transfer agreement.
137. Moreover, the Panel observes that the termination of the Transfer Agreement did not necessarily render all its clauses ineffective. Pursuant to Clause 2.3(a), under certain circumstances, Clauses 3, 6, 12, 13, and 15 would survive the termination of the agreement. In this regard, it must be noted that Clause 3.2(f), which remained in force following the termination of the Transfer Agreement, provided for the possibility that the contract between the Player and CASD could be terminated due to CASD's relegation to the third division. In such a scenario, the parties were obliged to explore solutions to facilitate the Player's registration with Lugano. This means that the LFC Contract would not have been automatically terminated in this scenario.
138. In this regard, the Appellants argue that, according to the aforementioned clause, the parties to the Transfer Agreement had an obligation to act. However, none of them fulfilled this obligation. Consequently, the Player considered that Lugano had lost interest in continuing with the LFC Contract, leading him to

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

conclude that the contract had been terminated due to the concurrent fault of the parties.

139. The Panel finds that, for a contract to be deemed terminated due to mutual non-performance by the parties, it must be naturally inferred from the parties' conduct vis-à-vis the fulfillment of their obligations that there is an implicit and reciprocal intention not to perform the contract. A mere reciprocal lack of action is not sufficient; rather, the acts or omissions constituting non-performance must be unequivocal, whether tacit or express, and must reflect a joint or separate intention to abandon the contract.
140. In this case, the Panel does not find any unequivocal actions or omissions demonstrating that Lugano had no intention of performing the LFC Contract. According to the evidence on record, Lugano only became aware that the Player had terminated his contractual relationship with CASD in January 2023. Upon learning this, the First Respondent immediately contacted the Player to find a solution that would allow him to join the team on the date stipulated in the LFC Contract. The Panel considers that Lugano did, in fact, demonstrate an intention to uphold the contract with the Player. Although this occurred three months after the termination of the contract with CASD, the reality is that neither the Player nor CASD—who were in a better position to do so—informed Lugano of this situation. That said, this does not mean that the First Respondent had no other means of ascertaining the status of the Player's relationship with CASD. However, this does not imply an abandonment of its intention to uphold the contract.
141. For all the aforementioned reasons, the Panel determines that when the Player signed the LDU Contract, his LFC Contract was still in force. Any potential negative implications arising from the early termination of the contract with CASD and the late entry into force of the LFC Contract do not alter this conclusion. However, these implications will be analyzed later for the relevant purposes.

X.2 Was the LFC Contract valid and enforceable?

142. In their Appeal Brief, the Appellants also appear to challenge the validity of the LFC Contract on the grounds of alleged violations of labor law. Specifically, they question the fact that the contract would only come into effect nearly a year and a half after its signing. In their view, this constitutes an unjustified limitation on the Player's ability to sign with other clubs. In this regard, they invoke Article 18(3) of the RSTP. Likewise, they argue that the termination of the contract with CASD in October 2022—foreseen in the Transfer Agreement—combined with the Player's scheduled incorporation into Lugano only in July 2023, would have left him without income for nearly eight months and unable to play. Ultimately, the Player's employment situation was entirely at the discretion of the First Respondent.
143. The Panel agrees that the conditions governing the entry into force of the LFC Contract are not the most usual and common in football. However, this does not mean that the LFC Contract is null and void or that it violates the Player's labor rights. The six-month period established in Article 18(3) of the RSTP, which allows a player to sign with another club, applies when the contract with his current club has expired or is set to expire within that period. However, this provision is not applicable to the present case, as the signing of the LFC Contract was a direct consequence of the Transfer Agreement.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

144. The fact that the parties to the Transfer Agreement anticipated the possibility of the termination of the contract between the Player and CASD due to the latter's relegation did not necessarily mean that the Player would be left without income until the LFC Contract took effect. First, although the FEF regulations allowed the Player to terminate his contract with CASD with just cause due to relegation to the third division, such termination was not automatic. It was a right afforded to the Player, meaning that he could have chosen to remain with the club, continue playing, and receive his salary until his incorporation into Lugano. Therefore, it was the Player himself who placed himself in a situation of unemployment by terminating his contract with CASD.
145. On the other hand, if the Player wished to exercise his right to terminate the contract with CASD due to its relegation, he could have contacted Lugano to find a solution that would allow him to play for another club and receive his salary. While the obligation set out in Clause 3.1(f) of the Transfer Agreement applied to all parties, it was the Player who had an interest in terminating his contract with CASD. Therefore, he should have taken the initiative to explore alternatives with Lugano, but failed to do it.
146. Another potential alternative was for the Player to join another club until 30 June 2023. The Appellants argue that this would not have been possible because Article 18(2) of the RSTP establishes that the minimum duration of a contract must be from registration until the end of the season, and the season in Ecuador ends in December. However, the Panel is not persuaded by this argument, as the Player was not necessarily required to join an Ecuadorian team. He could have explored opportunities in other leagues where the season ended in June. In fact, according to the evidence on record, Lugano offered the Player the possibility of playing in a MLS team for six months.
147. In conclusion, the Panel does not consider that the unusual terms of the LFC Contract restricted the Player's right to sign with other clubs. Therefore, the LFC Contract does not violate fundamental principles of labor law and is not null and void.

X.3 Did the Player breach the LFC Contract?

148. Based on the foregoing, the LFC Contract was not terminated by the termination of the Transfer Agreement or by the parties' implicit mutual abandonment. Likewise, the LFC Contract was valid and enforceable. This means that, on 15 January 2023, when the Appellants signed the LDU Contract, the LFC Contract was still in force.
149. Furthermore, the Panel notes that the validity of the LDU Contract extended from the date of its signing until 30 July 2025, while the LFC Contract was set to be in force from 1 July 2023 until 20 June 2026. In other words, the duration of both contracts overlapped. Therefore, the Panel finds that the Player breached his LFC Contract by signing with LDU while still being bound by the

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

former.

150. The Panel emphasizes that the termination of the Transfer Agreement did not result in the termination of the LFC Contract. The obligation contained in Clause 3.1(f) of the Transfer Agreement applied to Lugano, the Player, and CASD alike. However, the parties best positioned to be aware of CASD's relegation and to explore alternatives that would enable the Player's registration with Lugano were the Player and CASD. This does not mean that the burden was placed exclusively on the Player. However, it is clear that he was the one who decided to terminate his contract with CASD and, therefore, had the duty to inform Lugano.
151. Furthermore, contrary to the Appellants' assertions, the Panel did not find that Lugano demonstrated a lack of interest in continuing the contract with the Player.
152. On the contrary, the First Respondent repeatedly contacted the Player and LDU to warn them about the existence and enforceability of the LFC Contract, proposed alternatives for the Player to play with another club and even suggested that he remain with LDU until 30 June 2023. As evidence of this, there are five formal communications from Lugano to the Appellants. Additionally, the First Respondent's scout sent multiple text messages to the Player. These messages clearly show that the Player, fully aware of the existence of the LFC Contract, chose to remain with LDU and ignored Lugano's warnings.
153. The Appellants argue that the scout's instructions to the Player regarding his incorporation into an MLS team were unclear and that the circumstances under which this would occur were unknown. These allegations are of no avail in the Panel's view, as the evidence shows that the Player chose to ignore the invitation to calls with Lugano's executives, where these alternatives would have been explained to him.
154. Finally, the Panel notes that the Appellants argued that it was uncertain whether Lugano had room to incorporate the Player into its squad. These allegations, beyond being speculative, are disproven by the fact that the First Respondent, in one of its communications, informed the Player that it had already purchased flight tickets for him to travel to Switzerland and requested certain documents to process the necessary work permits. It is therefore clear that the First Respondent genuinely intended and was able to incorporate the Player into the team.
155. Thus, the Panel finds no justification for the Player's decision to disregard the LFC Contract and sign with LDU. Nor was there any breach by Lugano or any abusive conduct on its part.

X.4 Is the compensation awarded in the Appealed Decision excessive?

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

156. In their Appeal Brief, the Appellants argue that, even if the Player were found to have breached the LFC Contract, the compensation awarded in the Appealed Decision is excessive. The Appellants contend that the methodology used by the DRC to calculate the compensation should not be applied, as the Player's salary at LDU is significantly lower than that stipulated in the LFC Contract. Additionally, the Appellants argue that the Appealed Decision failed to consider the economic differences between Ecuadorian and Swiss football. They further contend that other relevant criteria typically used by CAS to calculate compensation for contractual breaches do not apply in this case. Among other reasons, they point out that the LFC Contract did not contain a compensation clause, Lugano did not lose any revenue or receive offers from other clubs, did not incur replacement costs or expenses, and did not suffer any damages. Likewise, they argue that the DRC failed to consider that the LFC Contract was terminated before it came into effect and did not take into account the specificity of sport.
157. Article 17(1) RSTP establishes that, in all cases, the breaching party must pay compensation. Furthermore, the provision sets out a non-exhaustive list of objective criteria to be considered when calculating the compensation. CAS case-law has explained that Article 17 RSTP is designed to strictly uphold contractual stability. Unlike Articles 14 and 15, it does not allow a party to freely terminate a contract without just cause. Instead, it makes clear that breaching a contract in this manner—regardless of whether it occurs outside the Protected Period and with proper notice—is a grave violation of the duty to honor agreements. Such misconduct carries serious consequences, including the obligation to pay compensation (CAS 2008/A/1519-1520).
158. Moreover, CAS has been clear that the criteria set out in the provision in question are objective and that panels must apply the objective criteria in Article 17.1 to the specific facts of each case, assessing their relevance to determine the compensation. The parties must provide the necessary evidence. While each case is different, the panel's role remains consistent: ensuring a fair, transparent, and well-reasoned calculation that restores the injured party to its rightful position:

“It is the panel’s role to consider each of the criteria within Art. 17.1 of the Regulations and indeed any other objective criteria in the light of the specific facts of the case and to determine how much weight, if any at all, to apply to each in determining the amount of compensation due in the particular case. In addition, the onus is on the parties to provide the evidence for the panel to carry out this task. Although the facts involved in previous awards, and those in cases to follow, are and will be different from each other, the role of a panel remains the same, to apply all of the Art. 17.1 criteria and any other objective criteria to the specific facts and determine which are relevant and which are not and to ensure the calculation made shall be not only just and fair, but also transparent and comprehensible, with a view to putting the injured party in the position it would have been

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

in had no breach occurred.” (CAS 2010/A/2145-2146-2147)

159. Taking the above into account, the Panel considers that the reasons that led the Player to sign the LDU Contract and accept a significantly lower remuneration than that of the LFC Contract are irrelevant for the calculation of compensation. This is because they are merely subjective, and, as previously stated, the criteria for determining compensation are objective.
160. In analyzing the criteria set forth in Article 17(1) RSTP and their application to this case, the Panel finds that the reasoning in the Appealed Decision was correct in determining the compensation in this specific case. First, the Panel notes that the LFC Contract did not include a liquidated damages clause. The compensation clause contained in the Transfer Agreement is not applicable, as that is not the contract at issue in this dispute. For the sake of clarity, the Panel emphasizes that the LFC Contract was not terminated due to CASD’s relegation but rather as a consequence of the Player’s decision to sign with LDU.
161. Likewise, the Panel finds that the Appealed Decision was correct in denying the First Respondent compensation for the payments made to CASD under the Transfer Agreement. CAS jurisprudence has consistently held that an injured party has a duty to mitigate its losses. In this regard, the First Respondent should have sought reimbursement of the transfer fee from CASD once the Transfer Agreement was terminated, if it thought it was entitled to it. However, there is no evidence in the record that such action was taken.
162. Nevertheless, while it is true that the First Respondent did not provide evidence of having incurred expenses to replace the Player, this does not mean that the Player’s breach of the LFC Contract did not cause harm. Signing a player represents an investment in their recruitment and development and an expectation of on-field performance— expectations that are undermined when the player unilaterally terminates the contract before it takes effect. Moreover, given that the Player was young and had potential, the club lost the opportunity to potentially benefit financially from a future transfer, which could have ultimately generated a profit. This situation affects not only the club’s finances but also its competitiveness and overall strategy in the transfer market.
163. The Player’s breach of contract not only deprived the First Respondent of his services and the potential financial benefit of a future transfer but also resulted in a significant loss of resources and administrative efforts. To secure his signing, it deployed its scouting team in Ecuador, incurring costs related to talent identification and evaluation. Additionally, it initiated procedures in Switzerland to obtain the necessary work permit and arrange his relocation, investing time and money in a process that ultimately became futile due to the Player’s unilateral decision.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

164. The case file contains no evidence that would allow the compensation to be calculated differently from the method applied by the DRC. There is no proof of the Player's market value at the time he was supposed to join Lugano, nor of any expenses incurred by the First Respondent. The only available elements that enable the calculation of compensation based on the objective criteria set out in Article 17 of the RSTP consist of the LFC Contract and the LDU Contract.
165. Contrary to the Appellants' claims, the methodology of averaging the salaries under the LFC Contract and the LDU Contract is found reasonable and applicable by the Panel in this specific case, and even more favorable to the Appellants than simply applying the criterion of the salary under the LFC Contract, which could have been a possibility given that such contract was agreed upon in February 2022, meaning that by the time the Player breached that contract a year later, the value of his services was likely higher given that the Player was more experienced. Moreover, the fact that the salary under the LDU Contract is significantly lower than that of the LFC Contract results in a lower overall average. Typically, when a player breaches a contract, his new contract carries a higher value, leading to a higher compensation amount.
166. Thus, the Panel does not find the amount the Appellants must pay to be excessive. While the Player claims that the compensation resulting from the application *in casu* of the criteria of Article 17 (1) RSTP represents more than eight years of his salary, it is important to note that he put himself in that position. Furthermore, it was his own decision to accept a lower salary at LDU. Nor can it be overlooked that the First Respondent gave the Appellants an opportunity to remedy their breach, which would have allowed them to avoid paying compensation.
167. Therefore, the Panel confirms the compensation awarded by the Appealed Decision as regards of the Player's breach of contract.

X.5 Shall sporting sanctions be imposed on the Player and LDU?

168. Article 17(3) RSTP stipulates that, in addition to compensation, a player who breaches a contract will be subject to a sporting sanction consisting of a four-month suspension from official matches in case the breach takes place during the protected period. Similarly, Article 17(4) RSTP establishes sporting sanctions for clubs that induce a player to breach their contract with another club. In such cases, the penalty consists of a ban on registering new players for two consecutive transfer windows. Both sanctions were imposed on the Appellants in the Appealed Decision.
169. On the one hand, the Appellants argue that sporting sanctions are not applicable in this case, since the breach did not occur during the protected period. In their opinion, the protected period only begins when the contract enters into force. In this case, the breach occurred six months before

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

that date. Moreover, the Appellants note that the decision regarding the sporting sanctions was not unanimous. On the other hand, the Respondents argue that, according to CAS jurisprudence, the protected period begins at the time of signing the contract, not upon its entry into force. They further contend with regard to the sanction imposed on LDU that the latter failed to rebut the presumption regarding its inducement of the Player to breach the LFC Contract.

170. The imposition of sporting sanctions is grounded in the enhanced protection of contractual stability and the principle of *pacta sunt servanda* promoted by FIFA. Although Articles 17(3) and 17(4) RSTP stipulate that sporting sanctions shall be imposed, both FIFA and CAS jurisprudence have recognized that the DRC and arbitral panels retain a degree of discretion when determining whether to apply such sanctions. In other words, it is possible to refrain from imposing a sporting sanction even in cases where a contractual breach has occurred (CAS 2020/A/7310; CAS 2017/A/4935). For example, in CAS 2016/A/4550, the panel held:

“According to CAS jurisprudence sporting sanctions under Article 17 par. 3 and 17 par. 4 RSTP do not apply mandatorily, but the situation has to be analysed on a case-by-case basis, according to the specific circumstances of the case, verifying in each case in particular if some general principles of law have been respected; (...)”

171. With regard to the sanction imposed on the Player, while the Panel is clear that he unjustifiably breached the LFC Contract, it also recognizes that the particular circumstances of this case (especially the contractual scheme and the events occurred around the deal) warrant further evaluation. As previously noted, sporting sanctions are intended to safeguard contractual stability. However, in this instance, the LFC Contract was set to take effect more than one year after its signing, with the possibility of the Player of terminating his relationship with CASD in case of relegation, leaving him in such case in an at least uncertain situation until the LFC Contract entered into force.
172. The Panel considers that in this case, the parties (Lugano, CASD and the Player) chose an unusual business structure that inherently placed contractual stability at risk if the Player severed ties with CASD earlier than anticipated. While the Player’s breach was serious and therefore deserves and implies an obligation to indemnify Lugano, the Panel does not find that a sporting sanction on the Player is justified based on the reasons explained above.
173. Likewise, the Panel acknowledges that while the Player’s breach was serious, there is a clear distinction between prematurely and unjustifiably terminating a contract before its effective date and doing so once it is already in force. In this case, the Player’s decision to walk away from the LFC Contract six months before it was set to commence resulted in a lesser impact on Lugano. Additionally, considering the specific circumstances of this case, the Panel finds that

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

the compensation awarded to the First Respondent adequately safeguards the principles of contractual stability and *pacta sunt servanda*.

174. Based on the foregoing, the Panel will annul the sporting sanction imposed on the Player.
175. Regarding the sanction imposed on LDU, the Panel notes that Article 17(4) RSTP establishes a presumption against LDU, meaning the club bears the burden of proving that it did not induce the breach. However, given the specific circumstances of this case, such a presumption is unwarranted.
176. When the Appellants signed the LDU Contract on 15 January 2023, Lugano had not yet informed them of the existence of the LFC Contract, being it also unproven that the Player had informed LDU of such circumstance. Moreover, the LFC Contract was not officially registered, so even if LDU was not reasonably able to discover that the Player had a contract with Lugano. Additionally, under FEF regulations, LDU had fair reasons to believe that the Player's contract with CASD had ended due to the club's relegation and, therefore, that the Player was free to join LDU. Finally, in the First Clause of the LDU Contract, the Player expressly stated that no legal obstacles prevented him from signing the agreement.
177. Accordingly, the Panel considers that the presumption of inducement set out in Article 17(4) FIFA RSTP has been rebutted and will also annul the sporting sanction imposed on LDU.
178. In conclusion, the Panel upholds the Appealed Decision regarding the compensation awarded to the First Respondent and the joint and several liability of LDU but annuls the sporting sanctions against the Appellants.

XI COSTS

(...).

ON THESE GROUNDS

The Court of arbitration for Sport rules:

1. The appeal filed by Jairon Andrés Charcopa and Liga Deportiva Universitaria de Quito against the decision issued on 14 February 2024 by the FIFA Dispute Resolution Chamber is partially upheld.
2. The decision issued by the FIFA Dispute Resolution Chamber on 14 February 2024 is confirmed except for its points 7 and 8, which are annulled. As a result, the decision shall be modified as follows:

“1. The claim of the Claimant, FC Lugano, is partially accepted.

2. The Respondent 1, Jairón Andrés Charcopa Cabezas, has to pay to the Claimant CHF 158,221.55 as compensation for breach of contract without just cause plus 5% interest p.a. as from 15 January 2023 until the date of effective payment.

3. The Respondent 2, L.D.U. Quito, is jointly and severally liable for the payment of the aforementioned compensation.

4. Any further claims of the Claimant are rejected.

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

6. If the aforementioned sum plus interest is not paid within 30 days of notification of this decision, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and formal decision.

9. This decision is rendered without costs.”

3. (...).
4. (...).
5. (...).
6. All other and further motions or prayers for relief are dismissed.

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

Seat of arbitration: Lausanne, Switzerland
Date: 23 April 2025

THE COURT OF ARBITRATION FOR SPORT

Ernesto Gamboa Morales
President of the Panel

Miguel Cardenal Carro
Arbitrator

Jordi López Batet
Arbitrator