

CAS 2024/A/10341 Elias Fernando Aguilar Vargas v. Changchun Yatai FC

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

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

Arbitrators: Mr. Vitor Butruce, Attorney-at-law in Rio de Janeiro, Brazil
Mr. José Juan Pintó Sala, Attorney-at-law in Barcelona, Spain

Ad Hoc Clerk: Mr. Dhruv Siddharth, Attorney-at-Law, Lisbon, Portugal

in the arbitration between

Elías Fernando Aguilar Vargas, Herédia, Costa Rica.

Represented by Mr. Rafael Meirelles Gomes de Ávila and Mr. Fhayllow Lemos Nocko,
Attorneys-at-law at Meirelles Advocacia, Brazil.

– Appellant –

v.

Changchun Yatai FC, Changchun, China PR

Represented by Mr. Juan de Dios Crespo Perez and Ms. Juan (Emily) Yu, Attorneys-at-law at
Ruiz-Huerta & Crespo Abogados Valencia, Spain

– Respondent –

I. PARTIES

1. Elias Fernando Aguilar Vargas (the “**Appellant**” or the “**Player**”) is a professional football player of Costa Rican nationality who is currently employed with Costa Rican club Sport Herediano (“**Sport Herediano**”), which competes in the First Division of professional football.
2. Changchun Yatai FC (the “**Respondent**” or the “**Club**”) is a Chinese professional football club with headquarters at Renmin Road, 130031, Changchun, in China PR, currently competing in Chinese First Division of professional football, affiliated to the Chinese Football Association (the “**CFA**”), which in turn is a member association of the Fédération Internationale de Football Association (the “**FIFA**”). FIFA is the governing body for international football, based in Zurich, Switzerland.
3. The Club and the Player are collectively referred to as the “**Parties**”.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. This factual background information is given for the sole purpose of providing a synopsis of the matter in dispute. Although the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it is referred in this award (the “**Award**”) only to the submissions and evidence it is considered necessary to explain its reasoning.

(A) Introduction

5. This appeal case (the “**Appeal**”) before the Court of Arbitration for Sport (the “**CAS**”) is an employment related dispute, challenging the decision of the FIFA Dispute Resolution Chamber (the “**FIFA DRC**”), passed on 31 August 2023, with grounds communicated to the Parties on 11 October 2023, which rejected and dismissed the Player’s claim against the Club, for the Club’s unilateral and unjust termination of their alleged contractual employment relation (the “**Appealed Decision**” or the “**FIFA DRC Decision**”).

(B) Background and initial negotiations between the Agents – The Introduction

6. On 20 September 2022, Mr. Li Feng (the “**Chinese Agent**”) and Mr. Rodrigo Melo (the “**Player’s Agent**”) began negotiations using a communications app, “WeChat” with the aim to transfer the Player to the Club. The Player’s Agent and the Chinese Agent are collectively referred to as the “**Agents**”. The Panel clarifies that unless otherwise specified, the following communications between the Agents have always been made through WeChat.
7. On 21 September 2022, the Player’s Agent sent to the Chinese Agent a draft of an introductory letter to be signed and sent back. On the same date, the Player’s Agent stated “*I keep all in secret not be worried*” to the Chinese Agent and further asked if the introductory letter was ready.
8. On 22 September 2022, the Chinese Agent sent to the Player’s Agent the proposed introductory letter (the “**Introduction Letter**”). The Introduction Letter, correcting the minor typos, reads as follows:

“(…)

LETTER OF PROPOSAL

SUBJECT: TRANSFER OF PLAYER

Professional football player Mr. Elias Fernando Aguilar Vargas (born on 7 November 1991) with passport number of (...)

Dear Sir,

We, Changchun Yatai FC, Chinese Super League, would like to inform you that we are interesting in you for negotiation and employment contract for 2023 season and future

We appreciate you time and concern and hope to see you soon.

Best Regards,

CHANGCHUN YATAI FOOTBALL CLUB

SPORT DIRECTOR: MR. JIANG YONG (SIGNATURE)

(...).”

9. The Panel notes that ‘Mr. Jiang Yong’ (the “**Assistant to the Chinese Agent**”) is the colleague of the Chinese Agent. The Chinese Agent and the Assistant to the Chinese Agent shall be collectively referred to as the “**Chinese Agents**”.

(C) The follow-up negotiations between the Agents – The Offer

10. The below communications are excerpts from the WeChat history between the Agents, following the Introduction Letter, that the Panel found relevant for the present arbitration:

2022.9.22 14:05 – 14:29

Chinese Agent: [sent the Introduction Letter - see para. 8 above]

Player's Agent: *"thank you so much... I will keep in big secret and tonight I will let you know about conditions and also help you get \$"*

Player's Agent: *"(handshake emoji) 🤝"*

2022.9.22 19:17

Player's Agent: *"Hi Friend. Good night. How are you? I very appreciate to work again with you. Let's now talk about conditions of Aguilar
Period of contract 3 years or 2 years (let me know about period)
but 3 years its preferred
Salary 1.1M€ net per season 2023
Winner bonus
Draw bonus
Attached point bonus (assistance + goal)
House + car + 4 business class airfare from China to Costa Rica
Commission from club 10% per season (let me know your opinion) and let me know about your commission fee not be worried lets made it happen."*

2022.9.22. 20:10

Player's Agent: *"And also bonus for classification to AFC
Bonus for champion of Super League
Bonus for champion AFC
Let me know your opinion"*

[Attached the Introduction Letter signed by the Player]
“*With all player sign*”

(...)

2022.9.23 15:50

Player’s Agent: “*Hello friend
How are you? Give me your opinion and about the condition and
your fee also no problem*”

Chinese Agent: “*Hi my friend. Let waiting for one day. Tomorrow back to you*”

Player’s Agent: “*Okay I wait for you (...)*”

2022.9.30 11:17

Player’s Agent: “*Good morning my friend
How are you?
Everything okay?*”

Chinese Agent: “*[G]ood travel. Keeping in touch*”

Player’s Agent: “*(...) but I hope we made end before I fly because day 4 I need
to give answer to Incheon united fc say yes or not for new
contract to Aguilar
I want made he came and play in Yatai (...)*”

Chinese Agent: “*[H]ave big chance in Yatai*”

2022.9.30 11:44

Player’s Agent: “*[B]ecause the incheon united fc Korean club yesterday ask my
player Aguilar when Rodrigo [Player’s Agent] came need meet
about new contract and also club call me ask meet day 4
I want go and say thank for everything... and made move to
china but I need know and latter with condition that all and also
about your fee to fix it to you for me easy*”

Chinese Agent: “*I will answer to you afternoon*”

Player's Agent: "[T]hank you so much I wait of you my friend"

(...)

2022.10.5 20:43 – 21:19

Player's Agent: "[H]e [Player] agree
The condition to go to China (emoji)
Done (emoji)
From 1.1M Euro"

"Hi... how are you? Friend let me know about your work fee \$
for made agreement and give to u ... player want to [b]e 1.M just
to h[im]

We have from player 100k Euro per season
And come from club to we share"

2022.10.6 14:57

Chinese Agent: "[O]kay my friend"

(...)

Sometime between 2022.10.6 19:31 and 2022.10.10 17:38

Player's Agent: (...)

"Let's close this deal
Period of contract 2 years salary 1,1M€ net per season 2023
Winner bonus 3000usd
Draw bonus 1000usd
Apartment + car + 4 business class airfare from china to costa
rica
Extra bonus for champion league 100000USD
Commission from club 10% per season (let me know your
opinion) and let me know about your commission fee not be
worried lets ma[k]e it happen"

"Give me pre contract or letter with condition for made end this
I need give it and made the player visa before I fly from Korean
to Saudi (emoji)

*And let me know about your \$ too
This player Incheon united pushed me very much to made new
contract I already say no .. let's ma[k]e it
I wait of you friend... believe this player will ma[k]e your and
Yatai very satisfied.
Thank you so much”*

2022.10.10 17:38

Player's Agent: *“Hi my friend... how are you? Send me fee contract (...)
I wait for you”*

Chinese Agent: *“all agree your number”*

Player's Agent: *“perfect my friend... how about your \$ let me know no problem
Get the fee contract please (emoji)”*

Chinese Agent: *“every year 110.000 USD”*

Player's Agent: *“like commission from Club to you right? No problem”*

2022.10.10 17:50

Player's Agent: *“Done
You really get a good player and good person Aguilar is
wonderful”*

Chinese Agent: *“🍷👏”*

2022.10.11 12:41

Player's Agent: *“And also I can do china visa in Korean for player here before
he fly it's the best and fast”*

2022.10.100 13:57

Player's Agent: *“[G]ood morning. how are you friend? Send me pre contract
today please
I have meet with my player today afternoon”*

2022.10.13 14:03

Player's Agent: [Missed call]

2022.10.13 14:10

Chinese Agent: [The following message sent by the Chinese Agent contains a document on the alleged letterhead of the Club with the terms and conditions for the Player's signing (the "Offer") initially sent by the Player's Agent. The Offer reads as follows]:

"Greeting from Changchun Yatai FC – Chinese Football Club, we are interested to sign a contract with professional football player Elias Fernando Aguilar Vargas, under the following conditions.

- 1. Term: Two years contract options from 2023*
- 2. Salary: The annual salary is 1,100,000.00 euro net (one million and one hundred thousand euros net)*
- 3. Bonuses: win match: 3000 USD net, draw match: 1000 USD net (depends on the player's performance time)*
- 4. The Club provides an apartment, a car ND 4 (FOUR) business class air tickets between Costa Rica and China*
- 5. If the Club is qualified to participate in the Asian Champion League during the player's service, the additional bonus will be 100,000.00 USD*
- 6. The other conditions and main details will be specified at Employment Contract, which should be signed after the player passed the Medical Exam.*

We hope that this will be a start of a good business relationship between us. Thank you in advance and we look forward to hearing you soon.

Yours Sincerely

President [signed by the Chinese Agent]

2022.10.13 14:18

Player's Agent: *"[T]hank you so much... I will get player signed and also I will prepare the agreement to you guarantee your commission from club. You really get nice player"*

Sometime between 2022.10.17 17:46 and 2022.10.18 09:28

Player's Agent: *"[G]ood morning
How are you?"*

[Attached copy of the Offer signed by the Player]

*"I need stamp from club in this paper for get visa
I'm in embassy now"*

(...)

2022.10.18 09:28

Chinese Agent: *"Sorry. Now secret in club. We don't want Sergio [the current player in the Club] know this information"*

Player's Agent: *"Yes I know
Its secret"*

Chinese Agent: *"[P]lease waiting for after November can do it."*

Player's Agent: *"No worried I keep it in secret
Not need say sorry we cooperation together (...)"*

(...)

2022.10.27 10:50

Player's Agent: *"Good morning my friend
How are you?"*

Chinese Agent: *"OK"*

Player's Agent: *"I process in advance in case the visa for be safe"*

[Attached a picture of the Player's Chinese Visa (the "Visa")]

*“Done
I already made this in secret”*

(...)

2022.11.23 11:02

Player’s Agent: *“Hi... how are you?”*

2022.11.23 13:22

Chinese Agent: *“hi my friend, how are you? Are you in Qatar? Only one thing tell you, the Sergio in Yatai very good play and many goals he agreed to less salary to 1.1M net USD. Club agreed renew contract. your player need find new team for him. and we need one good defender, free. salary about 1M. if you have please send to me please”
(...)*

2022.11.23 16:05

Player’s Agent: *“[I]m good... now im in brazil... how am I gonna find new club now impossible... I already say no to Incheon united fc he have before 2 years offer made new contract ... I say no because we done the deal with Yatai...
How now I gonna find new club for h[im]
I stop work of h[im] and ignore many clubs in Korean one in Japan also”*

Chinese Agent: *“[S]orry. Because our coach strong want renew Sergio. Very difficult change his mind”*

Player’s Agent: *“Please exchange his mind because Aguilar its big player and he already also give up many thing to go to china (emoji)
We cant ignore it like this now”*

Chinese Agent: *“[D]ifficult. Only try another team. I will take to Shenzhen.”*

Player’s Agent: *“[P]lease*

*Because I strong say no to Incheon united in Korean... the club want he meet me many times I say no not deal and thank you... now I cant regret
Take he to Shenzhen if you can't made he in Yatai... "*

Chinese Agent: "[T]ry to my best"

Player's Agent: *"I know... but its really serious... need to do something and also Aguilar is big player"*

2022.11.24 15:14

Player's Agent: *"Hello Friend... how are you?"
(...)
Aguilar is better player than he [Serginho] and more easy to control for business too
Follow me 100%"*

2022.11.27 21:28 – 21:30

Player's Agent: "[H]i
*How are you? My friend
Everything okay?"*

Chinese Agent: "[N]ot yet"

Player's Agent: *"[N]ot worried you are the best all will be fine
I believe you"*

2022.12.1 19:21

Player's Agent: *"[H]i friend how are you?
Any update about Aguilar?"*

Chinese Agent: "[N]ot yet"
(...)

2022.12.2 21:14

Player's Agent: *"Hello friend... how are you? Any news? About Aguilar"*

Chinese Agent: *“not ye[t]”*

Player’s Agent: *“I’m wait for you for we concluded him in China”*

2022.12.4 15:53

Player’s Agent: *“[H]ello friend... how are you?
About Aguilar another club in china (emoji) contact me from
super league
But I’m wait of you because I just go one way (...)
(...)”*

2022.12.9 20:05

Player’s Agent: *“[O]ne thing you should know... I holding Aguilar to you
because he are the best option and also free transfer to you.
But the player push me about the contract... because many agent
call h[im] and offer to go to Dubai... but he are my player just
follow me 100% in this case let’s sign the contract if you need I
can let h[im] ma[k]e medical test in costa rica
Let me know your opinion”*

2022.12.9 21:18

Chinese Agent: *“[I]f he have good option, he can sign. After we together can find
new one”*

Player’s Agent: *“He can’t go with another agent he just follow me... I not want
work with another agent in another country
Let’s conclude he in china
Not one better than he and free in the market”
(...)”*

2022.12.9 21:23

Player’s Agent: *“Honestly to you is very good player and person to manager
Take h[im] and make money with h[im] believe
Romulo from chengdu also are my player I strong talk before to
take he in china (emoji) and now see he are very good*

Aguilar is better than Romulo I guarantee”

Chinese Agent: “OK”

Player’s Agent: “Take Aguilar is best number 10 player in all South Korean ...
best left foot
I guarantee (emoji)”

Chinese Agent: “Sergio now”

Player’s Agent: “What is his situation?”

Chinese Agent: “He want stay. But his father ask more commission. club no agree”

(...)

Player’s Agent: “When we meet in china I told you... his father very complicated
and stressful person to work
That why I not want lose time to find club to Sergio because his
father also you know about one agent put serginho in the fifa?
Because his father give mandate to h[im] and ignore he and sign
h[im] in china and not tell to agent just ignore (emoji)
Take Aguilar he will ma[k]e you very satisfied and also he
f[o]llow me just me can control he I’m very easy to work because
we are in same way”

Chinese Agent: “yes”

2022.12.9 22:14

Player’s Agent: “Honestly I have this offer from china one agent contact my
Aguilar and give to h[im]... but what I told you I just go one way
I promise to you I follow you (...)”

*“But I not like agent contact my player directly and try
conv[incing] like this... and my player open to me everything...
I say forget let’s just follow Li Feng not another way
Because I keep my words to you also my player same”*

2022.12.13 18:47 – 18:52

Player's Agent: *"Hello friend how are you??
Any update?"*

Chinese Agent: *"[N]ot yet"*

2022.12.13 22:51

Player's Agent: *"[W]hat we need wait friend?
I know are you work hard but also now Qingdao who came from
second division ask me about Aguilar :/ ... really I hold hard to
go with you for made my player in Yatai because I told you I just
go one way
(...)"*

2022.12.14 20:41

Chinese Agent: *"[Y]es Qingdao coach is my coach"*

Player's Agent: *"The old Guy?"*

Chinese Agent: *"[Y]es"*

2022.12.15 19:32

Player's Agent: *"Hi my friend... how are you? Can you send me Aguilar contract
please
(...)"*

2022.12.19 17:08 – 17:17

Player's Agent: *"Hello friend
How are you?
Friend give me Aguilar contract please"*

Chinese Agent: *"[H]i my friend, we work this week, will finally decide"*

2022.12.19 22:38

Player's Agent: *"[O]kay my friend I'm wai[t] for you
I know you do best always"*

2022.12.27 18:36

Player's Agent: *"[W]hen you send the contract my friend?
Its urgent because my player now push me"
[Missed call]*

2022.12.31 09:24

Player's Agent: *"[F]or let you know I convince my player be wait of you... but
many agent try contact my player to offer another's club in
China but my player believe me strong and I holding everything
but I need your help with contract please MR"*

Chinese Agent: *"[D]on't worry."*

2023.1.9 17:55 – 18:14

Player's Agent: *"[H]ello friend
How are you?"*

[Missed call]

*"Hi my friend
How are you?"*

2023.1.12 20:27

Player's Agent: *"Hi my friend
How are you?"*

2023.1.14 21:06

Player's Agent: *"Hi my friend
How are you?"*

2023.1.16 21:03

Player's Agent: *"Hi my friend
How are you?
What's the situation in china now about Aguilar?"*

2023.1.24 20:53

Player's Agent: *"Hi my friend
How are you? Any update about Aguilar?
He push me"*

2023.1.27 21:44

Player's Agent: *"Hi my friend
How are you?"*

2023.1.30 13:37

Player's Agent: *"[H]i my friend
How are you?
Anything wrong about Aguilar?"*

2023.1.30 19:55

Player's Agent: *"We need organized the player situation my friend"*

2023.1.31 10:39

Chinese Agent: *"[Y]ata[i] no want him. Shenzhen fc no cleaning. Because now
no coach and GM problem"*

2023.1.31 11:41-11:53

Player's Agent: *"Thank you for answer... but I need you help because I reject
offer from korean and now all korean team who need number 10
are full ... and I reject also 2 clubs in China (emoji) because I
speak with Ze Renato also and he say he talk with you and ask
me not sign my player in another team ... and also I wait of you
and respect our work I can't sign with another team...
[N]ow situation like this... where I will send my player because
he now push me a lot ... and I keep say wait... it's never*

happened before I never did it with any player ... in korean I have big respect with players... because I keep my words... I need you help to figure out it (...)

I need you find solution for this time this really big problem for me my friend

I have a lot player in k league in korean all player if you want I can give to you but never have case like this really ... we need figure out I know you can do it”

2023.1.31 16:47 – 18:14

Chinese Agent: *“[H]i my friend, you can put him in korea because in china our league not yet start transfer window”*

Player’s Agent: *“[H]i my friend in korea all teams are full now I can’t do it in Korean because I reject offers from Korean all clubs now have players”*

(...)

2023.2.1 17:17

Player’s Agent: *“Hi my friend
How are you? I’m work 24 hours try find club for Aguilar but in korean all clubs have now number 10 positions
You should help me solution it because it’s big d[a]mage to me for my player
Also Qingdao sign another number 10 because I say no many times
Now you need take the responsibility with me and help please”*

2023.2.5 20:10 – 20:26

Player’s Agent: *“But im worried because I like you that’s why I say it to you... but I know you will find solutions not one are best agent like you in china
I know this we are together until the end and I can give you more 50k from player each year for help you also”*

Chinese Agent: *“[W]hen all team cleaning who is coach, we will try to find”*

Player's Agent: *"(...) I will pay you more because your work hard its easy for me I'm in your side not be worried"*
(...)

2023.2.9 18:12 – 18:28

Player's Agent: *"[H]i my friend
How are you?"*
[Attached a picture of the Players' profile on the Transfermarkt website which stated the Player was playing for the Club]

Chinese Agent: *"[M]y friend, who put in Yatai? It is not true"*

Player's Agent: *"I don't know its not from club?"*

Chinese Agent: *"[O]f course, Yatai club don't know this"*

2023.2.16 22:00

Chinese Agent: *"[D]e Souza salary? 300.000 net?"*

Player's Agent: *"Yes 300k usd net"*

Chinese Agent: *"OK"*

Sometime before 2022.2.20 09:45

Player's Agent: *"About Aguilar any update?
What the situation?"*

Chinese Agent: *"[M]any clubs not yet decide finally coach and finance, waiting
for chance"*

Player's Agent: *"OK my friend I'm wait of you
You need coach for second division? Or first"*

2023.2.21 15:53

(...)

- Player's Agent: *"How much honestly you think you can make aguilar"*
- Chinese Agent: *"I don't know, important who will take him? many club now problem finance"*
- Player's Agent: *"But I lost 5 official offers in November and December for h[im] to keep h[im] to you now I'm in very difficult situation with my player he are very good player"*
- (...)

(D) The Termination of negotiations – The Termination Letter

11. On 16 February 2023, the Chinese Agent sent to the Player's Agent a letter terminating the negotiations dated 15 January 2023 (the "**Termination Letter**"). The Termination Letter is as follows:

"(...)

Mr. Elias Fernando Aguilar Vargas

Dear sir,

Changchun Yatai Football Club once sent you an Offer in interesting for 2023 season on October 13, 2022. However, in view of the fact that the foreign player transfer window of China Football Association in 2023 year has not been opened yet, and the reasons of our club's own financial budget, we are sorry to inform you that we cannot provide you with a work contract in the spring of 2023 season. At the same time, we announce that the Offer previously sent to you is invalid officially

Thank you for your understanding and support, we hope still have opportunities for cooperation for future.

Your sincerely!

Changchun Yatai Football Club

President: [Signed by the Chinese Agent]"

12. The Introduction Letter, the Offer, the Visa and the Termination Letter are collectively referred to as the "**Disputed Documents**".
13. Negotiations and exchange of the above-mentioned documents were held between the Chinese Agent and the Player's Agent on the communications application, WeChat from September 2022 until February 2023.

14. On 25 February 2023, the Player sent a notice to the Club (the “**Legal Notice**”) requesting to reinstate the alleged employment relationship between them or to pay the entire value of the Offer, which amounted to 2,200,000 EUR (two million two hundred thousand euros). The Player provided 15 (fifteen) days for the Club to respond. In case of no response, the Player stated that he would hold the Club liable for the unilateral termination of the contract without just cause.
- (E) The Player’s contract with Sport Herediano and the settlement proposed by the Chinese Agent
15. On 3 April 2023, the Player signed an employment contract with the Costa Rican Club Sport Herediano, which was valid from 1 June 2023 until 31 December 2023, with a monthly remuneration of 1,000,000 CRC (one million costa rican colones).
16. On 6 April 2023, the Club’s counsel sent an email to the Player stating that the Chinese Agent was open to pay a settlement amount of EUR 200,000 and a promise to find another club in the upcoming summer transfer window to the Player and settle the dispute amicably (the “**Proposed Settlement**”). However, the Proposed Settlement was refused by the Player.
- (F) Proceedings before the FIFA DRC
17. On 14 March 2023, the Player filed a claim before the FIFA DRC against the Club. In the claim, the Player stated, *inter alia*, that there existed a valid, binding employment agreement in the form of the Offer between the Club and himself, despite the fact that the main contract had not been signed. The Player claims that the Club should be held in breach for unilaterally terminating the contract with the Player without just cause. In reply, the Club stated, *inter alia*, that the Disputed Documents were sent solely by the Chinese Agent without the authorization of the Club and that the Chinese Agent did not have the authority to negotiate with the Player or the Player’s Agent on behalf of the Club. The Club further stated that they became aware of such a negotiation and exchange of the Disputed Documents only when the Club received the claim by FIFA.
18. On 31 August 2023, the FIFA DRC passed the Appealed Decision. The operative part is as follows:

“(…) *1. The claim of (...) Elias Fernando Aguilar Vargas, is rejected.*

2. *This decision is rendered without costs.*

(...)”

19. On 11 October 2023, the FIFA DRC communicated the grounds to the Parties. The grounds of the Appealed Decision are in summary the following:
- a. The Offer was written to be a unilateral offer and not a bilateral one;
 - b. It was allegedly signed by the ‘President’ but there was no name specified and no designated space for the Player’s signature;
 - c. The Offer explicitly mentioned that further conditions would be specified in the contract;
 - d. The Offer did not have a specific start/end date of the contractual relationship; and
 - e. There was no other evidence to suggest that the Parties indeed agreed on a contract and that it had been duly executed.

III. PROCEEDINGS BEFORE THE CAS

20. On 31 October 2023, the Player filed with the CAS a Statement of Appeal in accordance with Article R47 and Article R48 of the Code of Sports-related Arbitration (the “**CAS Code**”), challenging the Appealed Decision, naming the Respondent and additionally naming FIFA as the “**Second Respondent**”.
21. On 8 November 2023, the Player confirmed that the Statement of Appeal should also be considered as the Appeal Brief.
22. On 14 February 2024, the Athletes’ Commission of the International Council of Arbitration for Sport (the “**ICAS**”) granted the Player’s request for Legal Aid to cover the payment of the CAS Court Office fee as well as his share of the arbitration costs. For this reason, this Award is rendered free of costs.
23. On 22 February 2024, the Club requested to submit the matter to a three-member Panel and that its nomination was Mr. José Juan Pintó Sala.
24. On 23 February 2024, FIFA requested to be excluded from the present procedure and to suspend any deadlines for its submissions as the Second Respondent.
25. On 26 February 2024, the Player agreed to the exclusion of FIFA as Respondent for the present proceedings, and this was duly confirmed by the CAS Court Office.

26. On 16 March 2024, within the extended time limit, the Club filed its Answer.
27. On 3 September 2024, pursuant to Article R50 of the CAS Code, the Deputy Division President decided to submit the matter to a three-member Panel, provided that the Club paid its share of the advance of costs.
28. On 8 September 2024, the Player nominated Mr. Vitor Butruce as his arbitrator.
29. On 29 October 2024, the CAS Court Office notified the Parties that in accordance with Article R54 of the CAS Code, the Deputy President of the CAS Appeals Arbitration Division has appointed the following Panel:

President: Mr. Rui Botica Santos, Attorney-at-law, Lisbon, Portugal

Arbitrators: Mr. Vitor Butruce, Attorney-at-law, Rio de Janeiro, Brazil
Mr. José Juan Pintó Sala, Attorney-at-law, Barcelona, Spain.

30. On 1 November 2024, the CAS Court Office invited the Parties to inform whether they preferred a hearing to be held in this matter or for the Panel to issue an award based solely on the Parties' written submissions.
31. On 11 December 2024, after consulting the Parties, the Panel decided to hold a hearing in this matter by videoconference (via CISCO Webex), on 16 January 2025 at 14h00 (Swiss time).
32. On 19 December 2024, the Counsel of the Player expressed their interest in the participation of the President of the Club in the hearing, as they would like to be allowed to ask specific questions regarding matters that the President would be able to clarify and that were related to the case. Regarding the witnesses of the Club, the Chinese Agents, despite having already submitted statements addressing the facts they considered pertinent, the Counsel of the Player expressed further interest in asking additional questions during the hearing to seek further clarifications beyond what was previously reported in their written statements.
33. On 16 January 2025, at 14:00h (Swiss time), via videoconference (Cisco Webex) a hearing was held. In addition to the Panel, the appointed *ad-hoc* Clerk (Mr. Dhruv Siddharth) and Mr. Antonio de Quesada (Head of Arbitration), the following persons attended the hearing:

(i) For the Player

- Mr. Fhayllo Nocko – Legal Counsel
- Mr. Rafael Meirelles – Legal Counsel
- Mr. Elias Fernando Aguilar Vargas – Player

(ii) For the Club

- Ms. Emily Yu – Legal counsel
- Mr. Li Feng – Witness
- Mr. Jiang Yong – Witness
- Ms. Jiang Yue – Interpreter

34. As a preliminary remark, the Parties were asked to confirm whether they had any objections to the appointment of the Panel. The Parties confirmed they had no objections.
35. The President of the Panel deemed it necessary to clarify certain preliminary issues:
- a. The Club stated that they were unaware that the Player would be attending the hearing and requested the Panel to question him. The Panel clarified that the Player was not attending the hearing as a witness but as a party. The Counsel of the Player did not object to the Club's request to examine the Player, but the Club ultimately did not do so.
 - b. The Player requested to examine the President of the Club. However, the President of the Club informed that he was not available to participate in the hearing and he was not aware of the facts in dispute of the Appeal. In light of these circumstances, the Panel considered the examination of the President of the Club irrelevant and the Counsel for the Player agreed with it.
 - c. In their written submissions both Parties expressed the willing to have access to the documentation supporting the Visa application. The Panel pointed out that the Player, as the applicant of the Visa should have had access to the supporting relevant documentation for the application of the Visa that himself, or someone on his behalf, prepared and submitted. The Panel held the Club's request moot since it is not disputed that the Visa was applied by Player and that the Visa issued was for "business" purposes.
36. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. The Parties had also the opportunity to examine and cross-examine the witnesses. The Parties confirmed that

they were given the opportunity to present their case and submit their arguments in a fair and equal manner and that their right to be heard had been respected.

37. The hearing was then closed, and the Panel reserved its detailed decision to this written Award.
38. On 22 and 23 January 2025, both Parties reverted to CAS Court Office with the order of procedure duly signed.

IV. THE PARTIES' SUBMISSIONS

39. The following summary of the Parties' positions is illustrative and does not necessarily comprise each 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 Player's Submissions:

40. In the Statement of Appeal, which is also considered as the Appeal Brief, the Player submitted the following prayers and requests for relief:

“(…)

1. *The granting of legal aid to the Appellant, given that he is unable to bear the costs of the proceedings before CAS, without compromising his livelihood, as evidenced by the form for legal aid and the attached documents.*

2. *The annulment of the [FIFA DRC final Decision] (...).*

3. *Order the [Respondent] to pay the amount of EUR 2,200,000 (two million, two hundred thousand euros), which represents the exact terms of the negotiation agreed between the parties (...) and which were not fulfilled by the [Respondent].*

3.1 *If [the CAS] understands that it is necessary to deduct the value of the Appellant’s new contract, we inform you that (...) the total value of the contract represents the amount of CRC 6,000,000 (six million Costa Rican Colones).*

4. *Order the [Respondent] to pay default interest on the amount to be arbitrated as compensation, referring to item 3 of the requests.*

5. *Order the [Respondent] to pay the arbitration costs of this court and to pay attorney fees to the Appellant’s lawyers (...).”*

41. The Player put forth the following arguments in support of his position:

(1) Failure of the FIFA DRC to acknowledge all the statements and evidence

42. The Player demonstrated the various defects that occurred in the proceedings under the FIFA DRC and the violation of his right of defense.

43. The Club made a job offer containing all the terms of the contract and both Parties had kept negotiations for more than six (6) months (September 2022 – February 2023).

44. The Club alleged numerous new arguments and facts in its defense, which were unknown at the time of the FIFA claim, namely that the person who signed the Disputed Documents was the Chinese Agent without proper authority. These “new arguments” need to be refuted.

45. FIFA DRC decided to disregard all the statements and evidence that were presented after the Club’s defense.

46. The Chinese Agent was authorized by the Club to negotiate player contracts and was considered as a 'preferred agent' in numerous other transactions.

(2) The contractual conditions

47. On 22 September 2022, the Player's Agent received the Introduction Letter in which the Club expressed its intention to count on the services of the Player.

48. On 13 October 2022, the Parties began to negotiate a future employment contract where the Club, through the Chinese Agent, sent the Offer, signed by the President of the Club.

49. The Player accepted the Offer. Furthermore, the Agents had several conversations about the details of the contract and established that all terms were correct.

50. The conversations gathered by both Parties are clear and prove the conclusion that the Parties were taking care of the details to transfer the Player to China. It can be seen that after reiterated confirmations the transaction was closed.

51. The Player abandoned all negotiations that were in progress at the time and dedicated himself exclusively to the Club. The negotiations were even publicized in the media and the website Transfermarkt published that the Player was already a part of the Club.

52. The Player had all the support of the Club to obtain the Visa, and it was only possible due to the intermediation of the Club, which forwarded the documents when requested. By January 2023, the Player had taken care of all the procedures for moving himself and his family and all the details had been agreed and his visa had been dispatched.

53. On 16 February 2023, the Club sent the Termination Letter to the Player, with a retroactive date of 15 January 2023, informing that it would no longer fulfill the Offer and dismissed the Player, even after the contractual period had begun. This retroactive date is due to the fact that in February, the Asian transfer windows were already closed or about to close. The Player did not understand the reasons that led the Club to take such an action, considering that all the terms were set and agreed.

54. The requirements of the employment agreement are proven through the evidence provided and these documents have also been duly signed by the Club or its representatives. The procedures adopted by the Club are completely contrary to good practices after negotiating with the Player for months, signing commitments, assisting to obtain the Visa and then only after the Offer has begun, informing that the Player is released.

55. The person who signed and identified himself as the Club's President acted irresponsibly and without any commitment to his word.
56. The Player tried to prove that this situation is a market reserve tactic, in which the Club maintained a transaction with the Player as a Plan B, where Plan A was renewing the contract of current player "**Serginho**", who already had a contract with the Club and was negotiating a renewal. This can be evidenced from the chat messages between the Agents where the Chinese Agent confesses, "*it is a secret in the club. We don't want [Serginho] know this information. Please waiting for after November can do it.*"
57. Once the Club managed to renew the employment contract of Serginho, the Player was simply discarded.
58. Despite the Offer having clear contracting conditions (terms, salary, bonus etc.) as well as the messages between the Agents regarding the transaction, the FIFA DRC abandoned the core of the evidence to issue a contradictory decision.
59. There is no doubt that all the conditions of employment are clear and proven and that the Chinese Agent was acting on behalf of the Club. The Chinese agent was the true representative of the Club and is the person who negotiates all employment contracts for the Club.

(3) The relationship between the Chinese Agent and the Club

60. The Club and the Chinese Agent have hired the same law firm, which proves that they were working together in the negotiations to sign the Player.
61. The Player's Agent clarified that he had conducted multiple deals with the Club and in all negotiations, the Chinese Agent was the representative and has always acted and spoke for the Club.
62. The relationship between the Club and the Chinese Agent is old. The Chinese Agent has been the agent of the Club for 15 years and has represented more than a 100 players. The Club had confessed that the Chinese Agent has been acting on behalf of the Club, that they have been working together for a long time and that he is considered as a "preferred agent or intermediary" for the Club.
63. The Club's behavior of using its own turpitude for its benefit and whenever convenient, to try and shift the blame on to the Chinese Agent is contrary to the legal system established by FIFA.

64. The Player was unjustly dismissed by the Club since only after the player Serginho had renewed his contract with the Club, the Club dismissed the Player. The negotiations and the renewal of Serginho were managed by the Chinese Agent.
65. There is no need to talk about a power of attorney as the Chinese Agent presented the documents signed by the Club itself.
66. The Club should be held responsible for the individuals it chooses to act on its behalf. The Club uses the Chinese Agent as a barrier to protect itself of any possible contractual liability and this fact is held to be true as the Club said that if it was ordered to pay compensation, the Chinese Agent would bear the liability to save the Club from any legal risk.
67. The Player further noted that in the DRC Decision FPSD-7106¹ and FPSD-5574², FIFA held that even as no contract was signed between the parties, the offer was presented and duly signed by both the parties and hence, binds them and does not prevent the conditions from coming into force, as it contained all the necessary elements to establish the employment relationship.

(4) The effect on the Player's life and career

68. The Player had a good contract in South Korea and had the option to renew and improve his salary. However, as the Player had received a much better offer from the Club, he chose to follow this professional opportunity.
69. The yearly salary under the South Korea employment contract was gross USD 600,000 (six hundred thousand) and in accordance with the Offer the Player would earn USD 2,200,000 (two million two hundred thousand).
70. The Player was unemployed for eight months, and this depreciated his value as he could not practice his profession. The Player was able to get a new employment contract in his home country Costa Rica which is economically inferior to Asian markets. This employment contract value was net CRC 887,400 (eight hundred and eighty-seven thousand and four hundred), which is approximately equivalent to USD 1,677 (one thousand six hundred and seventy-seven), representing close to 3% of the previous South Korean employment contract value.

¹ FPSD-7106 *Uros Deric v. Hà Nội* (passed on 10 Nov 2022)

² FPSD-5574 *Raja Athletic Club v. Fabrice Olinga Essono* (passed on 15 Sep 2022)

71. The Player has suffered damage to his life and career and his family is dependent on his work and his livelihood to survive.

B. The Club's submissions:

72. In the Answer, the Club submitted the following prayers and requests for relief:

“(…)

1. *To dismiss the appeal lodged by the Appellant as groundless.*
2. *To determine that there was no employment contract between the parties, therefore the Club does not need to pay any compensation to the Player.*
3. *Award any and all costs, expenses and fees arising in connection with the present arbitration proceedings, including but not limited to the attorney's fees of the [Respondent] against the Appellant.*

Alternatively,

1. *The Club is not required to pay any compensation to the Player as the Chinese agent acted without any authorization from the Club, the Club shouldn't be held liable.*
2. *Award any and all costs, expenses and fees arising in connection with the present arbitration proceedings, including but not limited to the attorney's fees of the [Respondent] against the Appellant.*

Alternatively,

1. *The Offer is nothing but a pre-contract and the Club didn't breach the obligation under therefore the Club shouldn't pay any compensation;*
2. *Or if the Offer should be considered as a Contract between the Club and the Player or a pre-contract giving rise to any compensation then the compensation should be reduced to zero due to the Player's contributory fault or at least less than one third of the whole contract value or one-third of the compensation accruing from the breach of any pre-contract obligation due to the Player's contributory fault and the fact that the employment relationship never started.*
3. *The mitigated compensation from the value of the Player's current contract should be taken into consideration to further reduce any payable compensation.*

4. *Award any and all costs, expenses and fees arising in connection with the present arbitral proceedings, including but not limited to the attorney's fees of the [Respondent] against the Appellant.*”

73. The Club put forth the following arguments in support of its position:

(1) The Club was not aware of the negotiations

74. The Club was completely unaware about the details of this case since the Chinese Agent was operating on his own and without the authorization of the Club.

75. After a thorough analysis of the WeChat conversation history between the Agents, it can be seen that: (i) the Disputed Documents were drafted and sent to the Chinese Agent by the Player's Agent who instructed the Chinese Agent to insert the draft on the official letterhead of the Club and send it back and these documents were signed by the Chinese Agent with a false designation of the President of the Club and no official stamp; (ii) the Club was not mentioned anywhere and no explicit authorization can be seen.

76. The negotiations were motivated by personal gain, to earn the commission for the transfer of the Player and that the Player's Agent was aware of this fact and did not prioritize the Player's livelihood and needs over his own financial prospects.

(2) There is no contract established between the Parties

77. The Player's Agent was the one who approached the Chinese Agent, and all the conditions were proposed by the Player's Agent. The phrase, “*all in secret, not be worried*” had been repeated multiple times by the Player's Agent and also mentioned that he would help the Chinese Agent make money. The Club never showed its consent or acceptance as it was never aware of these conversations.

78. For an employment contract to be considered valid and binding, it should contain all the *essentialia negotii*, such as the Parties contracting, their role, the duration of the employment relationship, signature of the Parties and the remuneration payable.

79. The Offer does not fulfill the above requirements; it does not contain the specific start and end dates of the contractual relationship and simply states “*Two years contract options from 2023*”, the role and obligations of the Parties are not mentioned, and it was expressly stated that further conditions would be specified in the contract.

80. The Offer was signed by the “President”, but the name of the President was not stated, and the Offer did not contain any designated space for the Player’s signature. The Termination Letter allegedly sent by the Club withdrawing the Offer was also signed by the so called “President” but again, no name was stated.
81. There was no other evidence to show that the Parties had agreed to a contract or that the contract period had begun.
82. A contract is meant to be a bilateral agreement between the Parties but it can be seen that the Offer was merely a unilateral proposal made by the Player.
83. The letterhead used for the Disputed Documents is not the official letterhead issued by the Club and it is unaware on how the Agents started utilizing it. The Club has two kinds of letterheads which differ mainly in color, text style and does not feature a logo. However, the one presented by the Chinese Agent in the documentation features a logo and is written using a different font from the official one.

(3) Burden of proof falls on the Player

84. The Player has failed to provide any evidence demonstrating that an official document has been concluded between the Parties or to show that the conditions in the Offer were validated. The principle of *onus probandi* states that “*he who asserts must prove*”, which means that the person who alleges a claim must provide valid evidence to support that claim.
85. In CAS 2014/A/3546,³ the Sole Arbitrator reaffirmed the burden of proof principle stating that any party claiming a right on the basis of an alleged fact must carry the burden of proof. In CAS 2019/A/6095,⁴ the CAS Panel provided two requisites to satisfy the burden of proof: the *burden of persuasion* and the *burden of production of the proof*. The party alleging the fact has the burden to produce accurate documentation to persuade the Panel.
86. The Player has failed to satisfy his burden of proof to demonstrate than an employment relationship existed. The Club’s acceptance is essential to establish that there was a contractual agreement.

³ CAS 2014/A/3546

⁴ CAS 2019/A/6095

87. The Club has duly proven that the Offer was not made by the Club but was initiated by the Player and that the essential elements have not been fulfilled.
- (4) If the Offer is deemed a contract, the Chinese Agent had no authorization from the Club**
88. The Chinese Agent did not have the authority to act on behalf of the Club and he has neither been the President, director nor held any managerial position or been an employee at the Club.
89. The Club cannot reasonably be held responsible for the consequences of the actions of the unauthorized Chinese Agent and the WeChat conversation history between the Agents proved that the Club was not aware of the negotiations and that nothing, either passively or tacitly ratified the Disputed Documents.
90. To show that the Chinese Agent had the ‘apparent authority to act’ on behalf of the Club, the Player must indicate that the Chinese Agent (i) was not acting on his own behalf and (ii) had a valid power of attorney to show that he had the authority to act for the principal.
91. These requirements were not fulfilled as the WeChat history showed no explicit statement from the Chinese Agent that he was acting on behalf of the Club and there was no evidence of a power of attorney from the Club to the Chinese Agent. Additionally, there was no evidence of the Player’s Agent asking the Chinese Agent to produce any mandate.
92. The Player is pursuing his claim against the wrong party and should have instituted it solely against the Chinese Agent.
- (5) Even if the Chinese Agent could represent the Club, the Offer is a pre-contract and its liability should be limited**
93. The Offer explicitly states that ‘further conditions’ would be specified in the contract, which shows that the party that drafted it, that is, the Player’s Agent, understood the document was to be considered as a pre-contract and according to the legal principle of *contra proferentem*, if there are any doubts as to the interpretation of a legal document it should be interpreted against the drafting party.

94. In CAS 2020/A/6748,⁵ the existence of a pre-contract has been discussed and is defined as the reciprocal commitment of at least two parties to ‘promise to contract.’ The wording of the Offer as well as the title of the document, which is ‘Contract Offer’ clearly indicates that it is not a final employment contract and additionally does not contain the essential elements necessary such as the signature of an authorized signatory of the Club. In CAS 2008/A/1589,⁶ it was provided that: *“the clear distinction between a “pre-contract” and a “contract” is that the Parties to the pre contract have not agreed on the essential elements of the contract or at least the pre contract does not reflect the final agreement (...).”*
95. Through the WeChat conversation history, the Player’s Agent admitted that the Offer is a pre-contract and as he was the person who drafted it, the document has to be interpreted and considered as a pre-contract.

(6) The Club’s foreign player quota and the question of the Player’s Visa

96. The Club had already satisfied the foreign player quota it had allotted for the season. The Player obtained the Visa after the Chinese Agent informed the Player’s Agent that the Club was not interested in the Player.
97. All Chinese clubs which planned to bring in foreign players were required to apply to their provincial government for an ‘invitation letter’ and provide it to the player for the purpose of applying for the visa. The Club had not applied for such a letter for the Player and it is unclear how he managed to acquire the Visa.

(7) The Club’s legal counsel does not represent the Chinese Agent

98. The Club’s legal counsel does not represent the Chinese Agent and the only power of attorney produced is to represent the Club. The Chinese Agent, to salvage the relationship with the Club had expressed his willingness to pay a certain amount as compensation to the Player and settle the dispute amicably. Hence, the Club had relayed this information through its legal counsel.
99. The Club acknowledged that it had collaborated with the Chinese Agent on multiple deals, however that should not lead to the presumption that the Chinese Agent shall conduct every deal the Club may intend to make. Each transfer requires a separate

⁵ CAS 2020/A/6748

⁶ CAS 2008/A/1589

mandate and the final word has to be communicated from the Club and not from the intermediary.

(8) Regarding the news articles about the association of the Chinese Agent and the Club

100. The Player provided news articles and publications to show that the Chinese Agent was/is the President or Board member or CEO of the Club. These articles are not trustworthy to be considered as fact and many of these media outlets do not exercise the due diligence necessary to validate its authenticity.
101. The Club referred to a website called “Qichacha” which is a public platform for registry information of corporations and is affiliated with the official registration department and also provided the search result from the E-Platform of the Local Administration of Commerce and Corporations. The records prove that throughout the Club’s history, the Chinese Agent and the Assistant to the Chinese Agent have not been named as Board Members or CEOs or Supervisors or held any sort of managerial position with the Club.
102. The signature on the Introduction Letter belongs to the Assistant of the Chinese Agent, who is not the Sports Director of the Club and the signature on the Offer belongs to the Chinese Agent, who is not the President of the Club.

(9) The (no) compensation for the Player due from the Club

103. The Club did not act in bad faith. The Player should be held liable for his own contributory fault and negligence, as he knew the Club was not going to sign him. The Player should not have rejected other offers available from the First and Second Division in China as well as in South Korea.
104. The Player failed to question the legitimacy of the Disputed Documents, did not request to see the mandate providing authorization to the Chinese Agent and also acquired the Visa without the authorization from the Club. It is evident that the Player wanted to exploit the situation and demand a huge compensation which he would have not gotten from any other offer. Hence, the Club should bear zero compensation.
105. Furthermore, the supposed contractual relationship did not commence.
106. The Club stated that if the Panel were to decide otherwise and award damages to the Player, it should be evaluated taking into account the negligent behavior of the Player and that the Player signed a contract with a Costa Rican club, Sport Herediano, which

commenced in June 2023 and remains valid to date. Hence, this contractual relationship has to be taken into consideration and mitigated according to Article 17 of the FIFA RSTP.

V. JURISDICTION

107. Pursuant to Article 186 of the Swiss Private International Law Act (“**PILA**”), the CAS has the power to decide upon its own jurisdiction.

108. Article R47 of the CAS Code states the following:

“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. Furthermore, Article 56(1) of the FIFA Statutes, May 2022 Ed.⁷ read as follows:

“Article 56.1 – FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, members associations, confederations, leagues, clubs, players, officials, football agents and match agents.”

110. The jurisdiction of CAS, which is not disputed by the Parties, derives from Article R47 of the CAS Code and Articles 56(1) and 57 (1) of the FIFA Statutes. Additionally, the jurisdiction of the CAS is confirmed by the Order of Procedure duly signed by the Parties.

111. Therefore, it follows that CAS has jurisdiction to hear this matter.

VI. ADMISSIBILITY

112. Article R49 of the CAS Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit

⁷ All subsequent references to FIFA Statutes refer to Edition May 2022.

for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.”

113. Article 57(1) of the FIFA Statutes provides as follows:

“Appeals against final decisions passed by the 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.”

114. The grounds of the Appealed Decision were notified to the Parties on 11 October 2023 and the Statement of Appeal was filed on 31 October 2023, *i.e.*, within the 21-day deadline as specified under the above-mentioned statutes and regulations.

115. Hence, it follows that the Appeal is deemed to be admissible.

VII. APPLICABLE LAW

116. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

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

117. Furthermore, Article 56(2) of the FIFA Statutes sets forth as follows:

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

118. The Parties do not dispute the applicability of the FIFA Regulations and Statutes, with Swiss law being applied on a subsidiary basis. Consequently, the CAS Panel will primarily apply the relevant FIFA Regulations, particularly the FIFA RSTP (May 2023 Edition). Swiss law shall be applied on a subsidiary basis in the event that it is necessary to fill any gap or omission in the FIFA Regulations.

VIII. MERITS OF THE APPEAL

(A) THE SCOPE OF THE APPEAL

119. The Panel deems it useful to clarify the scope of the Appeal.
120. The scope of the Appeal is limited to the Player's sole claim for payment of the amount of EUR 2,200,000 (two million two hundred thousand euros), which, as stated in the Player's request for relief, "*represents the exact terms of the negotiation agreed between the parties (...) and which were not fulfilled by the [Respondent]*". The Panel also refers to the Player's arguments, which sums up that "[t]he controversy presented in this demand lies in the fact that the [Respondent] dismissed the athlete after the beginning of the employment relationship (contained in the contract offer), which represents a case of contractual termination without just cause". In other words, the Panel's role is to verify whether there was a valid and binding employment contract between the Player and the Club and, if so, to enforce the terms of that contract.
121. The Panel further holds that the case does not revolve around the *culpa in contrahendo* doctrine, which under Swiss Law means the "*negligent/intentional breach of pre-contractual duties*",⁸ due to the fact that this was not a relief sought out by the Player. The Player presents this dispute as a case of "*breach of contract without just cause*" against the Club, under "*the terms of art. 17 of the FIFA Regulations on the Status and Transfer of Players*". The Panel has carefully analyzed the Player's pleadings and finds that there is no alternative or subsidiary claim for damages for breach of pre-contractual duties, but only a claim against the Club for compensation due to termination without just cause of an alleged employment contract – which are two different claims, with two different causes of action and two different standards of proof. The Player's request for relief is centered solely on the latter. Hence, the Panel will focus on the Player's claim against the Club for compensation due to the unjust breach of the employment contract, which was allegedly concluded during the negotiations between the Agents.
122. Considering the Player's request and position in the Appeal, and particularly the subject in dispute, the Panel identified the following issues to be decided:

⁸ CAS 2021/A/8070. See also CAS 2016/A/4489, CAS 2020/A/7582 & 7583 and CAS 2021/A/8008.

a. Whether the Chinese Agent was duly mandated to represent the Club in the negotiations with the Player's Agent

and if so,

b. Whether the Parties entered into a valid and binding employment agreement,

and, depending on the answers to the above,

c. What legal consequences should follow.

123. With regard to the Player's claim of procedural flaws and failure during the FIFA DRC proceedings, the Panel clarifies that such arguments are moot at the CAS stage, as any procedural irregularities can be remedied at this level. Article R57.1 of the CAS Code grants the Panel full authority to conduct a *de novo* review, allowing it to reassess the facts, the evidence and the applicable law while also rectifying any procedural defects from the lower instance. Accordingly, the Panel will examine all relevant facts, circumstances, and evidence before rendering its decision.

(B) THE APPLICABLE BURDEN AND STANDARD OF PROOF

124. Before beginning the analysis of the case at hand, the Panel notes that it is for the party that derives a claim from a certain fact to prove the existence of such a fact. This rule is applied in several jurisdictions and is explicitly contained under Article 8 of the Swiss Civil Code (the "SCC"), which reads as follows: "*unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.*"

125. Coming to the standard of proof, it is a well-established practice that when a particular case is lacking a specific legal or regulatory requirement, the Panel will establish a standard of proof to further analyze the findings. For the case at hand, the Panel deems it valid to establish the one of "**Comfortable Satisfaction**" as the standard of proof requirement, as this case concerns matters of a contractual nature. (See CAS 2020/A/7503,⁹ para. 95; CAS 2018/A/6075,¹⁰ para. 46).

126. The comfortable satisfaction standard may be defined as "*(...) being greater than a mere balance of probability but less than proof beyond a reasonable doubt (CAS*

⁹ CAS 2020/A/7503

¹⁰ CAS 2018/A/6075

2014/A/3625, with further reference to CAS 2009/A/1920, CAS 2013/A/3258, CAS 2010/A/2267 and CAS 2010/A/2172). To reach this standard of comfortable satisfaction, CAS jurisprudence states that the Panel should have in mind “the seriousness of the allegation which is made.”” (CAS 2016/A/4558,¹¹ para. 70).

(C) THE DECISION

C.1 Whether the Chinese Agent was duly mandated to represent the Club in the negotiations with the Player’s Agent

127. The Player stated that all the Disputed Documents were properly negotiated and discussed between the Agents. Based on the WeChat history, the Player contends that an agreement for his transfer to the Club had been finalized. To support this conclusion, the Player emphasizes that the Chinese Agent was recognized as the Club’s “preferred agent or intermediary” and, as such, would have the necessary authority to negotiate transfers on its behalf.
128. The Club, however, refutes the Player’s claim, stating that it never authorized the Chinese Agent to represent it in negotiations for the Player’s transfer. It asserts that the discussions occurred solely between the Agents and that the WeChat history contained no evidence suggesting that the Chinese Agent had the authority to act on the Club’s behalf. Consequently, the Club maintains that it cannot be held responsible for the Chinese Agent’s actions and misrepresentations. Furthermore, no power of attorney or formal mandate was produced by the Chinese Agent to confirm his authority, nor did the Player’s Agent request such a mandate.
129. The Panel notes that the relevant evidence regarding this matter consists of the messages exchanged between the Agents and the testimonial evidence provided by the Chinese Agents. The Panel additionally points out that the presence and participation of the Player’s Agent at the hearing could have been valuable in clarifying the context, meaning and intent behind these messages, particularly from the Player’s perspective. However, for reasons unexplained and beyond the Panel’s consideration, the Player’s Agent was not called to testify in this dispute.
130. The Panel emphasizes that good practice dictates exercising due diligence in verifying the scope of representation powers and it is considered a fundamental professional duty, particularly among experienced agents engaged in negotiations with each other. Logically, this duty also dictates that one must ascertain the identity of the counterparty

¹¹ CAS 2016/A/4558

and ensure that the person or entity in question is duly authorized to represent the party in the transaction. In addition, occasional trust established between agents through previous negotiations is not enough to assume powers of representation for a principal, in the same way that a continuous relationship between a principal and a ‘preferred agent’ is insufficient to grant the latter powers to bind the principal to any potential deal.

131. Regarding the WeChat history between the Agents, a detailed examination of the WeChat history’s content, context, and significance reveals the following:
- (a) The very first written interaction between the Agents regarding the Player was on 20 September 2022, with the Player’s Agent sending the Player’s passport to the Chinese Agent and stating: “[n]ice to see you ... and not be worried all in secret”.
 - (b) On 30 September 2022, the Player’s agent messaged the Chinese Agent: “*I want made [the Player] come play in Yatai (...)*”¹². This message indicates that the initiative to propose the Player’s transfer to the Club originated from the Player’s Agent.
 - (c) The Chinese Agent replied in less than one hour, stating that there was a “*(...) big chance in Yatai*”, implying that the Club might be interested in a player with the Player’s profile¹³. In the Panel’s view, this message suggests that the Chinese Agent was open to exploring the possibility of the Player being signed by the Club, particularly since both Agents knew that the renewal of the player Serginho was uncertain at that moment.
 - (d) This understanding is also supported by the numerous references made by the Player’s Agent indicating that the transfer would generate a substantial commission for both Agents, as well as by the Player’s Agent messages to the Chinese Agent regarding the latter’s commission to be paid by the Club¹⁴. In other words, if the Chinese Agent was acting as an effective representative of the Club, and not as an intermediary, there would be no place for such an issue to be raised under good faith negotiations, which must be presumed.
 - (e) Five days later, the Player’s Agent messaged the Chinese Agent, confirming that the Player agreed to move to China for €1.1M¹⁵. In the Panel’s view, this

¹² See para. 10 above, conversation on 2022.9.30 - 11:17.

¹³ See para. 10 above, conversation on 2022.9.30 - 11:40.

¹⁴ See para. 10 above, conversations dated 2022.9.22 – 19:17; 2022.10.5 – 20:43; messages from uncertain date, exchanged sometime between 2022.10.6 19:31 and 2022.10.10 – 17:38; and 2022.10.13 – 14:18.

¹⁵ See para. 10 above, conversation on 2022.10.5 - 21:19

demonstrates that the Player's Agent took the initiative informing the transfer terms to the Player and then confirming the same to the Chinese Agent.

- (f) The Offer was sent by the Chinese Agent to the Player on 13 October 2022, and on 18 October 2022 the Player's Agent requested that the Offer bore the Club's official stamp: "*I need stamp from club in this paper for get visa (...)*".¹⁶ Following this, the Chinese Agent responded that the negotiations for the Player were a "*secret in club*" and stated that they needed to wait "*after November*", since they did not want the information to be disclosed to the player Serginho. The Player's Agent replied, "*no worried I keep it in secret (...)*".¹⁷ which in the Panel's view implied his awareness that the Club had not yet been formally involved in the negotiations, or at least that the transfer of the Player to the Club still depended on the definition of the contractual situation of the player Serginho.

132. Based on the considerations above and available evidence, the Panel finds that it was the Player's Agent who initially contacted the Chinese Agent and proposed the Player's transfer to the Club. This approach was likely influenced by the general understanding that the Chinese Agent was considered the Club's "preferred agent" and by previous interactions between the Player's Agent and the Chinese Agent to transfer other clients of the Player's Agent to the Club. This conclusion is further supported by the fact that the Player's Agent sent the Chinese Agent a draft of the Introduction Letter, in which the Chinese Agent was required to state that the Club was interested in negotiating the Player's transfer. However, the Panel emphasizes that the Introduction Letter was most likely intended to create an impression, particularly for the Player, that negotiations with the Club were actively underway, being unable to support any conclusion that an actual contract was about to be signed.
133. During the hearing, the Chinese Agents testified and confirmed that they had not received any mandate from the Club to negotiate the Player's transfer. Furthermore, they admitted that they had neither informed nor kept the Club updated about the contacts and negotiations with the Player's Agent.
134. The testimony of the Assistant of the Chinese Agent was not particularly credible, clear or convincing. However, the existing evidence, including the WeChat history, does not support a conclusion that the Chinese Agents were in direct contact with the Club regarding the Player's possible transfer, particularly under a standard of comfortable satisfaction.

¹⁶ See para. 10 above, conversation on 2022.10.18

¹⁷ See para. 10 above, conversation on 2022.10.18 - 09:28

135. The Panel notes that, in their testimonies, the Chinese Agents stated that they were part of a football agency in China and that the Club was one of many clients that occasionally used their services. The Chinese Agents clarified that they were neither authorized to sign contracts nor formally represent the Club and that the Club was not informed of the negotiations for the Player's transfer. The Chinese Agents further testified that the exchange of the Disputed Documents was merely part of the preliminary negotiations between the Agents and that only after agreeing on the terms and conditions would they proceed further and inform the Club.
136. The Panel acknowledges that the Chinese Agent had facilitated multiple transfers for the Club and was considered as a "preferred agent or intermediary". However, there is no evidence suggesting that the Club was the Chinese Agent's sole client or that all of the Club's transfers had to be conducted through him. On the contrary, the evidence provided by the Player, as well as the WeChat history, show that the Chinese Agent was also involved in the transfer of foreign players or coaches to other clubs in the Chinese Super League. The documentation provided by the Player also shows that the Chinese Agents were involved in the negotiations between other clients of the Player's Agent and the Club, signing offers or pre-contracts in a *modus operandi* similar as the one seen in this dispute, but the Player does not provide evidence of the actual employment contracts resulting from these negotiations, which would have had to be duly registered with the CFA and presumably duly signed by the Club. In addition, it would be unreasonable to conclude that the Chinese Agent had the authority to negotiate every deal on the Club's behalf, especially when it has been established that he was never officially part of the Club's management and operated through a third-party agency. Moreover, no power of attorney was presented authorizing him to act on behalf of the Club.
137. Basing the following conclusion primarily on the WeChat history between the Agents, the Panel is not comfortably satisfied to ascertain that there is evidence strong enough to support the Player's allegation that the Disputed Documents were concluded with the Club's involvement, a fact for which the burden of proof rests with the Player. Specifically, the messages exchanged by the Agents on 18 October 2022, at 09:28, compellingly confirms this conclusion. In this message, the Player's Agent requested the Chinese Agent to attach the Club's official stamp onto the Offer. The Chinese Agent responded: "*Sorry. Now secret in club (...)*." This response suggests that the negotiations had not been disclosed to the Club and that the Agents were still "preparing" the proposal before formally presenting it to the Club, especially due to the pending situation regarding the player Serginho.

138. Therefore, the Panel finds that there is insufficient evidence to conclude that the Chinese Agent was duly authorized to negotiate the Player's transfer on behalf of the Club. In fact, there is no indication in the record that the Club, whether actively, passively, or tacitly, was aware of these negotiations.
139. In the Panel's perspective, the WeChat history between the Agents creates the impression that they were orchestrating the transfer based on their respective knowledge and experience – on the one hand, the Player's Agent trying to understand his client's interests and on the other, the Chinese Agent anticipating the Club's potential needs and customary contractual terms. Their commitment appears to have been to secure the transfer by convincing both parties – the Player and the Club – of its feasibility without any concrete indication of the Club's interest.
140. The WeChat history and the testimonies of the Chinese Agents regarding the events that happened after 23 November 2022 further validate this conclusion. On that date, the Chinese Agent informed the Player's Agent that the Club had decided to renew the contract of its then current player Serginho and that the Player would need to find a new club. This is further reinforced by the testimonies of the Chinese Agents, who stated that they "*directly told the Player's Agent to find other clubs*", and from the WeChat history: "*(...) your player need find new team for him. (...)*".¹⁸
141. The Panel further notes that, following the abovementioned conversation between the Agents, the Player's Agent sent multiple requests to the Chinese Agent, urging him to change the Club's decision to renew with Serginho.¹⁹ The Panel also deems it is worth highlighting that the Player's Agent's instinctive reaction when informed of the renewal of the Club with Serginho was not to assert the existence of an employment relationship but rather to request the intervention of the Chinese Agent in identifying opportunities with other Chinese clubs. As can be read within the WeChat history, 23 November 2022 begins with the Chinese Agent informing the Player's Agent of the renewal with Serginho and ends with the Player's Agent asking the Chinese Agent to "*take [the Player] to Shenzhen if you can't ma[k]e h[im] in Yatai*".²⁰
142. The Player's Agent admitted to rejecting other offers from clubs for the Player and expressed frustration that he could not reverse that decision.²¹ The Chinese Agent responded: "*(...) difficult. Only try another team. I will take to Shenzhen*".²² The Panel understands this exchange of messages as evidence that the Chinese Agent was not a

¹⁸ See para. 10 above, conversation on 2022.11.23 13:22 and the Chinese Agents testimonies.

¹⁹ See para. 10 above, conversation on 2022.11.24 15:14. See also conversation on 2022.12.9 21:23.

²⁰ See para. 10 above, conversation on 2022.11.23 16:05.

²¹ See para. 10 above, conversation on 2022.11.23 16:05.

²² See para. 10 above, conversation on 2022.11.23 16:05.

de facto representative of the Club, since he did not have authority to impose transfers to the Club, and since he also suggested a potential move to a different club.

143. Considering the WeChat history, the last time the Agents discussed the situation of the Player was between 18 February 2023 and 22 February 2023, when the Player's Agent asked the Chinese Agent "[h]ow much honestly you think you can make Aguilar", while the Chinese Agent replied: "*I don't know, important who will take him? many club now problem finance*".²³
144. The Player's Agent's comments further seem to summarize his strategy to push for a potential deal with the Chinese Agent: "*But I lost 5 official offers in November and December for keep he to you now I'm in very difficult situation with my player (...)*". Also, when asked on updates about the Player's situation, the Chinese Agent responded that "*many clubs not yet decide finally coach and finance, waiting for chance*", while the Player's Agent replied: "*Okay my friend I'm wait of you*". He then immediately asked the Chinese Agent if "[y]ou need coach for second division? Or first".²⁴
145. Consequently, the Panel finds that the evidence presented in this dispute is insufficient to meet the standard of comfortable satisfaction required to conclude that the Chinese Agent was duly authorized by the Club to negotiate the Player's transfer. The Panel reaches this conclusion based on the following elements:
- (a) The Offer was drafted and proposed entirely by the Player's Agent and lacked substantive validation or negotiation from the Club.
 - (b) The signatures on the Offer were not of the Club's representatives but rather of the Chinese Agents, as confirmed from their testimonies.
 - (c) The WeChat conversations and the testimonies of the Chinese Agents demonstrate that the negotiations had not reached a final stage and that the Club had never formally ratified or accepted the Offer.
 - (d) The Player's Agent was ultimately informed, through the Chinese Agents, that the Club was not interested in the transfer, confirming that the Club had not considered itself bound by any prior negotiations.
 - (e) The behavior of the Player's Agent after being informed of the renewal of the Club with Serginho indicates that the Player's Agent himself did not consider the Parties bound to the Disputed Documents.

²³ See para. 10 above, conversation on sometime between 2023.2.18 and 2023.22.

²⁴ See para. 10 above, conversation on sometime before 2022.2.20 09:45.

146. Finally, Article 38 of the Swiss Code of Obligations (“**SCO**”) states that “[w]here a person without authority enters into a contract on behalf of a third party, rights and obligations do not accrue to the latter unless he ratifies the contract”. While there is no evidence that the Club ratified the Offer implicitly, the Club explicitly denied its knowledge of the Offer and any authorization granted to the Chinese Agent to negotiate on behalf of the Club with the Player once it received the communication of the claim of the Player before FIFA. In addition, although a Termination Letter was sent by the Chinese Agent to the Player’s Agent on 16 February 2023, the previous communications between the Agents indicate that the Club had never formally agreed to the transfer.
147. In light of the Panel’s conclusion, the issue of whether the Offer represented a valid and binding employment agreement becomes moot.

C.2 Legal consequences to follow

148. Based on the foregoing and after taking in due consideration all the arguments and evidence produced and submissions made, the Panel concludes that the Appeal should be dismissed, and the Appealed Decision confirmed.
149. Despite the above conclusion, the Panel strongly condemns the conduct of the Agents, which demonstrated a distinct lack of transparency and professional ethics. The Agents deliberately created the false impression to the Appellant that the Club was engaged in the negotiations, likely to persuade the Player that his agent was securing a legitimate professional opportunity.
150. The Chinese Agents should have explicitly clarified that they were not representing the Club and should not have produced or used communications on an unofficial letterhead of the Club to misleadingly suggest the Club’s direct participation in the negotiations. Such conduct is highly reprehensible and contrary to the fundamental principles of good faith negotiations. Ultimately, and as appears to have been the case, the party that was harmed by the Agents’ conduct was the Player himself, who, in good faith, relied on the belief that the negotiations for his transfer to the Club were genuinely taking place. In parallel, the Panel also finds it necessary to address the conduct of the Player’s Agent. His actions or, more precisely, his omissions and the manner in which he conducted the negotiations and reported the findings to the Player, demonstrate a concerning level of negligence and a failure to uphold his fiduciary and contractual duty to act in the best interests of the Player. Rather than undertaking proper due diligence or ensuring that

the negotiations were based on legitimate and authorized representations, the Player's Agent appears to have prioritized the prospect of receiving a substantial commission over safeguarding the long-term career interests of his client. It is particularly regrettable that, as a direct result of the Player's Agent's failure to properly assess the situation and provide appropriate advice, the Player missed a concrete opportunity to continue his career in South Korea and instead ended up signing with a club in Costa Rica under significantly less favorable conditions.

IX. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Elias Fernando Aguilar Vargas on 31 October 2023 with respect to the decision issued by the Dispute Resolution Chamber of FIFA on 31 August 2023 is dismissed.
2. The decision issued by the Dispute Resolution Chamber of FIFA on 31 August 2023 is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of Arbitration: Lausanne, Switzerland

Date: 8 May 2025

THE COURT OF ARBITRATION FOR SPORT

Rui Botica Santos
President of the Panel

Vitor Butruce
Arbitrator

José Juan Pintó Sala
Arbitrator

Dhruv Siddharth
Ad-Hoc Clerk