**CAS 2024/A/10478 Hapoel Tel Aviv FC v. FIFA**

# ARBITRAL AWARD

**delivered by the**

# COURT OF ARBITRATION FOR SPORT

**sitting in the following composition:**

Sole Arbitrator: Dr Leanne O'Leary, Solicitor in Liverpool, United Kingdom

**in the arbitration between**

**Hapoel Tel Aviv FC, Tel Aviv, Israel**

Represented by Mr Omri Applebaum, Attorney-at-law, Gornitzky & Co Advocates in Tel Aviv, Israel

**Appellant**

**and**

**Fédération Internationale de Football Association, Zurich, Switzerland**

Represented by Mr Miguel Liétard Fernández-Palacios and Ms Cristina Pérez González, FIFA Litigation Department in Miami, United States of America

**Respondent**

## I. PARTIES

1. Hapoel Tel Aviv FC (the "Club" or the "Appellant") is a professional football club situated in Tel Aviv, Israel. It is affiliated to the Israel Football Association ("IFA"), which, in turn, is a member of the Fédération Internationale de Football Association ("FIFA").

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

3. Collectively, the Appellant and the Respondent are referred to as "the Parties".

## II. INTRODUCTION

4. This is an appeal against a determination of the FIFA general secretariat dated 21 March 2024 regarding the Electronic Player Passport (the "EPP") 28787 for the American football player, Mr Matthew Frank (the "Player") (the "EPP Determination"), and the associated Allocation Statement TC-6158 also dated 21 March 2024 (the "Allocation Statement"). Although issued as separate decisions, the EPP Determination and the Allocation Statement will be jointly referred to as the "Appealed Decision".

5. At issue is the amount of training compensation that is recorded in the Appealed Decision and which the Appellant is required to pay to the Player's former club, New York Red Bulls ("NYRB"). The Appellant submits that due to a clerical oversight and misunderstanding, it did not participate in the EPP procedure under the FIFA Clearing House Regulations ("FCHR") which was triggered when the Club registered the Player's international transfer on the FIFA Transfer Matching System (the "TMS"), and it did not submit evidence during the EPP procedure that NYRB waived its right to training compensation. FIFA's primary submission is that the appeal must be rejected in the absence of NYRB as a respondent.

## III. FACTUAL BACKGROUND

### A. Background Facts

6. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and pleadings. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, she refers in her Award only to the submissions and evidence she considers necessary to explain her reasoning.

7. Between 19 February 2018 and 30 July 2018, the Player was a member of the NYRB academy. NYRB did not offer the Player a professional contract.

8. In the summer of 2019, the Player participated in the NYRB amateur team during a summer league tournament. He was apparently not registered as a player with NYRB for this tournament.

9. In 2019, the Player moved to California to obtain a Bachelor of Arts degree from Stanford University. While at Stanford University, he played for the Stanford University soccer team, which is affiliated to the National Collegiate Athletic Association (the "NCAA") and is not affiliated to FIFA.

10. On 18 June 2023, the Player was conferred with the degree of Bachelor of Arts from Stanford University.

11. On 2 July 2023, the Player and the Club entered into an employment contract for the 2023/2024 season (the "Employment Contract"), which included terms relating to the Player's basic salary, bonuses, other benefits, and warranties provided by the Player.

12. On 14 August 2023, the Club registered the Player as a professional in the TMS. It is not disputed that this was the Player's first professional registration and that the registration was at a different member association to that with which the Player had been registered previously as an amateur. The Player's registration was entered into the TMS as an international transfer and as required under the FIFA Regulations on the Status and Transfer of Players (the "RSTP").

13. The Player's first professional registration triggered the provisions of the FCHR and a provisional EPP was automatically generated in the FIFA TMS on 14 August 2023.

14. Between 14 August 2023 and 28 August 2023, the provisional EPP was available for inspection (also known as the Inspection Period under Article 8.1 FCHR).

15. On 28 August 2023 and in accordance with Article 9 FCHR, the EPP Review Process commenced, and the FIFA general secretariat invited the Appellant, the IFA, and NYRB, amongst others, to participate in the EPP Review Process.

16. On 28 August 2023, the IFA confirmed the Player's registration date through the FIFA TMS.

17. On 9 September 2023, the Player's EPP was "*moved into validation*".

18. On 27 February 2024, the FIFA general secretariat approved the new registration data that the IFA had submitted, informed the Club of the changes to the registration data and expressly requested of the Club that:

"*In accordance with art. 10 par 1 and 10 par. 2 of the Clearing House regulations, we kindly ask you to provide any documentation relevant to the entitlement to training rewards of any relevant club in the EPP, including but not limited to waivers provided*

*by the training clubs of the player, by no later than the end date of the ongoing completion phase as currently displayed in TMS.*

*...*"

19. On 4 March 2024, the FIFA general secretariat sent a second identical message to the one sent on 27 February 2024 and repeated its request for the Club to upload any relevant documentation, including waivers to TMS.

20. The Club did not reply to FIFA's messages of 27 February 2024 or 4 March 2024.

21. On 13 March 2024, the EPP was approved, which concluded as follows:

"*10. In consideration of the above and in accordance with the FCHR and annexes 4 and 5 to the RSTP, the FIFA general secretariat has determined the entitlement of clubs to training rewards for the above trigger as follows.*

*11. New York Red Bulls is entitled to training compensation for having registered the player at some point in time between the start of the calendar year of the player's 12th birthday and the end of the calendar year of the player's 21st birthday.*

*12. All of the above determinations and decisions are reflected in the EPP in question and/or will be considered in the generation of any Allocation Statement from this EPP for the calculation and distribution of training rewards in accordance with article 13 of the FCHR.*

*13. Pursuant to article 57 paragraph 1 of the FIFA Statutes and in accordance with article 10 of the FCHR, this decision and the corresponding allocation statement(s) TC-6158 may be jointly appealed before the Court of Arbitration for Sport within 21 days of notification. The final EPP will remain available in TMS*."

22. Also on 13 March 2024, Allocation Statement TC-2226 was automatically generated, which concluded that the following amounts were due to each of the clubs and member associations identified in the Player's final EPP:

"*Conclusion*

*7. The new club Hapoel Tel Aviv (IFA) shall pay training compensation to the training club(s) of the player and the total amount of EUR 135,123.29.*

*8. The following training club(s) shall receive the following payment(s)*

*8.1. The training club New York Red Bulls (USSF) shall receive training compensation payments from the new club of the player in the amount of EUR 135,123.29.*

*9. The payments defined in this Allocation Statement shall be made through the FIFA Clearing House entity (FCH) in accordance with articles 12, 13 and 14 of*

*the FCHR. The FCH will contact the new club, the relevant training clubs and the relevant member associations to process these payments.*

*10. According to the relevant provisions of RSTP and FCHR, it is the new club that will be required to pay training rewards due to the training clubs concerned, and the new club may not assign responsibility to pay the amount requested to any other party.*

*11. Pursuant to article 57 paragraph 1 of the FIFA Statutes and in accordance with article 10 of the FCHR this decision and its corresponding EPP may be jointly appealed before the Court of Arbitration for Sport within 21 days of notification. The final EPP will remain available in TMS.*"

23. On 21 March 2024, the Appealed Decision was notified to the Appellant.

24. Also on 21 March 2024, the agent who arranged the Player's contract, sent an email to NYRB seeking confirmation that NYRB waived its right to training compensation for the Player.

25. On 31 May 2024, the Appellant appears to have obtained a letter of waiver (the "NYRB Waiver"). The NYRB Waiver states that the NYRB waives all rights to training compensation in connection with the Player's transfer:

"*New York Red Bulls, represented by Red Bull New York, Inc. (hereinafter: "NYRB"), hereby confirms that the soccer player Matthew Frank (EPP 28787, DOB: Jan 31, 2000; hereinafter: "Player") was registered at NYRB between the dates February 19, 2017 and July 30th, 2018, and was released by NYRB afterwards, without any formal extension proposal made by the NYRB towards the Player.*

*We are aware that the Player joined and registered Hapoel Tel Aviv Football Club on 14 August 2023 and confirmed such transfer of the Player.*

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

*By signing this document, we hereby unconditionally and irreversibly waive NYRB's rights to receive training compensation from Hapoel Tel Aviv according to Allocation Statement TC-6158.*"

## IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 8 April 2024, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code") against the Respondent and regarding the Appealed Decision. The Appellant requested the appointment of a sole arbitrator to determine the matter.

27. On 10 April 2024, the CAS Court Office acknowledged receipt of the Statement of Appeal and invited the Appellant to file the Appeal Brief. The CAS Court Office also invited the Respondent to confirm whether it agreed to the language of the proceedings as English, to confirm its agreement to the appointment of a sole arbitrator to determine the matter and invited the Parties to consider submitting the dispute to mediation.

28. On 12 April 2024, the Respondent informed the CAS Court Office of its agreement to the appointment of a sole arbitrator and to English as the language of the proceedings. The Respondent also confirmed that it did not agree to submit the dispute to mediation.

29. On 3 June 2024, in accordance with Article R51 of the Code and within previously agreed extensions of time, the Appellant filed its Appeal Brief.

30. On 26 June 2024, the Appellant informed the CAS Court Office that due to "*a technical issue*", Exhibit 3 of the Appeal Brief did not show the full name and position of the signatory and was not the original document that NYRB had provided to the Appellant. The Appellant requested that the sole arbitrator exercise their discretion and permit the admission of an amended Exhibit 3.

31. On 22 July 2024, in accordance with Article R55 of the Code and within a previously agreed time extension, the Respondent submitted its Answer, which included its objection to the admission of an amended Exhibit 3.

32. On 23 July 2024, the CAS Court Office informed the Parties that unless they agreed or the sole arbitrator ordered otherwise on the basis of exceptional circumstances, pursuant to Article R56 of the Code, the Parties were not authorised to supplement or amend their requests or their argument, nor to produce new exhibits or specify further evidence. The CAS Court Office also invited the Parties to inform of their preference for a hearing and a case management conference to be held.

33. On 25 July 2024, the Respondent informed the CAS Court Office of its preference for a hearing not to be held and for a decision to be made on the Parties' written submissions.

34. On 29 July 2024, CAS Court Office informed the Parties that pursuant to Article R54 of the Code, the Panel had been appointed as follows:

    Dr Leanne O'Leary, Solicitor in Liverpool, United Kingdom sitting as Sole Arbitrator

35. On 30 July 2024, the Appellant informed the CAS Court Office of its requests for a second round of written submissions, for a hearing to be held, and to amend its request for relief to include an alternative request that the Sole Arbitrator set aside the Appealed Decision and remit the case back to FIFA for a new EPP procedure to be undertaken.

36. On 7 August 2024, the Respondent informed the CAS Court Office that it objected to the Appellant's request to amend its prayers for relief, citing Article R56 of the Code. It also informed of its objection to a second round of submissions and reiterated its

position that a hearing was not required, particularly in the absence of NYRB as a respondent.

37. On 5 September 2024, the CAS Court Office informed of the Sole Arbitrator's decisions: not to admit an amended Exhibit 3 to the file; to grant a second round of submissions; to reject the Appellant's request to amend its prayer for relief; and to not hold a case management conference. The CAS Court Office provided timetabling orders for the second round of submissions and confirmed that a final decision regarding a hearing would be made after the second round of submissions. The reasons for the Sole Arbitrator's decisions, where necessary, are outlined elsewhere in this Award.

38. On 14 November 2024, and within a previously agreed extension of time, the Appellant filed its Reply, including witness statements from Mr Boaz Shapiro, the Club's VP and General Counsel, Mr Luis Miguel Garcia Vasquez, CFO for NYRB, and the Player.

39. On 18 November 2024, the Respondent filed its Rejoinder.

40. On 19 November 2024, the CAS Court Office invited the Parties to confirm whether they maintained their positions with respect to holding a hearing.

41. Still on 19 November 2024, the Respondent reiterated its preference for a hearing not to be held.

42. On 21 November 2024, the Appellant informed the CAS Court Office that although "*it generally believed that the sole arbitrator is well-informed in order to issue an award based on the written submissions*", in view of the Respondent's position regarding the NYRB Waiver, and its non-response to the Appellant's submission that the Player's training period was significantly shorter than stated in the Appealed Decision, the Appellant was compelled to request a short video-conference hearing to focus on two factual questions, namely: "*a) what was the actual training period of the player; and b) did New York Red Bulls genuinely waive its right to training compensation and is the waiver (exhibit 3) authentic and valid*?". The Appellant emphasised that unless the Respondent did not dispute the factual contents of the witness statements and the appendices and renounced its right to cross-examine the witnesses, the Appellant was compelled to request a hearing for the purpose of examining the Appellant's witnesses.

43. On 25 November 2024, the CAS Court Office invited the Respondent to comment on the Appellant's letter of 21 November 2024.

44. On 5 December 2024, the Respondent replied to the Appellant's letter of 21 November 2024 and stated, *inter alia*, the following:

> *"[We] wish to reiterate, once again, that the validity of the waiver and the registration period of the Player cannot be reviewed in the absence of New York Red Bulls, whose rights would be directly affected without being an active party to the proceedings.*
>
> *... the situation is bluntly clear: in the absence of New York Red Bulls in the present proceedings, Hapoel's requests for relief – namely, to accept the validity of the waiver*

*and reassess the Player's registration period -, cannot be granted. As expressly stated in our Answer, it is our firm position that "[t]he appeal should be already dismissed on this ground", i.e. on the basis that the Appellant's appeal must be immediately dismissed in the absence of New York Red Bulls as a respondent*.

*In light of the foregoing, it is evident that FIFA has not presented any position regarding the validity of the waiver or the Player's training period, as these issues cannot be examined in the absence of mandatory respondents*. *Accordingly, FIFA maintains the same position with respect to the witness statements, which were submitted solely to address questions that cannot be analyzed within the context of this flawed appeal*.

…

*Consequently, FIFA (i) refrains from commenting on whether it disputes the contents of the witness statements and their attachments, as their submission does not cure the blatant violation of the right to be heard under Swiss law of the entities not summoned as proper parties, and (ii) will not cross-examine those witnesses, insofar as the witness statements focus exclusively on issues that cannot be addressed within the context of the present proceedings*."

45. On 8 December 2024, the Appellant informed the CAS Court Office of a recent decision, CAS 2023/A/10050 *VšĮ Telšių Futbolo Ateitis v. FK Arsenal, OFK Grbalj, FK Budva & FIFA* issued on 12 November 2024, that it wished to submit to the file and to be taken into consideration by the Sole Arbitrator. The Appellant submitted that the decision supported its position in relation to the waiver of training compensation, procedural flexibility, prevention of unjust enrichment and the *de novo* review principle.

46. On 11 December 2024, the CAS Court Office invited the Respondent to comment on the Appellant's letter of 8 December 2024.

47. On 12 December 2024, the Respondent submitted its comments, which included the following:

*"[We] wish to underscore that there is a fundamental distinction between the two procedures: while in CAS 2023/A/10050 all mandatory respondents were properly included as parties to the arbitral proceedings, in the present matter, as repeatedly emphasized in our written submissions, there is a clear issue of passive mandatory litisconsortium that cannot be remedied*."

48. On 16 January 2025, the CAS Court Office informed the Parties that the Sole Arbitrator had considered the Parties' positions with respect to a hearing, and pursuant to R57 of the CAS Code, considered herself sufficiently well informed to decide the case solely on the Parties' written submissions. The CAS Court Office also forwarded a copy of the Order of Procedure, which was duly signed and returned by the Parties within the granted deadline.

## V. PARTIES' SUBMISSIONS AND WITNESS EVIDENCE

49. The following outline is a summary of the Parties' submissions and witness evidence which the Sole Arbitrator considers relevant to decide the present dispute and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator has, nonetheless, carefully considered all the submissions made by the Parties, even if no express reference has been made in the following summary. The Parties' written submissions and evidence, and the content of the Appealed Decision were all taken into consideration.

### A. The Appellant's Position

#### *a. Submissions*

50. The Appellant's submissions set out in the Appeal Brief may be summarised as follows:

- The FIFA RSTP and FCHR do not prevent clubs from agreeing to waive training compensation and expressly permit waivers (see Article 9.7 FCHR and Annexe 3 Article 10.4(a) RSTP).

- NYRB has expressly waived the right to receive training compensation in the present case. The circumstances of how the Employment Contract came about meant the Club and NYRB overlooked the training compensation issue. The Player was brought to the Club as a favour for a friend of the Club's owner and as a fourth goalkeeper for consideration that was equal to the minimum wage in Israel. He was never included in the Appellant's official matches and the Employment Contract expired on 31 May 2024 and will not be renewed.

- NYRB never had any expectation of receiving consideration for the Player's training. He was a member of the NYRB Academy in 2018 and NYRB had no interest in him when he left for college nor when he graduated from university. The Player considered himself free to join a club without any conditions, and he provided a declaration in the Employment Contract to that effect.

- NYRB has provided the NYRB Waiver and FIFA should respect the clubs' agreement and refrain from processing a payment that the Appellant does not want and cannot pay and which NYRB does not wish or expect to receive. If FIFA respects the waiver, it will not undermine FIFA regulations nor conflict with the FCHR's objectives (e.g. integrity of payments involving football transparency in transfer deals, anti-money laundering). It is consistent also with Swiss contract law, specifically Article 19 of the Swiss Code of Obligations ("SCO"). The terms of the NYRB Waiver do not deviate from any mandatory law (or FIFA regulations) nor contravene public policy, morality or personal privacy. Article 20 SCO provides that a contract is void if its terms are impossible, unlawful or immoral. By refusing to respect the NYRB Waiver, FIFA is treating the NYRB Waiver as a void contract even though the NYRB Waiver terms are not impossible, unlawful or immoral.

- The Club did not participate in the EPP procedure and failed to upload the NYRB Waiver due to a clerical oversight and "misunderstanding". The FCHR are newly implemented regulations, and the Player's transfer was one of the first transfers with which the Appellant was involved. NYRB, the Club and the Player understood that Annexe 4, Article 6 para 3 FIFA RSTP applied to the Player's transfer and that no training compensation was due, and consequently the Appellant did not obtain a waiver to upload during the EPP process. The Appellant now understands that Annexe 4, Article 6 para 3 FIFA RSTP only applies when a player transfers within the EU or the EEA. Even if the Club and NYRB were wrong regarding the requirement to pay training compensation, they acted in good faith and did not intentionally violate the FCHRs or disrespect the Respondent

- The fact the NYRB Waiver was not submitted during the EPP process does not preclude its late submission now. If FIFA wants to "punish" the Appellant for the procedural oversight, which the Appellant considers it does not deserve, it should instead take disciplinary measures against the Appellant and proportionately fine the Appellant for not submitting the waiver in time. Refusing to accept the late submission of a valid waiver is illogical, disproportionate and punishes the Appellant unnecessarily.

- Even if the NYRB Waiver is not accepted, the actual training amount that NYRB is entitled to is EUR 43,232.87 and not the amount that FIFA calculated. The Player was registered with NYRB for one and a half years between 19 February 2017 and 30 July 2018. From 2018 until 2023, the Player lived in California, attended Stanford University and played collegiate soccer. There was no connection between the Player and NYRB while the Player was at Stanford University. Pursuant to FIFA Circular 1853 of 29 July 2024, the Appellant is entitled to receive EUR 30,000 per year that the Player was with it.

- The Appellant does not have the funds to pay the EUR 135,129 that it has been directed to pay in the Appealed Decision. It is suffering from cashflow problems mainly caused by the war situation in Israel. Millions of NIS in Government and municipal funding that the Appellant is entitled to receive have been delayed, and sponsors have left and breached contracts with the Appellant, which may be viewed as a *force majeure* situation. The Appellant would not be able to raise the funds that it was directed to pay.

- No one benefits from the Respondent's solution that involves paying money to the Clearing House, which in turn will transfer it to NYRB, only for it to be reimbursed back to the Appellant.

- In the Appeal Brief, the Appellant submitted the following requests for relief:

  "*64. Therefore, and based on all of the above, the honorable Sole Arbitrator is requested to issue the following decisions:*

  *64.1. As primary requests:*

*a. To annul and set aside the Determination and the corresponding Allocation Statement.*

*b. To declare that under the circumstances, the Appellant is not obligated to pay any training compensation in connection with the Player Matthew Frank.*

*64.2. Alternatively: if the CAS finds that the Determination and the Allocation Statement should be upheld- then the CAS is requested to declare that FIFA must respect the agreement between the Appellant and the NYRB in respect of the waiver of the payment of training compensation, and Therefore the Appellant is exempted from processing the payment of the training compensation through the FIFA Clearing House.*

*64.3 If the CAS finds that the NYRB did not waive its right for training compensation or that it is entitled to such compensation, then the CAS is requested to determine that the Determination and the Allocation Statement will be corrected so the actual training compensation applicable is for the actual period the Player was active and trained by NYRB, i.e., 19 February 2017- 30 July 2018; which is 526 days X EUR 30,000 per annum = EUR 43,232.87.*

*64.4* ***In any case,*** *The CAS is requested to order the respondent to pay the Appellant a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Sole Arbitrator*."

51. In its Reply, the Appellant reiterated the points raised in the Appeal Brief and submitted the following:

- It disagreed with the Respondent's position that the appeal lacks standing. The dispute primarily concerns the interpretation and application of the FCHR and FIFA as the author and enforcer of the regulations is the proper respondent.

- FIFA issued the Appealed Decision and not NYRB, and the Appellant challenges FIFA's determination; NYRB has not taken any action.

- NYRB has waived its right to training compensation as evidenced by the NYRB Waiver. NYRB does not have a direct legal interest in the outcome of the appeal that would require its participation as respondent.

- NYRB has submitted a witness statement confirming that it is aware of the appeal proceedings and the Appellant's requests for relief and does not object to the appeal or the Appellant's request to set aside the Appealed Decision.

- The CAS jurisprudence regarding mandatory joinder is distinguishable from the present case because those cases involved situations in which the absent party's rights would be directly affected by the CAS decision. In the present case, NYRB

has already voluntarily relinquished any claim to training compensation. In any event, if the Sole Arbitrator deems NYRB's participation necessary, the Club would not object to NYRB being invited to join proceedings as an interested party under Article R41.4 of the Code.

- The Club acknowledges the importance of the FIFA Clearing House System and the need for consistent application of the FCHR, however, such an application should not come at the expense of fairness and consideration of "exceptional circumstances". The purpose of the system is to ensure proper training compensation payments are made to clubs that contributed to a player's development. Strictly enforcing the FCHR in the present case would lead to a result contrary to this purpose and require payment to NYRB, which has expressly waived its right to compensation and did not contribute to the Player's training.

- FIFA's position represents excessive formalism as defined by the Swiss Federal Tribunal ("SFT"). Excessive formalism occurs when procedural rules are applied in a manner that is not justified by any interest worthy of protection, complicates the realization of substantive rights, or hinders access to justice (*cf:* SFT 134 II 244, para 2.4.2; MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, 2015, N88 p. 418). FIFA has not demonstrated that a strict application of Article 9 FCHR is necessary to protect any legitimate interest. There is no evidence that a more flexible approach would undermine the Clearing House's objectives and a rigid application of Article 9 FCHR could lead to abuses and unequal treatment between cases involving the Dispute Resolution Chamber and those that do not.

- The comparison between Article 9 FCHR and the ITC registration process is a false equivalence. The ITC process involves different "*stakes and procedural contexts*" (Reply, para 15). More lenient measures could effectively prevent breaches of Article 9 FCHR without resorting to excessive formalism. FIFA's approach hinders access to courts, is inadmissible and contrary to the principles of natural justice. The Appellant was also not adequately informed about the consequences of breaching Article 9 FCHR. As stated in CAS 2023/A/9730 at paragraph 62, "*Excessive formalism should not obstruct the realization of substantive rights, especially when it leads to unjust outcomes*".

- CAS Panels have a *de novo* power of review which permits them to consider all aspects of a case without limitation. There is no rule within the CAS framework or with the FCHR that limits the scope of an appeal and any attempt to impose such a limitation would be unenforceable (*cf*: CAS 2008/A/1700-1710). Relying on CAS 2023/A/9940 & 9941 and CAS 2023/A/9730, the Appellant submits that the Sole Arbitrator should issue an award based on the evidence and the facts existing at the time of the hearing in this appeal or at the time in which the Sole Arbitrator decides she is well-informed to issue a decision. There is now a valid waiver for training compensation on the file, and the Appealed Decision should be set aside.

- Upholding FIFA's position would result in an unjust enrichment which is contrary to the principles of equity and fairness that underpin the CAS framework and

FIFA's regulatory framework. The CAS 9940 & 9941 decisions emphasise the need to prevent unjust enrichment and ensure that the application of regulations does not lead to inequitable outcomes. Procedural rules should not be applied in a manner that results in unfair financial gain for one party at the expense of another. Enforcing the training compensation despite the NYRB Waiver would result in an unjust enrichment for NYRB (*cf*: CAS 2023/A/9730).

- The NYRB Waiver is valid and should be respected irrespective of when it was submitted. If FIFA had genuine doubts regarding the validity of the NYRB Waiver, it could contact NYRB and in any event there is a witness statement filed by NYRB representatives on file which confirms its authenticity. The principle of *pacta sunt servanda* should apply to the agreement between the Club and NYRB and enforcing payment of the training compensation conflicts with basic principles of contract law and fairness. The NYRB Waiver is valid notwithstanding the technical issue that prevented the signature from printing out on the NYRB Waiver hard copy.

- In the Reply, the Appellant submitted the following requests:

"*42. For the reasons stated above and in our Appeal Brief, Hapoel respectfully requests that the Sole Arbitrator:*

*a) Admit the Second Waiver as evidence in these proceedings;*

*b) Find that FIFA has proper standing to be sued in this matter;*

*c) Consider the validity of NYRB's waiver of training compensation;*

*d) Determine that Hapoel is not obligated to pay training compensation for the player;*

*e) In the alternative, recalculate the training compensation based on the actual period the Player trained with NYRB (approximately 1.5 years).*

*43. Hapoel maintains its request for the Sole Arbitrator to order FIFA to pay a contribution towards Hapoel's legal costs and expenses in this matter*."

***b. Evidence***

52. The Appellant submitted three witness statements in support of its appeal. The main points of the evidence of the Player, Mr Luis Miguel Garcia Vazquez, and Mr Boaz Shapiro, which are relevant to this Award, may be summarised as follows:

- Player's evidence: The Player explained he was registered at NYRB between 19 February 2017 and 30 July 2018 and that during his time there, he was only an academy player, not part of the regular team's roster, and was never offered a professional contract. The Player stated that he participated in the NYRB amateur team during a summer league tournament in the summer of 2019, without registering with NYRB. In 2019, he moved to Stanford University to pursue a Bachelor of Arts degree at Stanford University which he completed in December

2022. The Player confirmed that while at Stanford University, he played for the University's soccer team but was not registered with or a member of any other soccer or football team worldwide until he joined the Appellant on 31 July 2023.

- Mr Luis Miguel Garcia Vazquez: Mr Garcia stated that he is the Chief Financial Officer ("CFO") of NYRB and authorised to make the statement on behalf of NYRB as part of these proceedings. He confirmed that the Player was registered at NYRB between 19 February 2017 and 30 July 2018 and was released by NYRB without any formal extension proposal being made. Mr Garcia stated that NYRB had signed a waiver which confirmed that "*NYRB unconditionally and irreversibly waive NYRB's rights to receive training compensation from Hapoel Tel Aviv according to Allocation Statement TC-6158…upon releasing the Player, we have waived rights or intentions to receive training compensation payments in connection with the Player that NYRB may be entitled to from Hapoel Tel Aviv FC according to FIFA's Regulations*". Mr Garcia confirmed that NYRB waived any rights and claims to training compensation from the Appellant and that NYRB did not consider it necessary to be a respondent to these appeal proceedings and did not object to the Appellant's requests for relief as outlined in the appeal.

- Mr Boaz Shapiro: Mr Shapiro confirmed that he was the Appellant's VP and General Counsel. He confirmed that he drafted the Employment Contract and that the Player signed with the Club in July 2023. Mr Shapiro stated that he was told by the Player and his agent that the Player had played for the past four years in Stanford College's soccer team, which was not affiliated to the USA Soccer Federation and that no training compensation was applicable. He stated that he was surprised by the Appealed Decision and immediately contacted the Player's agent and NYRB representatives who confirmed that NYRB waived its right to training compensation. Mr Shapiro stated that he informed NYRB of the Appellant's intention to file an appeal before CAS against the Appealed Decision. He further stated that NYRB clarified to him that it had no objection to the appeal or the request to set aside the Appealed Decision, and it signed the NYRB Waiver.

- Mr Shapiro confirmed that he received the executed copy of the NYRB Waiver on 31 May 2024 and sent it to the Club's lawyers who were representing the Appellant in these proceedings. Mr Shapiro stated that on 26 June 2024, while reviewing the Club's Appeal Brief, he noticed that the NYRB Waiver submitted as an exhibit to the Appeal Brief was missing the name and position of Mr Garcia who signed the waiver. Mr Shapiro drew the attention of the Club's lawyers to the technical issue which occurred when the Club's lawyer's printed the NYRB Waiver and the printed copy did not show the details, which were visible only on the digital copy of the NYRB Waiver.

## B. The Respondent's Position

53. The Respondent's submissions set out in the Answer may be summarised as follows:

- The FCHR should be strictly interpreted because of the FIFA Clearing House objectives and the large number of transactions with which it deals. The FIFA

Clearing House was created with the aim of ensuring that training rewards (training compensation and solidarity contribution) were paid to the clubs to which they were owed. Article 1.2 FCHR lists the FIFA Clearing House's objectives. The EPP procedure provides for a review process in which the relevant clubs and member associations participate, and which enables the FIFA general secretariat to determine a player's EPP. The process is transparent, ensures accuracy and facilitates the calculation of training rewards. The significant volume of transactions (estimated at the time of the FIFA Clearing House's creation at USD 400 million) and around 300 to 400 EPPs are determined each week.

- It would be extremely complicated for FIFA: i) to allow exceptions to rules such as Article 9 FCHR every time a club does not comply with a provision; and ii) to examine a club's reason for non-compliance e.g. such as wrong legal assumptions. It would also undermine the purpose of introducing an automated system in the first place i.e. for efficiency of payment. Flexibility would create uncertainty and runs the risk of undermining another crucial purpose of the FIFA Clearing House which is the avoidance of fraudulent conduct. The need for the FCHR to be enforced rigorously has been confirmed in CAS 2023/A/9682.

- FIFA does not object to the relevant parties agreeing on the partial or total reimbursement of the amounts paid after such payment has been processed in accordance with the FCHR. This ensures that there is no circumvention of the FCHR and that the objectives of the system (e.g. financial transparency, prevention of fraud) are achieved. The Respondent rejects the Appellant's submission that "*no one will benefit"* from this solution because the purpose of the process is to guarantee that there is no circumvention of the FCHR and permitting an exception would put at risk or harm the system's certainty and credibility.

- The Appellant failed to call NYRB as a respondent to these proceedings, and its request for CAS to annul the Appealed Decision, affects NYRB's legal position in violation of NYRB's right to be heard. The Appealed Decision grants training compensation in the amount of EUR 135,123.29 thereby creating a legitimate expectation that such amount would be paid. NYRB has a legitimate expectation that the Appealed Decision will be final and binding and the appeal must be rejected in the absence of NYRB as a mandatory respondent.

- The absence of NYRB is a clear situation of lack of standing for FIFA to be sued as a sole respondent, specifically a lack of passive mandatory joinder (also referred to as "passive mandatory *litisconsortium*") or "*consorité passive necessaire*". This concept has been considered in CAS jurisprudence (*cf*: CAS 2008/O/1808, paras 68-90; CAS 2013/A/3228, paras 8.10 and 8.11; CAS 2018/A/6044, para 72; CAS 2022/A/9238, paras 71-76; and CAS 2021/A/8225, paras 111-114). The Appellant's procedural mistake cannot be cured by summoning NYRB as a party at this stage because of applicable provisions in the Code (*cf*: TAS 2017/A/5131, paras 68-75, and CAS 2013/A/3228 and CAS 2021/A/8140).

- The Appeal must be rejected in any case for violation of the FCHR (*cf*: CAS 2023/A/9682). The Appellant has provided contradictory and opportunistic

explanations stating that it did not participate in the EPP procedure because of a clerical oversight and misunderstanding, that the regulations are new and that it had no practical experience of the process. The Appellant then later submits that the Club was of the understanding that no training compensation was applicable because of the exception provided in Annexe 4, Article 6 para 3 of the FIFA RSTP, and that this was the reason why it did not obtain and upload the NYRB Waiver – an exception which is completely irrelevant to the present matter.

- Even if it were accepted that the regulations were "new", the general principle is that "*ignorance of law is no excuse*" (*cf*: CAS 2003/A/505, para 37; CAS 2014/A/3793, para 9.4) and the Appellant should not be permitted to rely on such an excuse. The Appellant ought to have performed due diligence in relation to the exception provided in Annexe 4, Article 6 para 3 of the FIFA RSTP too. The Appellant's negligence is inexcusable considering that it successfully sent messages via TMS in other previous EPP review processes.

- The Appellant is precluded from submitting new documents or any document that could and should have been submitted during the administrative EPP procedure. To admit them would circumvent the FCHR and the system. Despite the *de novo* power of review, the Sole Arbitrator must ultimately consider and decide whether the Appealed Decision is correct in accordance with the information provided by the parties during the relevant EPP administrative process.

- The Respondent relies on Article R57 of the Code to exclude the NYRB Waiver. Even though a strict approach is adopted under Article R57 of the Code to requests to exclude evidence, when it comes to cases related to the FIFA Clearing House's administrative process, any evidence that could and should have been submitted during that stage is no longer acceptable in an appeal instance, in light of the principles and objectives of the FIFA Clearing House system and to avoid abusive conduct by clubs. FIFA respectfully submits that the Sole Arbitrator is prevented from "re-opening" the EPP procedure at CAS level.

- A parallel can be drawn between the EPP administrative procedure and the process for an international player's transfer. CAS has repeatedly confirmed the strict application of the International Transfer Certificate ("ITC") process (*cf*: CAS 2017/A/5368) and the jurisprudence is applicable to the present case because: i) the NYRB Waiver was only filed after the EPP and Allocation Statement was issued; ii) it is not excessive formalism to require strict compliance to avoid unequal treatment and fraudulent conduct; and iii) there is no rule in the FCHR which permits the late filing of waivers. Accepting the waiver would re-open the EPP procedure after it has concluded when there is no rule which permits that and is the same as permitting a player's registration after the closure of the transfer window.

- The waiver is not valid because: i) NYRB cannot verify it in its absence as a party, ii) it does not have the date of signature on it; iii) it has been signed by someone whose role is unknown; and iv) it is not possible to verify if the signatory has the capacity/authority to do so on NYRB's behalf. Even if the amended Exhibit 3 which was filed on 26 June 2024 is accepted as filed in a timely manner, the Appellant has

not provided evidence that it was truly signed on 31 May 2024. The Player signed the Employment Contract in July 2023 and the NYRB Waiver was allegedly concluded on 31 May 2024, one year after the employment relationship commenced, and ordinarily a waiver is obtained prior to signing an employment contract (*cf*: CAS 2021/A.8344, para 118).

- The Appellant was invited on two occasions to submit its position with respect to NYRB's entitlement to training rewards and did not submit any information that would show that the Player was only trained at NYRB for one and a half years rather than four and a half years. The Appellant is now estopped from claiming the lesser amount of training compensation because its procedural behaviour led to the legitimate expectation that it had accepted the registration information/history that was available during the EPP procedure. The Appellant's change in position is to the detriment of NYRB and FIFA and is unacceptable (*cf*: CAS 98/200, para 60; CAS 2006/A/1086, para 8.21; CAS 2006/A/1189, para 8.4; CAS 2008/O/1455, para 16; CAS 2008/A/1699, para 33; and CAS 2020/A/7517, para 128). The Club has also failed to discharge its burden and prove that NYRB only trained the Player for one and a half years. Article 10(3) of the Procedural Rules of the FIFA Tribunal, which applies to the EPP procedure through Article 21(1) FCHR, establishes that parties must review TMS once per day and are responsible for any procedural disadvantages that may arise if they do not. A club's failure to check TMS is not a valid excuse for any procedural disadvantage that might arise (*cf*: CAS 2020/A/7516, para 118 and CAS 2020/A/7517, para 118).

- The Appellant has not provided any evidence of its financial difficulties relating to a *force majeure* situation. Financial difficulties are a business risk to be borne by the club and do not constitute a valid excuse for non-compliance with its financial obligations (*cf:* CAS 2021/A/7819, para 87). The Appellant's obligation to make the payment only commences after the completion of the Compliance Assessment and the issue of a payment notification under Article 13 FCHR so the Appellant's arguments regarding its financial position are premature as it has not yet been ordered to make any payment in connection with the Appealed Decision.

- Should the Sole Arbitrator determine that the Appellant succeeds in whole or in part with its appeal for reason that is based on a document that was not put before the FIFA general secretariat during the EPP procedure, FIFA requests that it not be ordered to pay any arbitration costs or contribution to legal expenses. Fairness dictates that the Appellant should assume all costs related to these proceedings.

- In the Answer, the Respondent submitted the following requests for relief:

"*148. Based on the foregoing, FIFA respectfully requests the Sole Arbitrator to issue an award:*

*(a) Rejecting the requests for relief sought by the Appellant;*

*(b) Confirming the Appealed Decision;*

(c) *Ordering the Appellant to bear the full costs of these arbitration proceedings*."

54. In the Rejoinder, the Respondent reiterated the points raised in the Answer and submitted the following:

- Under Swiss law the matter of standing to be sued is a matter of substantive law and not procedural law as the Appellant submits (*cf*: CAS 2013/A/3047, para 52; CAS 2023/A/10002, para 65; CAS 2023/A/10009, para 65; and CAS 2023/A/10010, para 61).

- This dispute is not a matter of breaching the FCHR. Article 9.7 FCHR is explicit in requiring proof of a valid waiver to be uploaded. If the new club fails to upload the waiver in TMS, FIFA can only assume that no valid waiver exists. The Appellant was invited on two occasions to submit a valid waiver and did not. The repeated requests demonstrate that the Appellant was "*adequately informed*" and must bear the consequences of its own failings.

- CAS jurisprudence in similar-fact cases has confirmed that in the absence of the training club, an appeal may be dismissed (*cf*: CAS 2023/A/10002, para 66; CAS 2023/A/10009, para 66; and CAS 2023/A/10010, para 62; and CAS 2024/A/10514, paras 89 – 100).

- Pursuant to Article R48 of the Code, the respondent(s) must be identified at the time that the statement of appeal is filed (*cf*: CAS 2024/A/10514, paras 93 – 94 and CAS 2017/A/5131, paras 65 – 73). The Appellant's suggestion to include NYRB as a party to this proceeding should not be followed because it was the Appellant's responsibility to name the proper respondents in its statement of appeal and the Respondent objects to NYRB being added at this late stage. It also objects to the Appellant attempting to bypass the mandatory requirements of the Code by including an NYRB employee as witness. The role of a witness statement is not to fill the procedural gaps created by a party's failure to include all necessary respondents within the prescribed timeframe. A witness cannot substitute for the active participation of a mandatory party and the Appellant should not be permitted to correct its procedural failings by calling the training club as a witness.

- The cases concerning the *de novo* principle on which the Appellant relies, namely CAS 2023/A/9940 & 9941 and CAS 2023/A/9730, included training clubs that were properly named as respondents and had the opportunity to be heard during the CAS proceedings. The Respondent considers that the validity of a waiver cannot be determined without the participation of a mandatory co-respondent and the *de novo* principle under Article R57(1) of the Code cannot be applied in the same manner as applied in those cases.

## VI. JURISDICTION

55. Article R47 of the Code provides as follows:

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

56. Pursuant to Article 56(1) of the FIFA Statutes:

"*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*."

57. Pursuant to Article 57(1) of the FIFA Statutes:

"*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*."

58. This dispute arises under the FCHR which provides in Article 10.5(b) that:

"*10.5 The FIFA general secretariat will notify the final EPP and the allocation Statement to all parties and the EPP review process.*

*...*

*b) This notification shall be considered a final decision by the FIFA general secretariat for the purposes of article 57 paragraph 1 of the FIFA Statutes and may be appealed to the Court of Arbitration for Sport (CAS).*"

59. Article 18(1) FCHR provides that:

"*Any final decision, as identified in these Regulations, may be appealed to CAS in accordance with the FIFA Statutes, unless otherwise specified in these Regulations*."

60. The Appellant relies on Article 57 (1) of the FIFA Statutes and Article 10 of the FCHR as conferring jurisdiction on the CAS. The Respondent refers also to Article 57(1) of the FIFA Statutes and does not dispute the jurisdiction of the CAS. The jurisdiction is further confirmed by the Parties' signatures on the Order of Procedure.

61. Accordingly, for the foregoing reasons, the Sole Arbitrator is satisfied that she has jurisdiction to adjudicate the present dispute.

## VII. ADMISSIBILITY

62. Article R49 of the Code provides as follows:

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

63. The Appellant relies on Article 57(1) of the FIFA Statutes and Article 10 FCHR which provide that an appeal may be made to CAS within 21 days of receipt of a decision. The Appellant further submits that the Appealed Decision was received on 6 March 2024 (sic), 20 days prior to filing the Statement of Appeal on 8 April 2024.

64. The Sole Arbitrator observes that the FIFA general secretariat approved the Appealed Decision on 13 March 2024 and notified it through the FIFA TMS portal on 21 March 2024. The Sole Arbitrator further observes that the Statement of Appeal was filed on 8 April 2024 and within the deadline of 21 days prescribed in the FIFA Statutes and the Code. The Statement of Appeal also complies with the requirements of Article R48 of the Code. The Appeal Brief was filed on 3 June 2024 in accordance with Article R51 of the Code and a previously granted extension of time.

65. The Respondent does not challenge the admissibility of the appeal.

66. Accordingly, for the foregoing reasons, the Sole Arbitrator is satisfied that the Appeal was filed in time and is admissible.

## VIII. APPLICABLE LAW

67. Pursuant to Article R58 of the Code, the Sole Arbitrator is required to decide the dispute:

*"[According] to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the [Sole Arbitrator] deems appropriate. In the latter case, the [Sole Arbitrator] shall give reasons for [her] decision."*

68. Furthermore, Article 56(2) of the FIFA Statutes provides that:

"*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."*

69. The Appellant submits that FIFA Regulations, specifically the RSTP and the FCHR, and additionally Swiss law, constitute the applicable law. The Respondent relies on Article 56(2) of the FIFA Statutes (2022 edition) and the Code, and submits that the various FIFA regulations apply, with Swiss law applying subsidiarily.

70. The Sole Arbitrator observes that the Appealed Decision was notified on 21 March 2024, that it was made under the FCHR and that at the time the dispute arose, the October 2022 edition of the FCHR was in effect. The merits of the dispute also touch on matters pertaining to the FIFA RSTP.

71. Accordingly, for the foregoing reasons, the Sole Arbitrator determines that the FCHR (October 2022 edition), the FIFA RSTP, and any other relevant FIFA regulations constitute the applicable law to the matter at hand, with Swiss law applying subsidiarily.

## IX. OTHER PROCEDURAL MATTERS

72. On 26 June 2024 and 30 July 2024, respectively, the Appellant submitted several procedural requests to the CAS Court Office which included:

a. A request under Article R56 of the Code to amend the waiver in Exhibit 3 and replace it with a new Exhibit 3 that showed the full name and position of the signatory who provided the Waiver; and

b. A request to amend its prayer for relief to include an alternative request that the Sole Arbitrator set aside the Appealed Decision and send the case back to FIFA for a new EPP process to be carried out.

*a. Appellant's Request under Article R56 of the Code to amend Exhibit 3*

73. The Appellant submitted the following reasons in support of the request to admit the new Exhibit 3:

- Due to a technical issue, Exhibit 3 was not the full original document that NYRB sent to the Appellant. The only difference between the existing Exhibit 3 and the new Exhibit 3 was that the signatory details were missing from the existing Exhibit 3.

- Since the Respondent had not filed its Answer, admitting the new Exhibit 3 would not compromise any of the Respondent's rights nor present any procedural advantage for the Appellant.

74. The Respondent objected to the request for the following reasons:

- Pursuant to Article R56 of the Code, new evidence shall only be admitted if there are exceptional circumstances and only if it has become available after the time limit for filing the appeal brief or the answer. "Exceptional circumstances" included new facts or evidence that was unavailable at an earlier stage.

- The new Exhibit 3 allegedly signed on 31 May 2024 was supposedly issued before the filing of the Appeal Brief and was in the Appellant's possession before the time limit for filing the Appeal Brief passed. The document was not "new".

- The Appellant had also failed to demonstrate the existence of the 'technical issue' on which it relied as exceptional circumstances for the late submission. Had the Appellant acted diligently, it should have duly verified that it was filing the correct waiver along with its Appeal Brief.

- The SFT has confirmed the importance of time limits for filing evidence outlined in the CAS procedural rules (*cf*: ATF 4A_274/2013 *FC X v FC Z & FIFA*, at 3.2f; ATF 4A_576/2012 *X v IWF*). A party's right to be heard is not violated if the arbitral tribunal denies a piece of evidence that was not submitted in a timely manner. The Appellant had access to the document since 31 May 2024, yet failed to produce it in a timely manner with its Appeal Brief.

75. Article R51 of the Code provides that:

"*Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely*…." (emphasis added).

76. Pursuant to Article R56 of the Code:

"*Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorised to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer. …".*

77. The Sole Arbitrator recalls that Article R56 of the Code serves the purpose of ensuring the efficient and rapid resolution of CAS appeal proceedings; thus, the Parties are required to specify all the evidence on which they intend to rely to prove their case in the Appeal Brief and the Answer. The Sole Arbitrator notes that Article R56 of the Code does not define "*exceptional circumstances*" and that there is a consistent line of CAS jurisprudence which provides for a strict interpretation of the scope of "*exceptional circumstances*" (*cf*: 2020/A/6994, para. 102 and CAS 2017/A/5369, para. 133). The Swiss Federal Tribunal has concluded previously that a party's right to be heard is not infringed when a CAS panel denies the submission of new evidence, if that new evidence is submitted outside a prescribed time limit (*cf*: SFT 4A_312/2012, SFT 4A_576/2012 and SFT 5 4A_274/2013).

78. The Sole Arbitrator observes that the new Exhibit 3 relates to a disputed waiver, that the Appellant was in receipt of an electronic copy of the waiver which appears to have contained the name and position of the signatory prior to the date on which it filed the Appeal Brief, and that the Appellant has not provided any evidence of the "technical issue" that prevented it from filing the complete waiver with the Appeal Brief.

79. Accordingly, for all the above reasons, the Sole Arbitrator rejects the Appellant's request and does not admit the new Exhibit 3.

80. In its Reply filed on 14 November 2024, the Appellant submitted a second request to include the new Exhibit 3. Having already ruled the new Exhibit 3 inadmissible on 5 September 2024, the Sole Arbitrator disregarded the second request.

*b. Appellant's request to amend its prayer for relief*

81. With regards to the request to amend the prayer for relief, the Appellant submitted that:

- The request was made taking into consideration the Respondent's request to dismiss the appeal in the absence of NYRB as a co-respondent and "*for the sake of caution*".

- Amending the request would not cause the absent NYRB to suffer any potential harm as it will be able to fully defend itself in the new EPP proceedings.

- The Sole Arbitrator had the power and competence to send the proceeding back to FIFA for a new EPP process, even without the request, in accordance with Article R57 of the Code.

82. The Respondent objected to the request on the basis that:

- Article R56 precluded the amendment to the Appellant's prayer for relief except in exceptional circumstances. The Appellant had not disclosed any exceptional circumstances that would warrant the amendment except to state that it was doing so for "*the sake of caution*", which did not amount to exceptional circumstances.

- The Appellant's sudden desire to include the request for relief followed the submission of the Answer and the Appellant's appreciation that its appeal lacked standing without NYRB as a respondent.

83. Having considered the Parties' submissions, noting that Article R56 of the Code expressly precludes amendment to a prayer for relief after the submission of the Appeal Brief and Answer, and considering that no exceptional circumstances have been disclosed, the Sole Arbitrator rejects the Appellant's request.

84. The Sole Arbitrator's decision was communicated to the Parties on 5 September 2024.

85. On 14 November 2024, the Appellant included in its Reply an amended prayer for relief and for which it did not offer a reason for the amendment that might be considered "*exceptional circumstances*". Accordingly, the Sole Arbitrator determines that the amendments to the prayer for relief in the Reply are also not admitted.

## X. MERITS

86. Having considered the Parties' pleadings, written submissions and evidence, and noting that pursuant to Swiss law, standing to be sued is a matter of substantive law and not procedural law (*cf*: CAS 2023/A/10010, para 61; CAS 2023/A/10009, para 65; CAS 2023/A/10002, para 65; and CAS 2013/A/3047, para 52), the Sole Arbitrator considers that the issues for determination are:

a) Does the appeal fail in the absence of NYRB as a respondent?

b) Does the Appellant's failure to submit the NYRB Waiver during the EPP procedure preclude it from submitting the NYRB Waiver out of time?

## A. Does the appeal fail in the absence of NYRB as a respondent?

87. The Respondent submits that the appeal should be dismissed because the Appellant failed to call NYRB as a respondent to these proceedings. The Respondent relies on the legal concept of passive mandatory *litisconsortium* or passive mandatory rejoinder and submits that the absence of NYRB is a clear situation of lack of standing for FIFA to be sued as a sole respondent because the Appellant's request for CAS to annul the Appealed Decision affects NYRB's legal position in violation of NYRB's right to be heard. It submits that the Appellant's attempts to bypass the requirement to add NYRB as a respondent, by submitting the NYRB Waiver and adducing witness evidence from the NYRB's CFO, undermines the principles of procedural fairness and legal certainty.

88. The Appellant disputes the Respondent's position and submits that the Respondent issued the Appealed Decision, not NYRB, and it is FIFA's decision that the Appellant challenges. The Appellant further submits that NYRB has waived its right to training compensation and thus has no direct legal interest in the outcome of the appeal that would require its participation as respondent. NYRB has confirmed in a witness statement that it is aware of the appeal proceedings and the Appellant's requests for relief, and it does not object to the Appellant's request to set aside the Appealed Decision. The cases cited by FIFA in support of its decision are distinguishable because in those cases the absent parties' rights were directly affected.

89. It is not disputed that FIFA has standing to be sued in the present case. The issue is whether FIFA has standing to be sued in the absence of NYRB as a respondent.

90. The Sole Arbitrator observes that neither the FCHR, the FIFA Statutes nor the FIFA Tribunal Procedural Rules contain a provision that prescribes against whom an appeal under Article 18(1) FCHR is to be brought.

91. The Sole Arbitrator also observes that Article R48 of the Code refers to the Appellant's obligation to indicate in the statement of appeal the name and full address of the respondent(s) but otherwise does not include a procedural rule which prescribes the proper respondent(s) for an appeal. The issue of the proper respondent(s) to an appeal, or standing to be sued, therefore, falls to be determined under Swiss law (*cf*: 2020/A/6694, para 80).

92. The Sole Arbitrator recalls that in the context of Swiss association law, Article 75 of the Swiss Civil Code ("SCC") provides that:

"*Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof*."

93. The Sole Arbitrator observes that when a member of an association challenges a decision of that association before a court under Article 75 SCC, in principle, the party that has standing to be sued is the association which issued the decision (*cf:* TAS 2022/A/9175, para 167). However, Article 75 SCC is "*first and foremost aimed at a challenge directed against the resolution of a general assembly*"; in circumstances where organs other than a sports association's general assembly has issued a decision, as the FIFA general secretariat did in the present case, CAS jurisprudence takes a more nuanced approach (*cf*: CAS 2020/A/6694, para 81).

94. In Swiss law, the closest concept to standing to sue/be sued is so-called "*légitimation active/passive*" ("Aktiv- und Passivlegitimation"), which derives from the mere fact of legally owning the right in dispute, i.e. a party has standing to sue or to be sued if a substantive right of its own is concerned by the claim (CAS 2024/A/10514, para 84; and CAS 2013/A/3278, paras 55-56). The concept is applied in CAS jurisprudence and establishes the requirement for another party to be named as a respondent, if an appellant's requests for relief, should they be accepted, would determine the substantive rights of the other party who has not been summoned as a respondent (CAS 2024/A/10514, para 84; CAS 2022/A/9238, paras 71-76; CAS 2021/A/8225, paras 111-114; CAS 2018/A/6044, para 72; CAS 2013/A/3228, paras 8.10 and 8.11; CAS 2013/A/3278, paras 84-85; and CAS 2008/O/1808, paras 68-90). The concept's application affects the scope of a CAS panel's review because to proceed with a determination of a party's rights in that party's absence, would infringe a basic principle of procedural justice, namely the right to be heard. In those circumstances, a CAS panel cannot decide the dispute in the absence of the third party and the appeal must be dismissed (CAS 2021/A/8140, para 51; CAS 2013/A/3228, paras 8.12-8.13).

95. The Sole Arbitrator recalls that the FCHR and RSTP provide clubs which have contributed to the development of football players, with the entitlement to obtain training compensation, and she observes that the Appealed Decision directs that the Appellant make a significant payment of EUR 135,123.29 to NYRB as training compensation. On that basis, the Sole Arbitrator considers that NYRB has the right to receive the training compensation as directed by the Appealed Decision.

96. The Sole Arbitrator further observes that the Appellant's requests for relief outlined in the Appeal Brief seek, *inter alia*:

"*64.1. As primary requests:*

*a. To annul and set aside the Determination and the corresponding Allocation Statement.*

*b. To declare that under the circumstances, the Appellant is not obligated to pay any training compensation in connection with the Player Matthew Frank.*

*64.2. Alternatively: if the CAS finds that the Determination and the Allocation Statement should be upheld- then the CAS is requested to declare that FIFA must respect the agreement between the Appellant and the NYRB in respect of the waiver of the payment of training compensation, and therefore the Appellant is*

*exempted from processing the payment of the training compensation through the FIFA Clearing House.*

*64.3 If the CAS finds that the NYRB did not waive its right for training compensation or that it is entitled to such compensation, then the CAS is requested to determine that the Determination and the Allocation Statement will be corrected so the actual training compensation applicable is for the actual period the Player was active and trained by NYRB, i.e., 19 February 2017- 30 July 2018; which is 526 days X EUR 30,000 per annum = EUR 43,232.87*

*…"*

97. It is evident that the Appellant's prayers for relief (its primary request and alternative requests) concern the liability for, and the quantum of, training compensation owed to NYRB. The Sole Arbitrator considers that if the Appealed Decision were to be set aside in its entirety or even in part, then NYRB's entitlement to training compensation as directed in the Appealed Decision would be affected, without providing it with the opportunity to adduce evidence or make submissions on all the legal issues at hand, including in relation to the Respondent's arguments against permitting the late submission of the disputed NYRB Waiver. The Sole Arbitrator considers that determining the dispute in the absence of NYRB as a party would deny NYRB the right to be heard and be contrary to a basic principle of procedural justice.

98. The Appellant submits that the dispute can be determined NYRB's absence on the basis that: i) FIFA issued the decision and not NYRB, which itself has taken no action; ii) NYRB does not have a direct legal interest in the outcome of the appeal because it has voluntarily waived its right to training compensation and the legal authorities relied upon by the Respondent are distinguishable on that basis; iii) the Appellant has called a senior representative of NYRB as a witness and submitted the disputed NYRB waiver as evidence which shows that NYRB knows of the proceedings, does not object to the appeal, and agrees to the Appellant's requests for relief; and iv) the Appellant would not object to NYRB being invited to join these proceedings as an interested party under Article R41.4 of the Code.

99. The Sole Arbitrator rejects the Appellant's arguments in their entirety. The fact that the Respondent made the decision and therefore has standing to be sued, is not disputed. It is the Respondent's standing to be sued in the absence of NYRB that is at issue. As a matter of principle, the proper parties to an action are those whose legal rights will be determined; in this case it is the right of NYRB under the FCHR to receive training compensation and as confirmed in the Appealed Decision that will be altered if the Appealed Decision is set aside. NYRB therefore has a direct legal interest in the outcome of the appeal. The NYRB Waiver is disputed and would require a determination by the Sole Arbitrator as to its validity, which the Sole Arbitrator is unable to make in the absence of NYRB as a party.

100. NYRB's right to training compensation and the scope of the Appellant's requests for relief are central to the application of passive mandatory *litisconsortium* and the fact NYRB has not taken any action itself against the Appealed Decision is irrelevant.

101. The Sole Arbitrator observes from information on file that NYRB is aware of these proceedings but that its position as a party on all disputed issues is unknown. The presence of the NYRB CFO as a witness has no bearing on whether NYRB is required to be present as a respondent in these proceedings, and the Sole Arbitrator was not referred to any legal authorities that would support an exception in the circumstances.

102. The Code includes provisions regarding *joinder* in Article R41.2 which applies when the Respondent intends a third party to participate in the arbitration, and *intervention* in Article R41.3 which applies to a third party that wishes to participate in the proceedings. Neither provision is relevant to the present case. The Respondent has not requested the joinder of NYRB in these proceedings which may, in any event, be precluded by application of Article R56 of the Code (*cf*: CAS 2024/A/10514, para 93). The Sole Arbitrator notes that NYRB did not request to join these proceedings.

103. The Sole Arbitrator observes that her decision is consistent with other decisions made under the FCHR in similar circumstances (*cf*: CAS 2024/A/10514, paras 86-92; CAS 2023/A/10002, paras 65-75; CAS 2023/A/10009, paras 65-75; and CAS 2023/A/10010, paras 61-71).

104. Accordingly, for all the foregoing reasons, the appeal is dismissed.

### B. Does the Appellant's failure to submit the NYRB Waiver during the EPP procedure preclude it from submitting the NYRB Waiver out of time?

105. Having dismissed the appeal, the Sole Arbitrator considers that it is unnecessary to consider the Parties' additional arguments regarding the merits of the Appealed Decision. The Sole Arbitrator notes that dismissing the appeal in the absence of NYRB as a respondent and without a consideration of the additional arguments does not infringe the Appellant's right to be heard (*cf*: 4A_ 548/2019, para 6.2.2).

## XI. COSTS

(…)

# ON THESE GROUNDS

**The Court of Arbitration for Sport rules that:**

1. The appeal filed by Hapoel Tel Aviv FC on 8 April 2024 against the Determination issued on 21 March 2024 by the FIFA general secretariat on Electronic Player Passport 28787 and against the Allocation Statement TC-6158 corresponding to Electronic Player Passport 28787, is dismissed.

2. The FIFA Determination on Electronic Player Passport 28787 and the Allocation Statement TC-6158 corresponding to Electronic Player Passport 28787, both issued on 21 March 2024 by the FIFA general secretariat, are confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 20 May 2025

# THE COURT OF ARBITRATION FOR SPORT

Leanne O'Leary
Sole Arbitrator