CAS 2024/A/10673 Torres S.r.l v. FIFA & Club Atlético Independiente & Asociación Atlética Argentinos Juniors

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Dr Marco Balmelli, Attorney-at-law, Basel, Switzerland

in the arbitration between

Torres S.r.l, Sassari (SS), Italy

Represented by Mr. Federico Venturi Ferriolo, LCA Studio Legale, Attorney-at-Law in Milan, Italy

Appellant

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Mr. Roberto Nájera Reyes, FIFA Senior Legal Counsel, Coral Gables, United States of America

First Respondent

and

Club Atlético Independiente, Buenos Aires, Argentina

Represented by Mr Ariel N. Reck, Attorney-at-Law in Buenos Aires, Argentina

Second Respondent

and

Asociación Atlética Argentinos Juniors, Buenos Aires, Argentina

Represented by Mr Cesar Darío Gimenez, Attorney-at-Law in Buenos Aires, Argentina

Third Respondent

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

I. PARTIES

1. Torres S.r.l (the "Appellant" or "Torres") is an Italian football club affiliated to the Federazione Italiana Giuoco Calcio ("FIGC").

2. The Fédération Internationale de Football Association (the "First Respondent" or "FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

3. Club Atlético Independiente (hereinafter the "Second Respondent" or "Independiente"), is an Argentinian football club, affiliated to the Asociación del Fútbol Argentino ("AFA").

4. Asociación Atlética Argentinos Juniors (hereinafter the "Third Respondent" or "Argentinos Juniors") is an Argentinian football club, affiliated to the AFA.

5. FIFA, Independiente and Argentinos Juniors shall jointly be referred to as the "Respondents". The Appellant and the Respondents shall jointly be referred to as the "Parties".

II. FACTUAL BACKGROUND

A. Facts of the case

6. Below is a summary of the main facts established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be referred to, where relevant, in connection with the later legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence available in the present proceedings, only the submissions and evidence necessary to explain the reasoning of the award will be referred to in the following paragraphs.

7. The matter at hand pertains to the claim for training compensation advanced by the Respondents in relation to the transfer of the player, Patricio Alexis Goglino, born on 6 February 2001 in Buenos Aires, Argentina (hereinafter the "Player"), to Torres. Given that the determination of whether training compensation is due, as well as the quantification thereof, hinges on the relevant prior circumstances, these will be recounted herein in detail, as necessary.

8. The Appellant, Torres, engaged Patricio Alexis Goglino as a new player in July 2023 and registered the Player as a professional on 10 October 2023. The registration triggered the training awards to be paid to the Player's training clubs according to Art. 5 FIFA Clearing House Regulations (hereinafter "FCHR").

9. On the same day as the Player has been registered as a professional, i.e. 10 October 2023, the Player's provisional Electronic Player Passport (hereinafter "EPP") was generated, and the Appellant was included as a participant by default.

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10. On 23 October 2023, the EPP, after an inspection and assessment period, was released for review. According to FIFA, the stakeholders participating in this review process were the Appellant, the FIGC, the AFA, Nuovo Inizio SR, Lupranese FC, US Breno and Calvina Sport SSDARL.

11. The review process has been closed on 15 May 2024.

12. On the day of the closing of the review process, i.e. 15 May 2024, FIFA reached out to the Appellant by mail requesting any documents relevant to the entitlement of training compensation. The Appellant was then requested again to provide such documents on 22 May 2024 and again on 25 May 2024.

13. On 31 May 2024 the EPP Nr. 32649 was approved and the Allocation Statement (hereinafter jointly the "Appealed Decisions") was automatically generated. According to the Allocation Statement, the Appellant shall pay training rewards in the total amount of EUR 107'561.64 to the Second and Third Respondent.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 21 June 2024, the Appellant filed a Statement of Appeal against the Appealed Decision in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2023 edition; the "Code") with the Court for Arbitration for Sport (the "CAS").

15. On 11 July 2024, the Appellant filed an Appeal Brief in accordance with Article R51 of the Code and within the previously extended time limit. On 30 September 2024, the Third Respondent, within the previously extended time limit, filed its Answer to the Appeal Brief.

16. On 25 October 2024, the First Respondent, within the previously extended time limit, filed its Answer to the Appeal Brief.

17. The Second Respondent, who did not request any extension of time, did not file any Answer to the Appeal Brief.

18. On 5 November, pursuant to the Articles R33, R52, R53 and R54 of the Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to hear the dispute was constituted as follows:

19. Sole Arbitrator: Dr Marco Balmelli, Attorney-at-Law in Basel, Switzerland

20. On 19 December 2024, the CAS Court Office informed the Parties that the hearing will be held on 28 January 2025.

21. On 14 January 2025, the CAS Court Office communicated the Order of Procedure, which was at first duly signed by the Appellant, the First Respondent and the Third Respondent.

22. On 28 January 2025 the hearing was held. The Sole Arbitrator was assisted by Mr. Giovanni Maria Fares, Counsel to the CAS. In addition, the following persons attended the hearing:

a) For the Appellant:

- Mr Stefano Udassi, Director of the Club
- Mr Federico Venturi Ferriolo, Legal Representative

b) For the First Respondent:

- Mr Roberto Nájera Reyes, Legal Representative, Senior Legal Counsel

c) For the Second Respondent:

- Mr Ariel N. Reck, Legal Representative

d) For the Third Respondent

- Mr Cesar Darío Gimenez, Legal Representative, inhouse Legal

23. On 5 February 2025 the Parties were informed that the evidentiary process has been closed.

IV. SUBMISSIONS OF THE PARTIES

24. The following outline of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel has, however, carefully considered all the submissions made by the Parties, even if no explicit reference has been made in what immediately follows. The Parties' written submissions and the content of the Appealed Decision were all taken into consideration.

A. Appellant

25. The Appellant filed the following requests for relief:

"*I. [T]he Challenged Decisions are set aside;*

II. FIFA shall generate a new Electronic Player Passport of the Player and consequently reallocate the amounts related to the training compensation."

26. The Appellant's submissions, in essence, may be summarized as follows:

a. The Player's first registration in Italy with the FIGC was when he transferred to Parma Calcio 1913 on 8 April 2019. He then completed his training there and moved to Lupranese FC in Padova, where he played from November 2020 to February 2021. Until June 2022 he played for US Breno.

b. The Player had written contracts with all the mentioned clubs according to which he was paid more for his footballing activity than the expanses he effectively incurred.

c. In August 2022 the Player entered into a contract with Desenzano Calcio according to which he was entitled to a total amount of EUR 10,000 for eleven months, i.e. until 30 June

2023. Desenzano Calcio further paid for all the Player's expanses, in particular his accommodation, meals, the travel and transportation expanses for him to being able to participate in Desenzano Calcio's practice sessions and matches, the clothing which was necessary to carry out the sporting activities as well as the costs for laundry and the medical costs.

d. Referring to the CAS' *de novo* power according to Article R57 para. 1 of the Code, the Appellant states that several documents, predominantly contracts of the Player with the clubs he was registered before the Appellant, have not been in the Appellant's possession and were not considered during the EPP review process.

e. Further, the Appellant states that according to the new documents the Player must have been considered to be a professional under the definition in Article 2 para. 2 of the FIFA Regulations on the Status and Transfer of Players (hereinafter the "RSTP"). The definition under said Article asks for two cumulative criteria to be met which are (i) a written contract and (ii) a salary which is higher than the expenses the player incurred to play football.

f. Given the facts arising from the newly acknowledged documents, the Player's first registration as a professional football player was with US Breno or – if this registration shall not be deemed the first professional registration – with Desenzano Calcio.

g. Following this argumentation, the Appellant does not own any training compensation to the Second and Third Respondent.

B. First Respondent (FIFA)

27. The First Respondent requests an award to be issued:

"(a) rejecting the requests for relief sought by the Appellant;

(b) confirming the Appealed Decision; and

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

28. The First Respondent relies, in essence, on the following arguments:

a. After the Player's provisional EPP was generated on 10 October 2023 following his registration with the Appellant, the EPP was released for review on 23 October 2023. The review process was closed on 15 May 2024. During the whole process the Appellant had several opportunities to upload any relevant documents to the Transfer Matching System (hereinafter the "TMS").

b. After the review process was closed, FIFA contacted the Appellant on 15 May 2024, 22 May 2024 and ultimately on 25 May 2024 requesting the Appellant to provide any documents concerning the entitlement to training rewards of any relevant club in the EPP. The Appellant however has not uploaded any relevant documents to the TMS, even though it had several opportunities.

c. The Appellant failed to explain why it was not able to provide the new documents during the EPP review process. It therefore must be concluded that the documents could have been provided during the EPP review process and the documents must be excluded from the evidentiary process before CAS. As a result, the CAS' *de novo* power should be limited in the case at hand as allowing the new documents before CAS would undermine the integrity and purpose of the FIFA Clearing House (hereinafter the "FCH"), as it would breach the integrity of the transfer system and financial transparency through fraudulent conduct.

d. The allowance of the new documents before CAS after the Appellant has had the opportunity to provide them for more than 133 days and after several specific requests would contravene the principle of *venire contra factum proprium* and would constitute a precedent for the potential forgery of documents, backdating agreements or similar fraudulent activities by the clubs.

e. The Appeal must further be dismissed according to CAS jurisprudence as the Appellant failed to include US Breno, the FIGC and Desenzano Calcio as Respondents and they therefore are not able to comment on the evidence produced by the Appellant before CAS.

C. Second Respondent (Independiente)

29. The Second Respondent did not file an Answer to the Appeal.

D. Third Respondent (Argentinos Juniors)

30. The Third Respondent filed the following requests for relief:

> *"1. - You consider me presented in the capacity invoked and answered in a timely manner the lawsuit filed.*
>
> *2. - Keep in mind what has been stated and consequently, reject the appellant's claims."*

31. The Third Respondent relies, in essence, on the following arguments:

a. As the Third Respondent was not aware of the factual statements the Appellant makes in its Appeal Brief, it denies all the Appellant's claims. In particular, the Third Respondent denies the inability of the Appellant to provide the new documents during the EPP review process.

V. JURISDICTION, ADMISSIBILITY, APPLICABLE LAW

A. Jurisdiction

32. 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 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.*"

33. The jurisdiction of CAS, which is not disputed, derives from Article 57 para. 1 of the FIFA Statutes as it determines that:

"*[a]ppeals 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*".

34. The Parties further confirmed the jurisdiction of CAS by signing the Order of Procedure.

35. It follows that CAS has jurisdiction to decide on the present dispute.

B. Admissibility

36. Article R49 of the Code provides:

"*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 for appeal shall be twenty-one days from the receipt of the decision appealed against*."

37. In addition, Article 57 para. 1 of the FIFA Statutes states:

"*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*."

38. The Appealed Decision was notified to the Parties on 31 May 2024 and the Statement of Appeal was filed on 21 June 2024, i.e. within the 21 days set by Article 57 para. 1 of the FIFA Statutes. The Appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.

39. It follows that the Appeal is admissible.

C. Applicable Law

40. Pursuant to Article R58 of the Code:

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

41. The Panel notes that Article 56 para. 2 of the FIFA Statutes stipulates the following:

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

42. Moreover, the Parties are also bound by the FIFA Statutes as they are all directly or indirectly affiliated to FIFA. Article 56 para. 2 of the FIFA Statutes holds that CAS "*shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*"

43. The Sole Arbitrator will decide the present dispute primarily in accordance with the FIFA Regulations and, subsidiarily, in accordance with Swiss Law in case of any lacuna in the FIFA Regulations.

VI. MERITS

A. The Sole Arbitrator's power to review the facts and the law

44. To decide on the matter at hand, it is crucial to firstly determine the Sole Arbitrator's power to review the facts and the law.

45. This said, it shall initially be stated that the general rule according to Article R57 para. 1 of the Code grants the Sole Arbitrator "*full power to review the facts and the law*". However, in Article R57 para. 3 of the Code a "*discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered"* is granted to the Sole Arbitrator.

46. In addition to the exception according to Article R57 para. 3 of the Code, the CAS Panel has ruled in the matter *CAS 2018/A/5808* para. 131 f. that:

> *"Article R57 of the Code provides for a de novo hearing. Such concept implies – in principle – that also new evidence may be taken into account that was not presented or available before the first instance. Thus, in principle, the correct reference to judge the correctness of the Decision is the date of the CAS hearing. However, there are exceptions to this rule. Article R57(3) of the CAS Code e.g. provides that evidence may be excluded in the CAS procedure if such evidence was available before the first instance and the Appellant did not act diligently or acted in bad faith. The Respondent does not avail itself of this exception in the present case.*
>
> *[…] The Panel notes that access to justice may be restricted (by freezing the relevant reference date) for just cause, i.e. in the interest of good administration of justice. Whether to do so or not is, in principle, in the autonomy of the relevant federation. […]"*

47. Therefore, under the light of the just cited CAS jurisprudence, "*the correct reference to judge the correctness of the Decision is the date of the CAS hearing",* which in the case at hand was held on 28 January 2025, and the Sole Arbitrator's full power to review the facts and the law can only be reduced if

    a. the applicable rules and regulations dictate otherwise; or

    b. the exception according to Article R57 para. 3 of the Code is applicable.

B. Applicable rules and regulations to restrict the full power to review the facts and the law or provide an exception

48. In light of the just said, it is to be determined if any applicable rules or regulations to the matter at hand reduce or provide an exception to the general rule in Article R57 para. 1 of the Code.

49. The CAS had already the opportunity to decide on similar cases where the claims made by the parties also referred to training compensations due after an EPP review process. In *CAS 2023/A/9940-9941* as well as in *CAS 2023/A/9730* the Sole Arbitrator examined if *inter alia* Article 10 para. 3 of the Procedural Rules Governing the Football Tribunal (hereinafter the "Procedural Rules") and Article 10.5 and 18 FCHR can be interpreted in a way that the *de novo* power of the CAS should be deemed reduced or except.

50. In the abovementioned decisions, the Sole Arbitrator, using the same wording, concluded that (see *CAS 2023/A/9940-9941* para. 94 and *CAS 2023/A/9730* para. 74)"*[…] that there is no provision or principle enshrined in the FIFA regulations that demands an exception from the de novo principle in the case at hand*."

51. As no further rules or regulations are applicable in the matter at hand, the same conclusion must be drawn. Therefore, no regulations or rules restrict the Sole Arbitrator's full power to review the facts and the law nor do they provide an exception.

C. Restrictions due to Article R57 para. 3 of the Code

52. As established by CAS jurisprudence, the CAS appeals arbitration procedure thus entails a *de novo* review of the merits of the case as it is not confined to merely ruling whether the appealed decision is to be upheld or not. It is the role of the Panel/Sole Arbitrator to establish the merits of the case independently.

53. As regards the discretion to exclude evidence, CAS jurisprudence has repeatedly confirmed a restrictive approach and limited the application of the discretion to cases where the production of evidence only before CAS constitutes an abuse of procedural rights or bad faith of the respective Party.

54. For instance, in CAS 2017/A/5371 para. 69 it was stated that "*[…] the discretion to exclude evidence should be exercised with caution, for example in situations where a party may have engaged in abusive procedural behavior or in any other facts or circumstances where the Sole Arbitrator might, in his discretion, consider either unfair or inappropriate to admit new evidence.*

55. In its Answer, FIFA submits that it is not acceptable that the Appellant introduces evidence which could (and should) have been provided during the administrative EPP process, and that while acknowledging that Article R57 para. 3 of the Code has a strict approach to excluding evidence, in cases related to the FCH administrative process, any evidence that could (and should) have been submitted during the review stages is no longer acceptable in a CAS appeal. Therefore, the Sole Arbitrator/Panel should not "reopen" the EPP administrative process before CAS as *"[…] a CAS appeal procedure is not the relevant stage for filing a document that should have been filed during the EPP review process."*

56. Further, FIFA submits in para. 95 of its Answer that:

„[…] (i) The objectives of the FCH are, inter alia, (a) to process specific payments, (b) protect the integrity of the transfer system, (c) enhance and promote financial transparency, and (d) prevent fraudulent conduct.

(ii) The proper administrative process must be strictly followed, and the relevant preclusive deadlines foreseen in the FCHR must be complied with to achieve the aforementioned goals and objectives.

(iii) The administrative process provides and allows reasonable deadlines and ample opportunities for the relevant parties to file any document which could be relevant to the issuance of the final EPP and Allocation Statement. In particular, the Appellant had more than 133 days to upload the alleged Contracts. Moreover, FIFA explicitly invited it, at least three times, to upload any relevant document or contract. Yet it failed to do so.

(iv) The submission of documents during a CAS appeal that could have been filed during the EPP process raises concerns as to the authenticity and credibility of such documents.

(v) Allowing and admitting at this stage, the documents that were not submitted during the EPP process will undoubtedly open the door for clubs to the potential forgery of documents, backdated agreements and other potential fraudulent activities. It also creates an opportunity for clubs to bypass the system and avoid using the FCH for payments, including undergoing the relevant compliance assessment. Again, we must insist that one of the main objectives of the FCH is to protect the integrity of the transfer system, enhance and promote financial transparency and prevent fraudulent conducts.

(vi) Such conduct would also undermine the system in itself by depriving training clubs from their legitimate entitlement to training rewards.

(vii) In light of the above, admitting documents filed ex post during a CAS appeal, precisely contravene and undermine the objectives of the FCH, as it would breach the integrity of the transfer system and financial transparency through fraudulent conduct."

57. FIFA bases its arguments particularly on the findings in CAS 2023/A/9682, where the respective Sole Arbitrator concluded in para. 91 that:

„[…] if a negligent club, through its own fault, fails to comply with the time limits set forth in Article 9.2 FCHR, it should not be permitted to remedy its culpable inaction by filing an appeal accompanied by the missing waivers. This would constitute a case of abuse of right and compromise the efficiency and reliability of the entire process and potentially place the training clubs in a situation where they would be involved in costly and unpredictable arbitration proceedings that could result in delays in the payment of their compensation, which is certainly contrary to one of the primary purposes of the creation of the FCH. It could also expose training clubs to abusive litigations, forcing them to weigh the merits of continuing the proceedings or entering into negotiations, potentially reducing some or all of their Training Rewards."

58. While the Sole Arbitrator is aware of the objectives and the importance that the FCH has for the high amount of player transfers and remuneration in relation to them, it must also be considered,

that the CAS's approach regarding the dismissal of evidence that has been followed in the just mentioned jurisprudence has been revised by more recent decisions.

59. For instance, in *CAS 2023/A/9995* para. 92 f. the following has been stated:

"Whilst the Sole Arbitrator is cognisant of the objectives pursued by the FCHR and the nature of the E[P]P administrative process, a process which provided several opportunities to the Appellant to submit the Transfer Agreement, the Sole Arbitrator does not find that the Appellant's failure to upload the Transfer Agreement during the E[P]P administrative process and to only provide it during these proceedings amounts to an abuse, in that a possible violation of one's obligations as contained in the FCHR, particularly those listed at article 9.7 "shall upload", does not amount to an abusive behaviour[,] with such failure apparently being sanctionable under article 17.2. of the FCHR. In addition, the Sole Arbitrator also finds that the aforementioned failure does not amount to a bad faith behaviour, in that the Appellant had nothing to win by not submitting the Transfer Agreement during the EPP process, on the contrary.

[…]Besides, the Sole Arbitrator, whilst appreciative of the administrative challenges that [c]ome with implementing the FCH, he does not find, nor did FIFA prove to the comfortable satisfaction of the Sole Arbitrator, that the objectives pursued by FIFA with the FCH (i.e. to enhance specific payments, protect the integrity of the transfer system, enhance and promote financial transparency and prevent fraudulent conduct) would be undermined by allowing a party to submit a waiver on appeal. In similar fashion, neither does the Sole Arbitrator find nor has FIFA proven to his comfortable satisfaction that admitting such waivers on appeal "might very well open the door for potential forgery of waivers, backdated agreements and other fraudulent activities".

60. Further, in *CAS 2023/A/9895 – 9917* para. 103 the respective Sole Arbitrator concluded that:

"Applying the principles emanated from the aforementioned jurisprudence to the case-at-hand, the Sole Arbitrator notes and is of the view that:

(i) Indeed, the Appellant could have taken in the EPP administrative process followed before FIFA the steps it took after the issuance of the EPP Determination and the Allocation Statement Determination (i.e. collecting and producing the documents it has produced to the CAS proceedings). However, it is also true that these documents were not issued by the Appellant and it is at least doubtful that the Appellant had them in its possession ab initio. For instance, the Appellant was not a party to the agreements of the Player with Argia Bóltfelag and Viitorul and was not the issuer of the waivers to training compensation and of the written declaration of Viitorul' President that it has produced to the CAS file.

(ii) Even if the Appellant could have been more active in getting such documents and bringing them to the EPP administrative process in FIFA, it has not been established that the failure in doing so was due to the Appellant's bad faith or abuse.

(iii) None of the Respondents are challenging the documents produced by the Appellant in these CAS proceedings for reasons of falsity, forgery or the like.

(iv) FIFA did not convincingly substantiate why the approach to Article R57 para.3 of the CAS Code should be different in cases related to the FIFA Clearing House administrative process. The mere appellation to the FIFA Clearing House general objectives and goals and to the necessary adherence to the FCHR proceedings is not enough in the Sole Arbitrator's view to make an exception to the long-standing CAS jurisprudence on the interpretation of the aforementioned provision."

61. Therefore, admitting evidence before CAS follows the more recent approach of the CAS jurisprudence "*as absent a case of abuse – justice is better served by admitting the evidence that was already available at the time when the Appealed Decisions were issued*." (*CAS 2023/A/9940-9941* para. 97). This applies also to cases where the submitting Party acted negligently during the EPP review process by not uploading relevant documents even after being presented numerous occasions to do so.

D. Conclusion on the dismissal of evidence before CAS

62. In light of the above and considering also the *ratio legis* of Art. R57 para. 1 and para. 3 of the Code, the principles set out in the cited CAS jurisprudence and the submissions of FIFA regarding the objectives of the FCH as well as the importance of its integrity, the Sole Arbitrator, after taking into account the specific circumstances of the case at hand concludes that:

a. The date of the CAS hearing, i.e. 28 January 2025, is the correct reference to assess the correctness of the Appealed Decisions, as neither the applicable regulation, nor the exception of Article R57 para. 3 of the Code restrict the CAS' *de novo* power in the case at hand;

b. The Appellant had numerous opportunities to submit relevant documents during the EPP review process and – failing to do so – acted negligently, but, however, not in bad faith or in abuse of its procedural rights, as the Appellant could not gain a procedural advantage by doing so.

c. The authenticity of the submitted evidence has not been substantially contested by the Respondents.

63. *In conclusio* the Sole Arbitrator allows the evidence submitted by the Appellant before CAS.

E. The pertinent evidence produced before CAS

64. After establishing the permission of the new evidence before CAS, the submitted evidence and the arguments based on them must be examined.

65. As already mentioned (see para. 26), the Appellant argues that the Player must have been already considered a professional player in accordance with Art. 2 para. 2 RSTP as he had a respective contract with US Breno (Exhibit R7 of the Appeal Brief) or – if this contract should not represent a sufficient contract – with Desenzano Calcio (Exhibit R8 of the Appeal Brief; hereinafter together the "Contracts"). In addition to the Contracts, the Appellant relies on a written and signed statement of the Player (Exhibit R9 of the Appeal Brief).

66. This said, the Sole Arbitrator will hereinafter examine if the Player should have been considered a professional according to Art. 2 para. 2 RSTP based on the Contracts and, if so, whether the

training rewards trigger as per Article 5 FCHR ("*first registration as a professional"*) was incorrectly applied. However, already at this point, it shall be said that the Sole Arbitrator – for the reasons to be elaborated further below (see para. 74 ff.) – is not able to answer those questions in a binding and final way but only in a manner that allows him to decide whether there are reasons to uphold the Appeal and refer the matter at hand to the previous instance.

F. The status of the Player when registered by the Appellant

a. A player's status according to the RSTP

67. According to Article 2 para. 1 RSTP, a player's status is either "professional" or "amateur" and "*[n]o other status shall be recognised*". Following para. 2 of the same Article, a player shall be considered professional if – cumulatively – he (i) has a written contract with a club ad (ii) he *"is paid more for his footballing activity than the expanses he effectively incurs"*. For the sake of completeness, it shall here also be mentioned that no other provision – especially no provision of a national member association – is relevant for the determination of a player's status (Commentary on the RSTP (hereinafter the "Commentary") p. 29)

68. While the first condition established in Art. 2 para. 2 RSTP, the contract to be written, is clearly met by the Contracts, the financial threshold must be examined further.

69. In the Commentary it is explained, referencing several CAS decisions, "*that the financial threshold arising out of the article 2 paragraph 2 criteria is relatively low. Article 2 paragraph 2 does not require a player to make a living from their footballing activity in order to qualify as a professional. A player can qualify as a professional even if they need to pursue other work to earn a living. If the remuneration they receive from their club exceeds the expenses they effectively incur to provide their footballing services, they are a professional player"* and, further, that "*[i]t is, however, not possible to set a global figure as to the amount a player must be paid to be deemed a professional. As such, when considering whether a player is a professional or an amateur, the specific circumstances of each individual case must be considered, including the circumstances in the country concerned and any non-financial benefits to which the player is entitled […] In any event, a decision on whether a player is a professional or amateur must be based on a careful consideration of the actual content of the contract, particularly in respect of financial and other benefits.* (Commentary, p. 30 f.).

70. In addition to the abovementioned, the Commentary also provides the following (Commentary, p. 31):

"*[…] A player can still be a professional even if they earn much less than the average salary in their country and, conversely, a player can still be an amateur even if their salary exceeds the minimum wage in that country. The only relevant factor is whether the amount received by the player exceeds the expenses effectively incurred; the expenses to be considered and compared are not those relating to the player's general cost of living, but those specifically and effectively incurred for their footballing activity. […]*

Whether the amount received by the player exceeds the expenses effectively incurred is assessed on a case-by-case basis. For an English scholarship agreement, CAS has previously found that monthly remuneration of approximately GBP 400 exceeded the expenses effectively incurred by the player. Consequently, any player who signs a scholarship agreement that includes

remuneration at or above this level acquires professional status. By contrast, in Belgium, monthly remuneration of EUR 400 was not considered to exceed the expenses effectively incurred by the player. However, in that specific case, the player was not receiving any additional benefits, such as accommodation or meals at the club's campus. As a final example, under Portugal's system of "Sports Training Agreements", any player receiving a salary of EUR 250 per month plus food and accommodation was deemed a professional."

b. Application of the principles to the case at hand

71. The Appellant bases its argument – the Player already being a professional according to Article 2 para. 2 RSTP before transferring to them – particularly on the Contracts. The contract between the Player and US Breno – concluded for the period between 15 February 2021 and 30 June 2021 – awarded the Player a remuneration amounting EUR 2,000.00 for the four and a half months of its duration, i.e. approximately EUR 445.00 per month. No further remuneration was granted to the Player by US Breno according to the respective contract.

72. However, in the contract with Desenzano Calcio the Player and the club agreed upon the following:

    a. The contract was concluded for the 2022/23 season, i.e. from 1 August 2022 until 30 June 2023.

    b. The Player was entitled to a total renumeration of EUR 10,000.00 for the duration of the contract, i.e. approximately EUR 910.00 per month.

    c. The Player did not receive any reimbursement for board and lodging (Art. 4 of the contract with Desenzano Calcio).

73. Considering all the evidence at hand and the established principles and jurisprudence as well as being aware that none of the Respondents substantially contested the Appellant's claims concerning the Player's status, the Sole Arbitrator finds that the Contracts – and especially the one concluded with Desenzano Calcio – provide for reasonable grounds for assuming a potential professional status of the Player before he transferred to the Appellant.

74. Notwithstanding the above, it must also be further considered that a final and binding ruling on the question of whether – and if so – which of the Contracts should be deemed the first professional contract of the Player, cannot be answered in the ongoing procedure as the relevant clubs, Desenzano Calcio and US Breno, are not parties of the dispute at hand and therefore had no opportunity to present their arguments and/or contest or confirm the validity of the Contracts.

75. While such failure to include all relevant parties has been considered a reason to dismiss an appeal, e.g. in *CAS 2023/A/10002, 10009* and *100010*, the Sole Arbitrator also notes that the CAS jurisprudence repeatedly acknowledged that "*the consequence of not identifying all proper respondents is not that the appeal is wholly inadmissible but only that the Panel may decline to make any orders against a person who is a proper respondent but has not been joined or may limit the scope of its review to the orders sought against the party properly joined as a respondent"* (*CAS 2013/A/3437* para. 283).

76. This said and in light of the circumstances of the case at hand – particularly as Desenzano Calcio (which entered with the Player into a contract of considerable economical value) has neither been included into the EPP review process (FIFA's Answer to the Appeal para. 17) – the Sole Arbitrator will not dismiss the Appeal for failure to include all relevant parties, but rather annul the Appealed Decision and refer the case back to the previous instance according to Article R57 para. 1 of the Code.

G. Conclusion

77. The Sole Arbitrator concludes the following:

a. The evidence produced by the Appellant before CAS, especially the Contracts, can be taken into consideration according to Article R57 para. 1 of the Code.

b. The Contracts, particularly the contract between the Player and Desenzano Calcio, indicate that the Player may have been a professional in the meaning of Article 2 para. 2 RSTP before transferring to the Appellant.

c. The Sole Arbitrator cannot decide bindingly whether the Player must have been considered a professional in the meaning of Article 2 para. 2 RSTP based on the Contracts as not all relevant parties have been included as respondents.

d. The failure to include US Breno and Desenzano Calcio should not – given the circumstances of the case at hand – be followed by a dismissal of the Appeal.

e. The Sole Arbitrator acknowledges that FIFA, in light of the passivity shown by the Appellant in the EPP administrative process, did not act unreasonably when it issued the Appealed Decisions and ordered the Appellant to pay training compensation: it had repeatedly requested information to the Appellant without getting a response to such requests, so on the basis of such silence and inaction it made its decision with the information it had on file. However, with the evidence presented to the Sole Arbitrator in the proceedings before CAS, which raise considerable doubts to whether the event triggering the training rewards calculation according to Article 5 FCHR did take place in the moment of the transfer of the Player to the Appellant, the Sole Arbitrator shall annul the Appealed Decision and refer it to the previous instance.

f. This being said, and as it will be outlined below, the Appellant's behavior shall have an impact on the costs' allocation in these proceedings.

g. The Appeal is to be upheld and the Appealed Decisions to be annulled and referred back to the FIFA general secretariat to generate a new EPP and Allocation Statement regarding the Player.

VII. COSTS

(…)

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 21 June 2024 by Torres S.r.l against the decisions rendered by the FIFA general secretariat on 31 May 2024 is upheld.

2. The decisions rendered on 31 May 2024 by the FIFA general secretariat are annulled and referred to the FIFA general secretariat to generate a new EPP and Allocation Statement for the Player.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 28 May 2025

THE COURT OF ARBITRATION FOR SPORT

Dr Marco Balmelli
Sole Arbitrator