CAS 2024/A/10812 Pedro Miguel Marques Costa Filipe v. Al Tai Club

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Fabio Iudica, Attorney-at-Law in Milan, Italy

in the arbitration between

Pedro Miguel Marques Costa Filipe, Portugal
Represented by Mr Nuno Rêgo, Attorney-at-law, Porto, Portugal

- Appellant -

and

Al Tai Club, Saudi Arabia

- Respondent -

I. INTRODUCTION

1. This appeal is brought by Pedro Miguel Marques Costa Filipe, against the decision rendered by the Single Judge of the Players' Status Chamber (the "PSC") of FIFA on 27 June 2024 regarding an employment-related dispute with Al Tai Club (the "Appealed Decision").

II. THE PARTIES

1. Pedro Miguel Marques Costa Filipe (the "Appellant" or the "Coach") is a professional football coach of Portuguese nationality.

2. Al Tai Club (the "Respondent" or the "Club") is a professional football club based in Hail, Saudi Arabia, playing in the Saudi First Division. The Club is affiliated to the Saudi Arabian Football Federation which, in turn, is affiliated to FIFA.

3. The Appellant and the Respondent are jointly referred to as the "Parties".

III. FACTUAL AND PROCEDURAL BACKGROUND

4. The following is a summary of the main relevant facts and allegations based on the documentation in the file which includes the Appellant's written submissions[1], the Appealed Decision and the evidence examined in the course of the proceedings. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence included in the file, he refers in the Award only to the submissions and evidence he considers necessary to explain its reasoning.

Factual background

5. On 17 July 2022, the Club and the Coach signed a Contract for Professional Football Coach for the Club's first team for the 2022/2023 sporting season[2] (the "Employment Contract").

6. According to Article 3 of the Employment Contract, the Coach was entitled to a total amount of € 1,300,000 (one million three hundred thousand euros) payable as follows:

   - € 400,000 as downpayment, upon arrival of the Coach in the Kingdom of Saudi Arabia;
   - € 90,000 as monthly salary at the end of each calendar month from August 2022 to

[1] As it will be clarified hereinafter in the following sections, the Answer submitted by the Respondent has been deemed inadmissible and excluded from the file.

[2] Based on the information retrieved by the PSC from the FIFA Transfer Matching System, the 2022/2023 sporting season in Saudi Arabia ran from 25 August 2022 until 30 May 2023.

May 2023,
plus, housing and car allowance, 6 round trip air tickets KSA-Europe-KSA.

7. In addition, also in accordance with Art. 3 of the Employment Contract, the Club undertook to pay to the Coach the following bonuses:

   - "*1- 200.000 Two hundred thousand euros NET. in case of achieving first place.*
   - *2- 150,000 One hundred and fifty thousand euros NET. in the event of achieving one of the second to fourth positions.*
   - *3- 100,000 one hundred thousand euros NET. in the event of achieving one of the fifth to tenth positions.*
   - *4- 150,000 One hundred and fifty thousand euros NET. In the event of achieving the Custodian of the Two Holy Mosques Cup. All incentives are paid after five days of achievement*".

8. On 23 January 2023, the Club announced on its social media that the Coach had been dismissed. According to the translation provided by the Coach, the Club's post reads as follows: "*Termination of Pepa's first team coach. In light of the unsatisfactory results of Al Ta'i Club's first team, the club's board of directors has decided to terminate the employment of Portuguese coach Pedro Miguel – Pepa, thanking him for his time as coach and asking Almighty God to grant him success in his next coaching career*".

9. On 23 March 2023, the Coach signed a new employment contract with the Brazilian club, Cruzeiro Esporte Clube, effective from the date of signing until 31 December 2023, under which the Coach was entitled to BRL 172,341.75 (corresponding to approximately USD 30,000) net as monthly salary and BRL 15,000 (corresponding to approximately USD 2,600) as housing allowance.

10. Based on the FIFA proceedings and decision, the Club paid the Coach the balance between the remuneration provided for in the Employment Contract and the remuneration earned by the Coach with his new club Cruzeiro (the "Mitigated Compensation").

11. On 20 November 2023, the Coach put the Club in default for outstanding remuneration through an email by the Coach's lawyer reading as follows:

    "Dear President,
    As you know, ALTAI CLUB has unfairly fired my client Mr. PEDRO MIGUEL MARQUES COSTA FILIPE ***(THE COACH PÊPA)****.*

    In accordance with clause 3.3 of the employment contract signed on 18.07.2022, in the event of ALTAI CLUB achieved one the fifth to tenth positions, in sports season 2022/2023, my client would be entitled to payment of the net amount of € 100.000,00 (one hundred thousand euros).
    […]
    On ***23 January 2023****, at the time of his dismissal, ALTAI CLUB was in* ***ninth place in the league table****, with 18 (eighteen) points from 14 (fourteen) games.*

*At the **end of the 2023/2024 season**, the club finished ninth in the league table, with 34 (thirty-four) points from 30 (thirty) games.*
[…]
According to the decision rendered by the CAS in the case, "Arbitration CAS 2020/A/6798 Galatasaray Sportif Sinai ve Ticari Yatirimlar A.S. v. Igor Tudor, award of 10 May 2021" available for consultation at https://jurisprudence.tas-cas.org/Shared%20Documents/6798.pdf:

*"5. According to Article 337c para. 1 CO, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the expiry of the agreed duration. The employee shall be put in the same position as if there was no immediate termination of the employment relationship ("positive interest"). The damages the employee is entitled to, contain the lost salary as well as all the other payments granted by the employer. **Included in this "positive interest" are amongst others e.g. gratifications.** No specific personal performance of a football player is needed to get the bonus for the win of a championship, even if the employment contract is terminated by the club without just cause before the win of the championship."*

*In order to avoid having to discuss **the just cause for terminating the contract**, and because my client is always entitled to payment of the amount of **€100,000.00 (one hundred thousand euros),** because the club finished ninth in the league table, I kindly invite you to, within 10 (ten) days upon this date, to proceed with volunteer payment of **€ 100.000,00** (one hundred thousand euros) NET, directly to my client.*

By express wish of my client, if the AlTai Club pays the prize due of €100,000.00, the case ends here and I will not file a complaint in FIFA.

Please note that if due payment is not done within a/m term, I will proceed to court to enforce payment (near F.I.F.A) by not complying with the terms of signed contract, with all legal inconveniences to your club.

Certain you will comply with what has been hereby asked, we remain,
Best Regards,
Nuno Rêgo
LAWYER".

The FIFA Disciplinary Proceedings and the Appealed Decision

12. On 22 May 2024, the Coach filed a claim before FIFA against the Club, requesting the PSC to decide as follows:

"*The Claimant request the Players' Status Committee to decide that:*

a. the Respondent has unilaterally terminated the employment contract with the Claimant without just cause;

b. the Claimant is entitled to receive compensation for the unilateral termination without just cause, in the total amount of EUR 370.000,00, plus 5% interest as from 23 January 2023;

c. the Respondent shall cover all costs of these proceedings and make a contribution towards the Claimant's legal costs".

13. In his claim, the Coach alleged that the Club had dismissed him without just cause, admitted that he had received payment of the Mitigated Compensation but argued that the relevant amount was less than the amount to which he was entitled under the provisions of Art. 6 of Annex 2 of the FIFA Regulations on the Status and Transfer of Players (the "RSTP").

14. According to the Coach, the Club still owed him € 270,000 as additional compensation corresponding to three-month salaries, as well as € 100,000 as incentive payment in accordance with Art. 3(3) of the Employment Contract. In this regard, the Coach relied on Swiss law, arguing that the Club's early termination had prevented the fulfilment of the condition set forth in the Employment Contract, which must therefore be considered to have been met.

15. In its reply to the Coach's claim, the Club first confirmed having dismissed the latter as a result of the poor performance in the National League. However, the Club claimed to have reached an agreement with the Coach to pay him the Mitigated Compensation which it complied with after receiving a copy of his new employment contract with Cruzeiro. Therefore, the Club argued that no additional compensation was due.

16. In addition, the Club maintained that the Coach "*was not entitled to the bonus because he did not personally achieve it, and also because he was coaching another club at the same time*".

17. In conclusion, the Club held that the Coach's claim should be rejected.

18. On 27 June 2024, the FIFA Players' Status Chamber rendered the Appealed Decision, whose operative part of reads as follows:

"*1. The claim of the Claimant, Pedro Miguel Marques Costa Filipe, is rejected.*

2. This decision is rendered without costs".

IV. SUMMARY OF THE APPEALED DECISION

19. The grounds of the Appealed Decision were served to the Parties on 29 July 2024. They can be summarized as follows.

20. Firstly, the Single Judge considered that he was competent to decide the present case, which concerns an employment-related dispute between a Portuguese coach and a Saudi

club, on the basis of Art. 23(2) in combination with Art. 22 (1)(c) of the RSTP.

21. Subsequently, in accordance with Art. 26(1) and (2) of the RSTP (June 2024 edition), considering that the claim was submitted by the Coach on 22 May 2024, the Single Judge confirmed that the February 2024 edition of the said regulations was applicable to the present matter.

22. As to the substance of the case, the following elements were considered essential to the decision:

- the Parties entered into the Employment Contract for the period from July 2022 until May 2023;
- the Club terminated the Employment Contract in January 2023 due to the Coach's unsatisfactory performance;
- following the termination, the Coach found employment with Cruzeiro. Based on the new employment contract, the Club calculated and paid the Mitigated Compensation to the Coach;
- in November 2023, the Coach sent a default notice to the Club, demanding an additional payment of € 100,000 net, corresponding to the incentive payment referred to in Art. 3(3) of the Employment Contract;
- in May 2024, the Coach filed his claim before FIFA, requesting to be awarded: i) the aforementioned incentive payment and, ii) additional compensation of 3 monthly salaries pursuant to Art. 6 of Annex 2 RSTP, both of which were contested by the Club.

23. On the basis of the simple assessment of the events mentioned above, the Single Judge was immediately convinced that the Coach's claim had to be rejected.

24. Indeed, it was considered that, by accepting the Mitigated Compensation without any reservation of rights, the Coach had created a legitimate expectation on the part of the Club that he agreed to the level of compensation proactively paid by the Club.

25. The Single Judge's persuasion was further supported by the following considerations:

- the Mitigated Compensation paid by the Club was calculated in strict compliance with the standard rule laid down in Art. 6 of Annex 2 RSTP, i.e., the residual value of the Employment Contract at the time of the termination, *minus* the remuneration paid by Cruzeiro;
- these calculations were based on the documentation provided by the Coach himself (i.e. copy of the new employment contract), confirming that he participated in the negotiations;
- the Coach made no reference to a future amount to be paid by the Club, nor to the fact that his acceptance of the Mitigated Compensation was conditional on a residual payment;
- the Mitigated Compensation was unequivocally paid by the Club.

26. The PSC established that the conduct of the Parties, and in particular, of the Coach, showed that, notwithstanding the Club's unilateral termination of the Employment Contract, the Parties had already settled their differences and, as a result, the Coach was estopped from changing his course of action by demanding a higher compensation than the one already agreed with the Club.

27. Without prejudice and in addition to the above, as to the incentive payment, the Single Judge also recalled that, according to the consistent jurisprudence of the FIFA Football Tribunal, conditional payments or bonuses are generally not taken into account when calculating compensation for breach of contract, as they depend on future events and are therefore subjective in nature.

28. In the present case, the relevant bonus claimed by the Coach was linked to the achievement of a certain ranking in the Saudi League which could only be determined at the end of the relevant season, while, due to the early termination of the Employment Contract, the Coach had not managed the Club's team for the last 4 months (and therefore, the goal was not achieved by the Coach). As a result, it would be impossible to determine whether the Club's final ranking would have been the same, worse or better as the one achieved.

29. Moreover, the Single Judge rejected the Coach's argument that he was intentionally prevented by the Club due to the unilateral termination, since there was no evidence that the Club acted in bad faith and/or that the incentive payment was ever discussed by the Parties when negotiating the Mitigated Compensation.

30. Finally, the request for additional compensation was also rejected since the conditions set out in Art. 6 of Annex 2 RSTP, namely that the early termination must be due to overdue payables, were not deemed to be met in the present case.

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

31. On 19 August 2024, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Article R48 of the Code of Sports-related Arbitration (2023 edition) (the "CAS Code") against the Club with respect to the Appealed Decision. The Appellant requested that the present dispute be submitted to a panel of three arbitrators and chose English as the language of the arbitration.

32. On 26 August 2024, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.

33. On 27 August 2024, the CAS Court Office invited the Respondent to nominate an arbitrator from the list of CAS arbitrators by 5 September 2024 in accordance with Art. R53 of the CAS Code.

34. On 29 August 2024, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

35. On 2 September 2024, the CAS Court Office notified the Respondent with the Appeal Brief and reminded the latter of its 20-day time limit upon notification by courier, for filing the Answer pursuant to Art. 55 of the CAS Code.

36. On 17 September 2024, the CAS Court Office informed the Parties that, in the absence of any nomination by the Respondent within the granted deadline, the President of the CAS Appeals Division or her Deputy would nominate an arbitrator in lieu of the Respondent.

37. On 3 October 2024, the CAS Court Office informed the Parties that it had not received the Answer to the Appeal Brief nor any communication by the Respondent in that regard within the relevant deadline. The Respondent was therefore requested to provide the CAS Court Office, by 7 October 2024, with proof of filing the Answer within the said deadline, failing which the CAS Court Office would consider that the Respondent had not filed its Answer in the present proceedings.

38. On 7 October 2024, the Appellant requested the CAS Court Office that, in view of the current circumstances (the Respondent had not filed its Answer, nor had it appointed its Arbitrator) the present appeal be decided by a Sole Arbitrator in order to reduce the costs of the arbitration.

39. On 8 October 2024, the CAS Court Office informed the Parties that the Respondent had failed to present a proof of the filing of the Answer or any other communication in that regard. In addition, the CAS Court Office requested the Parties to state where they preferred a hearing to be held in the present matter or for the Panel or the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

40. On 15 October 2024, the Respondent filed unsolicited submissions to the CAS Court Office, corresponding, *de facto,* to the content of the Answer to the Appeal Brief and relevant attachments.

41. Also on 15 October 2024, the Appellant requested the CAS Court Office that the time limit to submit its position with regard to a possible hearing to be held in the present arbitration, be postponed after the CAS had decided on the number of arbitrators and the amount of the advance payment of costs.

42. On 17 October 2024, the CAS Court Office informed the Parties that the Respondent's submission of 15 October 2024 was in principle inadmissible since it had been filed beyond the relevant deadline for filing the Answer. Notwithstanding the above, the Appellant was requested to inform the CAS Court Office whether it would agree that the Respondent's Answer be submitted to the file.

43. On 18 October 2024, the Appellant informed the CAS Court Office that he did not agree that the Respondent's Answer be admitted to the file.

44. On 28 October 2024, the CAS Court Office informed the Parties that, in light of the

circumstances of this proceeding, the Deputy President of the CAS Appeals Division had decided to submit the present case to a sole arbitrator. Moreover, the Appellant was invited to inform the CAS Court office by 4 November 2024 whether it preferred for a hearing to be held or for the Sole Arbitrator to issue an award based only on the Parties' submissions.

45. On 4 November 2024, the Appellant informed the CAS Court Office that it did not consider a hearing to be necessary in the present case.

46. On 30 December 2024, the CAS Court Office informed the Parties that Mr Fabio Iudica, attorney-at-law in Milan, Italy, had been appointed as a sole arbitrator in the present case.

47. On 27 January 2025, on behalf of the Sole Arbitrator, the CAS Court Office informed the Parties that the Respondent's Answer was belated and inadmissible and as such, it would be excluded from the file. In the same correspondence, the CAS Court Office granted a final deadline to the Respondent, until 31 January 2025, to submit its position with regard to the possibility of a hearing being held in the present case.

48. The Respondent failed to submit its position with regard to the holding of a hearing within the given deadline.

49. On 5 February 2025, the CAS Court Office informed the Parties that the Sole Arbitrator considered himself sufficiently well-informed to decide the present case based solely on the Parties written submissions, without the need to hold a hearing.

50. On 6 February, the CAS Court Office forwarded the Order of Procedure to the Parties which was duly signed and returned to the CAS Court Office by both the Appellant and the Respondent on 13 February 2025.

VI. SUBMISSIONS OF THE PARTIES

51. The Sole Arbitrator recalls that the Respondent failed to submit its Answer within the relevant time limit pursuant to Art. R55 of the CAS Code which has therefore been excluded from the file and shall not be taken into account for the purpose of deciding the present case. The following outline is a summary of the main position of the Appellant which the Sole Arbitrator considers relevant to decide the present dispute and does not comprise each and every contention put forward by the Appellant. In addition, the Parties' position in the first instance proceedings before the FIFA PSC, based on the findings of the Appealed Decision have all taken been taken into consideration.

A. The Appellant's submissions and requests for relief

52. In his Statement of Appeal and in his Appeal Brief, the Coach submitted the following request for relief:

"(a) declare that the appeal of the Coach is admissible;

(b) order the Respondent to pay to the Appellant compensation in the net amount of € 100,000.00 as a result of the club had achieved a position between fifth and tenth in the league table, in season 2022/2023, as established in article three of the employment contract, plus 5% interest as from 30 May 2023;

(c) order the Respondent to bear all costs pertaining to the arbitration and to make a contribution the Appellant's legal costs and other expenses in the amount of CHF 30.000,00".

53. The Club's appeal is based on the arguments and legal submissions which are summarized below.

54. The main facts on which the appeal is grounded are as follows:

- On 23 January 2023, the Coach was dismissed by the Club;
- at the time when FIFA issued the Appealed Decision, around halfway through the sporting season 2022/2023, the Club was in ninth place in the relevant championship with 18 points from 14 games;
- at the end of the said sporting season, the Club finished ninth in the league table, with 34 points from 30 games;
- on 20 November 2023, the Coach put the Club in default in relation to the failure to pay him the bonus stipulated in Art. 3(3) of the Employment Contract.

55. With regard to the legal analysis, the Appellant underlined that the Coach's dismissal constitutes a serious breach of contract which has to be duly compensated in accordance with the applicable mandatory rules, which was denied by the Appealed Decision.

56. In this view, reference is made to the Employment Contract which provides for two different kinds of "*compensation*", i.e. monthly salaries on the one hand and performance bonuses on the other.

57. Performance bonuses are contingent payment and, as such, they correspond to conditional clauses which have to be analysed pursuant to Swiss law, namely art. 151 et seq. of the Swiss Code of Obligations (the "SCO").

58. In particular, Art. 156 (1) of the SCO establishes that "*A condition is deemed fulfilled where one of the parties has prevented its fulfilment by acting in bad faith*", in such way protecting the legitimate expectations of the creditor of a conditional obligation by preventing the debtor's abuse of right according to which no one can invoke their own reprehensible behaviour (from the latin principle "*nemo auditur propriam turpitudinem allegans*").

59. According to the Employment Contract, the payment of the relevant bonuses in the present case was subject to the achievement of certain results by the team, excluding any other conditions, such as the fact that the Coach was working for the Club at the time when the condition was fulfilled.

60. Moreover, since the Coach only failed to conclude the 2022/2023 sporting season with the Club due to the unlawful decision by the latter to dismiss him, "*it cannot be excluded that, had the coach not been unfairly dismissed, he would have finished the season between fifth and tenth place in the Saudi league*".

61. Besides, since the Club prevented the occurrence of the condition precedent for the payment of the bonus by terminating the Employment Contract without just cause (which results in the Club's acting in bad faith), such a condition must be deemed to have been otherwise fulfilled pursuant to Art. 156 SCO.

62. What is more, the Club, which finished ninth in the Saudi League at the end of the 2022/2023 sporting season, was already in ninth place when the Coach was dismissed; therefore, the result must be attributed to his merits.

63. In light of this, it is reasonable to affirm that, had the Coach not been unlawfully dismissed, he would have achieved a place between fifth and tenth in the Saudi League in the 2022/2023 sporting season. According to the Appellant, such conclusion is also supported by CAS jurisprudence in CAS 2020/A/6798 and in CAS 2012/A/2874.

64. As a consequence, the Coach is entitled to the bonus stipulated under Art. 3(3) of the Employment Contract in the amount of € 100,000 as a result of the Club's ranking between fifth and tenth place in the Saudi league in the relevant sporting season.

VII. JURISDICTION

65. Art. R47 of the CAS 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*."

66. The Appellant relied on Art. 57 and Art. 58 of the FIFA Statutes (September 2020 ed.) as conferring jurisdiction to the CAS.

67. The Respondent did not dispute that CAS has jurisdiction in the present case. In addition, the jurisdiction of the CAS was further confirmed by the signature of the Order of Procedure by the Parties.

68. Accordingly, the CAS has jurisdiction to hear the present case.

VIII. ADMISSIBILITY

A) Appeal

69. Art. R49 of the CAS Code provides the following:

"*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*".

70. According to Art. 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 notification of the decision in question*".

71. The Sole Arbitrator notes that the Appealed Decision was rendered on 27 June 2024 and that the grounds of the Appealed Decision were notified to the Parties on 29 July 2024.

72. Considering that the Appellant filed his Statement of Appeal on 19 August 2024, i.e., within the deadline of 21 days set in the FIFA Statutes, the Sole Arbitrator is satisfied that the present appeal was filed in due time. Moreover, the Respondent did not contest the admissibility of the Appeal.

73. Furthermore, the appeal complied with all other requirements of Art. R48 of the CAS Code and is thus admissible.

B) Answer

74. Pursuant to Art. R55 of the CAS Code, the Answer to the Appeal Brief shall be submitted by the Respondent to the CAS Court Office within 20 days from the receipt of the grounds for the appeal by courier letter.

75. As it emerges from the CAS correspondence to the Parties, and according to the courier service report, the Respondent received copy of the Appeal Brief on 8 September 2024; therefore, since the 20-day time limit would expire on 28 September 2024 which is a non-business day in Switzerland, the time limit for the Respondent to file its Answer expired at the end of 30 September 2024, i.e. the first subsequent business day, in accordance with Art. R32 of the CAS Code.

76. On the contrary, the Respondent did not file the Answer, and did not provide proof of delivery of the Answer and relevant attachments, within the aforementioned time-limit.

77. Therefore, the Sole Arbitrator considered that the Respondent's submission of 8 October 2024 was belated and, in view of the Appellant's objection to its admissibility, the Answer from the Respondent was not considered admissible and excluded from the file.

78. In addition, since the Respondent also failed to exercise its right to request a hearing in the present case, although he was invited to do so, it also renounced to provide its oral submissions.

79. Notwithstanding the above, the Sole Arbitrator recalls that, pursuant to Art. R32 of the

CAS Code, if the Respondent fails to submit its Answer by the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award.

IX. APPLICABLE LAW

80. Art. R58 of the CAS Code provides the following:

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

81. According to Art. R56(2) of the FIFA Statutes, "*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*".

82. The Appellant refers to the relevant FIFA Regulations and subsidiarily, Swiss Law, as the law applicable to the present matter. The Respondent did not contest that.

83. In consideration of the above and in accordance with the wording of Art. R58 of the CAS Code, the Sole Arbitrator holds that the present dispute shall be decided principally according to the FIFA Regulations, namely, the FIFA Regulations on the Status and Transfer of Players (RSTP), February 2024 edition, with Swiss law applying subsidiarily in case of regulatory gap.

X. LEGAL ANALYSIS

What is this case about?

84. The present appeal was brought by the Appellant in order to reverse the Appealed Decision insofar as the PSC has rejected the claim for payment of the performance bonus stipulated by the Parties under Art. 3(3) of the Employment Contract.

85. Incidentally, the Sole Arbitrator notes that the Appellant implicitly waived the claim for additional compensation set forth in Art. 6, Annex 2 of the FIFA RSTP, which was submitted in the first instance proceedings, as it was not included in the Appellant's requests for relief in the Statement of Appeal or the Appeal Brief.

86. Therefore, the Sole Arbitrator's task in these arbitration proceedings is limited to assessing whether the Appellant is entitled to the payment of € 100,000 in connection with the Club's achievement of ninth position in the relevant League table in the sporting season 2022/2023 pursuant to Art. 3(3) of the Employment Contract, as a part of the compensation for breach of contract. In this respect, the Sole Arbitrator wished to

highlight that this bonus is claimed as part of the Appellant's compensation and not as an outstanding remuneration, insofar it refers to an event that would have occurred in any case only after his dismissal on 23 January 2023 (i.e. during the middle of the season).

87. In essence, in support of his claim, the Appellant maintains the following arguments:

a) that the calculation of compensation for breach of contract pursuant to FIFA RSTP also includes performance bonuses or other incentives;
b) that, in the present case, the condition precedent (the achievement of the sporting result) on which the bonus payment was based according to Art. 3(3) of the Employment Contract was prevented by the Club's unlawful decision to dismiss the Coach and should therefore be regarded as having been fulfilled pursuant to Art. 156 of the SCO.

88. In the proceedings before the PSC, the Respondent's position was that the Parties had agreed on the Mitigated Compensation, which had been negotiated between them and duly paid by the Club, and therefore, the Coach was not entitled to any additional compensation. Furthermore, according to the Club, the Coach had not personally contributed to the achievement of the sporting result triggering the bonus and moreover, he was working with a new club at that time.

89. In the Appealed Decision, the PSC finally established that the Parties had reached an agreement on the Mitigated Compensation and for that reason, the Coach was not entitled to any additional payment.

90. That being said, the challenge to the PSC's decision by the Appellant only concerns the reasoning expressed in the Appealed Decision that "*conditional payments or bonuses are generally not taken into account when calculating compensation for breach of contract, as they depend on future events and are therefore subjective in nature*".

91. The Sole Arbitrator notes that, the one above was a secondary argument used by the PSC only to further support its decision which was based on the main conclusive argument that the Parties had reached an agreement on the amount of compensation and that the Coach was not entitled to request any additional amount of compensation than the one agreed upon.

92. In fact, the PSC's principal argument to reject the Appellant's claim was that, by accepting the Mitigated Compensation, the Appellant had tacitly agreed on the relevant amount or, that at least, he had created a legitimate expectation on the part of the Club in that respect.

93. Only in addition to that reasoning and to further confirm its decision, the PSC also pointed out that conditional payments are generally not taken into account when calculating compensation for breach and moreover, there was no evidence that the payment of the bonus was ever discussed by the Parties when negotiating the compensation for breach. The relevant part of the Appealed Decision reads as follows:

"*According to the Single Judge, notwithstanding the Club's premature termination of the Contract without just cause, the conduct of the Parties – and in particular the Coach – confirmed that they had already settled their differences. As a result, the Single judge decided that the Coach was estopped from changing his course of action by demanding a higher amount of compensation well after the termination (venire contra factum proprium).*

In addition to the foregoing and for the sake of completeness, the Single Judge also made the following remarks with respect to each of the amounts claimed by the Coach" (Appealed Decision, para 26, 27).

94. However, in no part of the appeal does the Appellant challenge the PSC's main argument that the Parties had reached a settlement of their differences after the premature termination of the Employment Contract.

95. In fact, the Appellant has completely failed to contest or even comment on the Appealed Decision, insofar as it acknowledges that the Mitigated Compensation was in fact negotiated between the Parties.

96. According to the reasoning of the Appealed Decision, it appears that the Club had paid a certain (unspecified) amount to the Coach as compensation for the unilateral termination, which was calculated by deducting the Coach's remuneration under the new employment contract.

97. In fact, the PSC took into account that "*The Parties expressly confirmed that the Club paid the Coach the balance between the remuneration provided for in the Contract and the remuneration earned by the Coach with Cruzeiro*" [i.e., the Mitigated Compensation].

98. Notwithstanding the above, there is no reference whatsoever in the Appeal Brief to the Mitigated Compensation or to the course of the events that finally led to the payment of the Mitigated Compensation by the Club, as the Appellant merely claims that he is entitled to receive payment of the relevant bonus stipulated under Art. 3 of the Employment Contract, pursuant to the provisions of the FIFA RSTP governing the termination of employment contracts without just cause, as well as Swiss law.

99. In the present appeal, although the Appellant did not even mention the payment of the Mitigated Compensation (which was in any case acknowledged by the Appellant before FIFA), or the process of calculation of the relevant amount, he did not challenge the Appealed Decision in the part where it was acknowledged that the Coach had indeed received the Mitigated Compensation, or where the PSC concluded that the Mitigated Compensation had been negotiated by the Parties in order to settle their differences.

100. First and foremost, the Sole Arbitrator notes that it is undisputed that, after the termination of the Employment Contract, the Mitigated Compensation was actually paid by the Club.

101. Second, based on the reasoning of the Single Judge of the PSC, failing any specific

objection raised by the Appellant in this regard, and in the absence of any evidence to the contrary, the Sole Arbitrator considers that the Parties had in fact reached an agreement with regard to the payment of the said Mitigated Compensation as a consequence of the unilateral termination. Or at least, that the Appellant did not raise any objection to the amount of the Mitigated Compensation, nor did he reserve his right to claim additional payments, until the letter of formal notice of 20 November 2023.

102. In this regard, the Sole Arbitrator notes that the Appellant does not deny the Appealed Decision's analysis that the Mitigated Compensation was actually negotiated and agreed upon by the Parties. In this respect, the Appealed Decision also underlined the fact that the Appellant himself provided copy of his new employment contract with Cruzeiro in order for the Club to calculate the Mitigated Compensation, which shows that the Appellant was in some way involved in the negotiation. As there is no evidence that the Appellant raised any issue regarding the Mitigated Compensation (nor did the Appellant state the contrary), it is also reasonable to conclude that the Parties may have agreed on the Mitigated Compensation as an all-inclusive lump sum payment for the full settlement of any possible dispute deriving from the unilateral termination by the Club.

103. The relevant part of the Appealed Decision reads as follows: "*The Club confirmed that it had dismissed the Coach as a result of the poor performance in the National League. Nevertheless, it claimed to have reached an agreement with the Coach to pay him the Mitigated Compensation, which it proactively complied with after receiving a copy of his new contract with Cruzeiro and the relevant calculations*" (Appealed Decision, para 14)

104. The Sole Arbitrator believes that in the light of the payment of the Mitigated Compensation, which was accepted by the Coach without any reservation, the Appellant has failed to meet the burden of proof with respect to the alleged right to claim the additional payment of € 100,000 corresponding to the bonus stipulated under Art. 3(3) of the Employment Contract.

105. In this respect, the Sole Arbitrator believes that, in the absence of any evidence or allegation to the contrary, which the Appellant has failed to provide, the conclusion of a settlement agreement between the Parties with reference to the amount of the Mitigated Compensation, as stated by the Club in the FIFA proceedings, has not been disproved.

106. According to the burden of proof, it is for the party that derives a claim from a certain fact to prove the existence of such fact. This general rule is applied in several jurisdictions and is explicitly contained in Article 8 of the Swiss Civil Code. As to the standard of proof, it is a well-established practice that in the lack of any specific legal or regulatory requirement, in a civil dispute a CAS panel has to apply the usual standard of proof for civil matters, i.e. the one of comfortable satisfaction.

107. In the present case, in the absence of any dispute or evidence to the contrary submitted by the Appellant, the Sole Arbitrator believes to his comfortable satisfaction that there are no reasons to deviate from the reasoning of the Appealed Decision that the amount of the Mitigated Compensation paid by the Club was validly agreed between the Parties after

the termination of the Employment Contract.

108. As such, based on the documentation in the file, the Sole Arbitrator considers that the amount of the Mitigated Compensation was determined by the Parties by way of a settlement following the premature termination of the Employment Contract.

109. In addition, and from a different perspective (as if there had been no previous settlement between the Parties), by accepting the payment of the Mitigated Amount without any reservation or objection, as the PSC pointed out in the Appealed Decision, the Appellant also created a legitimate expectation on the part of the Club that the *quantum* of compensation proactively paid by the Club was considered fully satisfactory.

110. In this regard the Sole Arbitrator recalls that, according to the doctrine of *venire contra factum proprium*, where the conduct of one party has led to the legitimate expectations on the part of a second party, the first party is estopped from changing its course of action to the detriment of the second party.

Conclusion

111. In view of the foregoing, the Appeal filed by the Club is groundless and must be rejected in full and the Appealed Decision is confirmed in its entirety.

112. Any further claims or requests for relief from the Parties are dismissed.

XI. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 19 August 2024 by Pedro Miguel Marques Costa Filipe against the decision issued on 27 June 2024 by the Single Judge of the FIFA Players' Status Chamber is dismissed.

2. The decision issued on 27 June 2024 by the Single Judge of the FIFA Players' Status Chamber is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland

Date: 14 April 2025

THE COURT OF ARBITRATION FOR SPORT

Fabio Iudica
Sole Arbitrator