CAS 2024/A/10825 Leixões Sport Club SAD v. Coimbra Esporte Clube LTDA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Jaime Castillo, Attorney-at-law, Mexico City, Mexico

in the arbitration between

Leixões Sport Club SAD, Portugal
Represented by Mr Breno Costa Ramos Tannuri, Attorney-at-law, Higienópolis, Brazil

Appellant

and

Coimbra Esporte Clube LTDA, Brazil
Represented by Mr Thomas Sousa Lima Mattos de Paiva, Mr Luiz Fernando Pimenta Ribeiro, and Mr Rodrigo Vaz Mendes Sampaio, Attorneys-at-law, Alphaville, Brazil

Respondent

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I. INTRODUCTION

1. This appeal is brought by Leixões Sport Club SAD against Coimbra Esporte Clube LTDA, to challenge a decision issued by the FIFA Players' Status Chamber (the "PSC") on 20 June 2024, with grounds issued on 2 August 2024 (the "Appealed Decision").

2. The Appealed Decision ruled on two separate claims consolidated under the same file (FPSD-13508). In its first-instance claim, the Appellant demands that the Respondent reimburse certain payments and expenses as agreed in a loan transfer agreement. In its own claim against the Appellant, the Respondent alleges that the Appellant failed to pay the transfer fee due under an option agreement.

3. In the aforementioned decision, Leixões Sport Club SAD's claim was dismissed, and said club was ordered to pay Coimbra Esporte Clube LTDA an amount of EUR 400,000 as outstanding remuneration, plus 12% interest p.a. from 22 January 2024 until the date of effective payment, as well as EUR 40,000 as a contractual penalty.

II. PARTIES

4. Leixões Sport Club SAD ("**Leixões**" or the "**Appellant**") is a Portuguese football club based in Matosinhos, Portugal, and affiliated to the Portuguese Football Federation (the "FPF") and currently playing in the Portuguese second division.

5. Coimbra Esporte Clube LTDA ("**Coimbra**" or the "**Respondent**") is a Brazilian football club based in Belo Horizonte, MG, Brazil, and affiliated to the Brazilian Football Confederation (the "CBF").

6. Collectively, Leixões and Coimbra will be referred to as the "Parties".

III. FACTUAL BACKGROUND

A. Background Facts

7. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings and evidence. 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 these proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

8. On 10 December 2021, Coimbra and the Brazilian professional football player Adriano Luiz Amorim Santos (the "Player"), signed an employment contract valid from said date until 1 December 2024. Under the employment contract, Coimbra agreed to remunerate the Player for his services with a monthly salary amounting to BRL 2,000.00.

9. On 5 August 2022, the Parties, with the consent of the Player, executed an agreement titled "*AGREEMENT FOR THE TEMPORARY ASSIGNMENT OF PLAYER FEDERATION REGISTRATION RIGHTS*" in relation to the temporary/loan transfer of the Player from Coimbra to Leixões (the "First Loan Agreement"). The temporary transfer would be in effect from 1 August 2022 until 30 June 2023.

10. Clause 1.4 of the Loan Agreement reads as follows (free translation from Portuguese):

> *"1.4. During the period of the temporary transfer, LEIXÕES SAD undertakes to enter into a sports employment contract with the PLAYER, whose annual gross remuneration will be of € 12,169.98 (twelve thousand one hundred sixty-nine euros ninety-eight cents), which corresponds to the value of R$ 64,924.41 (sixty-four thousand nine hundred twenty-four reais forty-one cents), plus the incidental charges on salary amounts in Portugal to be paid by COIMBRA BR, via bank transfer*."

11. Subsequently, the Appellant and the Player signed an employment contract on 8 August 2022, valid as of 1 August 2022 and expiring on 30 June 2023. Clause 3.1 of the employment agreement sets the Player's remuneration as follows:

> *"1. For the above-mentioned installment, LEIXOES SAD undertakes to pay the PLAYER, during the term of this contract, the minimum monthly guaranteed remuneration (RMMG), which on the present date is set at EUR 705,000 gross (seven hundred five euros), to be paid until the 5th (fiveth) day of the month following the month to which it relates."*

12. On 13 July 2023, the Parties, with the consent of the Player, entered into a second agreement, titled "*LOAN AGREEMENT*", pursuant to which Coimbra agreed to temporarily transfer the Player to the Appellant from 14 July 2023 until 30 June 2024 (the "Second Loan Agreement").

13. Clause 1.4 of the Second Loan Agreement reads as follows (free translation from the Portuguese original):

> *"1.4 During the period of temporary transfer, LEIXOES SAD is obliged to enter into a sports employment contract with the PLAYER, whose remuneration and other charges incidental to the PLAYER's salary will be the sole responsibility of LEIXOES SAD."*

14. On 19 July 2023, the Parties, as well as the Player, entered into an agreement titled "*OPTION AGREEMENT FOR ACQUISITION AND OTHER COVENANTS*", by virtue of which Coimbra granted the Appellant a unilateral option to secure the permanent transfer of the Player if certain conditions were met (the "Option Agreement"), as detailed below (free translation from the Portuguese original):

"1.1 Until 30/08/2024, LEIXOES SAD will have the option to acquire the federative rights and 50% (fifty percent) of the economic rights related to the PLAYER from COIMBRA EC, upon immediate payment of the NET amount of EUR 400,000.00 (four hundred thousand euros) to COIMBRA EC.

1.2 In the event of delay in the payment referred to above, regardless of notification or formal demand, a penalty of 10% (ten percent) will be applied to the amount due, plus interest of 1% (one percent) per month until full payment is made.

1.3 The acquisition of the federative rights and 50% (fifty percent) of the economic rights as outlined in this clause will only be perfected upon complete receipt of the funds by COIMBRA EC.

1.4 Regarding the provisions in clause 1.1, no withholding shall be made, for any reason, including in relation to the solidarity mechanism or training compensation, which shall be the sole responsibility of LEIXOES SAD."

15. On 22 December 2023, the Appellant, via its appointed attorney, sent a letter to Coimbra expressing its intent to exercise the option agreed by the Parties in the Option Agreement. The Appellant further requested that Coimbra proceed to "*... insert the relevant data for the permanent transfer of the Player into the FIFA Transfer Matching System ("TMS") as soon as possible."*

16. On 26 December 2023, Coimbra responded to the Appellant's letter acknowledging the Appellant's intent to exercise the option, but objecting that execution would only be perfected upon the immediate payment of the amount of EUR 400,000 on the same date as the option was exercised, as per clause 1.1 of the Option Agreement. Coimbra therefore provided the Appellant with a five-day deadline, as from the date of its correspondence, to proceed with payment of the agreed amount.

17. The above notwithstanding, the Parties subsequently undertook all necessary steps with the FIFA TMS, resulting in the Player's status being updated from a loan transfer to a permanent transfer from Coimbra to the Appellant.

18. Via its correspondence to the Appellant dated 24 January 2024, Coimbra provided formal notice that payment for the exercise of the option established in the Option Agreement, had not been performed by the Appellant. Consequently, Coimbra provided the Appellant with a final and non-extendable deadline of ten days from the receipt of the said correspondence, to proceed with payment of the net amount of EUR 400,000.00.

B. Proceedings before the Player's Status Chamber of the FIFA Tribunal

19. On 26 January 2024, the Appellant lodged a claim against the Respondent with the FIFA PSC, alleging that Coimbra had failed to comply with its contractual obligations under the First Loan Agreement, as it had failed to reimburse the Appellant all salaries paid to the Player during the 2022/2023 season, as well as applicable taxes paid in Portugal, as per article 1.4 of the aforementioned agreement. Consequently, the Appellant requested that Coimbra

be ordered to pay EUR 14,725.67 plus default interest at the rate of 5% annually, as from 1 July 2023 until the date of effective payment.

20. On 5 March 2024, Coimbra filed its response to the claim instituted by the Appellant, essentially rejecting the Appellant's claim.

21. On 6 March 2024, the PSC acknowledged receipt of Coimbra's response and informed the Parties that the submission phase of the case was closed and that the matter would be submitted to the Single Judge of the Players' Status Chamber for a formal decision on 19 March 2024.

22. On 12 March 2024, Coimbra filed a claim against the Appellant before the PSC, alleging that the Appellant had failed to comply with its contractual obligations under the Option Agreement, by failing to pay the agreed upon amount for the effective exercise of the option contained therein for the permanent transfer of the Player. Consequently, Coimbra requested that the Appellant be ordered to pay EUR 400,000.00, as well as the contractual penalty amounting to 10% of the overdue amount, and a default interest of 1% per month as from 1 January 2024 until the date of effective payment.

23. On 15 March 2024, the PSC acknowledged receipt of Coimbra's claim, and deemed it related to the claim filed by the Appellant on 26 January 2024. As a result, the PSC informed the Parties that it would be up to the Single Judge of the FIFA PSC to decide on the admissibility of the "counterclaim" filed by Coimbra.

24. On 18 March 2024, Coimbra filed a submission with the PSC in response to FIFA's correspondence described above, disputing the supposed link between the two claims on the basis that each claim had a different contractual basis, and therefore its own claim, filed on 12 March 2024, did not constitute a counterclaim.

25. On 21 March 2024, the PSC informed the Parties that the Single Judge of the PSC had decided to refer the case to a panel of three judges, due to the legal complexity of the matter. Furthermore, the PSC invited the Appellant to provide it with its position in relation to the claim filed by Coimbra.

26. On 17 April 2024, the Appellant filed its response to the claim filed by Coimbra at the PSC, contending that said claim was inadmissible due to its late filing, as well as rejecting Coimbra's request for the contractual penalty and the default interest to be applied to the overdue amount.

27. On 20 June 2024, FIFA issued the Appealed Decision. The operative part of the Appealed Decision reads as follows (boldface as in the original):

> "*1. The claim of the Claimant / Counter-Respondent,* Leixões *SC, SAD, is rejected.*

2. The counterclaim of the Respondent / Counterclaimant, Coimbra Esporte Clube Ltda, is admissible and partially accepted.

3. The Claimant / Counter-Respondent must pay to the Respondent / Counterclaimant the following amount(s):

***-EUR 400,000 as outstanding remuneration** plus 12% interest p.a. as from 22 January 2024 until the date of effective payment; and*

-EUR 40,000 as contractual penalty

4. Any further claims of the Respondent / Counterclaimant are rejected.

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

*6. Pursuant to article 24bis of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not paid **within 45 days** of notification of this decision, the following **consequences** shall apply:*

1. The Claimant / Counter-Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of three entire and consecutive registration periods.

2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the of the three entire and consecutive registration periods.

*7. The consequences **shall only be enforced at the request of the Respondent / Counterclaimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*

*8. The final costs of the proceedings in the amount of **USD 20,000** are split between the parties and shall be paid to FIFA in the following manner (cf., note relating to the payment of the procedural costs below):*

*a) USD **15,000** by the Claimant/Counter-Respondent. As the Claimant/Counter-Respondent already paid the amount of USD 1,000 to FIFA as advance of costs at the start of the proceedings, the residual amount of USD 14,000 is still to be paid as procedural costs.*

*b) **USD 5,000** by the Respondent/Counterclaimant. As the Respondent/Counterclaimant already paid the amount of USD 5,000 to FIFA as advance of costs at the start of the proceedings, the procedural costs will be offset in case the grounds are requested*."

28. The grounds of the Appealed Decision were notified to the parties on 2 August 2024.

29. In the Appealed Decision, the PSC's reasoning, *inter alia,* was as follows:

(i) Coimbra's claim was timely filed and is therefore admissible, because:

(a) both claims involve the same clubs and concern the same contractual relationship, and therefore the mutual obligations between the Parties were to be assessed together;

(b) however, the objects of both claims have a significant independence, referring to credits arising from different contracts;

(c) each dispute was triggered by a different event;

(d) therefore, the nexus between the two claims did not meet the threshold of connection required by art. 21, par. 3 of the Procedural Rules to constitute related claims.

(ii) Leixões's claim for reimbursement is rejected, because:

(a) clause 1.4 of the First Loan Agreement does not mention that the Player's global remuneration would be paid in Portugal, or that said amounts would be reimbursed by Coimbra at any moment in time;

(b) it was incumbent upon the Parties to establish when and how the reimbursements would be made, which the PSC did not find in the First Loan Agreement;

(c) Leixões failed to prove that it had contacted Coimbra regarding any residual claim related to the First Loan Agreement, while also failing to prove that it paid any amounts to the Player or the competent tax authorities.

(iii) Coimbra's claim is partially accepted, because:

(a) the Parties did not dispute that the fee of EUR 400,000 agreed for the exercise of the option had not been paid, and therefore said amount should be awarded on the basis of the legal principle of *pacta sunt servanda*;

(b) the contractual penalty and the interest rate established by the Parties were reasonable and proportionate in accordance with the jurisprudence of the Football Tribunal;

(c) as a result of the above, Coimbra should be awarded (i) interest at 12% p.a. from 22 January 2024; and (ii) EUR 40,000 as a contractual penalty.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 23 August 2024, the Appellant filed its Statement of Appeal at the Court of Arbitration for Sport (the "CAS") against Coimbra, regarding the Appealed Decision, in accordance with Articles R47 and R48 of the Code of Sport-related Arbitration (the "Code"),

31. The Appellant also requested – invoking Article R50 of the CAS Code – that the case be referred to a Sole Arbitrator.

32. On 28 August 2024, the CAS acknowledged receipt of the Statement of Appeal and invited the Respondent to inform the CAS Court Office whether it agreed to the appointment of a Sole Arbitrator.

33. On 2 September 2024, the Respondent requested that the case be adjudicated by a panel of three arbitrators.

34. On 6 September 2024, the CAS Court Office took note of the Respondent's request, and invited the Respondent to state whether it intended to pay its share of the advance of costs.

35. On the same date, the Respondent informed the CAS Court Office that it did not intend to pay its share of advance of costs.

36. On 17 September 2024, the CAS Court Office informed the parties that, after giving due consideration to the Respondent's position regarding the composition of the panel, the Deputy President of the CAS Appeals Arbitration Division had decided to submit the present case to a sole arbitrator, whose appointment would proceed pursuant to article R54 of the Code.

37. On 7 October 2024, the Appellant filed its Appeal Brief, in accordance with article R51 of the Code.

38. On 14 December 2024, in accordance with Article R55 of the Code, Coimbra filed its Answer.

39. On the same date, pursuant to Article 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 decide the matter would be constituted as follows:

    Sole Arbitrator: Mr. Jaime Castillo, Attorney-at-law in Mexico City, Mexico

40. On 28 January 2025, the CAS Court Office, on behalf of the Sole Arbitrator, called the Parties to appear at a hearing which would be held by video-conference on 13 February 2025, at 15h00 (Swiss time).

41. On 29 January 2025, the CAS Court Office provided the parties with the Order of Procedure, which was duly signed and returned by the Parties.

42. On 13 February 2025, a hearing was held by video-conference. Besides the Sole Arbitrator and Mr Andrés Redondo Oshur, CAS Legal Counsel, the hearing was attended by the Parties' legal representatives. At the outset of the hearing, the Parties confirmed that they had no objections as to the constitution and composition of the arbitral tribunal and raised no other preliminary objection.

43. The Sole Arbitrator heard the Parties' opening and closing pleadings. After their closing pleadings and before the end of the hearing, answering to the Sole Arbitrator's question, the Parties confirmed their satisfaction with the manner in which the Sole Arbitrator had conducted the hearing and raised no procedural objections. Additionally, the Parties expressly stated that their rights to be heard and to be treated equally had been duly respected.

V. SUBMISSIONS OF THE PARTIES

44. The following outline is a summary of the Parties' arguments and submissions 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 and oral submissions, documentary evidence, and the content of the Appealed Decision were all taken into consideration.

A. The Appellant

45. In its Appeal Brief, the Appellant requested the following relief:

"***FIRST*** *- To accept and uphold the present appeal*;

SECOND *- To dismiss the Challenged Decision in full;*

THIRD *- To order Coimbra to reimburse Leixões in the amount of EUR 14,725.67 (fourteen thousand seven hundred twenty-five euros and sixty-seven cents), plus the applicable default interest at the rate of 5% (five percent) per annum as from 1 July 2023 until the date of effective payment;*

FOURTH *- To rule that the counterclaim filed by Coimbra before the FIFA PSC is inadmissible;*

Subsidiarily, and only in case the above is rejected:

FIFTH *- To rule that Leixões shall pay to Coimbra an amount no greater than EUR 384,690.81 (three hundred eighty-four thousand six hundred ninety euros and eighty-one cents); or*

Subsidiarily, and only in case the above is rejected:

SIXTH *- To rule that Leixões shall pay Coimbra an amount no greater than EUR 388,990.81 (three hundred eighty-eight thousand nine hundred ninety euros and eighty-one cents).*

At any rate:

SEVENTH *- To order Coimbra to bear all costs associated with the ongoing arbitration and reimburse Leixões the CAS Court Office Fee of CHF 1,000 (one thousand Swiss francs), as well as the amount paid as advance of costs; and*

EIGHTH *- To order Coimbra to pay a contribution towards the legal fees, costs and expenses incurred by Leixões in connection with the present dispute, in equal to at least CHF 10,000 (ten thousand Swiss Francs).*"

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

(i) Leixões's claim before the FIFA PSC:

(a) In the First Loan Agreement, the Parties indisputably agreed that Leixões would pay the Player's remuneration, as well as all taxes and levies in Portugal, while Coimbra had the obligation to reimburse Leixões all expenses incurred with the Player in Portugal.

(b) In accordance with Swiss law, if the mutually agreed intention of the parties cannot be established *prima facie*, the contract must be interpreted according to the requirements of good faith. Therefore, in case of a dispute the judge shall seek to ascertain the true and common intention of the parties. As such, the Parties' intention was that Leixões would pay the Player his remuneration, as well as all applicable taxes and levies, in Portugal during the duration of the loan term, and Coimbra had the reciprocal obligation to reimburse all such amounts upon the expiry of the loan term.

(c) It is irrelevant that Coimbra continued to pay the Player his salary in Brazil as per the employment contract signed between Coimbra and the Player, as this obligation was not stipulated in the First Loan Agreement. Furthermore, the salary paid by Coimbra to the Player in Brazil is lower than the amount established as salary in said agreement. Therefore, the amounts paid by Coimbra to the Player should have no bearing on the reimbursement due by Coimbra to Leixões.

(d) In the Appealed Decision, FIFA completely disregarded Leixões's evidence of payment to the Player of salaries, taxes and levies performed in Portugal, as proven by receipts provided by Leixões during the first instance proceedings. FIFA therefore wrongly concluded that Leixões had not proven that it had paid the Player his remuneration or paid applicable taxes as per the First Loan Agreement.

(e) By failing to reimburse Leixões as agreed in the First Loan Agreement, Coimbra has violated the fundamental legal principle of respect of contracts, and has unjustly enriched itself at the Appellant's expense. Therefore, Coimbra must perform restitution to the Appellant as per article 62 of the Swiss Code of Obligations.

(ii) Coimbra's counterclaim was inadmissible:

(a) Pursuant to Article 14 of the Swiss Civil Procedure Code, a counterclaim may be filed in the court that has jurisdiction over the main action, provided the counterclaim has a factual connection with the main action. In the case at hand,

the claims have a clear connection as they are based on the same fact, which is the loan of the Player from Coimbra to the Appellant, even if the claims result from different contracts. Furthermore, FIFA itself recognized in its letter dated 15 March 2024 that Coimbra's claim constituted a counterclaim.

(b) Considering that FIFA had granted Coimbra a deadline until 5 March 2024 to respond to the Appellant's claim before the PSC, Coimbra's counterclaim should have been filed on said date. Therefore, Coimbra's claim, filed on 12 March 2024, should have been dismissed based on its belated filing, as the FIFA Procedural Rules state that a counterclaim must have been submitted within the same time limit as that for the response to the claim to which it is related. In this case, Coimbra's counterclaim was not filed with its response to the Appellant's claim at the PSC, nor was it submitted within the term granted by the PSC to file said response, therefore rendering it inadmissible.

(c) Furthermore, CAS's *de novo* attributions to review a first instance decision do not extend to cases in which there has been a failure to comply with the time limit established in the regulations applicable to the first instance dispute, as CAS has no competence to amend or abolish the regulations of a sports federation.

(iii) As to Coimbra's counterclaim:

(a) Provided that Coimbra has failed in its obligation to reimburse Leixões as agreed in the First Loan Agreement, article 82 of the Swiss Code of Obligations is applicable to this matter. Namely, a party in default of its obligations is impeded from compelling fulfilment from its counterparty, as per the *exceptio non adimpleti contractus* principle.

(b) In the present case, even though the claims are not based on the same contract, they are connected by the same facts, and therefore the obligations embodied in the two claims must be deemed reciprocal. As such, Coimbra's claim against the Appellant regarding payment of the overdue fee resulting from the exercise of the Option Agreement cannot proceed, given that Coimbra is in default of its own obligations toward Leixões.

(c) Conversely, the Appellant is entitled to refuse the performance of its obligation to Coimbra under the Option Agreement, until Coimbra has complied with its reimbursement obligations under the First Loan Agreement.

(d) Furthermore, the application of a contractual penalty amounting to 10% of the overdue amount, as well as that of a default interest rate of 1% per month, is an incontestable violation of the principle of proportionality. Namely, applying the penalty and the default interest rate on the overdue amount would result in the Appellant being punished twice for the same conduct, contravening the legal principle of *ne bis in idem*.

B. The Respondent

47. In its Answer, Coimbra requested the Sole Arbitrator:

"(*i*) *To reject and dismiss Leixões' appeal in its entirety as unfounded, both factually and legally.*

(ii) To confirm the FIFA Player's Status Chamber decision passed on 20 June 2024 in its totality.

(iii) To order the Appellant to bear all arbitration-related costs and contribute to the legal fees and expenses incurred by the Respondent in connection with these proceedings, in an amount not less than CHF 10,000 (ten thousand Swiss Francs)."

48. The Respondent's submissions, in essence, may be summarized as follows:

(i) The Appellant's claim for reimbursement:

(a) The Appellant failed to credibly prove that it paid the Player the remuneration agreed upon in the First Loan Agreement, as well as any applicable taxes. As was the case before the PSC in the first instance, the Appellant has provided insufficient evidence, as the supposed payment receipts constitute internal documents that are not certified in any way, and do not effectively prove that any payment was duly performed

(b) Furthermore, the Appellant has deliberately misinterpreted clause 1.4 of the First Loan Agreement by stating that Coimbra undertook to reimburse both the Player's salary and the applicable taxes and levies. In fact, a correct interpretation of the contractual clause implies that Coimbra's obligation was limited to merely reimbursing taxes and levies applicable to the Player's salary.

(c) Coimbra duly fulfilled its contractual obligations under the First Loan Agreement by paying the Player's salary in Brazil, as supported by provided payment records and the Player's own written statement on the matter.

(d) Coimbra denies having incurred in unjust enrichment, as it did not derive any financial benefit on the Appellant's expense. The Appellant never requested the supposed reimbursement to Coimbra before it filed its claim before the PSC, which itself appears to have been solely in response to Coimbra denouncing the Appellant's failure to pay the transfer fee due under the Option Agreement. Coimbra is therefore acting in bad faith by using an unsubstantiated claim to avoid or delay fulfilment of its own obligations towards Coimbra.

(ii) Admissibility of Coimbra's claim:

(a) The Appellant's arguments characterizing Coimbra's claim before the PSC as a counterclaim are factually and legally incorrect. Coimbra's claim results from the Option Agreement, which has no relation to the First Loan Agreement (from which the Appellant's claim at the PSC arose).

(b) FIFA's decision to consolidate the two cases was of a procedural nature and does not imply that the two cases had the same legal or contractual basis. Consolidation was solely undertaken for practical and efficiency considerations. The Appealed Decision itself differentiates between the cases and does not characterize Coimbra's claim as a counterclaim.

(c) Coimbra's claim was unquestionably admissible as an independent and enforceable claim. If anything, said claim arises from a contractual framework linked to the Second Loan Agreement, and bears no connection to the First Loan Agreement and the claim initiated by the Appellant relating to its supposed non-fulfillment.

(iii) As to Coimbra's claim:

(a) Coimbra has fully complied with its obligations under the First Loan Agreement, and therefore the *exceptio non adimpleti contractus* principle invoked by the Appellant is inapplicable to the matter at hand. Conversely, the Appellant did not prove that it had paid the Player's salary and applicable taxes in Portugal, nor did it request any reimbursements from Coimbra prior to filing its claim before the PSC. The Appellant has therefore no basis to invoke non-performance by Coimbra to justify its own failure to pay the transfer fee agreed in the Option Agreement.

(b) Furthermore, Coimbra's claim is separate, independent and unrelated to the Appellant's own claim. Therefore, there are no reciprocal obligations that can be invoked to justify non-performance.

(c) The penalty clause and default interest established in the Option Agreement reflect the parties' mutual commitment to ensure compliance with payment obligations, and do not violate the principle of *ne bis in idem*. Each concept serves distinct and complementary purposes, as the penalty constitutes a contractual deterrent to ensure timely payment, while the interest rate compensates for the financial loss incurred in by the creditor due to the belated payment. There is, therefore, no double punishment on the Appellant.

(d) FIFA and CAS's longstanding jurisprudence have established that contractual penalty clauses and default interest rates may be freely negotiated and agreed upon by contracting parties.

(e) A set-off as requested by the Appellant may not be applied to the case at hand, as Swiss law dictates that a set-off requires that the claims involved be

reciprocal, enforceable, and liquidated. The Appellant's claim is not enforceable and uncontested, and therefore cannot form the basis of a valid set-off.

VI. JURISDICTION

49. 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*".

50. Articles 49.1 and 50.1 of the FIFA Statutes respectively provide:

> Art. 49.1: "*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, intermediaries and licensed match agents*"; and
>
> Art. 50.1: "*Appeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question*".

51. The Appellant invokes article R47 of the Code and article 50 of the FIFA Statutes as conferring jurisdiction on the CAS. The Respondent did not dispute the jurisdiction of the CAS and jurisdiction is further confirmed by the Parties' signatures on the Order of Procedure.

52. It follows that CAS has jurisdiction to hear and adjudicate the present dispute.

VII. ADMISSIBILITY

53. 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. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document*".

54. Under Article 50 of the FIFA Statutes (see *supra* at para. 50), decisions adopted by FIFA legal bodies, such as the PSC, can be appealed within 21 days from their notification.

55. The grounds of the Appealed Decision were notified to the Parties on 2 August 2024. The Appellant timely lodged its appeal on 23 August 2024, i.e. within the 21 days allotted under Article 50 of the FIFA Statutes.

56. Moreover, the appeal complies with the requirements of Articles R47 and R48 of the Code, and no objections were raised by the Respondent.

57. It follows that the Appellant's appeal is admissible.

58. The issue of the admissibility of the claim filed by Coimbra before the FIFA PSC will be addressed below.

VIII. APPLICABLE LAW

59. Article R58 of the CAS Code provides as follows:

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

60. Article 49.2 of the FIFA Statutes provides:

> "*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*".

61. Accordingly, the present dispute must be decided applying the FIFA Regulations on the Status and Transfer of Players (the "RSTP"), and any other relevant FIFA rules and regulations, with Swiss law applying additionally.

IX. MERITS

62. Having duly considered the Parties' written submissions, oral arguments and evidence, the Sole Arbitrator observes that there are multiple issues for determination in the present appeal.

63. Due to the fact that the Appealed Decision rules on two claims involving the same parties, and that the Appellant has contested the decision as to both claims (as well as regarding admissibility of one of the claims), the Sole Arbitrator will first consider the Appellant's appeal in relation to its claim for reimbursement of salaries paid to the Player, as well as applicable taxes and levies, which was denied by the PSC.

64. Subsequently, the Sole Arbitrator will consider the Appellant's position in relation to the claim filed by Coimbra. In this regard, the Sole Arbitrator has taken note that the Appellant preliminarily contends that the claim filed by Coimbra before the PSC was inadmissible insofar as time-barred by applicable procedural rules and regulations.

65. Accordingly, the Sole Arbitrator will study the Appellant's arguments in relation to Coimbra's claim only after being satisfied that its claim before the PSC was lodged in compliance with the relevant time limitation.

66. The Sole Arbitrator recalls that the burden of proving the existence of an alleged fact rests with the party who invokes it and derives rights from that fact (article 8 of the Swiss Civil Code; CAS 2009/A/1810 & 1811, para. 18; and CAS 2020/A/6796, para. 98). Consequently, it is for the Appellant to prove its claim as per the legal principle of the balance of probabilities.

67. The Sole Arbitrator also recalls that, pursuant to article R57 of the Code, it has full powers to review the facts and the law of the case, as per the *de novo* principle.

68. The principles applicable to the interpretation of a contract under Swiss law have been put forward by the Parties' in their written submissions, and will be assessed as pertinent in subsequent paragraphs.

A. The Appellant's claim for reimbursement due by Coimbra

69. It remains undisputed that: (1) the Parties entered into the First Loan Agreement; (2) the loan transfer of the Player would not involve the payment of a transfer fee; (3) the Appellant committed itself to signing an employment contract with the Player involving a fixed annual remuneration; and (4) Coimbra committed itself to reimburse certain amounts related to the Player's employment to the Appellant.

70. The dispute essentially derives from the meaning and implications of article 1.4 of the First Loan Agreement, particularly the final part of said article, in which the Parties agree that Coimbra pay certain concepts during the 2022/2023 season:

> "*1.4. Durante o período da cedência temporária, obriga-se a LEIXÕES SAD a celebrar um contrato de trabalho desportivo com o JOGADOR, cuja remuneração anual ilíquida será de € 12.169,98 (doze mil cento e sessenta e nove euros e noventa e oito cêntimos), que corresponde ao valor de R$ 64.924,41 (sessenta e quatro mil novecentos e vinte e quatro reais e quarenta e um centavos), acrescido dos encargos incidentes sobre as verbas salariais em Portugal a ser pago pelo COIMBRA BR, através de transferência bancária*."
>
> A translation of the article into English is provided below:
>
> *1.4. During the period of the temporary transfer, LEIXÕES SAD undertakes to enter into a sports employment contract with the PLAYER, whose annual gross remuneration will be of € 12,169.98 (twelve thousand one hundred sixty-nine euros ninety-eight cents), which corresponds to the value of*

R$ 64,924.41 (sixty-four thousand nine hundred twenty-four reais forty-one cents), plus the incidental charges on salary amounts in Portugal to be paid by COIMBRA BR, via bank transfer."

71. The Appellant argues that the wording of article 1.4 must be understood to imply that, although the Appellant committed itself to entering into an employment contract with the Player and remunerating him with a total salary of EUR 12,169.98, Coimbra committed itself to reimburse said amount to Leixões at the conclusion of the First Loan Agreement, as well as to cover all taxes and levies applicable to the Player's remuneration and employment.

72. Coimbra contends that the Appellant's interpretation is incorrect: Coimbra's obligations under article 1.4 are limited to reimbursing the amounts paid by the Appellant as taxes and levies resulting from the Player's remuneration, but not the salary itself, which remained the sole obligation of the Appellant. Furthermore, Coimbra further rebuts the Appellant's allegations denying that it has any obligation to reimburse the Appellant, as the Appellant has not proved that it incurred in any payment related to the employment of the Player, and did not demand reimbursement to Coimbra until it filed its claim at the PSC.

73. In view of the above, the Sole Arbitrator deems that the following two issues must be determined:

    (i) The obligations of the parties deriving from article 1.4 of the First Loan Agreement;

    (ii) Whether the Appellant discharged its burden of proof regarding payment of the Player's remuneration and applicable taxes and levies in Portugal.

74. The Sole Arbitrator will analyze each of the aforementioned issues separately in the subsections that follow.

(i) The obligations of the Parties deriving from article 1.4 of the First Loan Agreement

75. As notoriously evident from the wording and structure of article 1.4 of the First Loan Agreement, the text lacks sufficient clarity and rigor to allow a literal and uncontested understanding of its meaning and implications. The drafting of the clause is certainly not unambiguous, and therefore the burden of proof relating to the true meaning of the clause falls on the Appellant, as the Party deriving its claim from the aforementioned contractual clause.

76. Furthermore, the First Loan Agreement was negotiated and agreed on by two professional clubs in equal standing. No position of disadvantage or weakness can be alleged by any of the Parties (and in fact the Sole Arbitrator notes that neither of the Parties invoked unequal standing in negotiations to support their interpretation of the agreement).

77. The RSTP do not establish rules or criteria to interpret the sense and meaning of a contractual clause. The Sole Arbitrator must therefore consider applicable provisions of Swiss law (to be applied additionally to the applicable regulations, as established by the FIFA Statutes) when analyzing the disputed clause.

78. Article 18 of the Swiss Code of Obligations establishes:

> *"When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement." (...)*

79. The interpretation of a contract in accordance with Article 18 of the Swiss Code of Obligations requires the Sole Arbitrator to ascertain the "true and common intention of the parties" when the parties concluded the contract. If the true and common intention of the parties cannot be established, then the contract must be interpreted according to the requirements of good faith (cf: ATF 129 III 664; 128 III 419 para 2.2 p. 422). The requirements of good faith tend to give preference to an objective approach i.e. the emphasis is less on what a party may have meant than on how a reasonable person would have understood the party's declaration (cf: ATF 129 III 118 para 2.5 p.122; 128 III 419 para 2.2 p 422).

80. When determining a party's intent, or the intent that a reasonable person would have had in the same circumstances, it is necessary to examine the words actually used or the conduct involved. The assessment is not limited to those words or conduct even if they appear to give a clear answer to the question. Due consideration must be given to all the relevant circumstances of the case e.g. negotiations, any subsequent conduct of the parties establishing what was, at the time, the understanding of the contracting parties (cf: ATF 144 III 93, para 5.2.2; 4A_596/2018, para 2.3.1) and usages. These principles of interpretation have been confirmed in CAS jurisprudence (cf: CAS 2019/A/6525, para 67; CAS 2017/A/5172, paras 70 and 73; CAS 2016/A/4544, para 94; CAS 2015/O/4362, para 83; and CAS 2013/A/3133, para 63).

81. The starting point for an interpretation of a contract is the wording of the relevant clause. There is no reason to depart from the literal meaning of the text adopted by the contracting parties where there is no serious reason to believe that it does not correspond to their intent (4A_596/2018, para 2.3.2; ATF 136 III 186, para 3.2.1). Furthermore, the contract must be considered as a whole, rather than interpreting specific parts or clauses in isolation (ATF 136 III 186, para 3.2.1).

82. As to the applicable standard of proof, the relevant FIFA rules are silent on the matter, and thus it is for the Sole Arbitrator to determine the applicable standard. The Sole Arbitrator notes that it was stated in a CAS precedent that, in the absence of any indication in either the RSTP or other FIFA regulations, the relevant standard for non-disciplinary matters would be that of the "balance of probabilities", which "*has historically been considered to require that the CAS be satisfied that there is a 51% chance of a relevant scenario having had occurred or, put another way, that a matter is more likely to have occurred than not to have occurred*" (see CAS 2018/A/5618 at para. 64).

83. The Sole Arbitrator concurs with this CAS precedent and determines that the standard of the balance of probabilities (also known as "preponderance of evidence") must be equally applied to any circumstances that must be proven by any of the Parties.

84. Due to the unclear structure and wording of article 1.4, the Sole Arbitrator finds that the literal text is ambiguous and does not completely clarify the Parties' intent. The Sole Arbitrator must rely on additional circumstances of the case, as well as evidence provided by the Parties to ascertain their true and common intention. However, the Sole Arbitrator notes that no supporting evidence was provided by the Parties, in the form of communication exchanges during negotiations prior to the loan transfer of the Player, or any request for reimbursement issued by the Appellant to Coimbra. Nor did the Parties provide written or oral testimony of any of the individuals directly involved in the negotiation and structuring of the First Loan Agreement, from which the Sole Arbitrator could ascertain the Parties' intentions regarding the distribution of the obligations related to the Player's employment in Portugal.

85. In view of the above, the Sole Arbitrator must rely solely on the meaning that a reasonable person would ascribe to article 1.4, as well as the context provided by the First Loan Agreement in its entirety, to ascertain its meaning and consequences.

86. Preliminarily, it is undisputed that the Parties agreed on the loan transfer of the Player from Coimbra to the Appellant free of cost. Furthermore, the Appellant agreed to provide the Player with an employment contract for the 2022/2023 season, in which a total gross salary of EUR 12,169.98 would be paid to the Player, plus "*incidental charges on salary amounts in Portugal*."

87. However, the final line of article 1.4 ("*... to be paid by COIMBRA BR, via bank transfer*") does not establish with due clarity and precision what precise amounts Coimbra undertook to pay. It is also not immediately clear if Coimbra must pay said amounts to the Player directly, or to the Appellant.

88. In any case, the Sole Arbitrator has no alternative but to interpret article 1.4 primarily on the basis of its literal wording and drafting, and subsequently by applying the principle of the balance of probabilities. Consequently, article 1.4 may be structurally subdivided into three parts (based on the placing of commas in its text), as follows:

"During the period of the temporary transfer,

i) LEIXÕES SAD undertakes to enter into a sports employment contract with the PLAYER,

ii) whose annual remuneration will be of € 12,169.98 (twelve thousand one hundred sixty-nine euros ninety-eight cents),

iii) plus the incidental charges on salary amounts in Portugal to be paid by COIMBRA BR, via bank transfer."

89. Fron the drafting and structuring of article 1.4, we may therefore conclude that: i) the Appellant undertook the obligation to sign an employment contract with the Player; ii) the Player's total gross remuneration was set at EUR 12,169.98 (no clarification is provided as to which of the Parties would pay the Player's salary, but it can be implied that said obligation would fall directly on the Appellant as the Player's employer); and iii) incidental charges on salary amounts in Portugal would be paid by Coimbra.

90. In view of the above, a literal interpretation of clause 1.4 leads the Sole Arbitrator to conclude that Coimbra undertook to pay solely the "*incidental charges on salary amounts in Portugal*."

91. Furthermore, when considering the (scant) evidence provided by the Parties, the balance of probabilities also favors the above-mentioned interpretation. Coimbra proved that it continued to pay the Player a salary while he was, in fact, playing for the Appellant. Although not impossible, and certainly not illegal, it does seem implausible that Coimbra would agree to pay the Player (via reimbursement to the Appellant or otherwise) a second salary in Portugal, especially considering that the Player was loaned free of charge to the Appellant, and that, presumably (as per common usages in professional football) the purpose of both the First Loan Agreement and the Second Loan Agreement, was to provide the Player with the opportunity to play with a club in a larger league (considering that Coimbra plays in the second division of a regional league in Brazil, while Leixões plays in the second division of the professional Portuguese League) with a view to him either securing a permanent transfer to the Appellant, or a transfer to a larger European club, to the benefit of both Parties. This position is reinforced by the terms of the Option Agreement executed by the Parties (and eventually exercised by the Appellant).

92. As a result of the above, it would seem reasonable, under the balance of probabilities, that Coimbra would continue to pay the Player a salary in Brazil, while the Appellant would pay the Player a salary in Portugal, with Coimbra only due to cover *"incidental charges on salary amounts in Portugal."*

93. The Sole Arbitrator is therefore not persuaded that the Parties intended article 1.4 of the First Loan Agreement to put the burden of paying the Player's remuneration in Portugal, plus applicable taxes and levies, as well as any other related incidental charges, on Coimbra.

(ii) Whether the Appellant discharged its burden of proof regarding payment of the Player's remuneration and applicable taxes and levies.

94. Even after concluding that Coimbra had the obligation to pay incidental charges on the salary amounts paid to the Player in Portugal during the period of validity of the First Loan

Agreement (1 August 2022 to 30 June 2023), it remains unclear what amount, if any, Coimbra had the obligation to pay. Even if the Parties agreed that the Appellant would pay directly said amounts in Portugal, and that Coimbra would subsequently reimburse the Appellant, the Parties failed to adequately define the amount to be reimbursed.

95. The Sole Arbitrator notes that the Appellant presents a calculation of the taxes and levies generated by the Player's remuneration in Portugal. However, it is also pertinent to note that article 1.4 of the First Loan Agreement establishes that the Player's annual gross remuneration would be EUR 12,169.98. Gross remuneration, by definition, is the full amount an employee earns before any amounts are deducted, such as taxes and other deductions (such as social security contributions and retirement fund contributions). Therefore, the "*incidental charges on salary amounts*" should not in principle comprise income tax and other deductions applicable to the gross salary.

96. In view of the above, in order to determine what concepts comprise the incidental charges that Coimbra undertook to pay under the First Loan Agreement, it is essential to analyze the payments effectively made by the Appellant to the Player during the period of validity of the First Loan Agreement.

97. However, when analyzing the evidence provided by the Appellant in the present appeal, the Sole Arbitrator notes that, while a number of receipts referring to purported payments to the Player were exhibited by the Appellant, no further proof of payment has been provided during the present proceedings. Although the receipts could be deemed indicative that payments were made to the Player, the Sole Arbitrator deems them insufficient to prove effective payment to the Player of the indicated amounts.

98. Furthermore, when analyzing the evidence provided by the Parties in the present matter under the principle of the balance of probabilities, the Sole Arbitrator can only conclude that the Appellant has failed to fully discharge its burden of proof. The Appellant could certainly have obtained proof of payment to the Player from its bank, in the form of bank transfer slips, deposited check copies, etc., while also proving payment of contributions and incidentals to tax and social security authorities, but limited itself to providing receipts that do not, in themselves, prove actual payment to the Player.

99. In addition to the above, the Player, who is not a party in this matter, provided a written statement indicating that he never received any payment from the Appellant, other than a monthly allowance of EUR 300 for food and leisure expenses.

100. And, when assessing the conduct of the Parties during and after their contractual relationship, the Sole Arbitrator notes that the Appellant did not make a single request for reimbursement, or otherwise any sort of demand for payment of any amount, to Coimbra before it filed its claim at the PSC.

101. The Player's statement and the Appellant's failure to request reimbursement to Coimbra, although certainly not conclusive in themselves, do contrast with the Appellant's insufficient proof of payment of the Player's remuneration and any other related tax, levy or incidental charge. When applying the balance of probability principle to the aforementioned considerations, the Sole Arbitrator concludes that the Appellant has not conclusively proven that it paid any incidental charges related to the Player's salary in Portugal, and therefore has not proven that Coimbra must reimburse it of any amount whatsoever, to date.

102. In view of the above, the Sole Arbitrator rejects the Appellant's submission and confirms the Appealed Decision as concerns the claim for reimbursement filed by the Appellant at the PSC.

B. The admissibility of Coimbra's claim at the PSC

103. The Appellant submits that Coimbra lodged its claim at the FIFA Football Tribunal beyond the term provided by the PSC to file its response to the Appellant's original claim, and was therefore rendered inadmissible. Namely, the Appellant argues that Coimbra's claim constitutes, in fact, a counterclaim and, as such, was bound by the provision set forth by article 14 of the Swiss Civil Procedure Code, according to which: *"A counterclaim may be filed in the court that has jurisdiction over the main action, provided the counterclaim has a factual connection with the main action."*

104. Essentially, the Appellant argues that the two claims ruled upon in the Appealed Decision are based on the same underlying fact, namely, the loan of the Player from Coimbra to Leixões, even if they do not derive from the same contract. As the Appellant filed its claim on 26 January 2024, and the PSC granted Coimbra a term to file its position expiring on 5 March 2024, Coimbra should have filed its counterclaim with its response, since article 21.4 of the FIFA Procedural Rules establishes that: *"If a party submits a new claim which is related to an existing case in which it is a respondent, the new claim shall be joined with the existing case and treated as a counterclaim in the existing case. Where the party has already been notified of the existing case, the new claim must have been submitted within the same time limit as that for the response to the claim in the existing case in order to be considered.";* in the Appellant's view, as Coimbra's response was due on 5 March 2024, and Coimbra filed its alleged counterclaim on 12 March 2024, the term available to file a counterclaim in the present matter had lapsed and the PSC was barred – as would be the Sole Arbitrator in the present appeal – from entertaining the merits of Coimbra's request for payment of the overdue transfer fee.

105. Coimbra, however, points out that the PSC correctly acknowledged that its claim is admissible, as said claim does not actually constitute a counterclaim and was simply consolidated with the Appellant's claim for procedural efficiency.

106. In the Appealed Decision, FIFA concluded that: i) the objects of the two claims were independent; 2) each dispute was triggered by a different event; and 3) the Option Agreement did not constitute a waiver of the amounts referred to in the First Loan Agreement. According to the PSC, the nexus between the two claims did not meet the threshold of connection required by article 21.3 of the FIFA Procedural Rules to constitute related claims.

107. The Sole Arbitrator concurs with the PSC's reasoning.

108. Although the two claims result from contractual agreements involving the Player, they are substantially different in nature and are not directly related. While the Appellant's claim was based on the non-reimbursement of salaries and incidentals paid to the Player while on loan at the club from Coimbra, the Respondent's claim relates to the non-payment of the transfer fee emanating from a subsequent, independent agreement (the Option Agreement). Even though both claims relate to the transfer (first on loan, and then permanent) of the Player from Coimbra to the Appellant, said transfers constituted independent and separate obligations. Furthermore, Coimbra's alleged obligation to reimburse the Appellant of salaries and incidentals paid to the Player, and the Appellant's alleged obligation to pay Coimbra a transfer fee for the exercise of the option contained in the Option Agreement, are certainly not reciprocal. Namely, Coimbra's alleged obligation to reimburse the Appellant is not linked to the Appellant's obligation to pay Coimbra the option fee, and vice-versa. Strictly speaking, performance of each of these alleged obligations bears no effect on the other party's obligation emanating from a separate agreement.

109. The Sole Arbitrator therefore concludes that Coimbra's claim against the Appellant was not directly related to the Appellant's original claim against Coimbra, and cannot be characterized as a counterclaim.

110. In light of the above, the Sole Arbitrator holds that in the present case, contrary to the Appellant's contention, Coimbra's claim was not time-barred by the deadline provided for Coimbra to respond to the Appellant's original claim at the PSC.

111. Furthermore, even if it is a fact that the PSC consolidated the two claims and produced its ruling on both matters in the same decision (the Appealed Decision), this does not *per se* imply that Coimbra's claim should be deemed a counterclaim. Whatever reasons the PSC had to consolidate the claims certainly cannot be held against Coimbra.

112. The Sole Arbitrator underlines the distinction between procedural consolidation and the filing of a counterclaim. While consolidation is an administrative measure aimed at procedural economy, it does not affect the legal character or admissibility of the claims involved. A counterclaim, by contrast, must meet specific conditions of relatedness and timing under Article 21.4 of the FIFA Procedural Rules. The mere fact that two claims are decided together does not transform one into a counterclaim nor subject it to the procedural limits applicable to such.

113. The Sole Arbitrator is thus satisfied that the Appealed Decision correctly treated as admissible Coimbra's claim. Consequently, the Sole Arbitrator may entertain the merits of Coimbra's request for payment related to the exercise of the option contained in the Option Agreement, which has been contested by the Appellant.

C. Coimbra's claim under the Option Agreement

114. The Appellant does not dispute that it has the obligation to pay Coimbra a net amount of EUR 400,000 for its acquisition of the playing and registration rights of the Player, as per clause 1.1 of the Option Agreement. And indeed, the evidence provided in this matter proves that via its correspondence dated 22 November 2023, the Appellant effectively exercised the option. Under clause 1.1 of the Option Agreement: "*Until 30/08/2024, LEIXÕES SAD will have the option to acquire the federative rights and 50% (...) of the economic rights related to the PLAYER from COIMBRA EC, upon immediate payment of the NET amount of EUR 400,000.00 (...) to COIMBRA EC.*"

115. However, although the Appellant does not dispute the Appealed Decision in relation to Coimbra's claim for the transfer/option fee of EUR 400,000, the Appellant does contend that it has no obligation to pay the said amount to Coimbra, until Coimbra itself has reimbursed the Appellant of the salaries, taxes and levies paid by the Appellant to the Player in Portugal under the First Loan Agreement, as per the legal principle of *exceptio non adimpleti contractus*.

116. Furthermore, the Appellant does contest the application of the penalty clause and the default interest on the overdue amount in the Appealed Decision, invoking the legal principle of *ne bis in idem*. The Sole Arbitrator will consider each of these two concepts in turn.

a) As to the exceptio non adimpleti contractus

117. The Appellant bases its opposition to paying the overdue option fee on article 82 of the Swiss Code of Obligations:

> *"A party to a bilateral contract may not demand performance until he has discharged or offered to discharge his own obligation, unless the terms or nature of the contract allow him to do so at a later date."*

118. The Appellant contends that obligations under a reciprocal contract must be fulfilled concurrently, granting the right to one party to refuse performance of its obligations when the other party is in breach thereof. Conversely, the party in breach is impeded from compelling fulfilment from the other party.

119. Notwithstanding the above, the Sole Arbitrator must restate the conclusions adopted when analyzing the admissibility of Coimbra's claim in the previous chapter. Essentially,

Coimbra's alleged obligation to reimburse the Appellant of salaries and incidentals paid to the Player, and the Appellant's (recognized) obligation to pay Coimbra a transfer fee for the exercise of the option contained in the Option Agreement, are certainly not reciprocal. Namely, Coimbra's alleged obligation to reimburse the Appellant is not linked to the Appellant's obligation to pay Coimbra the option fee, and vice-versa. Strictly speaking, performance of each of these alleged obligations bears no effect on the other party's obligation emanating from a separate agreement. The obligations arise from distinct contractual sources, involve different legal grounds, and serve separate purposes.

120. Therefore, as the obligations resulting from the First Loan Agreement and the Option Agreement do not have to be performed simultaneously, article 82 of the Code of Obligations does not apply to the case at hand. Nor are the performances linked by the same contract, or even the same factual events, and therefore article 82 cannot be applied by analogy.

121. Therefore, the Sole Arbitrator is of the view that the Appellant has no right of retention of the amount owed to Coimbra under the Option Agreement, and must be considered to be in default of its obligation.

122. Furthermore, it has been established in the present award that the Appellant did not prove that it paid any incidental charges related to the Player's salary in Portugal under the First Loan Agreement and, therefore, any amounts it could be owed by Coimbra have not been duly liquidated. As such, Coimbra is not currently in default towards the Appellant, and therefore the *exceptio non adimpleti contractus* is not applicable to the present matter.

b) As to the ne bis in idem principle

123. The Appellant contends that the application of a penalty amounting to 10% of the overdue amount, and the application of a default interest at the rate of 1% per month, as agreed by the Parties in the Option Agreement, violates the principle of proportionality, as it would imply punishing the Appellant twice for the same conduct.

124. Having analyzed the aforementioned arguments, the Sole Arbitrator deems pertinent to review the agreement reached by the Parties in article 1.2 of the Option Agreement:

"In the event of delay in the payment referred to above, regardless of notification or formal demand, a penalty of 10% (ten percent) will be applied to the amount due, plus interest of 1% (one percent) per month until full payment is made."

125. The Sole Arbitrator notes that the consequences for lack of payment agreed by the Parties in the Option Agreement are, *prima facie,* admissible under applicable legal provisions, as per the principles of the autonomy of the parties and *pacta sunt servanda*. The Parties agreed that in case the Appellant failed to meet its obligation to pay the transfer fee under the Option Agreement, a contractual penalty and a default interest rate would apply, none of which is illegal under Swiss law.

126. The above notwithstanding, the Appellant contends that the application of two separate "punishments" to its failure to timely comply with its monetary obligation is disproportionate and violates the principle that one can only be sanctioned once for the same act.

127. In the Sole Arbitrator's view, the Appellant's arguments are insufficiently grounded. Penalty clauses and default interest rates are quite common in contracts of a commercial nature to protect the creditor from the debtor's failure to timely perform its monetary obligation, as well as to protect the creditor from the overdue amount's devaluation as a result of the delay in payment. Furthermore, the Appellant has in no way proven, or in any way insinuated, that it negotiated and executed the Option Agreement in error, or under pressure or duress. The Option Agreement was freely negotiated by two professional clubs with experience in the football business, particularly pertaining to the international transfer of players, and there are no indications that the penalty clause and the default interest were not negotiated by the Parties under their full autonomy, will and independence to contract. The Appellant could freely have rejected this condition and negotiated otherwise, as it had no constraints at that point to exercise the option. In fact, the Option Agreement was signed on 9 July 2023, and the option was only exercised on 22 November 2023.

128. Furthermore, the penalty clause and the default interest rate in no way exceed what Swiss law and applicable jurisprudence deem to be fair and proportionate, nor do they appear disproportional when considering the circumstances and context of the present matter.

129. Finally, the application of a penalty clause and a default interest rate in the same contract is normal usage in commercial contracts and can in no way be deemed a "double punishment" under Swiss law. As previously highlighted, the penalty clause and the default interest serve different (and complementary) purposes, the penalty clause constituting a deterrent to unfulfillment of the obligation to pay, while the default interest rate simply protects the creditor from the loss of value that the owed amount is bound to suffer over time. A reasonable interest rate certainly does not constitute a punitive measure, and the Parties had absolute freedom to fix any value under the limit of 18% per annum established by Swiss law.

130. As a result, the Sole Arbitrator concludes that the principles of proportionality and *non bis in idem* do not constitute sufficient legal basis to annul the penalty and default interest applicable to the overdue amount owed by the Appellant, as explained in the above paragraphs.

131. Accordingly, the Appellant is liable to pay the contractual penalty and the default interest as agreed by the Parties in the Option Agreement.

D. Further or different motions

132. The Appellant has requested that a set-off be authorised as per article 120 of the Swiss Code of Obligations: *"Where two persons owe each other sums of money or performance of identical obligations, and provided that both claims have fallen due, each party may set off his debt against his claim."*

133. The Sole Arbitrator observes that it previously denied the Appellant's claim for reimbursement of certain amounts by Coimbra.

134. In light of the above, the Sole Arbitrator concludes, notwithstanding the legal basis or lack thereof of the Appellant's request, that a set-off is impracticable at this time as Coimbra has not been ordered to pay any amount to the Appellant.

135. The Appellant's request for a set-off is therefore dismissed.

X. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Leixões Sport Club SAD against the decision rendered by the FIFA Players' Status Chamber on 20 June 2024 in case FPSD-13508 is dismissed.
2. The decision rendered by the FIFA Players' Status Chamber on 20 June 2024 in case FPSD-13508 is confirmed.
3. (…).
4. (…).
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 27 August 2025

THE COURT OF ARBITRATION FOR SPORT

Jaime Castillo
Sole Arbitrator