

**CAS 2022/A/9158 Jorge Hernán Crespo v. São Paulo Futebol Clube**

**ARBITRAL AWARD**

delivered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

President: Mr Ricardo de Buen Rodríguez, Attorney-at-law, México City, México

Arbitrators: Mr Luiz Felipe Guimarães Santoro, Attorney-at-law, São Paulo, Brazil  
Mr Roberto Moreno Rodríguez Alcalá, Attorney-at-Law, Asunción, Paraguay

between

**Jorge Hernán Crespo**, Buenos Aires, Argentina

Represented by Mr Rafael Trevisán and Mr Santiago Casares, Attorneys-at-law, Buenos Aires, Argentina

- as Appellant -

and

**São Paulo Futebol Clube**, São Paulo, Brazil

Represented by Mr André Sica and Mr Pedro Henrique Mendonça, Attorneys-at-law, São Paulo, Brazil

- as Respondent –

\* \* \* \* \*

## **I. THE PARTIES**

1. Mr Jorge Hernán Crespo (the “Appellant” or the “Coach”) is a professional football coach from Buenos Aires, Argentina.
2. São Paulo Futebol Clube (the “Respondent” or the “Club”) is a Brazilian professional football club, affiliated to the Confederação Brasileira de Futebol (the “CBF”) which in turn is affiliated to the *Fédération Internationale de Football Association* (the “FIFA”).
3. The Appellant and the Respondent are hereinafter jointly referred to as the “Parties”.

## **II. FACTS OF THE CASE**

4. The following is a summary of the relevant facts based on the Parties’ written submissions. Although the Panel has considered all the facts, legal arguments and evidence submitted by the Parties in the present case, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

### **A. Factual background**

#### ***Agreements between the Parties***

5. On 15 February 2021, the Parties signed an employment contract, entitled “*INSTRUMENTO Particular de CONTRATO DE TRABALHO DE ENTRENADOR PROFESIONAL DE FÚTBOL*” (the “Employment Contract”).
6. The relevant clauses of the Employment Contract are the following:

“**CLÁUSULA SEGUNDA** – *El CONTRATADO prestará los servicios al que se refiere la Cláusula Primera, por el período determinado de 2 (dos) años, iniciándose el 15.02.2021 y finalizando el 31.12.2022.*”

“**CLÁUSULA TERCERA** – *Si bien el presente contrato tiene un plazo fijo, cualquier PARTE podrá, en cualquier momento, anticipar la terminación de este contrato de trabajo, y en este caso, la PARTE responsable de dicha terminación anticipada deberá abonar a la otra la cantidad de R\$ 2.716.200,00, si ocurre hasta el 30 de junio de 2021; R\$ 2.037.150.00 si ocurre entre el 1 de julio y el 31 de diciembre de 2021 y, finalmente, de R\$ 1.358.100,00, si ocurriera antes de la finalización del contrato. En todos los casos, dichas sumas son netas y líquidas de impuesto a las ganancias y/o cualquier otro impuesto que grave dichos pagos y que deba abonar el CONTRATADO en Brasil.*”

“**PÁRRAFO ÚNICO:** *En caso que el ENTRENADOR rescinda el contrato de manera anticipada como consecuencia de la existencia de salarios vencidos y no pagados por el*

**CONTRATANTE**, en los términos del Art. 5 del Anexo 8 del FIFA RSTP, las partes acuerdan que el **ENTRENADOR** tendrá derecho a percibir las mismas sumas indicadas en el caput...”

**“CLÁUSULA SÉTIMA** – Toda y cualquier disputa o litigio originado del presente Contrato deberá someterse a los comités competentes de la FIFA y/o al TAS directamente, a la elección de la parte reclamante, renunciado las **PARTES** a cualquier otro foro, por privilegiado que sea. El idioma de los procedimientos ante el TAS deberá ser el inglés y la cantidad de árbitros deberá ser de 03 (tres).”

**“PÁRRAFO ÚNICO** – Todas las decisiones de los comités competentes de la FIFA podrán ser sometidas, en la sede de apelación, a la Corte Arbitral de Deportes – CAS, debiendo ser instaurada de acuerdo con el Code of Sport-related Arbitration y conducido en la Ciudad de Lausana, en Suiza y/o TAS en forma directa, a elección del reclamante. El idioma de los procedimientos deberá ser el inglés y el número de árbitros deberá de ser de 03 (tres). Las Partes, aquí presentes, desisten y renuncian a buscar cualquier solución o apelación ante el Tribunal Federal Suizo, aceptando que la eventual decisión de la Corte Arbitral del Deporte – CAS y/o TAS será final y vinculante.”

7. Also on 15 February 2021, the company called Hernán Crespo Ltda. (the “Company”) and the Parties, signed another agreement called “**INSTRUMENTO PARTICULAR DE CONTRATO DE LICENCIA DE DERECHO DE USO DE NOMBRE, APODO DEPORTIVO, VOZ EN IMAGEN**” (the “Image Contract”).

8. The most important clauses of the Image Contract are the following:

**“1.1 La CONTRATADA**, declara estar autorizada y habilitada a comercializar el uso del nombre, apodo deportivo, voz e imagen del **INTERVINIENTE** con relación al objeto del presente contrato, debiendo tomar todas las correspondientes medidas para que estas atribuciones se encuentren expresadas en un contrato social o en un contrato específico, bajo pena de que las obligaciones contraídas en este instrumento se vuelvan ineficaces.”

**“1.2 El INTERVINIENTE**, a la vez, reconoce y ratifica la autorización concedida a la **CONTRATADA** para negociar y comercializar el uso de su imagen, voz, nombre y apodo deportivo ante terceros, inclusive ante el **CONTRATANTE**.”

**“2.1 El presente contrato tiene como objeto disciplinar los límites y condiciones de licencia del nombre, apodo deportivo, voz e imagen del ENTRENADOR**, entendidos como **DERECHOS DE IMAGEN**, que incluyen tanto los Derechos de Imagen Individual como los Derechos de Imagen Colectiva....”

**“5.1 Las PARTES acuerdan que debido a la apreciación positiva inmediata de la IMAGEN**

*del ENTRENADOR, SPFC pagará a la CONTRATADA un monto cierto, único y ajustado en Reais equivalente a US\$300,000.00 netos, liquidos y libres de cualquier impuesto que deba abonarse en la República de Brasil relacionada con dicho pago. Dicha suma será abonada en 4 (cuatro) cuotas de US\$ 75.000,00, en febrero, mayo, junio y septiembre de 2021.”*

*“5.4. Al otorgar la licencia para utilizar la imagen del ENTRENADOR, en caso del que el SPFC masculino, adulto y equipo de fútbol profesional principal alcance alguno de los logros a continuación, las PARTES especifican expresamente el monto bruto que se adeudará por la variación positiva de la imagen del ENTRENADOR, y el cual resultará directamente en la valorización de la imagen y exposición del ENTRENADOR, de manera acumulativa, para cada uno de los siguientes y eventuales resultados positivos del equipo SPFC, siempre que este contrato continúe vigente cuando el resultado ocurra:*

- Campeón de la Copa Conmebol Libertadores: el equivalente en reales a US\$800.000,00 (ochocientos mil dólares);*
- Campeón de la Copa Conmebol Sudamericana: el equivalente en reales a US\$ 200.000,00 (doscientos mil dólares);*
- Campeón del Campeonato Brasileño: el equivalente en reales a US\$500.000,00 (quinientos mil dólares);*
- Campeón de la Copa do Brasil: el equivalente en reales a US\$450.000,00 (cuatrocientos e cincuenta mil dólares);*
- Campeón de Campeonato Paulista: el equivalente en reales a US\$ 200.000,00 (doscientos mil dólares);*
- Campeón del Campeonato Mundial FIFA: el equivalente en reales a US\$ 1.000.000,00 (un millón de dólares).”*

*“5.8. Si SPFC se atrasa por más de 60 (sesenta) días en el pago de una de las cuotas establecidas en el presente contrato, a lo largo de la vigencia del contrato, la CONTRATADA podrá notificar al CONTRATANTE para remediar las deudas en abierto dentro de los 30 días a partir de la fecha de cualquier notificación, siendo suficiente la notificación vía correo electrónico. Si SPFC no subsanara el incumplimiento de dicho plazo, LA CONTRATADA y/o la INTERVINIENTE a título personal podrán reclamar el pago de las mismas en los términos de lo previsto por el Art. 5 del Anexo 8 del Reglamento sobre el Estatuto y la Transferencia de Jugadores de FIFA. En cualquier caso, se aclara que en caso que SPFC realice pagos parciales, los mismos serán imputados siempre a las cuotas más antiguas, no pudiendo la CONTRATANTE imputar los pagos de diferente manera. Las*

*partes acuerdan asimismo que, una vez vencidos los 30 días desde la intimación, comenzará a correr de manera automática un interés equivalente al 1% mensual sobre los saldos pendientes de pago”.*

*“6.1 Este instrumento entrará en vigencia en la fecha de su firma y será efectivo hasta la fecha en que el **ENTRENADOR** se encuentre en el cargo de Técnico de **SPFC** y, en consecuencia, vinculando su imagen a el **CONTRATANTE**.”*

*“9.1 Toda y cualquier disputa o litigio procedente del presente Contrato deberá ser sometido a los órganos competentes de la FIFA y/o a la Corte Arbitral del Deporte- CAS (a elección del reclamante). En caso que se opte por reclamar ante los órganos competentes de la FIFA, las decisiones de los mismos serán apelables ante la Corte Arbitral de Deportes – CAS. Los procedimientos ante la Corte Arbitral de Deportes – CAS serán instaurados de acuerdo con el Code of Sports-related Arbitration y conducido en la ciudad de Lausana, en Suiza renunciando las **PARTES** a cualquier otro foro, por privilegiado que sea. El idioma de los procedimientos ante la Corte Arbitral de Deportes – CAS debe ser el inglés y el número de árbitros debe ser de 03 (tres). Las Partes aquí desisten y renuncian en buscar cualquier solución o apelación ante el Tribunal Federal Suizo, aceptando que una eventual decisión de la Corte Arbitral del Deporte – CAS será final y vinculante. Las **PARTES** acuerdan que podrán producir documentos en la correspondencia y escritos judiciales en portugués y/o español.”*

*“9.5 Las Partes acuerdan expresa e irrevocablemente que las comunicaciones entre las **PARTES** sobre este Contrato de Trabajo deben ser por escrito y deben enviarse por correo postal, fax o a las siguientes direcciones de correo electrónico:...”*

9. On 13 October 2021, the Respondent sent a letter to the Appellant, signed by its Executive Football Director, Mr Rui Costa, notifying the unilateral termination of the employment relationship with the Coach by the Club.
10. On 21 December 2021, the Coach, through his legal representative, sent the Club a default notice requesting the payment of a total amount of USD 1,283,390.14.
11. On 7 January 2022, the Club sent the Coach, with the intention to reply to the default notice mentioned above, a “comfort letter”, expressing, in general, that it will comply with the contractual terms.

## **B. Proceedings before the FIFA Players’ Status Chamber**

12. On 4 February 2022, the Coach submitted a claim before the FIFA Football Tribunal, seeking the following relief against the Club:

- USD 377,368.42 net, for early termination without just cause of the Employment Contract (Clause 3 of the Employment Contract), plus interest of 1% per month as contractually agreed, from 12 November 2021.
  - USD 460,320.00 net, as compensation (residual value) for early termination without just cause of the Image Contract, plus interest at the contractually agreed rate of 1% per month, as the date of termination, i.e. 13 October 2021.
  - USD 150,000.00 net, as provided for in Article 5.1 of the Image Contract, plus interest of 1% per month as contractually agreed, according to the following schedule:
    - i) USD 75,000.00 corresponding to the instalment due in June 2021, plus interest at the rate of 1% per month from 1 July 2021.
    - ii) USD 75,000.00 corresponding to the instalment due in September 2021, plus interest at 1% per month as from 1 October 2021.
  - USD 116,880.00 net, plus interest at 1% per month as contractually agreed under Article 5.2 of the Image Contract, according to the following schedule:
    - i) USD 38,960.00 corresponding to the instalment due on 10 August 2021, plus interest of 1% per month as contractually agreed, as from 11 August 2021.
    - ii) USD 38,960.00 corresponding to the instalment maturing on 10 September 2021, plus interest of 1% per month as contractually agreed, as from 11 September 2021.
    - iii) USD 38,960.00 for the instalment due on 10 October 2021, plus interest at the contractually agreed rate of 1% per month, starting 11 October 2021.
  - USD 200,000.00 net (Article 5.4 of the Image Contract) plus interest of 1% per month as contractually agreed, as from 10 June 2021, corresponding to the bonus for winning the Paulista Championship 2021 minus the partial payments already made, which results in a sum of USD 135,679.19, on which interest at a rate of 1% should be recognized as from 23 February 2021.
13. On 19 July 2022, the FIFA Players' Status Chamber (the "FIFA PSC") issued a decision (the "Appealed Decision").
14. The operative part of the Appealed Decision stated as follows:
- "1. The claim of the Claimant, Jorge Hernán Crespo, is admissible.*
  - 2. The claim of the Claimant is partially accepted.*
  - 3. The Respondent, São Paulo Futebol Clube, has to pay to the Claimant, the following amount(s):*

***-USD 150,000 net as outstanding remuneration, detailed as follows:***

- USD 75,000 plus interest at the rate of 1% per month as from 1 July 2021 until the date of effective payment;*
- USD 75,000 plus interest at the rate of 1% per month as from 1 October 2021 until the date of the effective payment.*

***- USD 116,880 net as outstanding remuneration, detailed as follows:***

- USD 38,960,000 plus interest at the rate of 1% per month as from 11 August 2021 until the date of effective payment;*
- USD 38,960 plus interest at the rate of 1% per month as from 11 September 2021 until the date of the effective payment.*
- USD 38,960 plus interest at the rate of 1% per month as from 11 October 2021 until the date of the effective payment.*

***- BRL 1,385,100 net as compensation for breach of contract without just cause*** plus 1% interest per month as from 13 November 2021 until the date of effective payment.

*4. Any further claims of the Claimant are rejected.*

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

15. On 1 September 2022, the grounds of the Appealed Decision were notified to the Appellant.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

16. On 21 September 2022, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent with respect to the Appealed Decision, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code").
17. In the Statement of Appeal, the Coach nominated Mr Roberto Moreno Rodríguez Alcalá as arbitrator.
18. On 27 September 2022, the CAS Court Office, among other issues, asked the Parties if they agreed to conduct the proceedings in a bilingual manner.
19. On 29 September 2022, the Respondent sent a letter to the CAS, expressing among other things, that it appointed Mr Luiz Felipe Guimarães Santoro as arbitrator and that it asked to conduct the procedure in bilingual matter (submissions and hearings in English, but with possibility of filing documents in either Spanish or Portuguese).
20. On 3 October 2022, the CAS Court Office sent a letter to the Parties, informing, among other

issues, that the language of the proceedings shall be English, but documents submitted in Spanish and /or Portuguese may be presented without the need for their translation into English.

21. On 17 October 2022, the Appellant filed its Appeal Brief, together with supporting documents, pursuant to Article R51 of the Code.
22. On 22 November 2022, the Club filed its Answer pursuant to Article R55 of the Code.
23. On 23 November 2022, the CAS Court Office informed the Parties that according to Article R54 of the Code and on behalf of the Deputy President of the Appeals Arbitration Division, the Panel appointed to decide the present case was constituted by Mr Ricardo de Buen Rodríguez, as President of the Panel and by Mr Luiz Felipe Guimarães Santoro and Mr Roberto Moreno Rodríguez Alcalá, as Arbitrators.
24. On 2 February 2023, after having consulted the Parties, the CAS Court Office informed them that the Panel had decided to hold a remote hearing on 28 March 2023.
25. On 8 February 2023, the CAS Court Office issued the Order of Procedure, which was duly signed by the Parties.
26. On 21 February 2023, FIFA sent the CAS Court Office the complete file of the case.
27. The hearing of the case was held on 28 March 2023, by videoconference, with the presence of the members of the Panel and Ms Lia Yokomizo, Counsel to the CAS. The Appellant was represented by his legal counsels Mr Rafael Trevisán and Mr Santiago Casares, accompanied by Ms María Itati Encinas as interpreter; the Respondent was represented by its legal representatives Mr Felipe Ramos Carvalho, Mr Pedro Henrique Mendonça, Ms Danielle Maiolini Medes and Mr João Vitor Teles Pimentel.
28. At the beginning of the hearing, the Parties stated that they did not have any objection regarding the composition of the Panel. The Parties had the opportunity to express everything they considered important, and the Panel heard all their arguments, including the declarations of the Parties.
29. At the end of the hearing, the Parties expressed that they were comfortable with the way the hearing had been conducted and stated that the right to be heard had been respected.

#### **IV. SUBMISSIONS OF THE PARTIES**

30. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered, for the purposes of the legal analysis, which follows, all the submissions



made by the Parties, even if there is no specific reference to those submissions in the following summary.

**A. The Appellant's position**

31. The Appellant's position and arguments can be summarized as follows:

- As can be seen from the Appealed Decision, there are 2 items claimed by the Coach that were not acknowledged by the FIFA PSC as it was requested and that are the object of the appeal.
- The FIFA PSC has erroneously not recognized the right of the Coach to collect USD 200,000.00 (Art. 5.4 of the Image Contract) as a bonus for achieving the title of the Copa Paulista 2021 Championship.
- Regarding the compensation for breach of contract without just cause, the FIFA PSC has mistakenly decided that the amount should be BRL 1,358,100.00 plus 1% interest per month as from 13 November 2021, when it is clear, according to Clause 3 of the Employment Contract, that the amount of the compensation should have been BRL 2,037,150.00.
- The first professional male football team of the Respondent was the Champion of the 2021 Copa Paulista.
- The right of the Appellant to receive the mentioned bonus has been expressly recognized by the Respondent on multiple occasions, such as the letter dated 7 January 2022 signed by the President of the Respondent and in the Club's statement answering the Claim in front of the FIFA PSC.
- There is no doubt and it has been recognized by the Parties that the Employment Contract between the Coach and the Club was terminated on 13 October 2021.
- Therefore, taking into account the termination date and what was agreed between the Parties in Clause 3 of the Employment Contract, it is appropriate that the compensation recognized in favor of Mr. Crespo for the early termination of the said contract was BRL 2,073,150.00, since the employment relationship effectively ended between 1 July and 31 December 2021.
- The Respondent has decided, unilaterally and without the approval of the Appellant, to make some partial payments after the termination, and the Appellant recognizes such payments. The total of those payments has been BRL 1,810,800.00

32. In his Appeal Brief, the Appellant made the following requests:

*“64.1 To partially set aside the Appealed Decision.*

*64.2 To modify paragraph 3 of the Appealed Decision as follows:*

*3. The Respondent, São Paulo Futebol Clube, has to pay the Claimant, the following amounts:*

*- USD 150,000 net as outstanding remuneration (Art. 5.1 of the Image Rights Agreement), detailed as follows:*

*- USD 75,000 plus interest at the rate of 1% per month as from 1 July 2021 until the date of effective payment;*

*- USD 75,000 plus interest at the rate of 1% per month as from 1 October 2021 until the date of effective payment.*

*- USD 116,880 net as outstanding remuneration (Art. 5.2 of the Image Rights Agreement), detailed as follows:*

*- USD 38,960 plus interest at the rate of 1% per month as from 11 August 2021 until the date of effective payment,*

*- USD 38,960 plus interest at the rate of 1% per month as from 11 September 2021 until the date of effective payment,*

*- USD 38,960 plus interest at the rate of 1% per month as from 11 October 2021 until the date of effective payment.*

*- USD 200.000 net as outstanding remuneration (Art. 5.4 of the Image Rights Agreement), plus interest at the rate of 1% per month as from 10 June 2021 until the date of effective payment;*

*- BRL 2.037.150 net as compensation for breach of contract without just cause plus 1% interest per month as from 13 November 2021 until the date of effective payment, minus the amount of BRL 1.180.800.*

*24.3 To order the Respondent to pay all costs related to the present arbitration proceedings and to reimburse the Appellant the minimum CAS court office fee of CH1000 and any other advance of costs paid to the CAS; and*

*24.3 To order the Respondent to pay the Appellant a contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel”*

**B. The Respondent's position**

33. The Respondent's position and arguments can be summarized as follows:

- The Appellant is not legitimately entitled to either claim nor receive any amounts related to the Image Contract.
- The Image Contract was executed by the Company and not by the Appellant. The Appellant assigned the Company the right to exploit and to license his image rights.
- In line with Brazilian and Swiss Law, the Company is fully capable to have its own rights and obligations and cannot be replaced by its shareholders, founders or managers in this regard.
- It is clear and unequivocal that the rights and obligations arising from the Image Contract only concerned the Respondent and the Company.
- Since the amount provided by the Image Contract were owed exclusively to the Company, the Appellant does not have any substantive right to claim any of those amounts.
- The Appellant lacks standing to sue regarding any amounts allegedly owed by the Respondent to the Company in connection with the Image Contract.
- In the unlikely event CAS considers that the Appellant is legitimate to claim amounts arising from the Image Contract, the Appellant would still not be entitled to seek any amounts arising from the Image Contract before FIFA (and consequently through the corresponding appeal before CAS) due to the specific nature of said contract.
- The FIFA Football Tribunal could not adjudicate a claim arising from a non-employment related contract.
- The Image Contract did not create a reward for the sporting performance *per se*, but actually for the value that a successful sporting performance could add to the Appellant's image which would economically benefit the Company as the one entitled to exploit the Appellant's image, not the Appellant himself.
- The Appellant's image was widely used and commercially explored through interviews, campaigns, activations and several brands of commercial partners of the Respondent.
- It is demonstrated that the image rights licensed by the means of the Image Contract were commercially exploited by the Respondent.
- From any legal standpoint, considering both Brazilian and Swiss Law, the Image Contract referred to a "civil-related" matter and certainly never fit as an "employment-related"

contract as the FIFA Regulations on the Status and Transfer of Players (the “FIFA RSTP”) would require for any claims arising from such agreement to be accepted or even judged by the FIFA Football Tribunal.

- The Appellant failed to provide any proof that the Respondent was notified of the alleged default of payment of the amount provided by Article 5.4 of the Imager Contract. Thus, no interest is applicable to the charging of the alleged amount provided by Article 5.4 of the Image Contract.
- In the unlikely event CAS deems that the Appellant actually presented proof of said notification, the only document presented during the appeals proceedings before CAS that could possibly resemble a notification is the e-mail sent by the Appellant’s legal representatives on 21 December 2021. Therefore, the interest of 1% per month would only be applicable from 21 January 2022 (*i.e.*, 31 days after said e-mail).
- The amount determined by the FIFA PSC (BRL 1,358,100.00) corresponds to the liquidated damages established between the Parties if the termination “occurs before the end of the contract”.
- Subsidiarily, in the unlikely event that the CAS Panel decides that the Appellant is entitled to receive the claimed amounts as compensation for breach of contract without just cause (*i.e.*, BRL 2,037,15.00 minus BRL 1,810,800.00), it must be considered that the eight installments already paid by the Respondent from December 2021 to July 2022 and the respective dates of such payments must be reflected in the calculation of the applicable interest.

34. The Club requested the following:

*“(i) To rule that the Appealed Decision is totally upheld;*

*(ii) To dismiss all and any requests from relief made by the Appellant based on the Image Rights Agreement;*

*a. Subsidiarily, in the unlikely event CAS upholds the Appellant’s request for relief arising from the Image Rights Agreement, to dismiss all and any request related to the application of interest over the amount claimed.*

*b. Alternatively, to establish that any applicable interest shall be considered only from 21 January 2021.*

*(iii) To dismiss all and any requests from relief made by the Appellant based on the Employment Contract.*

*(iv) To order the Appellant to cover all costs of the proceedings; and*

- (v) *In any event, to hold the Respondent free of liability for its good faith and law-abiding attitude.*”

## **V. JURISDICTION**

35. The CAS jurisdiction for this appeal derives from Article R47 para 1 of the Code which provides that *“An appeal against the decision of a federation, association or sports-related body may be filed with CAS in 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”*, which, read in conjunction with Articles 56 par. 1 and 57 of the FIFA Statutes (the “Statutes”) clearly establish CAS jurisdiction for an appeal of a decision of the FIFA PSC.
36. It follows from these provisions that CAS has jurisdiction to rule on this dispute. Moreover, the Parties have agreed and confirmed this by fully by signing the Order of Procedure.

## **VI. ADMISSIBILITY**

37. The Appealed Decision was notified to the Appellant on 1 September 2022. The Statement of Appeal was filed on 21 September 2022, that is, within the twenty-one-day deadline specified in the Article 57(1) of the Statutes applied in conjunction with Article R49 of the Code which provides that *“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 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. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of the appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.”*. Moreover, no further stages of appeal against the Appealed Decision were available at the FIFA level.
38. The appeal therefore complies with the requirements of the Code and is, accordingly, admissible.

## VII. APPLICABLE LAW

39. According to Article R58 of the Code,

*“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”.*

40. In this case, there is a partial discussion by the Parties regarding the applicable law. The Appellant considers that the Panel must apply the various regulations of FIFA and subsidiarily, Swiss Law. In turn, the Respondent argues that the applicable law must be the FIFA RSTP and Brazilian law.
41. After analyzing the Parties positions in this regard, and the relevant evidence provided by both, the Panel considers that the applicable law is the FIFA Regulations, specially the FIFA RSTP (August 2021 edition) and, subsidiarily, Swiss law.
42. The reason for this conclusion is that first of all, both Parties agree on the application of the FIFA RSTP, a topic in which this Panel concurs, given the nature of an international employment-related dispute between an Argentinian Coach and a Brazilian Club. In addition, in Article 5.8. of the Image Contract and in the “*PÁRRAFO ÚNICO*” of the Clause “*TERCERA*” of the Employment Agreement, there is a direct reference to the FIFA RSTP.
43. Regarding the application of other laws, the Panel considers that the natural law to apply subsidiarily is Swiss law, given that Article 56 par. 2 of the Statutes, provides that “*The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA, and additionally, Swiss law.*”
44. The Panel does not find legal reason to apply Brazilian law, as the Parties agreed to submit any dispute direct to the FIFA regulations, and the FIFA RSTP, in its article 22 c), regulates the competence of FIFA and thus the application of different articles of the said regulations, to these kind of employment-related disputes of international nature, and which, in this specific case, leaves no room for the application of other laws or regulations. Moreover, as has been noted, the applicable regulations (i.e., the Statutes) expressly establish that CAS shall additionally apply Swiss law.
45. Thus the dispute must be resolved in accordance to the FIFA regulations and subsidiarily by Swiss law.

## **VIII. MERITS**

### **A. The objects of the dispute**

46. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.
47. As clarification, and to leave no doubt, the point of departure for the legal analysis is the fact that there is no controversy in these arbitral proceedings regarding the unilateral termination of the agreements without just cause by the Club on 13 October 2021 and the obligation by the Respondent to pay compensation for the breach of the Employment Agreement. This part of the Appealed Decision was not challenged before the CAS and is thus final and binding.
48. According to the Parties' written submissions, the only legal issues to be decided in this dispute are the following:
- Does the Coach have standing to sue regarding any compensation derived from the Image Agreement?
  - In the case the Coach is entitled to claim any compensation derived from the Image Agreement, does he have the right to receive the USD 200.000 as bonus for winning the Copa Paulista 2021?
  - What is the amount to be paid by the Club to the Coach as compensation for breach of the Employment Agreement?
49. For the avoidance of doubt, the other amounts and respective interest to be paid contained in the Appeal Decision were not appealed and they are also final and binding.
50. In the light of the above and after a deep analysis of the arguments and evidence of the Parties, the Panel has arrived to the following discussion and conclusions on each one of the above-mentioned issues.
- ### **B. Does the Coach have standing to sue regarding any compensation derived from the Image Contract?**
51. The first essential step is to analyze if the Coach has standing to sue (appeal) in relation to any compensation deriving from the Image Contract.

52. The Panel has analyzed this essential first topic, from four different sides: a) The nature of the Image Contract and its relationship with the Employment Contract; b) the specific content of the Image Contract in relation to the standing to sue of the Coach; and, c) the letter sent by the Club to the Coach on 7 January 2022.

***a) The nature of the Image Agreement and its relationship with the Employment Agreement.***

53. The Panel is aware that in many cases in which an employment contract and an image contract are involved at the same time, circumstances may lead to consider that they are different and independent agreements from one another; and even more when one of the parties is different in both agreements.
54. However, in this specific case, given the nature and specific content of the Employment Contract and the Image Contract, the Panel has arrived at the conclusion, that both, together, did indeed govern the employment relationship between the Coach and the Club.
55. There are many reasons to support this conclusion:
- The Employment and the Image Contract were signed on the same date.
  - The duration of the Image Contract is subject to the permanence of the Appellant as Coach of the Club (cf. Article 6.1 of the Image Contract).
  - There also exists a legally relevant connection between both documents, given that the Coach is also “Interviniente” of the Company; although taken by itself this fact is not sufficient for holding a conclusion, taken together with the other considerations herein expressed it is a relevant factor for evincing the close proximity and connection between both agreements.
  - Some of the amounts to be paid in relation to the Image Contract are linked with the achievement of sportive results by the Coach (*i.e.*, winning championships), that are typically benefits derived from an employment contract in the football industry (cf. Article 5.4 of the Image Contract).
  - In the Image Contract, both parties agreed that it was an employment contract (cf. Article 9.5 of the Image Contract).
  - Also in the Image Contract, the Club and the Coach established that claims related to the



non-payment of the agreed sums should be claimed according to Article 5 of the Annex 8 of the FIFA RSTP ( cf. Clause 5.8 of the Image Contract).

- The Image Contract submits to the jurisdiction of FIFA regarding any conflict derived from the said Contract (cf. Clause 9.1 of the Image Contract).

56. As expressed before, with all that has been inferred from the content and nature of the mentioned agreements, and the particular circumstances of the relationship between the Parties, the conclusion of the Panel is that both, together, govern an employment relationship between the Club and the Coach, and that this was indeed their mutual will and intention. Despite the name of the Image Contract, and the content of some of its clauses, the truth is that both, the Employment and the Image Contract, have as a main object and purpose, the employment of the Appellant as Coach of the Club and the remunerations to be paid, such as salaries and bonuses granted if some sportive results are achieved. It is not only the implicit issues derived and mentioned before, but the explicit content of the Image Contract when both parties classified it, in one of its clauses, as an employment agreement, and when in the said agreement there is a direct reference to parts of the FIFA RSTP that are directly linked to employment issues (Annex 8 of the FIFA RSTP, today Annex 2), that has been taken into account by the Panel for achieving the correct interpretation of the relationship between these two Parties to the present proceedings. And the conclusion is undoubtedly that both documents were drafted and executed by the Parties to jointly govern their employment relationship. The arguments of the Respondent regarding the use of the Appellant's image, have been duly analyzed by the Panel, which has found that the content of the Image Contract referring to the use of the image of the Coach in front of the multiple employment elements of it, is not enough to lead to consider it a real independent image contract.

57. Moreover, there are other arguments that lead, unequivocally, to the same conclusion.

***b) The specific content of the Image Contract in relation to the standing to sue of the Coach***

58. Further, there is a key provision in the Image Contract, that deserves to be analyzed in particular, that makes the standing to sue by the Coach very clear and unambiguous. Article 5.8 of the Image Contract gives the right not only to the Company but to the Coach, to personally present any claim regarding the non-payment of any amount derived from the Image Contract.

59. This means that the Parties agreed that there were not only rights to the Company but to the

Coach personally in the Image Contract.

***c) The letter sent by the Club to the Coach on 7 January 2022.***

60. One of the pieces of evidence presented by the Appellant and not contested by the Respondent, is the “comfort letter” sent by e-mail from the Club to the Coach’s representatives on 7 January 2022.
61. In paragraph 4 of the said letter, the Club expressly recognizes the right of the Coach himself, to receive the pending amounts content in the Image Contract.
62. The text of the letter is very clear. When making reference to pending payments related to the Image Contract, the Club expressed that the mentioned contract was signed exclusively with the Coach. It is only reasonable to conclude that the interpretation given by the Club itself *after* the signature of the agreements, that is, its conduct in executing the contract – which is undoubtedly an interpretation criterion under Swiss law—, leads to the same conclusion. As has been stated, the “ulterior conduct of the parties” is a means of interpretation of contracts under Swiss law (ATF 144 III 93; ATF 140 III 86; ATF 129 III 675, quoted in Pierre Tercier / Pascal Pichonnaz, *Le droit des obligations*, 6<sup>th</sup>. Edition, Schulthess, 2019, p. 238).
63. In conclusion: flowing from the arguments of the precedent paragraphs a), b) and c), it is clear for the Panel that the Appellant has standing to sue (appeal) a potential compensation deriving from the Image Contract.

**C. In the affirmative, does he have the right to receive the USD 200,000.00 as bonus for winning the Copa Paulista 2021?**

64. The Panel has to decide if the Coach has the right to receive the claimed compensation.
65. For the potential right of the Appellant to receive a specific compensation for the achievement of the Copa Paulista 2021, the wording of the Image Contract, recognized by both Parties, in its Article 5.4 is crystal clear. The Coach had the right to receive USD 200,000.00 in case they were champions at the Copa Paulista.
66. Regarding the achievement of the Copa Paulista, it is important to express that along this arbitral procedure, the Respondent has not contested the championship of the Copa Paulista 2021 with the Appellant as the coach of the Club.

67. The Appellant has presented several press releases, making reference to the achievement by the Club of the Copa Paulista 2021 on 23 May 2021. This evidence was not objected by the Respondent.
68. Additionally, in the previously mentioned Comfort Letter dated on 7 January 2022, in paragraph 2, iii, the Club makes reference to the USD 200,000.00 owed to the Coach for the achievement of the Copa Paulista and in paragraph 4, the Club expressly recognized the non-payment of this specific amount for this specific concept.
69. With all these elements, the Panel is convinced that the Coach is entitled to receive USD 200,000.00 for winning the Copa Paulista 2021.
70. The USD 200,000.00 were agreed as a gross amount, not net, as stated at the beginning of Article 5.4 of the Image Contract.
71. Regarding the interests to be paid, and after analyzing both Parties' arguments in this regard, as well as the content of Article 5.8 of the Image Contract, the percentage in which the calculation must be based is 1% per month.
72. In relation to the date in which the interests for this specific concept must be paid, and based also on Article 5.8 of the Image Contract, given that the said clause establishes that the Appellant - in case of a default of more than 60 days in the payment of any sum coming from the said agreement - may notify the Respondent its default and then, if the Respondent would not comply within 30 days, the interest would start automatically, the Panel, taking into account that the first request on this matter that is on file is the letter from the Appellant dated 21 December 2021, considers that the interests must be paid as from 21 January 2022, as the Respondent has argued.

**D. What is the amount to be paid by the Club to the Coach as compensation for breach of the Employment Agreement?**

73. As stated before in this award, regarding the payment of compensation for breach of the Employment Contract, there is no discussion in relation to the right of the Coach to receive such compensation, and the only discussion to be solved is the amount to be finally paid.
74. The Appealed Decision grants the Coach compensation in the amount of BRL 1,358,100.00.
75. The Appellant argues that he is entitled to receive the amount of BRL 2,037,150.00, according to clause "TERCERA" of the Employment Contract, and based on the date the unilateral termination of the contract took place.

76. As can be read in clause “*TERCERA*” of the Employment Contract, the Parties agreed the amount of the compensation for the breach of contract, depending on the date the mentioned termination may occur.
77. In this case, it has been determined that the Club unilateral terminated the Employment Contract on 13 October 2021. Reading the text of the Employment Contract, in the mentioned clause “*TERCERA*”, the amount to be paid if the termination occurs between 1 July and 31 December 2021, is BRL 2,037,150.00.
78. In this case, the amount to be paid is net, as expressed in the same clause “*TERCERA*” of the Employment Contract.
79. Being clear that the total amount to be paid is BRL 2,037,150.00, the Appellant has recognized that he has received 8 payments in the amount of BRL 226,350.00 each, made by the Club, on different dates, for a total of BRL 1,810,800.00. This amount must be deducted from the total, at the final payment.
80. In relation to the interest, following the content of the Appealed Decision, the percentage is 1% per month, beginning on 13 November 2021.
81. The Panel concurs with the Respondent, in the fact that the advanced payments already made, and the specific dates of their payment, must be taken into account for the calculation of the interest at the moment of the performance of the payment of the pending difference.

#### **E. Final Conclusion**

82. In light of the above, the Panel concludes that:
  - The Coach has standing to sue any potential amount derived from the Image Contract.
  - The Club owes the Coach USD 200,000.00 for the achievement of the Copa Paulista 2021, plus interest of 1% per month as for 21 January 2022.
  - The Club owes the Coach BRL 2,037,150.00, as a compensation for the breach of the Employment Agreement, minus BRL 1,810,800.00, plus interest of 1% per month as from 13 November 2021.

#### **VI. COSTS**

(...)

## ON THESE GROUNDS

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

1. The appeal filed by Jorge Hernán Crespo against the decision issued on 19 July 2022 by the FIFA Players' Status Chamber is upheld.
2. Paragraph 3 of the decision rendered on 19 July 2022 by the FIFA Players' Status Chamber is amended as follows:

*“3. The Respondent, São Paulo Futebol Clube, has to pay the Claimant, the following amounts:*

  - **USD 150,000 net as outstanding remuneration, detailed as follows:**
    - USD 75,000 plus interest at the rate of 1% per month as from 1 July 2021 until the date of effective payment;
    - USD 75,000 plus interest at the rate of 1% per month as from 1 October 2021 until the date of effective payment.
  - **USD 116,880 net as outstanding remuneration, detailed as follows:**
    - USD 38,960 plus interest at the rate of 1% per month as from 11 August 2021 until the date of effective payment,
    - USD 38,960 plus interest at the rate of 1% per month as from 11 September 2021 until the date of effective payment,
    - USD 38,960 plus interest at the rate of 1% per month as from 11 October 2021 until the date of effective payment.
  - **USD 200,000 as outstanding remuneration, plus interest at the rate of 1% interest per month as from 21 January 2022 until the date of effective payment;**
  - **BRL 2,037,150 as compensation for breach of contract without just cause plus 1% interest per month as from 13 November 2021 until the date of effective payment, minus the amount of BRL 1,810,800”**

3. (...).

4. (...).

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

Seat of the arbitration: Lausanne, Switzerland

Date: 2 May 2025

## **THE COURT OF ARBITRATION FOR SPORT**

Ricardo de Buen Rodríguez

President of the Panel

Luiz Felipe Guimarães Santoro

Arbitrator

Roberto Moreno Rodríguez Alcalá

Arbitrator