

CAS 2022/A/9020 Philippines Football Federation v. Ramadani Herzirdan

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Mark A. Hovell, Solicitor in Manchester, United Kingdom

in the arbitration between

Philippines Football Federation, Pasig City, Philippines

Represented by Mr Menno Teunissen, Mr Thomas Spee and Mr Gauthier Bouchat, Attorneys-at-Law, Eleven & Law, Belgium

Appellant

and

Mr Ramadani Herzirdan, Belgrade, Serbia

Represented by Mr Filip Blagojevic, Attorney-at-Law, Serbia

Respondent

I. PARTIES

1. The Philippines Football Federation (the “Appellant” or the “PFF”) is the governing body of association football in the Philippines, with its registered office in Pasig City, Philippines. It is affiliated to the Asian Football Confederation (“AFC”) and the Fédération Internationale de Football Association (“FIFA”).
2. Mr Ramadani Herzirdan is a Serbian football coach (the “Respondent” or the “Coach”).
3. The PFF and the Coach shall collectively be referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions and evidence submitted with those submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

A. The First Contract

5. On 15 June 2018, the Coach signed a contract with the PFF, valid until 31 May 2020 (the “First Contract”). Pursuant to the First Contract, the Coach was subordinated to Mr Scott Cooper, who had also signed a contract with the PFF as its Technical Director / Team Manager / Advisor / Manager) for the Philippines senior, U22 and U23 men’s football teams.
6. The Coach’s monthly remuneration under the First Contract was USD 4,000 (four thousand US Dollars) net.
7. At or around the same time, the PFF also appointed Mr Stefan Bosnic as physiotherapist, upon the recommendation of the Coach.
8. In September 2018, the Coach and Mr Cooper led the men’s senior team at a training camp in Bahrain, which also included friendly matches against Oman and Bahrain. Following this, the Coach and Mr Cooper flew back to Manila with the team to prepare for the upcoming Southeast Asian Championship, then scheduled to take place from 8 November – 15 December 2018.

B. The Second Contract

9. On 5 December 2018, the Coach signed a second contract with the PFF. The Futbol Pilipinas Azkals Foundation INC (the “Foundation”) was also a party (the “Second Contract”).

10. Pursuant to the Second Contract, the Coach was appointed *“to assume the role as Assistant National Team Coach for the Men’s National Team and the U22 and U23 Men’s National Team”*.
11. The term of the contract was fixed from 1 February 2019 until 31 December 2022.
12. The Coach’s monthly remuneration was USD 6,000 (six thousand US Dollars). He was also entitled to *“other fringe benefits”* including accommodation, four round trip flights to Serbia every year and expense reimbursement.
13. With effect from 1 February 2019, the PFF also engaged Mr Goran Milojevic as the head coach of the men’s national team and youth teams until 31 December 2019. Similarly, the PFF also appointed Mr Milos Simic as goalkeeping coach on a two-year contract from 1 September 2020 to 1 September 2022. Mr Milojevic and Mr Simic were appointed upon the Coach’s recommendation.
14. Therefore, by this stage, the PFF’s coaching staff consisted of five individuals; Mr Cooper, Mr Milojevic, Mr Simic, Mr Bosnic and the Coach.
15. Apart from training and accompanying the PFF’s teams at various international tournaments, one of the main tasks of Mr Cooper and his team (of which the Coach was part) was to identify and scout foreign talent with a Philippine connection with a view to offering them Philippine citizenship and having them play for the PFF’s national team. Several players had been recruited to the PFF’s national team in this manner, a practice which continued into 2020 and 2021.
16. On 30 November 2019, the PFF failed to pay the Coach (and other Serbian staff) their salaries.
17. On 6 December 2019, the Coach and other Serbian staff left the Philippines for Serbia. Whilst leaving the Coach sent Mr Dan Palami (who represented both the PFF and the Foundation) a WhatsApp message to inform him that they had obtained flight tickets and thanked him on behalf of Mr Milojevic, Mr Simic and Mr Bosnic. Mr Palami responded:

“Youre welcome Serbian brothers. Thank you very much for your service to the Filipinos. We really appreciate the dedication and professionalism that you have shown. In all these years, i have never worked with better people than you. See you very soon!” [sic].
18. On 31 December 2019, the PFF failed to pay the Coach (and other Serbian staff) their salaries.
19. The Coach was instructed to stay in Serbia until March 2020. During this time (i.e. December 2019, January 2020 and February 2020), Mr Cooper instructed the Coach to monitor the progress of potential targets to play for the Philippines national team.
20. By the end of February 2020, the PFF had failed to pay salaries to the Coach (and other Serbian staff), taking the total to 4 (four) outstanding salaries.

21. On 6 March 2020, the Coach messaged Mr Palami on WhatsApp, requesting for
“4 month salary for [...] Serbian guys
4 month x 17 000 \$ = 68 000\$
Minus 4 000 that you given to Milos and Stefan that is all 64 000 if you want you can give to Scoot he can share to staff coaches big regards” [sic].
22. Mr Palami did not respond to this message.
23. On 6 April 2020, following the PFF’s failure to pay any salaries on 31 March 2020 (by which point the PFF had failed to pay the Coach for 5 months), the Coach requested Mr Palami for payment, providing a break-down of the USD 64,000 he believed was owed to him and other Serbian members of the coaching staff.
24. In addition, the Coach requested for 50% of salaries for February and March 2020.
25. Mr Palami responded that same day, stating that the PFF office had been closed due to Covid-19, and as a result, had requested the government for *“an exemption so that our accounting personnel can report for office. The office has been closed since March 13 and people have not been allowed to get out of their houses without the special pass which is usually just given to doctors and healthworkers”*.
26. On 20 June 2020, the Coach sent another WhatsApp message to Mr Palami, requesting unpaid salaries. He stated, in summary, that it was difficult for him (and the other staff who were also unpaid) to stay positive without receiving salaries but were looking forward to continuing work with the PFF and Foundation.
27. On 5 August 2020, the PFF paid the Coach PHP 445,000 (four hundred and forty five thousand Philippine Peso). This amount was equivalent to approximately USD 9,100 (nine thousand one hundred US Dollars)
28. On 17 August 2020, the PFF paid the Coach PHP 245,000 (two hundred and forty five thousand Philippine Peso). This amount was equivalent to approximately USD 5,050 (five thousand and fifty US Dollars).

C. The Third Contract

29. On 1 September 2020, the Coach partially renounced his salaries under the Second Contract, and agreed to a 70% reduction for the period between 1 April 2020 and 1 September 2020.
30. Also on 1 September 2020, the Coach, the PFF and the Foundation (together described as “the Team Management” in this new agreement) entered into a third tripartite agreement, titled *“General Staff Employment Contract Agreement (Assistant Staff Member)”* (hereinafter, the “Contract”).

31. Pursuant to the Contract:

“[...] the Team Management [...] appointed [the Coach] as the Assistant to the Technical Director and Assistant Coach.

As Assistant to the Technical Director, [the Coach] shall be responsible for assisting the Technical Director in his duties.

As Assistant Coach, [the Coach] shall be responsible for assisting the head coach in leading and coaching:

- *The Philippines National Men’s Soccer football team (The Azkals);*
- *The Philippines National Men’s Youth football team (U23 and U22)”.*

32. The Contract was valid from 1 September 2020 until 31 December 2026.

33. Clause 1.2 of the Contract, the Coach had *“the explicit obligation to fully disclose any offer or any other employment not related to the Philippine National Men’s football team to the Head Coach and Team Management”*. Failure to do this enabled the *“Team Management [to] suspend [the Coach] [...] for a period of up to 6 months without pay or upon second offense to terminate his employment without any further compensation”* (Contract, Clause 1.3).

34. Under Clause 4 of the Contract, the PFF and Foundation agreed to remunerate the Coach as follows:

- A monthly salary of USD 8,000 (eight thousand US Dollars) net, payable by the Foundation.
- One-time bonuses of:
 - USD 7,500 (seven thousand five hundred US Dollars) net, if the men’s senior national team attained a FIFA top 70 ranking; and
 - USD 9,000 (nine thousand US Dollars) net, if the men’s senior national team attained a FIFA top 50 ranking.
- Other bonus payments:
 - USD 300 (three hundred US Dollars) for each FIFA international friendly match win.
 - USD 500 (five hundred US Dollars) for each game won win *“from stage 2 qualifications of Asian Cup or FIFA World Cup”*
 - USD 750 (seven hundred and fifty US Dollars) for each game win during an Asian Cup or FIFA World Cup.

- USD 300 (three hundred US Dollars) for each Suzuki Cup game win.
 - USD 6,000 (six thousand US Dollars) for qualifying for the group stage at the Asia Cup.
 - USD 30,000 (thirty thousand US Dollars) for qualifying for the FIFA World Cup finals.
 - USD 6,000 (six thousand US Dollars) for winning the Suzuki Cup.
 - USD 15,000 (fifteen thousand US Dollars) for progressing from the group stage at the Asia Cup.
 - USD 15,000 (fifteen thousand USD Dollars) for winning the Asia Cup.
- As regards the monthly salaries, it was expressly stated that:

“The payment of this salary will be under the responsibility of the [Foundation].”

35. The Coach was also entitled to receive benefits such as *“transportation and housing”* and payment of all reasonable medical expenses under the Contract.

36. Clause 11 (*Governing Law and Dispute Resolution*) of the Contract stated the following:

“This Agreement shall be primary governed by and construed in accordance with the applicable rules and regulations of FIFA and/or the CAS.

In case of disagreement, the parties shall avoid going to court. Disputes that have not been resolved through amicable consultations shall be submitted to arbitration by FIFA/CAS.

Any dispute arising out of or in connection with this Agreement shall be subject to the jurisdiction of the FIFA DRC and to the CAS to be finally settled in accordance with the rules of the CODE OF SPORTS RELATED ARBITRATION, which rules are hereby deemed incorporated. The FIFA PSC and the CAS shall determine the dispute firstly in accordance with applicable rules and regulations of FIFA and Swiss law. All proceedings before FIFA or the CAS shall be held in the English language”.

37. On 13 November 2020, the Coach was paid PHP 200,000 (two hundred thousand Philippine Peso). This amount was equivalent to approximately USD 4,150 (four thousand one hundred and fifty US Dollars).

38. On 11 December 2020, the Coach was paid PHP 200,000 (two hundred thousand Philippine Peso). This amount was equivalent to approximately USD 4,150 (four thousand one hundred and fifty US Dollars).

39. In March 2021, the Coach attempted to obtain a visa to go back to the Philippines. He was in touch with Mr Palami and Ms Anna Katrina L. Liscano about this, as he liaised

with the Philippine embassy in Hungary. The embassy informed the Coach that as the Philippines had enforced a travel ban, in place until 19 April 2021, at the earliest, he needed an exemption in the form of an endorsement from the PFF to obtain a visa.

40. Also in March 2021, the Coach followed up with the PFF about overdue payables towards himself and other staff, particularly Mr Milojevic. The amount owed to Mr Milojevic at the time, was USD 8,000 (eight thousand US Dollars) – two monthly salaries for him.
41. On 23 March 2021, Mr Palami paid PHP 480,000 (four hundred and eighty thousand Philippine peso) (approx. USD 9,600) into the Coach’s account via bank transfer. The Coach forwarded on the PHP equivalent of USD 8,000 to Mr Milojevic and kept the remaining approx. USD 1,600 for himself.
42. Similarly, on 27 May 2021, Mr Palami paid PHP 485,000 (four hundred and eighty five thousand Philippine peso) (approx. USD 9,700) into the Coach’s account via bank transfer. The Coach forwarded on the PHP equivalent of USD 3,700, divided amongst Mr Bosnic and Mr Simic, and kept the remainder for himself.
43. In June 2021, the Coach acted as Assistant Coach (with Mr Cooper, head coach) during the FIFA World Cup qualifiers, held in the United Arab Emirates. However, the Coach (and other Serbian staff) returned to Serbia thereafter, as none of them had a Philippine visa.
44. In July 2021, Ms Liscano instructed the Serbian staff (which included the Coach) to apply for a tourist visa. This was not granted to them.
45. Throughout August, September and October 2021, the Coach requested Mr Palami for payment of overdue payables on several occasions, with no success.
46. On 31 October 2021, the Coach received PHP 250,000 (two hundred and fifty thousand Philippine peso) (approximately USD 5,000 (five thousand US Dollars) via bank transfer), from the personal bank account of Mr Palami.
47. On 20 November 2021, the Coach put the PFF on default. In his letter, the Coach highlighted that he had not been paid his salary in the amount of USD 89,605 (eighty nine thousand six hundred and five US Dollars), being:
 - USD 8,000 (eight thousand US Dollars) per month for 11 months from December 2020 to October 2021 (both months inclusive); and
 - USD 1,605 (one thousand six hundred and five US Dollars), being part of his salary for November 2020.

(the “Default Notice”)

48. The Coach requested the PFF to “*pay debt within 15 days*”, failing which, he would “*be forced to unilaterally terminate the contract by FIFA Regulations on the Status and Transfer of Players (Article 14)*”.

49. On 6 December 2021, failing any response from the PFF, the Coach gave the PFF an additional three days to pay him in full.
50. On 10 December 2021, the Coach sent a notice terminating Contract to the PFF. This notice stated the following:

“[...]

In accordance to the FIFA RSTP, Art. 14, I herewith properly terminate the current General Staff Employment Contract Agreement (Assistant Staff Coach) – signed on 1 September 2020 for the period from 1 September 2020 until 31 December 2026 – with immediate effect, due to the unilaterally breaching of the contract without just cause by [the PFF], in order to be able to continue the career. Moreover, my duty herewith stops.

Therefore, you will have to take the responsibility for the consequences, according to the FIFA RSTP Art 17.1 and 17.4. Consequently, we will claim for the outstanding debt plus compensation until 31 December 2026, plus 5% interest rate

[...]”.

(the “Termination Notice”)

51. On 1 November 2022, the Coach signed a contract with FC Indjija, for a term of 26 months until 31 December 2024, at a monthly salary of USD 450 (four hundred and fifty US Dollars), taking the total value to USD 11,700 (eleven thousand seven hundred US Dollars) (the “Indjija Contract”).

D. Proceedings before the Players’ Status Chamber of the FIFA Football Tribunal

52. On 15 December 2022, the Coach filed a claim against the PFF, at the Players’ Status Chamber (the “PSC”) of the FIFA Football Tribunal (the “FIFA Claim”).
53. In the FIFA Claim, the Coach requested the FIFA PSC to order the PFF to pay him outstanding salaries and compensation in the total amount of USD 585,605 (five hundred and eighty five thousand six hundred and five US Dollars), being:
 - i. USD 97,605 (ninety seven thousand six hundred and five US Dollars) in unpaid salaries. This included the amounts set out at paragraph 47 above, plus a further USD 8,000 (eight thousand US Dollars) in unpaid salaries for November 2020, plus interest at 5% p.a. from the date on which each payment fell due; and
 - ii. USD 488,000 (four hundred and eighty eight thousand US Dollars); the residual value of the Contract, from 1 December 2021 until 31 December 2026, plus interest at 5% p.a. from 10 December 2021.

54. On 17 May 2022, the FIFA PSC issued its decision, partially accepting the Coach's claim (the "Appealed Decision"). Specifically, it ordered the following:

"[...]"

2. *The Respondent, [PFF], has to pay the [Coach] the following amount(s):*
 - *USD 96,928 as outstanding remuneration plus 5% interest p.a. as from 10 December 2021 until the date of effective payment;*
 - *USD 488,000 as compensation for breach of contract without just cause plus 5% interest p.a. as from 15 December 2021 until the date of effective payment*
3. *Any further claims of the [Coach] are rejected*

"[...]"

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

55. On 10 July 2022, the PFF filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS"), in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"). In its Statement of Appeal, the PFF suggested the appointment of a sole arbitrator to hear the dispute.
56. On 19 July 2022, the Coach informed the CAS Court Office that he agreed to the appointment of a sole arbitrator to hear the dispute.
57. On 5 September 2022, and within the deadline, as extended, the PFF filed its Appeal Brief with the CAS in accordance with Article R51 of the CAS Code.
58. On 11 November 2022, the Coach filed his Answer with the CAS Court Office in accordance with Article R55 of the CAS Code. In its Answer the Coach stated that it was satisfied to have the matter determined based on the Parties' written submissions and as such, he did not consider a hearing necessary.
59. On 14 November 2022, in accordance with Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Arbitral Tribunal appointed to decide the dispute was constituted as follows:
- Sole Arbitrator: Mr Mark Andrew Hovell, Solicitor in Manchester, United Kingdom
60. On 21 November 2022, the Appellant indicated its preference for a hearing in the matter.
61. On 16 December 2022, the Sole Arbitrator invited the PFF to comment on whether it contested the existence of a contractual relationship between itself and Mr Cooper, and if so to provide all contracts between the two of them. The CAS Court Office directed the PFF to respond by 23 December 2023.

62. On 5 January 2023, the CAS Court Office informed the Parties that hearing would be held by video-conference on 23 February 2023.
63. On 16 January 2023, the CAS Court Office circulated a copy of the Order of Procedure to the Parties for their approval and signature.
64. On 20 January 2023, the PFF returned a signed copy of the Order of Procedure to the CAS Court Office.
65. On 23 January 2023, the Coach returned a signed copy of the Order of Procedure to the CAS Court Office.
66. On 23 January 2023, the PFF informed the CAS Court Office that the employment contract between the PFF and Scott Cooper was confidential, that it had contacted, but not heard from Mr Cooper in relation to the disclosure request of 16 December 2022 and therefore requested the CAS Court Office for an additional deadline to respond to this request.
67. On 23 January 2023, the Coach clarified that *“his request for document production was conditional, i.e. [...] only in case the [PFF] contested the Coach’s description of Mr. Cooper’s engagement with the PFF. [...] if [the Coach’s] description of Mr Cooper’s engagement [...] is uncontested by the Parties, there is no need for PFF to submit the engagement contracts of Mr Cooper”*.
68. In any event, the CAS Court Office granted the PFF a short extension until 25 January 2023 to comply with the disclosure request.
69. In its correspondence of 25 January 2023, the PFF *inter alia* referred to its position in the Appeal Brief to assert the Coach’s *“freelance position as an external consultant”* to prove that he did not provide any professional services. However, it was unable – on account of confidentiality – to provide any contracts with Mr Cooper.
70. On 28 January 2023, the Coach reemphasised that the request for disclosure of Mr Cooper’s employment contract(s) with the PFF was only if the PFF disputed the fact that Mr Cooper was employed by the PFF.
71. On 2 February 2023, Mr Cooper directly requested the CAS Court Office that he did not wish to participate in the proceedings as a witness as he was a third party.

IV. THE HEARING

72. On 23 February 2023, a hearing was held via video conference. The Sole Arbitrator was assisted by Mr Fabien Cagneux, CAS Managing Counsel.
73. The Sole Arbitrator was joined at the hearing by:
 - i. For the PFF: Mr Menno Teunissen and Mr Thomas Spee (legal representatives); Mr Josef Mari C. Malinay (PFF employee and witness).

- ii. For the Coach: Mr Ramadani Herzirdan; Mr Filip Blagojevic and Mr Mirko Poledica (legal representatives); Mr Stefan Bosnic and Mr Milos Simic (witnesses); Ms Gordoranicevic (interpreter).
74. At the hearing, the Parties confirmed that they had no objection to the appointment of the Sole Arbitrator and the holding of the hearing by video connection.
 75. The witnesses and the interpreter were invited by the Sole Arbitrator to tell the truth, subject to sanctions of perjury. The Parties and the Sole Arbitrator had the opportunity to examine and cross-examine the witnesses.
 76. At the conclusion of the hearing the Parties expressly stated that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings.

V. THE PARTIES' SUBMISSIONS

77. 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 Sole Arbitrator, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant

78. In its Appeal Brief, the PFF requested the following prayers for relief:

"[...] that the CAS admits this Statement of appeal [sic] against the Decision rendered by the FIFA Dispute Resolution Chamber on 17 May 2022. In this perspective, and based on CAS code R48.5, to suspend the execution of the Decision under appeal

The Appellant requests the Court of Arbitration for Sport to:

- ***In limine litis***
 - *Suspend the present proceedings pending the outcome of the criminal proceedings in Philippines.*
- ***Merits***
 - *To pronounce the financial claim addressed against the [PFF] was to be rejected as the PFF has no standing to be sued.*
 - *Reject all further claims of [the Coach].*
 - *Find that the contract has tacitly been terminated and there are no overdue salaries between parties.*

- *Alternatively*
 - *Reject all the claims of [the Coach].*
 - *Find that the salary reduction has been tacitly accepted by [the Coach] and there are no overdue salaries between parties.*
 - *Find that the contract has been terminated without just cause by [the Coach] and there is no legal right to claim any financial compensation between parties.*
 - *More Alternatively*
 - *Consider the contract to be terminated based on article 6 of the Contract.*
 - *Apply the principles of reasonableness and good faith.*
 - *In any event*
 - *Confirm that based on the appealed decision no sporting sanction can be applied upon the Appellant;*
 - *Order the Respondent to bear the costs of proceedings before the Court of Arbitration for Sport;*
 - *Award a contribution to be established at its discretion to cover the legal fees and expenses of the [PFF].*
- [sic]*”.

79. In summary, the PFF submitted the following arguments in support of its Appeal:

PFF’s standing to be sued

- The Contract was a tripartite agreement between the PFF, the Coach and the Foundation. However, the Contract explicitly provided that the “*payment of [the Coach’s] salary will be under the responsibility of the [Foundation]*”.
- As such, the Coach ought to have made the Foundation a party to these proceedings. The PFF has no standing to be sued.

PFF’s burden of proof, deliberate omissions, and lack of evidence

- CAS jurisprudence (CAS 2011/A/2625, CAS 2005/A/968 and CAS 2004/A/730), FIFA regulations (Article 12 of the FIFA Rules Governing the Procedures of the FIFA Football Tribunal) and the Swiss Civil Code (Article 8) all prescribe that the burden of proof rests with the party alleging a certain fact.

- In this context, the Coach has only produced the signed Contract, the Default Notice and proof of accreditation at tournaments that took place in June 2021 and October 2021.
- However, the Coach has not – and cannot – prove that he has “*executed his contract in due form*”.
- The Coach was not present in the Philippines and attempts to demonstrate the provision of services by referring to “*some unverified WhatsApp messages without any further context or explanation*”.
- The role of an assistant coach involves “*more than just a few WhatsApp messages over the course of a year. Other staff members were on the pitch, making reports to PFF management and attending offline and online meetings per the employment contract, which clearly sets out all the necessary tasks*”.
- Whilst these messages are addressed to “Scott”, the Coach has not proved that this person is in fact Scott Cooper. In any event, Mr Cooper was not the head coach of the PFF. He was “*a manager within the organisation, however the head coach position was filled in by other persons during the alleged contract period of the coach (example: Mr Goran Milojevic, Mr Stewart Hall)*”.
- The Coach was not involved in daily team and technical meetings – further proof that he was a freelance, external consultant.
- Similarly, the Coach’s correspondence via WhatsApp with Mr Palami cannot be accepted as formal notice served upon the PFF.
- The Coach justifies his infrequent involvement with the PFF because working for a national team (as opposed to a club) is periodic and not performed on a daily basis. He also admits to his “*lack of activity*” for a year in an email of 5 March 2021.
- The Coach held various positions for the PFF, but has not proved that he has actually provided services to the PFF. He was obliged, under Clause 2.3 of the Contract to “*report any time*” to the PFF, but failed to do so.
- Further, the Coach has not furnished the entire employment contract, pursuant to which the Parties agreed to a salary reduction “*which would remain in effect as long as the COVID crisis rages*”.
- The Coach did not provide any services to the PFF from December 2020 – December 2021, save for two specific missions from 23 May to 17 June 2021 and October 2021 respectively.
- In any event, the Coach was paid an aggregate amount of PHP 1,715,000 (one million seven hundred and fifteen thousand Philippine Peso), in March 2021, May 2021, June 2021 and October 2021. The Coach’s failure to disclose these payments

demonstrates the “*lack of credibility*” and “*violates the most elementary principles defended by FIFA and CAS [and also] violates Philippine criminal law*”.

- The fact that the Coach continued to work for a year without complaint is further evidence of the fact that he “*agreed to terminate the employment contract and switch to a freelance collaboration*”. The Coach was providing services on a freelance basis without claiming any overdue remuneration from the PFF. This is evidenced by the conduct of both parties over time, and the Sole Arbitrator must take into account the “*whole context of the employment relationship and the various agreements made by the parties regarding the implementation and modification of this employment contract*”.

Tacit termination and consent to the new agreement between the parties

- The Coach never showed a proactive attitude seeking to provide services starting in September 2020. Similarly, he did not put the PFF on notice of breach of its employment contract for 14 months.
- The Coach therefore failed to prove any will to execute the Contract. His silence over a 14-month period demonstrates that he was “*not interested in pursuing his contractual relationship with the [PFF]*”, even if the Contract was assumed to be enforceable.
- FIFA has previously established that where both parties were no longer interested in, or in a position to “*uphold a continuation of the contractual relationship*”, the contract should be “*tacitly terminated [...] meaning that the parties had not committed any breach of the contract*”, with no financial consequences.
- This principle should be applied to the case at hand. The Parties stopped executing the Contract following the first international camp which the PFF paid the Coach for. The fact that the Coach did not contest the amounts received, amounts to his acceptance of a tacit termination of the Contract between the Parties. Applying the maxim *qui tacet consentit* (“silence gives consent”), the Coach should be found to have tacitly accepted the termination of the Contract.
- As the Contract had been tacitly terminated 14 months before the Coach explicitly sought to terminate it, the PFF considered it irrelevant to reply to the Default Notice and Termination Notice.
- Moreover, the Respondent failed to inform the FIFA PSC that he had agreed to reduce his salary, and further that he had been paid “*on more than five occasions*”.
- Therefore, the PFF has no liabilities towards the Coach – it stopped paying the Coach on the same day that the Parties decided to end their collaboration in November 2020.
- The salary reduction was tacitly accepted – or at least tolerated – by the Coach and there was no just cause to terminate the Contract.

- In any event, termination of the Contract was permissible under:
 - Article 6.1 of the Contract, which enables the PFF to terminate in the event of *“any fraud or dishonesty by Assistant Staff member while performing the duties required by [the Contract] including, but not limited to, falsifying, altering, or otherwise fraudulently preparing any documents or records of or required by the [...] PFF or FIFA, pertaining transcripts, compliance reports, or any other document pertaining or related to any section of the Team Management.”*
 - Article 6.2 of the Contract, which enables the PFF to terminate in the event of *“any conduct, including acts or omissions, that misleads the Team Management about any matter related to the employment”*.
 - Article 6.3 of the Contract, which permits the PFF to terminate in the event of, amongst other things, *“any prolonged absence from the performance of obligations, duties, and responsibilities [...] without the prior consent of the Team Management”*.
- Therefore, even if the Contract was not tacitly terminated by mutual agreement in November 2020, the Contract was terminated pursuant to Article 6.3 of the Contract, as the Coach was neither present in the Philippines nor provided any services to the PFF.
- If not Article 6.3 of the Contract, then Article 6.2 would be applicable, and if not Article 6.2, then the PFF had the right to terminate the Contract under Article 6.1.

Compensation to be calculated reasonably and proportionately

- If financial compensation is found to be payable by the PFF to the Coach, then such compensation must be in accordance with principles of *“freedom of contract and reasonableness”*, having regard for the specific circumstances of the case at hand.
- To that end, the maximum liability of the PFF should be 11 months’ worth of salary with the deduction of PHP 1,715,000 (one million seven hundred and fifteen thousand Philippine Peso), any other payment allegedly received during the term of the Contract plus a reduction of 30%. To decide otherwise would lead to a disproportionate decision in favour of the Coach, without taking into account his unacceptable behaviour. Compensation of USD 600,000 (six hundred thousand) for just twenty days of services provided by the Coach is unreasonable.

Both parties contributed to the breach of the Contract

- As an alternative argument, compensation must be calculated on a case by case basis by assessing all the relevant factors relating to the case and must calculate an amount in a fair and comprehensible manner.

- According to CAS jurisprudence, it is for the judging authority to “*carefully assess [...] all the factors and determine how much weight, if any, each of them should carry in calculating compensation under Article 17.1 RSTP*”.
- Therefore, even if the PFF was responsible for the termination of the Contract, “*both parties equally contributed to the termination [...] and consequently no compensation should be payable by either party*”.

Application of sporting sanctions

- The Appealed Decision initially provided for the threat of sporting sanctions in the event of the PFF’s failure to pay the Coach. This sanction cannot be applied to the PFF as it is not a professional football club. This is reflected by the rectified Appealed Decision, which provides that failure to pay the Coach would lead to a “*restriction on receiving a percentage of development funding until due amounts are paid*” by the PFF.
- This sanction holds no legal basis and is unclear and ambiguous in its wording. The FIFA PSC should have specified what percentage of development funding would be withheld.
- Therefore, even if the PFF’s appeal were to fail on its merits, sporting sanctions should not be imposed.

B. The Respondent

80. In his Answer, the Coach requested the Sole Arbitrator to decide as follows:

- “1. *The appeal filed on 19 July 2022 by the Philippine Football Federation against the decision issued on 17 May 2022 by the Football Tribunal – the Players’ Status Chamber of [FIFA] is dismissed.*
2. *The [PFF] shall bear its own costs and is ordered to pay [the Coach] a contribution towards his legal fees and other expenses incurred in connection with these arbitration proceedings, the amount of which will be specified at a later stage;*
3. *The entire costs of the CAS administration and the arbitration fees shall be borne in their entirety by the [PFF].”*

81. In summary, the Coach submitted the following arguments in support of its Answer:

Preliminarily, on the PFF’s standing to be sued

- The PFF’s arguments are unclear and contradictory. Article 4 of the Contract states that remuneration would be paid by the ‘Team Management’ which includes the PFF and the Foundation.

- The Contract was drafted by the PFF, not the Coach. Any doubts as to whether the PFF was obliged to remunerate the Coach need to be interpreted in the Coach's favour, in line with the *contra stipulatorem* principle.
- In any event, the Coach was providing services to the PFF, not the Foundation.
- Further, the PFF relies on a document signed by Mr Palami on behalf of the PFF to assert that the coach agreed to a 30% salary deduction, but refuses to accept that it had the responsibility to remunerate the Coach under the Contract.

Sanction

- The PFF did not designate FIFA as the respondent in these proceedings and therefore cannot challenge the sanction imposed. This position has been established in CAS jurisprudence.
- Conversely, the Coach will be entitled to initiate a procedure before the FIFA Disciplinary Committee if the PFF fails to honour its decision.
- Article 8(2)(b) of Annex 2 of the RSTP does not limit FIFA in terms of the range of the percentage it can impose as a sanction – i.e. FIFA can decide to withhold 100% of the PFF's development funding.

Overdue payables

- By 31 December 2029, the PFF owed the Coach at least two monthly salaries.
- The Appellant's obligations towards the Respondent for the period November 2019 – March 2020 amounted to USD 30,000 (thirty thousand US Dollars) (6,000 x 5 months) and the same is valid for the period April – August 2020, if the salary reduction is not taken into account.
- For the period November 2019 – November 2021, the Coach owed the PFF USD 171,000 (one hundred and seventy one thousand US Dollars).
- The PFF paid the Coach:
 - Approximately USD 21,000 (twenty one thousand US Dollars) in 2020.
 - Approximately USD 24,300 (twenty four thousand three hundred US Dollars) in 2021, with USD 1,905 (one thousand nine hundred and five US Dollars) deducted for airplane tickets for Mr Bosnic and Mr Simic.
- These payments combined, are lower than its debt from the Second Contract, even if a 30% reduction on account of Covid-19 was applied.
- The 2020 payments were paid towards settling debt under for the period April – 1 September 2020, whilst the 2021 payments were paid towards settling salaries

under the Contract. This meant that salaries from November 2019 – March 2020 in the amount of USD 127,600 (one hundred and twenty seven thousand six hundred US Dollars) were fully unpaid of which the Coach claimed USD 97,605 (ninety seven thousand six hundred and five US Dollars).

- The PFF’s claims about the Coach (1) “pretending” that termination was on account of their non-compliance; (2) choosing not to refer to payments received and (3) continuing to claim salaries in spite of the parties having ended their relationship in November 2020, are therefore “*preposterous*”.

The Coach’s obligation to provide services beyond 1 December 2019

- CAS jurisprudence states (CAS 2014/A/3463 and CAS 2013/A/3354) that a club is not entitled to demand performance of a player’s obligations, let alone fine him, until it pays him the outstanding amounts.
- Therefore, even if the PFF’s allegations about the Coach’s non-performance were true – which they are not – the Coach was entitled to refuse to work for as long as there were outstanding payments due to him.
- Therefore, all arguments related to non-performance of the Coach’s duties are not only factually incorrect and misleading but also irrelevant.

The Coach’s absence from the Philippines

- Article 2(4) of Annex 2 to the RSTP states that the validity of a contract may not be subject to the granting of *inter alia* a work or residence permit. It is the employer’s obligation to obtain visas or work permits for its employees. Therefore, the Coach’s absence from the Philippines was the PFF’s fault. The Coach “*expressed the utmost flexibility in his approach to stay on good terms*” with the PFF.

The PFF’s false statements

- In its Answer the Coach submits that all the following statements by the PFF were false:
 - Mr Cooper was not head coach of the PFF’s teams;
 - The Coach spoke to the Foundation on 2 November 2021;
 - Mr Palami sent a notice to the Respondent 4 November 2021;
 - A criminal complaint was filed before the Coach’s first default notice of 20 November 2021;
 - Pending criminal procedure requires suspension of the arbitration;

- The Contract was tacitly terminated, after which a freelance collaboration was agreed upon;
- The Coach did not perform his duties;
- The PFF was impacted by the Covid-19 pandemic;
- The salary deduction document was actually signed 5 months before it was dated;
- There were no outstanding debts towards the Respondent in the previous contract;
- Two cash payments of USD 5,000 were made in 2021; and
- That a photo from October 2020 demonstrates the Coach's absence from the national team.

Coach's termination with just cause

- Article 4(1) of Annex 2 of the RSTP applicable to coaches, mirrors RSTP Article 14(2), applicable to players. As such, failure to pay at least two monthly salaries amounts to just cause to terminate a contract.
- The PFF owed more than 12 salaries to the Coach and had been put on notice of default on two occasions before the Coach ultimately served the Termination Notice.
- The PFF's delay in payment started as early as December 2019 – the Coach tolerated this breach for nearly two years before he decided to terminate the Contract.

Compensation for damages

- Article 6(1) of Annex 2 of the RSTP applicable to coaches, mirrors RSTP Article 17, applicable to players. As such, the party in breach, in this case the PFF, shall pay compensation.
- Damages include 'Mitigated Compensation', and 'Additional Compensation' as defined in the RSTP.
- The Coach signed the Indjija Contract on 1 November 2022. Therefore, the initial damages of USD 488,000 (four hundred and eighty eight thousand US Dollars) granted by the FIFA PSC should be mitigated by the value of the Indjija Contract; i.e. USD 11,700 (eleven thousand seven hundred US Dollars).
- However, no mitigation should be awarded to the Coach, on account of the egregious circumstances involved here. As such, the compensation awarded by the

FIFA PSC should not be reduced and the Coach should be entitled to six months of Additional Compensation.

Duty to mitigate

- The Coach tried his best to find alternative employment but was unfortunately not successful.
- The fact that he had not been paid for two years and was unable to find a job for a further subsequent year demonstrates that the Indjija Contract – at a significantly lower value – was accepted as a last resort.

Net/gross calculation

- Compensation awarded by the FIFA PSC were net of tax.
- The Contract also provided that remuneration would be paid net of taxes.
- Therefore, the Coach is claiming a total of USD 584,928 (five hundred and eighty four thousand nine hundred and twenty eight US Dollars) net, together with interest.

VI. JURISDICTION OF THE CAS

82. Article R47 of the CAS Code provides as follows:

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

83. Neither Party has contested the CAS’s jurisdiction to hear this appeal, both expressly citing the Article 57 of FIFA Statutes as conferring appellate jurisdiction upon the CAS. In addition, the Sole Arbitrator also notes Article 56 of the FIFA Statutes, pursuant to which FIFA recognises the CAS as the competent appellate body.
84. Both Parties also confirmed the CAS’s jurisdiction having subsequently signed and returned the Order of Procedure to the CAS Court Office.
85. The Sole Arbitrator agrees with the Parties, and it therefore follows that the CAS has jurisdiction to hear this dispute.
86. The Sole Arbitrator was requested by the PFF to stay the matter at hand, pending the outcome of proceedings apparently ongoing in the Philippines. The same request had been made of (and denied by) the FIFA PSC.
87. These other proceedings were described as a “criminal complaint” against the Coach, issued by Mr Palami. It appeared that the threat of these other proceedings were made in

November 2021, however, were formally lodged on 8 February 2022, after the Coach had already claimed before FIFA.

88. The PFF believed that the Coach had falsified documents and was guilty of “criminal libel” and that the Criminal Courts in the Philippines were best to deal with these issues. The PFF looked to balance its interests with the Coach’s. If he was found criminally liable, then this would have an impact on his claims before FIFA, now being appealed at CAS. Whereas, if not, then he would have simply suffered a delay.
89. The Coach disputed this, noted that these pleadings had not even been served on him (rather stated that his address was c/o a hotel he last stayed at in the Philippines and noted that the PSC did not feel convinced by the PFF’s arguments here.
90. At the hearing, the Sole Arbitrator asked the PFF’s counsel for any update on these court proceedings. They were unable to assist.
91. The Sole Arbitrator examined the correspondence from Mr Palami in November 2021. The basis of his threat to the Coach was his belief that the Coach had been paid some monies during 2021, so to say the FIFA that he had not was somehow criminal and libellous. Mr Palami then files an affidavit with the criminal court in February 2022 and again he refers to payments that he states were made and that by the Coach stating that none had been made in 2021, he had been libelled by the Coach.
92. The Sole Arbitrator determined not to stay the matter at hand. It is clear that the dispute in the Philippines is a libel dispute between Mr Palami and the Coach. The PFF are not a party to this. Any damages won by Mr Palami would be for him and would not have any set-off value in a contractual dispute between the PFF and the Coach. Whilst it is true that a factor in both cases is whether or not the Coach received payments in 2021, the Sole Arbitrator could see why the PSC would feel more than able to examine the evidence on this issue and reach a decision, as, indeed the Sole Arbitrator is able to do on appeal.

VII. ADMISSIBILITY

93. Article R49 of the CAS Code provides that:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sport-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”.

94. The FIFA Statutes (Article 57(1)) requires appeals against final decisions passed by FIFA’s legal bodies to be *“lodged with the CAS within 21 days of receipt of the decision in question”*.
95. The Appealed Decision was communicated by FIFA to the Parties on 20 June 2022.
96. The Appellant filed its Statement of Appeal on 10 July 2022, complying with the requirements of Article R48 of the CAS Code.

97. It therefore follows that the PFF's Appeal is admissible.

VIII. APPLICABLE LAW

98. Pursuant to Article R58 of the CAS Code (*Law Applicable to the merits*), in an Appeals Arbitration procedure before the CAS:

“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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

99. The Sole Arbitrator notes that the Appellant has made no stipulation as to the applicable law in its Statement of Appeal or Appeal Brief.

100. The Respondent, on the other hand, has stated that the FIFA RSTP should apply primarily, with Swiss law of subsidiary application, on the basis that:

- i. Article 57(2) of the FIFA Statutes states that “[...] CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”; and
- ii. The Third Contract states that it “shall be primary governed by and construed in accordance with the applicable rules and regulations of FIFA and/or the CAS”.

101. In the absence of any objection from the Appellant, and in any event accepting the Respondent's submissions in this regard, the Sole Arbitrator finds that the FIFA RSTP will be of primary application to the merits of this appeal, with Swiss law applying subsidiarily, where required.

IX. MERITS OF THE APPEAL

A. The Main Issues

102. The Sole Arbitrator observes that the main issues to be resolved are:

- a) Does the PFF have standing to be sued?
- b) Does the salary reduction apply to the Second Contract?
- c) Was the Contract mutually terminated?
- d) If not, did the Coach terminate the Contract with just cause?
- e) What are the consequences of such termination?

f) Should any sporting sanctions be maintained?

103. These issues will be considered in turn.

a) PFF's standing to be sued

104. The PFF directed the Sole Arbitrator to the line in the remuneration section of the Contract that stated: *"The payment of this salary will be under the responsibility of the [Foundation]."*
105. The PFF submitted that whilst it was a party to the Contract, it was not the party that was responsible for paying the Coach. The Foundation was so responsible. As the claims brought by the Coach, that are under appeal at the CAS, solely related to arrears of remuneration and compensation based on the remuneration, should the Coach be found to have terminated with just cause, then there were no claims against the PFF, but only against the party responsible for the remuneration, i.e. the Foundation. Additionally, as the Coach had not issued any claims before FIFA against the Foundation and as it was not a party before the CAS, the Sole Arbitrator should annul the Appealed Decision.
106. The Coach pointed out that before this line, there was a clear reference at the beginning of Article 4 to the *"Team Management"* paying the remuneration of the Coach and the PFF was part of the Team Management. As such, both were responsible for paying the remuneration. Further, the Coach cited the *contra stipulatorem* principle and referred to CAS 2015/A/4333 and CAS 2008/A/1589 which had applied it. In summary, according to this principle, if the Contract was inconsistent then that should be applied against the drafter of the contract i.e. the PFF.
107. On balance, the Sole Arbitrator was not convinced that the PFF could look to annul the Appealed Decision on such grounds. The Contract was a contract of employment, where the Coach was providing his services to the PFF. The PFF runs the game of football in the Philippines and has a number of national football teams that compete across the world at different age groups. The Contract clearly notes that: *"PFF is the National Sports Association duly recognized by [FIFA], [AFC], Philippine Olympic Committee ("POC") and the Philippine Sports Commission ("PSC") as the sole private organization responsible for the governance, development and promotion, of association football in the Philippines."* The Coach was part of the team coaching these teams and the players for the PFF.
108. The role of the Foundation was also clearly stated in the Contract: *"the Foundation offers to help PFF source sponsors or funds to help defray the expenses of men's National team..."*
109. The Sole Arbitrator notes that the Foundation was a party to the Contract and was termed part of the *"Team Management"* but he sees this as part of an agreement between the Foundation and the PFF. From a coach's point of view, he or she would be interested in what obligations and rights he or she derived or owed to their employer and what they received back, rather than how their employer was funded. Article 4 of the Contract is not particularly well drafted. Both the PFF and the Foundation have the responsibility to pay

the Coach, not just his salary, but a range of bonuses too. The insertion of the line saying that the remuneration is the sole responsibility of the Foundation conflicts with the overarching responsibility of both to pay the Coach.

110. The Sole Arbitrator relies upon Article 18 (1) of the Swiss Code of Obligations to assist in interpreting this line in the Contract. He is able to look beyond the actual wording and to consider the real intentions of the parties and the true nature of the Contract.
111. Ultimately, the Contract is a contract of employment. An employer must pay its employee. If a third party agrees with the employer to help it with that “expense”, then that is all well and good, but the expense remains the obligation of the employer and, in the case at hand, the PFF remained responsible for it, in the event the Foundation ultimately does not help the PFF meet it.
112. A final point was that when the Coach accepted a salary reduction, he did so by way of a written letter, which was between himself and the PFF. The Foundation were not a party to a document that varied the remuneration of the Coach. The Sole Arbitrator notes that this may be because it related to the Second Contract and not the Contract, however, as is seen below, that was not the PFF’s position and more importantly, it supports the Sole Arbitrator’s position that the PFF was the employer and the Coach was the employee.
113. The Sole Arbitrator additionally notes that the dispute resolution clause in the Contract directs the parties to FIFA and then to the CAS on appeal, if there is a dispute. The Coach would be unable to take the Foundation to FIFA, as it is not part of the football family. Indeed if he had tried, the Foundation may well have objected to that, whilst the PFF maintained this stance on lack of standing to be sued. It cannot have been the Parties’ intention for this clause to be rendered totally useless.
114. The interpretation taken by the Sole Arbitrator is that the primary parties to the Contract were the PFF as employer and the Coach as employee. The PFF is responsible for paying the expense (the remuneration and bonuses). If the Foundation decides to make these payments on behalf of the PFF, the Coach is fine with that (indeed it was not clear how the payments that were made were actually paid. A number seemed to come from Mr Palami personally). However, if the Coach is not paid at all, then his dispute is with his employer and any dispute between them then goes to FIFA and then to the CAS on appeal. The PFF may then have its own dispute with the Foundation, but that is not relevant to FIFA and/or the CAS.

b) Does the salary reduction apply to the Second Contract?

115. The Sole Arbitrator notes that the PFF’s position regarding the timing and the duration of the salary reduction the Coach accepted was at odds with the position of the Coach. This is relevant when attempting to assess whether there were arrears due to the Coach under the Contract when it was terminated.
116. What is undisputed is that the parties signed the Contract on 11 September 2020. It appears that the salary reduction letter (which related to Covid) was also signed that day.

However, the PFF allege that it was re-signed that day, having been originally been signed in April 2020.

117. The Sole Arbitrator examined the salary reduction letter. The letter only appeared to have been signed once by the Coach and by Mr Palami (on behalf of the PFF). If it had been re-signed, then there should have been the signatures on it twice, with different dates. If it replaced an original version that was signed in April, then that should have been produced by the PFF to the Sole Arbitrator in the matter at hand.
118. The wording was quite clear too. It lasted until clubs could train again. This appears to have been 2 September 2020. However, the Sole Arbitrator notes that the PFF claim that the reductions continued until December 2021 (relying on the written statement of Ms Anna Liscano), yet the PFF criticises the Coach for not being at a photoshoot of the Team in October 2020. It appears to the Sole Arbitrator that the national team was back together by October 2020. As such, the reduction covered the months of April to September 2020 inclusive and would only have affected one month at most under the Contract.

c) Was the Contract mutually terminated?

119. The Sole Arbitrator notes that the Coach's position is that he terminated the Contract on 10 December 2021, due to alleged unpaid remuneration and with just cause. On the other hand, the PFF submitted that the Contract had already been mutually terminated by the parties and they had moved to a freelance arrangement, the terms of which had been satisfied.
120. The Sole Arbitrator takes note of the Default Notice and the Termination Notice, the validity of both seems uncontested by the PFF (albeit the contents of the same are disputed by the PFF, as will be considered below). The PFF did submit that it ignored the Default Notice, as it was under the impression that the Contract had been mutually terminated. Further, the PFF pointed to the fact that the Coach was not in the Philippines at all in 2020 or 2021, including in October 2020 when the official photographs of the national team were taken. The various payments that were made to the Coach between November 2020 and October 2021 were all in relation to the various *ad hoc* assignments the Coach undertook, as part of the new freelance arrangements, with the payments being made around (or even at, often in cash) the various overseas camps.
121. The Coach's position is that he constantly demanded sums due to him under the Second Contract, under the Contract and sums due to the other coaches too. The payments in November and December 200 were the final sums due under the Second Contract, after the agreed Covid deductions. The payments received between March and October 2021 were used in the main to settle the sums due to the other coaches, however, some balances were retained by the Coach, but these left significant shortfalls under the Contract.
122. The Sole Arbitrator notes the position of the PFF as regards this alleged mutual termination and therefore considers what evidence there is to support this position, when the Coach relies upon the Contract that the PFF acknowledges was signed in September 2020. The burden is therefore on the PFF.

123. The submissions of the PFF regarding the alleged mutual termination and the entry into the freelance arrangements were unhelpful. There was no specific date cited for when this happened, no clear details as to where the parties were, who was actually a party to the termination on behalf of the PFF and the Foundation (Mr Palami was referred to, but it was unclear whether it was just him and who he represented, the PFF (as the salary reduction letter indicates), the Foundation, (as other correspondence indicates) or both or the like.
124. The evidence provided to support this submission was equally left wanting. As regards direct evidence, the Sole Arbitrator was presented with Mr Josef Mari C. Malinay, a PFF employee. He was unable to give any personal evidence of this mutual termination. During the hearing, the Sole Arbitrator asked him what Mr Palami had said regarding this termination. Mr Malinay could not remember. He was asked about what the Coach had told him. He replied that the Coach had told him he was just working on overseas camps now. Apparently this was at the Camp in Singapore, which would have been in September 2021.
125. For reasons best known to the PFF, Mr Palami did not attend the hearing to provide evidence. Additionally, the PFF, whilst realising the importance of documenting in writing a salary variation, did not prepare any termination agreement. Additionally, it did not produce a freelance contract, rather it relied upon the “*long-lasting relationship the Parties*” had.
126. The PFF then made lengthy submission regarding the actions of the parties which were to demonstrate the Coach’s tacit acceptance of the freelance arrangements. The PFF pointed to a lack of complaints by the Coach; to his non-attendance of a photoshoot or at any engagements in the Philippines post-Covid; and to payments that were made at the camps, which related to the freelance work at those camps.
127. The Sole Arbitrator notes that the Coach had a counter-position for all of those submissions – he complained constantly for his arrears, not just for him but for the other coaches (he directed the Sole Arbitrator to the various WhatsApp messages with Mr Palami) and these culminated in the Default Notice; he could not attend anything in the Philippines, as he did not have a visa (there was evidence of WhatsApp correspondence with the PFF in March 2021 where the Coach requested assistance to obtain a visa); further he was actively scouting across Europe for players that might be (and many were) eligible to represent the Philippines, i.e. he was providing services under the Contract; and he acknowledged that some of these payments were made (he disputed a number of the cash payments that were apparently made by Ms Anna Liscano, the PFF’s administration manager, who also failed to attend the hearing to be examined by the parties and the Sole Arbitrator).
128. The Sole Arbitrator also considered the chronology of events. It appears from the PFF’s submissions that this alleged mutual termination occurred in November 2020. It seems somewhat surprising that, just two months after signing a new agreement with the PFF, with a salary increase and having gone through Covid, the Coach would at this stage switch to a freelance arrangement. Indeed this does not accord with him requesting the PFF to help him obtain a visa so he could return to the Philippines in March 2021, nor

does it seem to fit with his constant WhatsApp messages with Scott Cooper from September 2020 until he terminates the Contract. The terms of the alleged freelance arrangements were never made particularly clear by the PFF to the Sole Arbitrator, but seemed to relate purely to camps, for which the PFF would request his help. Why would he be so actively scouting if the PFF did not request him to do so?

129. On balance, the Sole Arbitrator was not convinced that the PFF had met its burden of proof here. There was practically no evidence produced by the PFF to support its allegations. Whereas the Coach produced the signed Contract and evidence that he continued to work (albeit hampered by Covid and the lack of a visa), continued to demand his (and others') salary under the Contract. The Sole Arbitrator was not persuaded that the Contract was mutually terminated, rather that the Contract continued until it was terminated by the Coach on 10 December 2021.

d) Did the Coach terminate the Contract with just cause?

130. The Sole Arbitrator notes that the PFF made two additional alternative arguments: (i) that the Coach lacked just cause to terminate the Contract; or (ii) alternatively, that the PFF could have terminated the Contract in any event pursuant to Clause 6 of the Contract.

131. Taking the second of these first, the Sole Arbitrator notes that the PFF simply did not exercise any right it may or may not have under the Contract. The Contract was terminated by the Coach, pursuant to the Termination Notice. What the PFF might have been able to do is largely irrelevant. It did not terminate the Contract.

132. This leaves the question as to whether the Coach did or did not have just cause to terminate the Contract.

133. Having determined that the Contract remained in force and that the only deduction might have been for the month of September 2020 (and then 30% of that month's remuneration), the Coach should have received his contractual monies for the next 14 months.

134. However, it appears to be largely agreed between the Parties that he received monies in November and December 2020 (albeit, the Coach's position is that these were sums due pre-September 2020 in relation to the Second Contract); monies in March 2021 (albeit that the Coach claims he only received USD 1,160 of these, as the rest went to the other coaches); further monies in May 2021 (where the Coach claims he retained USD 3,700 after paying the Head Coach); and then again in October 2021. The PFF claim there were a couple of cash payments made in the sum of USD 5,000 each.

135. Even on the PFF's best case (which will be assessed below), it is clear to the Sole Arbitrator that there were numerous and significant arrears due to the Coach at the time of termination. The Coach gave the appropriate warnings in the Default Notice. The Sole Arbitrator notes that FIFA assessed these to be USD 97,605 in the Appealed Decision, whereas the Coach now claims these were higher. In any event, the quantum of the overdue sums and frequency of non-payments of monthly salaries are sufficient for the Sole Arbitrator to concur with FIFA - the Coach had just cause to terminate the Contract.

e) What are the consequences of such termination?

136. In cases where there is no agreement in the contract which sets out what the consequences should be, the Sole Arbitrator needs to consider the arrears due to the Coach at the time of termination and any compensation for the remaining term of the contract that was terminated with just cause.
137. In the case at hand, the Coach did not appeal against the Appealed Decision, however, he has made representations that he was actually owed more on the termination date than he was awarded. This was due to him having used some of the monies he acknowledged receiving from Mr Palami, to settle the PFF's debts to his fellow coaches (namely Messrs Bosnic, Simic and Milojevic). The Coach did, however, challenge the written evidence of Mrs Liscano, and denied receiving two cash payments of USD 5,000 each in June and October 2021.
138. The Sole Arbitrator notes that FIFA assessed these arrears to be USD 96,928, whereas the Coach now claims these were USD 171,000 net, less the USD 43,400 paid, therefore leaving USD 127,600. The Coach acknowledged that as he did not appeal the Appealed Decision, he has not challenged the finding by FIFA and, as such, the "*Appellant has 'got away' with not being requested to pay USD 29,995.*"
139. With this margin, the issues before the Sole Arbitrator as to whether the Coach could demonstrate that he shared part of the monies he received with his fellow coaches or whether the PFF could demonstrate that the alleged cash payments were made or not – ultimately, even if these two issues were to go against the Coach, his arrears would still be in excess of USD 96,928. As such, those two issues can be left moot and the Sole Arbitrator will uphold this part of the Appealed Decision awarding the Coach arrears of USD 96,928.
140. Next, considering the compensation element, the Sole Arbitrator notes that FIFA awarded the Coach USD 488,000 being the residual value of the Contract, from 1 December 2021 until 31 December 2026.
141. The Sole Arbitrator notes that the PFF did not challenge this calculation, rather advanced arguments that it would be unfair to award this total sum and that ultimately no compensation should be awarded, as both Parties contributed to the breach of the Contract. The PFF submitted that the Coach never complained over a 14-month period about the delayed payments and that he never provided any services during 2021. The Sole Arbitrator, however, noted that despite Covid, the Coach continued to actively scout for players that could play for the PFF's national teams, he was in constant contact with other coaches and Mr Palami, and he did demand his arrears (and those of his colleagues) over the period too. Ultimately, the evidence produced by the Parties went against the allegations and submissions made by the PFF in this regard.
142. The Sole Arbitrator notes that when the matter was heard before FIFA, the Coach was still unemployed and he had not signed the Indijja Contract, under which the Coach

earned USD 11,700. FIFA considered this to be a matter falling under Article 6.2.a of Annex 2 of the RSTP (March 2022 edition), however, as the Coach did sign the Indjija Contract, it must be considered under Article 6.2.b of Annex 2 of the RSTP, which states:

“In case the coach signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the “Mitigated Compensation”). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the coach shall be entitled to an amount corresponding to three monthly salaries (the “Additional Compensation”). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the residual value of the prematurely terminated contract.”

143. Ultimately, there is no difference to the result established in the Appealed Decision. Whilst the Sole Arbitrator on the one hand has to deduct the Mitigated Compensation, he also can add the same amount back, as there were overdue payables in the case at hand, resulting in Additional Compensation, however, this can never exceed the residual value of the Contract, so the Sole Arbitrator awards USD 488,000, as FIFA did.
144. Additionally, the rate of interest and the dates this should flow from were not challenged and remain as FIFA awarded in the Appealed Decision.

f) Should any sporting sanctions be maintained?

145. The Sole Arbitrator notes that FIFA did not look to issue any sporting sanctions on the PFF for its breach of the Contract, that resulted in the Coach terminating with just cause. The Appealed Decision is silent in that regard.
146. However, the Appealed Decision does contain the consequences that the PFF would suffer if it does not respect the FIFA decision (now if it does not respect this CAS Award). This is pursuant to Article 8 of Annex 2 of the RSTP and is now common place in such FIFA decisions.
147. The Sole Arbitrator notes that the PFF will have 45 days from the date of this award to make the payments to the Coach and it is therefore in the PFF’s hands to do this. If it does not, then it knows in advance what the disciplinary consequences will be. However, this event has not yet happened and is not a matter that the Sole Arbitrator is able to deal with in the scope of this arbitration.

B. Conclusion

148. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Sole Arbitrator determines that the Appeal is dismissed and the Appealed Decision is confirmed.
149. Any further claims or requests for relief are dismissed.

X. COSTS

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed of 10 July 2022 by the Philippine Football Federation against the decision of the FIFA Players Status Committee of 17 May 2022 is dismissed.
2. The decision of the FIFA Players Status Committee of 17 May 2022 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Award Date: 27 November 2023

THE COURT OF ARBITRATION FOR SPORT

Mark A. Hovell
Sole Arbitrator