



**TAS / CAS**

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

**CAS 2022/A/9034 Cameroon Football Association (FECAFOOT) v. Antonio Conceição da Silva**

## **ARBITRAL AWARD**

**delivered by the**

## **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President: Mr Alexander McLin, Attorney-at-law in Lausanne, Switzerland  
Arbitrators: Mr Benoît Pasquier, Attorney-at-law in Zurich, Switzerland  
Mr Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland  
*Ad Hoc* Clerk: Mr Pierre Turrettini, Attorney-at-law in Geneva, Switzerland

**between**

**Cameroon Football Association (FECAFOOT), Cameroon**

Represented by Mr Elie Elkaim and Mr Jonathan Borno, Attorneys-at-law in Lausanne, Switzerland

**Appellant**

**and**

**Antonio Conceição da Silva, Portugal**

Represented by Mr Jonás Vallina, Attorney-at-law in Oviedo, Spain

**Respondent**

## I. PARTIES

1. The Cameroon Football Association (the “Appellant” or the “FECAFOOT”) is a national federation affiliated with the Confederation of African Football (“CAF”) and the Fédération Internationale de Football Association (“FIFA”). The FECAFOOT is the governing body of football in Cameroon.
2. Mr Antonio Conceição da Silva (the “Respondent” or the “Coach”) is a professional football coach born in Maximinos, Braga, Portugal, on 6 December 1961.

## II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the Parties’ oral and written submissions and documentation produced in this appeal. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On 27 August 2021, the Government of the Republic of Cameroon (the “Government”), represented by its Minister of Sports and Physical Education (the “Sports Minister”) and the FECAFOOT, on one hand, and the Coach, on the other hand, signed an employment agreement (“*contrat de travail*”) (the “Contract”) for a position of coach selector of the national team “*Les Lions Indomptables*” (the “National Team”), valid as from 20 September 2021 until 19 September 2023.
5. The signature of the Contract followed an initial contractual relationship between the parties, which started on 4 October 2019, and a letter from the Minister of State, Secretary General, of Cameroon to the Sports Minister confirming that the Head of State agreed to extend the contractual relationship of the Coach.
6. According to Article 3 para. 1 of the Contract, the Coach should, in particular:

### “*Obligations de l’Entraîneur-Sélectionneur*”

[...]

a) *Mettre tout en œuvre pour gagner la Coupe d’Afrique des Nations 2021 ou tout au moins atteindre la finale ;*

b) *Qualifier le Cameroun à la phase finale de la Coupe du monde 2022 ;*

c) *Améliorer la place du Cameroun dans le classement FIFA en le hissant au premier rang africain pendant la durée d’exécution du présent contrat ; [...]*”

freely translated as follows:

***“Obligations of the Coach-Selector***

[...]

a) *To make every effort to win the 2021 African Cup of Nations or at least reach the final;*

b) *To qualify Cameroon for the 2022 World Cup finals;*

c) *To improve Cameroon's position in the FIFA rankings to the highest position in Africa during the period of execution of this contract; [...]*”

7. Article 3 para. 2 let. i) of the Contract provided also that the Coach should live (“résider”) in Cameroon during the entire duration of the Contract.

8. Article 4 of the Contract included the obligations of the Government, which were mostly of a financial nature and included in particular the following:

*“[...] Le paiement des rémunérations et avantages convenus conformément aux stipulations du présent contrat ; [...]*”

freely translated as follows:

*“[...] The payment of agreed remuneration and benefits in accordance with the provisions of this contract; [...]*”

9. Article 5 of the Contract included the obligations of the FECAFOOT, which were mostly of a sporting nature, except the payment of certain expenses (travel costs, service phone, credit card) and the obligation to ensure the payment (“s’assurer du paiement”) of bonuses related to games.

10. According to Article 7 of the Contract, the Coach was entitled to receive the following remuneration:

***“Rémunération***

*1) Outre les avantages prévus aux articles 4 et 5 ci-dessus, les parties conviennent de ce que le salaire mensuel de l’Entraîneur-Sélectionneur est **90.000 € (quatre-vingt-dix mille Euros)** net d’impôts, taxes et charges sociales.*

*2) L’Entraîneur-Sélectionneur soustrait de la rémunération susvisée, celle des quatre (4) assistants techniques librement choisis par lui tel que prévu à l’alinéa (4) de l’article (2). Ainsi, ladite rémunération est répartie ainsi qu’il suit :*

- l’Entraîneur-Sélectionneur : 52.000 € (cinquante-deux mille Euro);*
- l’Entraîneur-Adjoint-second : 10.000 € (dix mille Euro) ;*
- le Préparateur Physique : 10.000 € (dix mille Euro) ;*
- l’Entraîneur adjoint chargé de la performance : 10.000 € (dix mille Euro) ;*
- le Coordonnateur Adjoint : 8.000 € (huit mille Euro).*

*3) La rémunération visé à l’alinéa ci-dessus est virée dans un compte bancaire qui peut être ouvert au niveau local ou à l’étranger et dont les coordonnées sont communiquées aux services financiers compétents du Ministère chargé des Sports. [...]” [Emphasis original.]*

freely translated as follows:

**“Remuneration**

*1) In addition to the benefits provided for in articles 4 and 5 above, the parties agree that the monthly salary of the Coach-Selector shall be **€90,000 (ninety thousand Euros)** net of taxes and social security contribution.*

*The Coach-Selector shall subtract from the above remuneration the remuneration of the four (4) technical assistants freely chosen by him as provided for in paragraph (4) of Article (2). Thus, the said remuneration shall be distributed as follows:*

- *the Coach-Selector: €52,000 (fifty-two thousand Euros);*
- *the Assistant-Secondary Coach: €10,000 (ten thousand Euros);*
- *the Physical Trainor: €10,000 (ten thousand Euros);*
- *the Assistant Performance Coach: €10,000 (ten thousand Euros);*
- *the Deputy Coordinator: €8,000 (eight thousand Euros).*

*3) The remuneration referred to in the above paragraph shall be transferred to a bank account which may be opened locally or abroad and whose details shall be communicated to the competent financial services of the Ministry of Sport. [...]”*

11. Article 8 let. c) of the Contract provided that the Coach was entitled to receive an amount of EUR 50,000 in case of qualification of the National Team to the 2022 FIFA World Cup.
12. According to Article 9 of the Contract, the Contract could be terminated by the FECAFOOT and/or the Government (“*A l’initiative de la FECAFOOT et/ou du MINSEP*”) in particular according to the following conditions:

**“Résiliation**

[...]

- a) *En cas de non-respect de l’une quelconque des obligations de l’Entraîneur-Sélectionneur ;*
- b) *En cas de négligence grave, après au moins une sommation interpellative pour y mettre un terme. [...]”*

freely translated as follows:

**“Termination**

[...]

- a) *In the event of non-compliance with any of the obligations of the Coach-Selector;*
- b) *In the event of gross negligence, after at least one summons to stop it. [...]*”

13. The Contract also included a dispute resolution clause, which provided as follows:

**“Article 10 : Règlement des différends**

- 1) *Tout différend né de l’exécution ou de l’interprétation du présent contrat fera l’objet d’une conciliation préalable avant tout contentieux ;*
- 2) *En cas d’échec dans la résolution dudit différend devant les conciliateurs la FECAFOOT [sic], les parties s’engagent à soumettre l’affaire devant le Tribunal Arbitral du Sport (TAS) aux fins de médiation. Le TAS choisit à cet effet un médiateur pour proposer aux parties, une solution à leur différend.*
- 3) *En cas d’acceptation totale de la solution proposée par les conciliateurs de la FECAFOOT ou par le médiateur du TAS, il sera dressé un procès-verbal de conciliation ou de médiation qui règle définitivement le litige et ne sera susceptible d’aucun recours devant quelque juridiction ;*
- 4) *En cas d’acceptation partielle de la solution proposée par les conciliateurs de la FECAFOOT ou par le médiateur du TAS, il sera dressé un procès-verbal de conciliation ou de médiation partielle qui règle définitivement les points du litige acceptés par les parties, et les questions réglées ne seront susceptibles d’aucun recours juridictionnel ;*
- 5) *A défaut d’une conciliation totale ou partielle, les parties s’engagent à ce que leur litige soit résolu conformément aux dispositions des articles 22 alinéa C et 23 du règlement du statut et du transfert des joueurs de la FIFA.*
- 6) *En cas d’échec total par les instances susmentionnées de régler définitivement tout différend entre les parties, celles-ci acceptent de le soumettre au Tribunal Arbitrage [sic] du Sport de Lausanne, en Suisse conformément aux règles et procédures en vigueur.”*

freely translated as follows:

**“Article 10: Settlement of disputes**

- 1) *Any dispute arising from the execution or interpretation of this contract shall be subject to prior conciliation before any litigation;*
- 2) *In case of failure to resolve the said dispute before the conciliators of FECAFOOT, the parties undertake to submit the matter to the Court of Arbitration for Sport (CAS) for mediation. CAS shall choose a mediator to propose to the parties a solution to their dispute.*

- 3) *In case of total acceptance of the solution proposed by the FECAFOOT conciliators or by the CAS mediator, a conciliation or mediation report shall be drawn up which shall definitively settle the dispute and shall not be subject to appeal before any court;*
  - 4) *In case of partial acceptance of the solution proposed by the FECAFOOT conciliators or by the CAS mediator, a conciliation or partial mediation report shall be drawn up which shall definitively settle the points of the dispute accepted by the parties, and the issues settled shall not be subject to any recourse to the courts;*
  - 5) *If full or partial conciliation cannot be reached, the parties undertake to resolve their dispute in accordance with the provisions of articles 22 para. C and 23 of the FIFA Regulations on the Status and Transfer of Players.*
  - 6) *In the event of total failure by the above-mentioned bodies to settle definitively any dispute between the parties, the parties agree to submit it to the Court of Arbitration for Sport in Lausanne, Switzerland in accordance with the rules and procedures in force.”*
14. On 31 December 2021, the FECAFOOT President, Mr Samuel Eto’o Fils, (the “FECAFOOT President”) sent a letter to Mr Ferdinand Lucien Emmanuel Makota, Deputy Coordinator of the National Team, to inform him about the decision to suspend him considering activities contrary to morals that he committed during the preparatory training camp for the Africa Cup of Nations (the “AFCON”).
  15. In January and February 2022, Cameroon hosted the AFCON.
  16. On 3 February 2022, the National Team lost against Egypt in the semi-finals of the AFCON.
  17. On 5 February 2022, the National Team won against Burkina Faso and finished in the third place of the AFCON.
  18. On 7 February 2022, the President of the Republic of Cameroon sent a letter to the captain of the National Team, Mr Vincent Aboubakar, to invite the Indomitable Lions to continue to be motivated and cohesive to be prepared for the important future sporting events.
  19. On 13 February 2022, during a TV interview on CRTVweb, the Sports Minister confirmed that the Coach would be maintained as Coach-Selector of the National Team.
  20. On 14 February 2022, the FECAFOOT President sent a letter to the Sports Minister to recall that the presidential decree n° 2014/384 of 26 September 2014 provides that the administrative, sports and technical management of the football national teams is the responsibility of the FECAFOOT and, therefore, the study about maintaining or terminating the Contract with the Coach was ongoing. He further indicated that the competent minister would be informed about the decision in due course.

21. On 16 February 2022, the Secretary General of the FECAFOOT, Mr Benjamin Didier Banlock, issued a media release regarding the decisions of the FECAFOOT Executive Committee of the same day. The suspension of Mr Ferdinand Lucien Emmanuel Makota, Deputy Coordinator of the National Team, was confirmed and a time limit of 72 hours was given to the FECAFOOT President to take a decision regarding the future of the Coach with the National Team.
22. On 28 February 2022, the FECAFOOT President sent a letter to the Coach by email with the following content:

**“Objet : Fin de votre contrat**

**Monsieur CONCEIÇÃO,**

*Au moment où votre aventure avec notre Sélection Nationale s’achève, le football camerounais par ma personne tient à vous remercier de l’implication dont vous avez fait preuve aux côtés de nos joueurs.*

*Nous tenons à remercier aussi votre staff pour le travail fait à vos côtés.*

*Je vous convie à une rencontre pour échanger sur la fin de notre collaboration et tirer le bilan qui s’impose.*

*Sachant compter sur votre disponibilité,*

*Je vous prie de trouver ici, **Monsieur CONCEIÇÃO**, l’expression de toute considération distinguée.”* [Emphasis original.]

freely translated as follows:

**“Subject: End of your contract**

**Mr CONCEIÇÃO,**

*As your adventure with our National Team comes to an end, Cameroonian football through myself would like to thank you for the involvement you have shown alongside our players.*

*We would also like to thank your staff for the work done by your side.*

*I invite you to a meeting to discuss the end of our collaboration and make an assessment of the results.*

*Knowing that I can count on your availability,*

*Please accept, **Mr CONCEIÇÃO**, the expression of my highest consideration.”*

23. On the same day, the Sports Minister published the following media release:

**“COMMUNIQUE DE PRESSE**

*Le Ministre des Sports et de l'Education Physique a l'honneur d'informer le public que, sur Très Hautes Instructions de **Monsieur le Président de la République**, répercutées par correspondance n°232/CF/SG/PR du 28 février 2022, le Sélectionneur de l'équipe nationale fanion de football masculin, M. Antonio CONCEIÇÃO, et l'encadrement technique des Lions Indomptables sont remplacés par les responsables ci-après :*

<i>Manager Sélectionneur :</i>	<i>M. SONG Rigobert ;</i>
<i>Entraîneur Sélectionneur Adjoint :</i>	<i>M. MIGNE Sébastien ;</i>
<i>Team Manager :</i>	<i>M. KALLA Raymond ;</i>
<i>Assistant Coach :</i>	<i>M. SIMO Augustine ;</i>
<i>Entraîneur des Gardiens de But :</i>	<i>M. SOULEYMANOU ;</i>
<i>Préparateur Physique :</i>	<i>M. FEVRE Raphael ;</i>
<i>Analyste Vidéo :</i>	<i>M. BALTAZE David.</i>

*La Fédération Camerounaise de Football (FECAFOOT) est invitée à prendre les dispositions nécessaires, en ce qui la concerne, pour une mise en œuvre harmonieuse et rapide de ces Très Hautes Directives, afin de permettre aux Lions Indomptables d'affronter, dans les meilleures conditions possibles, les importantes échéances sportives futures.” [Emphasis original.]*

freely translated as follows:

**“MEDIA RELEASE**

*The Minister of Sports and Physical Education has the honour to inform the public that, on the Very High Instructions of the **President of the Republic**, by correspondence n°232/CF/SG/PR of 28 February 2022, the Selector of the national men's football team, Mr Antonio CONCEIÇÃO, and the technical staff of the Indomitable Lions are replaced by the following officials:*

<i>Selection Manager:</i>	<i>Mr. SONG Rigobert ;</i>
<i>Assistant Coach-Selector:</i>	<i>Mr. MIGNE Sébastien ;</i>
<i>Team Manager:</i>	<i>Mr. KALLA Raymond ;</i>
<i>Assistant Coach:</i>	<i>Mr. SIMO Augustine ;</i>
<i>Goalkeepers' Coach:</i>	<i>Mr SOULEYMANOU ;</i>
<i>Physical Trainer:</i>	<i>Mr. FEVRE Raphael ;</i>
<i>Video Analyst:</i>	<i>Mr. BALTAZE David.</i>

*The Cameroon Football Federation (FECAFOOT) is invited to take the necessary measures, as far as it is concerned, for a harmonious and rapid implementation of these Highest Directives, in order to enable the Indomitable Lions to face, in the best possible conditions, the important future sporting events.”*

24. On the same day, the FECAFOOT President issued the following media release:



*“La Fédération Camerounaise de Football annonce à l’opinion publique et à la famille du sport, la fin du contrat de l’Entraîneur Antonio CONCEIÇÃO.*

*C’est l’occasion de le remercier ainsi que tout son staff pour le travail effectué au sein de notre Sélection Nationale.*

*Les échéances à venir pour notre Equipe Nationale nécessitent de nouvelles orientations et un souffle nouveau.*

*Nous lui souhaitons beaucoup de chance et de réussite pour l’avenir.”*

freely translated as follows:

*“The Cameroon Football Federation announces to the public opinion and to the sport family, the end of the contract of Coach Antonio CONCEIÇÃO.*

*This is an opportunity to thank him and all his staff for the work done for our National Team.*

*The upcoming deadlines for our National Team require new orientations and a new breath.*

*We wish him good luck and success for the future.”*

25. On 4 March 2022, the Coach, through his counsel, sent a letter to the FECAFOOT and the Sports Minister to dispute the termination of the Contract and, recalling the positive results of the National Team with the Coach and the obligation to proceed with an official evaluation of the Contract as per its Article 6 para. 2, requested the payment of the following amounts in his favour:

- **“45.000,00 EURO NET pending- 11.250,00 EURO NET month difference not received payments October 2021, November 2021, December 2021 and January 2022”;**
- **“90.000,00 EURO NET pending salary 20th January 2022 to 19th February 2022”;**
- **“24.000,00 EURO NET pending salary 20th February 2022 to 28th February 2022”;**
- **“ONE MILLION AND FOUR HUNDRED AND SEVEN THOUSAND EURO NET (1.407.000,00 EURO)” as compensation for termination without just cause; and**
- **“THIRTY SEVEN THOUSAND AND FIVE HUNDRED EURO NET (37.500 EURO)” as bonus for the qualification to the 2022 FIFA World Cup.**

[emphasis in the original]

**III. PROCEEDINGS BEFORE THE PLAYERS' STATUS CHAMBER OF THE FIFA FOOTBALL TRIBUNAL**

26. On 18 March 2022, the Coach filed a claim before FIFA requesting the payment of the total amount of EUR 1,603,500, detailed as follows:

- EUR 159,000 as outstanding remuneration, detailed as follows:
  - EUR 45,000 as outstanding remuneration for October 2021, November 2021, December 2021 and January 2022;
  - EUR 90,000 as outstanding salary for the period from 20 January 2022 to 19 February 2022;
  - EUR 24,000 as outstanding salary for the period from 20 February 2022 to 28 February 2022.
- EUR 1,407,000 as compensation for breach of contract without just cause;
- EUR 37,500 as outstanding bonus.

27. On 22 March 2022, the FECAFOOT was invited to provide its comments to the claim no later than 12 April 2022.

28. On 21 April 2022, the Secretary General of the FECAFOOT, Mr Blaise Djounang, sent a letter to FIFA to inform it that it received a copy of the notice of 19 April 2022 transmitted to the Coach but that it never received an invitation from FIFA to comment on the matter concerning the Coach. The letter also included the following content:

“[...]”

*En tout état de cause, il importe de relever que le contrat de l'entraîneur Ex Sélectionneur des Lions Indomptables du Cameroun avait été conclu avec l'Etat du Cameroun, à travers son Ministre des Sports et de l'Education Physique, et qui en assurait toute la gestion administrative et financière. La FECAFOOT ne s'occupant que de la gestion technique des sélectionneurs.*

*Toutefois, nous prenons acte de ce que la présente question sera soumise à l'examen de la Chambre du Statut des Joueurs.”*

freely translated as follows:

“[...]”

*In any case, it is important to note that the contract of the former coach of the Indomitable Lions of Cameroon was concluded with the State of Cameroon, through its Minister of Sports and Physical Education, who was in charge of the administrative and financial management. FECAFOOT was only in charge of the technical management of the coaches.*

*However, we note that this matter will be submitted to the Players' Status Chamber for examination.”*

29. On 22 April 2022, FIFA sent an email to the FECAFOOT with a copy of the communication sent on 22 March 2022 to [sgoffice@fecafoot.org](mailto:sgoffice@fecafoot.org), [paulmebizoo@yahoo.fr](mailto:paulmebizoo@yahoo.fr) and [divinenamanga1@gmail.com](mailto:divinenamanga1@gmail.com).

30. On 7 June 2022, the Single Judge of the Players Status Chamber of the FIFA Football Tribunal (the “FIFA PSC”) issued a decision (the “Appealed Decision”) as follows:

“1. *The claim of the Claimant, Antonio Conceição da Silva Oliveira, is admissible.*

2. *The claim of the Claimant is partially accepted.*

3. *The Respondent, FECAFOOT, has to pay to the Claimant, the following amounts:*

- ***EUR 213,750 net as outstanding remuneration plus interest as follows:***
  - 5% interest p.a. over the amount of EUR 11,250 (remaining part of the salary of October 2021) as from 1 November 2021 until the date of effective payment;;*
  - 5% interest p.a. over the amount of EUR 11,250 (remaining part of the salary of November 2021) as from 1 December 2021 until the date of effective payment;*
  - 5% interest p.a. over the amount of EUR 11,250 (remaining part of the salary of December 2021) as from 1 January 2022 until the date of effective payment;*
  - 5% interest p.a. over the amount of EUR 90,000 (salary of January 2022) as from 1 February 2022 until the date of effective payment;*
  - 5% interest p.a. over the amount of EUR 90,000 (salary of February 2022) as from 1 March 2022 until the date of effective payment;*

- ***EUR 37,500 net as outstanding bonus payment;***

- ***EUR 1,352,250 net as compensation for breach of contract without just cause plus 5% interest p.a. as from 18 March 2022 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.*

6. *Pursuant to art. 8 of Annexe 2 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:*

1. *The Respondent shall be imposed with a restriction on receiving a percentage of development funding, up until the due amounts are paid.*

8. *The consequences shall only be enforced at the request of the Claimant in accordance with art. 8 par. 7 and 8 of Annexe 2 and art. 25 of the Regulations on the Status and Transfer of Players.*
9. *This decision is rendered without costs*". [Emphasis original.]

31. On 23 June 2022, FIFA notified the grounds of the Appealed Decision to the Parties.

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

32. On 13 July 2022, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"), the FECAFOOT filed a Statement of Appeal at the CAS, challenging the Appealed Decision. The FECAFOOT indicated English as the language of the arbitration and nominated Mr Pierre Muller, former Judge, Switzerland, as arbitrator.
33. On 18 July 2022, the CAS Court Office acknowledged receipt of the Statement of Appeal of the FECAFOOT and transferred a copy to the Coach. The CAS Court Office invited the Parties to indicate if they were interested in the submission of the dispute to CAS mediation. The CAS Court Office also invited FIFA to participate as party, should it want to, within a time limit of ten days.
34. On 20 July 2022, the Coach indicated to the CAS Court Office that he agreed that the language of the arbitration is English and suggested that the Parties could file exhibits both in English and French without the need to submit a translation. The Coach also nominated Mr Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland, as arbitrator.
35. On 21 July 2022, the FECAFOOT filed its Appeal Brief with the CAS Court Office and indicated that it agreed to file exhibits in French without a translation.
36. On 25 July 2022, the CAS Court Office acknowledged receipt of the Appeal Brief of the FECAFOOT and transferred a copy to the Coach. The CAS Court Office also informed the Parties that Mr Pierre Muller did not accept his nomination as arbitrator and invited FECAFOOT to nominate another arbitrator.
37. On 28 July 2022, FIFA informed the CAS Court Office that it renounced its right to intervene as a party in the proceedings.
38. On 2 August 2022, the Coach filed its Answer to the Appeal Brief of the FECAFOOT, which included a request to order the FECAFOOT to pay to the Coach an additional amount of EUR 46,763.72 as outstanding bonus.
39. On 3 August 2022, the CAS Court Office acknowledged receipt of the Answer of the Coach and transferred a copy to the FECAFOOT. The CAS Court Office also invited

the Parties to inform whether they preferred a hearing to be held in the matter or for the Panel to issue an award based solely on the Parties' written submissions.

40. On the same day, the Coach informed the CAS Court Office that he did not consider necessary to hold a hearing considering the extensive documentation submitted.
41. On 15 August 2022, the FECAFOOT informed the CAS Court Office that it nominated Mr Benoît Pasquier, Attorney-at-law in Zurich, Switzerland, as arbitrator.
42. On 22 August 2022, the FECAFOOT informed the CAS Court Office that it preferred that a hearing be held. In addition, the FECAFOOT raised that the Answer of the Coach included a counterclaim of EUR 46,763.72 which shall be declared inadmissible considering that counterclaims are only allowed before CAS in ordinary proceedings but not admissible in appeal proceedings in accordance with Article R55 of the CAS Code.
43. On the same day, the CAS Court Office invited the Coach to indicate whether he maintained his prayer for relief nr. 3.
44. On 26 August 2022, the Coach informed the CAS Court Office that he withdrew his counterclaim and did not maintain his prayer for relief nr. 3.
45. On 26 September 2022, the CAS Court Office informed the Parties that the Panel appointed to decide this case was constituted as follows:  
  
President: Mr Alexander McLin, Attorney-at-law in Lausanne, Switzerland  
  
Arbitrators: Mr Benoît Pasquier, Attorney-at-law in Zurich, Switzerland  
  
Mr Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland.
46. The CAS Court Office also informed the Parties that Mr Pierre Turrettini, Attorney-at-law in Geneva, Switzerland, was appointed as *Ad Hoc* Clerk.
47. On 12 October 2022, the CAS Court Office invited the FECAFOOT to clarify the reasons for which it considered that a hearing was necessary.
48. On 27 October 2022, the FECAFOOT informed the CAS Court Office that it considered necessary to hold a hearing to discuss and present all its factual and legal arguments to the Panel as well as for the questioning of both Parties in relation with the submissions filed by the Coach and the FECAFOOT.
49. On 15 November 2022, the CAS Court Office called the Parties to appear at the hearing, which would be held by videoconference on 23 January 2023.
50. On 18 November 2022, the Coach returned the Order of Procedure, duly signed.
51. On 22 November 2022, the FECAFOOT returned the Order of Procedure, duly signed, and modified in accordance with the Parties' agreement regarding the exhibits.

52. On 23 January 2023, a hearing took place by videoconference. At the hearing, besides the Panel, the *Ad Hoc* Clerk and Mrs Delphine Deschenaux-Rochat, Counsel to the CAS, the following persons were present:
- i. For the FECAFOOT: Mr Blaise Djoungang, Acting Secretary General of the FECAFOOT and Mr Jonathan Borno, counsel;
  - ii. For the Coach: the Coach, Mr Jonás Vallina, counsel, and Mrs Soraia Carvalho, interpreter.
53. At the outset of the hearing, the Parties confirmed that they had no objections in respect to the constitution of the Panel.
54. The Parties also agreed that the participation of Mr Jacques Celestin Songo'o, invited by the Coach, to the hearing was not necessary.
55. Mr Blaise Djoungang, Acting Secretary General of the FECAFOOT, was heard as a party. In substance, he declared the following:
- He started his functions as Acting Secretary General in February 2022 because his predecessor resigned.
  - The Government is the principal party to the Contract assuming its sovereign missions. The salaries and premiums of the Coach were paid by the Sports Minister via the Minister of Finance based on an approved budget. Therefore, the salary of the Coach does not appear in the accounts of the FECAFOOT but in the accounts of the Sports Minister.
  - The FECAFOOT only had a technical role. Payment of travel expenses was subsidiary and a part of the supervision mission of the FECAFOOT. In that context, the FECAFOOT should verify that games premiums were paid but could not pay such premiums itself. It could only inform the Government that premiums were not paid but not order such payments. The FECAFOOT could request from the Government copies of evidence of payments.
  - Considering the good level of the National Team, it was expected from the Coach that the National Team wins the AFCON or at least reach the final. There was a lot of hope because of the potential of the National Team. The obligation of the Contract was therefore not met.
  - He did not see the exchanges of correspondences of the FIFA PSC proceedings, except the last communication which indicated that the time limit set to the FECAFOOT had expired.
  - Article 9 of the Contract specifies the conditions to terminate the Contract. While he was not in function when the Contract was terminated, he believes that the termination was based on Article 9 let. a) (noncompliance with the obligations), because the Coach did not meet the objectives, did not file the reports and did not comply with the obligation to reside in Cameroon.

- The letter of the FECAFOOT is not a termination letter but only a letter of thanks and invitation to discuss past results. The letter from the Sports Minister includes the termination.
- He does not have any document evidencing the presence of the Coach in Cameroon.

56. The Coach was heard as a party. In substance, he declared the following:

- The objective of the Contract was to make all possible efforts to reach the final of AFCON and to qualify the National Team to the 2022 FIFA World Cup. The National Team finished in the third place of the AFCON and qualified for the 2022 FIFA World Cup. After the AFCON, all members of the National Team were praised by representatives of the Government.
- The objective to choose the best players was met. The best player of the AFCON was in the National Team. He prepared the best team for the future, as requested.
- The FIFA ranking of the National Team went from 58<sup>th</sup> to 36<sup>th</sup>. The Coach and his team did a great job with very good atmosphere and team spirit, and so felt the players of the National Team.
- The Sports Minister paid the salaries, taxes and social contributions. The Coach gave his bank account details to the Sports Minister.
- Mr Jonás Vallina, counsel of the Coach, was present for the meeting regarding the signature of the Contract.
- The AFCON was indeed one of the most important competitions for the National Team and, when negotiating the Contract, the Government requested the Coach to make his best efforts to win the AFCON. It was however not decisive to reach the final and win it. As a professional coach, he could not guarantee such result.

57. During the hearing, the Parties had the opportunity to present and defend their positions and reiterate the arguments already put forward in their respective written submissions.

58. Before the hearing concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard and to be treated equally had been duly respected.

## **V. SUBMISSIONS OF THE PARTIES**

59. The following outline is a summary of the Parties' arguments and submissions which the Panel considers relevant to decide the present dispute and does not necessarily comprise each and every contention put forward by the Parties. The Panel has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in the following summary. The Parties' written and

oral submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

**A. The Appellant’s Submissions and Prayers for Relief**

60. The Appellant’s submissions contained in its Appeal Brief, as well as those made during the hearing may be summarized as follows:

- In accordance with Article R58 of the CAS Code and Article 57 para. 2 of the FIFA Statutes, the Panel shall apply the various regulations of FIFA, including the applicable Regulations on the Status and Transfer of Players (“FIFA RSTP”) and subsidiary Swiss law. The Contract explicitly mentions also different laws on the first page, which are also applicable to the dispute.
- The FIFA PSC did not have jurisdiction to hear the dispute. The Contract provides indeed for a precise dispute resolution mechanism in four steps at its Article 10, which corresponds to the intent of the Parties. First, a conciliation had to be engaged between the Parties (step 1). Failing to find an agreement during such process, the Parties should have then submitted their dispute to mediation before CAS (step 2). It was only if the conciliation and the mediation failed that the Parties could eventually file their claims before the FIFA PSC (step 3), with a possible appeal to CAS (step 4). In the present case, while the FECAFOOT President proposed a meeting in his letter of 28 February 2022, the Coach did not engage any conciliation or mediation as required by the Contract (Article 10) but directly filed a claim before FIFA against the FECAFOOT (step 3 directly, overlooking steps 1 and 2). The FIFA PSC – which did not examine Article 10 of the Contract in the Appealed Decision – was therefore not competent to hear the dispute between the Parties and should have declared the claim of the Coach inadmissible. For these reasons, the Appealed Decision shall be set aside.
- The termination process was complied with and the Coach should have initiated the conciliation procedure if he did not agree with the termination of the Contract.
- The Contract was signed between three parties: the Coach, the FECAFOOT and the Government represented by the Sports Minister. The Contract provides for each party specific obligations:
  - The Coach was responsible for the management of the football team with specific objectives to reach (as detailed in Article 3 of the Contract).
  - The Sports Minister, in its capacity of representative of the Government, was in charge of all the financial obligations and therefore the sole party responsible for all benefits and remuneration to be paid to the Coach, to the exclusion of the FECAFOOT. Article 7 of the Contract provided specifically that the salary and benefits of the Coach had to be paid directly by the Sports Minister. In particular, Article 7 para. 3 of the Contract provided that the Coach should communicate his bank account details “*to the competent financial services of the Ministry of Sports*”.



- The FECAFOOT had technical obligations and a few accessory financial obligations, such as to pay the travel expenses of the Coach when he travelled abroad to follow and watch players of the National Team in their clubs. The FECAFOOT had no other financial obligations and was, and has never been, liable to pay the remuneration and the benefits of the Coach under the Contract.
- The Coach has always been paid directly by the Sports Minister and never by the FECAFOOT which was under no obligation to pay the remuneration and benefits of the Coach under the Contract. In the Appealed Decision, the FIFA PSC did not provide any justification as to why, despite the clear wording of the Contract, the FECAFOOT was responsible for the payment of the remuneration and benefits of the Coach, nor mentioned Articles 2 to 5 and 9. Therefore, the FECAFOOT should not have been ordered to pay the outstanding remuneration and bonus of the Coach and the Appealed Decision should be entirely set aside. The decision to terminate the Contract is a decision of the Government which is responsible for its consequences.
- In any event, and should the Panel find that the FECAFOOT was responsible for the remuneration and bonus of the Coach, the termination of the Contract was made with just cause and the FECAFOOT should therefore not have been ordered to pay EUR 1,352,000 as compensation for breach of contract without just cause.
- Under the Contract, the Coach had indeed two strict obligations which had to be fulfilled: 1) to win the AFCON or at least reach the final and 2) to reside in Cameroon to be able to fully follow all players and ensure the best possible management of the team.
- The AFCON was one of the most important sports events held in Cameroon over the last decades. It was made clear to the Coach that it was expected from him to ensure that the National Team win or, at least, reach the final of the competition, otherwise his Contract would be terminated. Both the FECAFOOT and the Sports Minister made in this respect important financial and infrastructural efforts to provide the Coach with what he required for him to reach the objectives set in the Contract. As the National Team finished in the third place of the AFCON, the Coach did not meet the minimum requirements expected from him and breached the Contract (Article 3).

Article 6 para. 2 of the Contract provided that the Contract would be evaluated at the end of the AFCON and therefore allowed the Sports Minister or the FECAFOOT to terminate the Contract should the objectives not be met. As it has been the case, the Sports Minister had no other choice but to terminate the Contract immediately to ensure a smooth and fast transition with the newly appointed Coach-Selector, Mr Rigobert Song.

- The Coach never lived in Cameroon and therefore breached Article 3 para. 2 let. i) of the Contract. He also never presented his monthly program to the FECAFOOT in breach of Article 3 para. 2 let. h) of the Contract.

- For these reasons, the Contract was immediately terminated on 28 February 2022. Such termination was entirely justified by the breaches listed by the FECAFOOT. Therefore, the FIFA PSC should not have ordered the FECAFOOT to pay EUR 1,352,000 as compensation for breach of contract without just cause and the Appealed Decision shall be set aside on this point.
- In the unlikely event that the Panel find that, under the Contract, the FECAFOOT was responsible for the payment of the bonus of the Coach, the FECAFOOT submits that the Coach cannot claim a bonus according to Article 8 let. c) of the Contract. The Coach indeed did not reach the elimination rounds of the 2022 FIFA World Cup because his Contract was terminated before the qualification of the National Team for the 2022 FIFA World Cup. Therefore, the FECAFOOT should not be ordered to pay EUR 37,500 as bonus payment to the Coach.

61. In its Appeal Brief, the Appellant submitted the following requests for relief:

- “1. To declare admissible the Appeal submitted by the Cameroon Football Association.*
- 2. To set aside in its entirety the decision of the Players status Chamber passed on 7 June 2022 between Antonio Conceição da Silva Oliveira and the Cameroon Football Association.*
- 3. To rule that Antonio Conceição da Silva Oliveira is not entitled to any amount to be paid by the Cameroon Football Association in relation with the employment agreement concluded between the Parties.*
- 4. To rule that the termination of the contract of Antonio Conceição da Silva Oliveira was made with just cause.*
- 5. To set aside and cancel all restrictions imposed on the Cameroon Football association pursuant to art.8 of Annexe 2 of the regulations on the Status and transfer of Players.*
- 6. To order Antonio Conceição da Silva Oliveira to bear all the costs of this arbitration including all legal costs incurred by the FECAFOOT for legal representation which shall not be less than CHF 30'000.- (thirty thousand Swiss francs)”*

## **B. The Respondent’s Submissions and Prayers for Relief**

62. The Respondent’s submissions contained in his Answer to the Appellant’s Appeal Brief, as well as those made during the hearing may be summarized as follows:

- In accordance with Article R58 of the CAS Code and Article 57 para. 2 of the FIFA Statutes, the Panel shall apply the various regulations of FIFA, including the applicable FIFA RSTP, and subsidiary Swiss law. Because there was no choice of law clause in the Contract, the Panel shall apply first and foremost the FIFA RSTP

edition of March 2022 and additionally Swiss law (CAS 2006/A/1180). Swiss law will apply for all questions not directly regulated by the FIFA Regulations.

- On 28 February 2022, the FECAFOOT sent a termination letter to the Coach without any prior notice or discussion. The Coach replied to such letter on 4 March 2022, disputing the termination and recalling the evaluation procedure of Article 6.2 of the Contract, and never received any answer from the FECAFOOT. The Coach could therefore not have submitted the matter to a prior conciliation with the FECAFOOT, which was not applicable. Moreover, the Contract was drafted by the FECAFOOT and shall be in any case interpreted against it in accordance with the principles of *contra proferentem* and *in dubio pro operario*. The FIFA PSC was thus fully competent to hear the dispute between the Parties.
- Moreover, the FECAFOOT confirmed the jurisdiction of the FIFA PSC when, on 21 April 2022, nine days after the closing of the investigation phase by the FIFA PSC, the FECAFOOT submitted its formal position and replied to the claim.
- The Coach fulfilled all his obligations provided at Articles 3.1 and 3.2 of the Contract. The Coach initially signed a first contract on 20 September 2019, valid until 19 September 2021, with the FECAFOOT, under the presidency of Mr Seidou Mbombo Nchouwa Njoya, and the former Sports Minister. Because the Parties were both satisfied with the good harmony and sporting results (and the satisfaction of all contractual obligations), the contract was renewed on 27 August 2021 until 19 September 2023, with the common target to use maximum efforts to win the AFCON and qualify the National Team for the 2022 FIFA World Cup.
- While the National Team qualified in the first position of the group stage of the AFCON, on 11 December 2021, Mr Samuel Eto'o Fils was elected President of the FECAFOOT. He replaced Mr Seidou Mbombo Nchouwa, who had signed the Contract with the Coach. On 31 December 2021, Mr Samuel Eto'o Fils, as new President of the FECAFOOT, surprisingly decided to suspend the Deputy Coordinator of the National Team just before the beginning of the AFCON, without any justification or procedure, in breach of Article 2 para. 6 of the Contract.
- The participation of the National Team to the AFCON was a success as the National Team finished in third place with a bronze medal, only defeated in penalty kicks by the Egypt national team in the semi-final. Contrary to what the FECAFOOT alleged, the Contract provided that the Coach should "*make every effort*" to win the AFCON or reach the final and therefore the objective was met: by finishing in third place, the Coach had made all efforts to reach the final. In any case, the interpretation of the Contract shall be made in accordance with Article 18 of the Swiss Code of Obligations ("SCO") (CAS 2015/A/4152) and take into account the principles *contra proferentem* and *in dubio pro operario*. Therefore, in case of doubt regarding the interpretation of the Contract, the Panel shall protect the "weaker" party, i.e. the Coach, who did not draft the Contract.
- The Coach had great results with the National Team (23 games with 14 wins, 7 draws and 2 defeats) and, undoubtedly, contributed to the success of the

qualification of the National Team to the 2022 FIFA World Cup. The Coach elevated the National Team from position 56 to position 38 in the FIFA ranking.

- The Coach submitted all the required reports in accordance with Article 3 para. 2, which is evidenced by his exhibits 14 to 44 filed in these proceedings.
- Regarding the obligation to reside in Cameroon, the Coach rented a property in Nouvelle Route Bastos, Yaounde, where also his technical staff lived. The Coach also submitted evidence in this respect during the proceedings, including a certificate of domicile from the civil authorities in Cameroon. The allegations of the FECAFOOT regarding the breach of contract by the Coach shall therefore be dismissed.
- Article 6 para. 2 of the Contract provided a procedure for an official evaluation session to be held at the end of the AFCON to discuss the termination or modification of the Contract. This evaluation was *sine qua non* to any revision of the Contract. The FECAFOOT breached such provision by terminating the Contract without any justification and without just cause and shall therefore bear the consequences of such termination.
- The FECAFOOT, in particular its new president, decided to terminate the Contract without just cause on 28 February 2022 (and not the Sports Minister, as evidenced by his TV interview of 13 February 2022) and shall therefore be responsible for the consequences of such termination and pay the remaining salaries due and a compensation corresponding to the residual value of the Contract as provided by Article 6 para. 1 and 2 of Annexe 2 of the FIFA RSTP. The Contract was drafted by the FECAFOOT and, from a labour law perspective, the Coach was the “weaker” party, which justifies that the Contract be interpreted with the principles *contra proferentem* and *in dubio pro operario*. Therefore, the Coach shall have the right to claim the entire remuneration due until the end of the Contract as compensation in accordance with Article 6 para. 1 of Annexe 2 of the FIFA RSTP.
- At the date of termination of the Contract the following amounts were due as recognized by the FIFA PSC:
  - EUR 11,250 as remaining part of the October salary 2021;
  - EUR 11,250 as remaining part of the November salary 2021;
  - EUR 11,250 as remaining part of the December salary 2021;
  - EUR 90,000 as the full salary of January 2022;
  - EUR 90,000 as the full salary of February 2022.

The total amount of EUR 213,750 shall be paid to the Coach and then distributed to the other members of his team as provided by Article 7 para. 2 of the Contract. Interest of 5% per annum shall bear over such amounts from the due dates.

- According to Article 6 para. 1 and 2 of Annexe 2 of the FIFA RSTP, the party in breach shall pay a compensation corresponding to all salaries due until the end of the contract like if the employment contract had been performed until that time. As

correctly retained by the FIFA PSC, a total amount of EUR 1,407,000 shall serve as a basis to calculate the compensation due. It corresponds to EUR 90,000 multiplied by 18.6 months, namely the period between 1<sup>st</sup> March 2022 until 19 September 2023 (18 months and 18 days). Referring to Article 337 SCO, the Coach took immediate action after the termination of the Contract to find new employment and was in a final short list of candidates for three national teams. Unfortunately, it did not work. The Coach was also in contact with the following national teams and clubs: Ivory Coast, Namibia, Egypt, Morocco, Congo, Malta, Mexico, Ghana, Belgium, South Korea, Al Rabat, Montpellier, Brøndby, RSC Anderlecht, FC Groningen, FC Utrecht, Malaga CF. The duty to mitigate is more difficult for a coach of a national team level, and therefore the search for a new position may need more time compared to players or other coaches. Because, as per Swiss law, the injured party should be put in the position in which he would have been had the contract been properly fulfilled, the Coach should be entitled to claim the payment of the entire compensation and the Appealed Decision shall be confirmed.

- According to the Contract, the Coach was entitled to receive a special bonus of EUR 50,000 should the National Team qualify for the 2022 FIFA World Cup. The Coach was the main merit responsible for the qualification considering that, under his coaching, the National Team won 5 matches (and lost one) to reach the final qualifications matches against Algeria. The Appealed Decision was therefore correct to grant EUR 37,500 to the Coach as outstanding bonus.
- Article 3 of the Contract provided for the sporting obligations of the Coach, without any interference possible of the FECAFOOT or the Sports Minister. Article 4 provided for the obligations of the Sports Minister and Article 5 for the obligations of the FECAFOOT.

63. In his Answer to the Appeal Brief of the Appellant, the Respondent submitted the following requests for relief:

- “1. To declare inadmissible the Appeal submitted by the Cameroon Football Association against the decision rendered by the FIFA Players’ Status Chamber of the Football Tribunal on 07 June 2022 with reference FPSD-5510.*
- 2. To be entirely confirmed the decision rendered by the Players’ Status Chamber of the Football Tribunal on 7 June 2022 with reference FPSD-5510 between Mr. Antonio Conceição de Oliveira Silva and the Cameroon Football Association and then order to pay by Cameroon Football Association to Mr. Antonio Conceição de Oliveira Silva:*
  - (i) the amount of EUR 213,750 net as outstanding remuneration plus corresponding interests.*
  - (ii) the amount of EUR 1,352,250 net as compensation for breach of contract without just cause plus 5% interest p.a. as from 18 March 2022 until the date of effective payment.*
  - (iii) the amount of EUR 37,500 net as outstanding bonus payment.*

3. *To order to be pay by Cameroon Football Association to Mr. Antonio Conceição de Oliveira Silva the additional amount of EUR 46,763,72 net as outstanding general World Cup 2022 bonus payment.*
4. *To rule that the termination of the contract of Mr. Antonio Conceição da Silva Oliveira was made without a just cause.*
5. *To order to Cameroon Football Association to bear all the costs and all expenses of this arbitration including the legal costs incurred.*
6. *To order to Cameroon Football Association to pay the amount of CHF 5,000 as contribution towards the legal fees of the attorney of the Respondent incurred in the current procedure.*
7. *To order to Cameroon Football Association to pay to the amount of CHF 2,000 for travel expenses of the Respondent in case than an audience will be held presentially in CAS, Lausanne and other expenses incurred in the current procedure.”*

## **VI. JURISDICTION**

64. 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 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.”*

65. The jurisdiction of the CAS, which was not disputed, derives from Articles 56 para. 1 and 57 para. 1 of the FIFA Statutes and Article 10 para. 6 of the Contract.

66. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by the Parties.

67. Accordingly, the Panel is satisfied that the CAS has jurisdiction to hear the present case and to determine, as the first question on the merits, whether the FIFA PSC was competent to deal with the dispute between the FECAFOOT and the Coach.

## **VII. ADMISSIBILITY OF THE APPEAL**

68. According to Article 57 para. 1 of the FIFA Statutes, “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question”.

69. The Panel notes that the FIFA PSC rendered the Appealed Decision on 7 June 2022 and that the grounds of the Appealed Decision were communicated to the Parties by email on 23 June 2022.
70. Considering that the FECAFOOT filed its Statement of Appeal on 13 July 2022, *i.e.* within the deadline of 21 days set in the FIFA Statutes, the Panel is satisfied that the Appeal was filed in a timely manner. In addition, the Statement of Appeal complied with the requirements of Article R48 of the CAS Code and is therefore admissible.

### **VIII. APPLICABLE LAW**

71. Article R58 of the CAS Code provides the following:

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

72. Article 57 para. 2 of the FIFA Statutes provides the following:

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

73. In the present case, the Panel notes that the Parties agree that the various regulations of FIFA (including the FIFA RSTP) shall apply, with Swiss law applying on a subsidiary basis.
74. As the case was brought by the FECAFOOT on 18 March 2022, right after the entry into force of the FIFA RSTP on 16 March 2022, such edition is applicable.
75. In light of the above, the Panel holds that the present dispute shall be decided according to the FIFA RSTP of March 2022 and, subsidiarily, Swiss law.

### **IX. MERITS**

#### **A. The Dispute**

76. The object of these proceedings is the Appealed Decision, which ordered the FECAFOOT to pay:
- as outstanding remuneration to the Coach a total amount of EUR 213,750, plus 5% interest *p.a.* until the date of effective payment, as follows: as from 1 November 2021 on the amount of EUR 11,250, as from 1 December 2021 on the amount of EUR 11,250, as from 1 January 2022 on the amount of EUR 11,250, as from 1

February 2022 on the amount of EUR 90,000 and as from 1 March 2022 on the amount of EUR 90,000;

- as outstanding bonus payment EUR 37,500; and
- as compensation for breach of contract without just cause EUR 1,352,250 plus 5% interest *p.a.* as from 18 March 2022 until the date of effective payment.

77. As mentioned above (para. 44), the Coach withdrew his counterclaim and the Panel therefore does not have to address such counterclaim.

78. The Appealed Decision is challenged by the FECAFOOT which claimed in particular that (i) the FIFA PSC had no jurisdiction on the dispute, (ii) the FECAFOOT was not responsible for the financial obligations of the Contract and, (iii) in any case, the termination of the Contract was made for just cause.

79. In the Appealed Decision, the FIFA PSC found that the Sports Minister terminated the Contract without just cause on 28 February 2022. Thus, the FECAFOOT, as party to the Contract and considering its role, shall pay all outstanding remuneration due to the Coach at the time of the termination (EUR 213,750), plus the special bonus due for the qualification of the 2022 FIFA World Cup (*pro rata* EUR 37,500). The FIFA PSC also considered that the Coach shall be entitled to receive a compensation for breach of contract of EUR 1,352,250, based on Article 6 of Annex 8 of the FIFA RSTP, without any mitigation, considering that the Coach did not sign a new employment agreement since the termination of the Contract.

80. The Panel shall therefore address the following main issues of the present dispute:

- i. did the FIFA PSC have jurisdiction over the dispute between the FECAFOOT and the Coach regarding the termination of the Contract?
- ii. if so, is the FECAFOOT responsible for the payments due to the Coach under the Contract?
- iii. if so, was the Contract terminated on 28 February 2022 with or without just cause?
- iv. what are the financial consequences of the Panel's answer to the third question in this specific case?

81. The Panel shall answer each of those questions separately.

**i. Did the FIFA PSC have jurisdiction over the dispute between the FECAFOOT and the Coach regarding the termination of the Contract?**

82. The first question concerns the competence of the FIFA PSC to deal with the contractual dispute between the FECAFOOT and the Coach. The FIFA PSC declared itself competent based on the FIFA regulations, considering that the matter concerned an employment-related dispute with an international dimension between a Portuguese coach and a FIFA member association.



83. On this aspect, the FECAFOOT submitted that the FIFA PSC had no jurisdiction to hear the dispute since the Contract provided a clear dispute resolution mechanism in four steps. According to its Article 10, the Coach should have first initiated conciliation proceedings and, failing to find an agreement, should then have submitted the dispute to mediation before CAS. Only in the event the conciliation and the mediation failed could the Coach have filed his claim before the FIFA PSC. Considering this, the FIFA PSC should have declared the claim of the Coach inadmissible.
84. The Coach claimed that he could not have submitted the matter to a prior conciliation considering that the FECAFOOT never answered to his letter of 4 March 2022 in which he recalled the evaluation procedure provided for at Article 6 para. 2 of the Contract. Moreover, the Contract was drafted by the FECAFOOT and should therefore be interpreted against it. The FIFA PSC was therefore competent to hear the dispute.
85. As a preliminary remark, the Panel notes that the FIFA PSC is entitled *ex officio* to decide on its own competence, which entails the power to determine whether a dispute is an employment-related dispute between an association and a coach of an international dimension in accordance with Article 22 para. 1 (b) of the FIFA RSTP.
86. In the present case, it is undisputed that the matter is an employment-related dispute between an association and a coach of an international dimension considering the Portuguese nationality of the Coach, which justifies the jurisdiction of the FIFA PSC.
87. Secondly, the Panel refers to Article 186 para. 2 of the Swiss Private International Act (“PILA”), which reads as follows:
- “L’exception d’incompétence doit être soulevée préalablement à toute défense sur le fond.”*
- freely translated as follows:
- “Any plea of lack of jurisdiction must be raised prior any defence on the merits.”*
88. The jurisprudence of the Swiss Federal Tribunal provides in particular that *“Dès lors que le défendeur [...] a procédé sur le fond sans avoir préalablement soulevé l’exception d’incompétence de l’arbitre, il est désormais déchu du droit de soulever ultérieurement”* (freely translated as follows: *“As soon as the Respondent [...] enters into the merits without previously having raised an objection to the jurisdiction of the arbitrator, he is, from that moment onwards, deprived of the right to raise such objection subsequently”*) (ATF 120 II 155).
89. Therefore, in accordance with Swiss law, the Panel considers that if the FECAFOOT had any objection to the competence of the FIFA PSC, it should have raised such objection during the FIFA proceedings as an initial matter. However, it did not do so. When writing to the FIFA PSC on 21 April 2022, the FECAFOOT indeed commented briefly on the merits of the case – claiming that the Contract was concluded with the Sports Minister – and noted that the matter would be analysed by the FIFA PSC. The FECAFOOT is therefore precluded from raising the plea of lack of jurisdiction in the

subsequent and instant arbitration proceedings before the CAS. The argument of the FECAFOOT that it did not receive the initial emails from FIFA does not convince the Panel either, considering that the FIFA Procedural Rules provide that communication by email is considered a valid means of communication and sufficient to establish time limits and their observance. For these reasons already, the prayer for relief of the FECAFOOT regarding the competence of the FIFA PSC shall be dismissed.

90. Moreover, the Panel observes that at no point in time did the FECAFOOT request, whether from the FIFA PSC or the CAS, the suspension of the proceedings to allow a conciliation or CAS mediation to take place between the Parties. Nor did it react when the CAS Court Office proposed a mediation procedure. This behaviour, together with the lack of answer to the letter from the Coach of 4 April 2022 (itself an open door to conciliation), can only reasonably be interpreted as a renunciation to proceed with the conciliation and mediation procedures provided for in the Contract.

91. As a result, the Panel finds that the FIFA PSC was competent to deal with the Coach's claim, with the consequences that the respective request for relief of the FECAFOOT shall be dismissed.

**ii. Is the FECAFOOT responsible for the payments due to the Coach under the Contract?**

92. The FECAFOOT claimed that the Sports Minister was the sole responsible party for all financial obligations under the Contract, evidenced by the fact that all payments were made by the Sports Minister. In addition, the Sports Minister decided to terminate the Contract, and not the FECAFOOT, and shall therefore solely bear the associated consequences.

93. The Coach submitted that the FECAFOOT President decided to terminate his Contract and the FECAFOOT shall therefore be responsible for the consequences of such termination.

94. Having reviewed the Contract and assessed the information provided by the Parties, the Panel outlines the following aspects:

- the Contract is signed by the Sports Minister and the FECAFOOT on one hand and by the Coach on the other hand, which all appear in the headings of the Contract;
- Article 2 para. 5 provides that the FECAFOOT, if needed by the Coach, may recruit and pay any other person with recognized competences in a precise technical area to join the staff;
- Article 3 para. 2 let. k) provides that the Coach shall regularly and monthly report to the FECAFOOT on his activities;
- Most of the financial obligations are provided at Article 4 and are the responsibility of the Sports Minister, which was not disputed by the Coach;
- The FECAFOOT also had some minor financial responsibilities under the Contract

(Article 5), in addition to its sporting responsibilities and role of supervisor for the payment of the premiums due to the Coach;

- On 14 February 2022, reacting to a TV interview of the Sports Minister of the previous day, the FECAFOOT President stated that the management of football national teams was the responsibility of the FECAFOOT which would inform the Sports Minister about its decision to maintain or terminate the Contract with the Coach in due course;
- On 28 February 2022, the FECAFOOT President sent a letter to the Coach about the termination of his Contract on the same day as the media releases were issued by the Sports Minister and the FECAFOOT President.

95. In light of the foregoing, the Panel considers that the Contract had all essential elements of an employment contract according to Article 319 para. 1 SCO and Article 2 of Annexe 2 of the FIFA RSTP. It includes indeed the object of the contract, the rights and obligations of the parties, the status and occupation of the parties, the agreed remuneration, the duration of the contract and the signatures of each party. In addition, the contractual and reporting relationship is with the FECAFOOT, and not the Sports Minister, which is in accordance with the FIFA RSTP, Annexe 2. Accordingly, the Panel is of the opinion that the FECAFOOT was the *de facto* employer of the Coach and is therefore responsible for the payments due under the Contract, even more so when it is the party which decided to terminate the Contract.

96. The Panel concludes that the FECAFOOT is responsible for the financial consequences of the termination of the Contract of the Coach.

**iii. Was the Contract terminated on 28 February 2022 with or without just cause?**

97. Having established that the FECAFOOT is also responsible for the payments due to the Coach under the Contract, the Panel shall now determine whether the termination of the Contract on 28 February 2022 was made with or without just cause.

98. On this aspect, the FECAFOOT claimed that the Coach breached the Contract as he did not comply with the obligations to win the AFCON or at least reach the final and to reside in Cameroon. In addition, the Coach did not submit his monthly program to the FECAFOOT in breach of Article 3 para. 2 h) of the Contract.

99. The Coach denied any breach of the Contract, claiming that the objective of the Contract was to “*make his best efforts*” to win the AFCON or reach the final. With a third place at the AFCON, the objective was therefore met. In addition, on the argument related to his place of residence, he submitted various documents to prove that he was residing in Cameroon during the Contract (including an *attestation de presence effective* issued by the FECAFOOT on 13 October 2021, a *certificat de domicile* issued on 25 October 2021 by the deputy mayor of Yaoundé and a statement of a local notary regarding his tenancy agreement). The Coach also submitted the various reports he made to the FECAFOOT in accordance with Article 3.2 of the Contract.

100. In light of the foregoing, the Panel considers whether the FECAFOOT had just cause to terminate the Contract of the Coach.
101. The Panel observes that the Contract provided the following wording regarding the objective related to the AFCON: “*Mettre tout en œuvre pour gagner la Coupe d’Afrique des Nations 2021 ou tout au moins atteindre la finale*” (freely translated as follows: “*Make every effort to win the 2021 African Cup of Nations or at least reach the final*”).
102. The wording of the Contract is therefore clear. The Coach should “*make every effort*” to win the AFCON or reach the final. While the Panel understands that it is likely that the expectations of the FECAFOOT and the Sports Minister were that the National Team reaches at least the final of AFCON, the Panel is of the opinion that such objective was not an obligation of the Contract as confirmed by the wording of Article 3 para. 1 thereof. The Panel notes also that, in compliance with CAS practice, the absence of sporting results cannot, as a general rule, constitute *per se* a reason to terminate the contractual relationship with just cause (CAS 2011/A/2596, para. 9). Moreover, the Panel observes that the National Team finished in third place which is, in any case, a very good result. It also qualified for the 2022 FIFA World Cup. The Panel therefore agrees with the Coach that the final result of the National Team at the AFCON did not constitute a valid reason to terminate the Contract with just cause. The Panel considers that the Coach complied with his obligations under the Contract as he made every effort to reach the final of the AFCON.
103. On the obligation for the Coach to reside in Cameroon and to submit a monthly program to the FECAFOOT, the Panel notes that the Coach submitted various evidence in this respect, which validity was not disputed by the FECAFOOT in its submissions or during the hearing.
104. In this respect, the Panel recalls that, under Article 8 of the Swiss Civil Code “*Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu’elle allègue pour en déduire son droit*” (freely translated as follows: “*Each party must, if the law does not provide for the contrary, prove the facts it alleges to derive its right*”). As a result, the Panel reaffirms the principle established by CAS jurisprudence that “*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them .... The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*” (cf. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).
105. Considering the above, the Panel finds that the FECAFOOT has not discharged its burden of proof regarding the alleged breaches of the Contract by the Coach. All communications of the FECAFOOT and the Sports Minister following the termination of the Contract did also not mention such alleged breaches.
106. Accordingly, the Panel concludes that the termination of the Contract by the

FECAFOOT was made without just cause.

**iv. What are the financial consequences of the Panel's answer to the third question?**

107. The Panel has now to decide on the financial consequences of the termination without just cause by the FECAFOOT on 28 February 2022. In this context, the Panel shall determine:

- a) what was the outstanding remuneration due to the Coach on 28 February 2022?
- b) based on the answer to the first question, what compensation shall be awarded to the Coach?

108. The Panel shall answer each of those questions separately, taking into due consideration the evidence submitted by the Parties and discussed, in detail, during the hearing.

- a) What was the outstanding remuneration due to the Coach on 28 February 2022?

109. In the Appealed Decision, the FIFA PSC held that, at the date of the termination, the following amounts were due to the Coach:

- EUR 11,250 as the remaining part of the salary of October 2021;
- EUR 11,250 as the remaining part of the salary of November 2021;
- EUR 11,250 as the remaining part of the salary of December 2021;
- EUR 90,000 as the full salary of January 2022;
- EUR 90,000 as the full salary of February 2022;

corresponding to a total amount of EUR 213,750, to be distributed by the Coach to the other members of his team proportionally.

110. In addition, the FIFA PSC retained that the FECAFOOT should pay to the Coach an amount of EUR 37,500 as special bonus for the qualification of the National Team to the 2022 FIFA World Cup (*pro rata* of the full bonus amounting to EUR 50,000).

111. During the proceedings, the FECAFOOT did not dispute the remaining monthly salaries due to the Coach. However, it claimed that the Coach did not reach the elimination rounds of the 2022 FIFA World Cup because his Contract was terminated before the qualification of the National Team and, therefore, the FECAFOOT should not be ordered to pay EUR 37,500 as bonus payment to the Coach.

112. The Coach supported the Appealed Decision with respect to the outstanding remuneration due and submitted that he was mainly responsible for the qualification of the National Team to the 2022 FIFA World Cup, which justified the granting of the bonus *pro rata*.

113. The Panel firstly notes that it is undisputed that a total amount of EUR 213,750 was due to the Coach as outstanding monthly salaries. Therefore, the Appealed Decision shall be confirmed in this respect.

114. The Parties however disagree about the special bonus for the qualification of the National Team to the 2022 FIFA World Cup.
115. The Panel observes first that the National Team qualified for the 2022 FIFA World Cup. It is also true that, with the Coach, the National Team won 5 games and lost one (6 games in total), and that there were 2 games left to definitively qualify the National Team to the 2022 FIFA World Cup (i.e. 8 matches in total).
116. The Panel notes that Article 8 let. d) of the Contract is clear by specifying that the Coach shall receive a special premium of EUR 50,000 “*en cas de qualification pour la Coupe du Monde 2022*” (freely translated as follows: “*in case of qualification to the 2022 World Cup*”).
117. Considering the application of Swiss law on a subsidiary basis, the Panel recalls that “*Lorsqu'un montant (même désigné comme bonus ou gratification) est déterminé ou objectivement déterminable, c'est-à-dire qu'il a été promis par contrat dans son principe et que son montant est déterminé ou doit l'être sur la base de critères objectifs prédéterminés comme le bénéfice, le chiffre d'affaires ou une participation au résultat de l'exploitation, et qu'il ne dépend pas de l'appréciation de l'employeur, il doit être considéré comme un élément du salaire (variable), que l'employeur est tenu de verser à l'employé*” (freely translated as follows: “*If an amount (even if designated as a bonus) is fixed or objectively determinable, i.e. it has been contractually promised in principle and its amount is determined or is to be determined on the basis of predetermined objective criteria such as profit, turnover or a share in the operating result, and it does not depend on the discretion of the employer, it is to be regarded as an element of the (variable) salary, which the employer is obliged to pay to the employee*”) (ATF 141 III 407, para. 4.1; ATF 136 III 313, para. 2; ATF 129 III 276, para. 2). The bonus is thus converted into a salary component, not subject to Article 322d para. 2 SCO and, if the employment relationship is terminated, it must be paid according to the duration of the employment relationship (ATF 109 II 447, para. 5c).
118. The Panel finds therefore that the FIFA PSC was right to consider that the bonus for the qualification to the 2022 FIFA World Cup was due *pro rata* taking into account the number of games necessary for such qualification compared to the number of games played by the National Team under the supervision of the Coach.
119. Accordingly, the Coach shall be entitled to receive a bonus of EUR 37,500 and the Appealed Decision confirmed in this respect and in relation to the outstanding monthly salaries due.
- b) What compensation shall be awarded to the Coach?
120. Having established that the FECAFOOT shall pay total amounts of EUR 213,750, as outstanding remuneration, and EUR 37,500, as outstanding bonus, to the Coach, as retained in the Appealed Decision, the Panel shall now determine the amount of the compensation due to the Coach for the termination of the Contract without just cause by the FECAFOOT.

121. To resolve this issue, the Panel wishes to refer to Article 6 para. 2 of Annexe 2 of the FIFA RSTP. Such provision provides that, unless otherwise provided for in the contract, compensation for the breach shall be equal to the residual value of the contract that was prematurely terminated when no new employment contract has been entered into.
122. In the present case, the Contract does not provide for the financial consequences in the event of termination without just cause. Thus, and considering that the Coach did not sign any new contract, the Panel shall calculate the residual value of the Contract.
123. The Panel notes that the monthly salary of the Coach corresponded to EUR 90,000, to be distributed proportionally within his team. The Contract was due to end on 19 September 2023. Thus, at the date of the termination on 28 February 2022, the residual value of the Contract was EUR 1,674,000 (18 months and 19 days, that is to say EUR 1,620,000 plus EUR 54,000).
124. As the Coach did not sign a new contract after 28 February 2022, and considering that the FECAFOOT did not dispute the Coach's job search efforts, nor proved that he failed his duty to mitigate his damage as per Swiss law, the amount of EUR 1,674,000 shall not be reduced.
125. However, the Panel cannot go against the principle "*non ultra petita*" – which provides that a party may not be awarded anything more than or different from what it has requested, nor less than what the opposing party has acknowledged – and review upward the amount granted by the FIFA PSC in favour of the Coach. Consequently, even if, in the Panel's view, the compensation for breach of contract due to the Coach amounts to EUR 1,674,000 in the present case, the Panel cannot diverge upward from the Appealed Decision in this respect considering that the Coach did not appeal it.
126. Accordingly, the Appealed Decision shall also be confirmed regarding the compensation due to the Coach, as well as the related restrictions of Article 8 para. 2 let. b) of Annexe 2 of the FIFA RSTP imposed by the FIFA PSC on the FECAFOOT.

## **B. Conclusion**

127. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel finds that:
  - i) The FIFA PSC was competent to deal with the matter.
  - ii) The FECAFOOT shall be responsible for the financial consequences of the termination of the Contract.
  - iii) The FECAFOOT terminated the Contract without just cause on 28 February 2022.
  - iv) The Appealed Decision shall be confirmed in its entirety.
128. The above conclusion makes it unnecessary for the Panel to consider the other requests and submissions presented by the Parties. Accordingly, all other and further motions or prayers for relief are dismissed.

**X. COSTS**

(...).

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## **ON THESE GROUNDS**

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

1. The appeal filed by the Cameroon Football Association (FECAFOOT) is dismissed.
2. The decision issued on 7 June 2022 by the Single Judge of the Players Status Chamber of the Football Tribunal of the Fédération Internationale de Football Association is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 8 May 2023

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

Mr Alexander McLin  
President of the Panel

Mr Benoît Pasquier  
Arbitrator

Mr Michele A.R. Bernasconi  
Arbitrator

Mr Pierre Turrettini  
*Ad Hoc* Clerk